



Snohomish County Council

Committee: Planning & Community Development

Analyst: Ryan Countryman

ECAF: 2021-0742

Proposal: Proposed Motion 21-334

Date: September 21, 2021

Consideration

Proposed Motion 21-334 would refer proposed code revisions that would increase exemptions thresholds for minor new construction and adopt new categorical exemptions per the State Environmental Policy Act (SEPA) to promote infill development in Urban Growth Areas (UGAs) to the department of Planning and Development Services (PDS) for input.

Background

Under the proposed motion, Council staff would work with PDS and other departments as necessary to refine the proposed ordinance in Attachment A. Council staff would report back to the County Council providing a summary of the proposal. This may include additional findings and recommendations as appropriate to reflect refinements to Attachment A resulting from the input process. The County Council would then consider taking further action.

SEPA requires that impacts of new development have appropriate mitigation. It allows for reliance on existing plans and regulations to provide adequate mitigation for many types of projects instead of requiring additional analysis and review. For example, the administrative rules adopted by the Washington State Department of Commerce allow local jurisdictions to consider subdivisions up to 30-lots in UGAs to be “minor new construction” that are exempt from additional review. This requires that the jurisdiction already have regulations addressing common potential impacts such as to wetlands and traffic in place. Snohomish County has the required regulations. The County has also adopted thresholds for minor new construction in the categories allowed, although some thresholds are lower than the maximum. This includes the threshold that would apply to subdivisions which is currently set at 20 dwelling units.

The Washington State Legislature recently amended SEPA to promote infill development in UGAs by Substitute House Bill 2673 (HB 2673). HB 2673 made specific amendments to

RCW 43.21C.229 that increased the potential categorical exemptions from SEPA. Now actions where the “density and intensity of use is roughly equal to or lower than called for in the goals and policies of the applicable comprehensive plan” may be exempt with certain exceptions. Categorical exemptions are different from exemptions for minor new construction discussed above. Some projects may be exempt both as minor new construction and under the new categorical exemptions. Use of categorical exemptions requires completion an Environmental Impact Statement (EIS) for the comprehensive plan. Snohomish County completed a programmatic EIS for the 2015 Update to the comprehensive plan and is thus eligible to make use of the categorical exemptions.

Current Proposal

Summary: The motion would refer a proposed ordinance to PDS for input on proposed revisions to the thresholds for minor new construction and on the proposed use of new categorical exemptions

Effective Date: The referral would take effect at passage of the motion; the request is to receive input back from PDS by October 29, 2021

Fiscal Implications: The referral of this motion would have no impact

Scope: Movement of a motion to refer proposed code amendments

Handling: NORMAL

Approved-as-to-form: N/A for the motion, TBD for the proposed ordinance

Risk Management: TBD

Executive Recommendation: TBD

Analysis

The proposed ordinance would increase certain thresholds for minor new construction to match existing upper limits in Washington Administrative Code (WAC) 197-11-800. It would also adopt new categorical exemptions as recently authorized by the State Legislature. Use of categorical exemptions would be a significant change to the permitting process for many types of permits in UGAs.

Using categorical exemptions in the permitting process would reduce submittal requirements. Removal of SEPA-related steps may help review timeframes for permitted uses such as townhomes in residential zones and warehouses in industrial zones which may become shorter. The programmatic EIS for the comprehensive plan already studied

the overall impact for these uses. Site-specific mitigation would come from existing regulations such as protections for critical areas and drainage.

A major area of change if Snohomish County were to adopt categorical exemptions relates to public involvement. Some changes would be substantive and others would arguably be a matter of perception. One potential substantive change relates to noticing requirements. This is because some of the noticing requirements in SCC 30.70.050 only apply to projects subject to SEPA. Most permit types would be unaffected. However, for example, some stand-alone building permits for non-residential uses such as warehouse or self-storage buildings would become categorically exempt from SEPA and therefore likely exempt from noticing requirements. While the ordinance proposed for referral purposes does not include changes to SCC 30.70.050 to address this, the referral motion specifically cites noticing requirements as an area where County Council seeks input from PDS before final consideration.

Another effect of allowing categorical exemptions relates to appeals. If a project is categorically exempt, there is no SEPA threshold determination to make. The importance of this change is arguably an issue of perception. Functionally, by making a project categorically exempt, the lack of a threshold determination (and notice thereof) means that the public cannot appeal a project under SEPA. If categorical exemptions are applied correctly, then there would be little to no merit in a SEPA-based appeal. Appeal rights per RCW 36.70C, the Land Use Petition Act (LUPA), would be unaffected. A non-trivial share of appeals nominally based on SEPA and received by the Snohomish County Hearing Examiner have been dismissed whole or in part because the arguments were insufficiently based on SEPA concerns. Use of categorical exemptions would thus take away a theoretical opportunity for the public to file SEPA appeals on those projects. However, the opportunity to successfully appeal on such grounds is often illusory. Use of categorical exemptions may therefore appear to reduce the public's opportunity to appeal a project, but it would also mean that appeals would be more often LUPA-based, which may be a more appropriate mechanism.

An important final reason for referring the proposed amendments to PDS for input is to ensure that the proposed code would apply categorical exemptions correctly. Proposed new subsection SCC 30.61.035(2)(c) identifies six criteria for determining categorical exemptions. These six criteria cover the vast majority of permit and SEPA scenarios, but it is important to make sure that a final ordinance includes all scenarios. If there are gaps, then the removal of potential for SEPA appeals described above may unintentionally have a meaningful, rather than just an apparent, effect on options available to the public. The referral motion cites this issue as a topic where the County Council specifically seeks input from PDS.

Request

Move to General Legislative Session September 29th for consideration.