

NO. 35834-4-II

DIVISION II, COURT OF APPEALS  
OF THE STATE OF WASHINGTON

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SECURITY SERVICES NORTHWEST, INC.,

Appellant,

v.

JEFFERSON COUNTY,

Respondent.

FILED  
BY  
STATE OF WASHINGTON  
COURT OF APPEALS  
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ON APPEAL FROM KITSAP COUNTY SUPERIOR COURT  
(Hon. Jay B. Roof)

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APPELLANT'S REPLY BRIEF

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ORIGINAL

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## I. INTRODUCTION

There is no dispute that Appellant Security Services Northwest, Inc. (“SSNW”) has established a legal nonconforming use for its security services business on Discovery Bay in Jefferson County. What is in dispute is the effect of subsequent County zoning regulations on the scope of SSNW’s continuing business operations at the time of each enactment, starting with the Emergency Zoning Ordinance enacted by Jefferson County (the “County”) in January 1992, which specifically permitted existing uses to continue.

The Trial Court overruled the Hearing Examiner, finding that SSNW had established a legal nonconforming use on the Gunstone property (the “Property”), but determined that the scope of such use was essentially “frozen in time” as of the effective date of the 1992 Zoning Ordinance. This determination is unsupported by Washington nonconforming use law, and contrary to the language set out in specific provisions of Jefferson County’s Zoning Ordinances from 1992 forward.

The Trial Court’s error was compounded by its restriction of SSNW’s business with respect to the number of allowed employees, the training of third parties, and the land area upon which such business could be conducted. This appeal seeks to lift these unlawful restrictions on the scope of SSNW’s legally established business operations in Jefferson

County.

Jefferson County did not appeal the Trial Court's decision, thus acceding to the determination that SSNW had lawfully established a nonconforming use for its security services and training business. In its Response Brief, the County admits to intensification of SSNW's established uses in the period January 1992 to the present (pp. 7-8), yet fails to accept the applicable provisions of its own zoning ordinances that allowed intensification and even expansion of such uses from January 1992 until 2001 without the necessity of a conditional use permit.

SSNW is not seeking an open-ended scope for its legal nonconforming use. For the Court's assistance, we restate the nature and scope of SSNW's legal nonconforming use:

- Security services, including patrol, site security, maritime security, alarm installation and monitoring, armored car services, K-9 detection and tracking (most occurring off-site).
- Training on the Property in each of the above-mentioned security services, including but not limited to small arms training (with firearm calibers equivalent to hunting rifles, or less) for SSNW's employees and third parties.
- Use of 3,700 acres of the Gunstone Property (allowing for

firearms discharge at locations remote from residences).

- Limit of three bermed shooting ranges (historically, SSNW maintained as many as seven ranges).

This represents the SSNW non-conforming use established by the law and facts. It does **not** include:

- Military or paramilitary training activities on the Property (a restriction on the type of training, not on type of trainee).
- Detonation of explosives on the Property (other than small arms caliber ammunition).

The County's suggestions that military training or use of explosives is sought by SSNW are off-base and appear to be made purely for shock value without consideration of the actual facts.

## II. ARGUMENTS

### A. **The Jefferson County Code Did Not Preclude Security Services Uses on the Property Until Much Later Than 1992, and Even Then Did Not Preclude Expansion or Intensification of Those Uses. The Alteration or Expansion of Nonconforming Uses Did Not Require a Conditional Use Permit Until 2001.**

Despite its assertions in this appeal, Jefferson County is not a jurisdiction that has historically "disfavored" legal nonconforming uses. To the contrary, as expressed through its adopted Zoning Ordinances and Comprehensive Plan policies from 1992 to the present, Jefferson County

has honored and respected the continuation of such uses.

The County's 1992 Zoning Ordinance designated the SSNW site for "General Uses," and specifically allowed existing commercial uses to continue. Ord. 1-0106-92, § 2. There was no mention, much less prohibition, of the enlargement or intensification of existing commercial uses in the 1992 Ordinance. Appx. A. Conversely, shortly after adoption of the 1992 Ordinance, the County Commission reiterated its intent that "uses and activities" lawfully existing in the "General Use" zone be allowed to continue:

The aforementioned Emergency Zoning Ordinance does not incorporate a finding clearly indicating that uses and activities though not in compliance with the ordinance, are not prohibited. Such a finding should be included within the ordinance [Ord. 1-0106-92] *to assuage, in particular, the apprehensions of owners of property within the general use zone.*

Ord. 2-0127-92, Finding 11, Appx. B (emphasis supplied).

The 1992 Zoning Ordinance explicitly permitted in the General Use Zone "all uses and activities except those enumerated" at that time in the other zones. Ord. 1-0106-92, § 8; Appx. A. Firearms training, shooting ranges, and other forms of security training were not "enumerated" in these other zones and, therefore, such uses continued to

be permitted in the General Use Zone after 1992.<sup>1</sup>

In 1994, the County enacted a second Zoning Ordinance which explicitly regulated alterations and expansions of “*structures* housing nonconforming uses,” but was silent on the expansion of the uses themselves. Ord. 9-0801-94 § 10.70. The 1994 Ordinance authorized the continuation of unspecified nonconforming or “grandfathered” commercial uses, while specifically allowing alteration expansion and changes in these existing uses without the necessity of obtaining a conditional use permit. *Id.* §§ 10.10, 10.30; Appx. C. Under the 1994 Ordinance, only a change to a different use required compliance with newly established development standards. *Id.*, § 10.40.

The 1994 Ordinance established a “Table of Permitted Uses;” however, this Table did not address any of the specific uses that were part of SSNW’s security business. *Id.*, at 22-25. As a result, SSNW’s security business uses continued to be permitted within the General Use Zone, and neither the expansion nor intensification of these uses was conditioned or

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<sup>1</sup> Respondent argues that a 1992 “Administrative Rule” required SSNW to “submit an application for review by the Hearing Examiner” in order to expand its legal nonconforming use after 1992. Resp. Br. at 30. SSNW contests the origin and efficacy of this “Administrative Rule.” The “Rule” states on its face that it was “reviewed and *recommended for adoption* by the Jefferson County Planning Commission” (page 1, emphasis added), but there is no evidence that it was ever forwarded to or adopted by the County Commissioners. Furthermore, the “Rule” directly contradicts Finding 11 of Ord. 2-0127-92, a contemporaneous legislative enactment, quoted in text, *supra*. The County provides no citation of authority as to how this purported “Rule” trumps the plain language of an adopted ordinance.

prohibited.

In 1998, the County adopted a revised Zoning Ordinance, adding language indicating that any use not specifically listed within its revised “Use Tables” was prohibited, unless “determined to be similar to a listed use through an administrative clarification.” Ord. 06-0828-98, § 13; Appx. D. Although the Ordinance defined the terms “Nonconforming, ‘Grandfathered,’ or Existing Uses” (§ 1.100, at 12), the 1998 Ordinance provided no new “nonconforming use” regulations to address such uses, nor did it repeal the applicable legal nonconforming use language in the 1992 and 1994 Ordinances. *See* Ord. 06-0828-98, § 1.60.2, at 3.

The 1998 legislation was the first point in Jefferson County’s zoning history in which any of SSNW’s specific security uses arguably could be prohibited if “newly established” in the General Use Zoning District because not listed in the tables.<sup>2</sup> The record, however, discloses no new uses were initiated after that date.

Significantly, the 1998 Zoning Ordinance had no effect on the continuation of existing uses, including the small arms training and shooting ranges<sup>3</sup> occurring on the Property for more than ten years, nor on

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<sup>2</sup> A use only becomes a legal nonconforming use when a new ordinance prohibits that use. *State ex rel. Lige & Wm. B. Dickson Co. v. County of Pierce*, 65 Wn. App. 614, 623, 829 P.2d 217 (1992).

<sup>3</sup> “Shooting range” uses were not specifically enumerated or regulated in Jefferson County until 2001. *See* JCC 18.15.040, Table 3-1.

the expansion or intensification of such uses.

The 2001 Jefferson County “Unified Development Code” was the first promulgation of a detailed set of regulations regarding nonconforming uses. The 2001 Code (effective January 16, 2001) provided that “alteration or replacement” of existing nonconforming uses within “Rural Residential” districts (the Property’s new zoning designation) is allowable subject to a conditional use permit. JCC § 18.20.260(1); Appx. E. The 2001 Code added a definition of “alteration” regarding nonconforming uses that included “expansion, modification or intensification” of such uses. JCC § 18.10.010.

The zoning history demonstrates that there was no restriction on expansion, modification or intensification until the 2001 Code. The Trial Court should have examined SSNW’s business uses on the Property during the period between 1988 through 2001, and evaluated the nature and scope of those uses against the specific provisions of the then-applicable Jefferson County Zoning Ordinances. Instead, the Trial Court erroneously “stopped the clock” on January 1992, with its only support being the rudimentary Emergency Zoning Ordinance which specifically allowed the continuance of existing uses, and did not prohibit the alteration, expansion or intensification of those uses, or require any permit

approval.<sup>4</sup>

The Jefferson County Comprehensive Land Use Plan lends support to SSNW's position regarding legal existing uses. One of its stated Land Use "Goals" is to: "Support the continued existence and economic viability of legally established land uses which become nonconforming as a result of Comprehensive Plan adoption." Jefferson Co. Comp. Plan, LNG 8.0 (as amended by Ord. 13-1213-02, 2002); Appx. F. Land Use Policies implemented in furtherance of that goal include the following:

LNP 8.1 - Existing commercial and industrial uses that become nonconforming will be allowed to continue and to expand within limits as defined in LNP 8.5 [which only concerns "structures" and not "uses"]."

LNP 8.2 - Existing commercial and industrial uses in areas designated as Rural Residential [the zoning currently applicable to SSNW's site] will have the right to continue and not be subject to nuisance claims if operating in compliance with all County regulations."

*See* Appx. F at 3.

Under the Growth Management Act, development regulations such as official zoning controls must be consistent with and implement the Comprehensive Plan. RCW 36.70A.040. The County's zoning

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<sup>4</sup> Respondent argues that "[e]ven if the issue of 'permissive' post-1992 alterations and expansions had been properly presented to the Hearing Examiner, there would be no reason for the trial court's order to be changed, because SSNW never sought approval for expansions or alterations between January 1992 and the enactment of the Unified Development Code in January 2001." Brief, at 35. While it is true that SSNW did not seek a conditional use permit for any expansion of use during this period, no such permit was required by the applicable 1992, 1994 and 1998 Zoning Ordinances.

enactments are consistent, but Respondent's application of the law as to SSNW clearly is not. The trial court's failure to recognize this inconsistency and its determinations limiting the scope of SSNW's nonconforming use constitute legal error.

**B. Intensification of SSNW's Legal Nonconforming Use Was Not an Alteration, But Rather an Allowed Intensification.**

SSNW has been successful in its security business, and the services that it provides on and off the Gunstone Property naturally intensified through the years. If Jefferson County intended to regulate the expansion or intensification of nonconforming uses in its 1992, 1994 or 1998 Zoning Ordinances, it could have done so legitimately via enactment of new legislation, but it did not. *Keller v. City of Bellingham*, 92 Wn.2d 726, 731, 600 P.2d 1276 (1979).

Under the law, intensification of a legally established nonconforming use is permissible where the nature and character of the use is unchanged. *Keller*, 92 Wn.2d at 731. Nonetheless, respondent argues that "alteration" of a nonconforming use in Jefferson County must include its "expansion" or "intensification." Resp. Br. 29-30. The definition cited in support of this argument, as discussed *supra*, *did not appear in the Jefferson County Code until 2001*. The statement that "similar regulations were applicable as far back as 1992" (Brief at 30) is

simply incorrect,<sup>5</sup> and contradicts the explicit enactments by the Jefferson County Commission in the 1992, 1994 and 1998 Zoning Ordinances as set out above.

Zoning enactments in derogation of the common law are to be strictly construed, *Pearson v. Evans*, 51 Wn.2d 574, 576, 320 P.2d 300 (1958), and they are not to be extended beyond the clear scope of legislative intent as manifest in their language. *State ex rel. Standard Mining & Dev. Corp. v. Auburn*, 82 Wn.2d 321, 326, 510 P.2d 647 (1973). The County's self-serving, expansive interpretations of its own laws must be rejected under these standards. Jefferson County zoning laws are unambiguous and require no interpretation: these laws did not preclude intensification or expansion of SSNW's non-conforming use until 2001 when a conditional use permit was required.

In determining the permissible scope of SSNW's use, the Trial Court erred in halting the analysis as of January 1992, and in failing to recognize the legal intensification of such use after that date. Nowhere in the Trial Court's Order is there a finding that SSNW impermissibly "altered" or "expanded" its business after 1992, so the question is one of law. A strict reading of the County ordinances supports a finding that

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<sup>5</sup> See note 1, *supra*, regarding the "Administrative Rule" proffered by Respondent. It bears repeating that this "Rule" was not made a part of the record before the Hearing Examiner nor was SSNW permitted to examine its origins through discovery. App. Br. 35-36.

neither expansion nor intensification of nonconforming uses required a conditional use permit until 2001.<sup>6</sup>

**C. The Trial Court's 20-Acre Limitation on SSNW's Use Is Not Supported by the Law or by Substantial Evidence in the Record.**

The Trial Court erroneously determined that SSNW's legal nonconforming use should be limited to a 20-acre area, close to Discovery Bay. Order, at 5. Respondent attempts to support this portion of the Order with questionable authority, i.e., this area was the only land for which there was a written rental agreement with the owner. Resp. Br., at 46.

The right to maintain a nonconforming land use attaches to the land itself, and is not personal to the current owner or tenant, nor does it depend upon the nature of the ownership or tenancy of the land on which the use is situated. *City of University Place v. McGuire*, 102 Wn. App. 658, 669, 9 P.3d 918 (2000) (citing 1 R. ANDERSON, AMERICAN LAW OF ZONING § 6.40, at 569-70 (3d ed.1986)).

The owner of the Property, Mr. Gunstone, testified that he gave SSNW permission to utilize the entire 3700 acres for its security services business. CP 136-37. Mr. Gunstone also testified that he was regularly on

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<sup>6</sup> Even then, Director Scalf testified that intensification in the "volume" of services would not require a conditional use permit, with reference to examples such as restaurants serving more meals and gas stations doubling previous sales. X VRP 8-9, 16-18.

the Property and observed SSNW's training activities, including firearms practice, taking place over the entire 3700 acres from 1987 forward. Log 212, pp. 2-4. Gunstone employees, who were present on the Property on nearly a daily basis, corroborated this testimony. Log 98, pp. 87-94.

Coincidentally, the record indicated that no County staff had ever set foot on the Property prior to the enforcement actions of 2005, and they presented no affirmative testimony on the geographic scope of SSNW's use. II VRP 3, 6; VIII VRP 36; IX VRP 25. If the burden is upon SSNW to establish the geographic scope of its legal nonconforming use, what better way to prove its use of the entire 3700 acres than testimony from the owner granting permission to do so, and eyewitness testimony of the actual use?

Although the Gunstone Property is in a rather remote area of Jefferson County where neighboring parcels are similarly forested and ownerships large (e.g., 1,000 acres and more), the 20 acres to which the Trial Court's Order confines SSNW's use is situated close to Discovery Bay and Highway 101. CP 386; App. Brief at 11. SSNW's firearms training can be conducted with far less impact on its neighbors if it is allowed to continue using the full 3700 acres.

**D. The Trial Court Improperly Limited the Scope of SSNW's Nonconforming Use to Two to Three "Full-Time Equivalent" Employees.**

The Trial Court determined that SSNW's legal nonconforming use was limited to "approximately two to three full-time employee equivalents (FTE's)" as of January 1992. Order, at 5. The Trial Court, however, provided no definition of this term nor any explanation as to how it was intended to apply to SSNW's business. Compounding the error in selecting January 1992 as the date by which the scope of SSNW's legal nonconforming use was determined (*see* discussion in A and B *supra*), the decision to limit SSNW's employment in such a manner has no support in Washington law.

The term "full time equivalents" has been used in several contexts in Washington law, but not for nonconforming uses. Washington statutes use FTEs to mandate ratios between students and teachers, RCW 28A.150.100, *et seq.*; to determine the number of elected judicial positions, RCW 3.46.063; and to determine patient-staff ratios in the healthcare industry. *Cascade Vista Convalescent Ctr., Inc. v. Department of Social & Health Servs.*, 61 Wn. App. 630, 635, 812 P.2d 104 (1991). The Appellant is not aware of, nor did the Trial Court reference any authority for the use of the FTE concept with respect to the scope of a legal nonconforming use, and its imposition here is unfair.

On the last point, SSNW's business, like the security services industry generally, is one in which many employees work part-time. Illustrative of this fact, SSNW recruited professional law enforcement officers to provide security services in their off-time. *See, e.g.*, Log 98, pp. 70-71. These employees have full-time jobs and cannot qualify as a full-time equivalent employee for SSNW. It defies logic to conclude, for example, that if eight off-duty police officers work 5 hours per week in their off-time (comprising a total of 40 hours), a business owner should be restricted to only one FTE employee under a legal nonconforming use analysis.

To the extent the FTE concept can be applied, there are no "FTE documents" in the record supporting the Trial Court's decision. On the contrary, quarterly reports filed with the Department of Labor and Industries quantify "worker hours," but there is no indication of whether these hours were worked by full-time or part-time employees. Log 227. SSNW worker hours varied but showed significant increases, even before 1992, reporting 833 worker hours in 1987, as much as 1,357 worker hours in the first quarter of 1991, and 2,452 worker hours by the fourth quarter of 1992. *Id.*

The Trial Court ignored altogether the gradual but steady increase in employees and worker hours at SSNW in the period after January 1992,

which was error. The record shows over 7,000 worker hours were reported in first quarter 1996; over 14,000 worker hours in third quarter of 1997; over 21,000 worker hours by third quarter of 1998; over 26,000 by second quarter 1999; and over 30,000 by fourth quarter 1999. Log 227. Respondent's Brief concedes the steady expansion of SSNW's work force from 1992 through 2005. Brief, at 8 (chart). The restriction of SSNW's business to two to three full-time equivalents is unsupported by substantial evidence in the record, unsupported by Washington law, and is clearly erroneous.

**E. The Trial Court Erred by Excluding the Training of Third Parties From the Scope of SSNW's Nonconforming Use.**

The Trial Court found that there is "little to no evidence to conclude that training of third parties took place on the property prior to January of 1992." Order, at 5. Again, use of the January 1992 time frame to determine the scope of SSNW's use is error for the reasons already discussed. Despite this arbitrary threshold, however, there is substantial evidence indicating that third-party training occurred on the Property beginning in 1988, and continuing without interruption since.

We invite the Court to review the extensive documentation of SSNW's business activities from 1988 through 2005 (in Log #98), as well as the unrebutted testimony of the only witnesses with personal knowledge

of the on-site training activities by SSNW, including Mr. Gunstone (VII VRP 23-70, VIII VRP 2-17), Mr. Carver (VIII VRP 41-68), Mr. Tangen (VI VRP 34-58), Mr. Hall (VI VRP 59-75, VII VRP 23), and Mr. D’Amico (II VRP 31 – IV VRP 83). The County offered no independent evidence on this issue.

The record reveals that private K-9 training including tracking, searching, and shooting was conducted on the property since 1988. Log 98-5. Armed security training was conducted in concert with the U.S. Navy in 1990. Log 98-6. Helicopter response training for third party pilots took place as early as 1990. Log 98-67. City of Sequim Police Officers have trained on the property since 1992. Log 120. Firearms certifications required by Washington law have been conducted on the property since 1991. Log 98-6. The Washington State Criminal Justice Training Commission records show 854 firearms certifications by persons trained by SSNW since 1992. Log 98-36. Clearly, third party training has been well established prior to 1992.

**F. Jefferson County Has Misrepresented the Record.**

Respondent has submitted in its Brief a colorful but unfounded narrative of the relevant facts in this matter.

**1. SSNW Does Not Claim the Right to Conduct Military or Paramilitary Operations.**

Counsel for Respondent specifically uses the terms “military” or

“paramilitary” to describe SSNW’s use of the Property a total of no less than 37 times. Resp. Br., 2-50. The entire tenor of the argument reflects an *ad hominem* attack on SSNW’s business.<sup>7</sup> Its transparent purpose is to portray SSNW as an unsympathetic business operation through rhetoric that is without foundation. Neither the Hearing Examiner nor the Trial Court characterized SSNW’s use as “military” or “paramilitary” and, in fact, neither of their decisions even use these terms.

The term “military” means “of or relating to, or characteristic of members of the armed forces” and “of and relating to war.” AMERICAN HERITAGE COLLEGE DICTIONARY (3d ed. 1994) at 864. “Paramilitary” activity denotes actions by a “group of civilians organized in a military fashion, to operate in place of or to assist regular army troops.” *Id.* at 990. The training activity conducted by SSNW has always been security-oriented, and not military in nature. Although units of the armed forces, including the Navy, trained at the Property, this was security and small arms training and not military training. IV VRP 13, Log 98-82. Simply

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<sup>7</sup> Respondent also makes personal allegations questioning the character of Mr. D’Amico, the President of SSNW, calling him “consistently deceptive in his dealings with the County and the courts,” someone who conducted a “clandestine expansion,” engaging in conduct that was “flagrant and deliberate.” Resp. Br., at 42. There was nothing “clandestine” about SSNW’s business; it was openly advertised, reported, and public solicitations for business were made, even to Jefferson County. Log 98, 20-82, 71. Mr. Al Scalf, the County enforcement official, admitted that he believed the testimony of Mr. D’Amico and his instructors. X VRP 10-11 and I VRP 66-67. Further, Mr. D’Amico fully cooperated with the County’s inquiry into SSNW’s activities as part of the 2005 enforcement proceedings. VIII VRP 23, 36.

put, only the military provides military training.

**2. Respondent Misrepresents the Scope of Services Provided by SSNW on the Property.**

Respondent asserts that the only security services provided on the Property prior to 1992 were the dispatching of security guards and installation of alarms. Resp. Br., at 4. This statement is false and the record demonstrates otherwise, with evidence of the following uses on the Property: classroom training; firearms training and qualification; shooting ranges; canine training and kennels; stick fighting and self-defense training; water survival; surveillance training; and pier and dock uses - all prior to 1992. Log 98, pp. 5-7. Letters from SSNW advertised a “comprehensive security program” (Log 98) and a “wide range of services” (Log 98, p. 31). Firearms practice and training occurred in multiple locations on the Property. Log 98, pp. 87-94. Mr. Gunstone testified that he personally observed firearms practice as early as 1987. Log 212, pp. 2-4.

Respondent repeatedly confuses SSNW’s *offsite* services, e.g., armored car services, alarm installation and monitoring, security patrols and K-9 assistance (Resp. Br., at 22-25), with what SSNW did *onsite*, e.g., *training* for persons engaged in armored car services, security patrols and K-9 assistance, each of which necessarily included small firearms training.

SSNW's business operations consist of both offsite and onsite activities.

Respondent included in its Brief a chart allegedly depicting SSNW's uses, number of employees, area used, shooting ranges, and buildings on the property before 1992 and in 2005. Resp. Br., at 8. This chart purposely misrepresents the record and is largely unsupported by the findings of either the Hearing Examiner or the Trial Court. Most of these issues have been addressed above with the exception of the most egregious misrepresentation concerning the rounds of ammunition allegedly fired per month.

The "pre-1992" data in the chart minimizes rounds fired; ignoring third-party and part-time users, while the "2005" entry maximizes ammunition rounds through the imagination and speculation of Respondent's counsel. In footnotes, Respondent cites testimony estimating that "about" 4000 rounds may have been fired by "about" 12 trainees in one four and a half day session. *Id.*; VII VRP, p. 17. Respondent then takes testimony from another witness - the recollection of a conversation by a Jefferson County employee who stated that he "believed" 18 trainees may have attended training *once* - and then concludes that 12 to 18 trainees participated in *every* session, and that 4000 rounds were fired by *each person in every session*. Resp. Br. at n.6; IX VRP 53. Compounding the misrepresentation, Respondent then "assumes" two sessions per month,

*every month*, to double the figure.

This factual misrepresentation is more than statistical error; it constitutes a purposeful manipulation of evidence. This “chart” should be ignored and stricken from the record.

**G. Other Issues Raised by Respondent.**

**1. The Legal Standard of Review.**

Respondent devotes considerable effort to discussing the applicable standard of review, reciting both LUPA and non-LUPA cases. Resp. Br., at 13-18. The thrust of the County’s argument is that the Court of Appeals should not disturb the Trial Court’s Order because it must give “considerable deference” to the findings and conclusions of the Hearing Examiner. *Id.* at 14. Significantly, the County seeks such deference even though the Examiner’s decision as to the very existence of a nonconforming use was reversed by the Trial Court. In describing the Hearing Examiner’s findings and conclusions, the Trial Court stated: “Because the HE ruled that all of SSNW’s activities prior to January 6, 1992, were illegal, *presumably any findings and conclusions he made regarding any lawful nonconforming uses were dicta.*” Memorandum Opinion, at 8 (emphasis added). This case, therefore, is not one that warrants deference to the Hearing Examiner.

In any event, LUPA standards provide a significant role for the

Court of Appeals. Under LUPA, the court can grant relief if *any one* of the six enumerated standards are established. RCW 36.70C.130(1). Further, LUPA standards (a), (b), (e), and (f) each present questions of law that courts must review *de novo*, notwithstanding any level of deference. RCW 36.70C.130(1); *HJS Dev., Inc. v. Pierce County*, 148 Wn.2d 451, 468, 61 P.3d 1141 (2003). Under Washington law, “it is and always has been for the courts, not administrative agencies, to declare the law and interpret statutes.” *White v. Salvation Army*, 118 Wn. App. 272, 277, 75 P.3d 990 (2003). Municipal ordinances are statutory equivalents and are evaluated under the same rules of construction. *McTavish v. City of Bellevue*, 89 Wn. App. 561, 565, 949 P.2d 837 (1998).

**2. The Lack of Building Permits for Structures Is Not a Basis for Disallowing a Legal Nonconforming Use.**

In its brief, Respondent assigns probative significance to the permitting of buildings on the SSNW site. Resp. Br., at 27-28. These arguments with respect to *structures* are irrelevant to the issue of SSNW’s legal nonconforming *uses*, and the Trial Court so held. Order, at 4.<sup>8</sup>

It is well settled that licensing and other regulations unrelated to land use approvals, whether business licensing, business or occupational tax regulations, or building permits, are not *per se* determinative of the

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<sup>8</sup> In fact, SSNW has applied for “after the fact” building permits on its structures and the County has refused to process the applications. IX VRP 22-23.

continuance of a non-conforming use. *Van Sant v. City of Everett*, 69 Wn. App. 641, 651-52, 849 P.2d 1276 (1993), citing *Hooper v. St. Paul*, 353 N.W.2d 138, 141 (1984) (“[v]iolations of ordinances unrelated to the land use planning do not render the type of use unlawful”). *See also Bartz v. Board of Adjustment*, 80 Wn.2d 209, 221, 492 P.2d 1374 (1972)(affirming permit to expand a non-conforming use and stating that a different forum existed for ordinance violations).

Judge Roof’s decision is in accord with this legal authority, specifically finding that failure to obtain building permits cannot be the basis for denying a legal nonconforming use. Order, 4. No error has been assigned to this finding by the County, and its arguments are without merit.

### **3. SSNW Did Not Waive Its Right to Argue Lawful Expansion of Its Use.**

Respondent asserts that SSNW cannot assert its rights to lawful expansion of its legal nonconforming use after January 1992 because it is a new argument not raised below. Resp. Br., at 32-34. This is incorrect.

The issue of the scope of SSNW’s uses prior to *and* after the 1992 Zoning Ordinance was raised in the LUPA Petition (CP 9) and SSNW’s Opening Brief below (CP 263-65). After the Trial Court announced in its Memorandum Opinion that it would use January 1992 as the date upon

which the scope of SSNW's uses would be determined, Appellant filed a timely Motion for Reconsideration, arguing that this "cut-off" date was not supported by law. CP 396-98. The "record on review" includes these items designated in the Clerk's Papers. RAP 9.1(a)

Washington Rules of Appellate Procedure also permit an appeal from a final judgment, the denial of a motion for amended judgment, or a simultaneous appellate review of the trial court's "decision or parts of the decision designated in the notice of appeal." RAP 2.2, 2.4(a); 15 KARL B. TEGLAND, WASHINGTON PRACTICE: CIVIL PROCEDURE § 38.3 at 4 (2003). Further, the appellate court may waive or alter the provisions of any of the Rules in order to serve the ends of justice. RAP 1.2(c). The issue of the 1992 cut-off date is of paramount significance, was brought to the attention of the Trial Court, was designated in the Notice of Appeal (CP 413), and is necessary to serve the ends of justice. Respondent's arguments are without merit.

**4. Trial Court's Perpetuation of the Dismissed Injunction Against SSNW Is in Error.**

Respondent argues that the Trial Court's attempt to keep "in effect" the December 21, 2005 Preliminary Injunction against SSNW is harmless error even though this Preliminary Injunction had previously been dismissed by the same judge who issued it. Resp. Br., at 48-49. For

support of its novel argument, the County cites a Declaration submitted by Mr. D'Amico. *Id.*

To begin with, the Trial Court reversed the Hearing Examiner and recognized the existence of SSNW's legal nonconforming use. Order, at 4. The Preliminary Injunction of December 2005, issued prior to the Trial Court's Order, is in direct contradiction of this recognition. Respondent argues that the "spirit" of the Trial Court's Order providing for the continuation of the defunct injunction was "that SSNW must comply with the Hearing Examiner's substantial limitations on use." Resp. Br., at 49. The Hearing Examiner's decision at issue in this case, however, provides SSNW no use whatsoever. Such a result was not the intent, nor the spirit of the rulings entered by Trial Court favorable to SSNW.

**5. County Is Not Entitled to Attorneys' Fees.**

Respondent asserts that it is entitled to attorneys' fees pursuant to RCW 4.84.370, which allows for recovery of fees on appeal of a land use decision where a county substantially prevails in Superior Court and at the Court of Appeals. Resp. Br. at 50. This request must be denied.

Respondent has not substantially prevailed "in all prior judicial proceedings" as required by the statute. The Trial Court found in favor of the Appellant, reversing the decision of the Examiner regarding the very existence of a nonconforming use. The prevailing party is the one "who

receives an affirmative judgment in its favor.” *Kysar v. Lambert*, 76 Wn. App. 470, 493, 887 P.2d 431 (1995) (quoting *Marassi v. Lau*, 71 Wn. App. 912, 915, 859 P.2d 605 (1993)). Because Appellant improved its position between the Examiner and Trial Court levels and the Respondent did not, Respondent is not entitled to attorneys fees under RCW 4.84.370. *Benchmark Land Co. v. City of Battle Ground*, 94 Wn. App. 537, 551, 72 P.2d 944 (1999).

### III. CONCLUSION

SSNW requests that the Court reverse the Trial Court with respect to its limitations on the scope of SSNW’s legal nonconforming use and instruct the Trial Court to issue an Order that defines such uses in a manner that is lawful and conforms to the unrebutted evidence in the record.

RESPECTFULLY SUBMITTED this first day of October, 2007.

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## APPENDIX A

Extended by  
07-0802-93

IN THE BOARD OF COMMISSIONERS  
IN AND FOR THE COUNTY OF JEFFERSON

Extended by  
11-1214-93

IN THE MATTER OF an emergency land )  
use control replacing the Jefferson )  
County Development Code, No. 3-89, )  
nullified by Clallam County Superior )  
Court Order No. 89-2-00646-7, and )  
ensuring that certain types of )  
development activity formerly )  
regulated by Ordinance No. 3-89 will )  
be reviewed to ensure consistency )  
with the goals and policies of the )  
Jefferson County Comprehensive Plan. )

ORDINANCE NO. 1-0106 -92

The Jefferson County Board of Commissioners enter the following findings:

1. The Superior Court of the State of Washington for Clallam County has issued an order, No. 89-2-0064607, declaring the Jefferson County Development Code, No. 3-89, Jefferson County's primary land use regulation, null, void, and without any effect whatever.
2. The Court of Appeals for the State of Washington has denied Jefferson County's request for a stay of the aforementioned court order pending appeal.
3. Jefferson County has experienced and will continue to experience rapid population growth and accompanying development. The 1990 U.S. Census of Population and Housing, County and Place Profiles (Jefferson County), and the Washington State Office of Financial Management April 1 Populations of Cities, Towns, and Counties used for the Allocation of State Revenues State of Washington, indicate a growth rate of seven and twenty-two hundredths percent (7.22%) for Jefferson County for the year ending March 31, 1991, which is higher than any other county in the State of Washington.
4. A projection of the seven and twenty-two hundredths percent (7.22%) growth rate for the year ending March 31, 1991 for the succeeding five years ending March 31, 1996, indicates a total projected population increase of approximately nine thousand and eight (9,008) residents, for a total population of thirty thousand six hundred and eight (30,608) residents, as compared with twenty-one thousand six hundred (21,600) at the present date.

## GENERAL PROVISIONS

### Section 1 - Purpose:

It is the purpose of this interim ordinance to promote the health, safety and general welfare by guiding development within the County in a manner consistent with the Jefferson County Comprehensive Plan. This ordinance implements the goals, purposes, and objectives of the Comprehensive Plan by ensuring that the design, location, and type of development occurring within the County is consistent with the Plan. This ordinance is intended as an interim control only and shall be repealed upon enactment of a permanent control.

### Section 2 - Scope:

No use or development activity subject to this ordinance shall be initiated except in compliance with this ordinance and then only after securing a permit granting interim zoning approval from the County.

Any building, structure, or use, lawfully existing at the time of enactment of this ordinance, though not in compliance with the provisions contained herein, shall not be prohibited by this ordinance.

Section 3 - Definitions: When used in this ordinance, certain words are interpreted as follows: words in the present tense include the future tense; words in the singular shall include the plural; the word "shall" is mandatory; the word "should" indicates that which is recommended but not required; the word "may" is permissive.

All words in this ordinance shall have their plain and ordinary meaning unless otherwise defined hereinbelow:

1. **Accessory:** A use or building that is clearly subordinate or incidental to the principal use of the property.
2. **Adjacent:** A lot or parcel of land that shares all or part of a common lot line with another lot or parcel of land. Properties separated by public rights-of-way are not considered adjacent.
3. **Agriculture:** Improvements or activities associated with the growing, cultivation, and/or harvesting of crops and livestock, including those activities necessary to prepare the agricultural commodity for shipment.
4. **Aquaculture:** Improvements or activities associated with the raising and harvesting of aquatic plants and animals, including

## SPECIFIC ZONE REGULATIONS

### Section 5 - General Commercial Zone:

1. Purpose and Intent: It is the purpose of this section to establish permitted uses and site development standards for the general commercial zone. All activities involved in the retail or wholesale buying, selling, or distribution of goods or services shall be permitted within the general commercial zone. Mini-storage, transient accommodations, and time-share developments shall be considered general commercial activities for the purpose of this ordinance.

Warehousing activities shall be considered light industrial activities for the purpose of this ordinance (see, Section 6 - Light Industrial Zone). Home occupations shall be considered conditional uses for the purpose of this ordinance (see, Section 8 - Conditional Uses).

The following maps, adopted pursuant to Jefferson County Board of Commissioners Resolutions Nos. 2-89, and 97-89, represent precisely detailed amendments to the Jefferson County Comprehensive Plan Optimum Land Use Map showing commercial areas. These maps are hereby incorporated by reference as interim zoning maps designating the "general commercial zone" for the purpose of this ordinance: Mats Mats Commercial Area; Quilcene Commercial Area; Discovery Bay Commercial Area; Chimacum Commercial Area; and, that portion of the Gardiner Optimum Development Map showing commercial areas.

2. Permitted Uses: All uses and activities involved in the retail or wholesale buying, selling, or distribution of goods or services shall be permitted within the general commercial zone.
3. Prohibited Uses: Uses other than those meeting the definition in subsection 2, hereinabove, are prohibited.
4. Conditional Uses: Multi-family residential development as defined in Section 9 - Conditional Uses, hereinbelow.
5. Development Standards:
  - a. Maximum building coverage: 70%.
  - b. Maximum development coverage: 85%.
  - c. Maximum height: Thirty-five feet (35').
  - d. Minimum setbacks: The minimum setback for a commercial structure, including any accessory building or structure, from the public or private road rights-of-way shall comply with the following standards. In the case of corner lots, the setback

standard shall be applied to both rights-of-way. Additional setbacks for planned unit commercial developments may be required when deemed necessary during project review.

**Department of Public Works**

**R-O-W Classifications:**

**Minimum Setbacks:**

Access road	twenty-five feet (25')
Collector road	thirty feet (30')
Arterial road	thirty-five feet (35')

The minimum building setback from adjoining properties (side and rear yards) shall be as follows:

**Interim Zoning Ordinance**

**Property Designation:**

**Minimum Setbacks:**

General Commercial	five feet (5') unless approved as a common wall structure
Light Industrial	twenty feet (20')
Light Industrial\Commercial	twenty feet (20')
General Use	fifty feet (50')

- e. **Improvements:** Pursuant to Section 13 - Administration, hereinbelow, the Director of the Jefferson County Planning and Building Department shall be empowered to draft and promulgate administrative guidelines establishing specific development standards for: lighting, landscaping, screening and buffering, permissible noise emission levels, signs, drainage, steep slopes, geologically unstable areas, traffic generation, parking space requirements, off-street parking dimensions, access, surfacing, and loading zones. Said guidelines shall provide additional standards necessary for orderly development and shall be considered as incorporated by reference herein upon adoption.

**Section 6 - Light Industrial Zone:**

1. **Purpose and Intent:** It is the purpose of this section to establish permitted uses and site development standards for the light industrial zone. All activities involved in the production, processing, manufacturing, fabrication, or assembly of goods or materials shall be permitted within the light industrial zone, except as provided hereinbelow.

Commercial mini-storage units designed primarily for the storage of domestic goods shall be considered commercial activities for the purpose of this ordinance (see, Section 5 - General Commercial Zone).

Only light industrial uses and activities shall be subject to this section. Any other industrial or commercial uses and activities shall be considered conditional uses for the purpose of this ordinance (see, Section 8 - Conditional Uses).

Light industrial uses are those activities that:

- a. Are wholly contained, excluding display, in a structure or combination of structures not exceeding ten thousand square feet (10,000 s.f.), and not exceeding three stories or fifty feet (50') in height;
- b. Utilize five (5) acres or less of land for on-site requirements except for use as an off-site hazardous waste and treatment facility;
- c. Do not produce noise, traffic, smoke, dust, odors, vibration, heat, light, particulates, or electromagnetic energy to a greater intensity than normally associated with commercial activities;
- d. Have outside storage not exceeding twice the square footage of the building.

The following maps, adopted pursuant to Jefferson County Board of Commissioners Resolution No. 2-89, represent precisely detailed amendments to the Jefferson County Comprehensive Plan Optimum Land Use Map showing industrial areas. These maps are hereby incorporated by reference as interim zoning maps designating the "light industrial zone" for the purpose of this ordinance: Quilcene Industrial Area; and, Center Industrial Area.

2. Permitted Uses: All uses and activities involved in the production, processing, manufacturing, fabrication, or assembly of goods or materials, except as limited in subsection 1 hereinabove, shall be permitted within the general industrial zone.
3. Prohibited Uses: Uses other than those meeting the definition in subsection 2, hereinabove, are prohibited.
4. Conditional Uses: Heavy industrial uses and activities, and general commercial uses and activities as prescribed in Section 8 - Conditional Uses, hereinbelow.
5. Development Standards:
  - a. Maximum building coverage: 80%.
  - b. Maximum development coverage: 95%.
  - c. Maximum height: Three stories, or fifty feet (50').

- d. **Minimum setbacks:** The minimum setback for light industrial buildings or structures, from the edge of public or private road rights-of-way, shall comply with the following standards. In the case of corner lots, the setback standard shall be applied to both rights-of-way.

**Department of Public Works  
R-O-W Classifications:**

**Minimum Setbacks:**

Access road	twenty-five feet (25')
Collector road	thirty feet (30')
Secondary arterial road	thirty-five feet (35')
Primary arterial road	fifty feet (50')

The minimum building setback from adjoining properties (side and rear yards) shall be as follows:

**Interim Zoning Ordinance  
Property Designation:**

**Minimum Setbacks:**

General Commercial	twenty feet (20')
Light Industrial	ten feet (10')
Light Industrial\Commercial	twenty feet (20')
General Use	fifty feet (50')

Additional setbacks for light industrial developments may be required when deemed necessary during project review.

- e. **Improvements:** Pursuant to Section 13 - Administration, hereinbelow, the Director of the Jefferson County Planning and Building Department shall be empowered to draft and promulgate administrative guidelines establishing specific development standards for: lighting, landscaping, screening and buffering, permissible noise emission levels, signs, drainage, steep slopes, geologically unstable areas, traffic generation, parking space requirements, off-street parking dimensions, access, surfacing, and loading zones. Said guidelines shall provide additional standards necessary for orderly development and shall be considered as incorporated by reference herein upon adoption.

**Section 7 - Light Industrial\Commercial Zone**

1. **Purpose and Intent:** It is the purpose of this section to provide for the development of areas in which certain types of industrial activities, and compatible commercial activities, shall be located. Furthermore, it is the purpose of this section to: (a) protect light industrial\commercial areas from other uses which may interfere with the purpose and efficient functioning of said areas; (b) protect the

adjacent interim zoning designations from adverse or damaging impacts of any kind emanating from activities in the light industrial\commercial areas; and, (c) provide standards for the development of said areas.

Certain maps adopted pursuant to Jefferson County Board of Commissioners Resolution No. 2-89, or adopted by the Jefferson County Board of Commissioners within the Highway Twenty Corridor Policies, represent precisely detailed amendments to the Jefferson County Comprehensive Plan Optimum Land Use Map showing industrial\commercial areas. Said maps are hereby incorporated by reference as interim zoning maps designating the "light industrial\commercial zone" for the purpose of this ordinance: West End Industrial\Commercial Area; and, Highway Twenty Industrial\ Commercial Area.

**2. Permitted Uses:**

- a. Light industrial activities involving the manufacture, repair, or servicing of goods or products which can be performed with minimal adverse impact on, and pose no special hazard to, the environment and the surrounding community. Such goods or products include, but are not limited to:
  - (1) Mechanical, automotive, marine and contractors\builders equipment and supplies;
  - (2) Electrical and electronic equipment or products; and,
  - (3) Warehousing and storage of equipment, commodities and products.
- b. Retail sale of goods or products manufactured on the premises, or utilized in manufacturing, repairing or servicing activities which are permitted in this zone.
- c. Radio and television transmitting and receiving towers.
- d. All uses and activities occurring within the "light industrial\commercial zone" must:
  - (1) Be wholly contained, excluding display, in a structure or combination of structures not exceeding ten thousand square feet (10,000 s.f.);
  - (2) Not utilize more than five (5) acres of land for on-site requirements except for use as an off-site hazardous waste and treatment facility;

- (3) Not produce noise, traffic, smoke, dust, odors, vibration, heat, light, particulates, or electromagnetic energy to a greater intensity than normally associated with commercial activities; and,
  - (4) Not have outside storage exceeding twice the square footage of the building.
3. Prohibited Uses: Uses other than those delineated in subsection 2, hereinabove, are prohibited.
4. Conditional Uses: Heavy industrial development as defined in section 9 - Conditional Uses, hereinbelow.
5. Development Standards:
- a. Maximum density: The maximum density shall be one building or structure per parcel of record as filed with the Jefferson County Auditor's Office.
  - ba. Maximum building coverage: 75%.
  - cb. Maximum development coverage: 90%.
  - dc. Maximum height: No building or structure shall exceed thirty-five feet (35') in height without conditional review and approval by the Board of Commissioners upon recommendation of the Hearing Examiner. Approval of structures exceeding thirty-five feet (35') in height shall meet the following criteria:
    - (1) The building and design shall be compatible with the physical characteristics of the site, the appearance of buildings adjacent to the site, and the character of the zone;
    - (2) A site plan shall be submitted by the applicant which facilitates efficient and convenient circulation, includes landscaping and/or other design features which ensure that the building or structure is compatible with the physical characteristics of the site, the appearance of buildings adjacent to the site, and the character of the zone; and,
    - (3) No structure shall be permitted to exceed fifty feet (50') or three (3) stories, whichever is less.
  - ed. Minimum setbacks: The minimum setback for light industrial\ commercial buildings or structures, from the edge of public or private road rights-of-way, shall comply with the following standards. In the case of corner lots, the setback standard shall be applied to both rights-of-way.

**Department of Public Works  
R-O-W Classifications:**

**Minimum Setbacks:**

Access road	twenty-five feet (25')
Collector road	thirty feet (30')
Secondary arterial road	thirty-five feet (35')
Primary arterial road	fifty feet (50')

The minimum building setback from adjoining properties (side and rear yards) shall be as follows:

**Interim Zoning Ordinance  
Property Designation:**

**Minimum Setbacks:**

General Commercial	twenty feet (20')
Light Industrial	twenty feet (20')
Light Industrial\Commercial	twenty feet (20')
General Use	fifty feet (50')

Additional setbacks for light industrial\commercial developments may be required when deemed necessary during project review.

- e. Improvements: Pursuant to Section 13 - Administration, hereinbelow, the Director of the Jefferson County Planning and Building Department shall be empowered to draft and promulgate administrative guidelines establishing specific development standards for: lighting, landscaping, screening and buffering, permissible noise emission levels, signs, drainage, steep slopes, geologically unstable areas, traffic generation, parking space requirements, off-street parking dimensions, access, surfacing, and loading zones. Said guidelines shall provide additional standards necessary for orderly development and shall be considered as incorporated by reference herein upon adoption.

**Section 8 - General Use Zone:**

1. Purpose and Intent: It is the purpose of this section to establish permitted uses for the general use zone. All uses and activities except those enumerated in Section 5 - General Commercial Zone, Section 6 - Light Industrial Zone, or Section 7 - Light Industrial\Commercial Zone hereinabove, shall be considered permitted or conditional uses within the general use zone.

All areas within the unincorporated boundaries of the County not designated as the "general commercial zone," the "light industrial zone," or the "light industrial\commercial zone" hereinabove, shall be designated as the "general use zone" for the purpose of this ordinance.

2. Permitted Uses: All uses and activities except those enumerated in Section 5 - General Commercial Zone, Section 6 - Light Industrial Zone, or Section 7 - Light Industrial\Commercial Zone hereinabove, shall be considered permitted or conditional uses within the general use zone.
3. Prohibited Uses: All uses and activities enumerated in Section 5 - General Commercial Zone, Section 6 - Light Industrial Zone, and Section 7 - Light Industrial\Commercial Zone hereinabove, except as may be permitted through the administrative remedy delineated in Section 13 - Administration hereinbelow.
4. Conditional Uses: As provided in Section 9 - Conditional Uses, hereinbelow, as follows:
  - a. Multi-family residential development, as defined in Section 9 - Conditional Uses, hereinbelow;
  - b. General commercial uses, as defined in Section 9 - Conditional Uses, hereinbelow;
  - c. Heavy industrial development, as defined in Section 9 - Conditional Uses, hereinbelow;
  - d. Signs, as provided in Section 9 - Conditional Uses, hereinbelow; and,
  - e. Home occupations as defined in Section 9 - Conditional Uses, hereinbelow.

## APPENDIX B



**IN THE BOARD OF COUNTY COMMISSIONERS  
IN AND FOR THE COUNTY OF JEFFERSON**

**IN THE MATTER OF an ordinance amending )  
the Jefferson County Emergency Zoning )  
Ordinance, No. 1-0106-92, adding maps )  
depicting the "general commercial zone")  
and the "light industrial zone" and )  
making substantive changes to the )  
provisions of the ordinance relating )  
to "home businesses" and the fees for )  
initiating the administrative remedy )  
of the "zone change." )**

**ORDINANCE NO. 2-0127-92**

The Jefferson County Board of Commissioners enter the following findings:

1. The Jefferson County Board of Commissioners passed an interim land use control, the Jefferson County Emergency Zoning Ordinance, No. 1-0106-92, on January 6, 1992.
2. The aforementioned Emergency Zoning Ordinance operates as an emergency land use control preserving the County's planning options under the Jefferson County Comprehensive Plan and applicable community plans, and is to remain in effect only until such time as the County can conduct studies, hold hearings, and adopt a permanent zoning control. As such, the Emergency Zoning Ordinance is consistent with, and expressly authorized by the Planning Enabling Act, RCW 36.70.790.
3. Findings 1-22 contained within the Jefferson County Emergency Zoning Ordinance, which support the Board's declaration that an emergency situation exists, are hereby adopted and incorporated by reference herein.
4. The amendments set forth hereinbelow must be enacted immediately in order to avoid an imminent threat to the public health and safety. Pursuant to Washington Administrative Code rule 197-11-880, these amendments are exempt from environmental review under the Jefferson County State Environmental Policy Act Implementing Ordinance, No. 7-84, and the State Environmental Policy Act, RCW 43.21C.

5. The aforementioned **Emergency Zoning Ordinance** incorporates by reference the following maps (which represent precisely detailed amendments to the **Jefferson County Comprehensive Plan Optimum Land Use Map** adopted pursuant to **Jefferson County Board of Commissioners Resolutions Nos. 2-89 and 97-89**) which depict the "general commercial zone": **Mats Mats Commercial Area; Quilcene Commercial Area; Discovery Bay Commercial Area; Chimacum Commercial Area;** and, that portion of the **Gardiner Optimum Land Development Map** showing the commercial area.
6. The aforementioned "general commercial zone" maps do not include any maps depicting the **Port Hadlock Community Center, the Tri-Area Business District, or the Brinnon Flats Commercial Core,** which, according to the applicable community plans (**Tri-Area Community Development Plan, and the Brinnon Community Development Plan**), are dedicated to commercial uses and activities.
7. In order to give effect to the optimum land use provisions of the respective community plans (**Tri-Area Community Development Plan, and the Brinnon Community Development Plan**), the areas referred to in finding number six, hereinabove, should be served by precisely detailed maps which explicitly designate the "general commercial zone" for the purposes of the **Emergency Zoning Ordinance.** The Board is cognizant of the fact that a precisely detailed map depicting the **Tri-Area Business District** will, consonant with the **Tri-Area Community Development Plan,** encourage strip commercial development.
8. The aforementioned **Emergency Zoning Ordinance** incorporates by reference the following maps (which represent precisely detailed amendments to the **Jefferson County Comprehensive Plan Optimum Land Use Map** adopted pursuant to **Jefferson County Board of Commissioners Resolution No. 2-89**) which depict the "light industrial zone": **Quilcene Industrial Area; and Center Industrial Area.**
9. The aforementioned "light industrial zone" maps fail to incorporate the **Gardiner Industrial Area** map, which represents a precisely detailed amendment to the **Jefferson County Comprehensive Plan Optimum Land Use Map** adopted by way of **Resolution No. 97-89,** depicting the **Gardiner Industrial Area.**
10. In order to give effect to the **Gardiner Community Development Plan,** that map within the **Gardiner Plan** depicting the **Gardiner Industrial Area** should be included within the **Emergency Zoning Ordinance** as a map explicitly designating the "light industrial zone."

11. The aforementioned **Emergency Zoning Ordinance** does not incorporate a finding clearly indicating that uses and activities lawfully existing at the time of enactment of the ordinance, though not in compliance with the ordinance, are not prohibited. Such a finding should be included within the ordinance to assuage, in particular, the apprehensions of owners of property within the "general use zone."
12. The aforementioned **Emergency Zoning Ordinance** incorporates conditional use approval standards for "home occupations" which are significantly more stringent than analogous provisions contained in prior Jefferson County land use regulations. These more stringent standards place unreasonable and unduly limiting restrictions upon home occupations, in that many activities which pose no threat to the peaceful enjoyment of surrounding properties would be prohibited. Accordingly, those provisions of the **Emergency Zoning Ordinance** relating to "home occupations" should be amended to ease the standards for "home occupations."
13. The aforementioned **Emergency Zoning Ordinance** details a procedure for obtaining "administrative relief" from the interim zoning designations. According to the ordinance, the petition for filing a request for a change in the interim zoning designations must be accompanied by a five hundred dollar (\$500.00) fee. This fee is excessive and operates to discourage individuals from seeking the remedy of the zone change. Accordingly, the **Emergency Zoning Ordinance** should be amended to eliminate the five hundred dollar (\$500.00) zoning change fee. Waiving the fee would encourage land owners to use the zoning change remedy, thereby facilitating the ongoing process of creating precisely detailed maps and adopting a permanent official land use control.

The Planning Department's **Unified Fee Ordinance**, No. 5-89, should be amended to make appropriate provision for fees covering notice expenses related to zoning change petitions (e.g., notices to adjacent property owners, publication of required public notices, etc.).

NOW, THEREFORE, the Jefferson County Board of Commissioners hereby ordains that the Jefferson County **Emergency Zoning Ordinance**, No. 1-0106-92, be amended as set forth hereinbelow. Language deleted from the ordinance is shown with strikeouts; language added to the ordinance is indicated by italics; interim zoning maps added to the ordinance which depict the "general commercial zone" are attached and labeled - "Tri-Area Business District Commercial Zone," "Port Hadlock Community Center Commercial Zone," and the "Brinnon Flats Commercial Zone,":

1. A new finding number 19 shall be added, and the following findings shall be renumbered accordingly. The new finding number 19 shall read as follows:

## APPENDIX C

**ORDINANCE NO. 09-0801-94**  
**JEFFERSON COUNTY ZONING CODE**  
**REPEALING AND REPLACING**  
**THE INTERIM ZONING ORDINANCE #1-0106-92**  
**AND #2-0127-92**

**JEFFERSON COUNTY BOARD OF COMMISSIONERS**

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Gary Phillips, Member  
Guy Rudolph, Member  
Janet Welch, Member

**JEFFERSON COUNTY DEPARTMENT OF LONG RANGE  
PLANNING**

Steven Ladd, Director  
James Holland, Senior Planner  
Lesa Barnes, Assistant Planner

**JEFFERSON COUNTY DEPARTMENT OF DEVELOPMENT  
REVIEW**

Kent Anderson, Manager

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**TABLE OF PERMITTED USES, Section 6, Jefferson County Zoning Code  
(Ordinance No. 09-0801-94 -- amended per Ordinance 15-0814-95)**

DISTRICT	C-1	C-2	M-1	M-2	M-C	G-1	U	
<b>Key: C = Conditionally Permitted ✓ = Permitted Outright</b>								<b>Special Use Permit</b>
<b>USE</b>	<b>n'hood comm.</b>	<b>general comm.</b>	<b>light industrial</b>	<b>heavy industrial</b>	<b>lt ind / comm</b>	<b>general use</b>	<b>urban use.</b>	
Accessory uses and structures incidental to any permitted use and which will not create a nuisance or hazard	Exempt							
Agricultural Processing, Heavy				✓				
Airports and airfields								✓
Amateur Radio Antennas, less than sixty-five (65) feet	✓	✓	✓	✓	✓	✓	✓	
Amateur Radio Antennas, more than sixty-five (65) feet	C	C	C	C	C	C	C	
Aquaculture, in an area regulated by the Shoreline Master Program	✓	✓	✓	✓	✓	✓	✓	
Aquaculture, in an area not regulated by the Shoreline Master Program	✓	✓	✓	✓	✓	C	C	
Bed and Breakfast Inns with 1 or 2 guestrooms	home business							
Bed and Breakfast Inns with 3, 4, 5, or 6 guestrooms	C	C	C	C	C	C	C	
Boat building and repair: Commercial	C	✓	✓	✓	✓			
Cemeteries						✓		
Church or place of religious worship	✓	✓	C		C	C	✓	
Commercial relay or transmission facilities		✓	✓	✓	✓	C		
Commercial Uses, General: uses whose primary activity is the retail or wholesale, buying, selling, or distributing of goods and services such as:								
Agencies (e.g. real estate, insurance)		✓						
Alcoholic beverage sales (packaged)		✓						
Bakeries		✓						
Banks and Financial Institutions		✓						
Boat marinas								✓
Bus stations and terminals		✓						✓
Car wash		✓						
Clinics		✓						✓
Convenience stores		✓	✓					
Construction yards	✓	✓	✓	✓	✓			
Dry cleaners and laundries		✓			C			
Food stores		✓						
Hardware stores		✓			✓			
Laboratories for research and testing		✓	✓		✓			
Lock and gunsmiths		✓						
Lumber yards		✓			✓			
Nursery, Landscape material		✓			✓	C		
Offices		✓						
Pawnshops or secondhand stores					✓			
Pharmacy or drugstore		✓						
Photographic studios		✓			✓			
Physical culture establishments: fitness centers, tanning salons, etc.		✓			✓			
Plumbing shops and yards		✓			✓			

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SECTION 10

NON-CONFORMING USES

Subsections:

- 10.10 Non-conforming Uses
- 10.20 Non-conforming Signs
- 10.30 Non-conforming Use - Continued
- 10.40 Non-conforming Use - Change in Use
- 10.50 Non-conforming Use by Reason of Change in Ordinance
- 10.60 Non-conforming Use - Discontinued
- 10.70 Alterations and Expansions of Non-conforming Uses
- 10.80 Reconstruction of a Damaged Building

10.10 NON-CONFORMING USES: Often referred to as "grandfathered", a non-conforming use is the legal term for an activity and structure that exists prior to the effective date of this Ordinance and is not in compliance with the provisions contained herein. Non-conforming uses are legitimate uses of property and therefore, for the purposes of this Ordinance, these activities are classified as to their current use. In addition, these preexisting or "grandfathered" activities may be altered, expanded or changed as provided for below.

10.20 NON-CONFORMING SIGNS: Non-conforming signs shall be regulated as set forth in Section 15 of this Ordinance.

10.30 NON-CONFORMING USE - CONTINUED: The use of a building and/or property lawfully existing at the time of the passage of this Ordinance may be continued although such use does not conform to its provisions. A non-conforming use shall not hereafter be changed to a less restrictive use.

10.40 NON-CONFORMING USE - CHANGE IN USE: A non-conforming use may be changed to another non-conforming use of the same or more restrictive zoning classification, provided that all applicable development standards for the proposed use are met.

Should the proposed non-conforming use require conditional use approval, application shall be made for a conditional use permit pursuant to Section 7.00 of this Ordinance.

10.50 NON-CONFORMING USE BY REASON OF CHANGE IN ORDINANCE: Whenever the use of a building and/or property becomes non-conforming by reason of a subsequent change in the Zoning Ordinance, such use may be continued.

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10.60 NON-CONFORMING USE - DISCONTINUED: Should the non-conforming use of a building and/or property be discontinued for a period of three (3) years, the use of such building and/or property shall hereafter conform to a use permitted in the zoning district in which it is located. The burden of proof in documenting continued use through written record shall be on the applicant.

10.70 ALTERATIONS AND EXPANSIONS OF STRUCTURES HOUSING NON-CONFORMING USES: The alteration of structures housing a non-conforming use shall be subject to the applicable bulk and dimensional requirements found in Section 12 of this Ordinance. Expansions or alterations required to meet federal or state laws will be allowed to the extent that the alteration or expansion is limited to that which is required to comply with the regulation.

10.80 RECONSTRUCTION OF A DAMAGED BUILDING: A non-conforming building that is damaged or destroyed by natural, accidental, or malicious causes may be restored or rebuilt within three (3) years from the date of damage and remain a legal, non-conforming use. Such structures shall be devoted only to the use that was in existence prior to the damage or destruction, unless a change of use pursuant to Section 10.40 has been approved. The structure may be restored or rebuilt to the same size and extent as the original structure, but shall not increase the pre-existing degree of non-conformity of the subject property.

## APPENDIX D

**EMERGENCY INTERIM CONTROLS ORDINANCE**

**EICO**

**FOR THE IMPLEMENTATION OF THE  
JEFFERSON COUNTY COMPREHENSIVE PLAN**

**AUGUST 28, 1998**  
**amended November 9, 1998**

STATE OF WASHINGTON  
County of Jefferson

IN THE MATTER OF AN Emergency Interim }  
Ordinance being adopted pursuant to }  
Chapter 36.70.790 and Chapter 36.70A.390 } Ordinance No. 06-0828-98  
Revised Code of Washington establishing }  
"Interim Official Controls" regulating and }  
restricting land use and development }  
throughout Jefferson County }

**SECTION 1**  
**STATEMENT OF AUTHORITY AND PURPOSE**

Sections:

- 1.10 Statement of Authority
- 1.20 Statement of Purpose and Intent
- 1.30 Findings of Fact
- 1.40 Enactment
- 1.50 Title
- 1.60 Repeal and Amendment of Existing Regulations
- 1.70 Minimum Requirements
- 1.80 Level of Service Standards
- 1.90 Rules of Interpretation
- 1.100 Definitions

Section 1.10 Statement of Authority: This ordinance is adopted pursuant to the provisions of Chapter 36.70.790 RCW and Chapter 36.70A.390 RCW which empowers the County to enact emergency interim zoning and provide for its administration and enforcement.

Section 1.20 Statement of Purpose and Intent: Based on the policy expressed in the Jefferson County Comprehensive Plan, the Growth Management Act and its amendments, it is in the best interest of the County to provide for the orderly planned use of land resources. The purpose of this emergency interim ordinance is to act as an interim measure during development of development regulations.

Section 1.30 Findings of Fact: The Jefferson County Board of Commissioners hereby enter the following findings:

1. Jefferson County is planning under the provisions of the Growth Management Act, codified as RCW 36.70A.
2. The legislative findings and planning goals adopted by the Washington State Legislature when the Growth Management Act was enacted in 1990 support the conservation and wise use of land in order to preserve the quality of life enjoyed by residents of the state.
3. Jefferson County has adopted a County-wide Planning Policy establishing a policy framework to guide the development of the Comprehensive Plan and development Regulations ensuring locally determined consistency with the provisions of the GMA.

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84. **MINERAL EXTRACTION AND PROCESSING:** Activities involved in the extraction of minerals from the earth for industrial, commercial, or construction uses. For purposes of this ordinance, minerals shall include, but not be limited to, sand, gravel, shale, rock, coal, soil, peat or clay industrial. Agriculture, road construction, mineral exploration testing, and site preparation for construction shall not be considered as mineral extraction and processing activities.
85. **MIXED-USE DEVELOPMENT:** A development in which various uses permitted within a zoning district are combined in a single building. For the purposes of this Ordinance, residential uses contained within a mixed-use development shall not occupy any portion of the ground floor of any building, excepting that accessory uses such as lobbies, which provide service or access to residential uses shall be permitted on the ground floor.
86. **MOTHER-IN-LAW APARTMENT:** [See ACCESSORY DWELLING UNIT].
87. **MULTI-FAMILY RESIDENTIAL DEVELOPMENT:** Developments containing structures housing two (2) or more residential dwelling units. Multi-family residential developments are those that are designed and intended for residential occupancy in multi-family structures regardless of the type of building or ownership in which such use occurs. Examples include, but are not limited to: townhouses, duplexes, triplexes, condominiums, apartment houses, boarding houses, and lodging houses. Accessory Dwelling Units, i.e., Mother-in-law and accessory apartments shall not be considered multi-family residences.
88. **NET LOT AREA:** Lot area calculation exclusive of road rights-of-way, road easements, community well easements and similar community encumbrances or dedications as portrayed on the plat but inclusive of any critical area. Drainage and utility easements may be included as part of net lot area calculation.
89. **NONCONFORMING, "GRANDFATHERED" or EXISTING USES:** A lawful use of land that does not comply with the use regulations for its zoning district but which complied with applicable regulations at the time the use was established.
90. **OFF-STREET PARKING:** Any space specifically allocated to the parking of motor vehicles that is not located within a public right-of-way, a travel lane, a service drive, or any easement for public use.
91. **OPEN SPACE LAND:** Land not occupied by buildings or other structures, and which is set aside to serve as a buffer, provide recreational opportunities, protect environmentally sensitive areas, preserve wildlife corridors, provide viewsheds or to serve as locations for future public facilities.
92. **OVERLAY DISTRICT:** A specially designated zoning district containing additional standards and requirements, which is applied on top of a basic zoning classification.
93. **PARKING SPACE:** An area which is improved, maintained and used for the sole purpose of temporarily accommodating a motor vehicle that is not in use.
94. **PERMITTED USE:** Any use authorized or permitted alone or in conjunction with another use in a specified district and subject to the limitations and regulations of that use district.
95. **PLANNED UNIT DEVELOPMENT:** A form of development usually characterized by a unified site design for a number of housing units and compatible nonresidential uses, including provisions for the clustering of buildings and promotion of common open space, and may include density increases and a mix of buildings types and land uses. PUDs allow for the planning of a project and the calculation of densities over the entire development, rather than on an individual lot-by-lot basis.

**SECTION 13  
USE TABLES**

**Key:**

**C = Conditionally Permitted in the zone.**

**✓ = Permitted Outright in the zone.**

**L = Essential Public Facilities sited in accordance with RCW 36.70A.200 are a legislation action.**

**Uses for the Jefferson County International Airport are described in Section 15.**

**Note:**

- **Crossroads are hierarchical in terms of allowed uses i.e. any use allowed in a more restrictive crossroad is allowed in a less restrictive crossroad unless otherwise noted.**
  
- **The absence of a check mark in a box means the use is not allowed in that zone.**
- **Uses not listed in this table or the corresponding section as specifically permitted, outright or conditionally, in a specific zone are prohibited unless:**
  - **determined to be similar to a listed use through an administrative clarification, or**
  - **added to the table by amendment of this ordinance through a legislative process.**

**Uses shall be strictly interpreted.**

Table 13-1 Permitted and Conditional Uses

District	CC	NC	GC	RVC	LC	LI	HI	R-5	R-10	R-20
Use	Conven. Cross Roads	N'hood Visitor	General Comm.	Rural Village Center	Light Ind /Assoc Comm	Light Ind	Mill Heavy Ind See section 12.70 p. 41	Res 5	Res 10	Res 20
Accessory dwellings				✓				✓	✓	✓
Agencies (e.g. real estate, insurance, travel)		✓	✓	✓						
Agricultural Processing, Heavy									C	C
Amateur Radio Towers, greater than 35 feet but less than 65 feet tall			C	C	✓	✓		✓	✓	✓
Amateur Radio Towers, greater than sixty five (65) feet tall			C	C	C	C		C	C	C
Apparel, retail sales				✓	✓					
Appliance repair (household)			✓	✓						
Aquaculture, in an area regulated by the Shoreline Master Program	✓	✓	✓	✓	✓	✓		✓	✓	✓
Aquaculture, in an area not regulated by the Shoreline Master Program	✓	✓	✓	✓	✓	✓		C	C	✓
Art Gallery		✓	✓	✓						
Assisted Living				✓				C	C	C
Associated Retail in Glen Cove Light Industrial Area					C See Section 12.10					
Automatic Teller Machines			✓	✓						
Bakeries/Coffee houses		✓	✓	✓						
Banks and Financial Institutions			✓	✓						
Barbers and Beauty Shops		✓	✓	✓						
Bed and breakfast inns with 1 or 2 Guest Rooms	Home Business	Home Business	Home Business	Home Business				Home Business	Home Business	Home Business
Bed and breakfast inns with 3 to 6 Guest Rooms		✓	✓	✓				C	C	C
Bicycle repair			✓	✓						
Boat Marinas				C	C	C		C	C	C
Blacksmith or Forge			✓	✓	✓	✓				

District	CC	NC	GC	RVC	LC	LI	HI	R-5	R-10	R-20
Use	Conven.	N'hood Visitor	General Comm.	Rural Village Center	Light Ind /Assoc Comm	Light Ind	Mill Heavy Ind See section 12.70 p. 41	Res 5	Res 10	Res 20
Boat Building and Repair				C	✓	✓				
Boat Storage						✓				
Bus stations and terminals				✓						
Cabinet shop					✓	✓				
Canning or bottling of food or beverages					C	C				
Car wash			C	✓	C	C				
Cemeteries								C	C	C
Church, or place of religious worship		C	C	C				C	C	C
Clinics (medical, dental, mental health, chiropractic)		✓	✓	✓						
Commercial relay or transfer stations					✓	✓		C	C	C
Construction Yards		✓	✓	C	✓	✓				
Convenience/General stores	✓	✓	✓	✓						
Cottage Industry				C				C	C	C
Craft (Hand Made) Goods		✓	✓	✓	✓	✓				
Day Care less than 13 charges is a home business				✓				✓	✓	✓
Day Care Center (13 or more charges)		✓	✓	✓				✓	✓	✓
Distribution Center					✓	✓				
Drive-in Theater								C	C	
Electronic goods repairs		C	✓	✓	C	C				
Engine repair (small, non-vehicle)				✓	✓	✓				
Essential Public Facilities	L	L	L	L	L	L	L	L	L	L
Espresso stands	✓	✓	✓	✓						
Excavating Contractors		✓4	✓	✓	✓	✓			C	C
Farm Equipment & farm supplies		✓	✓	✓						
Fitness Centers			✓	✓	C					
Fire Station	C	C	C	C	C	C		C	C	C

## APPENDIX E

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Ordinance No. \_\_\_\_\_-00

**IN THE MATTER OF AN ORDINANCE OF JEFFERSON COUNTY, WASHINGTON, ADOPTING A UNIFIED DEVELOPMENT CODE (UDC) TO GUIDE LAND USE DEVELOPMENT IN A MANNER THAT IS CONSISTENT WITH, AND IMPLEMENTS VARIOUS STATE STATUTES AND THE 1998 JEFFERSON COUNTY COMPREHENSIVE PLAN**

The Board of County Commissioners for Jefferson County, Washington (the BOCC), in their role as the legislature for Jefferson County, finds as follows:

1. RCW Chapter 36.70A, *et seq.*, also known as the Growth Management Act ("GMA"), requires that counties planning under the GMA adopt development regulations that are consistent with and implement their comprehensive plans.
2. By way of Resolution No. 72-98, the BOCC adopted its Comprehensive Plan and land use map in accordance with the GMA on August 28, 1998. All findings, recitals and other provisions of Resolution 72-98 and all subsequent resolutions and ordinances amending the Comprehensive Plan are incorporated herein by this reference.
3. The Comprehensive Plan contains goals, policies, implementing strategies and a land use map intended to establish the character, quality and pattern of the future physical development of Jefferson County.
4. It shall enact the UDC to implement those goals and policies in development regulations, to enact a uniform land use permit application and administrative process providing greater predictability for applicants and expediting permit review, to consolidate review processes, and to codify and update the numerous ordinances governing land use matters into a new, comprehensive code, to be called the Jefferson County Unified Development Code (or UDC).
5. The UDC is intended to be a comprehensive document governing land use, planning or zoning decisions made with respect to real property located within the unincorporated portions of Jefferson County.
6. The UDC will replace more than a dozen existing Ordinances that are often vague, incomplete or contradictory.
7. The UDC will carry over from the older Ordinances much (but not all) of the substance of the older Ordinances but also contains much that is new and innovative.

JEFFERSON COUNTY UNIFIED  
DEVELOPMENT CODE ADOPTING  
ORDINANCE

ORD. NO. \_\_\_\_\_-00

have been and are being repealed as of the date of the adoption of this Ordinance. Any Ordinance of this County not listed within Exhibit "B" shall continue to be in full force and effect after the enactment date of the UDC.

**Section 3: Designation as Resource Lands to remain unchanged:** This Ordinance does not impact, alter, nullify or change the current designation of any parcel or parcels in this County as resource land, for example, agricultural or forest lands or lands designated with a mineral lands overlay, to the extent said designation as resource land was in place on or before the date this Ordinance was adopted.

**Section 4: Effective Date.** This ordinance shall be in full force and effect on January 16, 2011.

**Section 5: Transmittal to OCD.** The Clerk of the Board of County commissioners shall transmit a copy of this ordinance to the Office of Community Development within ten (10) days of adoption of this ordinance.

**Section 6: Severability.** In the event any one or more of the provisions of this ordinance shall for any reason be held to be invalid, such invalidity shall not affect or invalidate any other provisions of this ordinance, but this ordinance shall be construed and enforced as if such invalid provision had not been contained therein; PROVIDED, that any provision which shall for any reason be held by reason of its extent to be invalid shall be deemed to be in effect to the extent permitted by law.

Adopted by the Board of Commissioners for Jefferson County, Washington, in regular session, this 18th day of December, 2000.

BOARD OF COMMISSIONERS  
JEFFERSON COUNTY, WASHINGTON

Richard D. ... Chairman

Glen Huntingford, Member

Dan ... Member

ATTEST:

Lorna Delaney, Clerk of the Board

APPROVED AS TO LEGAL FORM:

Julie Dalzell, Jefferson County Prosecutor

David Alvarez, Chief Civil Deputy Prosecuting Attorney

JEFFERSON COUNTY UNIFIED  
DEVELOPMENT CODE ADOPTION  
ORDINANCE

26

ORD. NO. ... 00

EXHIBIT "A"

RECEIVED

JAN 05 2001

JEFFERSON COUNTY  
BOARD OF COMMISSIONERS

**UNIFIED DEVELOPMENT CODE  
FOR  
JEFFERSON COUNTY, WASHINGTON**

**Adopted December 18, 2000  
Effective Date: January 16, 2001**

**UNIFIED DEVELOPMENT CODE  
FOR  
JEFFERSON COUNTY, WASHINGTON**

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A	Jefferson County Building Code Provisions
B	Port Ludlow Master Planned Resort Code
C	Wireless Telecommunication Facilities Provisions

## SECTION 2 • DEFINITIONS

required by applicable sections of this Code or the Uniform Building Code, as adopted and amended by Jefferson County.

**Alteration, Nonconforming Structures**

Any change or rearrangement in the supporting members of existing buildings, such as bearing walls, columns, beams, girders, or interior partitions, as well as any changes in doors, windows, means of egress or ingress, or any enlargement to or diminution of a building or structure, horizontally or vertically, or the moving of a building from one location to another. This definition excludes normal repair and maintenance, such as painting or roof replacement but includes more substantial changes.

**Alteration, Nonconforming Use**

The expansion, modification or intensification of a use that does not conform to the land-use regulations of the UDC.

**Animal Shelter (Kennel)**

Any premises, except where accessory to an agricultural use, where five (5) or more adult domestic animals, such as dogs and cats, are boarded, bred or trained. A kennel shall not be interpreted to include a pet shop or pet grooming shop.

**Appeal**

A request by an applicant or citizen that a decision made pursuant to this UDC be reviewed for its correctness and legality by another person, agency or court of law having jurisdiction to hear such an appeal.

**Appeal, Closed-Record**

(See **Closed Record Hearing**).

**Appeal, Open-Record**

(See **Open Record Hearing**).

**Applicant**

The owner or owners of record of the property subject to a project permit application under this Code, or authorized representative thereof.

**Application**

The forms, plans and accompanying documents required for any project permit approval under this Code.

**Approach, Transitional, Horizontal, and Conical Surfaces**

Imaginary surfaces relating to an airport or airfield runway as defined in Federal Aviation Regulation, Part 77, "Objects Affecting Navigable Airspace" as amended, and as shown on the Approach and Clear Zone Plan for an airport or airfield.

**Approach, Transitional, Horizontal, and Conical Zones**

The zones which apply to the ground areas immediately under a runway approach: transitional,

horizontal, and conical, surface as projected along a vertical axis.

**Approving Authority**

Either the Administrator, as defined in this UDC, the Jefferson County Hearing Examiner or the Jefferson County Board of Commissioners, depending on the type of permit process or decision specified in the applicable portion of this UDC.

**Aquaculture**

The science or art of cultivating fish, shellfish, or other aquatic animals or plants.

**Aquifer**

A body of permeable saturated rock material or soil capable of conducting ground water.

**Aquifer Recharge Areas**

Lands through which precipitation and surface water infiltrate the soil and are transmitted through rocks and soil to create ground water storage.

**Archaeological**

Having to do with the scientific study of material remains of past human life and activities.

**Archaeological Site**

An area of ancestral human use such as middens, burial grounds, and earthworks.

**Area**

The size of a parcel of land, as expressed in square feet or acres to two decimal places. When a public road right-of-way lies within a tract of land otherwise in contiguous ownership, area within the right-of-way may be included in gross area for the purpose of calculating maximum allowable density. When public road right-of-way abuts a tract of land, area to the centroid may not be included in the gross area of the parcel for this purpose.

**Area, Nominal**

The approximate area of a parcel of land, such as the aliquot part of the land area in the Assessor's records.

**Area of Special Flood Hazard**

The land in the flood plain within a community subject to a one percent or greater chance of flooding in any given year, as indicated on the flood insurance rate maps (FIRMs).

**Assembly Facility**

A facility designed and used for the gathering of people, or in which they may come together in a body, such as a meeting hall, community club or center, church, etc. (See also "**Community Structure**" and "**Religious Assembly Facility**")

**Assessor's Parcel Number**

A geocoding number assigned by the Assessor's office for property tax assessment purposes only.

## APPENDIX F

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# JEFFERSON COUNTY'S COMPREHENSIVE PLAN FOR GROWTH MANAGEMENT

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## INTRODUCTION

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Jefferson County is located in the north-central portion of Washington's Olympic Peninsula. The County is bounded on the west by the Pacific Ocean, and on the east by the waters of the Admiralty Inlet and Hood Canal. Clallam County and the Strait of Juan de Fuca define the northern border, while the southern boundaries are defined by Mason and Grays Harbor Counties. Jefferson County comprises 1,808 square miles, and is the eighteenth largest of the State's thirty-nine counties. The Olympic National Park and National Forest, which bisect the County into western and eastern halves, comprise approximately 65 percent of the County's 1.16 million acres of land. The majority of the County's population, nearly 96 percent, resides in eastern Jefferson County. A map of the entire County is shown on page 3.

Jefferson County is largely a rural County with one incorporated city, Port Townsend, and one Master Planned Resort, Port Ludlow. The County's population (25,754 as of 1996) is located primarily in the northeast portion of the County, in the communities of Port Townsend, Tri-Area, Quimper, and Port Ludlow. Quilcene and Brinnon are the largest communities in the southern portion of the County. Port Townsend is the largest community with 8,366 residents. The remaining communities of the County range in population from 400 to 1,200 people.

The County is comprised primarily of agricultural and forest lands, and is dotted by clusters of small communities. This rural quality of life is what attracts many residents and tourists to the County and is what most residents have expressed a desire to protect. Recent growth rates have made eastern Jefferson County one of the fastest growing areas of the State. As a result of this rapid growth rate, Jefferson County was required to participate in the State's Growth Management Act, which provides guidelines and assistance for managing growth throughout the State.

Jefferson County has prepared a Comprehensive Plan that outlines goals and policies that help define, direct and guide future growth and development throughout the County. The Plan was drafted with considerable input from the community, which remains committed to maintaining Jefferson County's high quality of life while, at the same time, providing economic, recreational and other opportunities to its residents.

### WHAT IS A COMPREHENSIVE PLAN

The Comprehensive Plan is a legal document that serves as a decision-making guide for both officials and citizens, and is intended to serve as a tool for making decisions about future growth and development in the County over the next 20 years. The Plan is comprehensive in that it identifies the major issues that influence future growth and development issues. It proposes actions to address the issues, and it targets use of the County's resources in the most efficient way.

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## GOALS AND POLICIES

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As in all elements of this Plan, the goals are general statements while policies are more specific. Goals state the general growth management intentions of the County while the policies are the specific guidelines. Strategies address implementation of goals and policies through specific projects and programs.

The Land Use element is combined with the Rural element of this Comprehensive Plan. The element includes an inventory and designation of land uses in rural areas that will aid in defining future development, and goals for the preservation of rural character that outline the general definition of the "rural environment" of those areas.

The goals and policies of the Land Use and Rural element provides direction for both the development and preservation of Jefferson County's rural areas. They outline specific criteria for the development of rural Jefferson County, incorporating issues and opportunities identified by County residents in the public planning process.

Land Use and Rural policies will provide the basis for revising the development standards contained in the Zoning Code, land use and environmental protection ordinances such as the Critical Areas Ordinance, the Subdivision Ordinance, and other development regulations.

### GENERAL LAND USE

#### GOAL:

**LNG 1.0**      **Comply with the Growth Management Act, the County-wide Planning Policy, this Comprehensive Plan, and the Land Use Map in all adopted land use, environmental and development regulations, and subsequent land use decisions and approvals.**

#### POLICIES:

**LNP 1.1**      Incorporate opportunities for continuous and ongoing public participation into both the comprehensive planning process and the implementation of the resulting Comprehensive Plan.

**LNP 1.2**      Acknowledge and protect the rights of private property owners in preparing land use, development, and environmental regulations, prohibit arbitrary and discriminatory actions, and preserve reasonable uses for regulated properties.

**LNP 1.3**      Review and amend the Comprehensive Plan on a minimum schedule of once every five (5) years, and preferably on an annual basis, consistent with the requirements of the Growth Management Act. Revisions to the Land Use Map may be considered on an annual basis, and shall be in strict compliance with the Comprehensive Plan criteria.

- a. preserving the character of the existing natural neighborhood;
- b. physical boundaries such as bodies of water, roadways, and land forms and contours are used to assist in delineation of the site;
- c. abnormally irregular site boundaries are prevented;
- d. public facilities and services are provided in a manner that does not permit low-density sprawl; and
- e. protecting critical areas and surface and groundwater resources.

**LNP 7.1.8** Within Jefferson County's isolated West End, allow small-scale recreation and tourist uses to provide basic goods and services to meet the needs of a local population living at a distance from commercial areas. This limited expansion of uses is also intended to allow for the creation of local jobs in an area of high unemployment and distressed economic conditions.

**LNP 7.1.9** When a specific area is identified through community planning as appropriate for the intensification/expansion of existing small-scale recreation and tourist uses and for new small-scale recreation and tourist uses, a Small-scale Recreation and Tourist (SRT) overlay district for the identified area may establish variations from the conditional use permitting process and the criteria in this section, so long as the overall goals of the Rural Element are maintained (see criteria a. through e. in LNP 7.1.7).

## LEGAL EXISTING USES

### GOAL:

**LNG 8.0** Support the continued existence and economic viability of legally established land uses which become nonconforming as a result of Comprehensive Plan adoption.

### POLICIES:

**LNP 8.1** Existing commercial and industrial uses that become nonconforming will be allowed to continue and to expand within limits as defined in LNP 8.5. Legal existing uses may be sold without jeopardizing the continuation of the use or activity.

**LNP 8.2** Existing commercial and industrial uses in areas designated as Rural Residential will have the right to continue and not be subject to nuisance claims if operating in compliance with all County regulations.

**LNP 8.3** Existing commercial and industrial uses should be allowed to expand or be replaced in Rural Residential areas provided that:

- a. they do not require additional urban levels of government service;
- b. they do not impose uncompensated additional costs to the taxpayers of Jefferson County for the provision of infrastructure, its replacement or improvement;
- c. they do not conflict with natural resource-based uses;
- d. they are compatible with surrounding rural uses, and

- e. the expansion results in no further adverse environmental or neighborhood impacts, unless mitigated.

**LNP 8.4** Businesses that do not meet the above criteria shall not be expanded or rebuilt if destroyed.

**LNP 8.5** Expansion of structures housing legal existing uses or replacement of structures occupied by legal existing nonconforming uses shall be subject to the following criteria:

Court of Appeals No. 35834-4-II

DIVISION II, COURT OF APPEALS  
OF THE STATE OF WASHINGTON

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SECURITY SERVICES NORTHWEST, INC.,

Appellant,

v.

JEFFERSON COUNTY,

Respondent.

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ON APPEAL FROM KITSAP COUNTY SUPERIOR COURT  
(Hon. Jay B. Roof)

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CERTIFICATE OF SERVICE

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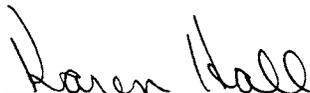
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BY \_\_\_\_\_  
STATE OF WASHINGTON  
COURT OF APPEALS  
DIVISION II  
JUL 11 2011  
SEATTLE

The undersigned declares under penalty of perjury under the laws of the State of Washington that she is the legal assistant for Davis Wright Tremaine LLP, attorneys for Appellant Security Services Northwest, Inc. On the date and in the manner indicated below, I caused a copy of this Declaration and Appellant's Reply Brief to be served on:

Mark Johnsen	<input type="checkbox"/> By United States Mail
Karr Tuttle Campbell	<input checked="" type="checkbox"/> By Legal Messenger
1201 Third Ave., Suite 2900	<input type="checkbox"/> By Facsimile
Seattle, Washington 98101	<input type="checkbox"/> By Federal Express/ Express Mail
	<input type="checkbox"/> By E-Mail

DATED at Seattle, Washington, this first day of October, 2007.



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Karen Hall