

# DPD

## Director's Rule 15-2007

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<b>Subject:</b>  State Environmental Policy Act (SEPA) Exemptions From Environmental Review Requirements When Establishing, Changing Or Expanding A Use	<b>Code and Section Reference:</b>  SEPA Sections 25.05.800 and 25.05.908	
	<b>Type of Rule:</b>  Code Interpretation	
	<b>Ordinance Authority:</b>  Seattle Municipal Code 3.06.040	
<b>Index:</b>  City of Seattle State Environmental Policy Act (SEPA) Ordinance	<b>Approved</b>  (signature on file) Diane M. Sugimura, Director, DPD	<b>Date</b>  7/16/07

**Background:** Compliance with the State Environmental Policy Act (SEPA), Revised Code of Washington Chapter 43.21C, and the City's SEPA Ordinance, Seattle Municipal Code Chapter 25.05, is required when establishing a new use or changing or expanding an existing use. State SEPA exempts certain actions from compliance with SEPA's procedural requirements. The purpose of this Director's Rule is to provide further interpretation of exemptions associated with establishing a new use or changing or expanding an existing use.

**Rule:** This Rule provides information pertaining to exemptions from SEPA environmental review as applied to the following four categories:

- I. Exemptions for Establishing a New Use with New Construction
- II. Exemptions for Change of Use in an Existing Structure
- III. Exemptions for Expansion of an Existing Use or Structure
- IV. Other Exemptions

## **I. Exemptions for Establishing a New Use with New Construction**

A. *Application of Table A.* Table A summarizes the exemptions from SEPA environmental review when a new use is established as the result of the construction of a new building or structure, or as the result of certain new uses of outdoor areas.

B. *Environmentally Critical Areas.* The exemptions in Table A do not apply when uses are in Environmentally Critical Areas (landslide-prone areas, steep slopes, riparian corridors, wetlands, and fish and wildlife habitat conservation areas), with the following exception: Establishing one single-family dwelling, when under 9,000 square feet of development coverage, is exempt from SEPA.

C. *Parking.* In all zones, construction of up to 20 parking spaces is exempt from SEPA review.

1. Principal use and accessory parking spaces are both counted toward the exemption level. Creation of more than 20 parking spaces requires SEPA review, regardless of whether they are principal use or accessory parking spaces. An exception is made when the parking is for a new residential building with more than ten units. If the building itself does not trigger SEPA review, up to two parking spaces per unit may be provided without SEPA review, even if a total of more than 20 parking spaces are provided.

2. Exemptions will be based on square footage rather than on the number of parking spaces for certain uses that may involve outdoor parking or storage of vehicles, including, but not limited to, the following:

- Towing service
- Major vehicle repair
- Sales and rental of motorized vehicles
- Outdoor parking areas for two or more fleet vehicles of more than 10,000 pounds gross vehicle weight

**TABLE A**  
**Environmental Review Exemptions for**  
**Establishing a New Use with New Construction<sup>1,2</sup>**

ZONE	RESIDENTIAL USES	NON-RESIDENTIAL USES
	Number of Units Exempt <sup>3,4</sup>	Exempt Area (sq ft) of Use <sup>4,5,6</sup>
SF, RSL, LDT, & L1	4	4,000
L2	6	4,000
L3 & L4	8	4,000
MR, HR, & Downtown	20	4,000
SCM	20	12,000
NC	4	4,000
C & I	4	12,000

Footnotes to Table A.

1. *Mixed-use buildings.* For buildings containing both residential and non-residential uses, the establishment of the total area of residential uses shall be considered independently of the total area of non-residential uses in the determination of exemption from environmental review. For example, if a new building in an NC zone will contain multiple commercial uses that are each less than 4,000 square feet in area, but, taken together, exceed 4,000 square feet, SEPA review is required based on the combined area of those uses, rather than exempting each use separately. However, a new building containing 3,800 square feet of non-residential area and two dwelling units would be exempt, even though the total area of the building exceeds 4,000 square feet.
2. *Lands covered by water or in Environmentally Critical Areas.* On lands covered by water, establishment of a new use regardless of the number of units, gross floor area, or number of parking spaces proposed shall be subject to environmental review. In Environmentally Critical Areas, lower thresholds for environmental review of non-residential uses apply, and vary depending on, among other factors, the environmental features of the site. See SMC 25.05.908 and Chapter 25.09, Regulations for Environmentally Critical Areas. If a site is determined to be fully exempt from Environmentally Critical Areas review, then non-Environmentally Critical Areas thresholds apply.
3. *Determining total number of units.* The exemption is based on the total number of units on a site or project, not on the number of units per structure. For residential uses not readily described as a discrete number of units, such as nursing homes and congregate residences, will be based on square footage rather than on the number of units for purposes of this Rule.
4. *Series of exempt structures or actions.* A series of exempt structures, or a series of exempt actions (i.e., approvals), may require environmental review if they are physically or functionally related to each other and together may have a probable significant adverse environmental impact, or if they are proposals or a series of actions that are related to each other closely enough to be considered a single course of action. This will be determined on a case-by-case basis by the Director.

5. *Accessory uses.* An accessory use shall be considered part of the principal use, so that the establishment of an accessory use within an existing building already occupied by the principal use shall be exempt.
6. *Area of use.* For uses located in buildings, "area of use" shall mean gross floor area. For uses located outdoors, "area of use" shall mean the area devoted to that use. Examples of such outdoor uses include, but are not limited to, the following:
  - Outdoor storage
  - Outdoor sales areas
  - Outdoor seating for restaurants, if outdoor seating area exceeds 750 square feet
  - Outdoor sports and recreational facilities
  - Salvage yards
  - Towing company impound lots
  - Gas station canopies
  - Car washes

For public parks, "area of use" shall mean those areas improved for active recreational uses, such as athletic fields.

## II. Exemptions for Change of Use in an Existing Structure

A. *When Change of Use Requires SEPA Review.* SEPA review shall be required if a change of use:

- eliminates more than the exempt number of dwelling units for the zone (based on Part I, Table A of this Rule), or
- increases the number of dwelling units by more than 20 percent (if the resulting total is over the exempt level for the zone), or
- increases the number of dwelling units at all if the site is in an Environmentally Critical Area.

B. *Change of Use Category in Exempt Structures.* A change of use category within an existing building requires SEPA review, regardless of the actual area being changed, if both of the following are true:

1. Prior to the change the entire building would qualify for exemption under Section I of this Rule, if built new, and
2. The change results in a building that would have required SEPA review under Section I of this Rule.

For example, in a mixed-use building containing 3,800 square feet of non-residential area and two dwelling units (the entire building being exempt from SEPA review as in footnote 1), if the dwelling units are changed to office space, the change is subject to SEPA review because the resulting building would have required SEPA review if newly constructed.

C. *When Change of Use Does Not Require SEPA Review.* A change of use within an existing building involving an area up to 4,000 square feet (or up to 12,000 square feet in an SCM, C1 or C2 zone) of non-residential space shall not require SEPA review, and a change of use up to the number of residential units exempt for a new building in the zone under Part I, Table A of this Rule, shall not require SEPA review.

D. *Organization of Table B.* Table B divides non-residential uses into four numbered categories. With the exception of structures in Industrial zones, over water, or in Environmentally Critical Areas, changing the use of an area from one non-residential use to another non-residential use, regardless of gross floor area involved, shall require SEPA review if and only if the change is from one numbered category on Table B to another numbered category. If located over water or in an Environmentally Critical Area, any change of use will require SEPA review.

E. *Application of Table B.* Table B will be used to determine exemptions from SEPA review when no increase in the structure's gross floor area is proposed and when either of the following changes in use category is proposed:

1. A new use is proposed to be established in an existing building where the use does not now exist, or
2. An existing non-residential use is proposed to be increased in area within an existing building, replacing another use.

F. *Change of Non-residential Use in Industrial Zones.* In Industrial zones, a change of use in an existing building, regardless of gross floor area involved, from a use in one numbered category on Table B to a use in an *adjacent* numbered category (for example, a change from a use in Category 2 to a use in either Category 1 or Category 3) shall not require SEPA review. Also, in Industrial zones, Category 3 and Category 4 on Table B shall be regarded as one numbered category. Thus, for example, a change from Category 3 or Category 4 to Category 2 shall not require SEPA review. An application to change from a use in one numbered category to a use in an adjacent numbered category on a site will be considered cumulatively with applications to change to a use in an adjacent numbered category on that site within the prior five years.

**TABLE B**

**Exemptions for Change of Use From One Non-residential Use to Another Non-residential Use in an Existing Building<sup>7,8,9</sup>**

<b>USE CATEGORIES</b>
<p>Category 1. Household commercial uses, institutional uses, and places of public assembly, including, but not limited to, the following:</p> <ul style="list-style-type: none"> <li>• Offices</li> <li>• Restaurants</li> <li>• Retail uses</li> <li>• Lodging</li> <li>• Medical offices</li> <li>• Schools</li> <li>• Religious facilities</li> <li>• Theaters</li> <li>• Indoor participant sports and recreation uses</li> </ul>
<p>Category 2. The following uses:</p> <ul style="list-style-type: none"> <li>• Business incubators</li> <li>• Gas stations</li> <li>• Custom and craft work</li> <li>• Food processing for human consumption</li> <li>• Research and development labs</li> </ul>
<p>Category 3. The following uses, including, but not limited to:</p> <ul style="list-style-type: none"> <li>• Warehouse</li> <li>• Wholesale showroom</li> <li>• Light manufacturing</li> <li>• General manufacturing</li> <li>• Cargo terminals</li> <li>• Construction services</li> </ul>
<p>Category 4. The following uses, including, but not limited to:</p> <ul style="list-style-type: none"> <li>• salvage yards</li> <li>• heavy manufacturing</li> <li>• high-impact uses</li> </ul>

Footnotes to Table B.

7. *Uses defined.* Uses on Table B are defined by the Land Use Code (Chapter 23.84 SMC).
8. *Parking.* When a change of use results in an increase in parking of more than 20 spaces, the change of use is not exempt. If the change of use increases the amount of parking provided from less than 20 spaces to more than 20 spaces, regardless of the number of parking spaces added, the change of use is not exempt.
9. *Most Similar Use.* Uses that are most similar to uses in a numbered category on Table B shall be regarded as belonging to that category for purposes of this Rule.

### III. Exemptions for Expansion of an Existing Use or Structure

A. *Application of Table C.* Table C summarizes the exemptions from SEPA (environmental) review when:

1. A building is being physically expanded through the addition of more floor area, more building footprint, or more parking, or
2. The number of dwelling units in a building is being increased either through
  - a. physical additions to the building or
  - b. through conversion of existing floor area (See Part II of this Rule).

Any expansion up to the amount shown on Table C does not require SEPA review, unless located over water or in an Environmentally Critical Area.

B. *Based on Entire Development at the Site.* Exemptions from SEPA will be based on the area and number of units in the entire development on the site, rather than based on the area and number of units in individual structures.

C. *Environmentally Critical Areas.* In an Environmentally Critical Area, physical expansion of a single family residential development, including accessory structures and site work, is categorically exempt from SEPA review if total development coverage does not exceed 9,000 square feet. "Total development coverage" means all areas within a site planned to be developed or redeveloped including, but not limited to, rooftops, driveways, carports, accessory buildings, parking areas, areas in which soils, slopes and vegetation have been altered, and roadways and other pervious and impervious surfaces. (See Regulations for Environmentally Critical Areas (SMC 25.09.420).) Expansion of any other building or any outdoor area devoted to active use requires SEPA review if the site is in an Environmentally Critical Area, provided that if the site qualifies for an exemption from Environmentally Critical Areas review, it shall be treated as a non-critical area for purposes of determining SEPA exemption levels.

D. *Lands Covered by Water.* Physical expansion of structures on or over lands covered by water shall require SEPA review.

**TABLE C**  
**Exemptions from SEPA Review for Expansions of Existing Uses or Structures**

Use <sup>10</sup>	Level of expansion exempt from SEPA
<b>RESIDENTIAL USES</b>	
Single Family Residence	All expansions are exempt, except as further limited on lands covered by water and for certain expansions in Environmentally Critical Areas.
Expansion of multifamily structure without adding units	If the total number of units remains less than the exempt number of units for a new building in the zone according to Part I of this Rule, then any structural addition is exempt from SEPA review. If the total number of units is already over the exempt number of units under Part I, an expansion of the structure is exempt from SEPA review if it does not increase the total gross floor area of the development by more than 10 percent.
Addition of units to multifamily structure	If the total number of units remains less than the exempt number of units for a new building in the zone according to Part I of this Rule, then any structural addition is exempt from SEPA review. An increase of up to 20 percent in the total number of units in the development on the site shall be exempt, unless this increase brings the building over the exempt number of units for the zone (as specified in Part I of this Rule) for the first time.
<b>NON-RESIDENTIAL USES</b>	
In Commercial (C1, C2), Seattle Cascade Mixed (SCM), or Industrial (I) zones	Any increase in gross floor area is exempt if it doesn't bring the total gross floor area of the development over 12,000 square feet. An increase of up to 25 percent of the existing gross floor area is exempt if the increase itself is no more than 12,000 square feet and the increase does not bring the total gross floor area of the development over 12,000 square feet for the first time.
In all other zones	Any increase in gross floor area is exempt if it doesn't bring the total gross floor area of the development over 4,000 square feet. An increase of up to 10 percent of the existing gross floor area is exempt if the increase itself is no more than 4,000 square feet and doesn't bring the total gross floor area of the development over 4,000 square feet for the first time.
Parking <sup>11,12,13</sup>	20 parking spaces.

Footnotes to Table C.

10. *Mixed-use buildings.* For buildings containing both residential and non-residential uses, the establishment of the total area of residential uses shall be considered independently of the total area of non-residential uses in the determination of exemption from environmental review. For example, if an expansion in an NC zone will contain multiple commercial uses that are each less than 4,000 square feet in area, but, taken together, exceed 4,000 square feet, SEPA review is required based on the combined area of those uses, rather than exempting each use separately. However, an expansion containing 3,800 square feet of

non-residential area and two dwelling units would be exempt, even though the total area of the expansion exceeds 4,000 square feet.

11. *Parking of automobiles.* SMC 25.05.800 sets exempt levels for a parking lot designed for 20 "automobiles." For the purposes of this Rule, DCLU shall consider "automobiles" to include other vehicles to be consistent with the Land Use Code definition of a parking area, which is an area "for the parking of vehicles." Exemptions will be based on square footage rather than on the number of parking spaces for certain uses that may involve outdoor parking or storage of vehicles, including, but not limited to, the following:
  - Towing service
  - Major vehicle repair
  - Sales and rental of motorized vehicles
  - Outdoor parking areas for two or more fleet vehicles of more than 10,000 pounds gross vehicle weight
12. *Parking increase.* When an expansion of use results in an increase in the amount of parking provided of more than 20 spaces, the expansion of use is not exempt. If the expansion of use increases the amount of parking provided from less than 20 spaces to more than 20 spaces, regardless of the number of parking spaces added, the expansion of use is not exempt.
13. *Cumulative review of parking expansion.* An application to increase the number of parking spaces on a site will be considered cumulatively with other applications to increase the number of parking spaces on that site within the lesser of (i) the prior five years or (ii) the period of time since an action to create or increase parking on the site was subject to SEPA review.

#### IV. Other Exemptions and Thresholds

- A. *Lot Boundary Adjustments.* Lot boundary adjustments do not require SEPA review.
- B. *Short Plats.* Short subdivision of land, in areas not designated as Environmentally Critical Areas, does not require SEPA review. Pursuant to SMC 25.05.908, short platting in Environmentally Critical Areas is not exempt from environmental review, even if the result is to create only one additional lot.
- C. *Repair or Minor Alteration of Structures.* The repair, remodeling, maintenance, enclosure or minor alteration of existing structures, or of portions of existing structures, is exempt from SEPA so long as it does not result in a material expansion or change of use. The following list contains examples of accessory features that, when altered, repaired, maintained or added to an existing structure located outside of any Environmentally Critical Area or any lands covered by water, are exempt from SEPA review:
1. Stairways and stairwells
  2. Heating and air conditioning equipment
  3. Porches and decks
  4. Canopies, awnings and marquees
  5. Fences
  6. Landscaping
  7. Signs, other than billboards
  8. Doors, entrances, and windows
  9. Roofing or siding
  10. Painting
  11. Transformer vaults
  12. Mechanical penthouses
  13. Restrooms
  14. Barrier-free access
- D. *Tanks.* Installation of one or more tanks, whether underground or above-ground, is exempt from SEPA review unless the total capacity of the tank or tanks exceeds 10,000 gallons.
- E. *Grading.* The grading of less than 500 cubic yards in areas other than those designated as Environmentally Critical Areas or lands covered by water is exempt from SEPA review.
- F. *Interior Demolition and Structural Reinforcement.* In nonexempt projects, interior demolition and structural reinforcement activities shall be considered exempt activities and shall be permitted under SMC 25.05.305 unless:
1. The activities may alter designated or eligible historical features; or
  2. The activities will eliminate the effective maintenance of a use in the current use category.
- The approval of these exempt activities does not constitute approval of nonexempt activities.
- G. *Accessory Communication Devices.* The following accessory communication devices qualify as "minor accessory facilities" under SMC 25.05.800 B.4 and are categorically exempt from SEPA review:

1. Satellite dish antennas that transmit and receive if:
    - accessory to a use located on the same site,
    - 6 feet or less in diameter, and
    - use no more than 2 watts of power.
  2. Point-to-point dish and panel antennas that transmit as well as receive, if:
    - accessory to a use located on the same site, and
    - no more than 4 feet in diameter or 15 square feet.
  3. Receive-only dish and panel antennas, if
    - accessory to a use located on the same site, and
    - no more than 12 feet in diameter or 38 square feet.
- H. *Minor Antennas.* The following shall be categorically exempt from SEPA review:
- “Whip” antennas: Tubular antennas (resembling flagpoles) if they are 4 inches or less in diameter.
  - GPS (global positioning satellite) antennas: Small, round antennas (resembling hockey pucks) that are typically placed on roofs of buildings.
  - “Test mobile” antennas: Small, prism-shaped antennas that are mounted near other antennas to act as monitors.
- I. *Addition of Antennas to Existing Transmission Towers.* Addition of one or more antennas to an existing transmission tower shall be categorically exempt from SEPA review unless the addition constitutes “physical expansion of a communication utility” as defined at SMC 23.84.006.
- J. *Satellite Earth Station Antennas.* The following standards shall govern whether SEPA review is required for satellite earth station antennas (which are dishes or similar antennas pointed up at satellites in geostationary orbit):
1. *Antennas one meter (3.28 feet) or smaller in diameter.* SEPA review shall be required only if the antenna is to be located in a historic district or on a site or structure designated as a historic landmark.
  2. *Antennas two meters (6.56 feet) in diameter or smaller, but larger than one meter in diameter.* SEPA review is required for those antennas to be located in residential zones (including single family, multifamily, DMR and IDR). SEPA review is not required for those antennas to be located in other downtown zones or in commercial or industrial zones.\*
  3. *Antennas larger than two meters in diameter.* SEPA review is required unless the antenna qualifies for an exemption under another section of this Rule.
- K. *Video Programming Antennas.* Video programming antennas are “over-the-air reception” antennas that allow people to receive satellite television signals. Some video programming antennas are also satellite earth stations, which may qualify for exemption under Part IV, Section I of this Rule. No SEPA review is required for

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\* **Note:** Taken together, paragraphs 1 and 2 of this Section reflect an anomaly in federal law that the City remains bound to uphold: If the site is a historic landmark or is in a historic district, and the zoning is not residential, an antenna up to one meter in diameter would require SEPA review, while an antenna that is greater than one meter in diameter but less than two meters in diameter would not require SEPA review. (*Compare 47 CFR 25.104 and 47 CFR 1.4000.*)

installation of the following types of antenna, unless the antenna is to be located in a historic district or on a site or structure designated as a historic landmark:

1. TBS: An antenna designed to receive television broadcast services.
2. DBS: An antenna, one meter or less in diameter, designed to receive direct broadcast satellite service, including direct-to-home satellite service.
3. MMDS: An antenna, one meter or less in diameter or on the diagonal, designed to receive video programming services via multi-point distribution services.

L. *Microcells and Other Personal Wireless Communication Service Antennas.* The following standards govern whether personal wireless service facilities are exempt from SEPA review:

1. Microcells: A facility is exempt from SEPA review if:
  - it is a microcell and
  - it is to be attached to an existing structure that does not contain a residence or a school.
2. Other personal wireless service antennas: A facility is exempt from SEPA review if:
  - it includes personal wireless services antennas, other than a microcell, and
  - it will be attached to an existing structure (which may be a tower) that does not contain a residence or a school, and
  - it is located in a Commercial, Downtown, or Industrial zone.
3. Towers (including monopoles): A facility is exempt from SEPA review if:
  - it is a personal wireless service tower less than 60 feet in height and
  - it is located in a Commercial, Downtown, or Industrial zone.

M. *Key Definitions in State Law.* State law defines "personal wireless services" as "commercial mobile services, unlicensed wireless services and common carrier wireless exchange access services, as defined by federal laws and regulations." (RCW 43.21C.0384(3)(a).) Cellular telephone facilities fall under the category of commercial mobile services.

"Microcell" is defined as "a wireless communication facility consisting of an antenna that is either: (i) Four feet in height and with an area of not more than five hundred eighty square inches; or (ii) if a tubular antenna, no more than four inches in diameter and no more than six feet in length." (RCW 43.21C.0384(3)(c).) The exemption for a microcell is limited to facilities with no more than one microcell antenna. If an applicant proposes to add two or more microcell antennas at a single site, the exemption does not apply.

If a proposed facility will consist of more than one microcell, or both a microcell and other personal wireless service antennas that do not meet the definition of "microcell," whether the facility is exempt from SEPA review shall be determined according to Part IV, Section K, paragraph 2 ("Other personal wireless service antennas") of this Rule. If it is attached to an existing structure that does not contain a residence or a school, and it is located in a Commercial, Downtown, or Industrial zone, it qualifies for an exemption from SEPA review.