



INFORMATIONAL MEMORANDUM

TO: Planning and Community Development

FROM: Nora Gierloff, DCD Director

CC: Mayor Ekberg

DATE: July 17, 2023

SUBJECT: SEPA Ordinance Thresholds Update

ISSUE

Staff is proposing code changes to streamline and update permit processes related to SEPA environmental determinations.

BACKGROUND

This is one of a series of steps DCD has taken or proposed over the past several years to streamline permit processes including code updates, instituting procedural improvements, updating handouts and online information, and user-friendly website updates. Staff was encouraged to move forward with increases to SEPA thresholds when they were proposed to the PCD Committee about a year ago, see Attachment A. Unlike standard updates to our codes, changes to these thresholds require sixty days' notice to affected tribes, agencies with expertise, affected jurisdictions, the department of ecology, and the public. Staff will return with the changes in full ordinance format after the notice period.

DISCUSSION

Staff is proposing code streamlining to reduce staff effort, reduce permit review times, and cut down on paperwork, see Attachment B. It is likely that these changes will not affect the substantive outcomes of the permit review but instead provide a faster and more predictable experience for our applicants.

SEPA Flexible Thresholds

The [State Environmental Policy Act](#) (SEPA) process identifies and analyzes environmental impacts associated with governmental decisions. These decisions may be related to issuing permits for private projects, constructing public facilities, or adopting regulations, policies, and plans. SEPA can be used to modify or deny a proposal to avoid, reduce, or compensate for probable impacts.

If SEPA environmental review is required it starts with the applicant filling out a standard checklist that asks about the proposal's potential impacts in a variety of areas including earth, water, air, plants, animals, energy, housing, transportation, public services, and utilities. The City uses the checklist to determine whether a proposal's impacts are likely to be significant and this is called a threshold determination. When a checklist is required it can trigger additional notice mailings, waiting periods, and appeal opportunities resulting in a longer and more uncertain permit process.

Certain types of proposals are automatically exempt from the threshold determination because they are a size or type unlikely to cause a significant adverse environmental impact. Examples include minor new construction of residential, commercial or storage structures and minor road and street improvements.

In the past the City has used its local authority to raise the size of projects that require SEPA review so that more applications are exempt. State law now allows us to raise these sizes even higher if we can document that we have existing regulations in place to provide adequate environmental protection, such as critical areas, concurrency, traffic mitigation, and design standards, see Attachment D. We very rarely need to use our SEPA authority to condition projects because our regulations give us the tools we need to address impacts. Therefore, staff proposes to use the process at WAC 197-11-800 1 (c) to raise thresholds and target SEPA reviews to larger, more impactful projects.

Project Type	Tukwila's Thresholds	Proposed Thresholds	Maximum Thresholds
Single Family	9	30	30
Single Family less than 1,500 SF	9	30	100
Multi Family	9	200	200
Agricultural Buildings	10,000 square feet	40,000 square feet	40,000 square feet
Office, School, Commercial or Storage Buildings	10,000 square feet	30,000 square feet	30,000 square feet
Parking Lots	40 spaces	90 spaces	90 spaces
Landfill and Excavations	500 cubic yards	1,000 cubic yards	1,000 cubic yards

The elimination of SEPA review for projects beneath the new thresholds should have minimal or no impact to public review and commenting opportunities, see Attachment C. Most of the projects that fall between the existing and proposed levels are either already exempt from noticing or subject to noticing anyway because they trigger land use approvals with independent notice requirements, such as design review.

Manufacturing Industrial Center Planned Action Repeal

In 1991 the Tukwila partnered with Boeing to evaluate a proposed ten-year master plan for the redevelopment of the Duwamish Corridor area in a programmatic Environmental Impact Statement (EIS). Boeing and Tukwila agreed to a set of mitigation measures for transportation, stormwater, and shoreline access impacts likely to result from full buildout of the proposal. The process resulted in a mitigation agreement signed by both parties in 1993. The term of that agreement ended in 2003, though it does provide that “changing business conditions may result in a longer or shorter time period for project completion.”

The adoption of a new Comprehensive Plan in 1995 included a Manufacturing Industrial Center (MIC) subarea in the Duwamish Corridor. In 1998 the City conducted an Integrated GMA Implementation Plan and Final EIS for the MIC. This Planned Action was adopted into Tukwila’s SEPA Ordinance, exempting projects that fell within the envelope of development from further SEPA review.

The planned action was intended to be in place for 10 years. At the end of that time we allowed the SEPA exemption to continue as the trip threshold had not been exceeded. Jack Pace and I reached out to Boeing multiple times beginning in 2011 to encourage them to update the analysis and extend the planned action but that has not taken place. It is now 25 years after the original studies and they are no longer a valid basis for the SEPA exemption. Therefore, staff is suggesting that TMC 21.04.152 and TMC 21.04.154 be deleted from the code. However, Boeing will be able to take advantage of the higher flexible thresholds proposed in this ordinance.

Tukwila Urban Center SEPA Exemption Repeal

Tukwila received a federal grant to develop the Southcenter Subarea Plan, and as part of that work conducted a Supplemental Environmental Impact Statement (SEIS). The City was able to use that environmental analysis as a basis to take advantage of a time-limited SEPA exemption rule and adopted those regulations in 2016. That has allowed projects that meet the development standards of TMC 18.28 to be exempt from an individual SEPA determination. Our ability to use that provision expired as of April 4, 2023. Therefore, staff is suggesting that TMC 21.04.164 be deleted from the code.

FINANCIAL IMPACT

Reducing the number of applications subject to SEPA would reduce permit revenue, though we do not recover the full cost of staff time through the application fee. It would result in a modest reduction to staff workload and provide process streamlining for our applicants.

RECOMMENDATION

Review and respond to the proposed redlined code changes. Due to required 60-day public notice provisions Staff will return to PCD with a draft ordinance on September 18, 2023. Council is being asked to consider this item and hold a public hearing at the September 25, 2023 Committee of the Whole meeting and adopt the ordinance at the subsequent October 2, 2023 Regular Meeting.

ATTACHMENTS

- A. 6-21-22 PCD Minutes
- B. Redlined Changes to TMC 21.04
- C. Analysis of Public Comment Impacts of Raised SEPA Thresholds
- D. Environmental Regulations Technical Memo



City of Tukwila

City Council Planning & Community Development Committee

Meeting Minutes

June 21, 2022 – 5:30 p.m. – Hybrid Meeting; Council Chamber & MS Teams

Councilmembers Present: Cynthia Delostrinos Johnson, Chair; De'Sean Quinn

Staff Present: David Cline, Rachel Bianchi, Nora Gierloff, Nancy Eklund

Guests: Josh Castle, Bradford Gerber, George Scarola, Low Income Housing Institute.

Chair Delostrinos Johnson called the meeting to order at 5:30 p.m. and asked guests and public attendees to introduce themselves.

BUSINESS AGENDA

A. Tiny House Village Memoranda of Agreement

Staff provided a status update and draft Memoranda of Agreement for each of the two tiny house village sites planned for Tukwila, one at 14925 Interurban Avenue South and one at 3118 S. 140th Street. Audience members were invited to provide brief public comment.

Committee Recommendation

Forward to June 27, 2022 Committee of the Whole.

B. Development Code Streamlining

Staff provided an overview of proposed code changes to streamline permit process related to SEPA environmental determinations, design review, and Zoning Code amendments. Committee members were supportive of the proposals. Staff will prepare an ordinance relating to zoning code amendments as the next step.

Item(s) requiring follow-up:

Consider language emphasizing Council's priority of customer service with regard to permitting matters.

Committee Recommendation

Discussion only. Return to Committee.

II. MISCELLANEOUS

The meeting adjourned at 6:39 p.m.

_____ CDJ Committee Chair Approval

Attachment B

Proposed Redlined Changes to TMC 21.04 State Environmental Policy Act

21.04.040 Definitions - Additional

In addition to those definitions contained within WAC 197-11- 700 through 799, when used in this chapter the following terms shall have the following meanings, unless the content indicates otherwise:

1. "Department" means any division, subdivision or organizational unit of the City established by ordinance, rule or order.
2. "Early notice" means the City's response to an applicant stating whether it considers issuance of the Determination of Significance likely for the applicant's proposal.
3. "Environmentally ~~sensitive~~-critical area": see TMC 21.04.300 and TMC 18.45.
4. "Notice of action" means the notice (as specified in RCW 43.21C.080) of the time for commencing an appeal of a SEPA determination that the City or the applicant may give following final City action upon an application for a permit or approval when the permit or approval does not have a time period set by statute or ordinance for commencing an appeal.
5. "SEPA Rules" means WAC Chapter 197-11 adopted by the Department of Ecology.

(Ord. 1770 §81, 1996; Ord. 1599 §7(1), 1991; Ord. 1344 §1, 1985; Ord. 1331 §3, 1984)

21.04.050 Designation of responsible official

A. For those proposals for which the City is a lead agency, the responsible official shall be the Community Development ~~Planning~~ Director or such other person as the Mayor may designate in writing.

B. For all proposals for which the City is a lead agency, the responsible official shall make the threshold determination, supervise scoping and preparation of any required Environmental Impact Statement (EIS), and perform any other functions assigned to the lead agency or responsible official by those sections of the SEPA Rules that have been adopted by reference.

(Ord. 1344 §2, 1985; Ord. 1331 §4, 1984)

21.04.110 Categorical exemptions - Flexible thresholds for Minor New Construction

A. The City establishes the following exempt levels for minor new construction as allowed under WAC 197-11-800(1)(c) and (d), based upon local conditions:

1. For single-family residential projects, up to thirty (30) dwelling units;
2. For multifamily residential projects, up to two hundred (200) dwelling units;
3. For agricultural structures, up to forty thousand (40,000) square feet;

4. For office, school, commercial, recreational, service or storage buildings, up to thirty thousand (30,000) square feet;

5. For parking facilities, up to ninety (90) parking spaces;

6. For fills or excavations, up to one thousand (1,000) cubic yards. All fill or excavation, of any quantity, necessary for an exempt project in subsections 1 through 4 of this section shall be exempt.

B. The exemptions in this subsection apply except when the project:

1. Is undertaken wholly or partly on lands covered by water

2. Requires a license governing discharges to water that is not exempt under RCW 43.21C.0383

3. Requires a license governing emissions to air that is not exempt under RCW 43.21C.0381 or WAC 197-11-800 (7) or (8); or

4. Requires a land use decision that is not exempt under WAC 197-11-800(6).

C. Whenever the city establishes new exempt levels under this section, it shall send them to the Department of Ecology, Headquarters Office, Olympia, Washington, 98504 under WAC 197-11-800(1)(c).

~~A. The City establishes the following exempt levels for minor new construction based on local conditions:~~

~~1. For residential dwelling units in WAC 197-11-800 (1)(b)(i) and WAC 197-11-800(1)(b)(ii) up to nine dwelling units.~~

~~2. For agricultural structures in WAC 197-11-800 (1)(b)(iii) up to 10,000 square feet.~~

~~3. For office, school, commercial, recreational, service or storage buildings in WAC 197-11-800 (1)(b)(iv), up to 12,000 square feet, and up to 40 parking spaces.~~

~~4. For parking lots in WAC 197-11-800 (1)(b)(iv), up to 40 parking spaces.~~

~~5. For landfills and excavations in WAC 197-11-800 (1)(b)(v), up to 500 cubic yards.~~

~~B. The responsible official shall send copies of all adopted flexible thresholds to the Department of Ecology, headquarters office, Olympia, Washington.~~

~~(Ord. 2502 §1, 2016; Ord. 2173 §1, 2007; Ord. 1344 §6, 1985; Ord. 1331 §11, 1984)~~

21.04.140 Threshold determinations - Environmental checklist

A. A completed environmental checklist shall be filed at the same time as an application for a permit, license, certificate or other approval not exempted by this chapter. The checklist shall be in the form of WAC 197-11-960, ~~with the following additions:~~

~~B1.~~ If the site is an environmentally ~~sensitive-critical~~ area, a ~~sensitive-critical~~ area study that meets the requirements of ~~TMC 18.45~~ ~~the SEPA official~~ may be required. The SEPA official may waive any study requirements determined to be unnecessary for review of a particular use or application.

~~Environmentally sensitive area studies shall have three components: a site analysis, an impact analysis, and proposed mitigation measures. More or less detail may be required for each component depending on the size of the project, severity of potential impacts and availability of information.~~ Funding for a qualified professional, selected and retained by the City shall be paid for by the applicant to review the geotechnical reports on Class 2 and Class 3 landslide, seismic and coal mine hazard areas if the geotechnical report indicates Class 3 or Class 4 characteristics, and will be required in all Class 4 landslide hazard areas. Applicants may also be required to pay for peer review of wetland and watercourse studies per 18.45.040 E.;

~~2. Identification of conflicts with the policies of the Comprehensive Land Use Policy Plan and proposed measures to reduce the conflicts;~~

~~3. Description of the objectives of the proposal, the alternative means of accomplishing these objectives, comparison of the alternatives, and indication of the preferred course of action.~~

~~CB.~~ A checklist is not needed if the City and the applicant agree an EIS is required, SEPA compliance has been completed, or SEPA compliance has been initiated by another agency.

~~DC.~~ The City shall use the environmental checklist to determine the lead agency and, if the City is the lead agency, for making the threshold determination.

~~ED.~~ For private proposals, the applicant is required to complete the environmental checklist. The City may provide information as necessary. For City proposals, the department initiating the proposal shall complete the environmental checklist for that proposal.

~~FE.~~ The City may decide to complete all or part of the environmental checklist for a private proposal, if either of the following occurs:

1. The City has technical information on a question or questions that is unavailable to the private applicant; or
2. The applicant has provided inaccurate information on previous proposals or on proposals currently under consideration.

(Ord. 1599 §7(3), 1991; Ord. 1344 §7, 1985; Ord. 1331 §13, 1984)

~~21.04.152 Planned actions identified~~

~~Planned actions are specifically identified as developments which satisfy all of the following characteristics:~~

- ~~1. is a "permitted use" located within the MIC/L (TMC 18.36.020) and MIC/H (TMC 18.38.020) zones and/or is an accessory use (TMC 18.36.030 and 18.38.030 respectively) ("conditional" and "unclassified" uses are not planned actions); and~~
- ~~2. satisfies the consistency checklist which demonstrates that all impacts have been mitigated; and~~
- ~~3. is consistent with the Tukwila Comprehensive Plan per RCW 43.21.440; and~~

4. is not any of the following:

- a. an “essential public facility” as defined in RCW 36.70a.200, per RCW 43.21C.031(2);
- b. an action which is not consistent with the Tukwila Comprehensive Plan as adopted per RCW 36.70A (consistency required per RCW 43.21C.031(2));
- c. a conditional or unclassified use, in the respective MIC/L or MIC/H zones;
- d. a development related to the Regional Transit Authority light rail or commuter rail system;
- e. any decisions about the 16th Avenue Bridge improvement or disposition which would normally require a SEPA threshold determination; or
- f. a development in which any portion includes shoreline modifications waterward of the ordinary high water mark.

(Ord. 2502 §2, 2016; Ord. 1853 §6, 1998)

21.04.154 Consistency check

A. Having identified the developments which are a potential “planned action”, the development must demonstrate that it has mitigated all of its impacts pursuant to the environmental impact statement and planned action ordinance, and is consistent with the Comprehensive Plan (RCW 43.21C.030(2)).

B. A consistency checklist will be provided by the Director of the Department of Community Development. The criteria for Comprehensive Plan consistency are as presented in the “Integrated GMA Implementation Plan and Environmental Impact Statement for the Tukwila Manufacturing/Industrial Center.”

(Ord. 1853 §7, 1998)

21.04.160 Documents required—SEPA decisions

For nonexempt proposals, the DNS or draft EIS for the proposal shall accompany the City staff’s recommendation to any appropriate advisory body such as the Planning Commission.

(Ord. 1331 §8, 1984)

21.04.165 Environmental review for development in the Tukwila Urban Center—Policies

A. Development proposed in the Tukwila Urban Center will not be subject to environmental review and project-specific SEPA based administrative or judicial appeals if all of the following criteria are met:

1. The proposed development is consistent with the Southcenter Subarea Plan and associated development regulations in TMC Chapter 18.28.
2. The proposed development meets all established conditions or mitigation.
3. Probable significant adverse impacts of the proposed development have been identified in the Supplemental Environmental Impact Statement (SEIS) prepared for the Southcenter Subarea Plan.

~~4. The traffic generated from the proposal does not cause the total number of PM hour peak trips generated within the Southcenter Subarea as a whole to exceed the maximum number of new PM peak hour trips threshold as identified in the SEIS for the Southcenter Subarea Plan, or a subsequent traffic analysis based on a revised future land use scenario for the Southcenter Subarea.~~

~~5. The project application vests by April 4, 2023.~~

~~6. The proposed development is~~

~~a. not a public facility or utility;~~

~~b. not an "essential public facility" as defined in RCW 36.70A.200 and TMC Section 18.06.270;~~

~~c. not a conditional or unclassified use, in the respective TUC zones;~~

~~d. not a development for which any portion includes shoreline modifications waterward of the ordinary high water mark.~~

~~B. A consistency checklist shall be provided by the Department of Community Development to track all the criteria listed under TMC Section 21.04.165.A. The applicant shall submit a response to the consistency checklist documenting that the proposed development complies with all of the criteria listed under TMC Section 21.04.165.A.~~

~~(Ord. 2502 §3, 2016)~~

21.04.300 Environmentally ~~sensitive~~ critical areas

A. Environmentally ~~sensitive~~ critical areas designated on the zoning maps, and/or as defined in TMC 18.45.03~~20~~ as of the effective date of the ordinance from which this section derives and as thereafter amended, designate the locations of environmentally ~~sensitive~~ critical areas within the City and are adopted by reference. In addition to those areas identified in WAC 197-11-908 and for purposes of this chapter, environmentally ~~sensitive~~ critical areas shall also include wooded hillsides, and the Green/Duwamish River and its shoreline zone as defined by the Tukwila Shoreline Master Program. For each environmentally ~~sensitive~~ critical area, all categorical exemptions within WAC 197-11-800 are applicable.

B. The City shall treat proposals located wholly or partially within an environmentally ~~sensitive~~ critical area no differently than other proposals under this chapter, making a threshold determination for all such proposals. The City shall not automatically require an EIS for a proposal merely because it is proposed for location in an environmentally ~~sensitive~~ critical area.

C. Certain exemptions do not apply on lands covered by water, and this remains true regardless of whether or not lands covered by water are mapped.

(Ord. 1608 §2, 1991; Ord. 1599 §7(6), 1991; Ord. 1344 §13, 1985; Ord. 1331 §30, 1984)

21.04.310 Fees

The City shall require the following fees for its activities in accordance with the provisions of this chapter:

1. Threshold Determination. For every environmental checklist the City will review when it is lead agency, the City shall collect a fee according to the adopted Land Use Fee resolution ~~of \$325.00~~ from the

proponent of the proposal prior to undertaking the threshold determination; provided that no fee shall be charged to or collected from the proponents of any proposal for annexation to the City, and the City shall review such checklists without charge. Where payment of a fee is required, the time periods provided by this chapter for making a threshold determination shall not begin to run until payment of the fee is received by the City.

2. Environmental Impact Statement.

a. When the City is the lead agency for a proposal requiring an EIS and the responsible official determines the EIS shall be prepared by employees of the City, the City may charge and collect a reasonable fee from any applicant to cover costs incurred, including overhead, by the City in preparing the EIS. The responsible official shall advise the applicant of the projected costs for the EIS prior to actual preparation.

b. The responsible official may determine that the City will contract directly with a consultant for preparation of an EIS, or a portion of the EIS, for activities initiated by some persons or entity other than the City, and may bill such costs and expenses directly to the applicant. Such consultants shall be selected by the City. Also, the City will charge an administrative fee ~~of \$1,000~~ in addition to the consultant fees, [see the adopted Land Use Fee resolution](#).

c. The applicant shall pay the projected amount to the City prior to commencing work. The City will refund the excess, if any, at the completion of the EIS. If the City's costs exceed the projected costs, the applicant shall immediately pay the excess. If a proposal is modified so that an EIS is no longer required, the responsible official shall refund any fees collected under a. or b. of this subsection which remain after incurred costs, including overhead, are paid.

3. The City ~~may~~ [shall](#) collect a ~~reasonable~~ fee from an applicant to cover the cost of meeting the public notice requirements of this chapter relating to the applicant's proposal [according to the adopted Land Use Fee resolution](#).

4. The City may charge any person for copies of any document prepared under this chapter, and for mailing the document, in a manner provided by RCW 42.17.

(Ord. 1650 §1, 1992; Ord. 1576 §6, 1990; Ord. 1425 §1, 1987; Ord. 1331 §31, 1984)

~~21.04.330 Copies on file~~

~~The City Clerk shall maintain on file for public use and examination three copies of the Washington Administrative Code sections referred to herein.~~

~~(Ord. 1331 §33, 1984)~~



INFORMATIONAL MEMORANDUM

TO: Department of Ecology, SEPA Unit

FROM: Nora Gierloff, DCD Director

DATE: June 27, 2023

SUBJECT: Public Notice and Public Comment Opportunities for Newly Exempt Development Projects

The City of Tukwila is proposing to adopt the following flexible categorical exemption thresholds for minor new construction, pursuant to WAC 197-11-800(1)(c):

- Single family residential: Thirty (30) units
- Multifamily residential: Two Hundred (200) units
- Agricultural: Forty thousand (40,000) square feet
- Office/School/Commercial: Thirty thousand (30,000) square feet
- Parking Facilities: Ninety (90) parking spaces
- Grading Quantity: One thousand (1,000) cubic yards

Below is an analysis of the public notice and public comment opportunities that will remain for newly exempt projects under the flexible thresholds, which the city believes meets the WAC requirements. Analysis of local, state, and federal environmental regulations is provided in a separate document.

Single Family Residential (Increase from 9 units to 30 units)

- The city only permits one detached SFR per lot along with one ADU
- Additional single family residential lots are created through the subdivision process
- The threshold for a short plat is 9 lots, while 10 or more lots is a subdivision, so the increased threshold will not affect the review process for creation of between 10 and 30 lots as any project in this category would already follow subdivision procedures
- Subdivisions are governed by TMC 17.14 and require Type III review
- Type III permits require a Notice of Application be mailed to property owners and tenants within 500 feet, have a sign posted on the site, be published, and posted on the city website
- Affected agencies, tribes, and members of the public have the opportunity to comment on Type III permits, attend the public hearing before the Hearing Examiner, become a party of record, receive a copy of the Notice of Decision, and have the option to appeal the decision.
- There is no loss of public notice or opportunities to comment on proposals involving between 10 and 30 single family residential lots

Multifamily Residential (Increase from 9 units to 200 units)

- Projects with 10 or more MFR units are only permitted in multifamily and mixed use/subarea zones
- All new MFR development of 10 or more units requires either Administrative or Public Hearing Design Review per TMC 18.60
- Administrative Design Review is a Type II land use permit that requires a Notice of Application be mailed to the applicant and agencies with jurisdiction for projects that do

not require SEPA. Administrative design review for multi-family projects is only available for MFR projects up to 50 units in the Tukwila Urban Center.

- The notice requirements differ for Type II decisions based on whether they require a SEPA determination so projects between 10 and 50 units in the TUC would have lower notice requirements, though public comments would still be accepted and considered.
- All other areas of the City require Public Hearing Design Review for MFR projects of 10 or more units which is a Type III decision.
- Type III permits require a Notice of Application be mailed to property owners and tenants within 500 feet, have a sign posted on the site, be published, and posted on the city website.
- Affected agencies, tribes, and members of the public have the opportunity to comment on Type III permits, attend the public hearing before the Hearing Examiner, become a party of record, receive a copy of the Notice of Decision, and have the option to appeal the decision.
- The only loss of public notice or opportunities to comment on proposals would be for projects in one subarea involving between 10 and 50 multifamily residential units. There have been no proposals for multi-family projects of less than 100 units in that subarea.

Agricultural (Increase from 10,000 to 40,000 sf)

- All structures over 10,000 sf in commercial and mixed use zones require Public Hearing Design Review which is a Type III decision. All structures in industrial zones are generally exempt from design review unless they are within the shoreline or adjacent to residential uses.
- Type III permits require a Notice of Application be mailed to property owners and tenants within 500 feet, have a sign posted on the site, be published, and posted on the city website.
- Affected agencies, tribes, and members of the public have the opportunity to comment on Type III permits, attend the public hearing before the Hearing Examiner, become a party of record, receive a copy of the Notice of Decision, and have the option to appeal the decision.
- There is no loss of public notice or opportunities to comment on proposals involving agricultural buildings between 10,000 and 40,000 sf.

Office, School, Commercial/Recreation/Service/Storage (Increase from 10,000 sf to 30,000 sf)

- All structures over 10,000 sf in commercial and mixed use zones require Public Hearing Design Review which is a Type III decision. All structures in industrial zones are generally exempt from design review unless they are within the shoreline or adjacent to residential uses.
- Type III permits require a Notice of Application be mailed to property owners and tenants within 500 feet, have a sign posted on the site, be published, and posted on the city website.
- Affected agencies, tribes, and members of the public have the opportunity to comment on Type III permits, attend the public hearing before the Hearing Examiner, become a party of record, receive a copy of the Notice of Decision, and have the option to appeal the decision.
- There is no loss of public notice or opportunities to comment on proposals involving between 12,000 sf and 30,000 sf of office/school/commercial development.

Parking Facilities (Increase from 40 to 90 stalls)

- Filling and excavations over 50 cubic yards require either a Right-of-Way Use Permit (ROWUP) per TMC 11.08 or a development permit if on private property or associated with building construction per TMC 16.04.
- These are Type I permits that only require public notice if they trigger SEPA review or are associated with a land use permit that independently requires public notice.
- While it is possible that some projects may not trigger public notice under the increased thresholds, because Tukwila does not allow stand-alone parking lots it is very unusual for a new parking lot over 40 stalls to not be associated with design review or other land use approvals.
- It is rare that a parking lot between 40 and 90 stalls would be built without triggering public notice or opportunities to comment through other associated permits. However, it would be possible under the increased thresholds.

Land Fills and Excavations (Increase from 500 to 1,000 cubic yards)

- Filling and excavations over 50 cubic yards require either a Right-of-Way Use Permit (ROWUP) per TMC 11.08 or a development permit if on private property or associated with building construction per TMC 16.04.
- These are Type I permits that only require public notice if they trigger SEPA review or are associated with a land use permit that independently requires public notice.
- It is rare that grading of this magnitude would not trigger public notice or opportunities to comment through other associated permits. However, it would be possible under the increased thresholds.



TECHNICAL MEMORANDUM

TO: Tukwila City Council

FROM: Nora Gierloff, DCD Director

CC: Mayor Ekberg

DATE: June 27, 2023

SUBJECT: Environmental Regulations Technical Memo

ISSUE

Tukwila is proposing to amend TMC 21.04 – State Environmental Policy Act (SEPA). Specifically, the City aims to increase the flexible thresholds for minor new construction as allowed under WAC 197-11-800(1). This technical memorandum evaluates how the proposed changes to the City’s SEPA code comply with the requirements of WAC 197-11-800 for increasing SEPA exemptions.

BACKGROUND

The State Environmental Policy Act (SEPA), adopted May 1971, is codified in RCW 43.21C and implemented through the Department of Ecology’s administrative code under WAC 197-11. The purpose of SEPA is to “(1) ...encourage productive and enjoyable harmony between humankind and the environment; (2) to promote efforts which will prevent or eliminate damage to the environment...; (3) [to] stimulate the health and welfare of human beings; and (4) to enrich the understanding of the ecological systems and natural resources...”. SEPA is a procedural statute designed to ensure that potential environmental effects of a proposed action or project are surfaced, evaluated, and mitigated or prevented.

In the decades since SEPA has become law, many other state laws have been adopted that require jurisdictions to enact regulations that protect the environment and provide for public notice. This includes, but is not limited to, the 1990 Growth Management Act (GMA), which requires local governments to enact critical areas regulations, the 1971-72 Shoreline Management Act, which requires all counties and most towns and cities to prepare and implement shoreline master programs, and stormwater regulations and permitting which implements requirements under the Clean Water Act. In most cases around the state, cities and counties have adopted regulations covering almost every element covered under the SEPA.

In addition, the GMA (RCW 36.70A) and the Local Project Review Act (RCW 36.70B) outline substantial requirements for community, Tribal, and local, state, and federal agency engagement during policy, code, and permit processes. SEPA is no longer the only process by which public notice is provided since these laws were enacted in the 1990s and implemented through local codes and processes.

To account for these additional layers of environmental protection and public engagement opportunities that did not exist when SEPA was created, updates to the administrative rules over the years have created various optional avenues under which specific types of projects or decisions can be exempt from review under SEPA. This has allowed cities and counties across the state the ability to modify their SEPA requirements as development regulations are adopted that protect the environment and mitigate impacts associated with project actions.

Tukwila has evaluated the requirements for increasing categorical exemptions for minor new construction flexible thresholds in WAC 197-11-800. To adopt these changes, the rules outline conditions which must be met. This memorandum addresses those requirements.

It is important to note that adopting higher SEPA exemption levels will not reduce the city's ability to mitigate environmental impacts associated with project actions. It only recognizes that impacts will be mitigated and conditioned for these projects using existing city code (and state and federal rules and laws), rather than SEPA. The reliance on existing development regulations to mitigate impacts instead of SEPA is also discussed in WAC 197-11-158, which in summary provides that a city or county planning under the Growth Management Act can decide that a project's potential impacts are adequately addressed and mitigated under the comprehensive plan, any subarea plans, and/or the jurisdiction's development regulations and incorporate specific findings therein in a SEPA determination of non-significance.

FLEXIBLE THRESHOLDS FOR MINOR NEW CONSTRUCTION

Overview

In 1984, the state developed SEPA rules (WAC 197-11-800) that outline certain types of projects that are categorically exempt from SEPA threshold determinations and Environmental Impact Statement (EIS) processes. WAC 197-11-800(1) outlines flexible thresholds for minor new construction. The flexibility comes from the range of exemptions provided for in the 800(1) subsection. This has allowed cities and counties around the state to tailor exemption levels that fit their community.

Under WAC 197-11-800(1)(b), certain levels and types of new construction are categorically exempt from SEPA. The following are the minimum exemptions for minor new construction:

- (i) The construction or location of four detached single family residential units.
- (ii) The construction or location of four multifamily residential units.
- (iii) The construction of a barn, loafing shed, farm equipment storage building, produce storage or packing structure, or similar agricultural structure, covering 10,000 square feet, and to be used only by the property owner or his or her agent in the conduct of farming the property. This exemption shall not apply to feed lots.
- (iv) The construction of an office, school, commercial, recreational, service or storage building with 4,000 square feet of gross floor area, and with associated parking facilities designed for twenty automobiles. This exemption includes parking lots for twenty or fewer automobiles not associated with a structure.
- (v) Any fill or excavation of 100 cubic yards throughout the total lifetime of the fill or excavation and any excavation, fill or grading necessary for an exempt project in (i), (ii), (iii), or (iv) of this subsection shall be exempt.

Under WAC 197-11-800(1)(c) and (d), cities can raise the exemption levels up to maximums outlined in part 800(1)(d). The City currently has exemption levels for minor new construction well below the level currently allowed.

City Proposal

Minor new construction maximum exemption levels, contained in WAC 197-11-800(1), were increased in 2013 and again in December 2022 by the state Department of Ecology to what is shown in the table below. These changes recognized that almost all minor new construction projects now have impacts mitigated through development regulations, rather than through SEPA. This also recognizes the number of regulations cities and counties have adopted over the past 50 years.

The 2013 WAC changes also recognized that planning requirements around the State of Washington are not the same for all cities and counties. Some counties and cities around the state are required to do more planning than others and therefore are likely to have more regulations in place to mitigate project impacts than those jurisdictions with fewer planning requirements and regulations. The maximum levels that Tukwila can adopt as a city within an urban growth area are listed in the table below.

Project Type	Tukwila's Thresholds	Proposed Thresholds	Max Thresholds
Single Family	9	30	30
Single Family less than 1,500 SF	9	30	100
Multi Family	9	200	200
Agricultural Buildings	10,000 square feet	40,000 square feet	40,000 square feet
Office, School, Commercial or Storage Buildings	10,000 square feet	30,000 square feet	30,000 square feet
Parking Lots	40 spaces	90 spaces	90 spaces
Landfill and Excavations	500 cubic yards	1,000 cubic yards	1,000 cubic yards

An important caveat is that these exemptions would not apply to projects that:

- Are proposed wholly or partly on lands covered by water
- Require a license governing discharges to water not exempt under RCW 43.21C.0383
- Require a license governing emission to air not exempt under RCW 43.21C.0381 or WAC 197- 11-800(7-8)
- Require a land use decision that is not exempt under WAC 197-11.800(6). Land use decisions that are exempt from SEPA under this WAC are:
 - o Land use decisions for exempt projects, except for rezones;
 - o Other land use decisions, like home occupations or use changes, subject to conditions;
 - o If an exempt project requires a rezone, the rezone is exempt if certain conditions are met;
 - o Short subdivisions, except on lands covered by water (this also applies to binding site plans up to the same number of lots allowed as a short subdivision);
 - o Granting of variances based on special circumstances (size, shape, topography, location or surroundings) and not resulting in any change in land use or density; and
 - o Alteration of property lines as exempted from subdivision statute in RCW 58.18.040.

This means that a large subset of potential land use decisions, including but not limited to full subdivisions, conditional uses, development agreements, a range of rezones, shoreline substantial development permits, and legislative actions like development code amendments, comprehensive plan amendments, and annexations would not be categorically exempt under WAC 197-11-800.

Technical analysis

To adopt thresholds above the minimums outlined in WAC 197-11-800(1)(b), certain public noticing, documentation and analysis is required. The following table outlines each required criterion and how the City meets WAC 197-11-800(1)(c) requirements for raising exemption levels.

WAC 197-11-800(1)(c) requirements for raising exemption levels	Response
Documentation that the requirements for environmental analysis, protection and mitigation for impacts to elements of the environment (listed in WAC 197-11-444) have been adequately addressed for the development exempted. The requirements may be addressed in specific adopted development regulations, and applicable state and federal regulations.	See table below for analysis showing the requirements for environmental analysis, protection and mitigation for impacts to elements of the environment (listed in WAC 197-11-444) have been adequately addressed for the developments which would be exempted.
(ii) Description in the findings or other appropriate section of the adopting ordinance or resolution of the locally established notice and comment opportunities for the public, affected tribes, and agencies regarding permitting of development projects included in these increased exemption levels.	The adopting ordinance will reference the analysis of the notice and comment opportunities for the public, affected tribes, and agencies regarding permitting of development projects included in these increased exemption levels.
(iii) Before adopting the ordinance or resolution containing the proposed new exemption levels, the agency shall provide a minimum of sixty days' notice to affected tribes, agencies with expertise, affected jurisdictions, the department of ecology, and the public and provide an opportunity for comment.	60-day notice of the intent to adopt an ordinance to increase the exemptions levels has been provided to the following: affected tribes, agencies with expertise, affected jurisdictions, the department of ecology, and the public and provide an opportunity for comment.
<p>(iv) The city, town, or county must document how specific adopted development regulations and applicable state and federal laws provide adequate protections for cultural and historic resources when exemption levels are raised. The requirements for notice and opportunity to comment for the public, affected tribes, and agencies in (c)(i) and (ii) of this subsection and the requirements for protection and mitigation in (c)(i) of this subsection must be specifically documented. The local ordinance or resolution shall include, but not be limited to, the following:</p> <ul style="list-style-type: none"> • Use of available data and other project review tools regarding known and likely cultural and historic resources, such as inventories and predictive models provided by the Washington department of archaeology and historic preservation, other agencies, and tribal governments. • Planning and permitting processes that ensure compliance with applicable laws including chapters 27.44, 27.53, 68.50, and 68.60 RCW. • Local development regulations that include at minimum pre-project cultural resource review 	<p>City development regulations and applicable state and federal laws currently will provide adequate protections for cultural and historic resources for the exemptions being proposed.</p> <p>Regulations listed in TMC 18.50.110 Archaeological/Paleontological Information Preservation Requirements cover pre-construction cultural resources assessment, archaeological response plan and provisions for excavation monitoring by a professional archaeologist. Excavations into historically native soil, when in an area of archaeological potential, shall have a professional archaeologist on site to ensure that all State statutes regarding archaeological conservation/ preservation are implemented. The applicant shall provide a written commitment to stop work immediately upon discovery of archaeological remains. Work in shoreline areas that will extend into native soil is noticed to WA Department of Archaeology and Historical Preservation and area Tribal governments.</p> <p>TMC 16.60 Historic Preservation contains regulations regarding landmark designation</p>

where warranted, and standard inadvertent discovery language (SIDL) for all projects.	and alteration of existing landmarked sites, buildings, or properties.
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The following table provides documentation that the requirements for environmental analysis, protection, and mitigation for impacts to elements of the environment (listed in WAC 197-11-444) have been adequately addressed for the development exempted under the proposed increases to the minor new construction flexible thresholds categorical exemptions.

Elements as listed in WAC 197-11-444	How impacts are adequately addressed by specific adopted development regulations, and applicable state and federal regulations
Earth	<p>TMC 14.30 SURFACE WATER MANAGEMENT (Stormwater Management) regulates stormwater discharges from all new development and redevelopment to prevent and control adverse impacts of drainage and stormwater on the public health, safety, and general welfare.</p> <p>TMC 16.54 GRADING regulates clearing and grading, with a permit required for all grading amounts above 50 cubic yards. Regulated activities include excavation, fill, grading, earthwork construction, and structural preloads with a goal of preventing erosion, controlling sedimentation, minimizing disturbance of native soils and landscapes, and restoring the moisture-holding capacity of disturbed soils.</p> <p>TMC 18.45 ENVIRONMENTALLY CRITICAL AREAS defines geologically hazardous areas and regulates their allowed development.</p>
Air	<p>RCW 70A.15 – Washington Clear Air Act - Commercial and industrial businesses that emit large amounts of air pollution must get an air operating permit. An air operating permit is a master document that lists all the air pollution requirements that apply to a business or industry. Ecology and other clean air agencies in Washington issue these permits. The Department of Ecology (DOE) regulates odors for certain uses, such as composting facilities. Permits are required through the DOE.</p> <p>TMC 16.54 GRADING addresses dust control during construction.</p> <p>A permit from the Puget Sound Clean Air Agency is required of any new or modified air pollution source prior to construction or making modifications (including equipment, process, or design changes) that affect the level of air contaminants emitted.</p>
Water	<p>TMC 14.30 SURFACE WATER MANAGEMENT (Stormwater Management) regulates stormwater discharges from all new development and redevelopment to prevent and control adverse impacts of drainage and stormwater on the public health, safety, and general welfare.</p> <p>TMC 16.54 GRADING regulates erosion and sediment control.</p> <p>Tukwila meets the conditions of its NPDES permit to address water pollution by regulating point sources that discharge pollutants to waters of the United States.</p> <p>TMC 16.52 FLOOD PLAIN MANAGEMENT regulates impacts to floodplains and associated habitat functions, flood protection, and flood damage.</p> <p>TMC 18.45 ENVIRONMENTALLY CRITICAL AREAS regulates developments</p>

	<p>within wetlands, watercourses, and their buffers.</p> <p>The City’s Shoreline Master Program (last updated in 2020) provides further protection of water resources within the shoreline jurisdiction.</p>
Plants/Animals	<p>TMC 18.45 ENVIRONMENTALLY CRITICAL AREAS regulates development in and around designated critical areas including wetlands and fish and wildlife conservation areas as well as requiring preservation of critical areas as Native Growth Protection Areas during development and demonstrating compliance with state and federal government lists of endangered, threatened or candidate species.</p> <p>TMC 18.54 URBAN FORESTRY AND TREE REGULATIONS requires retention of existing significant trees or replanting of trees approved for removal.</p> <p>18.52 LANDSCAPE REQUIREMENTS covers landscape planting and maintenance requirements for developed properties.</p>
Energy and Natural Resources	<p>TMC 16.04 BUILDINGS AND CONSTRUCTION adopts the International Energy Conservation Code of the State of Washington, with the most recent adoption of the 2018 code in February 2021. The State Building Code Council has delayed adoption of the next code cycle until October.</p> <p>TMC 18.28 TUKWILA URBAN CENTER (TUC) DISTRICT provides a height incentive for multi-family structures that meet LEED Silver standards.</p> <p>TMC 18.50.140 Charging Station Locations allows EV charging throughout the City.</p> <p>TITLE 22 SOLID WASTE AND RECYCLING encourages the management of solid wastes according to the priorities defined in RCW 70.95.010.</p>
Environmental Health	<p>TMC 6.12 REFUSE DISPOSAL requires proper disposal of trash, rubbish, and garbage.</p> <p>6.14 HAZARDOUS MATERIALS CLEANUP requires that any person transporting hazardous materials shall be responsible for the cleanup of any hazardous materials incident that occurs during transportation and shall take such additional action as may be reasonably necessary after consultation with the Tukwila Fire Department in order to achieve compliance with all applicable federal and State laws and regulations.</p> <p>TMC 14.30 SURFACE WATER MANAGEMENT establishes methods for controlling the introduction of pollutants into the stormwater drainage system in order to comply with the requirements of the National Pollutant Discharge Elimination Systems (“NPDES”) permit process.</p> <p>TMC 21.08 SITING CRITERIA FOR HAZARDOUS WASTE TREATMENT AND STORAGE FACILITIES adopts the siting criteria for on-site and off-site hazardous waste treatment and storage facilities set forth in RCW 70.105.</p> <p>The Department of Ecology manages Hazardous Waste and Toxics Reduction program and enforces Washington’s toxics laws, including the Dangerous Waste regulations that many businesses need to comply with.</p>
Noise	<p>TMC 8.22 NOISE regulates maximum permissible noise levels in alignment with State law.</p> <p>Washington State has the following noise regulations:</p>

	<ul style="list-style-type: none"> • Chapter 70.107 RCW - Noise control • Chapter 46.09 RCW - Off-road and highway vehicles • Chapter 173-58 WAC- Sound level measurement procedures • Chapter 173-60 WAC- Maximum environmental noise levels • Chapter 173-62 WAC - Motor vehicle noise performance standards#
<p>Land/Shoreline Use</p>	<p>TITLE 5 BUSINESS LICENSES AND REGULATIONS contains regulations for specific business types.</p> <p>TITLE 18 ZONING establishes which uses or types of uses are permitted, which require special approvals, and which are prohibited in the zones.</p> <p>TMC 18.44 SHORELINE OVERLAY implements the goals of the Shoreline Management Act (SMA) (chapter 90.58 RCW) and the state Department of Ecology’s implementing guidelines (chapter 173-26 WAC) and provides a uniform basis for applying Tukwila’s Shoreline Master Program (SMP) policies and development regulations within distinctive shoreline areas.</p> <p>Tukwila’s Comprehensive Plan identifies goals and policies for each subarea within the City.</p>
<p>Housing</p>	<p>TMC 5.06 RESIDENTIAL RENTAL BUSINESS LICENSE AND INSPECTION PROGRAM provides for regulation and life safety inspections of rental housing.</p> <p>Various sections within TITLE 18 ZONING establish setback, lot coverage, building height, and lot dimension regulations for all zoning districts. Tukwila is currently reviewing recently adopted State legislation that will require middle housing changes to our housing regulations by July of 2025.</p> <p>TMC 17 SUBDIVISIONS AND PLATS controls the process and requirements for land division including design and improvement standards.</p> <p>In September of 2021 Tukwila completed a Housing Action Plan focused on the transit-oriented development area around the Link Light Rail Station on Tukwila International Boulevard.</p> <p>Tukwila is preparing to reinstate its Multi-Family Tax Exemption regulations in targeted areas and may include unit size/mix and income requirements.</p> <p>Tukwila has used development agreements with several private developers to facilitate the development of new housing in areas consistent with our growth strategy.</p> <p>Parks, fire, and traffic impact fees require that new growth and development pay its proportionate share of the costs of new facilities identified in the capital facilities element of the comprehensive plan that are reasonably related to the new development.</p>
<p>Aesthetics</p>	<p>TMC 18.60 BOARD OF ARCHITECTURAL REVIEW provides for both administrative and public hearing review of the design of commercial and multi-family structures with the intent of creating well-designed developments that are creative and harmonious with the natural and manmade environments. Tukwila is currently reviewing recently adopted</p>

	<p>State legislation that will require changes to our design guidelines and procedures by July of 2025.</p> <p>TMC 18.50.050 Single-Family Dwelling Design Standards provides design requirements for single-family houses and ADUs.</p> <p>TMC 18.52 LANDSCAPE REQUIREMENTS provides screening and tree requirements for new development.</p>
<p>Light/Glare</p>	<p>TMC 11.12.110 Street Lighting requires street lighting along all public streets, including new public streets in subdivisions and short subdivisions.</p> <p>TMC 18.50.170 Lighting Standards regulates light and glare on developed sites.</p>
<p>Recreation</p>	<p>Recreation space requirements for residential uses are set out in the various zoning code district standards listed in TMC 18 Zoning Code.</p> <p>TMC 16.28 Provides for the assessment of parks impact fees.</p> <p>TMC 18.42 PUBLIC RECREATION OVERLAY DISTRICT is intended to reserve certain areas owned or controlled by a public or quasi-public agency for either passive or active public recreation use.</p> <p>TMC 12.04 PARKS, RECREATION AND OPEN SPACE PLAN adopts the most current edition of the PROS Plan. The parks, recreation and open space element of the city’s Comprehensive Plan also contains policies regarding the level of service for parks and trails.</p>
<p>Historic/Cultural Preservation</p>	<p>Regulations listed in TMC 18.50.110 Archaeological/Paleontological Information Preservation Requirements cover pre-construction cultural resources assessment, archaeological response plan and provisions for excavation monitoring by a professional archaeologist. Excavations into historically native soil, when in an area of archaeological potential, shall have a professional archaeologist on site to ensure that all State statutes regarding archaeological conservation/ preservation are implemented. The applicant shall provide a written commitment to stop work immediately upon discovery of archaeological remains. Work in shoreline areas that will extend into native soil is noticed to WA Department of Archaeology and Historical Preservation and area Tribal governments.</p> <p>TMC 16.60 Historic Preservation contains regulations regarding landmark designation and alteration of existing landmarked sites, buildings, or properties.</p>
<p>Transportation</p>	<p>TMC 9.48 CONCURRENCY STANDARDS AND TRANSPORTATION IMPACT FEES ensure that public health, safety and welfare will be preserved by having safe and efficient roads serving new and existing developments. The City of Tukwila’s impact fee financing program has been developed pursuant to the City of Tukwila’s police powers, the Growth Management Act as codified in Chapter 36.70A of the Revised Code of Washington (RCW), the enabling authority in RCW Chapter 82.02, RCW Chapter 58.17 relating to platting and subdivisions and the State Environmental Policy Act (SEPA), and RCW Chapter 42.12C.</p> <p>TMC 18.56 OFF-STREET PARKING AND LOADING REGULATIONS lists requirements for private development for automobiles and bicycles.</p>

	<p>Tukwila’s design guidelines address vehicular and pedestrian circulation on private development sites.</p> <p>Tukwila is developing a multi-modal level of service standard that will be implemented in the 2024 periodic update of the Comprehensive Plan. Public transportation including light rail, heavy rail, bus service, and rapid ride is provided by Sound Transit, King County Metro, and Amtrak.</p>
<p>Public Services</p>	<p>The City has adopted public facility requirements in TITLE 14 WATER AND SEWERS for services including water system, sewer system, and storm drainage. Some areas of the City are served by other provider districts such as ValVue Sewer and Highline Water. Solid waste is provided through a franchise agreement with Recology. Fire protection is currently provided through a contract with the Puget Sound Regional Fire Authority which Tukwila may annex into at a later date. Tukwila has its own Police Department. Tukwila is a member of the King County Library System and has a Library Advisory Board to provide oversight and recommendations. Tukwila approved a Public Safety Plan in 2016 that has resulted in a new Justice Center housing Police and Courts, two new fire stations, and a consolidated shops facility.</p> <p>These all implement the summary of projected demand and levels of service in the Comprehensive Plan, including water, wastewater, stormwater, solid waste, fire and EMS, police, parks and recreation, public library, and municipal services facilities</p>
<p>Utilities</p>	<p>TMC 11.28 UNDERGROUNDING OF UTILITIES contains policy to require the underground installation of all new electrical and communication facilities, with certain exceptions.</p> <p>TMC 16.36 INFRASTRUCTURE DESIGN AND CONSTRUCTION STANDARDS regulates utility work, work in the public right-of-way or in easements, and all other work performed pursuant to construction related permits issued by the City of Tukwila.</p> <p>TMC 14 WATER AND SEWERS contains rates and regulations for water, sewer, and stormwater.</p> <p>Tukwila is served by Seattle City Light and Puget Sound Energy.</p>

CONCLUSION

Based upon review of the requirements to raise exemption levels in WAC 197-11-800(1)(c) and (d), we conclude that the City of Tukwila qualifies to raise exemption levels to the proposed levels.