

Draft Code Amendment Language for Security Device Provisions in Title 30 SCC

Background

Snohomish County Planning and Development Services (PDS) has drafted code amendments that would modify provisions related to security devices in Title 30 of the Snohomish County Code (SCC). A security device is an instrument that helps ensure installation of public and private improvements as part of new development.

Several sections of the security devices chapter and one section in the concurrency and road impact mitigation chapter are under review for possible modification. Changes under consideration include additional flexibility in timing of certain improvements and establishing a new easement requirement to ensure that the County can effectively carry out work not completed under a security device, in the event that is necessary for the County to do so.

Project Scope

This project is an outgrowth of stakeholder interest in modifying and updating the County's security device provisions for new development. The intended scope of the project includes review of the following topics:

- **Delayed installation.** County code allows delayed construction of public improvements and landscaping in subdivisions and multifamily and commercial developments. County code also allows delayed construction of hot asphalt mix paving for public roads (referred to as “final lift”) in subdivisions. PDS is evaluating expansion of these provisions to include private improvements and private roads.
- **Emergency work.** County code provides for instances when emergency work should be conducted under a security device. Currently, the PDS Director is responsible for declaring an emergency and authorizing work. However, the Department of Public Works (DPW) often has an interest in installation and maintenance of improvements. PDS is evaluating changes that would provide a defined role for DPW in administering these provisions as well.
- **Construction easement.** In the event that an applicant fails to perform the duties outlined under a security device, such as installation of improvements, the County may draw upon the security device to complete the work. However, the ability of the County to enter upon the property to complete the work is unclear under current code. PDS is evaluating the addition of a construction easement requirement.

Additionally, the project will address housekeeping issues, such as erroneous citations and general readability.

Draft Code Language

The following table contains six sections of the development code under review for possible amendment. The table shows draft changes in strikeout and underline and provides a rationale for the changes.

Code Section	Rationale for Changes
30.66B.440 Timing of improvements. Construction of frontage improvements, offsite road improvements, and access and transportation circulation improvements is	The changes in the section would allow certain private improvements required under Chapter 30.66B SCC to be delayed pursuant to SCC 30.84.105. The relationship to the

<p>required prior to approval for occupancy or final inspection, except that ((if the development is a subdivision or short subdivision,)) construction <u>may be delayed, if allowed,</u> ((is required prior to the recording unless with the approval of the county engineer, construction is assured)) with a performance security in accordance with SCC 13.10.124 or 30.84.105. When no building permit will be associated with a conditional or administrative conditional use permit, construction of improvements is required as a precondition to approval, unless some later time of construction is recommended by the ((director of public works)) <u>county engineer</u> and imposed by the approving authority as a condition of approval.</p>	<p>delay of public improvements under SCC 13.10.124 would be clarified by the changes. The specificity of development types that may use the delayed installation exceptions is removed; the provision therefore relies upon the cited sections to determine when a development may delay certain improvements. Additionally, a technical housekeeping change from “Director of Public Works” to “County Engineer” would also be made.</p>
<p>30.84.020 Security devices((-)) = general provisions.</p> <p>(1) A security device shall be made on the forms as provided by the department or in a form acceptable to the director. The following general types of financial sureties may be used as security devices:</p> <ul style="list-style-type: none"> (a) Bond; (b) Letter of credit; (c) Assignment of funds or account; or (d) Other form of security device as may be specifically approved by the director of finance. <p>(2) All security devices shall provide for:</p> <ul style="list-style-type: none"> (a) Forfeiture to the county and the right for the county to withdraw funds upon failure of the permittee to construct any or all of the improvements in accordance with the approved plans, specifications, permit or approval requirements or conditions, and time limits. (b) The county’s interest in any security device required pursuant to this chapter to be assignable, without obtaining a re-issuance of the security device, to an annexing municipality in the event the real property covered by the security device is annexed prior to either completion of the work secured by a performance security or final acceptance and release of the security device for that work covered by a maintenance or performance monitoring security. 	<p>A new construction easement requirement would be added to the general security devices provision. The construction easement would only be required for private improvements to be bonded by a permittee. This would allow the County to complete work required under a bond if the permittee fails to complete the work. A construction easement would not be required for work bonded under Title 13 SCC.</p>

<p>(3) The amount of all security devices shall include an inflation factor calculated for the term of the security device together with the term of any allowed extensions.</p> <p>(4) In the event a development completes improvements to existing right-of-way pursuant to a title 13 SCC permit or future right-of-way and drainage facilities pursuant to a title 30 SCC permit, the maintenance securities required in accordance with SCC 13.10.108(1) and 30.84.120 shall be combined into one maintenance security with the same start and end date.</p> <p>(5) The combined maintenance security may be divided into separate securities for right-of-way and drainage if special circumstances exist and approval is granted by both the director and the county engineer.</p> <p><u>(6) When a security device is required or offered by a permittee for a development under this chapter, the property owner shall grant to the county a construction easement allowing the county to enter upon the property to complete the work guaranteed by the security device in the event such work is not completed as required. The easement shall be on a form provided by the county and shall be recorded with the county auditor before any permits may be issued for the development.</u></p>	
<p>30.84.050 Notice of noncompliance and forfeiture of proceeds.</p> <p>(1) If the director determines that work covered by a security device has not been completed or is not operating in conformance with the approved plans, specifications, permit, or approval requirements or conditions, the director shall notify the permittee(,) and the issuer of the security device of said nonconformance. The notice shall:</p> <p>(a) Describe the work or improvements that must be done to prevent the forfeiture of the security device;</p> <p>(b) Provide a date certain by which the required work or improvements must be completed to the directors satisfaction; and</p> <p>(c) State that if the work or improvements are not completed within the time specified, the county will proceed with forfeiture of the</p>	<p>Citations would be corrected in this section. Additionally, other housekeeping changes are proposed.</p>

security device and use the funds to complete the required work or improvements.

(2) After having given notice pursuant to SCC 30.84.050(1), the director may issue a stop work order prohibiting any additional work until the conditions are corrected.

(3) If the work to correct the noncompliance is not completed within the time specified the director may seek forfeiture of the security device, or a portion thereof, to correct the nonconformance. After the county receives payment from a security device, the county will use the funds to complete the required work or improvements. The permittee may not proceed with work until the required amount of the security device has been re-established.

(4) In the event the county proceeds with forfeiture of a security device, the issuer of the security device shall, within ~~((thirty (30)))~~ 30 days of demand of the county, make a written commitment to the county that it will either:

(a) Remedy the noncompliance itself with reasonable diligence pursuant to a time schedule acceptable to the county; or

(b) Tender to the county within ~~((fifteen (15)))~~ 15 days the amount necessary, as determined by the county, to remedy the nonconforming conditions.

(5) Upon completion of either of ~~((SCC 30.84.050(3)(a)))~~ SCC 30.84.050(4)(a) or 30.84.050(4)(b), the issuer of the security device shall then have fulfilled its obligations under the applicable security device for only those improvements identified by the county in its notice. If the issuer of the security device elects to fulfill its obligation pursuant to the requirements of ~~((SCC 30.84.050(3)(b)))~~ SCC 30.84.050(4)(b), the county, upon completion of the remedy, shall notify the issuer of the actual cost of the remedy. The county shall return, without interest, any overpayment made by the issuer of the security device, and the issuer of the security device shall pay to the county any actual costs which exceeded the county's estimate, limited to the total security device amount.

<p>30.84.060 Emergency work by the county.</p> <p>(1) The director <u>or county engineer</u> may determine an emergency exists when:</p> <p>(a) ((work)) <u>Work</u> covered by a security device has not been completed, was not completed in conformance with the approved plans, specifications, or permit requirements, or is not operating as required and the director <u>or county engineer</u> determines an emergency situation has been or may be created that may endanger the public health, safety, and welfare; and</p> <p>(b) The nature or timing of the emergency precludes notification of the applicant and security device issuer as provided in SCC 30.84.050 or the department has attempted to contact the permittee and received no response or the permittee was unable to perform the emergency work required((,)).</p> <p>(2) When the director <u>or county engineer</u> determines that an emergency exists as provided above, the county may take action to correct the emergency at the permittee's expense.</p> <p>(3) The department shall notify the permittee and security device issuer within four days after commencing emergency work. The notice must state the work that was commenced and the nature or timing of the emergency that necessitated the county to perform emergency work without prior notification.</p> <p>(4) After the county completes any emergency work the county shall provide the permittee and issuer of the security device with an itemized statement of expenditures.</p> <p>(5) If funds are collected from a security device the permittee may not proceed with work covered by the security device until the required amount of the security device has been re-established.</p>	<p>The "County Engineer" would be added throughout this section to clarify the role of DPW in determining the need for emergency for certain improvements under Title 30 SCC.</p>
<p>30.84.105 Delayed construction – ((Performance)) <u>performance security.</u></p> <p>(1) The director, with the concurrence of the county engineer, may approve the delayed construction of certain public improvements <u>in accordance with SCC 13.10.124 or certain private improvements</u>((, including)) <u>(such as landscaping, wetland</u></p>	<p>A variety of changes would be made to the delayed construction provisions in SCC 30.84.105. These include:</p> <ul style="list-style-type: none"> • Clarifying the relationship with Title 13 SCC for delayed installation of public improvements by referencing SCC 13.10.124;

mitigation plantings, and final placement of hot mix asphalt paving) in a subdivision, short subdivision, ~~((commercial))~~ or residential or ~~((multifamily))~~ non-residential development, when all of the following are met:

(a) The delay will not create adverse operational or safety impacts or create a threat of significant adverse environmental impacts;

(b) The permittee provides the department with a performance security in accordance with SCC 30.84.105(4);

(c) The request is not to delay the construction of stormwater retention or detention facilities, storm water treatment facilities, stormwater conveyance systems, ~~((or))~~ erosion and sedimentation control facilities~~((;))~~, or the placement of monuments; and

(d) The delayed facilities are constructed to a minimum level of construction as determined by, and acceptable to, the director and county engineer.

(2) ~~((Except as approved in SCC 30.84.105(3);))~~ Delayed construction ~~((delayed pursuant to SCC 30.84.105(1)))~~ shall be completed within two years ~~((of issuance))~~ of the county's receipt and approval of the performance security, except as approved under SCC 30.84.105(3). The director, with concurrence from the county engineer, may grant an extension of the deadline for construction up to one additional year for good cause shown.

(3) The director, with concurrence of the county engineer, may allow construction approval of a subdivision, ~~((or))~~ short subdivision, or residential development without the final placement of hot mix asphalt paving on new ~~((public))~~ private road network elements~~((roads))~~. The placement of hot mix asphalt paving shall be completed within one year of ~~((recording of the subdivision or short subdivision))~~ the county's receipt and approval of the performance security or earlier, as determined by the director, except that hot mix asphalt paving within a subdivision or short subdivision shall be completed within one year of recording the subdivision or short subdivision.

- Clarifying that installation of certain private improvements may be delayed under SCC 30.84.105;
- Eliminating terms "commercial" and "multifamily" and replacing them with "residential" and "non-residential" in SCC 30.84.105(1);
- Adjusting the general timing provisions for delayed installation of private improvements under SCC 30.84.105(2) and moving the one-year extension under SCC 30.84.105(6) to the same subsection for clarity;
- Allowing residential developments to delay installation of final lift on private road network elements under SCC 30.84.105(3);
- Clarifying the timing for delayed installation of final lift on private road networks based upon the type of development (subdivision or general residential development);
- Moving the extension provision under SCC 30.84.105(6) to SCC 30.84.105(2);
- Clarifying the relationship of the County Engineer in decision-making for certain private improvements;
- Renumbering subsections as necessary; and
- Making other housekeeping changes.

<p>(4) ((The)) <u>Any delayed construction approved under this section shall require a performance security ((required by SCC 30.84.105(1) shall be))</u> in the amount of 150 percent of the estimated cost of all delayed improvements, as determined in good faith by <u>the county engineer for private road network elements and the director for all other items</u> taking in to account the following:</p> <p>(a) The costs of constructing all facilities as specified in the approved plan;</p> <p>(b) The costs of monitoring the facilities' performance;</p> <p>(c) The costs of designing and constructing any corrective work including other mitigation measures which may be necessary to correct the effects on-site and off-site of inadequate or failed workmanship, materials or design; and</p> <p>(d) Any related incidental and consequential costs, inflation, and the cost of inspection of the work by the department.</p> <p>(5) The performance security shall remain in effect until final inspection and construction acceptance by the county of all facilities specified by the plans whose construction is secured with the performance security.</p> <p>((6) For good cause shown, the director, with concurrence from the county engineer, may grant an extension of the deadline for completion of construction imposed by SCC 30.84.105(2) for a time period not to exceed twelve months.))</p> <p>((7)) (6) The performance security required pursuant to this section shall not be released or reduced until a maintenance security or performance monitoring security, if required, is accepted pursuant to this chapter.</p>	
<p>30.84.150 General ((Landscaping)) landscaping.</p> <p>(1) If the director approves a planting delay pursuant to SCC 30.25.043(2), a performance security shall be required pursuant to SCC 30.84.105(1), <u>30.84.105(2)</u>, <u>30.84.105(4)</u>, and <u>30.84.105(5)</u> to ensure that all actions required by chapter 30.25 SCC are satisfactorily performed and completed in accordance with the approved plans,</p>	<p>All draft changes are housekeeping.</p>

specifications, permit or approval requirements or conditions. (2) The director may require a maintenance security prior to releasing a performance security accepted pursuant to SCC 30.84.150(1).	
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