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Hearing Date: Wednesday, December 6, 2023 @ 10:30 a.m.					
Council Staff: Ryan Countryman    DPA: Laura Kisielius					
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SNOHOMISH COUNTY COUNCIL  
Snohomish County, Washington

ORDINANCE NO. 23-133

RELATING TO GROWTH MANAGEMENT; ADOPTING AMENDMENTS  
REGULATING ACCESSORY DWELLING UNITS OUTSIDE OF URBAN  
GROWTH AREAS IN RESPONSE TO A DECISION BY THE GROWTH  
MANAGEMENT HEARINGS BOARD; AMENDING SCC 30.28.010

WHEREAS, the Snohomish County Council adopted Amended Ordinance No. 22-006 on March 9, 2022; and

WHEREAS, the ordinance expanded the allowed use of detached accessory dwelling units (ADUs) outside of Urban Growth Areas; and

WHEREAS, a petition for review challenging the ordinance was filed with the Washington State Growth Management Hearings Board (GMHB); and

WHEREAS, the GMHB issued a final decision and order in *Futurewise v. Snohomish County*, Case No. 22-3-0003, on June 20, 2023; and

WHEREAS, the GMHB found Amended Ordinance No. 22-006 “fails to protect designated agricultural lands of long-term commercial significance” and “is inconsistent with achievement of the growth targets in the County’s adopted Multicounty Planning Policies and Countywide Planning Policies”; and

WHEREAS, the GMHB remanded the ordinance to Snohomish County for action to bring it into compliance with the Growth Management Act (GMA), chapter 36.70A RCW; and

WHEREAS, the County Council referred code amendments addressing the GMHB’s final decision and order to the Snohomish County Planning Commission via Motion No. 23-342; and

WHEREAS, after holding a public hearing on September 26, 2023, the Planning Commission considered the referred amendments and recommended approval; and

WHEREAS, on \_\_\_\_\_, 2023, the 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.

NOW, THEREFORE, BE IT ORDAINED:

1 Section 1. The Snohomish County Council adopts the following findings of fact  
2 and conclusions:

- 3 A. The Snohomish County Council adopts and incorporates the foregoing recitals as  
4 findings as if set forth fully herein.
- 5 B. The ordinance addresses the two findings of non-compliance made by the GMHB  
6 by reinstating a prohibition on the construction of detached ADUs on lots that do  
7 not meet the minimum required lot area pursuant to SCC 30.23.030 in rural and  
8 resource zones.
- 9 C. Amended Ordinance No. 22-006 removed a requirement that a detached ADU be  
10 located within 100 feet of the primary dwelling in rural and resource zones. The  
11 GMHB did not find the removal of this requirement violated any provision of the  
12 GMA. This ordinance does not restore the 100-foot requirement.
- 13 D. It is in the best interest of Snohomish County to reinstate a prohibition on the  
14 construction of detached ADUs on lots that do not meet the minimum required lot  
15 area pursuant to SCC 30.23.030 in rural and resource zones.
- 16 E. The amendments contained in this ordinance restore the exact code language in  
17 place immediately prior to the adoption of Amended Ordinance No. 22-006; except  
18 language requiring a maximum distance of 100 feet between primary and  
19 detached accessory dwellings is not restored.
- 20 F. State Environmental Policy Act (chapter 43.21C RCW) requirements with respect  
21 to this non-project action have been satisfied through the completion of an  
22 environmental checklist and the issuance on October 19, 2023, of Addendum  
23 Number 3 to the Determination of Non-Significance Issued March 29, 2021.
- 24 G. The proposal is a Type 3 legislative action pursuant to SCC 30.73.010.
- 25 H. Pursuant to RCW 36.70A.106, a notice of intent to adopt this ordinance was  
26 transmitted to the Washington State Department of Commerce for distribution to  
27 state agencies on October 6, 2023.
- 28 I. The public participation process used in the adoption of this ordinance complies  
29 with all applicable requirements of the GMA and the SCC.
- 30 J. The Washington State Attorney General last issued an advisory memorandum, as  
31 required by RCW 36.70A.370, in September of 2018 entitled “Advisory  
32 Memorandum: Avoiding Unconstitutional Takings of Private Property” to help local  
33 governments avoid the unconstitutional taking of private property. The process  
34 outlined in the State Attorney General’s 2018 advisory memorandum was used by  
35 the County in objectively evaluating the regulatory changes proposed by this  
36 ordinance.

37  
38 Section 2. The County Council makes the following conclusions:  
39

- 40 1. The proposed amendments are consistent with the goals, policies, and objectives  
41 of the MPPs, CPPs, and GPPs.

- 1  
2 2. The proposed amendments are consistent with applicable federal, state, and  
3 local laws and regulations.  
4  
5 3. The County has complied with all SEPA requirements with respect to this non-  
6 project action.  
7  
8 4. The regulations proposed by this ordinance do not result in an unconstitutional  
9 taking of private property for a public purpose.

10  
11 Section 3. The County Council bases its findings and conclusions on the entire  
12 legislative record, including all testimony and exhibits. Any finding which should be  
13 deemed a conclusion, and any conclusion that should be a finding, is hereby adopted  
14 as such.  
15

16 Section 4. Snohomish County Code Section 30.28.010, last amended by  
17 Ordinance No. 22-006 on March 9, 2022, is amended to read:  
18

19 **30.28.010 Accessory dwelling units.**  
20

21 Accessory dwelling units are allowed subordinate to a single-family dwelling in zones  
22 where single-family dwellings are permitted under SCC 30.22.100, 30.22.110, and  
23 30.22.120.  
24

25 (1) *General standards.* All accessory dwelling units shall comply with the following  
26 standards:  
27

28 (a) Development of accessory dwelling units shall be subject to compliance with  
29 all other applicable provisions of this title;  
30

31 (b) Development of accessory dwelling units shall be subject to physical and  
32 legal availability of water and the applicant providing documentation that the water  
33 supply is potable and of adequate flow;  
34

35 (c) Applicants must provide documentation that the existing or proposed sewage  
36 or septic system is capable of handling the additional demand placed upon it by the  
37 attached or detached accessory dwelling unit;  
38

39 (d) The floor area of an accessory dwelling unit shall not exceed 1,200 square  
40 feet. Floor areas shall be exclusive of garages, porches, and unfinished basements;  
41

42 (e) Accessory dwelling units shall meet the off-street parking requirements in  
43 chapter 30.26 SCC;  
44

1 (f) Attached accessory dwelling units shall be designed such that the  
2 architectural character of the primary dwelling is preserved. Exterior materials, roof  
3 form, window spacing, and proportions shall match that of the primary dwelling; and  
4

5 (g) Detached accessory dwelling units shall be constructed such that exterior  
6 materials, roof form, window spacing, and proportions approximate those of the single-  
7 family dwelling. A detached accessory dwelling unit proposed for location within an  
8 existing accessory structure is not required to approximate the exterior features of the  
9 existing single family dwelling. A mobile home, where allowed as a detached accessory  
10 dwelling unit pursuant to subsection ~~((3)(c))~~ (3)(a)(ii) of this section, is not required to  
11 approximate the exterior features of the existing single-family dwelling.  
12

13 (2) *Urban zones.* Accessory dwelling units are permitted uses in the urban zones on  
14 lots with a single-family dwelling pursuant to SCC 30.22.100. One attached accessory  
15 dwelling unit and one detached accessory dwelling unit may be established on lots that  
16 contain a legally-established single-family dwelling.  
17

18 (3) *Rural, resource, and other zones.* Accessory dwelling units are permitted uses in  
19 the rural, resource, and other zones on lots with a single-family dwelling pursuant to  
20 SCC 30.22.110 and 30.22.120 and the following standards:  
21

22 (a) One accessory dwelling unit may be established on lots that contain a  
23 legally-established single-family dwelling ~~((;))~~ pursuant to the following:  
24

25 (i) Detached accessory dwelling units are prohibited on lots that do not meet  
26 the minimum required lot area, pursuant to SCC 30.23.030, in the zone in which they  
27 are located. The following prohibitions also apply:  
28

29 (A) Detached accessory dwelling units are prohibited on lots in the R-5 zone  
30 that are less than five acres in size; and  
31

32 (B) Detached accessory dwelling units are prohibited on lots in the RC zone  
33 that are less than 100,000 square feet in size.  
34

35 (ii) A mobile home that is subordinate to the single-family dwelling may be  
36 allowed as a detached accessory dwelling unit on lots equal to or greater than 10 acres.  
37

38 (b) Accessory dwelling units shall utilize the same driveway as the primary  
39 single-family dwelling ~~((; and~~  
40

41 ~~(c) A mobile home is allowed as a detached accessory dwelling unit only on lots~~  
42 ~~equal to or greater than 10 acres and only when the manufactured home is subordinate~~  
43 ~~to the existing single-family dwelling)).~~  
44

45 Section 5. Severability and savings. If any section, sentence, clause, or phrase  
46 of this ordinance shall be ruled to be invalid or unconstitutional by the Growth

1 Management Hearings Board or a court of competent jurisdiction, such ruling shall not  
2 affect the validity or constitutionality of any other section, sentence, clause, or phrase of  
3 this ordinance, and the section, sentence, clause, or phrase in effect prior to the  
4 effective date of this ordinance shall be in full force and effect for that individual section,  
5 sentence, clause, or phrase as if this ordinance had never been adopted.

6  
7 PASSED this \_\_\_\_ day of \_\_\_\_\_, 2023.

8  
9 SNOHOMISH COUNTY COUNCIL  
10 Snohomish County, Washington

11  
12  
13 \_\_\_\_\_  
14 Chairperson

15  
16 ATTEST:

17  
18 \_\_\_\_\_  
19 Clerk of the Council

20  
21 ( ) APPROVED  
22 ( ) EMERGENCY  
23 ( ) VETOED

24 DATE: \_\_\_\_\_

25  
26  
27 \_\_\_\_\_  
28 County Executive

29 ATTEST:

30  
31 \_\_\_\_\_  
32  
33 Approved as to form only:

34  10/18/23  
35 \_\_\_\_\_  
36 Deputy Prosecuting Attorney





# Committee of the Whole

Ryan Countryman

Council Initiated:

Yes

No

**SNOHOMISH COUNTY COUNCIL**

**ECAF:** 2023-1333

**Ordinance:** 23-133

**Type:**

- Contract
- Board Appt.
- Code Amendment
- Budget Action
- Other

**Requested Handling:**

- Normal
- Expedite
- Urgent

**Fund Source:**

- General Fund
- Other
- N/A

**Executive Rec:**

- Approve
- Do Not Approve
- N/A

**Approved as to**

**Form:**

- Yes
- No
- N/A

**EXHIBIT #** 3.2.001

**FILE** ORD 23-133

**Subject:** Ordinance – Accessory Dwelling Unit Code

**Scope:** Ordinance 23-133 would restore code provisions in SCC 30.28.010 in response to a Growth Management Hearings Board (GMHB) Decision.

**Duration:** The proposed ordinance would amend SCC 30.28.010 until the County Council amends that section again for other reasons.<sup>1</sup>

**Fiscal Impact:**  Current Year  Multi-Year  N/A

The proposal would result in a slight decrease in permits and permit revenue to Fund 193 (permitting). Planning and Development Services (PDS) has sufficient fund balance available in Fund 193 for its 2024 budget and operations.

**Authority Granted:** None

**Background:** The proposed ordinance would amend Accessory Dwelling Unit (ADU) provisions in SCC 30.28.010 to comply with a Decision issued by the GMHB. The GMHB Decision includes a compliance deadline of December 13, 2023 (see additional background on page 2).

The County Council referred the proposed amendments to the Planning Commission for review and recommendation consistent with Chapter 30.73 SCC by Motion 23-342 on August 15, 2023. At the conclusion of a September 26, 2023, public hearing on the proposed ordinance a 7-4 majority of the voted to recommend that the County Council adopt the proposal to comply with the GMHB Decision. The Planning Commission then discussed and unanimously passed a secondary motion encouraging the County Council to “revisit the equity issue during the 2024 comprehensive plan update.” This second motion expresses concern about creation of a geographically based two-tier system of access to affordable housing and property rights that compliance with the GMHB decision may result in.

This proposal is being expedited through Committee of the Whole to allow for completion of county processes before the December 13 compliance deadline.

**Request:** Set date and time for a public hearing. Suggested date and time is December 6, 2023, at 10:30 AM.

<sup>1</sup> The State Legislature passed Engrossed House Bill 1337 which became effective on July 23, 2023. It includes a mandate that Snohomish County make unrelated changes to Accessory Dwelling Unit regulations by June 30, 2025. Some of these other changes will need to further amend SCC 30.28.010.

## Additional Background

On March 9, 2022, the Snohomish County Council adopted Amended Ordinance 22-006 (Ord 22-006). Among other changes, Ord 22-006 allowed expanded use of detached ADUs outside of Urban Growth Areas. Prior to Ord 22-006, code prohibited detached ADUs on lots that did not meet the standard lot size minimum in rural and resource zones. Ord 22-006 changed that by allowing detached ADUs on substandard lots in rural and resource zones.

Futurewise filed a petition for review with the GMHB challenging Ord 22-006. In its June 30, 2023, Order, the GMHB remanded Ord 22-006 to Snohomish County to bring it into compliance with the Growth Management Act (GMA), RCW 36.70A.

The Order found two issues of non-compliance. First, the GMHB found that detached ADUs on substandard lots with agriculture zoning “fails to project designated agricultural lands of long-term commercial significance in violation of [RCW 36.70A.177](#)”. Under Snohomish County Code (SCC), Agriculture 10-Acre zoning (A-10) is a subset of resource zones which includes Forestry and Forestry & Recreation (F&R) zoning ([SCC 30.21.020](#)). The first issue of non-compliance in the Order implies that allowing detached ADUs on lots less than 10-acres in A-10 zoning is a violation of GMA regulations on accessory uses on agricultural lands.

Second, the GMHB found that Ord 22-006 is “inconsistent with achievement of the growth targets in the County’s adopted Multicounty Planning Policies and Countywide Planning Policies, in violation of [RCW 36.70A.130\(1\)\(d\)](#)<sup>2</sup> and [RCW 36.70A.210\(1\) and \(7\)](#).” Snohomish County is experiencing growth in rural and resource areas that exceeds adopted targets. By allowing detached ADUs on substandard lots in rural zones, Ord 22-006 made additional growth in rural areas possible without taking other action to offset the effect on overall rural growth. The GMHB did not find detached ADUs on substandard lots in rural zones to be a GMA compliance issue specifically, rather the non-compliance was the resulting addition to growth outside urban areas.

In the Order, the GMHB gave Snohomish County a due date for compliance of December 13, 2023. By that date, Snohomish County needs to:

- 1) Amend [SCC 30.28.010](#) so that it no longer allows detached ADUs on substandard lots in A-10 zoning; and
- 2) Take action to negate the impact to rural growth of allowing detached ADUs on substandard lots in rural zones. This could include amendments to SCC 30.28.010 or other actions to offset the resulting rural growth.

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<sup>2</sup> [Senate Bill 5457](#) added a new subsection to RCW 36.70A.130(1) effective July 23, 2023. What the GMHB Order referred to as (1)(d) is now (1)(e).



## Snohomish County Council

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**To:** Snohomish County Planning Commission  
**From:** Snohomish County Council  
Ryan Countryman, Senior Legislative Analyst  
**Report Date:** August 15, 2023  
**Briefing Date:** August 22, 2023  
**Subject:** Staff Report on Proposed Accessory Dwelling Unit Amendments

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### Introduction

This staff report addresses a proposed ordinance amending regulations for Accessory Dwelling Units. The County Council referred the ordinance to the Planning Commission by Motion 23-342 on August 15, 2023. This was in response to a June 20, 2023, Final Decision and Order (Order) issued by the Growth Management Hearings Board (GMHB) in *Futurewise v. Snohomish County*, Case No. 22-3-0003.

### Background

On March 9, 2022, the Snohomish County Council adopted Amended Ordinance 22-006 (Ord 22-006).<sup>1</sup> Among other changes, Ord 22-006 allowed expanded use of detached ADUs outside of Urban Growth Areas. Prior to Ord 22-006, code prohibited detached ADUs on lots that did not meet the standard lot size minimum in rural and resource zones. Ord 22-006 changed that by allowing detached ADUs on substandard lots in rural and resource zones. Futurewise filed a petition for review with the GMHB challenging Ord 22-006. In its June 30, 2023, Order, the GMHB remanded Ord 22-006 to Snohomish County to bring it into compliance with the Growth Management Act (GMA), RCW 36.70A.

The Order found two issues of non-compliance. First, the GMHB found that detached ADUs on substandard lots with agriculture zoning “fails to project designated agricultural lands of long-term commercial significance in violation of [RCW 36.70A.177](#)”. Under Snohomish County Code (SCC), Agriculture 10-Acre zoning (A-10) is subset of resource zones which

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<sup>1</sup> The Planning Commission was briefed on the proposal that became Ord 22-006 on [October 26, 2021](#), and held a public hearing on [November 16, 2021](#). The [staff report](#) for the October 26, 2021, briefing identified some of the risks associated with the ordinance – mainly an increase in rural population growth potential – that was the major basis for the Order.

includes Forestry and Forestry & Recreation (F&R) zoning ([SCC 30.21.020](#)). The first issue of non-compliance in the Order implies that allowing detached ADUs on lots less than 10-acres in A-10 zoning is a violation of GMA regulations on accessory uses on agricultural lands.

Second, the GMHB found that Ord 22-006 is “inconsistent with achievement of the growth targets in the County’s adopted Multicounty Planning Policies and Countywide Planning Policies, in violation of [RCW 36.70A.130\(1\)\(d\)](#)<sup>2</sup> and [RCW 36.70A.210\(1\) and \(7\)](#).” Snohomish County is experiencing growth in rural and resource areas that exceeds adopted targets. By allowing detached ADUs on substandard lots in rural zones, Ord 22-006 made additional growth in rural areas possible without taking other action to offset the effect on overall rural growth. The GMHB did not find detached ADUs on substandard lots in rural zones to be a GMA compliance issue specifically, rather the non-compliance was the resulting addition to growth outside urban areas.

In the Order, the GMHB gave Snohomish County a due date for compliance of December 13, 2023. By that date, Snohomish County needs to: 1) amend [SCC 30.28.010](#) so that detached ADUs are no longer allowed on substandard lots in A-10 zoning; and 2) take action to negate the impact to rural growth of allowing detached ADUs on substandard lots in rural zones. This could include amendments to SCC 30.28.010 or other actions to offset the resulting rural growth.

Amending SCC 30.28.010 takes a Type 3 Legislative Decision. This requires that the Planning Commission hold a public hearing and provide a recommendation to the County Council first ([Chapter 30.73 SCC](#)). Type 3 proposals referred to the Planning Commission by the County Council typically require a public hearing within 90 days of the referral unless the County Council specifies a different schedule ([SCC 30.73.070\(3\)](#)). Motion 23-342 specifies October 16, 2023, as a date by which the County Council requests a recommendation.<sup>3</sup> This timing would allow the County Council to act on an ordinance amending SCC 30.28.010 to address both issues of non-compliance by the December 13, 2023, compliance deadline.

## Proposed Code Amendments

The proposed amendments would restore phrasing in SCC 30.28.010 that Ord 22-006 removed. If adopted, code would no longer allow detached on lots in rural and resource zones that do not meet the minimum lot area for the zone. The substantive changes are in subsection (3)(a), as shown on the next page.

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<sup>2</sup> [Senate Bill 5457](#) added a new subsection to RCW 36.70A.130(1) effective July 23, 2023. What the GMHB Order referred to as (1)(d) is now (1)(e).

<sup>3</sup> Council staff has worked with PDS in its capacity as staff for the Planning Commission to arrange for a briefing to the Planning Commission on August 22 and a public hearing on September 26, 2023.

### 30.28.010 Accessory dwelling units.

Accessory dwelling units are allowed subordinate to a single-family dwelling in zones where single-family dwellings are permitted under SCC 30.22.100, 30.22.110, and 30.22.120.

(1) *General standards.* All accessory dwelling units shall comply with the following standards:

(a) Development of accessory dwelling units shall be subject to compliance with all other applicable provisions of this title;

(b) Development of accessory dwelling units shall be subject to physical and legal availability of water and the applicant providing documentation that the water supply is potable and of adequate flow;

(c) Applicants must provide documentation that the existing or proposed sewage or septic system is capable of handling the additional demand placed upon it by the attached or detached accessory dwelling unit;

(d) The floor area of an accessory dwelling unit shall not exceed 1,200 square feet. Floor areas shall be exclusive of garages, porches, and unfinished basements;

(e) Accessory dwelling units shall meet the off-street parking requirements in chapter 30.26 SCC;

(f) Attached accessory dwelling units shall be designed such that the architectural character of the primary dwelling is preserved. Exterior materials, roof form, window spacing, and proportions shall match that of the primary dwelling; and

(g) Detached accessory dwelling units shall be constructed such that exterior materials, roof form, window spacing, and proportions approximate those of the single-family dwelling. A detached accessory dwelling unit proposed for location within an existing accessory structure is not required to approximate the exterior features of the existing single family dwelling. A mobile home, where allowed as a detached accessory dwelling unit pursuant to subsection ~~((3)(c))~~ (3)(a)(ii) of this section, is not required to approximate the exterior features of the existing single-family dwelling.

(2) *Urban zones.* Accessory dwelling units are permitted uses in the urban zones on lots with a single-family dwelling pursuant to SCC 30.22.100. One attached accessory dwelling unit and one detached accessory dwelling unit may be established on lots that contain a legally-established single-family dwelling.

(3) *Rural, resource, and other zones.* Accessory dwelling units are permitted uses in the rural, resource, and other zones on lots with a single-family dwelling pursuant to SCC 30.22.110 and 30.22.120 and the following standards:

(a) One accessory dwelling unit may be established on lots that contain a legally-established single-family dwelling ~~((;))~~ pursuant to the following:

(i) Detached accessory dwelling units are prohibited on lots that do not meet the minimum required lot area, pursuant to SCC 30.23.030, in the zone in which they are located. The following prohibitions also apply:

(A) Detached accessory dwelling units are prohibited on lots in the R-5 zone that are less than five acres in size; and

(B) Detached accessory dwelling units are prohibited on lots in the RC zone that are less than 100,000 square feet in size.

(ii) A mobile home that is subordinate to the single-family dwelling may be allowed as a detached accessory dwelling unit on lots equal to or greater than 10 acres.

(b) Accessory dwelling units shall utilize the same driveway as the primary single-family dwelling ~~((; and~~

~~(c) A mobile home is allowed as a detached accessory dwelling unit only on lots equal to or greater than 10 acres and only when the manufactured home is subordinate to the existing single-family dwelling)).~~

## Analysis

The proposed ordinance attached to Motion 23-342 undoes the provision that allowed detached ADUs on substandard lots in rural and resource zones. This addresses both compliance issues found by the GMHB.

Options to address rural growth in a manner that re-allows detached ADUs on substandard lots in non-agricultural zones could be part of the ongoing 2024 update to the comprehensive plan or considered later. However, the complexity of other approaches, which would include meeting GMA public participation requirements, does not seem feasible before the December 13 compliance deadline.

## Procedural

### **Environmental Review**

A State Environmental Policy Act Checklist and a threshold determination will be issued prior to County Council consideration.

### **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 a Planning Commission public hearing.

### **Action Requested**

Motion 23-342 requests that Planning Commission hold a public hearing, consider the proposed code amendments, and provide a recommendation to the County Council by October 16, 2023. The Planning Commission can recommend approval of the amendments, recommend denial, or amend the proposal with appropriate findings.

cc: Ken Klein, Executive Director  
Mike McCrary, PDS Director  
David Killingstad, PDS Manager  
Michael Dobesh, PDS Manager

### Attachments

- GMHB Final Decision and Order in *Futurewise v Snohomish County*, June 30, 2023
- Motion 23-342, August 15, 2023
- Proposed Ordinance Amending SCC 30.28.010



## Snohomish County

### SNOHOMISH COUNTY PLANNING COMMISSION

October 5, 2023

Snohomish County Council  
County Administration Building  
3000 Rockefeller Avenue, M/S 609  
Everett, WA 98201-4046

SUBJECT: Planning Commission recommendations on proposed code amendments related to Accessory Dwelling Units

Dear Snohomish County Council:

On behalf of the Snohomish County Planning Commission, I am forwarding our recommendation to amend Snohomish County Code under the proposed Accessory Dwelling Unit (ADU) ordinance. The Planning Commission had a briefing on this topic on August 22, 2023, and conducted a public hearing and deliberated on September 26, 2023.

The proposed ordinance considered by the Planning Commission would amend code by restoring a prohibition on detached ADUs on substandard lots in rural and resource zones.

One written comment was received by the Planning Commission from the public before the September 26, 2023, hearing. The hearing was open for public comment, but no one from the public commented at the hearing.

#### **PLANNING COMMISSION RECOMMENDATION**

The Planning Commission passed two motions at the September 26, 2023, hearing. The Planning Commission understands the nature of the Order from Growth Management Hearings Board, which includes a December 13, 2023, compliance deadline set within the Order. Discussion of the proposed code amendments as presented by staff, with supporting findings and conclusions, led to discussion and belief among the commissioners that the manner of compliance proposed may create a two-tier system of property rights and access to affordable housing in rural areas. The

Planning Commission wished it had more time to develop options alternative to what had been presented.

Regarding the ordinance as submitted by staff, Commissioner Sheldon made a **Motion** seconded by Commissioner Eck, recommending APPROVAL of the proposed ordinance.

**VOTE:**

7 in favor (*Busteed, Campbell, Eck, Larsen, Niemela, Pedersen, Sheldon*)

4 opposed (*Ash, Brown, James, Siever*)

0 abstention

**Motion PASSED**

Regarding the Planning Commission's concern that a potential two-tier system in rural areas would result from the proposed ordinance, Commissioner Eck made a **Secondary Motion** seconded by Commissioner Sheldon strongly encouraging the County Council to revisit the equity issue in conjunction with the 2024 comprehensive plan update.

**VOTE:**

11 in favor (*Busteed, Campbell, Eck, Larsen, Niemela, Pedersen, Sheldon, Ash, Brown, James, Siever*)

0 opposed

0 abstention

**Secondary Motion PASSED**

This recommendation was made following the close of the public hearing and after due consideration of information presented. It is based on the findings and conclusions presented in the August 22, 2023, staff briefing and as supported by the Staff Report dated August 15, 2023.

Respectfully submitted,

RWL

SNOHOMISH COUNTY PLANNING COMMISSION

Robert Larsen, Chair

cc: Dave Somers, Snohomish County Executive

Mike McCrary, Director, Planning and Development Services



**Executive/Council Action Form (ECAF)**

**ITEM TITLE:**

Ordinance 23-133, relating to growth management; adopting amendments regulating accessory dwelling units outside of urban growth areas in response to a decision by the Growth Management Hearings Board; amending SCC 30.28.010

**DEPARTMENT:** Council

**ORIGINATOR:** Ryan Countryman

**EXECUTIVE RECOMMENDATION:** Approved

**PURPOSE:** The proposed ordinance revises Accessory Dwelling Unit provisions to bring code into compliance with a remand order and decision by the Growth Management Hearings Board (GMHB). That Decision includes a compliance deadline of December 13, 2023.

**BACKGROUND:** The proposed ordinance restores provisions that were in effect before Ordinance 22-006. Futurewise appealed Ord 22-006 and the GMHB decision remanded parts of Ord 22-006 to the County to bring code into compliance with the Growth Management Act.

**FISCAL IMPLICATIONS:** Negligible impacts to Fund 193 (PDS permitting revenue) can be expected

**DEPARTMENT FISCAL IMPACT NOTES:** Click or tap here to enter text.

**CONTRACT INFORMATION:**

ORIGINAL	_____	CONTRACT#	_____	AMOUNT	_____
AMENDMENT	_____	CONTRACT#	_____	AMOUNT	_____

**Contract Period**

ORIGINAL	START	_____	END	_____
AMENDMENT	START	_____	END	_____

**OTHER DEPARTMENTAL REVIEW/COMMENTS:** Click or tap here to enter text.

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD  
CENTRAL PUGET SOUND REGION  
STATE OF WASHINGTON

FUTUREWISE,

Petitioner,

**CASE No. 22-3-0003**

v.

**FINAL DECISION AND ORDER**

SNOHOMISH COUNTY,

Respondent.

**SYNOPSIS**

*Petitioner alleged that the County’s adoption of an Ordinance allowing detached Accessory Dwelling Units) on residential lots in the rural and resource areas failed to protect rural character and resource lands and was inconsistent with multi-county and countywide planning policies. The Board found that the County’s action failed to protect agricultural lands of long-term commercial significance, in violation of RCW 36.70A.177, and was inconsistent with multi-county and countywide planning policies in violation of RCW 36.70A.210.*

**I. INTRODUCTION**

Futurewise (Petitioner) challenged Snohomish County’s (County’s) adoption of Ordinance No. 22-006 (Ordinance), amending development regulations pertaining to accessory dwelling units (ADUs) in rural and resource lands.

The Briefs and exhibits of the parties were timely filed and are referenced in this

1 order as follows:

- 2 • Petitioner’s Prehearing Brief (Petitioner’s Brief).<sup>1</sup>
- 3 • Response Brief (County’s Response).<sup>2</sup>
- 4 • Petitioner’s Reply Brief (Petitioner’s Reply).<sup>3</sup>

5 The Hearing on the Merits convened on May 23, 2023. The hearing afforded  
6 each party the opportunity to emphasize the most important facts and arguments  
7 relevant to its case. Board members asked questions seeking to thoroughly understand  
8 the history of the proceedings, the important facts in the case, and the legal arguments  
9 of the parties.

10  
11 Legal issues are summarized below and set out fully, as established in the  
12 Prehearing Order, in Appendix A.

13  
14  
15 **II. BACKGROUND**

16 In 2022, the County adopted Amended Ordinance No. 22-006 (the Ordinance)  
17 expanding the ability of property owners to build Detached Accessory Dwelling Units  
18 (DADUs) on residential lots in the rural and resource areas. In 1996, to comply with the  
19 Growth Management Act (GMA), the County downzoned a portion of the rural area to a  
20 density of one dwelling for five acres. The immediate effect of that downzoning was to  
21 create many legacy or substandard lots, lots that had been legally created but which no  
22 longer met the zoning standards of the zone in which they were located. While the  
23 County permitted DADUs on lots that met the current minimum lot size, no DADU could  
24 be built on these substandard lots. Amended Ordinance 22-006 permits the building of a  
25 DADU on a substandard lot and eliminates the requirement that the DADU be located  
26 within 100 feet of the existing residence.

27  
28 The difference in how the parties view this action is clearly expressed in the  
29

30  
31 \_\_\_\_\_  
32 <sup>1</sup> Filed on April 17, 2023.  
<sup>2</sup> Filed on May 1, 2023.  
<sup>3</sup> Filed on May 15, 2023.

1 introductions to their briefs.

2 Petitioner opposes the expanded allowance for DADUs, as distinguished from  
3 *attached* accessory dwellings, for multiple reasons, including that the County *repealed*  
4 the requirement that prohibited DADUs on lots that do not meet the required minimum  
5 lot area. Petitioner believes that this action allows densities in rural areas which violate  
6 the GMA by failing to protect rural character, allowing urban growth outside the urban  
7 growth areas (UGAs), failing to protect agricultural lands and forest lands of long-term  
8 commercial significance, failing to comply with requirements for accessory uses in such  
9 agricultural areas, and thwarting achievement of density targets identified in the  
10 Multicounty Planning Policies and Countywide Planning Policies.<sup>4</sup>

11 The County's Response focuses on the purpose of allowing DADUs on certain  
12 lands outside of UGAs, expanding the current allowance "to lots that contain an existing  
13 single-family dwelling but do not meet current zoning requirements." The County asserts  
14 that expanding the number of lots on which DADUs may be built balances "the equally  
15 important goals of reducing sprawl and providing housing," allowing counties to define  
16 rural character "according to local circumstances and the values that are important to  
17 people who live in rural communities," and expanding housing opportunity to "families  
18 seeking the financial means to live intergenerationally in the rural communities they call  
19 home."<sup>5</sup>

### 23 III. STANDARD OF REVIEW

24 Comprehensive plans and development regulations, and amendments to them,  
25 are presumed valid upon adoption.<sup>6</sup> This presumption creates a high threshold for  
26 challengers as the burden is on the Petitioners to demonstrate that any action taken by  
27  
28  
29  
30

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31 <sup>4</sup> Petitioner's Brief at 1.

32 <sup>5</sup> County's Response at 1.

<sup>6</sup> RCW 36.70A.320(1).

1 the jurisdiction is not in compliance with the GMA). The Legislature’s intent is laid out in  
2 RCW 36.70A.3201:

3 The legislature intends that the board applies a more deferential standard of  
4 review to actions of counties and cities than the preponderance of the evidence  
5 standard provided for under existing law. In recognition of the broad range of  
6 discretion that may be exercised by counties and cities consistent with the  
7 requirements of this chapter, the legislature intends for the board to grant  
8 deference to counties and cities in how they plan for growth, consistent with  
9 the requirements and goals of this chapter. Local comprehensive plans and  
10 development regulations require counties and cities to balance priorities and  
11 options for action in full consideration of local circumstances. The legislature  
12 finds that while this chapter requires local planning to take place within a  
13 framework of state goals and requirements, the ultimate burden and  
14 responsibility for planning, harmonizing the planning goals of this chapter, and  
implementing a county’s or city’s future rests with that community.

15 This section lays out clearly the requirement that the Board must “grant  
16 deference to counties and cities in how they plan for growth, consistent with the  
17 requirements and goals” of the GMA.<sup>7</sup>

18 The scope of the Board’s review is limited to determining whether a County has  
19 achieved compliance with the GMA only with respect to those issues presented in a  
20 timely petition for review.<sup>8</sup> The Board is directed to find compliance unless it determines  
21 that the challenged action is **clearly erroneous** in view of the entire record before the  
22 Board and in light of the goals and requirements of the GMA.<sup>9</sup> In order to find the  
23 County’s action clearly erroneous, the Board must be “left with the firm and definite  
24 conviction that a mistake has been made.” *Dep’t of Ecology v. Pub. Util. Dist. No. 1,*  
25 *121 Wn.2d 179, 201 (1993).*

### 28 III. BOARD JURISDICTION

29 The Board finds the Petition for Review was timely filed, pursuant to RCW  
30

31 <sup>7</sup> RCW 36.70A.3201.

32 <sup>8</sup> RCW 36.70A.290(2).

<sup>9</sup> RCW 36.70A.320(3).

1 36.70A.290(2). The Board finds the Petitioner has standing to appear before the Board  
2 pursuant to RCW 36.70A.280(2)(b). The Board also finds it has jurisdiction over the  
3 subject matter of the petition pursuant to RCW 36.70A.280(1).  
4  
5

#### 6 IV. ANALYSIS AND DISCUSSION 7 8

#### 9 **Issue One: Did the adoption of Amended Ordinance No. 22-006 Section 4** 10 **removing limitations on Accessory Dwelling Units (ADUs) in rural zones permit** 11 **urban uses, fail to protect rural character, and fail to include measures that apply** 12 **to rural development to protect rural character?**

13 Petitioner argues that the challenged Ordinance fails to protect “rural character”  
14 and allows “urban growth” outside of the urban growth areas (UGAs), in violation of  
15 RCW 36.70A.020(2) and RCW 36.70A.070(5)(c).<sup>10</sup>

16 Petitioner cites cases in which the Board based its decision on ADUs on a bright-  
17 line rule for density, and on that basis found detached ADUs to hinder the protection of  
18 rural character.<sup>11</sup> Subsequent to those Board holdings, the Supreme Court twice  
19 disapproved the Board’s attempts to create bright-line rules concerning density,  
20 including rural density.<sup>12</sup> The Court held that the Board “may not use a bright-line rule to  
21 delineate between urban and rural densities, nor may it subject certain densities to  
22 increased scrutiny.”<sup>13</sup>

24 In focusing on the idea of rural character, Petitioner looks to definitional sections  
25 of the GMA<sup>14</sup> and RCW 36.70A.070, describing the mandatory elements that must be  
26 addressed in a comprehensive plan, and then concludes that permitting detached ADUs  
27  
28

---

29 <sup>10</sup> Petitioner’s Brief at 2-3, citing RCW 36.70A.020(2) and RCW 36.70A.070(5)(c).

30 <sup>11</sup> Petitioner’s Brief at 5.

31 <sup>12</sup> County’s Response at 7-9, citing *Viking Props., Inc. v. Holm*, 155 Wn.2d 112 (2005) and *Thurston*  
*County v. W. Wash. Growth Mgmt. Hearings Bd.*, 164 Wn.2d 329 (2008).

32 <sup>13</sup> *Thurston*, 164 Wn.2d at 359.

<sup>14</sup> RCW 36.70A.030(23) and (24).

1 will violate these sections. For example, Petitioner alleges:

2 RCW 36.70A.030(23)(g) and RCW 36.70A.070(5)(c)(iv) require that  
3 vegetation predominate over the built environment, that rural land use patterns  
4 be compatible with the use of the land by wildlife, and that critical areas  
5 including fish and wildlife habitats and surface water and groundwater  
6 resources are to be protected.

7 First, definitional sections of the GMA do not constitute goals and requirements  
8 sufficient to sustain a violation. This Board early set out its view that definitions cannot  
9 create a GMA duty which can be violated.<sup>15</sup>

10 Secondly, the requirements for mandatory elements of a comprehensive plan do  
11 not establish requirements beyond the plain meaning of the words. Specifically, RCW  
12 36.70A.070(5)(c) states that the rural element shall include measures:  
13

- 14 (i) Containing or otherwise controlling rural development;
- 15 (ii) Assuring visual compatibility of rural development with the surrounding  
16 rural area;
- 17 (iii) Reducing the inappropriate conversion of undeveloped land into  
18 sprawling, low-density development in the rural area;
- 19 (iv) Protecting critical areas, as provided in RCW 36.70A.060, and surface  
20 water and groundwater resources; and
- 21 (v) Protecting against conflicts with the use of agricultural, forest, and  
22 mineral resource lands designated under RCW 36.70A.170.  
23

24 Petitioner's concerns are somewhat speculative. There is no bright line for words  
25 like "containing," "assuring," or "inappropriate." While the ordinance will permit two  
26 freestanding residences on some substandard lots that currently have only one  
27 residence, it is speculative to assert doubling of density *on some lots* will inevitably  
28 result in a doubling of density throughout the entirety of these zones. Neither has  
29  
30

31 \_\_\_\_\_  
32 <sup>15</sup> *Hansen, et al v. King County*, CPSGMHB Case No. 98-3-0015c, Final Decision and Order  
(Dec. 16, 1998), at 7.

1 Petitioner shown that the Ordinance will allow the built environment to predominate, that  
2 critical area protections will be bypassed, or that sufficient development will occur to  
3 constitute sprawl.

4 The County argues that permitting DADUs on substandard lots created prior to  
5 the adoption of the GMA is precisely the sort of “local circumstances” for which the  
6 Court has indicated that jurisdictions should be granted a “broad range of discretion.”<sup>16</sup>  
7

8 The County notes that our Supreme Court has made clear that whether a  
9 particular density is rural in nature is a question of fact based on the circumstances of  
10 each case.<sup>17</sup> The County points to substantial data on Snohomish County’s experience  
11 with ADUs over decades, and extrapolates that “[e]ven if the proposed amendments  
12 result in a minor increase in the number of permitted ADUs per year, it will not result in  
13 urban net densities in rural and resource areas.”<sup>18</sup> Neither argument is particularly  
14 persuasive, particularly where the County’s historical experience is from prior decades  
15 in which the dearth of affordable housing was less extreme.  
16

17 As evidence that the Ordinance will protect rural character, the County points to  
18 regulations requiring that DADUs be constructed of “similar materials” to existing  
19 structures.<sup>19</sup> Here, the County’s argument is similarly unpersuasive in that it rests on a  
20 bucolic vision of quaint rural structures that may not comport with the reality that existing  
21 residences may already be mobile homes or geodesic domes.  
22

23 The burden is on Petitioner, and it has not shown evidence of probable negative  
24 impacts sufficient to convince the Board that a mistake has been made as to rural  
25 character that will result in excessive density in the rural area.  
26

27 **The Board finds** Petitioner has not shown that the Ordinance violates GMA  
28 requirements to protect rural character.  
29

30 Petitioner also asserts the allowance of DADUs will result in excessive water use,  
31  
32

---

<sup>16</sup> *Viking Props., Inc. v. Holm*, 155 Wn.2d at 130 (2005).

<sup>17</sup> *Thurston County*, 164 Wn.2d at 359.

<sup>18</sup> County’s Response at 9, Finding E.1.

<sup>19</sup> County’s Response at 9.



1 in violation of RCW 36.70A.050(5)(c)(iv), due to increased landscaping, irrigation and  
2 impervious surface.<sup>20</sup> Petitioner’s assertion is countered by the requirement of RCW  
3 36.70A.590, which the legislature adopted to codify a court case requiring the  
4 observance of minimum instream flow rules.<sup>21</sup> Existing ADU regulations provide that  
5 permitting any ADU is subject to the physical and legal availability of water.<sup>22</sup> The  
6 County is entitled to a presumption that it follows state law concerning water use and its  
7 own permitting requirements as to water availability.  
8

9 **The Board finds** that Petitioner has not met its burden to show that the  
10 Ordinance fails to protect groundwater resources in the rural area.<sup>23</sup>

11 **Issue One is dismissed.**

12  
13 **Issue 2: Did the adoption of Amended Ordinance No. 22-006 Section 4 removing**  
14 **ADU limitations in rural, agricultural, and forestry zones permit urban uses, fail to**  
15 **protect agricultural and forestry lands and uses, and allow non-agricultural**  
16 **accessory uses?**

17  
18 Petitioner argues that the Ordinance fails to protect agricultural lands and forest  
19 lands of long-term commercial significance and fails to comply with the requirements for  
20 accessory uses on such lands. Petitioner briefs only allegations of violation of  
21 RCW 36.70A.020(8), RCW 36.70A.060(1) and RCW 36.70A.177; all other issues raised  
22 in the Prehearing Order’s recitation of Issue 2 are dismissed.

23  
24 Petitioner argues that the ordinance violates the GMA because the detached  
25 ADUs do not constitute an “innovative zoning technique” under RCW 36.70A.177(3).<sup>24</sup>  
26 The County responds that ADUs were previously allowed in the agricultural zone and  
27

28 <sup>20</sup> Petitioner’s Brief at 9 – 12.

29 <sup>21</sup> *Whatcom Cty v. W. Wash. Growth Mgmt. Hr’gs Bd.*, 186 Wn.2d 648, 381 P.3d 1 (2016).

30 <sup>22</sup> SCC 30.28.010(1)(b).

31 <sup>23</sup> As a separate sub-set of Issue 1, Petitioners allege that the ordinance is inconsistent with the County’s  
32 Comprehensive Plan Objective LU 6.A, calling for the reduction in “the rate of growth that results in  
sprawl in rural and resource areas” in violation of RCW 36.70A.130(1)(d). This argument is dealt with  
more thoroughly in the discussion of Issue 3.

<sup>24</sup> Petitioner’s Brief at 16-18.

1 that even with the amendment “entire parcels will not be converted to non-agricultural or  
2 forestry use; rather, a small number of subordinate accessory dwellings might annually  
3 be developed. The Ordinance does not interfere with the conservation of resource  
4 lands.”<sup>25</sup>

5 The Supreme Court held that “RCW 36.70A.020(8), .060(1), and .170 evidence a  
6 legislative mandate for the conservation of agricultural land. Further, RCW 36.70A.177  
7 must be interpreted to harmonize with that mandate.”<sup>26</sup> The Court also held that “[t]he  
8 County was required to assure the conservation of agricultural lands and to assure that  
9 the use of adjacent lands does not interfere with their continued use for the production  
10 of food or agricultural products.<sup>27</sup> RCW 36.70A.177(2)(a) authorizes “[a]gricultural  
11 zoning, which limits the density of development and restricts or prohibits nonfarm uses  
12 of agricultural land and may allow accessory uses, including nonagricultural accessory  
13 uses and activities, that support, promote, or sustain agricultural operations and  
14 production, as provided in ...[RCW 36.70A.177(3)].” “In order to constitute an innovative  
15 zoning technique consistent with the overall meaning of the Act, a development  
16 regulation must satisfy the Act’s mandate to conserve agricultural lands for the  
17 maintenance and enhancement of the agricultural industry.”<sup>28</sup> As the Supreme Court  
18 held in *Lewis County*, allowing “non-farm uses of agricultural lands failed to comply with  
19 the GMA requirement to conserve designated agricultural lands.”<sup>29</sup>

20 Under the County’s action, DADUs are considered accessory uses, but without  
21 limiting them to DADUs that support, promote, or sustain agricultural operations and  
22

23  
24  
25  
26  
27  
28 <sup>25</sup> County’s Response at 17, 19.

29 <sup>26</sup> *Soccer Fields*, 142 Wn.2d at 561, 14 P.3d at 142

30 <sup>27</sup> *Soccer Fields*, 142 Wn.2d at 556, 14 P.3d at 140 King County v. Cent. Puget Sound Growth Mgmt.  
31 Hearings Bd., 142.2d 543, 14 P.3d 133 (2000) (emphasis in original).  
32 RCW 36.70A.060(1)(a) WAC 365-196-815.

<sup>28</sup> *Soccer Fields*, 142 Wn.2d at 560, 14 P.3d at 142. King County v. Cent. Puget Sound Growth Mgmt.  
Hearings Bd., 142.2d 543, 14 P.3d 133 (2000).

<sup>29</sup> *Lewis Cty. v. Hearings Bd.*, 157 Wn.2d 488, 509, 139 P.3d 1096, 1106 (2006).

1 production.<sup>30</sup> The newly allowable DADUs could be used to house those who work on  
2 the agricultural operation, but there is no limitation to solely those uses.<sup>31</sup>

3 **The Board finds** that the ordinance will allow the development of DADUs that do  
4 not “constitute an innovative zoning technique” in violation of RCW 36.70A.177 (3).<sup>32</sup>

5 While the Board agrees with Petitioner’s argument discussed above, the Board  
6 finds its remaining arguments unpersuasive.  
7

8 The deletion of the prior requirement that an ADU must be within 100 feet of the  
9 primary residence is cited for the proposition that the ordinance violates  
10 RCW 36.70A.177(3)(b)(ii), which the Petitioner alleges would require adjacency.

11 Petitioner seems to conclude that this section *would not apply* to DADUs proposed for  
12 Agricultural Lands of Long Term Commercial Significance (ALLTCs). Petitioner makes  
13 the same sort of assumption for the application of the ordinance to Forestry zones.<sup>33</sup>  
14

15 The County challenges Petitioner’s assertion that the ordinance doubles the  
16 allowed density in Agriculture or Forestry zones, pointing to the zoning matrix in  
17 SCC 30.22.110. The Ordinance only removes the restriction prohibiting a DADU on a  
18 *substandard* lot. The focus of the challenged ordinance is on those substandard lots.  
19 As the County points out, an ADU, attached or detached, is allowed only if it is  
20 subordinate to the primary dwelling.  
21

22 Petitioner’s argument for violation of RCW 36.70A.060(1)(a)<sup>34</sup> is limited to an  
23

24 <sup>30</sup> Amended Ordinance No. 22-006, p.14 of 15 in SCC 30.28.010(3) attached to Petition for Review in Tab  
25 Ord. No. 22-006.

26 <sup>31</sup> *Id.*

27 <sup>32</sup> *Soccer Fields*, 142 Wn.2d at 560, 14 P.3d at 142. *King County v. Cent. Puget Sound Growth Mgmt.*  
28 *Hearings Bd.*, 142.2d 543, 14 P.3d 133 (2000)

29 <sup>33</sup> Petitioner’s Prehearing Brief at 19.

30 <sup>34</sup> RCW 36.70A.060 Natural resource lands and critical areas—Development regulations. (1)(a) Each  
31 county that is required or chooses to plan under RCW 36.70A.040, and each city within such county, shall  
32 adopt development regulations ...to assure the conservation of agricultural, forest, and mineral resource  
lands designated under RCW 36.70A.170... . Such regulations shall assure that the use of lands adjacent  
to agricultural, forest, or mineral resource lands shall not interfere with the continued use, in the  
accustomed manner and in accordance with best management practices, of these designated lands for  
the production of food, agricultural products, or timber, or for the extraction of minerals. ...

1 argument that the Ordinance permits the *conversion* of forest land to residential uses.<sup>35</sup>  
2 The problem with this argument is that there must be existing residential use on the  
3 forestry zoned land before an ADU can be built. As noted by the County, these  
4 provisions have been part of Snohomish County Code since 2006; it is not a new  
5 provision arising from the Ordinance. The Ordinance merely expands the capacity of  
6 that existing residential use to include another dwelling. The zoning continues to require  
7 a minimum of 10 acres and the DADU is limited in size. Likewise, allowing the DADU to  
8 be a mobile home in lieu of a conventional “stick-built” structure does not prove that the  
9 land is being *converted* to residential use, and may play on subconscious bias<sup>36</sup> in favor  
10 of one type of housing over another.  
11

12 **The Board finds and concludes** that the Petitioner met its burden to show that  
13 the Ordinance fails to protect designated agricultural lands of long-term commercial  
14 significance in violation of RCW 36.70A.177.  
15

16 **The remaining allegations under Issue Two are dismissed.**

17  
18 **Issue Three: Is the adoption of Amended Ordinance No. 22-006 Section 4**  
19 **removing limitations on ADUs in all rural, agricultural, and forestry zones**  
20 **inconsistent with countywide planning policies; VISION 2050’s Regional Growth**  
21 **Strategy as to the population allocation for rural areas or Multicounty Planning**  
22 **Policies?**

23 Petitioner argues that the Ordinance fails to comply with the Multicounty Planning  
24 Policies and Countywide Planning Policies, in violation of  
25 RCW 36.70A.130(1) and .210(1) and (7).<sup>37</sup> Petitioner did not brief most of the violations  
26

27 <sup>35</sup> Petitioner’s Brief at 19.

28 <sup>36</sup> Such expectations may be acceptable in communities created with covenants and restrictions, but are  
29 not reasonable merely because the land is zoned rural or resource.

30 <sup>37</sup> In the Petitioner’s Brief at 19, Issue 3 appears as:

31 Is the adoption of Amended Ordinance No. 22-006 Section 4 removing limitations on ADUs in all rural,  
32 agricultural, and forestry zones inconsistent with countywide planning policies DP-25 and DP-26; VISION  
2050’s Regional Growth Strategy as to the population allocation for rural areas or Multicounty Planning  
Policy (MPP) MPP-RGS-1, MPP-RGS-12, MPP-RGS-14, MPP-DP-33, MPP-DP-37, or MPP-DP-43  
violating RCW 36.70A.020(2), RCW 36.70A.020(8), RCW 36.70A.020(9), RCW 36.70A.020(10), RCW  
36.70A.030(28), RCW 36.70A.100, RCW 36.70A.130(1), RCW 36.70A.210, or RCW 36.70A.290(2)?

1 asserted in the issues as adopted in the Prehearing Order. Pursuant to WAC 242-03-  
2 590(1), unbriefed issues are deemed abandoned.

3 Counties must comply with the Snohomish County Countywide Planning Policies  
4 (CPPs) and the Puget Sound Regional Council Multicounty Planning Policies (MPPs).<sup>38</sup>  
5 RCW 36.70A.100 provides that:

6 The comprehensive plan of each county or city that is adopted pursuant to RCW  
7 36.70A.040 shall be coordinated with, and consistent with, the comprehensive plans  
8 adopted pursuant to RCW 36.70A.040 of other counties or cities with which the county  
9 or city has, in part, common borders or related regional issues.

10 RCW 36.70A.210 (1) and (7) require comprehensive plans to comply with CPPs and  
11 MPPs. RCW 36.70A.130 (1)(d) provides that “[a]ny amendment of or revision to a  
12 comprehensive land use plan shall conform to this chapter. Any amendment of or  
13 revision to development regulations shall be consistent with and implement the  
14 comprehensive plan.” The Supreme Court has stated, “The Board was therefore correct  
15 to conclude that CPPs are binding on the County.”<sup>39</sup>  
16

17  
18 Snohomish Countywide Planning Policy (CPP) DP-26 provides that “[d]ensity  
19 and development standards in rural and resource areas shall work to manage and  
20 reduce rural growth rates over time, consistent with the Regional Growth Strategy, GF-  
21 5, and the growth targets in Appendix B.”<sup>40</sup> Appendix B sets an initial population growth  
22 target of 3.3 percent, or an increase of 10,063 people, for the unincorporated rural areas  
23 and resource lands.<sup>41</sup>  
24

25  
26  
27 <sup>38</sup> *Stickney v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 11 Wn. App. 2d 228, 244–48, 453 P.3d 25,  
33–35, 453 P.3d 25, 34 (2019).

28 <sup>39</sup> *King Cnty. v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 138 Wn.2d 161, 176, 979 P.2d 374, 380  
29 (1999) as amended on denial of reconsideration (Sept. 22, 1999).

30 <sup>40</sup> Countywide Planning Policies for Snohomish County p. 31 in Tab CPP enclosed with this brief. WAC  
31 242-03-630 (4) authorizes the Board or Presiding Officer to take office notice of ordinances, resolutions,  
32 and motions enacted by regulations adopted by counties. The Countywide Planning Policies are adopted  
by ordinance. Countywide Planning Policies for Snohomish County p. 1. Futurewise respectfully requests  
that the Board take legislative notice of the countywide planning policies cited in this brief.

<sup>41</sup> Countywide Planning Policies for Snohomish County p. 68.

1 Multicounty Planning Policy MPP-RGS-14 directs Snohomish County to  
2 “[m]anage and reduce rural growth rates over time, consistent with the Regional Growth  
3 Strategy, to maintain rural landscapes and lifestyles and protect resource lands and the  
4 environment.”<sup>42</sup> The Regional Growth Strategy adopted a 2017-50 population growth  
5 rate target for rural Snohomish County of 4.5 percent or 18,500 people.<sup>43</sup> MPP-RGS-1  
6 also directs Snohomish County to “[i]mplement the Regional Growth Strategy through  
7 regional policies and programs, countywide planning policies and growth targets, local  
8 plans, and development regulations.”<sup>44</sup>

10 Unfortunately, the record indicates that adoption of the Ordinance is inconsistent  
11 with the achievement of these growth targets. The County’s staff report on the  
12 Ordinance alerted the County Council to the possibility of the challenged ordinance  
13 adding to the rural growth rate, in opposition to the policies:

15 Overall population growth in rural and resource areas is another  
16 consideration [regarding Rural Character]. GMA and, more recently, the  
17 Regional Growth Strategy (RGS) adopted by Puget Sound Regional  
18 Council (PSRC), obligate Snohomish County to act to reduce rural  
19 population growth. Current growth targets for 2035 allow for only 6% of the  
20 County’s overall projected growth in rural areas. In 2020, PSRC updated  
21 the RGS to plan for 4.5% of Snohomish County’s growth in rural areas.  
22 Countywide Planning Policies and an interlocal agreement with PSRC  
23 create an expectation that Snohomish County will adopt the lower rural  
24 growth target of 4.5% in 2024 as part of the comprehensive plan update  
25 due that year.

24 The share of rural housing unit growth has been declining over time  
25 although it is still above the current 6% target ....<sup>45</sup>

28 <sup>42</sup> IRE # 3.3.005g in Tab IRE # 3.3.005g Puget Sound Regional Council, *VISION 2050: A Plan for the*  
29 *Central Puget Sound Region* p. 49 (Adopted Oct. 29, 2020).

30 <sup>43</sup> *Id.* p. 33; IRE # 1.0003 in Tab IRE # 1.0003, Staff Report on Referral Motion 21-297 Proposed Code  
31 Revisions for Detached Accessory Dwelling Units p. 6 of 9 (Oct. 8, 2021).

32 <sup>44</sup> IRE # 3.3.005g in Tab IRE # 3.3.005g Puget Sound Regional Council, *VISION 2050: A Plan for the*  
*Central Puget Sound Region* p. 48 (Adopted Oct. 29, 2020).

<sup>45</sup> IRE # 1.0003 in Tab IRE # 1.0003, Staff Report on Referral Motion 21-297 Proposed Code Revisions  
for Detached Accessory Dwelling Units p. 6 of 9 (Oct. 8, 2021) footnote omitted.

1 [R]ecent rural population growth against the current target of 6% of  
2 projected rural growth. It shows that recent growth has exceeded that target.  
3 Part of the excess is because overall county growth has also been faster  
4 than projected. That said, the share of new units in the rural areas would  
5 need to drop faster than it has been to meet the current 6% growth target.  
6 A larger change would be necessary to meet the new 4.5% expectation.<sup>46</sup>

7 Petitioner argues that the growth rate occasioned by permitting detached ADUs  
8 will exacerbate the County's failure to meet its targets and is thus inconsistent with  
9 these MPPs and CPPs.<sup>47</sup> The County responds by pointing out that it is in the process  
10 of updating its comprehensive plan by the statutory deadline of December 31, 2024,  
11 about 18 months hence, emphasizing that the Multicounty Planning Policies refer to the  
12 need for the County to manage rural growth rates *over time* - but not by any specific  
13 time.<sup>48</sup>

14 Here the Board is skeptical. There is nothing in the record to indicate that the  
15 Ordinance will assist in achievement of the growth target over any timeframe and  
16 Counsel for the County admitted during the Hearing on the Merits that the County may  
17 need to reverse the changes brought by this Ordinance as part of the 2023  
18 comprehensive plan update to achieve the growth target. Thus, the County admits that  
19 Ordinance may thwart achievement of the policies adopted by the County as part of the  
20 countywide and multicounty planning activities it engaged in pursuant to the GMA. The  
21 County further argues, without evidence, that these provisions establish the logical time  
22 for evaluation of the County's efforts to be the time of the comprehensive plan update.  
23 The Board is unpersuaded.

24  
25  
26 **The Board finds and concludes** that Ordinance No. 22-006 is inconsistent with  
27 achievement of the growth targets in the County's adopted Multicounty Planning  
28 Policies and Countywide Planning Policies, in violation of RCW 36.70A.130(1)(d) and  
29

30  
31 <sup>46</sup> *Id.* p. 7 of 9.

32 <sup>47</sup> Petitioner's Brief, page 21-23.

<sup>48</sup> MPP-RGS-14, CPP DP-26.

1 RCW 36.70A.210(1) and (7).

2  
3 **Invalidity**

4 Petitioner has requested that the Board invalidate the Ordinance. While  
5 RCW 36.70A.302(1) grants the Board the power to determine that a GMA related  
6 legislative enactment is invalid, a determination of invalidity is based on a finding that  
7 continued validity of a local government’s “action ‘would substantially interfere with the  
8 fulfillment’ of a GMA planning goal.” The Board is not convinced that the Ordinance will  
9 result in substantial interference with GMA goals during the pendency of the remand.  
10

11 **Petitioner’s request for invalidity is denied.**

12  
13 **V. ORDER**

14 Based upon review of the petition, the briefs and exhibits submitted by the  
15 parties, the GMA, prior Board orders and case law, having considered the arguments of  
16 the parties, and having deliberated on the matter, the Board finds that:  
17

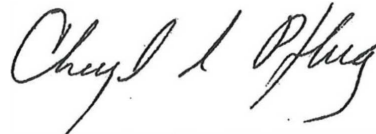
- 18 • Ordinance No. 22-006 fails to protect designated agricultural lands of long-  
19 term commercial significance in violation of RCW 36.70A.177.
- 20 • Ordinance No. 22-006 is inconsistent with achievement of the growth  
21 targets in the County’s adopted Multicounty Planning Policies and  
22 Countywide Planning Policies, in violation of RCW 36.70A.130(1)(d) and  
23 RCW 36.70A.210(1) and (7).
- 24 • Ordinance No. 22-006 is remanded to the County for action to bring it into  
25 compliance with the GMA.
- 26 • Petitioner’s request for invalidity is **Denied**.
- 27 • The following compliance schedule shall be in effect:  
28  
29  
30  
31  
32



Item	Date Due
Compliance Due	Dec 13, 2023
Compliance Report/Statement of Actions Taken to Comply and Index to Compliance Record	Dec 27, 2023
Objections to a Finding of Compliance	Jan 10, 2024
Response to Objections	Jan 22, 2024
<b>Telephonic Compliance Hearing</b>	<b>Jan 30, 2024 10:00 am</b>

Length of Briefs – A brief of 15 pages or longer shall have a table of exhibits and a table of authorities. WAC 242-03-590(3) states: “Clarity and brevity are expected to assist the board in meeting its statutorily imposed time limits. A presiding officer may limit the length of a brief and impose format restrictions.” **Compliance Report/Statement of Actions Taken to Comply shall be limited to 25 pages, 35 pages for Objections to Finding of Compliance, and 10 pages for the Response to Objections.**

So ORDERED this 20th day of June 2023.




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Cheryl Pflug, Board Member




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Rick Eichstaedt, Board Member

**This is a Final Decision and Order of the Growth Management Hearings Board issued pursuant to RCW 36.70A.300. A motion for reconsideration must be filed with the Board and served on all parties within ten days of mailing of the final order. WAC 242-03-830(1), WAC 242-03-840.**

## Appendix A: Legal Issues

1  
2  
3 **Issue One:** Did the adoption of Amended Ordinance No. 22-006 Section 4 removing  
4 limitations on accessory dwelling units (ADUs) in rural zones permit urban uses, fail to  
5 protect rural character, and fail to include measures that apply to rural development to  
6 protect rural character violating RCW 36.70A.020(2), RCW 36.70A.020(9), RCW  
7 36.70A.020(10), RCW 36.70A.030(23), RCW 36.70A.030(24), RCW 36.70A.030(28),  
8 RCW 36.70A.070 (internal consistency), RCW 36.70A.070(5), RCW 36.70A.110(1),  
9 RCW 36.70A.130(1), RCW 36.70A.290(2), or General Policy Plan Objective LU 6.A?

10 **Issue Two:** Is the adoption of Amended Ordinance No. 22-006 Section 4 removing  
11 limitations on ADUs in all rural, agricultural, and forestry zones inconsistent with  
12 countywide planning policies DP-25 and DP-26; VISION 2050's Regional Growth  
13 Strategy as to the population allocation for rural areas or Multicounty Planning Policy  
14 (MPP) MPP-RGS-1, MPP-RGS-12, MPP-RGS-14, MPP-DP-33, MPP-DP-37, or MPP-  
15 DP-43 violating RCW 36.70A.020(2), RCW 36.70A.020(8), RCW 36.70A.020(9), RCW  
16 36.70A.020(10), RCW 36.70A.030(28), RCW 36.70A.100, RCW 36.70A.130(1), RCW  
17 36.70A.210, or RCW 36.70A.290(2)?

18 **Issue Three:** Is the adoption of Amended Ordinance No. 22-006 Section 4 removing  
19 limitations on ADUs in all rural, agricultural, and forestry zones inconsistent with  
20 countywide planning policies DP-25 and DP-26; VISION 2050's Regional Growth  
21 Strategy as to the population allocation for rural areas or Multicounty Planning Policy  
22 (MPP) MPP-RGS-1, MPP-RGS-12, MPP-RGS-14, MPP-DP-33, MPP-DP-37, or MPP-  
23 DP-43 violating RCW 36.70A.020(2), RCW 36.70A.020(8), RCW 36.70A.020(9), RCW  
24 36.70A.020(10), RCW 36.70A.030(28), RCW 36.70A.100, RCW 36.70A.130(1), RCW  
25 36.70A.210, or RCW 36.70A.290(2)?  
26  
27  
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32

ECAF:  
RECEIVED:

# ORDINANCE INTRODUCTION SLIP

SNOHOMISH COUNTY COUNCIL

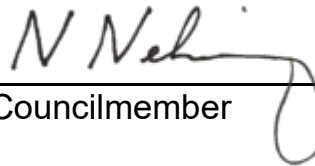
EXHIBIT # 3.1.004

FILE ORD 23-133

TO: Clerk of the Council

TITLE OF PROPOSED ORDINANCE:

Introduced By:



Councilmember

Date

~~~~~  
Clerk's Action:

Proposed Ordinance No. \_\_\_\_\_

Assigned to: \_\_\_\_\_ Date: \_\_\_\_\_

~~~~~  
**STANDING COMMITTEE RECOMMENDATION FORM**

On \_\_\_\_\_, the Committee considered the Ordinance by \_\_\_ Consensus /  
\_\_\_ Yeas and \_\_\_ Nays and made the following recommendation:

\_\_\_\_\_ Move to Council to schedule public hearing on: \_\_\_\_\_

\_\_\_\_\_ Other \_\_\_\_\_

Regular Agenda \_\_\_\_\_ Administrative Matters \_\_\_\_\_

Public Hearing Date \_\_\_\_\_ at \_\_\_\_\_

  
\_\_\_\_\_  
Committee Chair

EXHIBIT 3.2.002

Administrative Session Meeting – 11/07/23

[Minutes](#) and [Video](#)