

1 APPROVED: 01/16/19  
2 EFFECTIVE: 01/27/19

3  
4 SNOHOMISH COUNTY COUNCIL  
5 Snohomish County, Washington

6  
7 AMENDED ORDINANCE NO. 18-106

8  
9 RELATING TO GROWTH MANAGEMENT; CONCERNING LAND DISTURBING ACTIVITIES;  
10 AMENDING CHAPTER 30.63B OF THE SNOHOMISH COUNTY CODE  
11

12 WHEREAS, counties and cities that are required to plan under the Growth Management  
13 Act (GMA), chapter 36.70A of the Revised Code of Washington (RCW), must ensure that their  
14 comprehensive plans and development regulations encourage economic development,  
15 encourage availability of affordable housing, and reduce sprawl; and

16  
17 WHEREAS, the Snohomish County GMA Comprehensive Plan (GMACP) – General  
18 Policy Plan (GPP) directs Snohomish County to provide for expeditious and efficient  
19 development, land use practices that reduce housing costs, and a regulatory environment that  
20 facilitates growth of the local economy; and

21  
22 WHEREAS, chapter 30.63B of the Snohomish County Code (SCC) establishes land  
23 disturbing activity regulations for development, including standard setbacks, cutting and filling of  
24 materials and maximum slopes; and

25  
26 WHEREAS, chapter 30.63B SCC currently restricts the cutting and filling of materials  
27 within two feet of a property line on a development site unless authorization is granted by  
28 adjoining properties that may be affected by the activity and certain requirements are met by the  
29 project proponent; and

30  
31 WHEREAS, Snohomish County (the "County") seeks to promote the delivery of more  
32 affordable housing throughout Snohomish County by allowing more efficient use of land; and

33  
34 WHEREAS, the County seeks to maintain flexible development regulations; and

35  
36 WHEREAS, the County seeks to safeguard the health, safety, and general welfare of all  
37 communities in the County through appropriate land use and development controls; and

38  
39 WHEREAS, the proposed code amendments will provide a streamlined allowance for  
40 cuts and fills within two feet of a property line on a development site when an applicant  
41 demonstrates that the integrity and soil stability of adjoining properties is maintained and  
42 complies with other applicable construction regulations; and

43  
44 WHEREAS, Snohomish County Planning and Development Services (PDS) has  
45 conducted early and continuous public participation in developing the proposed amendments to  
46 title 30 SCC that are contained in this ordinance; and

47  
48 WHEREAS, on September 25, 2018, the Snohomish County Planning Commission (the  
49 "Planning Commission") was briefed by PDS staff about the proposed code amendments  
50 contained in this ordinance; and

1 WHEREAS, the Planning Commission held a public hearing on October 23, 2018, to  
2 receive public testimony concerning the code amendments contained in this ordinance; and  
3

4 WHEREAS, at the conclusion of the Planning Commission's public hearing, the Planning  
5 Commission deliberated on the proposed code amendments contained in this ordinance and  
6 voted to recommend amendments to the County code relating to standard setbacks for land  
7 disturbing activities as shown in its recommendation letter dated November 5, 2018; and  
8

9 WHEREAS, the County Council held a public hearing on January 16, 2019, and  
10 considered public comment and the entire record related to the proposed code amendments  
11 contained in this ordinance; and  
12

13 WHEREAS, following the public hearing, the County Council deliberated on the  
14 proposed code amendments contained in this ordinance;  
15

16 NOW, THEREFORE, BE IT ORDAINED:  
17

18 **Section 1.** The County Council adopts the following findings in support of this ordinance:  
19

- 20 A. The foregoing recitals are adopted as findings as if set forth in full herein.  
21  
22 B. This ordinance will amend title 30 SCC concerning standard setbacks for land disturbing  
23 activities, including cuts and fills, maximum slopes, and related citations and regulations.  
24  
25 C. The purpose of the proposed code amendments is to provide additional flexibility for grading  
26 activities within two feet of property lines, which will facilitate efficient and economical land  
27 use, particularly for housing development, while serving to safeguard public health and  
28 safety.  
29  
30 D. In developing the proposed code amendments, the County considered the goals of the  
31 GMA, specifically those goals related to reducing sprawl, encouraging affordable housing,  
32 and promoting economic development. The proposed code amendments are consistent  
33 with:  
34  
35 1. GMA Goal 2: "Reduce sprawl. Reduce the inappropriate conversion of undeveloped land  
36 into sprawling, low-density development."  
37  
38 2. GMA Goal 4: "Housing. Encourage the availability of affordable housing to all economic  
39 segments of the population of this state, promote a variety of residential densities and  
40 housing types, and encourage preservation of existing housing stock."  
41  
42 3. GMA Goal 5: "Economic development. Encourage economic development throughout  
43 the state that is consistent with adopted comprehensive plans, promote economic  
44 opportunity for all citizens of this state, especially for unemployed and for disadvantaged  
45 persons, promote the retention and expansion of existing businesses and recruitment of  
46 new businesses, recognize regional differences impacting economic development  
47 opportunities, and encourage growth in areas experiencing insufficient economic growth,  
48 all within the capacities of the state's natural resources, public services, and public  
49 facilities."  
50

- 1 E. The proposed code amendments will comply with and implement the following goals,  
2 objectives, and policies contained in the County’s GMACP – GPP by providing flexibility for  
3 additional infill development, facilitating more affordable housing, promoting economic  
4 development, allowing more efficient use of land, and utilizing established engineering  
5 practices to protect the health, safety, and general welfare of the public:  
6
- 7 1. Housing Goal 1: “Ensure that all county residents have the opportunity to obtain safe,  
8 healthy, and affordable housing.”  
9
  - 10 2. Housing Objective 1.B: “Ensure that a broad range of housing types and affordability  
11 levels is available in urban and rural areas.”  
12
  - 13 3. Housing Objective 1.C: “Make adequate provisions for the existing and projected  
14 housing needs of all economic segments of the population.”  
15
  - 16 4. Housing Goal 2: “Ensure the vitality and character of existing residential neighborhoods.”  
17
  - 18 5. Housing Objective 2.A: “Promote opportunities for all county residents to reside in safe  
19 and decent neighborhoods.”  
20
  - 21 6. Housing Goal 3: “Land use policies and regulations should contribute as little as possible  
22 to the cost of housing.”  
23
  - 24 7. Housing Objective 3.A: “Encourage land use practices, development standards, and  
25 building permit requirements that reduce housing production costs.”  
26
  - 27 8. Land Use Goal 2: “Establish development patterns that use urban land more efficiently.”  
28
  - 29 9. Land Use Objective 2.C: “Encourage intensification and revitalization of existing and  
30 planned commercial and industrial areas.”  
31
  - 32 10. Land Use Objective 2.E: “Provide for reasonable flexibility in land use regulation and  
33 planned mixing of uses, where appropriate, while maintaining adequate protection for  
34 existing neighborhoods.”  
35
  - 36 11. Economic Development Objective 2.A: “Develop and maintain a regulatory system that  
37 is fair, understandable, coordinated and timely.”  
38
  - 39 12. Economic Development Policy 2.A.2: “Snohomish County should stress predictability but  
40 maintain enough flexibility in the Comprehensive Plan and development codes to allow  
41 for timely response to unanticipated and desirable developments.”  
42
  - 43 13. Natural Environment Goal 1: “Continue existing and develop new county plans and  
44 programs which establish priorities to protect and enhance the natural environment  
45 through a coordinated policy framework to maintain and improve the quality of life for  
46 Snohomish County. The policy framework below provides a non-exclusive list of the core  
47 priorities and strategies that must be addressed in all plans and programs that affect the  
48 natural environment.”  
49
  - 50 14. Natural Environment Goal 8: “Protect public health and safety by minimizing the potential  
51 for physical injury and property damage.”

1  
2 F. The proposed code amendments are consistent with the record:  
3

- 4 1. This ordinance will amend SCC 30.63B.130 to eliminate the standard setbacks for cuts  
5 and fills within two feet of a site boundary line. This will resolve issues that have been  
6 encountered with existing regulations that inadvertently discourage or prevent property  
7 owners from maximizing development potential. The amendments to this section of code  
8 will provide flexibility for additional infill development, facilitate more affordable housing,  
9 promote economic development, allow more efficient use of land, and protect the health,  
10 safety, and general welfare of the public. Additionally, amendments to this section of  
11 code will include technical corrections and housekeeping changes to improve readability  
12 and regulatory implementation.  
13
- 14 2. This ordinance will amend SCC 30.63B.200 to specify that any grading within two feet of  
15 a site boundary line require engineered construction plans and may require a  
16 geotechnical report that demonstrate protection of adjoining properties. The amendment  
17 will provide a simplified review process for such grading. Additionally, amendments to  
18 this section of code will include corrections to land disturbance citations to the  
19 International Building Code (IBC) that have changed since the 2006 IBC and were  
20 inadvertently not amended in the last major revision of chapter 30.63B SCC  
21
- 22 3. This ordinance will amend SCC 30.63B.220, 30.63B.230, 30.63B.240, and 30.63B.250  
23 to correct land disturbance citations to the IBC that have changed since the 2006 IBC  
24 and were inadvertently not amended in the last major revision of chapter 30.63B SCC.  
25
- 26 4. This ordinance will add a new section SCC 30.63B.025 to allow vested land disturbing  
27 activity permit applications to opt-in to streamlined provisions contained in this ordinance  
28 that allow grading activities within two feet of property lines.  
29

30 G. The proposed code amendments are consistent with the record as set forth in the PDS  
31 Supplemental Staff Report dated October 5, 2018.  
32

33 H. Existing provisions that authorize grading activities within two feet of property lines present a  
34 very high burden to applicants since the regulations require permission be obtained from  
35 adjoining property owners. The County received comments from applicants that in many  
36 instances sufficient agreement with adjoining property owners was not reached or that  
37 negotiations with adjoining property owners often required expensive agreement proposals  
38 to obtain permission. The intent of the existing regulations is to make grading within two feet  
39 of property lines possible for applicants while protecting the interests of the adjoining  
40 property owners. The existing regulations are not operating as intended. The proposed  
41 regulations to streamline the process for allowing grading activities within two feet of  
42 property lines will create an equal or better outcome for all parties by achieving the original  
43 intent of allowing flexibility in development while protecting the integrity of adjacent land. To  
44 ensure that the development proposals under review by the County may take immediate  
45 benefit of the streamlined process for allowing grading activities within two feet of property  
46 lines, the County hereby intends to make Sections 4 through 5 retroactive.  
47

48 I. Procedural requirements:  
49

- 50 1. The proposal is a Type 3 legislative action under SCC 30.73.010 and 30.73.020.  
51

- 1           2. The public participation process used in the adoption of the proposed code amendments  
2           has complied with all applicable requirements of the GMA and SCC.
- 3
- 4           3. In accordance with RCW 30.70A.106(1), a notice of intent to adopt the proposed code  
5           amendments was transmitted to the Washington State Department of Commerce for  
6           distribution to state agencies on August 17, 2018.
- 7
- 8           4. State Environmental Policy Act (SEPA), chapter 43.21C RCW, requirements with  
9           respect to this non-project action have been satisfied through the completion of an  
10          environmental checklist and the issuance of a determination of non-significance on  
11          September 12, 2018.
- 12
- 13          5. As required by RCW 30.70A.370, the Washington State Attorney General last issued an  
14          advisory memorandum in December 2015 entitled "Advisory Memorandum: Avoiding  
15          Unconstitutional Takings of Private Property" to help local governments avoid  
16          unconstitutional takings of private property. The process outlined in the State Attorney  
17          General's 2015 advisory memorandum was used by the County in objectively evaluating  
18          the regulatory changes in this ordinance.
- 19

20           **Section 2.** The County Council makes the following conclusions:

- 21
- 22          A. The proposal is consistent with Washington State law and Snohomish County Code.
- 23
- 24          B. The proposal is consistent with the GMACP and with the goals, objectives, and policies of  
25          the GPP.
- 26
- 27          C. The regulations proposed by this ordinance do not result in an unconstitutional taking of  
28          private property for a public purpose.
- 29
- 30          D. The County complied with the state and local public participation requirements under the  
31          GMA and chapter 30.73 SCC.
- 32

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

36

37           **Section 4.** Snohomish County Code Section 30.63B.130, last amended by Ordinance  
38          15-103 on January 11, 2016, is amended to read:

39

40          **30.63B.130 Standard setbacks and maximum slopes for cuts and fills.**

41          (1) Before performing any land disturbing activity subject to a land disturbing activity permit,  
42          the applicant shall mark on the site and show on the land disturbing activity site plan the limits of  
43          all proposed land disturbing activities, trees and native vegetation to be retained, and drainage  
44          courses, so that setbacks can be determined. Cut and fill slopes shall be set back from site  
45          boundaries in accordance with this section. Setback dimensions shall be horizontal distances  
46          measured perpendicular to the site boundary.

47          (2) The top of cut slopes shall not be nearer to a site boundary line than 20 percent of the  
48          vertical height of the cut slope (~~(, and in no event nearer than two feet from the boundary line)~~).  
49          The setback shall be increased when necessary to stabilize any required subsurface drainage  
50          or surcharge, as determined by the geotechnical engineering report, soils engineering report, or  
51          engineering geology report pursuant to SCC 30.63B.220 through 30.63B.240.

1 (3) The toe of fill slopes shall not be made nearer to the site boundary line than 50 percent of  
2 the vertical height of the fill slope(~~, but in no event nearer than two feet from the boundary~~  
3 ~~line~~)).

4 ~~((4) Cuts and fills shall be set back a minimum of two feet from the property line unless the~~  
5 ~~both of the following are provided:~~

6 ~~(a) A construction easement, written agreement or letter of authorization from all the affected~~  
7 ~~property owners allowing a setback of less than two feet; and~~

8 ~~(b)) (4) For any proposed cut, fill, rockery, or retaining wall within six inches of a site~~  
9 ~~boundary line, ((A) a survey by a land surveyor licensed in Washington State shall be~~  
10 ~~completed that ensures compliance with construction and land disturbing activity site plans prior~~  
11 ~~to construction in the affected area. ((of cut, fill, rockery, or a retaining wall proposed within six~~  
12 ~~inches of a property line.))~~

13 (5) The grades and cuts and fills established on the land disturbing activity plan shall be  
14 prepared based on topographic data obtained to comply with SCC 30.63A.400 and volume I of  
15 the Drainage Manual.

16  
17 **Section 5.** Snohomish County Code Section 30.63B.200, last amended by Amended  
18 Ordinance 17-070 on November 1, 2017, is amended to read:

19  
20 **30.63B.200 Land disturbing activities and projects requiring engineered construction**  
21 **plans.**

22 (1) The following land disturbing activities require the submittal of construction plans prepared  
23 by and stamped by an engineer licensed in the State of Washington:

24 (a) All grading activity within two feet of a site boundary line;

25 ~~((a)) (b) All land disturbing activity in excess of 5,000 cubic yards;~~

26 ~~((b)) (c) All land disturbing activity located within public or private roads and their rights-of-~~  
27 ~~way, tracts, or easements;~~

28 ~~((c)) (d) All land disturbing activity that is subject to environmental review under chapter~~  
29 ~~30.61 SCC or is related to development activity that is subject to environmental review under~~  
30 ~~chapter 30.61 SCC;~~

31 ~~((d)) (e) All land disturbing activity projects that require civil engineering, as determined by~~  
32 ~~the department pursuant to subtitle 30.5 SCC and IBC sections ((1802.4,)) 1803.3, ((1802-6))~~  
33 ~~1803.6, and ((1803-4(2);)) 1804.5(2);~~

34 ~~((e)) (f) All land disturbing activity that has drainage impacts that are required to be mitigated~~  
35 ~~by construction of detention, water quality treatment (including low impact development best~~  
36 ~~management practices used to meet requirements of Minimum Requirement 6 per the Drainage~~  
37 ~~Manual), and/or bioretention systems; and~~

38 ~~((f)) (g) All land disturbing activity that may cause impacts to wetlands or streams as~~  
39 ~~described in chapter 30.63A SCC or volume I of the Drainage Manual.~~

40 (2) Engineered construction plans for the land disturbing activities identified in subsection (1)  
41 of this section shall also comply with chapter 30.52A SCC and the EDDS.

42  
43 **Section 6.** Snohomish County Code Section 30.63B.220, last amended by Ordinance  
44 15-103 on January 11, 2016, is amended to read:

45  
46 **30.63B.220 Geotechnical engineering report.**

47 If a geotechnical engineering report is required by SCC 30.63B.210 or chapter 18 of the IBC,  
48 the applicant's geotechnical engineer, civil engineer, or engineering geologist shall inspect and  
49 determine the suitability of the prepared ground to receive fills and the stability of cut slopes with  
50 respect to soil, hydrologic, and geologic conditions. This information shall be incorporated in the  
51 engineering report. The geotechnical engineering report shall also evaluate the need for

1 subdrains or other groundwater drainage devices. To verify safety, the department may require  
2 testing for required compaction, soil bearing capacity, stability of all finished slopes, and the  
3 adequacy of structural fills as a condition of permit approval. The required content of the  
4 geotechnical engineering report is contained in section ((1802.6)) 1803.6 of the IBC and volume  
5 I, chapter 3 of the Drainage Manual.  
6

7 **Section 7.** Snohomish County Code Section 30.63B.230, last amended by Ordinance  
8 15-103 on January 11, 2016, is amended to read:  
9

10 **30.63B.230 Soils engineering report.**

11 When required by chapters 16, 18, and 33 of the IBC for expansive soils, questionable soils  
12 and the potential for soils near high groundwater, a soils engineering report shall be required.  
13 The required content of the soils engineering report is contained in sections 1613, ((1802.6))  
14 1803.6, and 3304 of the IBC and volume I, chapter 3 of the Drainage Manual. The report also  
15 shall include the following:

- 16 (1) Data regarding the nature, distribution, site classification, and strength of existing soils;
- 17 (2) Conclusions and recommendations for land disturbing activity procedures identified in the  
18 reports required by SCC 30.63B.210 or chapters 16, 18, and 33 of the IBC;
- 19 (3) Design criteria for corrective measures, including structural fills, when necessary due to  
20 subsurface soils or groundwater conditions;
- 21 (4) An analysis of the adequacy of affected soils for the intended use of the site as affected by  
22 soils engineering factors;
- 23 (5) An analysis that describes the hydraulic conductivity, cation exchange capacity, depth to  
24 seasonal high water table, and groundwater flow direction and gradient within the soils; and
- 25 (6) A determination if it is feasible to infiltrate stormwater into the underlying site soils as part  
26 of the LID BMP selection or design for the site, without adversely affecting adjoining or off-site  
27 properties.

28  
29 **Section 8.** Snohomish County Code Section 30.63B.240, added by Amended Ordinance  
30 10-023 on June 9, 2010, is amended to read:  
31

32 **30.63B.240 Engineering geology report.**

33 When required by chapters 16 and 18 of the IBC to analyze soil characteristics due to the  
34 location of on-site faults, an engineering geology report shall be required. The report shall  
35 include an adequate description of the geology of the site, conclusions, and recommendations  
36 regarding the effect of geologic conditions on the proposed development, and an analysis of the  
37 adequacy for the intended use of sites to be developed by the proposed land disturbing activity,  
38 as affected by geologic factors. The required content of the engineering geology report is  
39 contained in sections 1613 or ((1802)) 1803 of the IBC as applicable.  
40

41 **Section 9.** Snohomish County Code Section 30.63B.250, added by Amended Ordinance  
42 10-023 on June 9, 2010, is amended to read:  
43

44 **30.63B.250 Liquefaction report.**

45 Based on the soil strength identified in the soils engineering report, the department may  
46 require a geotechnical or geologic investigation and report in accordance with section ((1802.4))  
47 1803 of the IBC, which shall address the potential for liquefaction.  
48

1  
2 **Section 10.** A new section is added to chapter 30.63B of the Snohomish County Code  
3 to read:  
4

5 **30.63B.025 Allowing a complete land disturbing activity permit application to opt-in to**  
6 **amended provisions adopted by Amended Ordinance No. 18-106.**

7 (1) An applicant with a land disturbing activity permit application within unincorporated  
8 Snohomish County, determined to be complete between January 11, 2016, and the effective  
9 date of Amended Ordinance No. 18-106, may voluntarily submit a signed waiver to the  
10 department requesting the permit application be reviewed under amended provisions for  
11 grading activities within two feet of a property line (SCC 30.63B.110 and 30.63B.200) adopted  
12 by sections 4 and 5 of Amended Ordinance No. 18-106. All other development regulations in  
13 effect as of the date of the original permit application was determined to be complete shall  
14 apply.

15 (2) Applicants submitting a signed waiver shall have 12 months from the effective date of  
16 Amended Ordinance No. 18-106 to submit revised construction plans.

17 (3) Revised construction plans submitted under this section shall require:

18 (a) Public notice under chapter 30.70 SCC unless the original land disturbing activity permit  
19 application was exempt from public notice requirements; and

20 (b) Payment of any applicable fees.

21 (4) The department shall include in its written decision for a Type 1 permit or staff  
22 recommendation for Type 2 permit a statement explaining that revised provisions for grading  
23 activities within two feet of a property line (refer to SCC 30.63B.110 and 30.63B.200)  
24 established under Amended Ordinance No. 18-106 apply.

25 (5) This section is repealed effective 12 months from the effective date of Amended  
26 Ordinance No. 18-106.  
27

28 **Section 11.** Severability and savings. If any section, sentence, clause, or phrase of this  
29 ordinance shall be held to be invalid or unconstitutional by the Growth Management Hearings  
30 Board, or a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect  
31 the validity or constitutionality of any other section, sentence, clause, or phrase of this  
32 ordinance. Provided, however, that if any section, sentence, clause, or phrase of this ordinance  
33 is held to be invalid by the Board or court of competent jurisdiction, then the section, sentence,  
34 clause, or phrase in effect prior to the effective date of this ordinance shall be in full force and  
35 effect for that individual section, sentence, clause, or phrase as if this ordinance had never been  
36 adopted.  
37

38 PASSED this 16<sup>th</sup> day of January, 2019.  
39

40 SNOHOMISH COUNTY COUNCIL  
41 Snohomish County, Washington

42  
43   
44 Council Chair

45  
46 ATTEST:

47   
48  
49 Clerk of the Council  
50  
51



