

DPD

Director's Rule 17-2008

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Subject: State Environmental Policy Act (SEPA) Exemptions From Environmental Review Requirements When Establishing, Changing or Expanding A Use	Code and Section Reference: SEPA Sections 25.05.800 and 25.05.908	
	Type of Rule: Code Interpretation	
	Ordinance Authority: SMC 3.06.040	
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	(Signature on file) Diane M. Sugimura, Director, DPD	3/10/09

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 regulations provide certain standards for "categorical exemption" of certain types of action from compliance with SEPA's procedural requirements related to environmental review, and Seattle's SEPA Ordinance provides more detail on how categorical exemptions apply in Seattle, in areas where the state regulations are flexible. The purpose of this Director's Rule is to provide further interpretation of the categorical exemptions associated with establishing a new use or changing or expanding an existing use. In other words, this rule helps determine when SEPA environmental review is required and when it is not.

RULE:

This Rule provides information on SEPA environmental review exemptions of the following types of actions:

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

Section I. Exemptions for Establishing a New Use with New Construction

- A. *Exemption levels for new uses shown in Table A.* Table A summarizes the highest levels of proposed development that are categorically exempt 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. These are also referred to as the "SEPA thresholds" because above these threshold levels SEPA environmental review will be required.¹ Other text in Section I provides further details, including thresholds for parking use in Section I.B.
- B. *Parking.* In all zones, construction or addition of parking spaces up to the threshold level of 40 parking spaces is exempt from SEPA review.² Principal use and accessory parking spaces are both counted toward the exemption level. Creation of more than 40 parking spaces requires SEPA review, regardless of whether they are principal use or accessory parking spaces. Also see other rules on thresholds for expansion of parking in Section II.D and III.E (pages 8 and 10) in this Rule.

Parking thresholds are evaluated differently for uses, such as the following, that entail the storage and parking of automobile, bus and truck vehicles as an intrinsic element of the use:

- 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

For such uses, thresholds of SEPA review will be based on square footage of the use, including outdoor lot area in active use, rather than the number of parking spaces.

¹ Other criteria in this rule addressing situations such as proposed changes in land use and expansions of existing uses may also lead to a determination that SEPA environmental review is required.

² SMC 25.05.800 sets exempt levels for a parking lot designed for 40 "automobiles." For the purposes of this Rule, DPD considers "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."

TABLE A
SEPA Environmental Review Exemption Levels for
Establishing a New Use with New Construction

<i>ZONE</i>	RESIDENTIAL USES	
	Number of Dwelling Units Exempt	
	Outside of Urban Centers	Within Urban Centers and SAOD
SF, RSL	4	4
LDT*	4	6*
L1*	4	30*
L2*	6	30*
L3, L4	8	30
NC1, NC2, NC3	4	30
C1, C2	4	30
MR, HR, SM	20	30
Downtown zones	NA	80
Industrial zones	4	4

<i>ZONE</i>	NON-RESIDENTIAL USES	
	Exempt Area of Use (square feet of gross floor area)	
	Outside of Urban Centers	Within Urban Centers and SAOD
SF, RSL, LDT, L1, L2, L3, L4	4,000	4,000
MR, HR, NC1, NC2, NC3	4,000	12,000
C1, C2, SM, Industrial zones	12,000	12,000
Downtown zones	NA	12,000

*For lots located in an Urban Center or a SAOD, if the proposed construction or location is on a lot in an LDT, L1 or L2 zone, and if the lot abuts any portion of another lot that is zoned SF or RSL, or is across an alley of any width from a lot that is zoned SF or RSL, or is across a street from a lot zoned SF or RSL where that street does not meet minimum width requirements in SMC 23.53.015A, then the level of exempt construction is 4 dwelling units for lots in an LDT or L1 zone, and 6 dwelling units for lots in an L2 zone.

Notes: For proposed development that is larger than the indicated levels, SEPA review will be required. If a zone exists but is not listed in this table, exemptions will be applied according to the standards for the most similar listed zone, in the judgment of the Director. SAOD = Station Area Overlay Districts. Urban centers and urban villages are identified in the Seattle Comprehensive Plan. Review text discussion in Section I for details related to interpretation of uses, unit count and other factors that could influence the relationship of a proposal to these thresholds for SEPA environmental review.

C. *Environmentally Critical Areas.* 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. The exemptions in Table A do not apply when uses are in certain Environmentally Critical Areas as specified in SMC Section 25.05.908 A (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. For this purpose, "development coverage" means all disturbed land within a site that is planned for development or redevelopment. Newly disturbed areas within the abutting right-of-way, when associated with a development proposal are counted towards the proposal's total development coverage. Also see SMC 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.

Lands covered by water. On lands covered by water, any new construction, regardless of the number of units, gross floor area, or number of parking spaces proposed is subject to environmental review. See SMC 25.05.908 and Chapter 25.09, Regulations for Environmentally Critical Areas.

D. *Mixed-use buildings.* For buildings containing both residential and non-residential uses, residential uses will be evaluated according to number of dwelling units, and non-residential uses will be evaluated according to square footage of gross floor area in the determination of exemption from environmental review. For example, if a development proposal in an NC zone outside an Urban Center or Station Area Overlay District will contain 3,800 square feet of non-residential area and up to four dwelling units it will be exempt from SEPA review, even though the total floor area of all uses in the development proposal exceeds 4,000 square feet. Similarly, on a site in an NC zone **within** an Urban Center or Station Area Overlay District, a development proposal containing 11,900 square feet of non-residential area and up to 30 dwelling units will be exempt from SEPA review. Please note:

- floor area associated with residential uses is not counted as part of non-residential uses' gross floor area; and
- the total combined non-residential gross floor area in a development proposal is the relevant measure, not floor area per individual business or any other such division of the non-residential gross floor area.

E. *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, including nursing homes and congregate residences, the exemption will be based on a comparison of sleeping units (functionally equivalent to bedrooms) to dwelling units. Each bedroom will be counted as one-half of one dwelling unit in these cases.

F. Non-residential thresholds for "live-work" uses. Live-work uses will be evaluated subject to the thresholds for non-residential uses.

- G. *Series of exempt structures or actions.* Pursuant to SMC 25.05.305, 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.
- H. *Accessory uses.* An accessory use (other than parking) is considered part of the principal use, so that the establishment of an accessory use in floor area already occupied by the principal use is exempt.
- I. *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, the "area of use" shall include gross floor area of structures together with outdoor areas improved for active recreational uses, such as athletic fields.

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

A. A proposal to change a use 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 a categorical 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 if built new.

B. Residential Uses

1. SEPA review is required for proposals involving residential uses if a change of use:
 - adds or eliminates (e.g. by remodel or demolition) more than the exempt number of dwelling units for the zone (based on Section I, Table A of this Rule), or
 - increases or decreases the number of dwelling units by more than 20 percent (if the total is over the exempt level for the zone), or

- increases the number of dwelling units such that the resulting total exceeds the exemption level for the first time (refer to Table A and Section II.A above), or
- increases the number of dwelling units at all if the site is in an Environmentally Critical Area.

C. *Non-Residential Uses*

1. For the purpose of these standards, actively used outdoor areas, as described in Section I.I above ("Area of Use"), shall be regulated in the same manner as floor area in a building.
2. Non-residential land uses are sorted into four categories, based on their intensity, in Table B. For the purposes of this rule, conversion of existing floor area from one use to another in a different category under Table B shall be considered a "change of use," and shall require SEPA review, except in industrial zones. In industrial zones, a change of use of existing floor area to a use in an adjacent category (for example, a change from a use in Category 2 to a use in Category 1 or 3) shall not require SEPA review. Uses listed in Table B are as defined in Chapter 23.84A of the Land Use Code. Uses not specifically listed in Table B will be considered to belong to the category containing the uses most similar in nature and/or relative intensity, in the judgment of the Director.
3. Except as provided in Paragraph 2 above, there is a "change of use" subject to this Section (Section II) of the Rule, if:
 - a. A new use is proposed to be established in an existing building (or actively used outdoor area) where the use does not now exist; OR
 - b. An increase is proposed in the area occupied by an existing use, replacing a different use.
4. Subject to Sections II.C.1, 2, and 3 above, and except as specifically provided in Sections II.D, E and F below, a change of use of an area requires SEPA review if and only if the resulting use is non-residential and the change involves an area larger than the exempt area provided for the zone under Section I, Table A of this Rule.
5. *Changes within past five years are evaluated cumulatively.* The five-year past record of changes-in-use (from date of application) will be considered in determining whether SEPA review is required for a current proposal. If past changes-of-use in that timeframe, combined with a current proposal for change-of-use, add up to a change that involves an area that would require SEPA review if undertaken in a single proposal, SEPA review will be required for the current proposal.

TABLE B
Exemptions for Change of Use From One Non-residential Use to
Another Non-residential Use in an Existing Building

USE CATEGORIES
Category 1. The following uses: <ul style="list-style-type: none">• Offices• Eating and drinking establishments• Retail sales and service uses• Automotive retail sales and service• Sales and rental of motorized vehicles• Lodging• Medical offices and services• Nursing homes• Schools• Religious facilities• Major Institutions• Theaters, lecture and meeting halls, spectator sports facilities• Libraries, museums, community clubs and centers• "Live-work" units• Indoor participant sports and recreation uses
Category 2. The following uses: <ul style="list-style-type: none">• Business incubators• Gas stations• Towing services• Custom and craft work• Food processing for human consumption• Research and development labs• Animal shelters and kennels• Rail transit facilities• Passenger terminals• Marine sales and services• Mini-warehouses• Utility services
Category 3. The following uses: <ul style="list-style-type: none">• Adult motion picture theaters, adult panorams, adult cabarets• Heavy commercial sales and services• Major automotive vehicle repair• Vehicle storage and maintenance• Warehouse• Wholesale showroom• Light manufacturing• General manufacturing• Cargo terminals• Dry boat storage• Construction services

Category 4. The following uses:

- Salvage yards
- Heavy manufacturing
- Major communication utility
- Jails
- Work-release centers
- High-impact uses
- Power plants
- Recycling
- Sewage treatment plant
- Solid waste management

Notes: If a use is not listed in this table, it will be categorized according to its relative intensity compared to other uses listed in these categories, in the judgment of the Director.

- D. *Parking*. A change of use that is an increase of more than 40 parking spaces will require SEPA review. An increase in parking that causes the total parking quantity to surpass 40 spaces will require SEPA review, regardless of the number of parking spaces added.³
- E. *Landmarks*. If the subject property includes a landmark, a change of use may require SEPA review. Refer to CAM 3000 for more information.
- F. If located over water or in an Environmentally Critical Area listed in SMC 25.05.908A (including landslide-prone areas, riparian corridors, wetlands, and fish and wildlife habitat conservation areas), any change of use will require SEPA review.

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

- A. *SEPA Review Exemptions for Expansions Described in Table C*. The exemptions in Table C relate to physical expansions in uses or structures (including more floor area, larger building footprint and/or increased parking), which may or may not relate to increased total dwelling unit counts.⁴

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. See Section III.C below.

- 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.

³ Refer to Section I.B about uses for which parking thresholds are measured according to square footage.

⁴ Refer to Section II for guidance on changes in use if that is applicable.

TABLE C
Exemptions from SEPA Review for Expansions of Existing Uses or Structures, Not Including Expansions on Lands Covered by Water or in Environmentally Critical Areas

Use/Zone	Level of expansion exempt from SEPA
RESIDENTIAL USES	
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 Section 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 Section 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 dwelling units remains less than the exempt number of units for a new building in the zone according to Section I of this Rule, then a structural addition that adds units is exempt from SEPA review. Regardless of the existing unit count, an increase of no more than 20 percent in the total number of units in the development on the site is exempt, unless this increase brings the development over the exempt number of units for the zone for the first time (as specified in Section I of this Rule), or the number of units added itself exceeds the exempt number provided for the zone under Section I of this Rule.
NON-RESIDENTIAL USES	
In Commercial (C1, C2), Seattle Mixed (SM), Industrial (I) and Downtown zones. Also applies to NC (NC1, NC2, NC3), Midrise & Highrise zones in Urban Centers and Station Area Overlay Districts	Any increase in gross floor area is exempt if it doesn't bring the total non-residential gross floor area of the development over 12,000 square feet. An increase of no more than 25 percent of the existing non-residential 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 non-residential 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 non-residential gross floor area of the development over 4,000 square feet. An increase of no more than 25 percent of the existing non-residential gross floor area is exempt if the increase itself is no more than 4,000 square feet and doesn't bring the total non-residential gross floor area of the development over 4,000 square feet for the first time.
Parking	40 parking spaces. See Section III.E for more guidance.

- C. *Environmentally Critical Areas.* In certain Environmentally Critical Areas (known and potential landslide areas, steep slope areas, riparian corridors, wetlands, and fish and wildlife habitat conservation areas, as regulated under SMC Chapter 25.09), physical expansion of a single family residential development, including accessory structures and site work, is categorically exempt from SEPA review if development coverage does not exceed 9,000 square feet. (See definition of "development coverage in Section I.C of this Director's Rule, and the definition of "development" in SMC 25.09.520). Expansion of any other building or any outdoor area devoted to active use requires SEPA review if the site is in one of the listed Environmentally Critical Areas, provided that if the site qualifies for an exemption from Environmentally Critical Areas review, it shall be treated as a noncritical 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.
- E. *Parking.* Refer to Sections I.B and II.D for parking thresholds that also relate to expansions of uses, including for uses that may involve outdoor parking or storage of vehicles.
- Parking expansions within past five years are evaluated cumulatively.* The five-year past record of parking expansions (from date of application) will be considered in determining whether SEPA review is required for a current proposal. If past parking expansions in that timeframe, combined with a current proposal for parking expansion, add up to an expansion of more than 40 parking spaces that would require SEPA review if undertaken in a single proposal, SEPA review will be required for the current proposal.
- F. *Mixed-use buildings.* For buildings containing both residential and non-residential uses, residential uses will be evaluated according to number of dwelling units, and non-residential uses will be evaluated according to square footage of gross floor area in the determination of exemption from environmental review. Refer to Section I.D for further description, and Section I.F regarding "live-work" uses.

Section 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 covered by water and 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. SEPA review is required for short subdivision of lands covered by water.
- 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 underground tanks is exempt from SEPA review unless the total capacity of the tank or tanks exceeds 10,000 gallons. Installation of cisterns to hold rainwater or other above-ground tanks will be evaluated for their relationship to SEPA exemptions by considering them as structures or parts of structures and counting their footprint coverage area as part of gross floor area. Such coverage will be evaluated against the non-residential use exemption levels in Section I, Table A of this Rule.
- 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.⁵
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 Section IV.I of this Rule. No SEPA review is required for installation of the

⁵ Taken together, paragraphs J1 and J2 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.)

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 Section IV.L, 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.