

CITY COUNCIL AGENDA ITEM

CITY OF SHORELINE, WASHINGTON

AGENDA TITLE:	Adoption of Ordinance No. 660 Amending the Categorical Exemptions for Minor New Construction Under the Environmental Policy Act; and Amending Section 20.30.560 of the Shoreline Municipal Code
DEPARTMENT:	Planning & Community Development
PRESENTED BY:	Jeff Forry, Permit Services Manager
ACTION:	<input checked="" type="checkbox"/> Ordinance <input type="checkbox"/> Resolution <input type="checkbox"/> Motion <input type="checkbox"/> Discussion <input type="checkbox"/> Public Hearing

PROBLEM/ISSUE STATEMENT

The State Legislature has amended the Washington State Environmental Policy Act (SEPA) to allow local agencies to increase the exemption thresholds that trigger required environmental review for minor new construction. Effective July 10, 2012, the Washington State Legislature passed Senate Bill (SB) 6406 which mandated that the Department of Ecology (DOE) update SEPA rules (WAC197-11). The bill and subsequent rule making was undertaken to streamline the regulatory process and achieve program efficiencies while maintaining current levels of natural resource protection; increase SEPA thresholds; and integrate the SEPA process with provisions of the Growth Management Act (GMA). DOE began "rule making" on October 24, 2012 and completed the first phase of the process on December 28, 2012. The new rules took effect on January 31, 2013. The new thresholds must be formally adopted by the City Council before the City can utilize them.

The following table provides a summary of the SEPA thresholds:

Existing and Proposed Thresholds for Minor New Construction			
Project Type	Existing City Exemptions	State Interim Regulations – SB6406 (Used by the City until expiration 1/31/2013)	Adopted Final Regulations(WAC) Exemptions (Ordinance No. 660)
Single family	4 dwelling units	20 dwelling units	30 dwelling units
Multifamily	4 dwelling units	20 dwelling units	60 dwelling units
Office, school, commercial, recreational, service, storage building,	4,000 square feet and 20 parking spaces	20,000 square feet and 40 parking spaces	30,000 square feet and 90 parking spaces

parking facilities			
Landfill or excavation	500 cubic yards	500 cubic yards	1,000 cubic yards

The purpose of tonight's meeting is to discuss any remaining issues, deliberate, and consider adoption of Ordinance No. 660 (Attachment A) to amend the City's environmental procedures (Shoreline Municipal Code Chapter 20.36).

The Council last discussed the proposed amendments at its April 08, 2013 meeting.

<http://cosweb.ci.shoreline.wa.us/uploads/attachments/cck/council/staffreports/2013/staffreport040813-8a.pdf>

RESOURCE/FINANCIAL IMPACT

No financial impacts are anticipated.

RECOMMENDATION

Staff recommends Council adopt Ordinance No. 660 to amend the environmental review thresholds for minor new construction in SMC 20.30.560 as proposed and eliminate the automatic environmental review requirement for activities in critical areas and their buffers.

Approved By: City Manager ***JU*** City Attorney ***JS***

BACKGROUND

SEPA provides a framework to condition or deny a proposal when mitigations are not provided for in policies adopted by the City and incorporated into regulations, plans, or codes. The environmental review process in SEPA is designed to work with other regulations to provide a comprehensive review of a proposal. Most regulations focus on particular aspects of a proposal, while SEPA requires the identification and evaluation of probable significant impacts for all elements of the environment. Combining the review processes of SEPA and other laws reduces duplication and delay by combining study needs, comment periods and public notices, and allowing agencies, applicants, and the public to consider all aspects of a proposal at the same time.

The City's environmental procedures have built in redundancies given that the City's current thresholds are below the level mitigations provided in local, state, and federal regulations.

To support Council Goal No. 1, Strengthen Shoreline's Economic Base, procedural redundancies should be eliminated. By implementing efforts to make the permit process predictable, timely, and competitive efficiencies are achieved in the permit process that will provide for a more focused review of proposals.

The state legislature has provided agencies the flexibility to evaluate local environmental procedures. By raising the thresholds for environmental review of minor new construction the City can reduce the redundancies created by the current procedures.

On March 21, 2013 the Planning Commission conducted a public hearing on the amendments. The Commission voted to recommend approval as proposed.

DISCUSSION

In ESSB 6406 the state legislature directed that the Department of Ecology (DOE) evaluate the rule-based categorical exemptions in WAC 197-11 (SEPA Rules). The bill established two phases of rule making that included:

1. Increase the rule-based categorical exemptions to Chapter 43.21C RCW found in WAC 197-11-800 and
2. Update the environmental checklist. The environmental checklist is a standardized tool that possesses questions regarding a proposals effect on elements of the environment. Staff uses the response to the questions to evaluate the proposal against the mitigations provided in adopted regulations.

The legislature established an expiration date for this section of the bill which would limit DOE's ability to continue the rule-making mandated by the bill past July 31, 2014. The categorical exemptions were to be updated by December 31, 2012. The rule-making process that established new maximum exemption thresholds was completed and the new rule went into effect January 28, 2013. The exemption thresholds will not be

affected by the expiration date. The second phase, updating the checklist, of the rule-making is scheduled to be completed by December 31, 2013.

In the first phase DOE defined new optional flexible thresholds for local agencies. An agency's ability to employ the highest thresholds is based on its status as a community planning under the Growth Management Act (GMA).

Maximum Threshold Comparison Cities vs. Counties			
Fully Planning GMA Counties			All Other Counties
Project Types	Incorporated and Unincorporated UGAs (Proposed in Ordinance No. 660)	Other Unincorporated Areas	Incorporated and Unincorporated Areas
Single Family	30 dwelling units	20 dwelling units	20 dwelling units
Multifamily	60 dwelling units	25 dwelling units	25 dwelling units
Office, School, etc,	30,000 square feet and 90 parking spaces	12,000 square feet and 40 parking spaces	12,000 square feet and 40 parking spaces
Landfill or Excavation	1,000 cubic yards	1,000 cubic yards	1,000 cubic yards

Cities fully planning under GMA, including Shoreline, were provided the most flexibility. This is the basis for the staff's recommendation.

As DOE concluded, and staff concurs, minor new construction less than the exemption level has a relatively low chance of significant impact when appropriate mitigations are provided in the rules and regulations implemented through the permit process. Given the extensive investment that the City is making and will continue to make in comprehensive plans and development regulations it is staff's belief that the local, state, and federal regulations employed during the City's environmental review process provide the appropriate level of mitigation for the impacts of development at or below the proposed thresholds for minor new construction.

ALTERNATIVES:

The following alternatives are available to Council with regard to proposed Ordinance No. 660:

1. *Adopt* – Council can adopt Ordinance No. 660, which would establish the exemption thresholds stated in the ordinance.
2. *Reject* – Council can reject Ordinance No. 660, which would keep the status quo in place and maintain the lowest available exemption thresholds.
3. *Adopt exemption thresholds between the lowest and highest allowed exemption thresholds* – Council can amend the proposed exemption thresholds of Ordinance No. 660.

Staff recommends that Council adopt Ordinance No. 660 as proposed.

STAKEHOLDER INPUT

Prior to amending thresholds, agencies must provide a 21 day comment period for state and local agencies and the public. The comment period ended April 18, 2013.

Comments were received from the Department of Archeology and Historic Preservation (DAHP) and the Washington Trust for Historic Preservation. Both recommended strengthening the City's review procedures with the adoption of higher thresholds. Staff has contacted DAHP and the City is in the process of pursuing a data sharing agreement with the State. Staff anticipates completion of this process by the end of May. This will provide full access to their data to supplement project review. The City's current review procedures include methods to identify and evaluate historic buildings and structures; DAHP provides a decision tree for evaluating proposals and it is being incorporated into the review procedures for consistency. The tree provides triggering thresholds and courses of action for staff evaluating proposals that might necessitate a consultation with tribes and DAHP.

RESOURCE/FINANCIAL IMPACT

No financial impacts are anticipated.

RECOMMENDATION

Staff recommends Council adopt Ordinance No. 660 to amend the environmental review thresholds for minor new construction in SMC 20.30.560 as proposed and eliminate the automatic environmental review requirement for activities in critical areas and their buffers.

ATTACHMENTS

Attachment A – Ordinance No. 660

Attachment B – Agency Comments

ORDINANCE NO. 660

AN ORDINANCE OF THE CITY OF SHORELINE, WASHINGTON AMENDING THE CATEGORICAL EXEMPTIONS FOR MINOR NEW CONSTRUCTION UNDER THE ENVIRONMENTAL POLICY ACT; AND AMENDING SECTION 20.30.560 OF THE SHORELINE MUNICIPAL CODE

WHEREAS, WAC 197-11-800(c) permits cities, towns or counties to raise the exempt levels for environmental review under the State Environmental Policy Act (SEPA) up to the maximum specified in WAC 197-11-800(d); and

WHEREAS, City staff drafted amendments to the Development Code to adopt expanded thresholds for minor construction; and

WHEREAS, the Planning Commission held a Public Hearing and formulated its recommendation to Council on the proposed amendments on March 21, 2013; and

WHEREAS, this action is exempt from environmental review pursuant to WAC 197-11-800(19) and no SEPA Threshold Determination was not issued; and

WHEREAS, the proposed amendments were submitted to affected tribes, agencies with expertise, affected jurisdictions, the department of ecology, and the public on March 27, 2013 for comment pursuant WAC 197-11-800(1)(c)(iii); and

WHEREAS, no substantive comments were received from state agencies or the Department of Ecology; and

WHEREAS, the Council finds that project-level public comment opportunities are provided for proposals included in these increased exemption levels in Chapter 20.30 SMC; and

WHEREAS, the Council finds that the requirements for environmental analysis, protection and mitigation have been adequately addressed for the development exempted; and

WHEREAS, the Council finds that the amendments adopted by this ordinance are consistent with and implement the Shoreline Comprehensive Plan and comply with the adoption requirements of the Growth Management Act, Chapter 36.70A. RCW; and

WHEREAS, the Council finds that the amendments adopted by this ordinance meet the criteria in Title 20 for adoption of amendments to the Development Code; now therefore

**THE CITY COUNCIL OF THE CITY OF SHORELINE, WASHINGTON
DO ORDAIN AS FOLLOWS:**

Section 1. Amendment. Shoreline Municipal Code Chapter 20.30.560 is amended as set forth in Exhibit 1, which is attached hereto and incorporated herein.

Section 2. Effective Date and Publication. A summary of this ordinance consisting of the title shall be published in the official newspaper and the ordinance shall take effect five days after publication.

PASSED BY THE CITY COUNCIL ON APRIL 29, 2013.

Keith A. McGlashan, Mayor

ATTEST:

APPROVED AS TO FORM:

Scott Passey
City Clerk

Ian Sievers
City Attorney

Date of Publication: , 2013
Effective Date: , 2013

20.30.560 Categorical exemptions – Minor new construction.

The following types of construction shall be exempt, except when: 1) ~~when~~ undertaken wholly or partly on lands covered by water; 2) ~~the proposal would alter the existing conditions within a critical area~~; 3) a rezone is requested; or 4) ~~3~~ any license governing emissions to the air or discharges to water is required.

A. The construction or location of: ~~any residential structures of four dwelling units.~~

1. Any residential structures up to thirty dwelling units.

2. A multifamily structure with up to sixty dwelling units.

B. The construction of an office, school, commercial, recreational, service or storage building with ~~4,000~~ 30,000 square feet of gross floor area, and with associated parking facilities designed for ~~20~~ 90 automobiles.

C. The construction of a parking lot designed for ~~20~~ 90 automobiles. This exemption includes stand-alone parking lots.

D. Any landfill or excavation of ~~500~~ 1,000 cubic yards throughout the total lifetime of the fill or excavation not associated with an exempt project in sections, A, B, or C and any fill or excavation classified as a Class I, II, or III forest practice under RCW 76.09.050 or regulations there under. (Ord. 591 § 1 (Exh. A), 2010; Ord. 324 § 1, 2003; Ord. 299 § 1, 2002; Ord. 238 Ch. III § 9(h), 2000).

April 17, 2013

Mr. Jeff Forry
Permit Services Manager
City of Shoreline
17500 Midvale Avenue N
Shoreline, WA 98133

In future correspondence please refer to:
Log: 041713-14-KI
Property: City Shoreline Notice Intent
Re:

Dear Mr. Forry:

Thank you for contacting the Washington State Department of Archaeology and Historic Preservation (DAHP). The raising of SEPA exemption thresholds could very likely impact cultural resources including archaeological resources, human remains and burials and historic and abandoned cemeteries which have legal protections under state statutes (RCW 27.53, RCW 27.44, RCW 68.50 and RCW 68.60). Exemptions from SEPA review do not negate compliance with state law and parties are still held responsible for inadvertent discoveries and damage to archaeological resources and human remains. Inadvertent discoveries of cultural resources during construction often lead to cost overruns and prolonged work stoppages. In order to assist the City of Shoreline in predicting and preventing such scenarios with regard to the raising exemption thresholds we recommend the following procedures and processes for review of exempted projects:

- The City of Shoreline should become a data sharing partner with DAHP.
- The location of exempted project would be checked against the DAHP database and archaeological predictive model.
- For exempted projects inside or within 500 feet of a DAHP resources polygon, a cultural resources survey should be required or the project materials should be sent to DAHP for review and recommendation for cultural resources survey
- For projects within the High Probability and Moderate Probability zones on the DAHP Statewide Predictive Model (included as part of the DAHP data sharing agreement) require a cultural resources survey and/or send to DAHP for review and recommendation for a cultural resources survey
- Develop an inadvertent discovery plan that can be included in permits for projects that do not trigger the above processes

Thank you for the opportunity to review and comment. We look forward to assisting you in implementing the above processes and developing an inadvertent discovery plan.

Sincerely,



Gretchen Kaehler
Assistant State Archaeologist
(360) 586-3088
gretchen.kaehler@dahp.wa.gov

cc. Hank Gobin, Cultural Resources, Tulalip Tribe
Laura Murphy, Archaeologist, Muckleshoot Tribe
Dennis Lewarch, THPO, Suquamish Tribe
Rhonda Foster, THPO, Squaxin Island Tribe
Steven Mullen-Moses, Cultural Resources, Snoqualmie Tribe
Chris Moore, Washington Trust for Historic Preservation
Allyson Brooks, SHPO, DAHP



April 17, 2013

City of Shoreline
Attn: Jeff Forry
17500 Midvale Avenue N
Shoreline, WA 98133

RE: Proposed SEPA Changes

Dear Mr. Forry,

On behalf of the Washington Trust for Historic Preservation, please accept these comments regarding the City of Shoreline's proposal to raise thresholds for minor new construction that would be exempt from review through the State Environmental Policy Act (SEPA). The Washington Trust is a statewide, nonprofit advocacy organization dedicated to safeguarding the historic and cultural resources of Washington. Given this role, we have been engaged in the rulemaking process undertaken by the Department of Ecology resulting in the increased exemption thresholds for minor new construction.

Of primary concern is the responsibility of local jurisdictions to adopt increased thresholds based on findings as defined in WAC 197-11-800(1)(c)(i): Documentation that the requirements for environmental analysis, protection and mitigation for impacts to elements of the environment have been *adequately addressed* (italics added). Per the Element and Regulation Matrix prepared by the city, the Historic and Cultural Preservation environmental element is adequately addressed based on the city's Landmark Designation and Preservation process (codified with an inter-local agreement with King County's Landmark Program) and through federal and state regulations that address cultural/archaeological resources.

What remains unclear, however, is whether the city's landmark ordinance is integrated with the SEPA process, or remains independent from SEPA review. For example, if a SEPA checklist is submitted for a project, is information on the checklist, specifically related to Question #13, cross-referenced with the city's list of designated historic structures or a city-wide inventory of known historic sites? Does city staff refer to WISAARD, the database maintained by the Department of Archaeology & Historic Preservation (DAHP), to confirm whether the property under review possesses historic significance?

The point is an important one – as thresholds increase, the number of projects that come under SEPA review will decrease. Correspondingly, the potential to unknowingly impact historic

resources in an adverse manner becomes greater: with respect to cultural resources, it is not so much the size of the proposed project as it is the location. Without a process to acknowledge, identify and confirm the presence of historic resources at a proposed project site, the city runs the risk of doing unintentional damage.

Given the above, prior to adopting increased thresholds, the Washington Trust recommends the City of Shoreline implement certain policies to reduce potential negative impacts to historic resources. Specifically, the city should:

- Enter into a data-sharing agreement with DAHP. While city staff can use the WISAARD database to look up historic structures, the Statewide Predictive Model for the presence of archaeology sites can only be accessed after a data-sharing agreement is in place;
- Determine whether a proposed project will affect a building or structure that is more than 45 years old;
- If a building is over 45 years old, determine whether it is listed in or eligible for listing in any historic register.

If efforts to collect the above information indicate historic and cultural resources will not be adversely affected, the project can reasonably move forward as exempt from SEPA review. If it is determined that historic and cultural resources will be affected, the city should condition the permit to avoid, minimize, and/or mitigate any adverse impacts. In implementing the measures noted above, the risk of unintentionally impacting cultural resources in a negative way will be greatly reduced. Thank you for your consideration and please do not hesitate to contact me with any questions you may have.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Moore". The signature is fluid and cursive, with the first name "Chris" and last name "Moore" clearly distinguishable.

Chris Moore
Field Director

Cc: Gretchen Kaehler, Assistant State Archaeologist, DAHP