



Snohomish County

Planning and Development Services

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MEMORANDUM

Dave Somers
County Executive

TO: Snohomish County Planning Commission

FROM: Henry Jennings, PDS

SUBJECT: Staff Report: Proposed Code Amendments Relating to Nonconforming Structures and Uses

DATE: July 23, 2025

INTRODUCTION

The purpose of this staff report is to provide information on a non-project proposal to amend Snohomish County Code (SCC) sections 30.28.070, 30.28.72, and 30.28.075 relating to nonconforming structures and uses. The code amendments will increase consistency between the sections and clarify the criteria for expanding nonconforming structures and uses. Attachment A presents the staff recommended draft findings.

PROPOSAL BACKGROUND

A nonconforming structure is defined within SCC 30.91N.050 as a structure that met all the required development regulations, such as building height and setbacks when it was first established, although it no longer does. Similarly, a nonconforming use is defined with SCC 30.91N.070 as a use that was allowed when established, although is no longer allowed. Nonconforming structures and uses are most often created when areawide rezones or changes in development regulations are adopted. These changes can create situations where what once was allowed could no longer be permitted under the new code. The provisions within chapter 30.28 SCC allow structures and uses already in place when the codes change to remain, and in some cases even expand.

State law does not regulate nonconforming uses and structures, so there is diversity in how the jurisdictions of the state address the issue. Nonconforming provisions have been included in Snohomish County Code since the code's creation in 1966. SCC 30.28.070 focuses on the requirements for continuing, improving, and restoring existing nonconforming structures. SCC 30.28.072 focuses instead on continuance, changes, abandonment, and expansion of nonconforming uses, and SCC 30.29.075 looks at structures that house nonconforming uses. The three provisions have only been amended twice since they were incorporated into the unified development code in 2003. The only amendment to SCC 30.28.072 occurred in 2013 within Amended Ordinance 13-007, effective October 3, 2013, that created Urban Center zone specific expansion limits for nonconforming use. The only amendment to SCC

30.28.070 occurred recently through Ordinance 25-014 and incorporated recent state legislation surrounding accessory dwelling units.

The central reasons for the proposed code amendments described in this staff report are inconsistencies between the three nonconforming provisions in code, issues with implementation, and ensuring compliance with the rest of title 30 SCC. The primary inconsistency is between SCC 30.28.075 and SCC 30.28.072. SCC 30.28.075 states that no structure containing a nonconforming use can be expanded, although SCC 30.28.072 provides the criteria to allow for expansion of a nonconforming use in or outside of a structure. Snohomish County Planning and Development Services (PDS) staff as well as the Hearing Examiner have also identified several issues with implementing the criteria for expanding nonconforming uses. Many criteria lack examples or quantitative measures that can help staff consistently implement the code. Finally, as the provisions for nonconforming uses and structures have primarily not been updated since the unified development code was created in 2003, they lack important references to other sections of code such as the shoreline management program.

The proposed amendments in this staff report aim to reduce inconsistencies by repealing SCC 30.28.075, clarify criteria by amending SCC 30.28.072(4), and detail that any expansions of nonconforming structures or uses must comply with all development regulations. This means that, for instance, any expanded area must comply with critical area regulations, ADA requirements, the fire code, and all other development regulations. The fundamental policy that will remain within these proposed amendments is that a nonconforming structure is allowed to remain for the life of the structure. This includes normal maintenance and repairs, although any expansions need to comply with all current code. Further, if the use or structure could become conforming with a conditional use permit, a conditional use permit is required for any expansion. A project cannot create or expand a nonconformity.

PROPOSED CODE AMENDMENTS

Table 1 outlines the proposed code amendments, as well as the findings in support of the proposed code amendments by subsection.

Table 1. Summary of proposed code changes and findings

Proposed Change	Finding
<p>30.28.070 Nonconforming structures.</p> <p>The following requirements apply to nonconforming structures:</p> <p>(1) <i>Continuance.</i> Any legally established nonconforming structure is permitted to remain <u>for the life of the structure</u> in the form and location in which it existed on the effective date of the nonconformance;</p> <p>(2) <i>Improvements and repairs.</i></p> <p style="padding-left: 40px;">(a) Nonconforming structures may be structurally altered or enlarged <u>with the required permits</u> only if the ((setback, height, lot coverage, and open space)) <u>altered or enlarged portion of the structure complies with all current and applicable local, state, and federal regulations.</u> ((requirements of the zone in which the structure is located are met; except when to:))</p>	<p>A nonconforming structure may continue for the life of the structure. This means that a nonconforming structure cannot be demolished and rebuilt, although normal maintenance of a nonconforming structure is allowed along with expansions to the structure. Proposed amendments help clarify this intent for the continuation and improvement of nonconforming structures. The proposed amendments more clearly indicate that all improvements, repairs, or restoration must be done in compliance with all of title 30 SCC.</p> <p>A 50 percent limit on replacement of the total number of exterior walls is proposed to be added to (2) because staff and the public are often confused about how many walls can be repaired or replaced and still be considered ordinary</p>

Table 1. Summary of proposed code changes and findings

Proposed Change	Finding
<p>((a)) <u>(b) Repair to the existing nonconforming structure including ordinary maintenance or replacement of up to 50 percent of the total number of exterior walls, fixtures, or plumbing shall be permitted so long as the exterior dimensions of the structure, as it existed on the effective date of the nonconformance, are not increased.</u> <u>Demolition and reconstruction of nonconforming structures is not ordinary maintenance.</u></p> <p>((b) Convert an existing nonconforming structure) <u>(c) Nonconforming structures may be converted into an accessory dwelling unit pursuant to SCC 30.28.010(2)(d)(iv).</u></p> <p>(3) <i>Restoration.</i> A structure that is accidentally destroyed may be fully restored only if ((the setback and yard)) <u>all applicable title 30 SCC requirements ((of chapter 30.23 SCC)) are met ((unless))</u> . If the structure is listed on the National Register of Historic Places, Washington State Cultural Resource Inventory, or Snohomish County Cultural Resource Inventory, ((in which case,)) the structure may be restored and located in its former location despite noncompliance with the bulk regulations:</p> <p>(a) <u>Regardless of historical status, a building permit, compliance with subtitle 30.5 SCC, and compliance with the Americans with Disabilities Act are required to restore a structure that is accidentally destroyed;</u></p> <p>(b) <u>To restore a destroyed nonconforming structure, a building permit application must be submitted to the department within one year of the destruction; and</u></p> <p>((b)) <u>(c) A structure shall be considered destroyed for purposes of this section if the restoration costs exceed 75 percent of assessed value of record when the damage occurred.</u></p> <p>(4) <u>If a nonconforming structure would become conforming by obtaining either a conditional use permit or an administrative conditional use permit, such permit shall be required to structurally alter, enlarge, or restore the nonconforming structure. The conditional use permit or administrative conditional use permit is required in addition to any other required permit, such as a building permit and land disturbing activity permit.</u></p>	<p>maintenance. With this proposed amendment, if a nonconforming structure had, for instance, 6 exterior walls, 3 of them could be replaced. This proposed amendment helps define ordinary maintenance. Further clarifying ordinary maintenance, the proposed amendments state that all exterior walls cannot be removed, and the entire structure cannot be replaced or rebuilt, even in the same footprint. This would not be consistent with the intent of allowing a nonconforming structure to remain for the life of the structure, whereas normal repair and maintenance is a part of the life of a structure.</p> <p>Amendments from Ordinance 25-014 included an allowance for nonconforming structures to be converted into accessory dwelling units with criteria included in a newly added SCC 30.28010(2)d(iv). The proposed amendments in this staff report are housekeeping to ensure the tense and sentence structure follow the other proposed amendments within (a) and (b) above.</p> <p>Improvements and repairs cannot create or expand a nonconformity, an expansion must be done in compliance with the development code. While nonconforming structures are allowed to be maintained, proposed amendments make it clear that any proposed expansion must comply with all applicable codes so that new nonconformities are not created. For instance, an expansion of an existing building could not be proposed within a critical area without compliance with critical area regulations, like any other newly proposed structure in unincorporated Snohomish County.</p> <p>Proposed language also clarifies that if a structure were accidentally destroyed, it can only be rebuilt if it complies with all of title 30 SCC, unless it was a historic building. Even if the nonconforming structure were historic and could be rebuilt in the same footprint, the restoration must be in compliance with the building and fire codes and receive an approved building permit.</p>

Table 1. Summary of proposed code changes and findings

Proposed Change	Finding
<p><u>(5) Structures that do not conform to the Snohomish County Shoreline Management Program or the policies of the Shoreline Management Act shall comply with SCC 30.67.450.</u></p>	<p>There are some nonconforming structures, such as larger garages or accessory structures, that could be conforming with a conditional use permit. The proposed amendments would require a conditional use permit in these situations if an applicant was also applying for a building permit to do an improvement or repair. The intent is to require structures to become conforming to current code if possible.</p> <p>Finally, this code section has not been updated since the nonconforming uses and structures section within the Shoreline Management Plan (SCC 30.67.450) was created in 2006 that supersedes this section within chapter 30.28 SCC. Proposed amendments add this reference to SCC 30.28.070 so that staff and the public know the requirements.</p>
<p>30.28.072 Nonconforming uses.</p> <p>(1) <i>Continuance.</i> Any legally established nonconforming use may be continued subject to the provisions of this section.</p> <p>(2) <i>Changes.</i> Nonconforming uses may only be changed to other uses that are allowed by ((this title)) <u>chapter 30.22 SCC</u> in the zone within which the nonconforming use is located.</p> <p>(3) <i>Abandonment.</i> If a nonconforming use is abandoned or discontinued for a period of 12 consecutive months or more, the nonconforming status of the use is terminated, and any future use of the land or structures shall be in conformity with the provisions of ((this)) <u>title 30 SCC</u>. The mere presence of a structure, equipment, or material shall not be deemed to constitute the continuance of a nonconforming use unless the structure, equipment, or material is actually being occupied or employed in maintaining such use.</p> <p>(4) <i>Expansion.</i> A nonconforming use may be expanded upon approval of <u>required permits</u>. ((an)) <u>An administrative conditional use permit ((-)) shall be required whenever an expansion of a nonconforming use is proposed; provided, however, if obtaining a conditional use permit would make such use conforming, a conditional use permit shall be required instead.</u> The department may impose conditions upon the expansion of the use to minimize impacts and ensure compatibility with nearby existing and</p>	<p>Proposed housekeeping amendments to spell out the use matrix chapter within (2) and that the title in question is title 30 SCC within (3). Further proposed amendments in (4) specify that any expansion of a nonconforming use must obtain any required permits. For instance, if there is clearing necessary to expand the amount of ground area utilized for a nonconforming use, a land disturbing activity permit may be required, or a building permit for a new or expanded structure. An ACUP is already required within code for an expansion of a nonconforming use, and this is not proposed to change. Similar to newly proposed next within SCC 30.29.070 (4), there is also proposed language within SCC 30.28.072(4) to require a conditional use permit if the use would be conforming with such a permit. While nonconforming uses are permitted to continue and even expand in some cases, this is a proposed amendment with the intent to make as many uses conforming as possible.</p> <p>Without quantitative and clear criteria in place for when a use can be expanded, it is difficult to ensure consistent review and application. The proposed amendments add clarity to existing criteria by adding examples of how the criteria could be measured, and in some cases further</p>

Table 1. Summary of proposed code changes and findings

Proposed Change	Finding
<p>potential uses. A nonconforming use may be expanded if the department determines that the following criteria are met:</p> <p>(a) The area proposed for expansion is contiguous to the nonconforming use;</p> <p>(b) The area is held under the same ownership as the land with the nonconforming use and has been so owned since immediately prior to the time the use ((has become)) <u>became</u> nonconforming;</p> <p>(c) The area for expansion is an area where the use would have been allowed immediately prior to the time the use became nonconforming;</p> <p>(d) ((The expansion)) <u>For a nonconforming use located outside of a structure, the cumulative total of all expansions shall not increase the ground area devoted to the nonconforming use by more than 100 percent of that in use at the effective date of the nonconformance</u>((, except that within)) <u>. Within the UC ((zone)) and MUC zones the ((expansion)) cumulative total of all expansions shall ((not increase the ground area devoted to the nonconforming use by more than)) be limited to a maximum increase of 10 percent of ((that existing)) ground area from what existed at the effective date of the nonconformance. The increase in ground area must comply with all current and applicable title 30 SCC provisions;</u></p> <p>(e) ((The expansion)) <u>For a nonconforming use located inside of a structure, the cumulative total of all expansions shall not increase the ((ground area covered by the structural portion)) building footprint of the structure or portion of the structure housing the nonconforming use by more than 100 percent of that existing at the effective date of the nonconformance</u>((, except that within)) <u>. Under this subsection, expansion of the building footprint can include utilizing more of an existing building than the nonconforming use previously occupied, additions to existing buildings, and construction of new building(s) that house the nonconforming use. Within the UC ((zone)) and MUC zones the ((expansion)) cumulative total of all expansions shall not increase the ((ground area covered by the structural portion)) building footprint of the structure or portion of the structure housing the nonconforming use</u></p>	<p>defining the criteria. For instance, an expansion cannot be approved if it is “detrimental to surrounding properties” within existing code, although to help staff implement this consistently and efficiently (g) the proposed amendments provide examples of what could be considered detrimental. Similarly, existing (h) states that expansions cannot “result in a significant increase in the intensity of the use of the nonconformity” and proposed amendments provide quantitative measures for what could be considered significant including a 10 percent increase in average daily trips to the site. These proposed amendments could provide backstops for staff to implement the code. These amendments are also in line with the type of language found in other jurisdictions’ nonconforming codes across the state such as King County, City of Tacoma, and Kitsap County.</p> <p>Proposed amendments also aim to clarify that expansions in ground area and building area for nonconforming uses are limited to 100 percent of what existed when the use became nonconforming. This is to prevent multiple permit applications that result in a beyond doubling of the space utilized by the use. Newly proposed text also confirms that any expansion to a ground area or building area must comply with all of title 30 SCC.</p> <p>Finally proposed amendments add the restoration subsections from SCC 30.28.075 into SCC 30.28.072 as SCC 30.28.075 is proposed for repeal.</p>

Table 1. Summary of proposed code changes and findings

Proposed Change	Finding
<p>by more than 10 percent of that existing at the effective date of the nonconformance. <u>New and expanded buildings that house an expanded nonconforming use must comply with all current and applicable title 30 SCC provisions;</u></p> <p><u>(f) Any expansion in ground area or building footprint shall not create a new nonconforming use or structure. If the structure housing the nonconforming use is a nonconforming structure, any expansions shall also comply within SCC 30.28.070;</u></p> <p>((f)) <u>(g) The expansion shall not be approved if it is found to be detrimental to surrounding properties</u>((, or to the implementation of the adopted comprehensive land use plan for the area;)). <u>Detrimental in this section is defined as, but is not limited to, increased hours of operation or increased light, glare, or noise;</u></p> <p>((g)) <u>(h) The expansion shall not be</u> ((granted)) <u>approved</u> if it would result in a significant increase in the intensity of the use of the nonconformity. <u>A significant increase is a 10 percent or greater increase in average daily trips to the site, or an increase of 10 percent or greater required minimum parking spaces. If multiple expansions are proposed over time, the aggregate increase related to criterion (h) shall not exceed the 10 percent limit as calculated from when the use became nonconforming;</u></p> <p>((h) Within the UC zone reconstruction of a destroyed nonconforming use is not permitted unless it complies with the requirements of chapter 30.34A SCC; and))</p> <p>(i) ((For purposes of this section "ground area" includes, but is not limited to, building footprint, paved surface parking, enclosed outdoor storage area, and enclosed outdoor service areas.))</p> <p><u>The expansion shall not be approved if it would result in a net loss of critical area functions or values as demonstrated by a critical area study if required pursuant to chapter 30.62A SCC; and</u></p> <p><u>(j) To be approved, the applicant must demonstrate that the expansion will further the goals, objectives, and policies of the Snohomish County Comprehensive Plan, including the Land Use Element.</u></p>	

Table 1. Summary of proposed code changes and findings

Proposed Change	Finding
<p><u>(5) Uses that do not conform to the Snohomish County Shoreline Management Program or the policies of the Shoreline Management Act shall comply with SCC 30.67.450.</u></p> <p><u>(6) A structure housing a nonconforming use that is accidentally destroyed may be restored under SCC 30.28.070(3).</u></p>	
<p>((30.28.075 Nonconforming uses—structures.</p> <p>The following requirements apply to structures, whether conforming or nonconforming, that house or contain nonconforming uses:</p> <p>(1) Improvements. No structure containing a nonconforming use shall be enlarged, extended or structurally altered, whether the structural alterations meet the bulk requirements of this code or not, unless the nonconforming use is changed to a use permitted by this code; except that repair to the existing structure including ordinary maintenance or replacement of walls, fixtures, or plumbing shall be permitted so long as the exterior dimensions of the structure, as it existed on the effective date of the nonconformance are not increased;</p> <p>(2) Restoration. A structure housing a nonconforming use that is accidentally destroyed may be fully restored only if the setback and yard requirements of chapter 30.23 SCC are met unless the structure is listed on the National Register of Historic Places, Washington State Cultural Resource Inventory, or Snohomish County Cultural Resource Inventory, in which case, the structure housing the nonconforming use may be restored and located in its former location despite noncompliance with the bulk regulations:</p> <p>(a) To restore a destroyed structure housing a nonconforming use, a building permit must be submitted to the department within one year of the destruction; and</p> <p>(b) A structure shall be considered destroyed for purposes of this section if the restoration costs exceed 75 percent of assessed value of record when the damage occurred.))</p>	<p>Proposed for repeal because the section is not consistent with the allowance for expansion within SCC 30.28.072. This disallowance is proposed for repeal as it does not align with Snohomish County’s long term policy of allowing for nonconforming structures and uses to continue and even be expanded in some cases. Nonconforming uses often provide uniqueness to a neighborhood and can be economic drivers. The intent of the code is to ensure these uses can remain and expand as needed to meet business demands. Although this expansion cannot be to the detriment of the users or the neighboring properties, and the long term goal is to have as many uses as possible become conforming.</p> <p>The subsection on restoration of nonconforming uses is a proposed to be added to SCC 30.28.072 as that is not currently enumerated there and is important for staff and applicants to understand the requirements for restoration.</p>
<p>30.91N.050 Nonconforming structure.</p> <p>"Nonconforming structure" means a structure which was lawful when established <u>and</u> which no longer conforms to the ((setback, height, or lot coverage requirements of the zone in which it is located)) <u>provisions of title 30 SCC.</u></p>	<p>Proposed amendments to the definition of a nonconforming structure to clarify that a structure is considered nonconforming when it no longer meets any of the requirements within title 30 SCC, not just certain bulk regulations.</p>

The following analysis provides a summary of the proposed code amendments' compliance with state law, as well as regional, countywide, and county Comprehensive Plan policies.

Compliance with State Law

The GMA planning goals adopted in RCW 36.70A.020 guide the development and adoption of comprehensive plans and development regulations. The goals are not priority-listed. In particular, the GMA goals guide the policies in the Snohomish County's GMA Comprehensive Plan (GMACP) and require consistency between the GMACP and implementing development regulations. Table 2 identifies the reasonably related GMA planning goals listed in RCW 36.70A.020, and describes how the proposed code amendments are consistent with and advance those goals.

Table 2 Compliance with GMA Planning Goals

GMA Planning Goal	Finding
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.	Many nonconforming uses are business related, and these proposed amendments enshrine the ability to expand a nonconforming use to ensure business viability without compromising the welfare of neighboring properties.
GMA Goal 6: Property rights. Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions.	Proposed amendments state that nonconforming uses and structures are permitted to be maintained and clarifies how expansions can occur to ensure that the private property rights of the nonconforming use or structure owner as well as neighboring properties can be maintained.
GMA Goal 7: Permits. Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability.	Better defining ordinary maintenance, clarifying expansion criteria, and increasing consistency across Title 30 SCC will allow for more predictability and efficiency in permit processing.

Compliance with the Multi-County Planning Policies

Multi-County Planning Policies (MPPs) within Vision 2050 "provide for coordination and consistency among the metropolitan counties sharing common borders and related regional issues as required by RCW 36.70A.100, and, in order to ensure consistency, the directive policies of the MPPs need to have a binding effect." (Summit-Waller Community Association, et al, v Pierce County). Table 3 identifies the reasonably related MPPs within Vision 2050, and describes how the proposed code amendments are consistent with and advance those goals.

Table 3 Compliance with MPPs

MPP	Finding
MPP-DP-47: Streamline development standards and regulations for residential and commercial development and public projects, especially in centers and high-capacity transit station areas, to provide flexibility and to accommodate a broader range of project types consistent with the regional vision.	The proposed amendments better define ordinary maintenance, clarify expansion criteria, and increase consistency across Title 30 SCC to allow for more predictability and efficiency in permit processing.
MPP-H-10: Encourage jurisdictions to review and streamline development standards and regulations to advance their public benefit, provide flexibility, and minimize additional costs to housing.	
MPP-Ec-17: Preserve and enhance the region's unique attributes and each community's distinctive identity and design as economic assets as the region grows.	Nonconforming uses and structures can contribute to the uniqueness of neighborhoods and communities. Proposed amendments confirm the county's commitment to the retention of these uses and structures, and their expansion.

Compliance with the Countywide Planning Policies

Countywide Planning Policies (CPPs) establish a countywide framework for developing and adopting county, city, and town comprehensive plans. The role of the CPPs is to coordinate comprehensive plans of jurisdictions in the same county in regard to regional issues and issues affecting common borders (RCW 36.70A.100). Table 4 identifies the reasonably related CPPs, and describes how the proposed code amendments are consistent with and advance those goals.

Table 4 Compliance with CPPs

CPP	Finding
CPP-ED-16: The expeditious processing of development applications shall not result in the reduction of environmental and land use standards.	The proposed amendments better define normal maintenance, clarify expansion criteria, and increase consistency across Title 30 SCC to allow for more predictability and efficiency in permit processing.

Compliance with the Snohomish County Comprehensive Plan

The proposed code amendments will better achieve, comply with, and implement the policies identified in Table 5 contained in the County's GMACP.

Table 5 Compliance with the Comprehensive Plan

GMACP Policy	Finding
HO Policy 3.A.2: Development standards and building permit requirements shall be reviewed every five years to ensure clarity and consistency while providing for a timely, fair, and predictable application processing outcome.	The proposed amendments better define normal maintenance, clarify expansion criteria, and increase consistency across Title 30 SCC to allow for more predictability and efficiency in permit processing.

GMACP Policy	Finding
ED Policy 2.A.3: To ensure timeliness, responsiveness, and increased efficiency, the county shall develop and maintain a program of periodic review of the permitting process to eliminate unnecessary administrative procedures that do not respond to legal requirements for public review and citizen input.	

Public Participation

The GMA requires early and continuous public participation (GOAL 11). Public participation on the proposed code amendments has been provided to date through:

- A 21-day public comment period on the preliminary draft amendments from January 22 through February 12, 2025;
- Email distributions to key parties about the comment period and updates to the code development webpage on the PDS website; and
- Virtual meetings with key parties.

The county received several comments from internal county staff as well as outside jurisdictions such as the Washington Department of Ecology (Ecology), Washington Department of Fish and Wildlife (WDFW), and The Tulalip Tribes. The internal staff were mainly concerned with a lack of clarity on how SCC 30.28.070(2) defined ordinary maintenance. Whereas the state agencies were concerned with the fate of critical areas if nonconforming structures and uses could be expanded. Staff in particular called out that code allows “replacement of walls, fixtures, or plumbing” and noted that some members of the public interpreted this to allow for removing all or all but one exterior wall before a rebuild. After discussions with staff, the proposed amendments included in this staff report were edited from those that went out for preliminary public comment to propose that up to 50 percent of exterior walls could be removed and replaced. Newly proposed text also states that ordinary maintenance does not include the demolition and rebuild of a nonconforming structure. The intent of the nonconforming code is to allow for the maintenance of a nonconforming structure for the life of said structure. Demolishing all but one wall of a nonconforming structure to rebuild from nearly scratch does not align with this intent, although the County believes that repair or replacing up to half of the exterior walls could be considered ordinary.

The existing code within SCC 30.28.070 and SCC 30.28.072 calls out that expanded areas must comply with specific bulk regulations such as setback and height requirements, and does not mention the rest of title 30 SCC. The preliminary draft amendments that went out for public comment added that any expanded building or use must comply with all title 30 SCC requirements, and gave a few examples such as ADA compliance. The state agencies who provided comment were concerned that if there was not a specific reference to highlight critical areas, they could be negatively impacted from expansion. The WDFW also suggested that the County create specific nonconforming provisions for critical areas similar to other jurisdictions like the City of Kirkland. To make it clear that any enlargement of a nonconforming structure or use must be in compliance with the entirety of title 30 SCC including the critical area regulations of chapters 30.62A, 30.62B, 30.62C, and 30.65 SCC, the proposed amendments in this staff report call out compliance with critical area regulations in particular. Newly added provisions also call out the shoreline regulations in chapter 30.67 SCC as they supersede the nonconforming provisions in chapter 30.28 SCC for areas in the shoreline. Staff agree that a cross reference will help staff and the public understand this during reviews. The proposed code amendments do not allow for expansion into critical

areas unless it complies with the avoidance, minimization, and mitigation requirements of the critical area regulations. While the nonconforming code does not call out methods that applicants could take to reduce their impacts, it does require no net loss of ecological function and value. Public comments received during the early comment period have directly influenced the proposed amendments within this staff report.

Environmental Review

A State Environmental Policy Act (SEPA) Determination is required for the proposed code amendments. A SEPA Determination of Non-Significance will be issued prior to the Planning Commission public hearing.

Notification of State Agencies

Pursuant to RCW 36.70A.106, a notice of intent to adopt the proposed regulations and standards will be transmitted to the Washington State Department of Commerce prior to the Planning Commission public hearing.

Staff Recommendation:

Staff recommends approval of the proposed code amendments and findings contained in this staff report.

Action Requested

The Planning Commission is requested to hold a public hearing, consider the proposed code amendments, and provide a recommendation to the County Council. The Planning Commission can recommend approval of the amendments with supporting findings of fact as proposed or modified, deny the proposal with findings, or amend the proposal with appropriate findings.

cc: Ken Klein, Executive Director
Mike McCrary, PDS Director
David Killingstad, PDS Manager
Michael Dobesh, PDS Manager
Ryan Hembree, Legislative Analyst

Attachments

Attachment A: Draft Findings of Fact and Conclusions

Attachment A
Relating to Nonconforming Structures and Uses Proposed Code Amendments
Findings of Fact and Conclusions

Section 1. Snohomish 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 proposes to amend SCC 30.28.070, 30.28.072, and 30.28.075 to increase consistency across Title 30 SCC and clarify criteria for expansion of nonconforming structures and uses.
- C. In developing the proposed code amendments, the County considered the goals of the GMA identified in RCW 36.70A.020, specifically those goals related to economic development, property rights, and permits. The proposed regulations are reasonably related to, and necessary for, the advancement of the before mentioned GMA planning goals.
- D. The proposed code amendments will allow SCC 30.28.070 and 30.29.072 to achieve, comply with, and implement the goals, objectives, and policies of the MPPs, CPPs, and the GMACP. In particular, the amendments will ensure consistent and efficient review of permits.
- E. The proposed code amendments are consistent with the record:
 - 1. SCC 30.28.070 is proposed to be amended to clarify that nonconforming structures may continue for the life of the structure and be improved or repaired if doing so is in full compliance with all requirements within title 30 SCC such as the fire code and critical area regulations.
 - a) Staff and the public are often confused about how many walls can be repaired or replaced and still be considered ordinary maintenance. Proposed amendments help define ordinary repair by specifying that up to 50 percent of the total number of exterior walls can be replaced. Amendments also clarify that all exterior walls cannot be removed and the entire structure cannot be replaced or rebuilt, even in the same footprint, under the banner of ordinary maintenance. This would not be considered consistent with the intent of allowing a nonconforming structure to remain for the life of the structure, whereas ordinary repair and maintenance can be a part of the normal life of a structure.
 - b) Improvements and repairs cannot create or expand a nonconformity, an expansion must be done in compliance with the development code. While nonconforming structures are allowed to be maintained, proposed amendments make it clear that any proposed expansion must comply with all applicable codes so that new nonconformities are not created. For instance, an expansion of an existing building could not be proposed within a critical area without compliance with critical area regulations like any other newly proposed structure in unincorporated Snohomish County.
 - c) If a structure were accidentally destroyed, it can only be rebuilt if it complies with all of title 30 SCC, unless it was a historic building. Even if the nonconforming structure were historic and could be rebuilt in the same footprint, proposed amendments state that the restoration must be in compliance with the building and fire codes and receive an approved building permit.
 - d) There are some nonconforming structures, such as larger garages or accessory structures, that could be conforming with a conditional use permit. The proposed

amendments would require a conditional use permit in these situations if an applicant was also applying for a building permit to do an improvement or repair. The intent is to require structures to become conforming to current code if possible.

- e) This code section has not been updated since the nonconforming uses and structures section within the Shoreline Management Plan (SCC 30.67.450) was created in 2006. SCC 30.67.450 supersedes the nonconforming use and structure provisions within chapter 30.28 SCC, although there is no mention of it within the chapter. Proposed amendments add this reference to SCC 30.28.070 and SCC 30.28.073 so that staff and the public are aware of the requirements.
2. SCC 30.28.072 is proposed to be amended to clarify that all expansions of nonconforming uses must comply with title 30 SCC, and to provide more concrete criteria for said expansions.
- a) Proposed amendments specify that any expansion of a nonconforming use must obtain any required permits. For instance, a land disturbing activity permit would be required for an expansion in ground area if more than 7,000 square feet or more of clearing is necessary or 2,000 square feet or more of new plus replaced hard surfaces are proposed. Similar to newly proposed text within SCC 30.29.070, there is also proposed language within (4) to require a conditional use permit if the use would be conforming with such a permit. While nonconforming uses are permitted, this is a proposed amendment to ensure that as many that can be made conforming should be made conforming.
 - b) Without quantitative and clear criteria in place for when a use can be expanded, it is difficult to ensure consistent review and application. The proposed amendments add clarity to existing criteria through some measurable statements and definitions. For instance, an expansion cannot be approved under existing code if it is “detrimental to surrounding properties,” although existing code does not provide enough detail to allow for consistent application of this criterion. To help staff implement this criterion, (g) is proposed to include examples of what could be considered detrimental. Similarly, an expansion in (h) cannot “result in a significant increase in the intensity of the use of the nonconformity” and proposed amendments provide quantitative measures for what could be considered significant. These proposed amendments provide backstops for staff to implement the code, while still allowing for some flexibility. These proposed amendments are also in line with the type of language found in other jurisdictions’ nonconforming codes across the state such as King County, City of Tacoma, and Kitsap County.
 - c) Proposed amendments also aim to clarify that expansions in ground area and building area for nonconforming uses are limited to 100 percent of what existed when the use became nonconforming. This is to prevent multiple permit applications over time that result in a more than doubling of the nonconforming use. Newly proposed text also confirms that any expansion to a ground area or building area must comply with all of title 30 SCC.
 - d) Amendments add the restoration subsections from SCC 30.28.075 into SCC 30.28.072 as SCC 30.28.075 is proposed for repeal.
3. SCC 30.28.075 is repealed as it does not allow for expansion of nonconforming uses whereas existing practice and SCC 30.28.072 does.

4. SCC 30.91N.050 is amended to clarify that a nonconforming structure can be nonconforming to more than just bulk regulations. A nonconforming structure is created when it does not comply with any of the requirements within title 30 SCC.

F. Procedural requirements:

1. The proposal is a Type 3 legislative action under SCC 30.73.010 and 30.73.020.
2. As required by RCW 30.70A.106(1), a notice of intent to adopt the proposed code amendments will be transmitted to the Washington State Department of Commerce for distribution to state agencies in the coming months.
3. State Environmental Policy Act (SEPA), chapter 43.21C RCW, requirements with respect to this non-project action will be satisfied through the completion of an environmental checklist and the issuance of a determination of non-significance in the coming months.
4. The public participation process used in the adoption of the proposed code amendments has complied with all applicable requirements of the GMA and SCC.
5. As required by RCW 30.70A.370, the Washington State Attorney General last issued an advisory memorandum in October 2024 entitled “Advisory Memorandum and Recommended Process for Evaluating Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property” to help local governments avoid unconstitutional takings of private property. The process outlined in the State Attorney General’s 2024 advisory memorandum was used by the County in objectively evaluating the regulatory changes in this ordinance.

Section 2. The County Council makes the following conclusions:

- A. The proposal is consistent with Washington State law and Snohomish County Code.
- B. The proposal is consistent with the GMACP and with the goals, objectives, and policies of the GMACP.
- C. The County has complied with all SEPA requirements with respect to this non-project action.
- D. The regulations proposed by this ordinance do not result in an unconstitutional taking of private property for a public purpose.
- E. The County complied with the state and local public participation requirements under the GMA and chapter 30.73 SCC.

Section 3. The 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.