



Snohomish County

Planning and Development Services

3000 Rockefeller Ave., M/S 604
Everett, WA 98201-4046
(425) 388-3311
www.snoco.org

MEMORANDUM

TO: Snohomish County Planning Commission **Dave Somers**
County Executive

FROM: Stephen A. Fesler, Senior Planner

SUBJECT: Supplemental Staff Report: Proposed Code Amendments to Ground Disturbance Provisions

DATE: October 5, 2018

Introduction

On September 25, 2018, the Planning Commission was briefed by Snohomish County Planning and Development Services (PDS) staff on proposed code amendments related to the Reforming Ground Disturbance Provisions project. The purpose of this staff report is to supplement the staff report dated September 7, 2018 and to provide changes to the proposed code amendments prior to a public hearing on October 23, 2018.

Attachment B of this memorandum presents the full set of proposed code amendments, as revised by PDS based upon Planning Commission feedback. Additionally, Attachment A presents the updated draft findings of fact and conclusions.

Background

This project is in response to stakeholder interest in reforming ground disturbance provisions under SCC 30.63B.130, which establish several requirements for grading activities. This code section generally limits grading within two feet of adjacent site boundary lines. In order to reduce the standard setback for grading from site boundary lines, an applicant must satisfy the requirements under SCC 30.63B.130(4) which stipulate that:

1. The applicant obtains a construction easement, written agreement, or authorization letter by the abutting property owner(s) to reduce the standard setback for ground disturbance; and
2. The applicant produces a survey by a professional land surveyor licensed in Washington State that ensures compliance with construction and land disturbing activity site plans prior to construction of cut, fill, rockery, or a retaining wall proposed within six inches of a property line.

PDS has engaged with stakeholders to better understand concerns and issues with the existing provisions and how the County could address them through code amendments. As part of this stakeholder engagement process, PDS met with stakeholders and subsequently released draft code language for public review in mid-August. Stakeholders have raised various issues with the existing ground disturbance provisions, including:

- Property rights concerns;
- Risks of liability, security, and health;

- Threats to existing tree canopy, including significant trees;
- Impediments to affordable housing and economic development; and
- Aesthetic impacts.

Existing regulations act as a significant barrier to grading within two feet of an exterior site boundary line even with the exception provisions. Applicants rarely are able to obtain the necessary agreements to authorize such grading and therefore must conform to the two-foot setback requirement.

Generally, stakeholders have indicated that the standard setback requirements should be more flexible. The proposed changes recommended by PDS would promote fairness through additional flexibility and improved aesthetics. The proposed code amendments would also safeguard health and safety by protecting the integrity of adjoining properties and reducing health and safety threats.

Discussion in Response to Planning Commission Feedback

During the Planning Commission briefing on September 25, 2018, Commissioners raised several issues for staff to further consider as part of the proposal. These fall into four categories:

1. Concern over a blanket requirement for a geotechnical engineering report for any grading activities within two feet of a property line;
2. Concern over the existing field survey requirement;
3. Concern over the implications of retaining the existing maximum slope provisions for cuts and fills; and
4. Desire for a more comprehensive finding of fact to describe the purpose of the proposed code amendments.

Geotechnical Engineering Report

PDS is recommending that proposed language specifying the need for a geotechnical engineering report under SCC 30.63B.200 be eliminated as PDS can require a geotechnical engineering report under other code authority as part of civil construction plan review. In reviewing this issue further, the proposed code amendments already specify that all grading activity proposed within two feet of the property line is subject to submission and review of civil construction plans. This process allows PDS staff to determine what information is necessary in order to grant approval of construction.

There are cases where proposed grading activities may be minimal yet subject to construction plan review. Staff can administratively determine if the proposed scope of work does not warrant submission and review of a geotechnical engineering report (e.g., a minor excavation or fill of one-foot difference). For most large projects, however, grading activities within two feet of a property line will trigger the need for geotechnical engineering analysis and review.

Field Survey Requirement

An existing provision under SCC 30.63B.130(4)(b) requires that an applicant mark a field survey any time that grading activities occur within six inches of a property line. This provision exists to ensure that heavy construction work will not cross the property line and impair the rights of the abutting property owners. PDS recommends retention of the code requirement as proposed to maintain the integrity of adjoining properties.

Maximum Slopes for Cuts and Fills

The proposed code amendments do not adjust the maximum slopes for cuts and fills since existing code authority exists already to modify the maximum. Under SCC 30.63B.110, an

applicant may already propose steeper slopes for cuts and fills, provided that sufficient engineering is submitted demonstrating that steeper slopes do not create a hazard for abutting property owners and can be properly stabilized. The proposed code amendments, however, do not modify the standard setback from property lines with respect to the top of cut slopes and toe of fill slopes. PDS recommends that subsections pertaining to those setbacks be modified to eliminate the standard minimum two-foot setback requirement, provided that the remainder of the subsection provisions still operate to establish a minimum setback, if any, based upon the height of the respective slope.

Comprehensive Finding

At the request of the Planning Commission, PDS recommends a new comprehensive finding (see Finding C in Section 1) that captures the purpose of the proposed code amendments.

Proposed Code Amendments and Findings of Fact and Conclusions

Recommended findings of fact and conclusions proposed for this project are contained in Attachment A. Recommended proposed code amendments for this project are contained in Attachment B.

Procedural Requirements

PDS has conducted environmental review on the proposed code amendments and notified the Washington State Department of Commerce of the County's intention to adopt regulations. A State Environmental Policy Act (SEPA) Determination is required for the proposed code amendments. A SEPA Determination of Non-Significance was issued on September 12, 2018. In accordance with RCW 36.70A.106, a notice of intent to adopt the proposed regulations and standards was transmitted to the Washington State Department of Commerce on August 17, 2018.

Staff Recommendation

Staff recommends approval of the proposed code amendments contained in this staff report as well as the Findings of Fact and Conclusions contained in Attachments A and B.

Action Requested

The Planning Commission is requested to hold a public hearing, consider the proposed code amendments, and provide a recommendation to the County Council. The Planning Commission can recommend approval of the code amendments with supporting findings as proposed or modified, denial of the proposal with findings, or amend the proposals with appropriate findings.

Attachments

There are two attachments to this staff report:

- Attachment A: Proposed Ground Disturbance Provisions Code Amendments Findings of Fact and Conclusions
- Attachment B: Proposed Ground Disturbance Provisions Code Amendments

CC:

Ken Klein, Executive Director
Barbara Mock, PDS Director
Mike McCrary, PDS Deputy Director
Ikuno Masterson, AICP, PDS Manager
Michael Dobesh, PDS Manager
Jacqueline Reid, AICP, PDS Supervisor
Ryan Countryman, PDS Supervisor

Kenneth Crossman, PDS Supervisor
Yorik Stevens-Wajda, Senior Legislative Analyst

Attachment A
Proposed Ground Disturbance Provisions Code Amendments
Findings of Fact and Conclusions

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

- A. The foregoing recitals are adopted as findings as if set forth in full herein.
- B. This ordinance will amend title 30 SCC concerning standard setbacks for land disturbing activities, including cuts and fills, maximum slopes, and related citations and regulations.
- C. The purpose of the proposed code amendments is to provide additional flexibility for grading activities within two feet of property lines, which will facilitate efficient and economical land use, particularly for housing development, while serving to safeguard public health and safety.
- D. In developing the proposed code amendments, the County considered the goals of the GMA, specifically those goals related to reducing sprawl, encouraging affordable housing, and promoting economic development. The proposed code amendments are consistent with:
 - 1. GMA Goal 2: “Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.”
 - 2. GMA Goal 4: “Housing. Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.”
 - 3. GMA Goal 5: “Economic development. Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic opportunity for all citizens of this state, especially for unemployed and for disadvantaged persons, promote the retention and expansion of existing businesses and recruitment of new businesses, recognize regional differences impacting economic development opportunities, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities.”
- E. The proposed code amendments will comply with and implement the following goals, objectives, and policies contained in the County’s GMACP – GPP by providing flexibility for additional infill development, facilitating more affordable housing, promoting economic development, allowing more efficient use of land, and utilizing established engineering practices to protect the health, safety, and general welfare of the public:
 - 1. Housing Goal 1: “Ensure that all county residents have the opportunity to obtain safe, healthy, and affordable housing.”
 - 2. Housing Objective 1.B: “Ensure that a broad range of housing types and affordability levels is available in urban and rural areas.”

3. Housing Objective 1.C: “Make adequate provisions for the existing and projected housing needs of all economic segments of the population.”
4. Housing Goal 2: “Ensure the vitality and character of existing residential neighborhoods.”
5. Housing Objective 2.A: “Promote opportunities for all county residents to reside in safe and decent neighborhoods.”
6. Housing Goal 3: “Land use policies and regulations should contribute as little as possible to the cost of housing.”
7. Housing Objective 3.A: “Encourage land use practices, development standards, and building permit requirements that reduce housing production costs.”
8. Land Use Goal 2: “Establish development patterns that use urban land more efficiently.”
9. Land Use Objective 2.C: “Encourage intensification and revitalization of existing and planned commercial and industrial areas.”
10. Land Use Objective 2.E: “Provide for reasonable flexibility in land use regulation and planned mixing of uses, where appropriate, while maintaining adequate protection for existing neighborhoods.”
11. Economic Development Goal 2.A: “Develop and maintain a regulatory system that is fair, understandable, coordinated and timely.”
12. Economic Development Policy 2.A.2: “Snohomish County should stress predictability but maintain enough flexibility in the Comprehensive Plan and development codes to allow for timely response to unanticipated and desirable developments.”
13. Natural Environment Goal 1: “Continue existing and develop new county plans and programs which establish priorities to protect and enhance the natural environment through a coordinated policy framework to maintain and improve the quality of life for Snohomish County. The policy framework below provides a non-exclusive list of the core priorities and strategies that must be addressed in all plans and programs that affect the natural environment.”
14. Natural Environment Goal 8: “Protect public health and safety by minimizing the potential for physical injury and property damage.”

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

1. This ordinance will amend SCC 30.63B.130 to eliminate the standard setbacks for cuts and fills within two feet of a site boundary line. This will resolve issues that have been encountered with existing regulations by providing flexibility for additional infill development, facilitating more affordable housing, promoting economic development, allowing more efficient use of land, and protecting the health, safety, and general welfare of the public. Additionally, amendments to this section of code will include technical corrections and housekeeping changes to improve readability and regulatory implementation.

2. This ordinance will amend SCC 30.63B.200 to specify that any grading within two feet of a site boundary line may require engineered construction plans and a geotechnical report that demonstrate protection of adjoining properties. The amendment will provide a simplified review process for such grading. Additionally, amendments to this section of code will include corrections to land disturbance citations to the International Building Code (IBC) that have changed since the 2006 IBC and were inadvertently not amended in the last major revision of chapter 30.63B SCC.
 3. This ordinance will amend SCC 30.63B.220, 30.63B.230, 30.63B.240, and 30.63B.250 to correct land disturbance citations to the IBC that have changed since the 2006 IBC and were inadvertently not amended in the last major revision of chapter 30.63B SCC.
- G. The proposed code amendments are consistent with the record as set forth in the PDS Supplemental Staff Report dated October 5, 2018.
- H. Procedural requirements:
1. The proposal is a Type 3 legislative action under SCC 30.73.010 and 30.73.020.
 2. The public participation process used in the adoption of the proposed code amendments has complied with all applicable requirements of the GMA and SCC.
 3. In accordance with RCW 30.70A.106(1), a notice of intent to adopt the proposed code amendments was transmitted to the Washington State Department of Commerce for distribution to state agencies on August 17, 2018.
 4. State Environmental Policy Act (SEPA), chapter 43.21C RCW, requirements with respect to this non-project action have been satisfied through the completion of an environmental checklist and the issuance of a determination of non-significance on September 12, 2018.
 5. As required by RCW 30.70A.370, the Washington State Attorney General last issued an advisory memorandum in December 2015 entitled "Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property" to help local governments avoid unconstitutional takings of private property. The process outlined in the State Attorney General's 2015 advisory memorandum was used by the County in objectively evaluating the regulatory changes in this ordinance.

Section 2. The County Council makes the following conclusions:

- A. The proposal is consistent with Washington State law and Snohomish County Code.
- B. The proposal is consistent with the GMACP and with the goals, objectives, and policies of the GPP.
- C. The regulations proposed by this ordinance do not result in an unconstitutional taking of private property for a public purpose.

D. The County complied with the state and local public participation requirements under the GMA and chapter 30.73 SCC.

Section 3. The County Council bases its findings and conclusions on the entire record of the County Council, 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.

Attachment B
Proposed Ground Disturbance Provisions Code Amendments

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

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

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

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

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

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

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

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

30.63B.200 Land disturbing activities and projects requiring engineered construction plans.

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

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

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

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

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

~~((d))~~ (e) All land disturbing activity projects that require civil engineering, as determined by the department pursuant to subtitle 30.5 SCC and IBC sections ((1802.4,)) 1803.3, ((1802.6)) 1803.6, and ((1803.4(2);)) 1804.5(2);

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

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

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

30.63B.220 Geotechnical engineering report.

If a geotechnical engineering report is required by SCC 30.63B.210 or chapter 18 of the IBC, the applicant's geotechnical engineer, civil engineer, or engineering geologist shall inspect and determine the suitability of the prepared ground to receive fills and the stability of cut slopes with respect to soil, hydrologic, and geologic conditions. This information shall be incorporated in the engineering report. The geotechnical engineering report shall also evaluate the need for subdrains or other groundwater drainage devices. To verify safety, the department may require testing for required compaction, soil bearing capacity, stability of all finished slopes, and the adequacy of structural fills as a condition of permit approval. The required content of the geotechnical engineering report is contained in section ~~((4802.6))~~ 1803.6 of the IBC and volume I, chapter 3 of the Drainage Manual.

30.63B.230 Soils engineering report.

When required by chapters 16, 18, and 33 of the IBC for expansive soils, questionable soils and the potential for soils near high groundwater, a soils engineering report shall be required. The required content of the soils engineering report is contained in sections 1613, ~~((4802.6))~~ 1803.6, and 3304 of the IBC and volume I, chapter 3 of the Drainage Manual. The report also shall include the following:

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

30.63B.240 Engineering geology report.

When required by chapters 16 and 18 of the IBC to analyze soil characteristics due to the location of on-site faults, an engineering geology report shall be required. The report shall include an adequate description of the geology of the site, conclusions, and recommendations regarding the effect of geologic conditions on the proposed development, and an analysis of the adequacy for the intended use of sites to be developed by the proposed land disturbing activity, as affected by geologic factors. The required content of the engineering geology report is contained in sections 1613 or ~~((4802))~~ 1803 of the IBC as applicable.

30.63B.250 Liquefaction report.

Based on the soil strength identified in the soils engineering report, the department may require a geotechnical or geologic investigation and report in accordance with section ~~((4802.4))~~ 1803 of the IBC, which shall address the potential for liquefaction.