ADOPTED: 10/06/21 EFFECTIVE: 10/22/21

SNOHOMISH COUNTY COUNCIL SNOHOMISH COUNTY, WASHINGTON

ORDINANCE NO. 21-056

RELATING TO THE GROWTH MANAGEMENT ACT, AMENDING THE SNOHOMISH COUNTY GROWTH MANAGEMENT ACT COMPREHENSIVE PLAN (GMACP) CAPITAL FACILITIES PLAN TO UPDATE SEWER INVENTORY INFORMATION RELATED TO OLYMPIC VIEW WATER AND SEWER DISTRICT (CFP1 – OLYMPIC VIEW WATER AND SEWER DISTRICT)

 WHEREAS, the GMA requires Snohomish County ("County") to prepare a capital facilities plan (CFP) (RCW 36.70A.070) as an element of the County's Growth Management Act Comprehensive Plan (GMACP) that addresses future demand for water and wastewater services and plans for provision of services to meet this future demand; and

WHEREAS, RCW 36.70A.070(4) requires the CFP to contain an inventory of existing capital facilities owned by public entities showing the location and capacities of the capital facilities together with the proposed locations and capacities of expanded or new capital facilities; and

WHEREAS, the County is not a provider of water or wastewater services and therefore relies on the capital facilities planning of external service providers to address planning for the provision of water and wastewater services necessary to support development as contemplated under the land use element of the GMACP in the unincorporated areas as provided in WAC 365-196-415(4) and addressed in Section II of the CFP; and

WHEREAS, for purposes of the inventory of existing and proposed capital facilities of such external service providers the CFP contains Capital Facilities Plan Maps in Appendix B which purport to identify the service area boundaries of those public facilities provided by non-county agencies for purposes of identifying which external service provider is being relied upon by the County to provide the designated service within a particular area for purposes of the CFP and incorporating by reference the capital facilities plan of such entity; and

WHEREAS, the geographic region situated in the southwest corner of the County commonly referred to as "Point Wells" was previously designated upon the Capital Facilities Plan Maps, Figure 7, as being within the service area boundary of the Ronald Wastewater District ("Ronald"), a special purpose district subject to Title 57 RCW, for purposes of the provision of wastewater services based upon a previously-approved amendment to the Comprehensive Sewer Plan for Ronald under chapter 57.16 RCW which purported to plan for the provision of sewer service to the Point Wells area; and

WHEREAS, the Point Wells area is also within the corporate boundaries of the Olympic View Water and Sewer District ("Olympic View"), a special purpose district subject to Title 57 RCW, which also claimed the right to provide wastewater services to the Point Wells area and submitted its own proposed Amendment No. 2 to the Olympic View Comprehensive Sewer Plan under chapter 57.16 RCW for the purpose of planning for the provision of wastewater services to the area; and

WHEREAS, on June 1, 2016, the Snohomish County Council ("County Council") approved Motion No. 16-135 approving Amendment No. 2 to Olympic View's Comprehensive Sewer Plan; and

WHEREAS, Ronald appealed the County's approval of Olympic View's Amendment No. 2 to the Growth Management Hearings Board ("Board") under Case No. 16-3-0004c, arguing in part that approval of Olympic View's proposed amendment to serve the Point Wells area under chapter 57.16 RCW created an internal inconsistency with the County's CFP which identified Ronald as the presumed service provider for the Point Wells area for purposes of capital facilities planning under the CFP; and

WHEREAS, the Board issued a Final Decision and Order dated January 25, 2017, concluding that the County's approval of Olympic View's proposed amendment to plan for the provision of wastewater services to the Point Wells area constituted a *de facto* amendment of the GMACP and created an internal inconsistency with the CFP which the Board concluded incorporated by reference Ronald's Comprehensive Sewer Plan and relied upon Ronald as the service provider for the Point Wells area to meet GMA planning requirements; and

WHEREAS, in compliance with the Board's Order the County Council approved Motion No. 18-179 repealing Motion No. 16-135; and

WHEREAS, subsequent litigation between Ronald and Olympic View culminated in a ruling by the Washington State Supreme Court in the matter of *Ronald Wastewater District v. Olympic View Water and Sewer District*, 196 Wn.2d 353 (2020), holding as

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follows: "Ronald's geographic boundary does not include Point Wells and does not extend into Snohomish County. Point Wells remains within the geographic boundaries of Olympic and Snohomish County;" and

WHEREAS, the foregoing decision of the Court invalidates the County's ability to rely upon Ronald as the designated wastewater service provider to the Point Wells area in the CFP and renders void that portion of Ronald's Comprehensive Sewer Plan purporting to provide for future wastewater service to the Point Wells area for purposes of meeting GMA planning requirements; and

WHEREAS, the foregoing Court decision dictates that Olympic View be recognized as the authorized wastewater service provider for the Point Wells area under the CFP; and

WHEREAS, Olympic View resubmitted its proposed Amendment No. 2 to the Olympic View Comprehensive Sewer Plan to plan for the provision of wastewater services to the Point Wells area, which amendment has been approved by Motion No. 21-289; and

WHEREAS, water and sewer districts are required under Title 57 RCW to prepare comprehensive CFPs addressing an inventory of existing facilities, forecast of demand for future services and facilities, the locations where new facilities will be needed as determined by the County's land use plan, and a capital funding plan identifying costs, timelines and financing for development of new facilities to meet this future demand; and

WHEREAS, the required contents for these external agency "external functional plans" under Title 57 RCW are consistent with the requirements in RCW 36.70A.030 and WAC 365-196-415 related to the contents of the County's CFP; and

WHEREAS, RCW 57.16.010 authorizes the County to review and approve the external functional plans prepared by water and wastewater agencies and verify that these external functional plans are consistent with the County's GMACP, including the CFP; and

 WHEREAS, after determining that the external functional plans are consistent with the growth forecasts and land use plans in the County's GMACP, and the external functional plans document that capacity is available to meet future needs, the County may rely on these external plans to conclude that adequate services are available to support the County's GMACP; and

WHEREAS, the GMA authorizes the County to update the GMACP once per year (RCW 36.70A.130); and

WHEREAS, Title 57 RCW requires that water and wastewater agencies update their external functional plans before ordering any improvements or submitting to vote any proposition for incurring any indebtedness, and allows the County 90 days from the date of submittal to the County Council for review and action; and

WHEREAS, the timelines for adoption of updates or amendments to comprehensive plans under chapter 36.70A RCW and external functional plans under chapter 57.16 RCW may not necessarily coincide; and

WHEREAS, RCW 36.70A.130 and .470 direct counties planning under the Growth Management Act (GMA) to adopt procedures for interested persons to propose amendments and revisions to the GMACP or development regulations; and

WHEREAS, the County Council adopted chapter 30.74 of the Snohomish County Code (SCC), "Growth Management Act Public Participation Program Docketing," to comply with the requirements of RCW 36.70A.130 and .470; and

WHEREAS, on September 9, 2019, Olympic View submitted a docket application to the County which consisted of a limited update to Olympic View's sewer comprehensive plan including an amendment to Olympic View's service area boundary. This application was assigned as CFP1; and

WHEREAS, the Department of Planning and Development Services (PDS) compiled the list of non-county initiated amendments and revisions received by the October 31, 2019, deadline as minor docket amendments, including the Olympic View Water and Sewer District (CFP1) proposal, and evaluated the proposals for consistency with the initial docket review criteria in SCC 30.74.030(1) and 30.74.040; and

WHEREAS, on July 22, 2020, the County Council approved, by Amended Motion No. 20-116, a list of non-county-initiated comprehensive plan amendments, including CFP1 – Olympic View Water and Sewer District, that will be included on Final Docket XX and authorized the County Executive, through PDS, to further process the proposed minor docket amendments consistent with chapters 30.73 and 30.74 SCC, including environmental review under the State Environmental Policy Act (SEPA), for final consideration in 2021; and

WHEREAS, County approval of Olympic View's sewer plan amendment under chapter 57.16 RCW requires corresponding amendments to the County's GMACP CFP

1 2	to accurately reflect the sewer service inventory information required under the GMA; and
3 4 5 6 7	WHEREAS, the County Council will take action on CFP1 under authority of chapter 57.16 RCW to address Olympic View's sewer plan amendment via Motion No. 21-289, and address the corresponding amendments to the county's CFP under authority of the GMA via this ordinance; and
8 9 10 11	WHEREAS, the County Council has determined that consideration of the proposed amendments and revisions to the CFP would promote a County purpose as established under RCW 36.70A.130; and
12 13 14 15	WHEREAS, on May 25, 2021, PDS briefed the Snohomish County Planning Commission ("planning commission") on the CFP1 – Olympic View Water and Sewer District proposal; and
16 17 18 19 20 21	WHEREAS, on June 22, 2021, the planning commission held a public hearing and received public testimony on the CFP1 – Olympic View Water and Sewer District proposal and recommended adoption, as shown in its recommendation letter of July 9, 2021; and
22 23 24	WHEREAS, on October 6, 2021, the County Council held a public hearing after proper notice, and considered public comment and the entire record related to the proposed amendments contained in this ordinance; and
25 26 27 28	WHEREAS, following the public hearing, the County Council deliberated on the proposed amendments contained in this ordinance;
29 30	NOW, THEREFORE, BE IT ORDAINED:
31 32	Section 1. The County Council adopts the following findings in support of this ordinance
33	A. The foregoing recitals are adopted as findings as if set forth fully herein.
34 35 36 37	B. This proposal is to amend the GMACP CFP to revise the sewer service inventory in CFP Section 2.3.A and CFP, Appendix B, Map 7.
38	C. Procedural requirements.
39 40 41	1. This ordinance is consistent with state law and chapter 30.73 SCC.

- 2. The proposal is a Type 3 legislative action pursuant to SCC 30.73.010.
- 3. The environmental impacts of the proposal are within the range of impacts analyzed by the draft environmental impact statement (DEIS) and final environmental impact statement (FEIS) during the update to the GMACP in 2015. No new impacts have been identified for this proposal, and State Environmental Policy Act (SEPA) requirements for this non-project action have been met through issuance of Addendum No. 22 to the FEIS for the 2015 Update to the GMACP. The FEIS was issued on June 3, 2015, and Addendum No. 22 was issued on June 7, 2021.
- 4. Pursuant to RCW 36.70A.106(1), a notice of intent to adopt this ordinance was transmitted to the Washington State Department of Commerce for distribution to state agencies on May 28, 2021.
- 5. The public participation process used in the adoption of this ordinance has complied with all applicable requirements of the GMA and the SCC.
- 6. The Washington State Attorney General last issued an advisory memorandum, as required by RCW 36.70A.370, in September of 2018 entitled "Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property" to help local governments avoid the unconstitutional taking of private property. The process outlined in the State Attorney General's 2018 advisory memorandum was used by Snohomish County in objectively evaluating the regulatory changes proposed by this ordinance.
- D. This ordinance is consistent with the record.
 - This ordinance will amend the GMACP CFP to update the sewer service inventory.
 - 2. The GMA requires that counties, when relying on external public agencies to provide services and facilities necessary to support development, review the external functional plans of such agencies for the limited purpose of making a determination that adequate public facilities and services are available to support the County's growth forecasts and land use element.
 - 3. These amendments to the GMACP are proposed due to a recent decision by the Growth Management Hearings Board indicating that amendments to external functional plans could, under certain circumstances, be considered *de facto* amendments to the County's GMACP and may result in actions

inconsistent with GMA requirements. Such circumstances exist when an amendment to an external functional plan previously adopted or relied upon by the County for the purpose of compliance with GMA requirements creates a conflict with, or an internal inconsistency within the County's GMACP. Examples are when an external functional plan as amended becomes inconsistent with the County's GMA-adopted population targets, or is amended in a manner which creates an internal inconsistency with another adopted external functional plan. In these circumstances, the County may not approve an amendment to an external functional plan until GMA public participation requirements are satisfied and the external functional plan amendment is considered cumulatively with other GMACP amendments pursuant to RCW 36.70A.130.

- 4. External functional plans are intended to implement GMACPs, not amend them. Amendment to an external functional plan relied on by the County for the purpose of compliance with GMA requirements should be approved only when consistent with the County's GMACP, thereby implementing the GMACP.
- 5. These amendments seek to coordinate actions under chapters 57.16 and 36.70A RCW to prevent an internal inconsistency within the County's GMACP CFP and prevent a *de facto* amendment in violation of the GMA process and timelines for amending the GMACP CFP.
- 6. No inconsistencies between the proposed amendments and the GMACP CFP or development regulations have been identified.
- E. This proposal complies with the GMA and was analyzed and found to be consistent with the following GMA statutes and regulations:
 - 1. GMA Planning Goal 12 (RCW 36.70A.020(12)): "Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards."
 - 2. RCW 36.70A.070(3), which requires that a comprehensive plan contain a capital facilities element that includes:
 - "(a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities; (b) a forecast of the future

needs for such capital facilities; (c) the proposed locations and capacities of expanded or new capital facilities; (d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and (e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent...."

3. RCW 36.70A.070(4), which requires that a comprehensive plan contain: "A utilities element consisting of the general location, proposed location, and capacity of all existing and proposed utilities, including, but not limited to, electrical lines, telecommunication lines, and natural gas lines."

4. WAC 365-196-415 Capital Facilities Element, subsection (4):

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"Relationship to plans of other service providers or plans adopted by reference. A county or city should not meet their responsibility to prepare a capital facilities element by relying only on assurances of availability from other service providers. When system plans or master plans from other service providers are adopted by reference, counties and cities should do the following:

(a) Summarize this information within the capital facilities element;

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(b) Synthesize the information from the various providers to show that the actions, taken together, provide adequate public facilities; and

(c) Conclude that the capital facilities element shows how the area will be provided with adequate public facilities."

- F. This proposal is consistent with the Puget Sound Regional Council Vision 2050 Multicounty Planning Policies (MPPs), in particular, the following goal, policies, and action:
 - 1. Public Services (PS) Overarching Goal: "The region will support development with adequate public facilities and services in a coordinated, efficient, and cost-effective manner that supports local and regional growth planning objectives."

2. MPP-PS-7: "Obtain urban services from cities or appropriate regional service providers. Encourage cities, counties, and special purpose districts, including sewer, water, and fire districts, to coordinate planning efforts, agree on optimal ways to provide efficient service, and support consolidations that would improve service to the public."

Objective UT 1.A: "Pursue improved coordinated facility planning processes among the various utility providers serving Snohomish County."

- 3. Objective UT 1.B: "Achieve and maintain consistency between utility system expansion plans and planned land use patterns."
- 4. Policy UT 1.B.2: "The county shall maintain consistency between district utility plans and the county's comprehensive plan; it shall also endeavor to maintain consistency between city utility plans that serve unincorporated areas and the county's comprehensive plan."
- 5. Goal UT 2: "Work with provider agencies of Snohomish County to help ensure the availability of a reliable, high quality water supply for all households and businesses within the county in a manner that is consistent with the comprehensive plan and protection of the natural environment."
- 6. Objective UT 2.B: "Assist provider agencies in modifying their system plans as required to support the land use element of the comprehensive plan."
- 7. Policy UT 2.B.1: "The county shall notify provider agencies of potential inconsistencies between their system plans and the comprehensive plan, and shall work with them to find acceptable solutions."
- 8. Policy UT 3.A.1: "The county shall notify provider agencies of potential inconsistencies between their system plans and the county's comprehensive plan, and shall work with them to find acceptable solutions."
- I. The proposed amendments are consistent with the Snohomish County GMACP CFP, notably the provisions regarding capital facilities necessary to support development in Section 1.1 and the discussion of public wastewater service in Section 2.3. The proposed amendments directly reflect the efficient provision of services necessary to support development as envisioned in the CFP.
- J. The proposed amendments to the CFP are consistent with the record.

1	 This ordinance will amend CFP Appendix B, Map 7 to update the inventory
2	of sewer providers in the unincorporated portion of the southwest urban
3	growth area at Point Wells.
4	K. This ordinance is consistent with the record as set forth in the PDS staff
5	memorandum dated May 7, 2021.
6	Section 2. The County Council makes the following conclusions:

A. The amendments are consistent with and comply with the procedural and substantive requirements of the GMA.

B. The amendments are consistent with and comply with the MPP, CPP, and goals, objectives and policies of the GMACP.

C. All SEPA requirements with respect to this non-project action have been satisfied.

D. This proposal does not result in an unconstitutional taking of private property for a public purpose and does not violate substantive due process guarantees.

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

Section 4. Section II, subsection 2.3.A, Table 1 of the CFP, an element of the GMACP, last amended by Ordinance No. 18-058 on November 30, 2018, is amended as indicated in Exhibit A, which is attached hereto and incorporated by reference into this ordinance.

Section 5. Appendix B, Map 7 of the CFP, an element of the GMACP, last amended by Ordinance No. 20-080 on January 9, 2021, is replaced as indicated in Exhibit B, which is attached hereto and incorporated by reference into this ordinance.

Section 6. The County Council directs the Code Reviser to update SCC 30.10.060 pursuant to SCC 1.02.020(3).

Section 7. Severability and Savings. If any section, sentence, clause or phrase of this ordinance shall be held to be invalid by the Growth Management Hearings Board, or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance. Provided, however, that if any section, sentence, clause or

1 2	•	be invalid by the Board or court of competent						
3	jurisdiction, then the section, sentence, clause or phrase in effect prior to the effective							
	date of this ordinance shall be in full force and effect for that individual section, sentence, clause or phrase as if this ordinance had never been adopted.							
4	clause of prirase as if this ordinance ha	u never been adopted.						
5 6	PASSED this 6 th day of October, 2021.							
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9		SNOHOMISH COUNTY COUNCIL						
10		Snohomish County, Washington						
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12 13		Stephanie Wright Stephanie Wright						
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17	ATTEST:							
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19 20	Dr.							
21	Debbie Eco, CMC							
22	Clerk of the Council							
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36	Melissa Geraghty							
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38	Approved as to form only:							
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40	/s/ Brian Dorsey							

Deputy Prosecuting Attorney

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■ Section 2.3 - Public Wastewater Systems

2.3.A Existing Inventories

Wastewater collection and treatment within Snohomish County is a de-centralized public service provided by municipal agencies at a local scale. This is typical of most counties in Washington State. King County is a notable exception.

There are twenty-three agencies within Snohomish County that provide wastewater collection (sanitary sewer) facilities and service. Sixteen of those are cities, one is the Tulalip Tribes, and the remaining six are special service districts. Many of these agencies provide service to customers in unincorporated urban growth areas, either directly as the sewer system operator or indirectly through contracts for treatment. Most of the remaining agencies are cities that do not currently provide service to unincorporated customers but who must plan their systems to serve future development within their city's UGA. These agencies are all important facility providers for future growth in the UGAs. These agencies are listed in Table 1, which also provides information about the treatment plants.

Fourteen of the 23 provider agencies provide wastewater treatment through the operation of their own plant. The other nine agencies contract for treatment services with nearby or "downstream" treatment plant operators. Another important provider of treatment for Snohomish County is the King County Wastewater Treatment Division. Its Brightwater plant which opened in 2012 receives wastewater flows from south Snohomish County, primarily from customers of the Alderwood and Cross Valley Water Districts and some from the city of Bothell. Snohomish County first prepared a technical support document in 1993-94 that accompanies and supports the GMA Comprehensive Plan entitled *The* Countywide Utility Inventory Report for Snohomish County. It describes the major public utility systems in the county, including the wastewater systems. That report draws upon and summarizes the information available from the comprehensive sewer system plans and from surveys and discussions with staff of the agencies. That report has been substantially updated to reflect the many plans that have been prepared and adopted by the provider agencies over the past seven years. Copies of that inventory report can be obtained from Snohomish County Planning and Development Services. information about projected future needs for a particular system can be obtained from the comprehensive system plan for each provider agency, a copy of which is retained in the Planning Library, or directly from the provider agency.

TABLE 1
WASTEWATER SYSTEMS AND TREATMENT PLANTS
SERVING UNINCORPORATED SNOHOMISH COUNTY

Provider Agency	Most Recent Sanitary Sewer	Treatment Plant's Rated	Other Cities/Systems	Treatment Provided by	
	Comprehensive Plan		other officeroystems		
		Capacity (MGD) ¹	Served (in whole or part) by WWTP	Own Plant	Other Plant (System)
SOUTHWEST COUNTY					
Alderwood W.W.D.	2017	3.0		Χ	King Co.
City of Bothell	2012 (CFP)	N/A	Served by King Co.		
City of Edmonds	2010	11.8	Woodway, Olympic View W.D., Mountlake Terrace	X	Lynnwood
City of Everett	2013	31.3	Alderwood W.W.D., Mukilteo W.W.D., Silver Lake W.W.D.	Х	
City of Lynnwood	2012	7.4		X	Edmonds
Mukilteo W.D.	2012	N/A	N/A		Everett
Olympic View W.D.	2007	N/A	N/A		Edmonds
((Ronald W.D.	2010	N/A			King Co.))
Silver Lake W.D.	2011	N/A			Everett, King Co.
King County	2003	Brightwater	Alderwood W.W.D., Cross Valley W.D., Lynnwood, Bothell, Mountlake Terrace, Brier	Х	
NORTH COUNTY					
Arlington D.P.W.	2008	4.67	Marysville	Χ	Marysville
Granite Falls D.P.W.	2013	0.6		X	
Marysville D.P.W.	2011	12.7	Tulalip (East), city of Arlington	Χ	
Stanwood D.P.W.	2010	0.7		Χ	
Tulalip Tribes	2004	0.3		Χ	Marysville
EAST COUNTY					
Cross Valley W.D.	2010	N/A	N/A		King Co.
Lake Stevens S. D.	2016	2.4	Lake Stevens	X	
Lake Stevens D.P.W.		N/A	N/A		Lake Stevens S.D.
Monroe D.P.W.	1999	1.7		Χ	
Snohomish D.P.W.	2011 (update)	2.8		Χ	
Sultan D.P.W.	2010	0.72		Х	

FOOTNOTE 1: Generally, the average day of the maximum month, per the NPDES permit. MGD=million gallons/day.

Exhibit B
Ordinance 21-056
Capital Facilities Plan
Appendix B, Figure 7

