



Snohomish County Council

Committee: Planning & Community Development **Analyst:** Ryan Countryman
ECAF: 2022-0855
Proposal: Proposed Ordinance 22-037 **Date:** September 6, 2022

Consideration

Ordinance 22-037 would adopt new State Environmental Policy Act (SEPA) exemptions for infill development in Urban Growth Areas (UGAs) in Title 30 of Snohomish County Code (SCC).

Background

Councilmember Nehring sponsored the development of Ordinance 22-037. This ordinance would implement changes authorized by the Washington State Legislature in 2021 with enactment of Substitute House Bill 2673 (SHB 2673) authorizing new categorical exemptions from SEPA for infill development in UGAs. It would also increase exemption thresholds for minor new construction as allowed in Washington Administrative Code (WAC) 197-11-800. The County Council discussed an earlier version of this ordinance as Motion 21-334 on September 21, 2021, in Planning and Community Development committee. Motion 21-334 passed on September 29, 2021, referring the earlier version to Planning and Development Services (PDS) and other departments for review and input. Ordinance 22-037 is the conclusion of that process.¹

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 single-family development with up to 30 units 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,

¹ On June 21, 2022, an earlier iteration of the ordinance was assigned to committee as proposed Ordinance 22-027 / ECAF 2022-0646. Feedback regarding implementation resulted in that ordinance never making it to committee for discussion. Instead, there was further work to address implementation issues, and these resulted in the current proposal.

although some thresholds are lower than the maximum. This includes the threshold that would apply to urban single-family development which is currently set at 20 dwelling units.

SHB 2673 amended SEPA to promote infill development in UGAs. SHB 2673 made specific changes 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.

Analysis

Ordinance 22-037 would increase certain thresholds for minor new construction to match existing upper limits in WAC 197-11-800. It would also adopt new categorical exemptions as authorized by the State Legislature in 2021. 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 for applicants and may help reduce review timeframes overall. SEPA-related procedural steps for permitted uses such as townhomes in residential zones and warehouses in industrial zones would no longer be necessary. The programmatic EIS for the comprehensive plan already studied the overall impact for these uses. Site-specific mitigation would come from compliance with existing regulations such as protections for critical areas and drainage. Long-standing SEPA requirements are in many ways redundant to more recent development regulations. Hence, in the interest of efficiency, the action by the State Legislature to allow most development in UGAs to be exempt.

Adoption of the proposed categorical exemptions from SEPA could have had unintended procedural effects where certain procedural actions currently use SEPA eligibility to trigger other actions. Ordinance 22-037 addresses these scenarios by making changes to these processes. The result is to keep outcomes the same, even as the phrasing of the relevant procedural requirements change.

Ordinance 22-037 maintains current levels of public involvement in two ways. First, it makes changes to notice of application requirements to keep similar the levels of notice provided to the public. The September 12, 2021, staff report for Motion 21-334 identified this as a potential issue, but no code provisions had been proposed at that time. This secondary effect of making more projects categorically exempt from SEPA on noticing has now been adequately address by new proposed in changes to SCC 30.070.050.

A second and perhaps more important effect of Ordinance 22-037 on public involvement 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 could be more often LUPA-based, which may be a more appropriate mechanism.

Ordinance 22-037 also makes changes to maintain current practice related to interlocal agreements (ILAs) for reciprocal traffic mitigation with other agencies. Most ILAs current in effect use SEPA eligibility as a trigger for whether the ILA is applicable to the project. The proposed new subsection SCC 30.61.035(3) would address applicability of such ILAs by making categorical exemption subject to an applicant's voluntary agreement to be subject to all reciprocal mitigation imposed under applicable ILAs. Absent such a provision, the adoption of categorical exemptions could have unintended adverse impacts on city and state roads. Ordinance 22-037 avoids that potential scenario by using voluntary agreements.

Current Proposal

Summary: Ordinance 22-037 would increase exemption thresholds for minor new construction and adopt new categorical exemptions under SEPA by amending existing sections in Chapters 30.43F, 30.61, 30.70, and 30.91I SCC.

Fiscal Implications: None

Handling: NORMAL

Approved-as-to-form: YES

Executive Recommendation: TBD

Request: Move to General Legislative Session on September 14 to set time and date for a hearing.