Adopted:
Effective:

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

ORDINANCE NO. **24-056**

RELATING TO GROWTH MANAGEMENT; AMENDING CHAPTER 30.65 SCC AND CHAPTER 30.86 SCC; CONCERNING DENSITY FRINGE EXCEPTIONS

WHEREAS, counties and cities that are required to plan under the Growth Management Act (GMA), chapter 36.70A RCW, must encourage economic development that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, promote the retention and expansion of existing businesses and recruitment of new businesses, all within the capacities of the state's natural resources, public services, and public facilities; and

WHEREAS, the Snohomish County ("County") GMA Comprehensive Plan (GMACP) - General Policy Plan (GPP) includes policies that encourage land use activities and development intensities that minimize impacts upon critical areas; and

WHEREAS, the County became a member of the Federal Emergency Management Agency (FEMA) National Flood Insurance Program (NFIP) in 1984 and adopted flood hazard regulations and Flood Insurance Rate Maps (FIRMs) that determine how much more development can occur in the floodplain without increasing the base flood level elevation by more than one foot; and

WHEREAS, the FIRMs were initially produced by FEMA in a Flood Insurance Study for unincorporated Snohomish County published on September 15, 1983 ("1983 Flood Insurance Study"), which investigated the existence and severity of flood hazards, analyzing data from existing conditions of development within the identified floodplains; and

WHEREAS, data for the 1983 Flood Insurance Study was initially solicited from Snohomish County jurisdictions in 1975, and the study results were reviewed by FEMA in 1981; and

WHEREAS, the County revised the Title 18 Snohomish County Zoning Code in 1984 to establish floodplain development regulations and a special flood hazard area; and

WHEREAS, the density fringe area was included as a classification within the special flood hazard area, and identified areas of high flood damage potential where conventional floodway areas could not be established; and

WHEREAS, the "density fringe area" is defined in Snohomish County Code (SCC) 30.91D.100 as "that portion of special flood hazard area of the lower Snohomish and Stillaguamish rivers in which floodway areas cannot reasonably be established and in which development is regulated by maximum development density criteria"; and

WHEREAS, under the Snohomish County Zoning Code Chapter 27.36 in effect in 1984, the density fringe area development regulations specified maximum allowable density (SCC 27.36.030) and maximum allowable obstruction of development (SCC 27.36.040) in a parcel; and

WHEREAS, maximum allowable density and obstruction limitations for the density fringe are now found in SCC 30.65.250 and 30.65.255 and are colloquially referred to as the "two and fifteen" development regulations because the maximum allowable density is limited to two percent of the land area of the portion of the lot in the density fringe area and the maximum allowable obstruction is limited to 15 percent of the length of a line perpendicular to floodwater flow direction at the point where the development is located; and

WHEREAS, the density fringe area regulations in chapter 30.65 SCC (Special Flood Hazard Areas) have been updated several times as new FEMA Flood Insurance Studies have been published, the most recent of which was published on June 19, 2020; and

WHEREAS, Ordinance No. 20-076 adopted the 2020 FEMA Flood Insurance Study and updated the County's special flood hazard regulations, amending chapters 30.43C and 30.65 and subtitle 30.9 of the SCC; and

WHEREAS, Ordinance No. 20-076 revised density fringe area permitted uses in SCC 30.65.280 to expand the permitted and conditionally permitted uses in portions of the density fringe area that coincide with an urban growth area to allow certain uses that would be allowed in the underlying zone; and

WHEREAS, these additional permitted uses are specified in SCC 30.65.280(14) and include permitted or conditionally permitted uses in the underlying zones under SCC 30.22.100 as long as the "two and fifteen" development regulations in SCC 30.65.250 and 30.65.255 are met; and

WHEREAS, the changes to chapter 30.65 SCC made in Ordinance No. 20-076 prompted a request from the community to have the flexibility to redevelop and modify certain properties within the density fringe area; and

WHEREAS, SCC 30.65.260 provides a list of exceptions from the maximum allowable density and obstruction limitations; and

WHEREAS, this ordinance amends SCC 30.65.260 to add an exception from the maximum allowable density and obstruction limitations of SCC 30.65.250 and 30.65.255 for proposed development in special flood hazard areas when the square footage and width of the proposed

development is offset by the square footage and width of the uses or development on the site that were accounted for in the 1983 Flood Insurance Study but no longer exist or will not exist prior to commencing construction of the proposed development; and

WHEREAS, under the amendments in this ordinance any further development beyond what was accounted for in the 1983 Flood Insurance Study will continue to be subject to density fringe area regulations, and all development, including development relying on the square footage and width credit, is subject to density fringe development regulations in SCC 30.65.270; and

WHEREAS, the square footage and width credit may only be used one time per site regardless of the number of uses or development that may be eligible; and

WHEREAS, the square footage and width credit allows property owners greater flexibility while sustaining the allowance in the original 1983 Flood Insurance Study and subsequent Flood Insurance Studies for a one-foot rise from the base flood level elevation; and

WHEREAS, utilizing the square footage and width credit to redevelop or replace existing structures promotes the replacement of older structures with redeveloped structures that are subject to all current building standards, which provide for additional flood protection measures and more stringent restrictions on environmental impacts from building materials; and

WHEREAS, on December 13, 2022, the Snohomish County Planning Commission (the "Planning Commission") was briefed by PDS staff about the proposed code amendments contained in this ordinance; and

WHEREAS, the Planning Commission held a public hearing on January 24, 2023, and on February 28, 2023, to receive public testimony concerning the proposed code amendments contained in this ordinance; and

WHEREAS, at the conclusion of the Planning Commission's public hearing, the Planning Commission deliberated on the proposed ordinance and voted to recommend approval of code amendments relating to density fringe as shown in its approval letter dated March 10, 2023; and

WHEREAS, on _____, 2024, the Snohomish County Council ("County Council") held a public hearing after proper notice, and considered public comment and the entire record related to the code amendments contained in this ordinance; and

NOW, THEREFORE, BE IT ORDAINED:

Section 1. The County Council adopts the following findings in support of this ordinance:

A. The foregoing recitals are adopted as findings as if set forth in full herein.

B. This ordinance amends SCC 30.65.250 to amend the reference to the exceptions list in SCC 30.65.260 for consistency with the amendments in SCC 30.65.260.

C. This ordinance amends SCC 30.65.255 to amend the reference to the exceptions list in SCC 30.65.260.

D. This ordinance amends SCC 30.65.260 to add an exception to the maximum allowable density and obstruction limitations of SCC 30.65.250 and 30.65.255 that would allow for greater flexibility for development within the density fringe area while sustaining flood mitigation requirements. The code amendment allows the square footage and width of the development that was accounted for in the 1983 Flood Insurance Study to be utilized as a one-time credit for future development. The square footage and width credit is to benefit and provide an exception for proposed future development from the maximum allowable density and obstruction limitations (the "two and fifteen" development regulations in SCC 30.65.250 and 30.65.255), not existing or former structures. This code amendment requires that the applicant demonstrate that their uses or development were accounted for in the 1983 Flood Insurance Study and, if the proposed development is authorized, that the applicant record this one-time credit utilization with the Snohomish County Auditor's Office. This one-time credit utilization allows property owners greater flexibility while sustaining the allowance in the original 1983 Flood Insurance Study and subsequent Flood Insurance Studies for a one-foot rise from the base flood level elevation. Utilizing the one-time credit to redevelop existing buildings promotes the replacement of existing structures with redeveloped structures that are subject to all current building standards, which provide for additional flood protection measures and more stringent restrictions on environmental impacts from building materials. The code amendment only allows for the credit to be used one time and on one site regardless of the number of uses or development accounted for in the 1983 Flood Insurance Study, and any remaining credit not used with the application is forfeited. Fill is not to be included in the one-time credit calculations and the one-time credit cannot be transferred to another site.

E. This ordinance amends SCC 30.86.300 to add a fee for processing the density fringe exception applications. Applications will be subject to a new "Density Fringe Exception Application" fee of $500. This fee offsets the costs associated with processing these complex applications. This fee amount was calculated utilizing the same methodology as used for Ordinance No. 21-048 in 2021 that updated development permit fees. Staff hourly rates for establishing this Density Fringe Exception Application fee are from 2024, instead of the 2020 fee rates used in Ordinance No. 21-048. The $500 fee was based off an estimated 3.2 hours of staff time necessary to intake and process each Density Fringe Exception Application.

F. In developing the proposed amendments, the County considered the following GMA goals:

> GMA Goal 5 - Economic development. Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, especially for unemployed and for disadvantaged persons, promote the retention and expansion of existing businesses and recruitment of new businesses, recognize

regional differences impacting economic development opportunities, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities.

The proposed amendments support the economic development goal by allowing the redevelopment of certain uses within the density fringe area which were recently expanded through Ordinance No. 20-076. Allowing for redevelopment promotes the retention and expansion of businesses while continuing to protect and preserve the natural environment.

GMA Goal 10 – Environment. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

The proposed amendments ensure that redevelopment of certain permitted uses would be subject to existing development standards as well as the rigorous environmental protections within chapter 30.65 SCC.

G. The proposed amendments are consistent with the following multicounty planning policies (MPPs) from Puget Sound Regional Council VISION 2050:

MPP-En-5 – Locate development in a manner that minimizes impacts to natural features. Promote the use of innovative environmentally sensitive development practices, including design, materials, construction, and on-going maintenance.

The proposed changes encourage redevelopment of permitted uses within the density fringe area, allowing for new construction to be held to the current development standards that minimize impacts to natural features and floodways.

MPP-DP-46 - Support and provide incentives to increase the percentage of new development and redevelopment–both public and private–to be built at higher-performing energy and environmental standards.

The proposed amendments promote the redevelopment of structures that existed prior to 1984, which would encourage redevelopment in existing building footprints. The proposed changes also encourage certain older buildings to be redeveloped and meet existing permitting and development standards.

H. The proposed amendments are consistent with the following Snohomish County Countywide Planning Policies (CPPs):

CPP-DP-33 - Jurisdictions should minimize the adverse impacts on resource lands and critical areas from new developments through the use of environmentally sensitive development and land use practices.

The proposed changes better allow for the redevelopment of buildings that are subject to existing permitting and development standards. These development standards require construction to use more environmentally sensitive materials in addition to standards that better protect the floodways.

> CPP-ED-9 - As appropriate, the County and cities should adopt plans, policies, and regulations that preserve designated industrial, commercial, agricultural, and resource land base for long-term regional economic benefit.

The proposed amendments support the preservation of existing development of permitted uses, which include businesses that create a regional economic benefit, through encouraging redevelopment of permitted commercial and agricultural structures within the density fringe area.

I. The proposed amendments are consistent with and help implement a number of policies contained within the County's GMACP GPP. The code amendments in this ordinance are consistent with the following objectives and policies:

> Objective LU 6.B - Encourage land use activities and development intensities that protect the character of rural areas, avoid interference with resource land uses, minimize impacts upon critical areas, and allow for future expansion of UGAs. (See the resource sections of the land use element for protection of resource lands and the natural environment element for protection of critical areas.)

The proposed code changes better serve the density fringe area by minimizing impacts on the floodway and other critical areas. Redevelopment would also reduce pressure for future UGA expansion.

> Objective NE 1.A - Balance the protection of the natural environment with economic growth, housing needs, and the protection of property rights.

The proposed amendments allow for redevelopment that enhances economic growth while ensuring the protection and maintenance of the floodway within the density fringe area.

> Objective NE 3.A.1 – The county shall designate and protect critical areas including fish and wildlife habitat conservation areas, wetlands, critical aquifer recharge areas, frequently flooded areas, and geologically hazardous areas and include best available science in the development of programs, policies, and regulations relating to critical areas.

> Policy NE 3.D.2 - The county shall allow only those developments and land uses in floodplains that are compatible with floodplain processes.

The proposed changes promote redevelopment within the floodplains, which would update buildings to reflect existing development regulations that are more environmentally rigorous and

protect critical areas. The building footprints were accounted for in the 1983 Flood Insurance Study that measured the 100-year floodplain and would not additionally impact floodplain processes.

J. Procedural requirements.

1. Under Snohomish County Code, this ordinance is a Type 3 legislative action pursuant to SCC 30.73.010.

2. As required by RCW 30.70A.106(1), a notice of intent to adopt the proposed code amendments was transmitted to the Washington State Department of Commerce for distribution to state agencies on November 30, 2022.

3. State Environmental Policy Act (SEPA), chapter 43.21C RCW, requirements with respect to this non-project action have been satisfied through the completion of an environmental checklist and the issuance of a determination of non-significance on November 30, 2022.

4. The public participation process used in the adoption of this ordinance complies with all applicable requirements of the GMA and the SCC, including but not limited to, RCW 36.70A.035, RCW 36.70A.140, and chapter 30.73 SCC.

5. The Planning Commission was briefed on the proposed amendments at its December 13, 2022, meeting and conducted a public hearing on the proposed amendments at its January 24, 2023, and February 28, 2023, meetings, resulting in its letter of March 10, 2023, recommending approval of the code amendments contained in this ordinance.

6. The Washington State Attorney General last issued an advisory memorandum, as required by RCW 36.70A.370, in September of 2018 entitled "Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property" to help local governments avoid the unconstitutional taking of private property. The process outlined in the State Attorney General's 2018 advisory memorandum was used by Snohomish County in objectively evaluating the regulatory changes proposed by this ordinance.

K. This ordinance is consistent with the record.

1. FEMA produced a Flood Insurance Study (FIS) for Snohomish County, Washington Unincorporated Areas, dated September 15, 1983. The 1983 Flood Insurance Study investigated the existence and severity of flood hazards, analyzing data from the existing conditions of development within the identified floodplains, and established the base flood elevation. Floodplain development regulations were created to prevent a cumulative increase in the base flood elevation of more than one foot. The density fringe area was created as a component of the Special Flood Hazard Areas when Snohomish County became a member of the National Flood Insurance Program (NFIP) administered by FEMA and adopted flood hazard regulations and mapping in 1984.

2. Snohomish County made changes in code that allow certain businesses within the density fringe area to have additional uses that are non-agricultural. Ordinance No. 20-076 adopted the most recent Flood Insurance Rate Maps (FIRMs) and revised the density fringe area permitted uses (SCC 30.65.280) to expand the list of permitted and conditionally permitted uses in the portions of the density fringe area that coincide with an urban growth area to allow certain uses that would be allowed in the underlying zone. These changes then led to a request from the community to have the flexibility to redevelop and modify certain properties within the density fringe area.

3. The code amendments proposed by this ordinance allow an exception from the maximum allowable density and obstruction limitations of SCC 30.65.250 and 30.65.255 for development square footage and width that was accounted for in the 1983 Flood Insurance Study.

4. The code amendments proposed by this ordinance create a new "Density Fringe Exception Application" fee of $500 to be located in Table SCC 30.86.300.

Section 2. The County Council makes the following conclusions:

A. The proposal complies and is consistent with the GMA, Washington State law, and the SCC.

B. The proposal complies and is consistent with the GMACP.

C. The County has complied with all SEPA requirements with respect to this non-project action.

D. The public participation process used in the adoption of this ordinance complies with all applicable requirements of the GMA and title 30 SCC.

E. The amendments proposed by this ordinance do not result in an unconstitutional taking of private property for a public purpose.

Section 3. The Snohomish County Council bases its findings and conclusions on the entire record of the County Council, including all testimony and exhibits. Any finding, which should be deemed a conclusion, and any conclusion which should be deemed a finding, is hereby adopted as such.

Section 4. Snohomish County Code Section 30.65.250, last amended by Amended Ordinance No. 02-064 on December 9, 2002, is amended to read:

30.65.250 Density fringe area: maximum allowable density.

The land area occupied by any use or development permitted by this chapter that will displace floodwaters shall not exceed two percent of the land area of that portion of the lot located in the density fringe area. The limitations of this section shall not apply to ((~~those uses~~)) the exceptions and exemptions listed in SCC 30.65.260.

Section 5. Snohomish County Code Section 30.65.255, last amended by Amended Ordinance No. 02-064 on December 9, 2002, is amended to read:

30.65.255 Density fringe area: maximum allowable obstruction.

The maximum width (sum of widths) of all new construction, substantial improvements or other development shall not exceed 15 percent of the length of a line drawn perpendicular to the known floodwater flow direction at the point where the development(s) is located. The length of said line shall not extend beyond the property boundary or the edge of the density fringe area, whichever is less. The limitations of this section shall not apply to ((~~those uses~~)) the exceptions and exemptions listed in SCC 30.65.260.

Section 6. Snohomish County Code Section 30.65.260, last amended by Amended Ordinance No. 02-064 on December 9, 2002, is amended to read:

30.65.260 Density fringe area: exceptions to maximum allowable density and obstruction limitations.

(1) The following uses shall be exempt from the maximum allowable density and obstruction limitations of SCC 30.65.250 and 30.65.255:

((~~(1)~~)) (a) Water-dependent utilities;

((~~(2)~~)) (b) Dikes;

((~~(3)~~)) (c) Utility facilities; and

((~~(4)~~)) (d) Public works, when the project proponent demonstrates that the floodwater displacement effects of the proposal when considered together with the maximum potential floodwater displacement allowed by SCC 30.65.250 and 30.65.255 shall not cause a cumulative increase in the base flood elevation of more than one foot. Floodwater displacement information shall be obtained and certified by a professional engineer.

(2) There shall be an exception for proposed "development in special flood hazard areas" from the maximum allowable density and obstruction limitations of SCC 30.65.250 and 30.65.255 if the square footage and width of proposed development is offset by the square footage and width of the uses or development on the site that were accounted for in the "Flood Insurance Study (FIS) for Snohomish County, Washington Unincorporated Areas" dated September 15, 1983, and such uses or development no longer exists or will not exist prior to commencing construction of the proposed "development in special flood hazard areas." The following apply to any application for the exception under SCC 30.65.260(2):

~~(a) The applicant shall submit an application for the exception under SCC 30.65.260(2) and pay the~~ fee for a Density Fringe Exception Application as provided for in SCC 30.86.300;

~~(b) The applicant has the burden to demonstrate in its application that the square footage and width~~ of the proposed "development in special flood hazard areas" were accounted for in the "Flood Insurance Study (FIS) for Snohomish County, Washington Unincorporated Areas" dated September 15, 1983;

~~(c) The total "development in special flood hazard area" on a site may equal but never exceed the~~ density and obstruction of the uses or development accounted for in the "Flood Insurance Study (FIS) for Snohomish County, Washington Unincorporated Areas" dated September 15, 1983;

(d) A site may only use the square footage and width credit one time regardless of the number of uses or development that may be eligible;

(e) If only a portion of the square footage and width credit is used by an applicant any remaining credit is forfeited for the site and shall not be utilized at a later date;

(f) Fill shall not be included in the square footage and width credit;

(g) The square footage and width credit cannot be transferred to another site; and

(h) After final approval by the County, the applicant shall record with the Auditor's office a notice in a form approved by Planning and Development Services describing the utilization of the square footage and width credit.

Section 7. Snohomish County Code Section 30.86.300, last amended by Amended Ordinance No. 22-073 on January 11, 2023, is amended to read:

30.86.300 Special flood hazard area permit fees.

Table 30.86.300 Special Flood Hazard Area Permit Fees

FLOOD HAZARD AREA PERMIT	$1,050
FLOOD HAZARD AREA VARIANCE	See Table 30.86.230
PRE-APPLICATION CONFERENCE FEE	$480
FLOOD HAZARD AREA DETERMINATION	$300
FLOOD HAZARD PERMIT & FLOOD HAZARD VARIANCE APPLICATION EXTENSION(1)	$500
DENSITY FRINGE EXCEPTION APPLICATION	$500
(1) This fee applies to Flood Hazard Permit and Flood Hazard Variance application extensions pursuant to SCC Table 30.70.140(1).	

Section 8. Severability and Savings. If any section, sentence, clause or phrase of this ordinance shall be held to be invalid by the Growth Management Hearings Board (Board), or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance. Provided, however, that if any section, sentence, clause or phrase of this ordinance is held to be invalid by the Board or court of competent jurisdiction, then the section, sentence, clause or phrase in effect prior to the effective date of this ordinance shall be in full force and effect for that individual section, sentence, clause or phrase as if this ordinance had never been adopted.

PASSED this _____ day of _____, 20__.

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

_____
Council Chair

ATTEST:

_____

Asst. Clerk of the Council

( ) APPROVED
( ) EMERGENCY
( ) VETOED

DATE:

_____

County Executive

ATTEST:

_____

Approved as to form only:

Richmond, Christina

Digitally signed by Richmond, Christina
Date: 2024.06.07 08:14:00 -07'00'

Deputy Prosecuting Attorney