

1 ADOPTED: 08/18/21  
2 EFFECTIVE: 09/02/21

3 SNOHOMISH COUNTY COUNCIL  
4 Snohomish County, Washington

5  
6 AMENDED ORDINANCE NO. 21-043

7  
8 RELATING TO GROWTH MANAGEMENT; AMENDING DEVELOPMENT REGULATIONS IN  
9 CHAPTER 30.32D OF THE SNOHOMISH COUNTY CODE PERTAINING TO  
10 ARCHAEOLOGICAL RESOURCES

11  
12 WHEREAS, the Growth Management Act (GMA), chapter 36.70A RCW, requires  
13 Snohomish County (the "County") to identify and encourage the preservation of lands, sites, and  
14 structures that have historical or archaeological significance; and

15  
16 WHEREAS, the Snohomish County GMA Comprehensive Plan (GMACP) General Policy  
17 Plan (GPP) directs Snohomish County to preserve, protect, and enhance archaeological,  
18 cultural, and historic resources, and to efficiently and effectively meet its archaeological  
19 resource management obligations under federal, state, and local regulations; and

20  
21 WHEREAS, in 2008 the Washington State Legislature revised state law concerning the  
22 inadvertent discovery of skeletal human remains, abandoned and historic cemeteries, and  
23 historic graves in chapters 68.50 and 68.60 RCW; and

24  
25 WHEREAS, chapter 30.32D of the Snohomish County Code (SCC) establishes the  
26 regulations for historic and archaeological resources in the County; and

27  
28 WHEREAS, the existing procedures within chapter 30.32D SCC for archaeological  
29 surveys reports, permit approvals for properties that contain documented archaeological sites  
30 that cannot be avoided, and the inadvertent discovery of archaeological resources and skeletal  
31 human remains do not align with current state laws related to the regulation of archaeological  
32 resources; and

33  
34 WHEREAS, SCC 30.32D.200 does not allow the County to require an archaeological  
35 survey when information from Indian tribes, the county archaeologist, or state archaeologists  
36 indicates that there is a high likelihood for archaeological resources to be located on the project  
37 site; and

38  
39 WHEREAS, chapter 30.32D SCC also contains outdated terminology and references  
40 which create unnecessary ambiguity and confusion; and

41  
42 WHEREAS, on March 23, 2021, the Snohomish County Planning Commission (the  
43 "Planning Commission") was briefed by PDS staff about the proposed code amendments  
44 contained in this ordinance; and

45  
46 WHEREAS, the Planning Commission held a public hearing on April 27, 2021, to receive  
47 public testimony concerning the code amendments contained in this ordinance, and at the  
48 conclusion of that hearing continued deliberations; and

1  
2 WHEREAS, on May 25, 2021, the Planning Commission deliberated on the proposed  
3 code amendments contained in this ordinance and voted to recommend amendments to the  
4 County code relating to archaeological resources as shown in its recommendation letter dated  
5 May 27, 2021; and  
6

7 WHEREAS, on August 18, 2021, the County Council held a public hearing after proper  
8 notice, and considered public comment and the entire record related to the code amendments  
9 contained in this ordinance; and  
10

11 WHEREAS, following the public hearing, the County Council deliberated on the code  
12 amendments contained in this ordinance;  
13

14 NOW, THEREFORE, BE IT ORDAINED:  
15

16 Section 1. The County Council adopts the following findings in support of this ordinance:  
17

18 A. The foregoing recitals are adopted as findings as if set forth in full herein.  
19

20 B. This ordinance amends chapter 30.32D SCC in the following manner:  
21

- 22 1. This ordinance amends SCC 30.32D.010 to update references to relevant state laws, to  
23 add that compliance with applicable state laws relating to the regulation of  
24 archaeological and cultural sites is a purpose of the section, to include that this chapter  
25 applies to properties that have a high probability of containing archaeological resources,  
26 and to resolve a code inconsistency regarding the applicability of this section for non-  
27 tribally owned, fee simple properties designated Residential Commercial on the  
28 Snohomish County Future Land Use Map.  
29
- 30 2. This ordinance amends SCC 30.32D.200 to update the requirements for archaeological  
31 survey reports to meet state and professional standards for cultural resources reporting.  
32 The amendments also create a new circumstance in which archaeological survey  
33 reports may be required, when an Indian tribe, the county archaeologist, or a state  
34 archaeologist determines that the project site has a high probability of containing  
35 archaeological resources.  
36
- 37 3. This ordinance amends SCC 30.32D.210 to clarify that this section applies to project or  
38 permit approval for properties that contain a documented archaeological site that cannot  
39 be avoided and to require that permits or project approval will be conditioned to comply  
40 with any permitting or additional archaeological work required under state laws for the  
41 protection of archaeological resources.  
42
- 43 4. This ordinance amends SCC 30.32D.220 to specify that this section applies to the  
44 inadvertent discovery of archaeological resources, to remove language regarding the  
45 discovery of human remains from this section, and to add clarifying language to align the  
46 procedure for the inadvertent discovery of archaeological resources with requirements  
47 under state law.  
48

1 5. This ordinance adds a new section SCC 30.32D.225 to conform to state law for the  
2 inadvertent discovery of skeletal human remains.

3  
4 C. In developing the proposed amendments, the County considered the GMA goals related to  
5 historic preservation. In particular, the proposed amendments are consistent with and  
6 promote:

7  
8 GMA Goal 13 – “Identify and encourage the preservation of lands, sites, and structures,  
9 that have historical or archaeological significance.”

10  
11 The proposed amendments support the identification and preservation of archaeological  
12 resources by allowing the County to require archaeological survey reports when  
13 information provided by an Indian tribe, the county archaeologist, or a state  
14 archaeologist indicates that the project location has a high probability of containing  
15 archaeological resources.

16  
17 D. The proposed amendments will better achieve, comply with, and implement goals and  
18 policies from the Puget Sound Regional Council’s Multicounty Planning Policies (MPPs),  
19 including the following Development Patterns (DP) policy:

20  
21 MPP-DP-34 – “Preserve significant regional historic, visual and cultural resources  
22 including public views, landmarks, archaeological sites, historic and cultural landscapes  
23 and areas of special character.”

24  
25 The proposed amendments are consistent with this policy. Allowing that an  
26 archaeological survey report may be required for a project that an Indian tribe, the  
27 county archaeologist, or a state archaeologist has determined to have a high probability  
28 to contain archaeological resources would increase the likelihood that previously  
29 unrecorded archaeological resources are identified prior to construction. With the  
30 proposed changes, projects that would have potentially damaged or destroyed  
31 archaeological resources can be modified to preserve them.

32  
33 E. The proposed amendments will better achieve, comply with, and implement the following  
34 goals, objectives, and policies contained in the County’s GMACP GPP:

35  
36 GPP Policy LU 11.B.2 “The county shall meet its historic and archaeological resource  
37 management obligations under federal, state and local regulations in an efficient and  
38 effective manner.”

39  
40 The proposed amendments modify procedures for archaeological surveys reports,  
41 permit approvals for properties that contain documented archaeological sites that cannot  
42 be avoided, and the inadvertent discovery of archaeological resources and skeletal  
43 human remains to align with state law. These amendments will support the county  
44 meeting its historic and archaeological resource management obligations in an efficient  
45 and effective manner.

46  
47 GPP Policy LU 11 B.4 “The county shall promote preservation of identified  
48 archaeological and historic resources.

1  
2 The proposed amendments are consistent with this policy. Allowing that an  
3 archaeological survey report may be required for a project area that an Indian tribe, the  
4 county archaeologist, or a state archaeologist has determined to have a high probability  
5 to contain archaeological resources would increase the likelihood that previously  
6 unrecorded archaeological resources are identified prior to construction. With the  
7 proposed changes, projects that would have potentially damaged or destroyed  
8 archaeological resources can be modified to preserve them.  
9

10 F. Procedural requirements.

- 11  
12 1. State Environmental Policy Act (SEPA), chapter 43.21C RCW, requirements with  
13 respect to this non-project action have been satisfied through the completion of an  
14 environmental checklist and the issuance of a determination of non-significance on  
15 March 8, 2021.  
16
- 17 2. The proposal is a Type 3 legislative action pursuant to SCC 30.73.010.  
18
- 19 3. Pursuant to RCW 36.70A.106(1), a notice of intent to adopt this ordinance was  
20 transmitted to the Washington State Department of Commerce on March 1, 2021.  
21
- 22 4. The public participation process used in the adoption of this ordinance complies with all  
23 applicable requirements of the GMA and the SCC, including but not limited to, RCW  
24 36.70A.035, RCW 36.70A.140, and chapter 30.73 SCC.  
25
- 26 5. The Washington State Attorney General last issued an advisory memorandum, as  
27 required by RCW 36.70A.370, in September of 2018 entitled "Advisory Memorandum:  
28 Avoiding Unconstitutional Takings of Private Property" to help local governments avoid  
29 the unconstitutional taking of private property. The process outlined in the State  
30 Attorney General's 2018 advisory memorandum was used by Snohomish County in  
31 objectively evaluating the regulatory changes proposed by this ordinance.  
32

33 G. This ordinance is consistent with the record.

- 34  
35 1. Existing archaeological resource procedures for archaeological surveys reports, permit  
36 approvals for properties that contain documented archaeological sites that cannot be  
37 avoided, and the inadvertent discovery of archaeological resources and skeletal human  
38 remains do not align with current state laws related to the regulation of archaeological  
39 resources. The proposed code amendments modify county regulations to align with state  
40 laws.  
41
- 42 2. Existing code language contains outdated references and confusing terminology. The  
43 amendments proposed by this ordinance provide clarity through updating references and  
44 terminology to match current state laws for the protection of archaeological resources.  
45
- 46 3. The code amendments proposed by this ordinance support the increased identification  
47 and protection of archaeological resources. Allowing the County to require an  
48 archaeological survey report when a project location has a high probability of containing

1 archaeological resources increases the likelihood of archaeological resources being  
2 identified early in the life of a project and allows projects to be modified to avoid  
3 impacting resources.  
4

5 H. The proposed amendments are consistent with the PDS Staff Report to the Planning  
6 Commission dated March 5, 2021.  
7

8 Section 2. The County Council makes the following conclusions:  
9

- 10 1. The amendments proposed by this ordinance comply with the GMA.
- 11 2. The amendments proposed by this ordinance comply with the Snohomish County  
12 GMACP.
- 13 3. The proposal is consistent with Washington State law and Snohomish County Code.  
14
- 15 4. The County has complied with all SEPA requirements in respect to this non-project  
16 action.  
17
- 18 5. The public participation process used in the adoption of this ordinance complies with all  
19 applicable requirements of the GMA and title 30 SCC.  
20
- 21 6. The amendments proposed by this ordinance do not result in an unconstitutional taking  
22 of private property for a public purpose.  
23

24  
25  
26 Section 3. The Snohomish County Council bases its findings and conclusions on the  
27 entire record of the County Council, including all testimony and exhibits. Any finding, which  
28 should be deemed a conclusion, and any conclusion which should be deemed a finding, is  
29 hereby adopted as such.  
30

31 Section 4. Snohomish County Code Section 30.32D.010, last amended by Amended  
32 Ordinance No. 06-037 on December 13, 2006, is amended to read:  
33

34 **30.32D.010 Purpose and applicability.**  
35

36 (1) The purpose of this chapter is to identify, evaluate, and protect archaeological and historic  
37 resources within Snohomish county and to preserve and rehabilitate eligible historic properties  
38 for future generations, in order to:

- 39 (a) Safeguard the heritage of the county as represented by those buildings, sites, structures,  
40 objects, and districts which reflect significant elements of county history;
- 41 (b) Foster civic pride in the beauty and accomplishments of the past, and a sense of identity  
42 with county history;
- 43 (c) Assist, encourage, and provide incentives to private owners for preservation, restoration,  
44 rehabilitation, and use of outstanding historic buildings, sites, structures, objects, and  
45 districts;
- 46 (d) Promote and facilitate the early identification and resolution of conflicts between  
47 preservation of archaeological and historic resources and land uses; ~~((and))~~

- 1 (e) Stabilize and improve the aesthetic and economic vitality and values of such sites  
2 improvements and objects ((-)); and  
3 (f) Comply with applicable state laws related to the regulation of archaeological and cultural  
4 sites.

5 (2) In Washington State, archaeology sites, historical graves and cemeteries, and Native  
6 American grave sites are protected by ~~((both federal and))~~ state laws on both public and private  
7 lands. This chapter does not repeal, modify, or waive any provision of federal or state law  
8 currently enacted, or as enacted in the future, that regulates archaeological sites including, but  
9 not limited to: the Archaeological Resource Protection Act of 1979 (16 U.S.C. 470aa-mm); the  
10 Native American Graves Protection and Repatriation Act (25 U.S.C. 3001 et seq.); the National  
11 Historic Preservation Act (16 U.S.C. 470 et seq.); Chapter 27.44 RCW titled "Indian Graves and  
12 Records";~~((and))~~ Chapter 27.53 RCW titled "Archaeological Sites and Resources((-)"; Chapter  
13 68.50 RCW titled "Human Remains"; and Chapter 68.60 RCW titled "Abandoned and Historic  
14 Cemeteries and Historic Graves."

15 (3) This chapter applies to:

- 16 (a) Properties eligible for and on the Snohomish ~~((county))~~ County Register of Historic  
17 Places established pursuant to SCC 30.32D.020; ~~((and;))~~  
18 (b) Properties ~~((listed))~~ recorded on the Washington ~~((State Archaeological Site Inventory))~~  
19 Information System for Architectural and Archaeological Records Data (WISAARD) ((-)) ;  
20 (c) Non-tribally owned, fee-simple properties designated Reservation Commercial on the  
21 Snohomish County Future Land Use Map; and  
22 (d) Properties with a high probability of containing archaeological resources as indicated by  
23 information provided by an Indian tribe, or by a Snohomish County or state professional  
24 archaeologist.

25 (4) Regulations concerning the Snohomish County Historic Preservation Commission are in  
26 chapter 2.96 SCC; regulations concerning the state tax incentive program for qualifying historic  
27 properties are located in chapter 4.31 SCC.

28  
29 Section 5. Snohomish County Code Section 30.32D.200, last amended by Amended  
30 Ordinance No. 15-027 on May 6, 2015, is amended to read:

31  
32 **30.32D.200 ~~((Archaeology Site))~~ Archaeological survey report.**

33 (1) Known archaeological sites are recorded on ~~((the Washington State Department of~~  
34 ~~Archaeology and Historic Preservation's Geographic Information System))~~ WISAARD and  
35 information from data sharing agreements between Snohomish County and the Washington  
36 State Department of Archaeology and Historic Preservation (DAHP).

37 (2) An archaeological site may cover only a portion of a property, parcel, or lot and may ~~((be~~  
38 ~~located on))~~ extend onto more than one property, parcel, or lot.

39 (3) Completion of ~~((an archaeology site report))~~ a professional archaeological survey ~~((or~~  
40 ~~relocation of the project to avoid the known archaeological site shall be required for))~~:

- 41 (a) ~~((Any))~~ Shall be required for any construction, earth movement, clearing, or other ~~((site))~~  
42 land disturbance of a known archaeological site; ~~((or))~~  
43 (b) ~~((Any))~~ Shall be required for any development application proposed on non-tribally  
44 owned, fee-simple properties designated Reservation Commercial on the Snohomish  
45 County Future Land Use Map ~~((-));~~ and  
46 (c) May be required for any development application when information provided by an  
47 Indian tribe or by a Snohomish County or state professional archaeologist demonstrates  
48 that the project location has a high probability of containing archaeological resources.

1 (4) ~~((An archaeology site report))~~ A professional archaeological survey report required under  
2 subsection (3)~~((a))~~ of this section shall:

- 3 (a) Be written by a professional archaeologist as defined in ~~((WAC 25.48.020))~~ RCW  
4 27.53.030(11);
- 5 (b) Be submitted to the department by the property owner or project proponent;
- 6 (c) Include the location ~~((, condition))~~ and extent of the archaeological resources located  
7 ~~((on site and any recommendation with respect to conditioning the activity to avoid or~~  
8 ~~minimize impacts on the known archaeological site))~~ within a project area; ~~((and))~~
- 9 (d) Include ~~((the results of consultation with))~~ any comments submitted by any affected  
10 Indian tribe ~~((on proposed actions to avoid or mitigate impacts of the proposed project))~~  
11 during the review process ~~((:))~~;
- 12 (e) Meet state and professional standards for cultural resources reporting; and
- 13 (f) Include recommendations for avoidance or minimization of impacts on archaeological  
14 resources if present, and recommendations for additional archaeological work and  
15 permitting to comply with applicable state and federal laws for the protection and  
16 preservation of archaeological resources.

17 ~~((5))~~ ~~An archaeological report is required under subsection (3)(b) of this section shall:~~

- 18 ~~(a) Be written by a professional archaeologist as defined in WAC 25.48.00;~~
- 19 ~~(b) Be submitted to the department by the property owner or project proponent~~
- 20 ~~(c) Include the location, condition, and extent of the archaeological resources located on~~  
21 ~~site and any recommendations with respect to conditioning the activity to avoid impacts;~~  
22 ~~and~~
- 23 ~~(d) Include the results of consultation with any affected Indian tribe on proposed actions to~~  
24 ~~avoid impacts of the proposed project.)~~

25 ~~((6))~~(5) The department shall provide a copy of the ~~((archaeology site))~~ archaeological survey  
26 report to any affected Indian tribe and the ~~((Washington State Department of Archaeology and~~  
27 ~~Historic Preservation, at the applicant's expense))~~ DAHP.

28  
29 Section 6. Snohomish County Code Section 30.32D.210, last amended by Amended  
30 Ordinance No. 06-037 on December 13, 2006, is amended to read:

31  
32 **30.32D.210 Project or permit approval for property** ~~**((on state register as an**~~  
33 ~~**archaeological resource.))**~~ **that contains a documented archaeological site that cannot be**  
34 **avoided.**

35  
36 (1) The county approving authority shall not issue a permit for any development activity or  
37 project approval requiring ~~((an archaeology site))~~ a professional archaeological survey report  
38 pursuant to SCC 30.32D.200 without considering the ~~((archaeology site))~~ professional  
39 archaeological survey report, ~~((and))~~ any comments on the report submitted by an affected  
40 Indian tribe, and any additional archaeological work and permitting required under chapter 27.53  
41 RCW.

42 ~~((2) If an applicant requests comments regarding mitigation from a potentially affected Indian~~  
43 ~~tribe and the tribe fails to respond within 30 days of the request, the department may proceed~~  
44 ~~with permit issuance based on the archaeology site report if the applicant provides~~  
45 ~~documentation of the request for tribal comments to the department.)~~

46 ~~((3))~~(2) Based on the information contained in the ~~((archaeology site))~~ professional  
47 archaeological survey report and any comments submitted by ~~((the))~~ any affected Indian  
48 ~~((tribe(s)))~~ tribes obtained during the ~~((consultation))~~ review process, the county approving

1 authority will condition the permit or project approval (~~in a manner that will avoid or minimize~~  
2 ~~impacts to the archaeological resource consistent with federal and state law~~) to comply with  
3 any permitting and additional archaeological work required under federal and state laws for the  
4 protection of archaeological resources.

5  
6 Section 7. Snohomish County Code Section 30.32D.220, added by Amended Ordinance  
7 No. 02-064 on December 9, 2002, is amended to read:

8  
9 **30.32D.220 ((Human remains or)) Inadvertent discovery of archaeological resources**  
10 **((found on a site)).**

11  
12 (1) If, during the course of construction, earth movement, clearing or other (~~site disturbance~~)  
13 land disturbing activity, (~~human remains or~~) archaeological resources are encountered, all  
14 work shall cease immediately. Under these circumstances, the (~~department~~) director may  
15 issue a stop work order pursuant to chapter 30.85 SCC.

16 (2) The applicant shall immediately notify the director and promptly notify any affected Indian  
17 tribe and the (~~state office of archaeology and historic preservation~~) Washington State  
18 Department of Archaeology and Historic Preservation (DAHP).

19 (3) (~~After~~) Ground disturbance may not proceed until consultation with any affected Indian tribe  
20 and (~~the state office of archaeology and historic preservation~~) DAHP is complete. (~~the state~~  
21 ~~shall determine whether the site contains archaeological resources that should be preserved.~~  
22 ~~The department will designate the appropriate area within the site as a preservation area. No~~  
23 ~~ground disturbance is permitted within a preservation area. This designation shall not affect~~  
24 ~~underlying zoning.~~)

25 (4) (~~The preservation area designation shall remain on the appropriate area within a site until~~

26 (a) ~~The human remains or archaeological resources have been completely removed from~~  
27 ~~the site; or~~

28 (b) ~~The department and the applicant have otherwise reached an agreement, in consultation~~  
29 ~~with the state and any affected Indian tribe, that provides for the preservation of the~~  
30 ~~human remains or archaeological resources.)~~

31  
32 Section 8. A new section is added to Snohomish County Code Chapter 30.32D to read:

33  
34 **30.32D.225 Inadvertent discovery of human remains.**

35  
36 (1) If, during the course of construction, earth movement, clearing or other land disturbing  
37 activity, human remains are encountered, all work shall cease immediately in an area large  
38 enough to protect the find.

39 (2) The finding of human skeletal remains shall be reported to the county medical examiner and  
40 local law enforcement by the applicant or property owner in the most expeditious manner  
41 possible.

42 (3) The remains shall not be touched, moved, or further disturbed. The county medical examiner  
43 shall assume jurisdiction over the human skeletal remains and make a determination of whether  
44 those remains are forensic or non-forensic. If the county medical examiner determines the  
45 remains are non-forensic, they shall report that finding to DAHP.

46 (4) The applicant or property owner shall also promptly notify DAHP and the director of the  
47 finding of human skeletal remains. The director may issue a stop work order pursuant to chapter  
48 30.85 SCC.

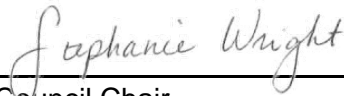


1 (5) Construction, earth movement, clearing, or other land disturbing activity may not proceed  
2 without DAHP approval.

3  
4 Section 9. Severability and Savings. If any section, sentence, clause or phrase of this  
5 ordinance shall be held to be invalid by the Growth Management Hearings Board (Board), or  
6 unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall  
7 not affect the validity or constitutionality of any other section, sentence, clause or phrase of this  
8 ordinance. Provided, however, that if any section, sentence, clause or phrase of this ordinance  
9 is held to be invalid by the Board or court of competent jurisdiction, then the section, sentence,  
10 clause or phrase in effect prior to the effective date of this ordinance shall be in full force and  
11 effect for that individual section, sentence, clause or phrase as if this ordinance had never been  
12 adopted.

13  
14 PASSED this 18<sup>th</sup> day of August, 2021.

15  
16 SNOHOMISH COUNTY COUNCIL  
17 Snohomish County, Washington


18  
19   
20 \_\_\_\_\_  
21 Council Chair

22 ATTEST:

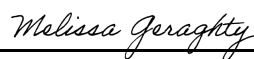
23   
24 \_\_\_\_\_  
25 Clerk of the Council

- 26  
27 (X) APPROVED  
28 ( ) EMERGENCY  
29 ( ) VETOED

30  
31 DATE: 8/23/2021

32  
33   
34 \_\_\_\_\_  
35 County Executive

36  
37 ATTEST:

38   
39 \_\_\_\_\_

40  
41  
42  
43 Approved as to form only:

44  
45 \_\_\_\_\_  
46 Deputy Prosecuting Attorney