

1 Adopted: 1/11/2023
2 Effective: 1/22/2023

3
4 SNOHOMISH COUNTY COUNCIL
5 Snohomish County, Washington

6
7 ORDINANCE NO. 22-065

8
9 RELATING TO GROWTH MANAGEMENT; AMENDING SCC 30.65.220 PERTAINING TO PERMITTED USES IN
10 FLOODWAYS

11
12 WHEREAS, counties and cities that are required to plan under the Growth Management Act
13 (GMA), chapter 36.70A RCW, must ensure their comprehensive plans and development regulations plan
14 for and accommodate affordable housing, while protecting both the environment and property rights;
15 and

16
17 WHEREAS, the Snohomish County (“County”) GMA Comprehensive Plan (GMACP) – General
18 Policy Plan (GPP) has an objective to balance the protection of the natural environment with economic
19 growth, housing needs, and the protection of property rights; and

20
21 WHEREAS, the Snohomish County Council (“County Council”) adopted Ordinance No. 20-076 on
22 November 4, 2020, to permanently adopt the Flood Insurance Study (FIS) for Snohomish County
23 required by the Department of Homeland Security’s Federal Emergency Management Agency for
24 compliance with the National Flood Insurance Program (NFIP) as well as to add clarity to the County’s
25 flood regulations; and

26
27 WHEREAS, Ordinance No. 20-076 also adopted the federal Flood Insurance Rate Maps and
28 updated County special flood hazard regulations under chapters 30.43C and 30.65 and title 30.9 of the
29 Snohomish County Code (SCC); and

30
31 WHEREAS, Ordinance No. 20-076 amended SCC 30.65.220(8) addressing the repair,
32 replacement, and improvement of substantially damaged residences in the floodway for consistency
33 with state and federal regulations; and

34
35 WHEREAS, changes to SCC 30.65.220(8) were a result of the NFIP Flood Damage Prevention
36 Ordinance Washington Model, Revised December 9, 2019, (“Model Ordinance”) Section 5.4-2 titled:
37 “Residential Construction in Floodways” and RCW 86.16.041 which addresses rules for the repair or
38 replacement of existing residential structures; and

39
40 WHEREAS, the intent of Model Ordinance Section 5.4-2 is to prohibit construction or
41 reconstruction of residential structures in floodways, except for repairs, reconstruction, or
42 improvements to a residential structure that are not substantial improvements and that do not increase
43 the ground floor area; and

44
45 WHEREAS, Model Ordinance Section 5.4-2 was implemented through the addition of SCC
46 30.65.220(8) recognizing that repairs, replacement, or relocation of substantially damaged residences in
47 the floodway, other than farmhouses can be permitted in floodways when certain criteria are met; and

1 WHEREAS, Ordinance No. 20-076 unintentionally deleted SCC 30.65.220(9) which stated
2 “Repair, reconstruction, or improvement of residential structures, where repair, reconstruction, or
3 improvement of a structure does not increase the ground floor area, and is not a substantial
4 improvement” when permitted by the applicable zone under chapter 30.22 SCC; and
5

6 WHEREAS, the unintentional deletion of SCC 30.65.220(9) by Ordinance No. 20-076 resulted in
7 the prohibition of repairs, reconstruction, or improvements to residential structures in the floodway
8 that have not been substantially damaged; and
9

10 WHEREAS, due to the deletion of SCC 30.65.220(9) and the lack of other code provisions
11 allowing for repairs, reconstruction, or improvements to residential structures in the floodway,
12 homeowners cannot currently perform repairs, reconstruction, or improvements even when such work
13 does not increase ground floor area and is not a substantial improvement, despite such work being
14 contemplated and allowed by the Model Ordinance Section 5.4-2; and
15

16 WHEREAS, as of May 31, 2022, there are over 6,000 homes within the floodway in
17 unincorporated Snohomish County subject to these codes and potentially impacted by the unintentional
18 prohibition of repairs, reconstruction, and improvement of these homes due to amendments found in
19 Ordinance No. 20-076; and
20

21 WHEREAS, this ordinance will re-adopt the language of SCC 30.65.220(9) exactly as it existed
22 prior to the adoption of Ordinance No. 20-076 to again allow the repair, reconstruction, and
23 improvement of residences located in the floodway, making the code consistent with Model Ordinance
24 Section 5.4-2; and
25

26 WHEREAS, on June 28, 2022, the Snohomish County Planning Commission (the “Planning
27 Commission”) was briefed by Snohomish County Planning and Development Services (PDS) staff about
28 the proposed code amendments contained in this ordinance; and
29

30 WHEREAS, the Planning Commission held a public hearing on July 26, 2022, to receive public
31 testimony concerning the proposed code amendments contained in this ordinance; and
32

33 WHEREAS, at the conclusion of the Planning Commission’s public hearing, the Planning
34 Commission deliberated on the proposed code amendments and voted to recommend approval of code
35 amendments relating to flood hazard areas code correction as shown in its approval letter dated August
36 10, 2022; and
37

38 WHEREAS, on January 11, 2023, the County Council held a public hearing after proper notice,
39 and considered public comment and the entire record related to the code amendments contained in
40 this ordinance; and
41

42 WHEREAS, following the public hearing, the County Council deliberated on the code
43 amendments contained in this ordinance;
44

45 NOW, THEREFORE, BE IT ORDAINED:
46

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

- 1 A. The foregoing recitals are adopted as findings as if set forth in full herein.
2
3 B. This ordinance amends SCC 30.65.220 to re-adopt the former SCC 30.65.220(9) allowing the repair,
4 reconstruction, and improvement of residential structures located within the floodway so long as
5 the repairs, reconstruction, and improvements do not increase ground floor area and are not
6 substantial improvements.
7
8 C. This ordinance ensures consistency with state and federal flood regulations and re-adopts a code
9 provision that was unintentionally deleted by Ordinance No. 20-076.
10
11 D. Model Ordinance Section 5.4-2 provides in part:
12
13 Construction or reconstruction of residential structures is prohibited within designated
14 floodways, except for (i) repairs, reconstruction, or improvements to a structure that do not
15 increase the ground floor area; and (ii) repairs, reconstruction, or improvements to a structure,
16 the cost of which does not exceed 50 percent of the market value of the structure either, (A)
17 before the repair or reconstruction is started, or (B) if the structure has been damaged, and is
18 being restored, before the damage occurred. Any project for improvement of a structure to
19 correct existing violations of state or local health, sanitary, or safety code specifications that
20 have been identified by the local code enforcement official and that are the minimum necessary
21 to assure safe living conditions, or to structures identified as historic places, may be excluded in
22 the 50 percent.
23
24 E. In developing the proposed amendment, the County considered the GMA goals identified in RCW
25 36.70A.020. In particular, the proposed amendment is consistent with and promotes:
26
27 GMA Goal 4 – “Housing. Plan for and accommodate housing affordable to all economic
28 segments of the population of this state, promote a variety of residential densities and housing
29 types, and encourage preservation of existing housing stock.”
30
31 GMA Goal 10 – “Environment. Protect the environment and enhance the state's high quality of
32 life, including air and water quality, and the availability of water.”
33
34 The proposed amendment supports the housing and environmental goals because it will allow
35 homeowners to preserve their existing homes through repair, reconstruction, and improvement.
36 This permitted work would not negatively impact the environment because the home could not be
37 substantially improved and the footprint could not be expanded.
38
39 F. The proposed amendment maintains consistency with the following Multicounty Planning Policy
40 (MPP) from the Puget Sound Regional Council VISION 2050:
41
42 MPP-H-3 – Achieve and sustain – through preservation, rehabilitation, and new development – a
43 sufficient supply of housing to meet the needs of low-income, moderate-income, middle-
44 income, and special needs individuals and households that is equitably and rationally distributed
45 throughout the region.
46

1 The proposed changes would support the preservation and rehabilitation efforts of this housing
2 goal. Existing residential housing in the floodway can be preserved with this code correction which
3 allows existing housing supply to be maintained.
4

- 5 G. The proposed amendment maintains consistency with the following MPP from the Puget Sound
6 Regional Council VISION 2050:

7
8 MPP-En-5 – Locate development in a manner that minimizes impacts to natural features.
9 Promote the use of innovative environmentally sensitive development practices, including
10 design, materials, construction, and on-going maintenance.
11

12 The proposed amendment supports this MPP by minimizing new impacts to natural features
13 through restricting major improvements and ground floor area expansion of existing homes located
14 in the floodway.
15

- 16 H. The proposed amendment is consistent with Countywide Planning Policy (CPP) HO-6 that provides:

17
18 The county and cities should implement policies and programs that encourage the rehabilitation
19 and preservation of existing legally established, affordable housing for residents of all income
20 levels, including but not limited to mobile/manufactured housing and single-room occupancy
21 (SRO) housing.

22 The proposed code amendment encourages the rehabilitation and preservation of existing housing
23 supply in the floodway. Affordable existing housing in the floodway will further be preserved.
24

- 25 I. The proposed amendment maintains consistency with the GPP Housing Chapter, including HO Policy
26 2.A.2, which provides:

27
28 The county shall continue programs to repair and maintain existing housing in neighborhoods to
29 reduce blight and deterioration and preserve and enhance the housing stock.
30

- 31 J. Procedural requirements.

- 32
33 1. This is a Type 3 legislative action under SCC 30.73.010.
34
35 2. As required by RCW 30.70A.106(1), a notice of intent to adopt the proposed code amendments
36 was transmitted to the Washington State Department of Commerce for distribution to state
37 agencies on June 8, 2022.
38
39 3. State Environmental Policy Act (SEPA), chapter 43.21C RCW, requirements with respect to this
40 non-project action have been satisfied through the completion of an environmental checklist
41 and the issuance of a determination of non-significance on June 8, 2022.
42
43 4. The public participation process used in the adoption of this ordinance complies with all
44 applicable requirements of the GMA and the SCC, including but not limited to, RCW 36.70A.035,
45 RCW 36.70A.140, and chapter 30.73 SCC.
46

- 1 5. The Planning Commission was briefed on the proposed amendments at its June 28, 2022,
2 meeting and conducted a public hearing on the proposed amendments at its July 26, 2022,
3 meeting resulting in its letter of August 10, 2022, recommending approval of the code
4 amendments contained in this ordinance.
5
- 6 6. The Washington State Attorney General last issued an advisory memorandum, as required by
7 RCW 36.70A.370, in September of 2018 entitled “Advisory Memorandum and Recommended
8 Process for Evaluating Proposed Regulatory and Administrative Actions to Avoid
9 Unconstitutional Takings of Private Property” to help local governments avoid the
10 unconstitutional taking of private property. The process outlined in the State Attorney
11 General’s 2018 advisory memorandum was used by Snohomish County in objectively evaluating
12 the regulatory changes proposed by this ordinance.
13

14 K. This ordinance is consistent with the record.
15

- 16 1. Due to Ordinance No. 20-076, homeowners are restricted from repairing, reconstructing, or
17 improving their homes located in the floodways when no substantial flood damage has
18 occurred. The proposed code amendments reinstate the ability of homeowners to repair,
19 reconstruct, or improve their homes to make necessary maintenance and preserve existing
20 housing.
21
- 22 2. The Model Ordinance allows for repair, reconstruction, and improvement of homes in the
23 floodways that have not been substantially damaged and when such repair, reconstruction, or
24 improvement will not increase the ground floor area.
25
- 26 3. The code amendments proposed by this ordinance will correct an unintentional deletion and re-
27 insert code that existed prior to 2020.
28

29 Section 2. The County Council makes the following conclusions:
30

- 31 A. The amendments proposed by this ordinance comply and are consistent with the GMA.
32
- 33 B. The amendments proposed by this ordinance comply and are consistent with the GMACP.
34
- 35 C. The County has complied with all SEPA requirements with respect to this non-project action.
36
- 37 D. The public participation process used in the adoption of this ordinance complies with all applicable
38 requirements of the GMA and title 30 SCC.
39
- 40 E. The amendments proposed by this ordinance does not result in an unconstitutional taking of private
41 property for a public purpose.
42

43 Section 3. The Snohomish County Council bases its findings and conclusions on the entire record
44 of the County Council, including all testimony and exhibits. Any finding, which should be deemed a
45 conclusion, and any conclusion which should be deemed a finding, is hereby adopted as such.
46

1 Section 4. Snohomish County Code Section 30.65.220, last amended by Amended Ordinance No.
2 21-060 on October 6, 2021, is amended to read:

3
4 SCC 30.65.220 Floodways: permitted uses.

5
6 The following uses are allowed in the floodway when permitted by the applicable zone under chapter
7 30.22 SCC, provided the use is in compliance with the applicable general and specific floodproofing
8 standards of SCC 30.65.110 and 30.65.120, and other applicable provisions of this chapter:

9
10 (1) Agriculture;

11
12 (2) Forestry, including processing of forest products with portable equipment;

13
14 (3) Preserves and reservations;

15
16 (4) Park and recreational activities;

17
18 (5) Removal of rock, sand and gravel, when the applicant can provide clear and convincing evidence
19 that such uses will not divert flood flows causing channel shift or erosion, accelerate or amplify the
20 flooding of downstream flood hazard areas, increase the flooding threat to upstream flood hazard areas,
21 or in any other way threaten public or private properties. When allowed, such removal shall comply with
22 the provisions of chapter 30.32C SCC and the county shoreline management program;

23
24 (6) Utility transmission lines when allowed in underlying zones unless otherwise prohibited by this
25 chapter. When the primary purpose of such a transmission line is to transfer bulk products or energy
26 through a floodway en route to another destination, as opposed to serving customers within a
27 floodway, such transmission lines shall conform to the following:

28
29 (a) All utility transmission lines shall cross floodways by the most direct route feasible as
30 opposed to paralleling floodways;

31
32 (b) Electric transmission lines shall span the floodway with support towers located in flood
33 fringe areas or beyond. Where floodway areas cannot be spanned due to excessive width,
34 support towers shall be located to avoid high flood water velocity and/or depth areas, and shall
35 be adequately floodproofed;

36
37 (c) Buried utility transmission lines transporting hazardous materials, including but not limited
38 to crude and refined petroleum products and natural gas, shall be buried a minimum of four
39 feet below the maximum established scour of the waterway, as calculated on the basis of
40 hydrologic analyses. Such burial depth shall be maintained horizontally within the hydraulic
41 floodway to the maximum extent of potential channel migration as determined by hydrologic
42 analyses. In the event potential channel migration extends beyond the hydraulic floodway,
43 conditions imposed upon floodway fringe and special flood hazard areas shall also govern
44 placement. All hydrologic analyses are subject to acceptance by the county, shall assume the
45 conditions of a 100-year frequency flood as verified by the U.S. Army Corps of Engineers, and
46 shall include on-site investigations and consideration of historical meander characteristics in
47 addition to other pertinent facts and data. The use of riprap as a meander containment

1 mechanism within the hydraulic floodway shall be consistent with the county shoreline
2 management program;

3
4 (d) Buried utility transmission lines transporting non-hazardous materials including water and
5 sewage shall be buried a minimum of four feet below the maximum established scour of the
6 waterway as calculated on the basis of hydrologic analyses. Such burial depth shall be
7 maintained horizontally within the hydraulic floodway to the maximum extent of potential
8 channel migration as determined by hydrologic analyses. All hydrologic analyses shall conform
9 to requirements in subsection (6)(c) of this section. The use of riprap as a meander containment
10 mechanism within the hydraulic floodway shall be consistent with the county shoreline
11 management program;

12
13 (e) Beyond the maximum extent of potential channel migration, utility transmission lines
14 transporting hazardous and non-hazardous materials shall be buried below existing natural and
15 artificial drainage features. Burial depth in all agricultural areas requiring or potentially requiring
16 subsurface drainage shall be a minimum of six feet as measured from ground surface to the top
17 of the transmission line, or at other such depth as deemed necessary by on-site investigations
18 performed by a qualified soils expert familiar with county soils. Burial depth in all other
19 agricultural and non-agricultural floodway areas shall be determined on the basis of accepted
20 engineering practice and in consideration of soil conditions and the need to avoid conflict with
21 agricultural tillage;

22
23 (f) All buried utility transmission lines shall achieve sufficient negative buoyancy so that any
24 potential for flotation or upward migration is eliminated;

25
26 (g) Above ground utility transmission lines, not including electric transmission lines, shall only
27 be allowed for the transportation of non-hazardous materials where an existing or new bridge
28 or other structure is available and capable of supporting the line. When located on existing or
29 new bridges or other structures with elevations below the level of the 100-year flood, the
30 transmission line shall be placed on the down-stream side and protected from flood debris. In
31 such instances, site specific conditions and flood damage potential shall dictate placement,
32 design and protection throughout the floodway. Applicants must demonstrate that such above
33 ground lines will have no appreciable effect upon flood depth, velocity or passage, and shall be
34 adequately protected from flood damage. If the transmission line is to be buried except at the
35 waterway crossing, burial specifications shall be determined as in subsection (6)(d) of this
36 section;

37
38 (h) All floodway crossings by utility transmission lines transporting hazardous materials shall be
39 equipped with valves capable of blocking flow within the pipeline in the event of leakage or
40 rupture. All floodway crossings shall have valves unless otherwise indicated by standard
41 engineering review of the site and type of transmission line as acceptable to the county with
42 locations determined by other provisions of this chapter;

43
44 (i) Above ground utility transmission line appurtenant structures including valves, pumping
45 stations, or other control facilities shall not be permitted in the floodway; and
46

1 (j) Where a floodway has not been determined by preliminary Corps of Engineers'
2 investigations or official designation, a floodway shall be defined by qualified engineering work
3 by the applicant on the basis of a verified 100-year flood event.
4

5 (7) Repairs, reconstruction, replacement, or improvements to existing farmhouse structures which are
6 located on lands designated as agricultural lands of long-term commercial significance under RCW
7 36.70A.170, subject to the following:
8

9 (a) The new farmhouse is a replacement for an existing farmhouse on the same farm site;

10
11 (b) There is no potential building site for a replacement farmhouse on the same farm outside
12 the designated floodway;

13
14 (c) The farmhouse being replaced shall be removed, in its entirety, including foundation, from
15 the floodway within 90 days after occupancy of the new farmhouse;

16
17 (d) For substantial improvements, and replacement farmhouses, the elevation of the lowest
18 floor of the improvement and farmhouse respectively, including basement, is one foot higher
19 than the base flood elevation;

20
21 (e) New and replacement water supply systems, are designed to eliminate or minimize
22 infiltration of flood waters into the system;

23 (f) New and replacement sanitary sewerage systems are designed and located to eliminate or
24 minimize infiltration of flood waters into the system and discharge from the system into the
25 flood waters;

26
27 (g) All other utilities and connections to public utilities are designed, constructed, and located
28 to eliminate or minimize flood damage;

29
30 (h) The replacement farmhouse shall not exceed the total square footage of encroachment of
31 the structure which it is replacing; and

32
33 (i) Repairs, reconstruction, or improvements to a farmhouse shall not increase the total square
34 footage of encroachment of the existing farmhouse.
35

36 (8) Repairs, replacement, or relocation of substantially damaged residences in the floodway, other than
37 farmhouses, are subject to the following:
38

39 (a) When residences other than farmhouses are substantially damaged in the floodway, the
40 floodplain administrator may make a written request to the Department of Ecology under RCW
41 86.16.041(4) to assess the risk of harm to life and property posed by the specific conditions of
42 the floodway. Based on analysis of depth, velocity, flood-related erosion, channel migration,
43 debris load potential, and flood warning capability, the Department of Ecology may exercise
44 best professional judgment in recommending to the floodplain administrator authority to
45 permit repair, replacement, or relocation of the substantially damaged structure. The property
46 owner shall submit any information necessary to complete the assessment to the county and
47 the Department of Ecology. Without a favorable recommendation from the Department of

1 Ecology for the repair or replacement of a substantially damaged residential structure located in
2 the regulatory floodway, no repair or replacement is allowed under WAC 173-158-076(1).

3
4 (b) Before the repair, replacement, or relocation is started, all applicable requirements of the
5 National Flood Insurance Program, chapter 86.16 RCW, chapter 30.43C SCC, and this chapter
6 must be satisfied. In addition, the following conditions must be met:

7
8 (i) There is no potential building location for the replacement residential structure on
9 the same property outside the regulatory floodway;

10
11 (ii) The replacement residential structure is equivalent in use and size to the
12 substantially damaged residential structure;

13 (iii) The structure being repaired, replaced, or reconstructed was legally constructed;

14
15 (iv) Repairs, reconstruction, or replacement do not result in an increase of the total
16 square footage of floodway encroachment;

17
18 (v) The elevation of the lowest floor of the substantially damaged or replacement
19 residential structure is a minimum of one foot higher than the base flood elevation;

20
21 (vi) New and replacement water supply systems are designed to eliminate or minimize
22 infiltration of floodwater into the system;

23
24 (vii) New and replacement sanitary sewerage systems are designed and located to
25 eliminate or minimize infiltration of floodwater into the system and discharge from the
26 system into the floodwaters; and

27
28 (viii) All other utilities and connections to public utilities are elevated a minimum of one
29 foot above the base flood elevation and are designed, constructed, and located to
30 eliminate or minimize flood damage.

31
32 (9) Repair, reconstruction, or improvement of residential structures, where repair, reconstruction, or
33 improvement of a structure does not increase the ground floor area, and is not a substantial
34 improvement.

35
36 ~~((9))~~ (10) Water-dependent utilities and other installations which by their very nature must be in the
37 floodway. Examples of such uses are: Dams for domestic/industrial water supply, flood control and/or
38 hydroelectric production; water diversion structures and facilities for water supply, irrigation and/or
39 fisheries enhancement; flood water and drainage pumping plants and facilities; hydroelectric generating
40 facilities and appurtenant structures; structural and nonstructural flood damage reduction facilities, and
41 stream bank stabilization structures and practices. The applicant shall supply convincing evidence that a
42 floodway location is necessary in view of the objectives of the proposal and that the proposal is
43 consistent with other provisions of this chapter and the county shoreline management program. In all
44 instances of locating utilities and other installations in floodway locations, project design must
45 incorporate floodproofing.

1 ~~((10))~~ (11) Dikes, when the applicant can provide clear and convincing evidence that:

2
3 (a) Adverse effects upon adjacent properties will not result relative to increased floodwater
4 depths and velocities during the base flood or other more frequent flood occurrences;

5
6 (b) Natural drainage ways are minimally affected in that their ability to adequately drain
7 floodwaters after a flooding event is not impaired; and

8
9 (c) The proposal has been coordinated through the appropriate diking district where applicable,
10 and that potential adverse effects upon other affected diking districts have been documented.

11
12 ~~((11))~~ (12) Public works, limited to roads and bridges.

13
14 Section 5. Severability and Savings. If any section, sentence, clause or phrase of this ordinance
15 shall be held to be invalid by the Growth Management Hearings Board ("Board"), or unconstitutional by
16 a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or
17 constitutionality of any other section, sentence, clause or phrase of this ordinance. Provided, however,
18 that if any section, sentence, clause or phrase of this ordinance is held to be invalid or unconstitutional
19 by the Board or court of competent jurisdiction, then the section, sentence, clause or phrase in effect
20 prior to the effective date of this ordinance shall be in full force and effect for that individual section,
21 sentence, clause or phrase as if this ordinance had never been adopted.

22
23 PASSED this 11th day of January 2023.

24
25 SNOHOMISH COUNTY COUNCIL
26 Snohomish County, Washington

27
28 
29 _____
30 Council Chairperson

31 ATTEST:

32 
33 _____
34 Asst. Clerk of the Council

35 APPROVED

36 EMERGENCY

37 VETOED

38
39 DATE: January 12, 2023

40
41 
42 _____
43 County Executive

44
45 ATTEST:

46
47 

1 Approved as to form only:

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4 _____
Deputy Prosecuting Attorney

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