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SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

RESOLUTION NO. 06-016

ACTING TO COMPLY WITH THE CENTRAL PUGET SOUND GROWTH
MANAGEMENT HEARINGS BOARD'S DETERMINATION OF INVALIDITY
CONCERNING THE USE OF SEWER LINES BY RURAL CHURCHES AND
SCHOOLS IN THE PILCHUCK VI FINAL DECISION AND ORDER

WHEREAS, on December 21, 2005, the County Council adopted Ordinance 05-069 as part of the Ten Year Update to the County's Growth Management Act Comprehensive Plan in accordance with RCW 36.70A.130(3), which included policies to facilitate the connection to sewer service for churches and schools located in the rural area; and

WHEREAS, there had been early and continuous public participation in the review of the provisions of Amended Ordinance 05-069; and

WHEREAS, Amended Ordinance 05-069 adopted text amendments relating to the use of sewer lines by rural churches and schools consisting of amendments to Land Use Policy 1.C.4 and Utilities Policy 3.B.1; and

WHEREAS, Section 49 of Amended Ordinance 05-069 contained a Severability Clause providing that, ". . .[I]f any section, sentence, clause or phrase of this ordinance shall be held to be invalid or unconstitutional by the Growth Management Hearings Board. . . , 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"; and

WHEREAS, Land Use Policy 1.C.4 and Utilities Policy 3.B.1 were adopted with the intent of protecting the rights of churches and schools where pre-existing sewer lines were located on or adjacent to their rural sites; and

WHEREAS, the Pilchuck Audubon Society and others appealed the adoption of Land Use Policy 1.C.4 and Utilities Policy 3.B.1 to the Central Puget Sound Growth Management Hearings Board (Board) in Pilchuck Audubon Society, et al. v. Snohomish County, CPSGMHB Case No. 06-3-0015c (Pilchuck VI); and

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WHEREAS, on September 15, 2006, the Board issued its Final Decision and Order in Pilchuck VI; and

WHEREAS, the Board concluded that RCW 36.70A.110(4) could not be broadly interpreted, and held: "The extension or expansion of urban governmental services into the rural area is prohibited except in those limited circumstances shown to be necessary to protect basic public health and safety and the environment." Pilchuck VI, CPSGMHB Case No. 06-3-0015c (Final Decision and Order, September 15, 2006) at 52; and

WHEREAS, the Board concluded that Land Use Policy 1.C.4 and Utilities Policy 3.B.1 adopted by Amended Ordinance 05-069 do not comply with the requirements of RCW 36.70A.110(4), by allowing the extension of urban governmental services into rural areas, determined that the policies were invalid for violating the Growth Management Act, and remanded the policies to the County to take appropriate legislative action; and

WHEREAS, the Board recognized in Hensley VI, CPSGMHB Case No. 03-3-0009c (Order Finding Validity of the Prior Plan and Regulations During the Remand Period and Rescinding Invalidity, October 13, 2003) at 2, and CTED II, CPSGMHB Case No. 03-3-0020 (Order Finding Compliance, September 30, 2004) at 5, that, upon a finding of invalidity, a savings clause, by operation of law, causes the invalid provisions to be changed back to the previous plan and regulations in place as if the invalidated ordinances were never adopted; and

WHEREAS, the Board recognized in Island Crossing, CPSGMHB Case No. 03-3-0019c, (Order Withdrawing the Recommendation of Gubernatorial Sanctions, Rescinding Invalidity and Finding Compliance, January 6, 2005), that legislative action to remove any ambiguity or doubt regarding compliance with a Board order will achieve compliance; and

WHEREAS, prior to the adoption of Amended Ordinance 05-069, the GPP did not provide an exception to the general prohibition on the extension of sewer service to rural churches and schools; and

WHEREAS, after the finding of invalidity by the Board, the GPP amended by Amended Ordinance 05-069 were by operation of law through the Severability Clause returned to their former policies; and

WHEREAS, the former provisions contained in the GPP comply with RCW 36.70A.110(4) and the Board's Final Decision and Order; and

WHEREAS, chapter 1.02 SCC charges the County Code Reviser with maintaining the County Code and revising the code as required by law.

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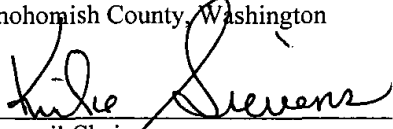
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NOW THEREFORE BE IT RESOLVED:

The County Council recognizes the Final Decision and Order issued by the Board and acknowledges the legal effect of the Severability Clause contained in Amended Ordinance 05-069. If it has not already been accomplished, the County Code Reviser is directed to reflect the Board's Final Decision and Order where appropriate in the GPP. The County Council further directs the Clerk of the Council to publish this resolution.

PASSED this 22nd day of November, 2006.

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington


Council Chair

ATTEST:


Clerk of the Council

Approved as to form:

Jason Cummings
Deputy Prosecuting Attorney

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