



SNOHOMISH COUNTY COUNCIL
SNOHOMISH COUNTY, WASHINGTON

AMENDED ORDINANCE NO. 03-127

AMENDING CHAPTER 30.66B SCC TO REVISE AND CLARIFY REQUIREMENTS
FOR CONCURRENCY OF LAND DEVELOPMENT WITH ROAD IMPROVEMENTS

WHEREAS, the state Growth Management Act (GMA) requires Snohomish County to adopt regulations related to the concurrency of transportation improvements or strategies with land developments; and

WHEREAS, the county adopted ordinances to regulate the concurrency of transportation improvements in 1995, by Amended Ordinance No. 95-039, and 2001, by Amended Ordinance Nos. 01-011 and 01-013, which were codified in Title 26B SCC; and

WHEREAS, Title 26B SCC was repealed and incorporated into the Unified Development Code as Chapter 30.66B SCC by Amended Ordinance No. 02-064, effective February 1, 2003; and

WHEREAS, the Washington Administrative Code (WAC) in Section 365-195-835(3)(e), which addresses the form, timing and duration of concurrency approvals, states that such approvals should "specify the length of time that a concurrency determination will remain effective"; and

WHEREAS, the county has been implementing GMA concurrency regulations since 1995 and experience to date has suggested the need for additional revisions, clarifications, and efficiencies to the county's concurrency regulations related to the duration and expiration of concurrency approvals as set forth in this ordinance; and

WHEREAS, the proposed revisions are consistent with and implement the county's Countywide Planning Policies and GMA Comprehensive Plan (GMACP), as amended; and

WHEREAS, the proposed revisions are consistent with and implement the GMACP Transportation Element and facilitate implementation of the concurrency management system for transportation as required by the GMA; and

WHEREAS, the proposed revisions are internally consistent with the county's existing GMA development regulations; and

WHEREAS, the county has provided for public participation in developing the proposed revisions in accordance with state law and county codes; and

WHEREAS, the Department of Public Works has provided for environmental review of the proposed revisions in accordance with the state law and county codes; and

WHEREAS, the planning commission held a a work session June 24, 2003, and a public hearing on July 22, 2003 and sent its recommendations to the county council; and

WHEREAS, having considered the recommendations of the planning commission, the county council finds that it is appropriate to amend Chapter 30.66B SCC to revise and clarify concurrency regulations consistent with state law.

THEREFORE, BE IT ORDAINED:

Section 1. The county council hereby adopts the foregoing recitals as findings of fact and conclusions.

Section 2. Snohomish County Code Section 30.66B.055, added by Amended Ord. No. 02-064 on December 9, 2002, is amended to read:

30.66B.055 Imposition of mitigation requirements.

(1) The county shall impose mitigation required under this chapter as a condition of approval of development.

(2) Mitigation imposed as a condition of approval shall expire on the expiration date of the ~~((certificate of))~~ concurrency determination for a development. Any building permit application submitted after the concurrency expiration date shall be subject to full reinvestigation of traffic impacts under this chapter before the building permit can be issued. Determination of new or additional impact mitigation measures shall take into consideration, and may allow credit for, mitigation measures fully accomplished in connection with the prior approval when those mitigation measures addressed impacts of the current building permit application.

(3) The director of public works, following review of any required traffic study and any other pertinent data, shall inform the developer in writing of the mitigation required pursuant to this chapter.

(4) If a development proposes transportation demand management measures or measures to mitigate impacts on roads under the jurisdiction of another agency, the applicant must provide a written proposal to the department of public works describing those measures. The director of public works shall review the developer's proposal and provide a recommendation of approval or denial of the development application to the department as required by SCC 30.66B.050, based on the requirements of this chapter. If the developer has not submitted a written proposal by the time the department of public works makes its written recommendation on the case to the department, the director of public works will recommend denial.

(5) Required mitigation measures shall be binding on the real property that is legally described in the development application and administered in accordance with the provisions of SCC 30.66B.070.

Section 3. Snohomish County Code Section 30.66B.070, added by Amended Ord. No. 02-064 on December 9, 2002, is amended to read:

30.66B.070 Record of development obligations.

(1) Satisfaction of development obligations is required as a pre-condition to development approval, unless the development obligation is deferred to issuance of subsequent building permit necessary to initiate the development.

(a) For subdivisions and short-subdivisions, any development obligations that will be deferred to the building permit stage will be recorded on the final plat. All development obligations related to subdivisions and short-subdivisions that are not deferred to building permit issuance shall be satisfied prior to the recording of the final plat.

(b) For all development other than subdivisions and short-subdivisions in which satisfaction of development obligations is deferred, the ~~((concurrency certificate and a))~~ record of development obligations shall be recorded on the title of the property on which the development is located.

(2) The form of the record of development obligations shall be as follows:

(a) For all developers required as a condition of approval under this chapter to meet transportation demand management requirements, or to mitigate impacts on roads under the jurisdiction of another agency, the record of development obligations shall state the measures proposed by the developer pursuant to SCC 30.66B.055(4).

(b) For developers choosing to construct offsite improvements to satisfy a transportation impact mitigation obligation of a development, the record of development obligations shall describe the offsite improvements to be constructed by the developer.

(c) For all developments required as a condition of approval to pay a road system impact fee under the authority provided to the county under RCW 82.02.050(2), the document stating the mitigation requirements imposed shall be a record of development obligations.

(d) The record of development obligation shall document the concurrency determination for the development including the concurrency determination date, the concurrency expiration date, and any conditions that have to be satisfied by the developer prior to building permit issuance.

(3) Where the developer is not the legal owner of the property on which the development is proposed, the legal owner shall sign a statement agreeing that the mitigation measures imposed will be binding on the real property and will run with the land until the development approval has expired or the obligations contained within the document or agreement have been fulfilled. The statement shall be attached to the record of development obligations.

(4) The record of development obligations shall contain, as appropriate, a complete legal description of the real property which is the subject of the development, an adequate description of the mitigation measures, the development and/or road system events triggering subsequent phases or parts of the mitigation measures, performance security, and notice to subsequent purchasers of the mitigation obligations related to development of the property. The continued validity of the development permit approval shall be conditioned upon adequate compliance with terms and conditions of the mitigation measures and the written agreement.

(5) Voluntary agreements(~~(,)~~) and records of development obligations(~~(, and certificates of concurrency)~~) shall be recorded as a precondition to approval of conditional and administrative conditional use permits, and rezone applications accompanied by an official site plan, or at the time of recording for binding site plans for nonresidential use. If the development is a subdivision or short subdivision for non residential use, voluntary agreements and records of development obligations shall be recorded prior to or at the time of recording.

(6) Voluntary agreements(~~(,)~~) and records of development obligations(~~(, and/or certificates of concurrency)~~) will be released from the title of the property on which the development is proposed upon request to the director of public works once the development approval has expired or the obligations contained within the document or agreement have been fulfilled.

Section 4. Snohomish County Code Section 30.66B.120, added by Amended Ord. No. 02-064 on December 9, 2002, is amended to read:

30.66B.120 Concurrency determination - Required.

(1) The department of public works shall make a concurrency determination for each development application to ensure that the development will not impact a county arterial unit in arrears. The approving authority shall not approve any development that is not determined concurrent under this chapter.

(2) A concurrency determination shall (~~be documented by a "certificate of concurrency" which shall be included as part of the director of public work's recommendation made pursuant to SCC 30.66B.050. The certificate shall~~) state

(a) When the concurrency determination was made (the "concurrency determination date"),

(b) Whether the (~~certificate of~~) concurrency determination is conditioned upon satisfaction of specific conditions, and

(c) The expiration date of the (~~certificate of~~) concurrency determination (the "concurrency expiration date").

Section 5. Snohomish County Code Section 30.66B.135, added by Amended Ord. No. 02-064 on December 9, 2002, is amended to read:

30.66B.135 Development deemed concurrent.

The following development shall be deemed concurrent:

(1) Any residential development that generates fewer than seven peak-hour trips, or any nonresidential development that generates fewer than five peak-hour trips;

(2) Any development that has a valid pre-application concurrency approval pursuant to SCC 30.66B.175; and

(3) Building permit applications for development within an approved binding site plan, rezone accompanied by an official site plan, nonresidential subdivision or short subdivision for which a concurrency determination has already been made in accordance with this chapter if the following are met:

(a) The (~~certificate of~~) concurrency determination for the development approval has not expired;

(b) The building permit will not cause the approved traffic generation of the prior approval to be exceeded;

(c) There is no change in points of access; and

(d) Mitigation required pursuant to the previous development approval is performed as a condition of building permit issuance.

Section 6. Snohomish County Code Section 30.66B.145, added by Amended Ord. No. 02-064 on December 9, 2002, is amended to read:

30.66B.145 Concurrency determination - Forecasting level-of-service.

(1) An inventory of developments that have been determined concurrent, also referred to as "developments in the pipeline," will be used to estimate future traffic volumes for forecasting future level-of-service conditions. This inventory will be established and maintained by the department of public works in accordance with the department's administrative rules. Developments in the pipeline will also include developments given pre-application concurrency approval pursuant to SCC 30.66B.175.

(a) The department of public works shall use the inventory of developments in the pipeline when conducting analysis to determine whether an arterial unit is in arrears. Inventories or estimates shall be in accordance with the department of public works' administrative rules.

(b) A developer may be required to provide a forecast of future level-of-service conditions to the department of public works for purposes of making a concurrency determination on a proposed development. When required to provide a forecast, the developer shall use the inventory of developments in the pipeline, as established and maintained by the department of public works, when providing a forecast of future level-of-service conditions to the department. The inventory of developments in the pipeline used for making a concurrency determination on a proposed development shall not include any development that has been deemed concurrent subsequent to the proposed development.

(2) Estimates of future traffic volumes used for purposes of making level-of-service forecasts for concurrency determinations shall consist of the sum of the following: the current traffic volumes, the additional traffic volume that will be generated by the proposed development, and the additional traffic volume that will be generated by other developments in the pipeline.

(a) Estimates of current traffic volumes will be based on recent counts acceptable to the department of public works. The department of public works will provide them when available. When acceptable counts are not available, the applicant must provide them. The department of public works may specify by administrative rule the methodology for performing traffic counts of current traffic volumes.

(b) Additional traffic volume that will be generated by the proposed development will be based on the development's forecast trip generation at full occupancy, in accordance with SCC 30.66B.130(3).

(c) The following shall apply to forecasting additional traffic volume that will be generated by the inventory of developments in the pipeline:

(i) the inventory of developments in the pipeline shall not include developments that have been deemed concurrent subsequent to the proposed development;

(ii) estimates of additional traffic volume that will be generated by the inventory of developments in the pipeline will include, at minimum, residential developments generating seven (7) or more peak-hour trips and commercial developments generating five (5) or more peak-hour trips that have been determined concurrent based on the department's concurrency determination;

(iii) the department may, in its discretion, determine that certain developments in the pipeline should not be included in the inventory. The department may exclude a development, or part of a development, in the pipeline based on a factual demonstration by the applicant that one or more of the following is applicable:

(A) a development is not going to be constructed;

(B) a development is not going to be approved; or

(C) a development was already occupied at the time the current traffic volumes were counted; and

(iv) a threshold of three AM and/or PM peak-hour trips will be used for trip distributions.

(d) The department of public works will provide the applicant with the information in the department's inventory of developments in the pipeline and the number of trips added to the individual traffic movements at the intersections on the identified arterial units.

(e) The department of public works will identify the arterial unit(s) for which an applicant must make estimates of future traffic volumes and specify the methodology for level-of-service forecasts used by the applicant in forecasting level of service from the estimates of future traffic volumes. Estimates of future traffic volumes may be required of the applicant for weekday a.m. and p.m. peak hour vehicle trips for any traffic movements on any intersection located on the identified arterial unit(s) including termini.

(f) Forecasts will analyze traffic impacts for arterial units in the development's road system for the "forecast year" (i.e., the year of the proposed expiration date of the development's ~~((certificate of))~~ concurrency determination).

Section 7. Snohomish County Code Section 30.66B.155, added by Amended Ord. No. 02-064 on December 9, 2002, is amended to read:

30.66B.155 Concurrency determination - Expiration.

(1) The concurrency expiration date ~~((of the certificate of concurrency))~~ for a development shall be six years after the ~~((date of the))~~ concurrency determination date, except

(a) When it is determined by the director of public works that an earlier concurrency expiration date should be established due to the impact of the development on level-of-service conditions;

(b) When a later ~~((date of))~~ concurrency expiration date is established in accordance with SCC 30.66B.810; and

(c) The concurrency expiration date ~~((of the certificate of concurrency))~~ for a binding site plan ~~((that generates more than fifty peak-hour trips shall be the expiration date of the binding site plan, as determined by))~~ may, at the request of the applicant, be established as the date of the latest certificate of occupancy for the development as proposed by the applicant, ~~((and the))~~ provided that the same or later date is used for the forecast year in the traffic study for determining impacts on level-of-service in accordance with SCC ~~((30.66B.035))~~ 30.66B.145.

(2) The concurrency expiration date ~~((of the certificate of concurrency))~~ shall be based upon the size of the development, the level of service of impacted arterial units, and shall be consistent with the level-of-service standards and revenue/expenditure forecast adopted in the comprehensive plan.

(3) Building permits for a development must be issued prior to expiration of the ~~((certificate of))~~ concurrency determination for the development, except when

(a) The development is a residential subdivision or short-subdivision, in which case the subdivision or short-subdivision must ~~((be recorded))~~ receive preliminary approval prior to expiration of the concurrency determination, ~~((and))~~ or

(b) The development is a residential development which requires site plan approval, in which case the site approval must be issued prior to expiration of the concurrency determination, or

~~((b))~~(c) ~~((No building permit will be associated with))~~ The development is a conditional or administrative conditional use permit with no associated building permits, in which case the conditional or administrative conditional use permit must be issued prior to expiration of the ~~((certificate of))~~ concurrency determination for the development.

(4) No additional concurrency determination is required for residential dwellings within a subdivision or short subdivision ~~((recorded))~~ that receives preliminary approval in compliance with this section.

(5) If a ~~((certificate of))~~ concurrency determination expires, ~~((prior to building permit issuance))~~ or within one year will expire, the director of public works shall, at the request of the developer, consider evidence that conditions have not significantly changed ~~((The director of public works shall))~~, make a new concurrency determination, and may establish a new concurrency expiration date in accordance with this section. If the concurrency determination for a binding site plan has expired, subsequent building permit applications for development within the binding site plan will be evaluated for concurrency as stand-alone development applications in accordance with SCC 30.66B.100 - .185.

(6) A concurrency determination is tied to the development application upon which the determination is made, cannot be transferred to another development application, and always expires in cases in which the underlying development application expires.

Section 8. Snohomish County Code Section 30.66B.175, added by Amended Ord. No. 02-064 on December 9, 2002, is amended to read:

30.66B.175 Optional pre-application concurrency evaluation.

(1) Prior to submitting an application, any developer may request a pre-application concurrency decision in accordance with the requirements of this section. All requirements of this chapter applicable to pre-submittal conferences shall apply to pre-application concurrency evaluations, unless expressly excepted in this section.

(2) A request for a pre-application concurrency evaluation must be made to the department of public works in accordance with the following and in the form and manner prescribed by the department. A pre-application concurrency evaluation is a Type 1 decision and shall be processed in accordance with chapter 30.71 SCC, except as otherwise provided in this chapter and SCC 30.66B.180.

(a) The developer must provide the department of public works with a detailed description of the proposed development's maximum possible impact on the level-of-service of the road system. The information provided must include projected trip generation and trip distribution, as well as site plan information indicating access points for the development.

(b) The developer must propose a year of expiration date for the requested ~~((certificate of))~~ concurrency determination, which shall be used as the forecast year for the evaluation of future level-of-service conditions on the road system. The expiration date for any ~~((certificate of))~~ concurrency determination issued pursuant to this section for a subsequent development application shall be in accordance with SCC 30.66B.155 and the forecast year used for the pre-application concurrency evaluation.

(c) The developer shall provide a traffic study consistent with SCC 30.66B.035. The department of public works will meet with the developer to identify the scope of the traffic study required to make the pre-application concurrency decision.

(d) Application for a pre-application concurrency evaluation shall be accompanied by a fee payment in the amount specified in SCC 13.110.030. For purposes of SCC 13.110.030, a request for a pre-application concurrency evaluation shall be considered a development application.

(3) Following receipt of a traffic study that meets the requirements established in the pre-application concurrency scoping meeting, notice of the request for a pre-application concurrency evaluation shall be made in accordance with the procedures of SCC 30.70.050. The department of public works will have fourteen (14) days following the close of the public and agency comment period to make a pre-application concurrency decision.

(4) Pre-application concurrency evaluations shall be consistent with the requirements of SCC 30.66B.130, except that the threshold for requiring a traffic study shall be seven (7) peak-hour trips for residential developments and five (5) peak hour trips for commercial developments instead of fifty (50) peak-hour trips.

(5) A pre-application concurrency evaluation is an action subject to the requirements of chapter 30.61 SCC.

(6) If the department of public works' pre-application concurrency decision is that the proposed development can be determined concurrent, the department will issue a pre-application concurrency approval. If the pre-application concurrency decision is that the proposed development cannot be determined concurrent, the department shall notify the developer in writing of the decision and the reasons therefore. The developer shall have 90 days from such notification to respond with revisions or alternative analyses or proposals. Responses may include revisions to the traffic study, alternative analysis of the conclusions drawn by the department, or utilization of options under SCC 30.66B.167. A response shall be treated like a new application for a pre-application concurrency decision.

(7) The department of planning and development services shall provide notice of the department of public works' pre-application concurrency decision and the time period for filing an administrative appeal in accordance with SCC 30.71.050. The pre-application concurrency decision may be appealed pursuant to SCC 30.66B.180.

(8) A development with a pre-application concurrency approval that is valid at the time of application submittal will be deemed concurrent under SCC 30.66B.135 without further review, provided that the administrative appeal period for the concurrency approval has expired or the concurrency approval has been upheld on appeal and there is no further opportunity for administrative or judicial review.

(9) Concurrency determinations for developments that received a pre-application concurrency approval shall not be subject to further administrative review or appeal during project review, including review pursuant to the State Environmental Policy Act (SEPA).

(10) A pre-application concurrency approval shall be valid only for subsequent development applications for the same parcel of property and where the maximum possible impact on the level-of-service of the road system established in the pre-application concurrency approval is not exceeded by the proposed development. A pre-application concurrency approval cannot be transferred to a different parcel of property.

(11) Pre-application concurrency approvals under this subsection shall be valid for six months following the notice of decision unless an appeal is pending, in which case the approval shall be valid for six months following resolution of all appeals.

Section 9. Snohomish County Code Section 30.66B.340, added by Amended Ord. No. 02-064 on December 9, 2002, is amended to read:

30.66B.340 Timing of road system impact fee payment.

(1) Payment of a road system impact fee is required prior to building permit issuance. Where no building permit will be associated with the development, such as a development requiring a conditional or administrative conditional use permit, payment is required as a precondition to approval. For a ~~((development))~~ binding site plan for which the concurrency expiration date ~~((of the certificate of concurrency for a binding site plan))~~ is more than six years after the ~~((date of the))~~ concurrency determination date, one-half of the payment is required prior to recording of the binding site plan with record of survey.

(2) The amount of the road system impact fee payment shall be based upon the rate in effect at the time of filing of a complete application for development.

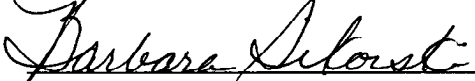
Section 10. Applicability. The provisions of this ordinance, except all procedural provisions, shall not apply to any development permit application that is complete prior to the effective date of this ordinance. An applicant for any pending application may choose to apply all applicable provisions of this ordinance to such application upon written request to PDS.


Section 11. Severability and savings. If any provision of this ordinance is held invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remainder of this ordinance. Provided, however, that if any provision of this ordinance is held invalid, then the provision in effect prior to the effective date of this ordinance shall be in full force and effect for that individual provision as if this ordinance had never been adopted.

PASSED this 5th day of November, 2003.

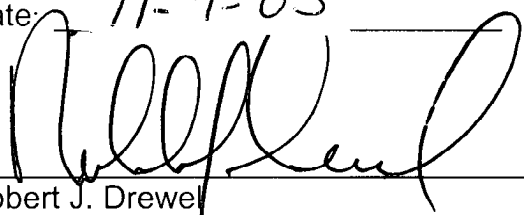
SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

ATTEST:

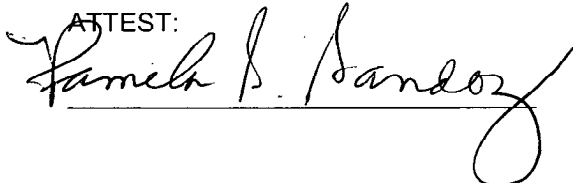

Asst. Clerk of the Council


Chairperson

- APPROVED
- EMERGENCY
- VETOED

Date: 11-7-03

Robert J. Drewel
County Executive

ATTEST:



Approved as to form only:

Deputy Prosecuting Attorney