

SNOHOMISH COUNTY COUNCIL  
SNOHOMISH COUNTY, WASHINGTON



CO00023104

EMERGENCY ORDINANCE NO. 95-065

AMENDING TITLE 26B SCC  
DEVELOPER CONTRIBUTIONS FOR ROAD PURPOSES  
AS A CONDITION OF LAND USE APPROVALS  
AND DECLARING AN EMERGENCY

BE IT ORDAINED:

**Section 1. Snohomish County Council makes the following findings of fact:**

(a) Title 26B SCC, providing for developer contributions for road purposes as a condition of land use approvals, has been successfully used in Snohomish County to mitigate traffic impacts directly resulting from new land development since 1980. Identification of transportation system impacts and analysis of reasonable mitigation has been based, in part, upon road level of service standards adopted in Title 26B SCC.

(b) Title 26B SCC was most recently revised by Amended Ordinance No. 95-039, adopted June 28, 1995, and effective July 13, 1995. The revisions to Title 26B SCC were unanimously enacted by the Snohomish County Council to provide for regulatory reform, to better integrate land development review under the county's police power, the state planning enabling act, chapter 36.70 RCW, the state subdivision law, chapter 58.17 RCW, the state environmental policy act (SEPA), chapter 43.21C RCW, and other state law, county charter and county code provisions, and to address recent state legislative enactments and case law developments in land use and environmental law. Another purpose of the revisions to Title 26B SCC was to bring Title 26B SCC into compliance with the state growth management act, chapter 36.70A RCW, and to confirm that Title 26B SCC, as revised, was a development regulation which was consistent with and implemented the County's comprehensive plan adopted pursuant to the state growth management act. Although the revisions to Title 26B SCC are consistent with and implement the growth management act, the provisions of Title 26B SCC in effect prior to July 13, 1995 and as revised in Amended Ordinance No. 95-039 are important public health, safety, and welfare regulations adopted to the County's authority under the state constitution, the county charter, and the laws of the state independent of the state growth management act.

(c) The county adopted a growth management act comprehensive plan pursuant to the state growth management act, chapter 36.70A RCW, in Amended Ordinance No. 94-125, enacted June 28, 1995, and effective July 10, 1995.

(d) On July 5, 1995, a petition for referendum under Snohomish County Charter Article 5, sections 5.60, 5.70 and 5.80, was filed against Amended Ordinance No. 94-125, adopting the Snohomish County growth management act comprehensive plan. This referendum petition was assigned referendum petition number 95-01. A second referendum petition was filed on July 7, 1995 against certain portions of Amended Ordinance No. 94-125 and was assigned referendum petition number 95-02. Pursuant to Snohomish County Charter Section 5.80, the filing of a referendum petition may suspend the ordinance or portion of the ordinance referred. The filing of a referendum petition against an ordinance or portions of an ordinance may delay the ordinance or portions of the ordinance from taking effect. Although there has been no determination on the validity of the referendum petitions or the sufficiency of the signatures, the filing of the petitions raises questions concerning the effective date of the county's growth management act comprehensive plan.

(e) The revisions to Title 26B SCC accomplish land use regulatory reform and promote the public health, safety, and welfare independent of the status of the county's growth management act comprehensive plan. Some sections of Title 26B SCC as revised by Amended Ordinance No. 95-039 incorporate by reference provisions of the county's growth management act comprehensive plan adopted pursuant to Amended Ordinance No. 94-125. The filing of a referendum petition against Amended Ordinance No. 94-125 and the possible delay in the effective date of this ordinance creates uncertainty regarding the effectiveness of certain revisions to Title 26B SCC. Amended Ordinance No. 95-039, revising Title 26B SCC, contains a savings clause (section 69) intended to revive the provisions of Title 26B SCC in effect prior to the effective date of Amended Ordinance No. 95-039 in the event Amended Ordinance No. 95-039 is determined to be invalid in whole or in part.

(f) In order for Snohomish County to continue to review development with certainty and predictability it is necessary to amend SCC 26B.51.005, SCC 26B.52.060, and SCC 26B.55.030, as amended by Amended Ordinance No. 95-039, to clarify the level of service standards for transportation.

(g) It is in the best interests of the citizens of Snohomish County and the land development community to provide for certainty regarding the status of the revisions to Title 26B SCC in order to provide for regulatory reform, to promote sound economic decisions, to protect the public health, safety and welfare, and to encourage opportunities for economic development, housing, and improved public facilities for the citizens of the county.

**Section 2.** Snohomish County Code Section 26B.51.005, last amended by Amended Ordinance No. 95-039, on June 28, 1995, is amended to read:

26B.51.005 Arterial unit in arrears "Arterial unit in arrears" means any arterial unit operating below the adopted level-of-service standard ~~((adopted in the comprehensive plan))~~ contained in SCC 26B.52.060, except where improvements to such a unit have been

programmed in the county Six-Year Transportation Improvement Program adopted pursuant to RCW 36.81.121, and funding identified that would remedy the deficiency within six years.

Section 3. Snohomish County Code Section 26B.52.060, last amended by Amended Ordinance No. 95-039, on June 28, 1995, is amended to read:

26B.52.060 Level-of-service standards.

(1) As required by RCW 36.70A.070(6)(b), standards for levels of service on county arterials have been adopted by the county in its comprehensive plan adopted pursuant to the state growth management act. The department will plan, program, and construct transportation system capacity improvements for the purpose of maintaining these adopted level-of-service standards in order to facilitate new development that is consistent with the county's comprehensive plan.

(2) Level-of-Service standards shall be as follows:

<u>Transit Compatibility</u>	<u>Urban Area - Tolerable Roadway Level of Service</u>	<u>Rural Area - Tolerable Roadway Level of Service</u>
<u>Compatible (*)</u>	<u>Below LOS E for Peak Hour (**)</u>	<u>LOS D for Peak Hour</u>
<u>Not Compatible</u>	<u>LOS E for Peak Hour</u>	<u>LOS C for Peak Hour</u>

(\*) Transit compatibility minimum criteria are set out in the directors policy and procedure for transit compatibility under SCC 26B.52.130.

(\*\*) Not below LOS E for two hours during the 6:00 to 9:00 A.M. or 3:30 to 6:30 P.M. peak travel periods. A development may create or impact a traffic peak on a particular roadway outside these time periods. In such cases, the director may determine that the concurrency determination for the development will consider the other peak.

~~((2))3~~ ) In accordance with RCW 36.70A.070(6)(e), no development will be approved which would cause the level of service on any arterial unit to fall below the adopted level-of-service in SCC 26B.52.060(2) standards unless improvements are programmed and funding identified which would remedy the deficiency within six years .

~~((3))4~~ ) When the county council determines that excessive expenditure of public funds is not warranted for the purpose of maintaining adopted level-of-service standards on an arterial unit, the county council may designate, by motion, such arterial unit as being at ultimate capacity. Improvements needed to address operational and safety issues may be identified in conjunction with such ultimate capacity designation.

~~(((4))~~5) Level-of-service standards for arterial units which have been designated by the county council as ultimate capacity arterial units, and that directly connect state routes with a city, may be determined jointly by the county and the city through an interlocal agreement.

~~(((5))~~6) In order to promote efficiency in the transportation system and to maximize the benefits received from public investment through increased use of transit, ridesharing, and non-motorized transportation, all new developments in the urban area shall provide sufficient transportation demand management measures to indicate the potential for removing a minimum of five (5) percent of a development's P.M. peak hour trips from the road system.

**Section 4.** Snohomish County Code Section 26B.55.030, last amended by Amended Ordinance No. 95-039, on June 28, 1995, is amended to read:

26B.55.030 Level-of-service requirements, concurrency determinations.

(1) The department shall make a concurrency determination for each development application to ensure that the development will not impact an arterial unit where the level-of-service is below the adopted level-of-service standard, or cause the level-of-service on an arterial unit to fall below the adopted level-of-service standard, unless improvements are programmed and funding identified which would remedy the deficiency within 6 years. The approving authority shall not approve any development that is not deemed concurrent under this section [SCC 26B.55.030]. Building permit applications for development within an approved rezone with binding site plan, non-residential subdivision or short subdivision, for which a concurrency determination has been made in accordance with this section shall be deemed concurrent; PROVIDED, That: the certificate of concurrency for the rezone with binding site plan, non-residential subdivision or short subdivision has not expired, the building permit will not cause the approved traffic generation of the prior approval to be exceeded, there is no change in points of access, and mitigation required pursuant to the rezone with binding site plan, subdivision or short subdivision approval is performed as a condition of building permit issuance.

(a) A concurrency determination which verifies that a development has been deemed concurrent shall be documented by a "certificate of concurrency" which shall be included as part of the director's recommendation under SCC 26B.55.010. Such certificate shall state when the concurrency determination was made and whether the concurrency certificate is conditioned upon satisfaction of conditions to enable the development to be deemed concurrent and shall indicate the expiration date of the certificate of concurrency.

(b) The department shall make a concurrency determination upon receipt of a development's initial application. The determination may change based upon revisions in the application. Any change in the development after approval will be resubmitted to the director, and the development will be reevaluated for concurrency purposes. Concurrency determinations made subsequent to the initial concurrency determination for a development due to change in the development or at the request of the developer will be subject to an additional review fee at the rate identified as the base review fee under SCC 13.110.030.

(c) The director shall determine the expiration date of the certificate of concurrency for a development based upon such factors as the size of the development and the level-of-service of impacted arterial units. The expiration date of the certificate of concurrency for a development shall be six (6) years after the date of the concurrency determination, except where it is determined by the director that a earlier expiration date should be established due to the impact of the development on level-of-service conditions. A later date of expiration may be established in accordance with SCC 26B.57.005. Factors to consider in determining whether a different expiration date should be established shall be consistent with the level-of-service standards contained in SCC 26B.52.060 (2) and the revenue/expenditure forecast adopted in the comprehensive plan. The expiration date of the certificate of concurrency for a binding site plan that generates more than 50 P.M. peak hour trips shall be the expiration date of the binding site plan for the purposes of concurrency as determined by the date of the latest certificate of occupancy for the development as proposed by the applicant and the date used in the traffic study for determining impacts on level-of-service in accordance with SCC 26B.55.030(5).

(d) Building permits for a development must be issued prior to expiration of the certificate of concurrency for the development, except when the development is a residential subdivision or short-subdivision in which case the subdivision or short-subdivision must be recorded prior to expiration of the certificate of concurrency for the development, and, except where no building permit will be associated with a conditional or special use permit, in which case the conditional or special use permit must be issued prior to expiration of the certificate of concurrency for the development. No additional concurrency determination shall apply to residential dwellings within a subdivision or short subdivisions recorded in compliance with this section.

(e) If a certificate of concurrency expires prior to building permit issuance, except when the development is a residential subdivision or short-subdivision then prior to the recording of the subdivision or short-subdivision, and, except where no building permit will be associated with a conditional or special use permit, then prior to issuance of the conditional or special use permit, the director shall at the request of the developer consider evidence that conditions have not significantly changed and make a new concurrency determination and may establish a new expiration date in accordance with SCC 26B.55.030(1)(c).

(2) In determining whether or not to deem a proposed development as concurrent, the department shall analyze likely road system impacts on arterial units based on the size and location of the development. A development will be deemed concurrent for the period prior to the expiration date of the certificate of concurrency for the development.

(a) Concurrency determinations under this section [SCC 26B.55.030] will evaluate the road system impacts for any proposed development within the boundaries of the development's transportation service area. The transportation service area in which a development is located will be determined at the pre-submittal conference. The director will determine the transportation service area of developments which straddle a boundary, are physically adjacent to another transportation service area, or

from which the traffic impacts are greatest in an adjacent TSA, and may change such determination upon review of the initial application.

(b) A development's forecast trip generation at full occupancy shall be the basis for determining the impacts of the development on the road system. The county will accept valid data from a traffic study under SCC 26B.53 or will use the latest edition of the ITE Trip Generation report published by the Institute of Transportation Engineers. Adjustments will be made for trip reduction credits approved under SCC 26B.55.130.

(3) A concurrency determination made for a proposed development under this section [SCC 26B.55.030] will evaluate the development's impacts on any arterial units in arrears, and/or designated ultimate capacity arterial units.

(a) If a development is proposed within a transportation service area which contains no arterial units in arrears and/or designated ultimate capacity arterial units, then the development shall be deemed concurrent, except that if the development generates more than fifty (50) P.M. peak-hour trips, the requirements of SCC 26B.55.030(5) shall also apply.

(b) If a residential development which generates seven (7) or more P.M. peak hour trips, or a non-residential development which generates five (5) or more P.M. peak hour trips is proposed within a transportation service area which contains one or more arterial units in arrears and/or designated ultimate capacity arterial units, then the development may only be deemed concurrent, based on a trip distribution to determine the impacts of the development. If the development generates more than fifty (50) P.M. peak-hour trips the requirements of SCC 26B.55.030(5) shall also apply. Impacts shall be determined based on each of the following:

(i) If the trip distribution indicates that the development will not place three (3) or more P.M. peak hour trips on any arterial units in arrears and/or designated ultimate capacity arterial units, then the development shall be deemed concurrent.

(ii) If the trip distribution indicates that the development will place three (3) or more P.M. peak hour trips on any arterial unit in arrears, then the development shall not be deemed concurrent except where the development is deemed concurrent in accordance with the options under SCC 26B.55.030(6).

(iii) If the trip distribution indicates that the development will place three (3) or more P.M. peak hour trips on any designated ultimate capacity arterial unit, then the development shall be deemed concurrent only if the development proposes to mitigate its road system impact by providing sufficient transportation demand management (TDM) measures under SCC 26B.55.140 to indicate the potential for removing a minimum of ten (10) percent of the development's P.M. peak hour trips from the road system. If the impacted ultimate capacity arterial unit meets the criteria for transit supportive design and if the development meets the department's criteria for transit compatibility in accordance with the director's policy and procedure for transit compatibility under SCC 26B.52.130, then the existence of, or provision of, an offsite walkway connecting the development with a bus stop will count for one-half of the required ten (10) percent provision of TDM measures.

(iv) If the trip distribution indicates that the development will place three (3) or more P.M. peak hour trips on any designated ultimate capacity arterial unit that directly connects a state highway with a city, and there is an interlocal agreement as specified in SCC 23.36.030(4) between the county and the city addressing the designated ultimate capacity arterial unit, then the development shall be deemed concurrent only if the impacted ultimate capacity arterial unit and the development are in accordance with the terms of the interlocal agreement. If there is no interlocal agreement between the county and the city addressing the designated ultimate capacity arterial unit, then this provision [26B.55.030(3)(b)(iv)] shall not apply.

(4) Any residential development that generates less than seven (7) P.M. peak-hour trips, or any non-residential development that generates less than five (5) P.M. peak hour trips shall be considered to have only minor impact on county arterials for purposes of a concurrency determination on impacts to level-of-service on arterial units and shall be deemed concurrent.

(5) Any development that generates more than fifty (50) P.M. peak-hour trips must provide a traffic study so that the department can determine if the development will cause any county arterial units to fall into arrears, except when the director determines at the presubmittal conference that a traffic study is not required. In addition to the concurrency determination under SCC 26B.55.030(3), the director shall not deem as concurrent any development generating more than fifty (50) P.M. peak-hour trips which would cause any arterial unit to fall into arrears, except where the development proposes to remedy any arterial unit in arrears in accordance with SCC 26B.55.030(6)(c)(ii).

(6) Any development not deemed concurrent shall have options available to enable the development to be deemed concurrent as follows:

(a) A development which meets the department's criteria for transit compatibility, in accordance with the director's policy and procedure for transit compatibility under SCC 26B.52.130, shall be deemed concurrent if the impacted arterial unit in arrears meets the criteria for transit supportive design in accordance with the director's policy and procedure for transit compatibility under SCC 26B.52.130, and if the level of service on the impacted arterial unit in arrears meets the LOS standards (~~((adopted within the comprehensive plan))~~) contained in SCC 26B.52.060 (2), and provided that the development can be deemed concurrent in accordance with all other provisions of SCC 26B.55.030(3).

(b) A development may modify its proposal to lessen its impacts on the road system in such a way as to allow the county to deem the development concurrent under this section.

(c) The county may deem such development concurrent based upon a written proposal signed by the proponent of the development and attached to the director's recommendation under SCC 26B.52.020, and referenced in the concurrency determination, as a condition of approval.

(i) Such proposal may include conditions which would defer construction of all or identified subsequent phases of a development until such time as the county has made or programmed capacity improvements which would remedy any arterial unit in arrears.

(ii) Such proposals may include conditions which would defer construction of all or identified subsequent phases of a development until such time as the developer constructs capacity improvements which would remedy any arterial unit in arrears.

(A) If a developer chooses to mitigate the development's impact by constructing offsite road improvements, the developer must investigate the impact, identify improvements, and offer a construction plan to the director for construction of the offsite improvements. Construction of improvements shall be in accordance with the Engineering Design and Development Standards, as adopted under section 13.05 SCC and the procedures of Title 13 SCC.

(B) In cases where two or more developers have agreed to fully fund a certain improvement, the proportionate sharing of the cost shall be on any basis that the developers agree among themselves would be equitable. Under such an arrangement, the terms of the agreement shall be binding on each development as conditions of approval.

(C) Any developer who volunteers to construct offsite improvements of greater value than any proportionate share mitigating payment imposed under this title to mitigate the development's impact on the future capacity of county roads, based on the cost basis contained within the transportation needs report, may apply for a reimbursement contract under the provisions of chapter 13.95 SCC or propose the establishment of a road improvement district (RID) under the provisions of chapter 13.140 SCC.

(D) Any developer who chooses to mitigate a development's impact by constructing offsite improvements may propose to the director that a joint public/private partnership be established to jointly fund and/or construct the proposed improvements. The director will determine whether or not such a partnership is to be established.

(E) Construction of capacity improvements under this section must be complete or under contract prior to the issuance of any building permits and must be complete prior to approval for occupancy or final inspection: PROVIDED, That where no building permit will be associated with a conditional or special use permit, then construction of improvements is required as a precondition to approval.

(d) If such development is consistent with the county's comprehensive plan adopted pursuant to the state's growth management act, then the developer may request, and based on such request the county may consider, amendment to the comprehensive plan to provide for lower density development to allow such development to be deemed concurrent. In such cases the development may be required to develop and/or pay for the amendment proposal.

(7) All new developments in the urban area shall provide transportation demand management measures. Sufficient transportation demand management measures shall be provided to indicate the potential for removing a minimum of five (5) percent of a development's P.M. peak hour trips from the road system. This requirement shall be met by the provision of site design requirements under SCC 26B.55.130(6) or SCC 26B.55.130(8), as applicable, except where the developer proposes construction or



purchase of specific offsite TDM measures or voluntary payment in lieu of site design, in accordance with SCC 26B.55.140(1).

**NEW SECTION. Section 5.** Snohomish County Code Section 26B.58.901, adopted by Amended Ordinance No. 95-039, on June 28, 1995, is amended to read:

26B.58.901 Application of 1995 Title 26B SCC Amendments. All development applications deemed complete by the department of planning and development services, as appropriate, prior to the effective date of this ordinance shall be reviewed for all purposes allowed under state law, including environmental review pursuant to the Snohomish county environmental policy ordinance (SCEPO), Title 23 SCC, under the provisions of Title 26B SCC as codified prior to the effective date of this ordinance, unless the developer, where allowed by state law, consents in writing to the application of the provisions this ordinance, as amended by Emergency Ordinance No. 95-065.

**Section 6. Severability.** If any portion of this ordinance or its application to any person or circumstance is held invalid, such decision shall have no effect upon the validity of the remaining portions of this ordinance and the application of this ordinance to other persons or circumstances shall not be affected. The county council hereby declares that it would have adopted this ordinance and each part or portions thereof irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, parts or portions thereof be declared invalid or unconstitutional.

**Section 7. Emergency.** The County Council makes the following findings of fact concerning the declaration of emergency:

(a) Significant public participation and review have occurred on the level-of-service standards included in Title 26B SCC and contained in the county's growth management comprehensive plan. The revised level-of-service standards are necessary to accomplish the county's regulatory reform objectives independent of the status of the comprehensive plan and should be separately adopted in Title 26B SCC.

(b) Adoption of level-of-service standards in Title 26B SCC independent of the growth management comprehensive plan is needed due to the unanticipated referendum petition on the comprehensive plan ordinance in order to avoid unnecessary and unintended confusion regarding the appropriate level-of-service standards for Title 26B SCC, conflicts over implementation of Title 26B SCC, delays in land development review, and frustration of the unanimously desired regulatory reform objectives of reliability and predictability.

(c) The Council finds that this ordinance is necessary for immediate preservation of the public health, safety, and welfare and the support of county government and its existing public institutions and that, based upon the findings in Sections 1 and 7 of this ordinance, the County Council declares that an emergency exists and that this ordinance shall take effect immediately upon passage by the County Council.

Passed this 24<sup>th</sup> day of July, 1995.

SNOHOMISH COUNTY COUNCIL  
Snohomish County, Washington

Karen Miller  
Chairperson

Kathryn J. Bratcher  
Clerk of the Council

- APPROVED  
 EMERGENCY  
 VETOED

DATE:

7/24/95  
Robert J. Drewel  
Snohomish County Executive

ATTEST:

Marilyn B. Allen

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