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Division II  
State of Washington  
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Nº. 52891-6-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION II

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RONALD PEABODY,  
Appellant,

v.

JON TUNISON et. al.,  
Respondents.

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REPLY BRIEF OF APPELLANT

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Appeal from the Superior Court of Kitsap County,  
Cause No. 17-1-00712-1  
The Honorable William Houser, Presiding Judge

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A. ARGUMENT

**1. Peabody never abandoned his original claim and even if this court believes it was abandoned, the claim was not waived since both parties litigated the claim.**

As anticipated in footnote 72 on page 16 of Mr. Peabody's Opening Brief, defendants argue that Mr. Peabody abandoned his original claim and advanced new claims during litigation.<sup>1</sup> Defendants assert that Mr. Peabody "took no effort to defend the merits of the original claim found in his complaint, essentially abandoning it" and, instead, raised two new claims, (1) the structures violated Kitsap County Health Ordinance 2008A-01 and (2) the structures impaired his ability to expand the size of his drainfield.<sup>2</sup> Defendants' argument fails.

*a. Peabody never abandoned his original claim.*

"Washington is a notice pleading state and merely requires a simple, concise statement of the claim and the relief sought."<sup>3</sup>

In Mr. Peabody's complaint, paragraphs B and C of the Causes of Action section state that "[t]he plaintiff claims an interest in the easement area adverse to the defendants," "[t]he plaintiff is entitled to continued beneficial use, without encroachments, of the entirety of the easement area" and "defendants have no right to unlawfully encroach upon the

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<sup>1</sup> Brief of Respondent, p. 12-14.

<sup>2</sup> Brief of Respondent, p. 13-14.

<sup>3</sup> *Pac. Nw. Shooting Park Ass'n v. City of Sequim*, 158 Wn.2d 342, 352, 144 P.3d 276 (2006); CR 8(a).

designated easement area”.<sup>4</sup> Further, paragraphs M of the Facts section and D of the Causes of Action section state that “the defendant’s actions constitute unlawful encroachment and have negatively impacted the plaintiff’s property” and that “the defendants’ actions constitute unlawful encroachment and said actions have interfered with the plaintiff’s right to quiet enjoyment and use of his property”.

Under the terms of the drainfield easement, the “easement area” includes the entirety of the active drainfield as well as the drainfield reserve. Mr. Peabody’s complaint clearly indicated that he was alleging the mobile home and shed were “unlawful encroachments” onto the drainfield easement area, including the drainfield reserve. Mr. Peabody maintained this claim throughout litigation in the trial court. The language of the complaint was more than sufficient to satisfy Mr. Peabody’s obligations under Washington’s notice pleading system.

*b. The “health ordinance violation claim” was not a new or separate claim.*

Exhibits G and H to the complaint were letters sent to Mr. Keiss and counsel for the defendants that clearly indicate the mobile home and shed were encroachments that violated the Kitsap County health code.<sup>5</sup> Mr. Peabody’s claim was never that the violation of the health code gave

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<sup>4</sup> CP 7.

<sup>5</sup> CP 43-48.

Mr. Peabody a cause of action. Rather, Mr. Peabody's claim has always been that the health code violation was but one of the factors that required Mr. Peabody to take action and ultimately, bring suit.

*c. Even if this court did find that Mr. Peabody raised claims not contained in the complaint, those claims must be treated as if they were in the complaint since they were "litigated" by the parties.*

Defendants claim that Mr. Peabody's arguments about the health code and the expansion of his drainfield were not "litigated" below because there was not a trial.<sup>6</sup>

CR 15(b) states, "When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings." In determining whether the parties impliedly tried an issue, courts consider the record as a whole, including whether the issue was mentioned before trial, and the legal and factual support for the trial court's conclusions regarding the issue.<sup>7</sup> However, "[a] party who does not plead a cause of action or theory of recovery cannot finesse the issue by later inserting the theory into trial briefs and contending it was in the case all along."<sup>8</sup>

Several cases have addressed situations where a plaintiff raised an unpleaded claim for the first time in opposition to summary judgment. In

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<sup>6</sup> Brief of Respondent, p. 13-14.

<sup>7</sup> *Dewey v. Tacoma Sch. Dist. No. 10*, 95 Wash. App. 18, 26, 974 P.2d 847 (1999).

<sup>8</sup> *Id.*

*Reichelt v. Johns-Manville Corp.*, the plaintiff raised a new negligence claim.<sup>9</sup> However, the parties addressed negligence in their briefs and argued the merits of the issue at the summary judgment hearing, and the trial court ruled on the issue.<sup>10</sup> The Supreme Court held that under CR 15(b), the inadequacies of the plaintiff's complaint did not preclude an appellate court from considering the issue.<sup>11</sup>

In *Denny's Restaurants Inc. v. Security Union Title Insurance*, the plaintiff raised a new mutual mistake claim.<sup>12</sup> The defendant responded to the claim on the merits in its reply.<sup>13</sup> The trial court also heard oral argument on the issue, although the defendant did point out at that time that the new issue had not been raised in the complaint.<sup>14</sup> On these facts, Division One of this court held that, "[i]t appears from the record that this issue was essentially litigated before the trial court," and therefore the trial court had abused its discretion by not allowing for an amendment of the complaint under CR 15(b).<sup>15</sup>

Here, as discussed above and in Mr. Peabody's Opening Brief, Mr. Peabody's original and continual claim is that defendants breached their

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<sup>9</sup> 107 Wash.2d 761, 767, 733 P.2d 530 (1987).

<sup>10</sup> *Id.* at 767, 733 P.2d 530.

<sup>11</sup> *Id.* at 768, 733 P.2d 530.

<sup>12</sup> 71 Wash. App. 194, 213-14, 859 P.2d 619 (1993).

<sup>13</sup> *Id.* at 213, 859 P.2d 619.

<sup>14</sup> *Id.* at 214, 859 P.2d 619.

<sup>15</sup> *Id.*

contractual and statutory duty to keep the drainage easement area free from encroachments. As noted by defendants, the defendants “did not explicitly ask the trial court to disregard Peabody’s two new claims on the basis that they were not in the Complaint.”<sup>16</sup> Instead, defendants directly addressed these “new claims” in their motion for summary judgment.<sup>17</sup> Not only did defendants not object to Mr. Peabody raising these “new claims,” defendants explicitly argued the merits of those claims.

Under *Reichelt* and *Denny’s*, defendants’ argument on the merits in the summary judgment pleadings and at the summary judgment hearing constituted “litigation” of the issues before the trial court. CR 15(b) applies and the “new claims” must be treated as if they were raised in the complaint.

**2. Defendants ignore the numerous reports that indicate the structures were on top of the drainfield reserve and, therefore, on top of the drainage system in violation of Kitsap County Health Ordinance 2008A-01.**

*a. The reserve drainfield is part of the septic “system” under Kitsap County Health Ordinance 2008A-01.*

Kitsap County Board of Health Ordinance 2008A-01 specifically references, on more than one occasion, septic “system”, “drainfield”, and “reserve area”. Said ordinance includes definitions of these terms. The Kitsap County Health Department officials, the septic system inspector,

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<sup>16</sup> Brief of Respondent, p. 14.

<sup>17</sup> CP 433-454.

and the engineer/surveyor involved in this matter, and both parties, both before the trial court and in their respective briefs to the Court of Appeals, reference and discuss not only Ordinance 2008-A-01, but also these terms. The definitions section of Kitsap County Board of Health Ordinance 2008A-01<sup>18</sup> defines “septic system” by referring to the definition for “onsite sewage system.”

“Onsite sewage system” is defined as

an integrated system of components, located on or nearby the property it serves, that conveys, treats, stores, and/or provides subsurface soil treatment and dispersal of sewage; any system constructed or utilized to handle sewage generated on a property other than a connection to a state approved sanitary sewer system or large onsite sewage system. Also known as “septic system”, “OSS”, “holding tank system.”

The definition for “Drainfield” refers to the definition of “soil dispersal component.”

A “soil dispersal component” is defined as “a technology that releases and distributes sewage effluent from a sewage treatment component into the ground.”

A “reserve area” is defined as “an area of land approved by the Health Officer for the installation of a conforming system and dedicated for replacement of the onsite sewage system upon its failure.”

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<sup>18</sup> Attached hereto as Appendix A.

Combining these definitions, it is clear that a “reserve drainfield” is a component of the septic system. This is consistent with the ordinance’s section 13 that requires the use, monitoring, maintenance, and protection of the onsite sewage system, “including the reserve area”. Therefore, when the structures were sitting on the drainfield easement, the structures were sitting on Mr. Peabody’s septic system.

*b. Numerous inspection reports establish that the structures were on the reserve drainfield and therefore the “system.”*

On April 11, 2017, Plaintiff’s septic system was inspected and it was noted that “[a s]hed is sitting with in [sic] the envelope of the drain field easement area and a mobile home is sitting 14 feet in the identified reserve drain field easement envelope.”<sup>19</sup> This was classified by the inspection company as “[i]mproper encroachment (structures/impervious surfaces).”<sup>20</sup>

On April 26, 2017, the Health District issued a PCI report including a finding that:

There is a shed sitting within the boundary of the drainfield easement area. There is also a mobile home that is over part of the reserve drainfield area. This is considered a violation of Section 13.C.12.b which states: The owner shall Protect the onsite sewage system, including the reserve, from use, activities, or situations that may have an adverse impact on the system, or dispersal component soils,

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<sup>19</sup> CP 394.

<sup>20</sup> CP 394.

including, but not limited to: vehicular traffic or domestic animal management activities.<sup>21</sup>

On August 17, 2018 WestSound Engineering issued a survey map of the drainfield easement area, including the location of the mobile home and the shed in the drainfield easement area.<sup>22</sup>

On November 15, 2017, Director Kiess filed a third declaration for purposes of correcting his first two declarations. In his third declaration Director Kiess stated that, after comparing the WestSound Engineering August 17, 2017 map of the drainfield easement to the Health District's "as-built" drawing of the septic system, he believed his first two declarations were in error and that the shed and mobile home may be located in the area of the approved reserve drainfield and, therefore, might violate the health ordinance. Further, he specifically referenced the August 17, 2018 Health Department report that determined the mobile home and shed to be a "violation of Section 13.C.12.b".<sup>23</sup> Director Kiess declared that

it appears that the north orientation of the original design drawing is incorrect and the primary septic drainfield was installed approximately ninety (90) degrees out of orientation to the approved septic design. If correct, the approved reserve drainfield area may be located in the area of the existing shed and mobile home.

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<sup>21</sup> CP 422-423.

<sup>22</sup> CP 426.

<sup>23</sup> CP 207-208.

6. If the approved reserve drainfield area is located in the area of the existing shed and mobile home, the requirements of Kitsap County Board of Health Ordinance 2008A-01 (Ordinance), Section 13.C.12. are being violated. As noted in the April 26, 2017, property conveyance inspection report this is considered an “Other Item of Non-Compliance” per Section 13.D.6. of the Ordinance.<sup>24</sup>

Clearly, numerous inspections concluded that the presence of the shed and mobile home on the drainfield reserve area were unlawful encroachments and were violations of the easement area and the Kitsap County Health Ordinance prohibition against encroachments covering the system.

**3. Defendants fail to address the fact that both Mr. Peabody and the defendants had duties to remove the structures from the drainfield.**

The fact that the structures were found to be on the septic system triggered a duty on the part of Mr. Peabody under the easement agreement and sections 13(B)(1) and (13)(C)(12)(a) of the health ordinance to take action to remove the structures. Said structures were clearly “unlawful encroachments”. This conclusion is consistent with the Health District findings and conclusions, the Health District ordinance, the parties’ easement agreement, the aforementioned inspection reports, and the representations made in plaintiff’s complaint. Further, Section 13(B)(1) mandates that “Occupants, tenants, employees, **and other persons** shall

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<sup>24</sup> CP 208.

cooperate with the owner to conform to these regulations.” Emphasis added. Defendants therefore had a statutory duty to cooperate with Mr. Peabody’s efforts to clear the unlawful encroachments, the encroaching shed and mobile home from the drainfield easement area.

The easement grants Mr. Peabody an easement “for utilities over, under, and across” the reserve drainfield area.<sup>25</sup> Mr. Peabody agrees that this easement is a non-exclusive easement. However, the fact the easement agreement created a non-exclusive easement is irrelevant. The defendants could use the drainfield reserve area, but could not use it in any manner that would interfere with Mr. Peabody’s rights to use the area for utilities. Mr. Peabody had a contractual duty under the easement agreement to monitor and maintain the septic system and a duty under the ordinance to maintain and protect the septic system. This included the duty under the health code to keep the reserve drainfield clear from any encroachments such as building structures “that may have an adverse impact on the system”. By refusing to remove the structures, defendants breached their duty under the easement and the health ordinance to allow Mr. Peabody to have access over and across the reserve drainfield for utilities because the defendants were preventing Mr. Peabody from monitoring, maintaining, and protecting the drainfield reserve area.

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<sup>25</sup> CP 31-33.

**4. RCW 4.84.330 does not apply to this case and Mr. Peabody was entitled to attorney fees and costs as the successful party below.**

In their Response Brief, defendants again assert that RCW 4.84.330 applies to this case and, under the definition of “prevailing party” in that statute, the trial court correctly awarded attorney’s fees and costs to defendants.<sup>26</sup> Defendants’ argument is not supported by Washington law.

By its terms, RCW 4.84.330 applies only to contracts with unilateral attorney fee provisions. As we have previously noted, “where, as here, the agreement already contains a bilateral attorneys’ fee provision, RCW 4.84.330 is generally inapplicable.” *Hawk v. Branjes*, 97 Wash.App. 776, 780, 986 P.2d 841 (1999); *accord Walji v. Candyco, Inc.*, 57 Wash.App. 284, 288, 787 P.2d 946 (1990) (where contract at issue contains a bilateral attorney fee clause, the statutory “prevailing party” provision of RCW 4.84.330 does not control over the contract’s plain language). Because the leases at issue herein contained bilateral attorney fee clauses, RCW 4.84.330 does not apply.<sup>27</sup>

As pointed out in Mr. Peabody’s Opening brief, the easement agreement provision dealing with the award of attorney’s fees and costs was a bilateral attorney fee provision.<sup>28</sup> Under *Kaintz* and the cases cited therein, RCW 4.84.330 does not apply to the easement agreement because the language in the easement agreement is a bilateral attorneys’ fees provision.

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<sup>26</sup> Brief of Responent, p. 25-26.

<sup>27</sup> *Kaintz v. PLG, Inc.*, 147 Wn. App. 782, 786–87, 197 P.3d 710, 713 (2008).

<sup>28</sup> Appellant’s Opening Brief, p. 22-23.

Citing *Mike's Painting, Inc. v. Carter Welsh Inc.*<sup>29</sup> and *State v. Farmers Union Grain Co., Paccar Auto Inc.*,<sup>30</sup> defendants argue that “Washington courts have consistently applied RCW 4.84.330 to all types of attorney’s fees clauses, including specifically bilateral clauses.”<sup>31</sup>

In *Mike's Painting*, the contract at issue specifically stated that “in any dispute...the prevailing party shall be awarded its reasonable attorney’s fees and costs.”<sup>32</sup> *Mike's Painting* is distinguishable from the instant case because there the parties specifically contracted that the “prevailing party” would be entitled to attorneys’ fees and costs. In interpreting all contracts, including leases, courts look to the parties’ objectively expressed mutual intent.<sup>33</sup> Further, parties are presumed to contract with reference to existing statutes.<sup>34</sup> Here, as discussed in Mr. Peabody’s Opening Brief, the parties contracted that the “successful party,” *not* the “prevailing party,” would be entitled to attorneys’ fees and costs. By selecting language different from that contained in RCW 4.84.330, the parties to the easement agreement prohibited the application of “prevailing party” as defined under RCW 4.84.330 to this case.

In *Farmers Union Grain Co.*, the State initiated condemnation

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<sup>29</sup> 95 Wn.App. 64, 975 P.2d 532 (1999).

<sup>30</sup> 80 Wn.App. 287, 908 P.2d 386 (1996).

<sup>31</sup> Brief of Respondent, p. 26.

<sup>32</sup> *Mike's Painting, Inc. v. Carter Welsh, Inc.*, 95 Wn. App. 64, 66, 975 P.2d 532 (1999).

<sup>33</sup> *Berg v. Hudesman*, 115 Wash.2d 657, 663, 671, 801 P.2d 222 (1990).

<sup>34</sup> *Wagner v. Wagner*, 95 Wash.2d 94, 98, 621 P.2d 1279 (1980).

proceedings against the lessor and lessee of certain real property. The underlying lease, which contained a condemnation clause, was negotiated and signed by the two parties. The lessor successfully moved for summary judgment of the entire condemnation award. However, the trial court denied the lessor's request for attorney fees and costs because neither party brought suit as required by the lease's attorney fee provision. In reversing that fee decision on appeal, the court held that “[b]y moving for summary judgment on the issue of its right to the condemnation award, [the lessor] was invoking the power of the court to secure its right. In effect, it ‘brought’ the action to enforce the agreement, and RCW 4.84.330 applies.”<sup>35</sup>

The decision in *Farmers Union Grain Co.* does not indicate the specific contractual language agreed to by the parties beyond stating, “The attorney fees paragraph at issue here provides for reasonable attorney fees, costs and expenses ‘[i]f either party brings suit to enforce or interpret any provision of this Lease...’”<sup>36</sup> However, the holding of *Farmers Union Grain Co.* is that parties are bound by the contractual language agreed to with regards to attorneys fees. Here, the parties agreed that the “successful party,” not the “prevailing party” would be entitled to attorneys’ fees and costs. Therefore, it was error for the trial court to

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<sup>35</sup> *State v. Farmers Union Grain Co.*, 80 Wn.App. 287, 295, 908 P.2d 386 (1996).

<sup>36</sup> *Farmers Union Grain Co.*, 80 Wn. App. at 295, 908 P.2d 386.

apply the “prevailing party” analytical paradigm to the award of attorneys’ fees in this case.<sup>37</sup>

Defendants continue to mischaracterize Mr. Peabody’s breach of contract claim and incorrectly argue that this court should ignore the contractual language relating to the award of attorneys’ fees and costs which binds both parties. Defendants have cited no authority that supports the argument that RCW 4.84.330 applies to this case.

As argued in Mr. Peabody’s Opening Brief, Mr. Peabody was the “successful party” because he obtained the goals of his litigation. The “prevailing party” analysis under RCW 4.84.330 does not apply to this case because the parties contracted for a bilateral attorney fee provision that adopted a different standard than “prevailing party.” The trial court applied the wrong standard and erred in awarding defendants attorneys’ fees and costs.

Mr. Peabody is entitled to his attorneys’ fees and costs expended at the trial level and on appeal.

B. CONCLUSION

For the reasons stated above and in Mr. Peabody’s Opening Brief, this court should vacate the trial court’s orders granting summary judgment for Defendants, awarding Defendants reasonable attorney’s fees

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<sup>37</sup> See *Kaintz*, supra.

and costs, and the final order of dismissal and remand this case for further proceedings. This court should also award Mr. Peabody his attorneys' fees and costs expended on this appeal.

DATED this 10 day of May, 2019.

Respectfully submitted,



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Steven Davies, WSBA No. 11566  
Attorney for Plaintiff

#### **CERTIFICATE OF SERVICE/MAILING**

I certify that on the 10<sup>th</sup> day of May, 2019, I caused a true and correct copy of Reply Brief of Appellant to be served on the following in the manner indicated below:

Isaac A. Anderson Esq.  
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Kingston, WA 98346

in the manner indicated:

Email: [isaac@isaacandersonlaw.com](mailto:isaac@isaacandersonlaw.com)

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.



---

Danielle S. Mallek

# APPENDIX

## **APPENDIX A: DEFINITIONS & ACRONYMS**

Words not specifically defined herein shall be construed according to their common dictionary definition.

### Definitions

**Accepted** --- a written statement of approval by the Health Officer.

**Accessible** --- easily approached and capable of being reached without extraordinary effort. Situated to allow for typical, and required, service and repair outside of locked structures and/or fences, and located between ground level and five (5) feet above ground level.

**Accessory Dwelling Unit** --- a secondary residence on a single building lot, detached from the primary residence that contains provisions for sleeping, cooking, and sanitation. Such buildings are located on lots that meet the minimum land area requirement for each living unit for onsite sewage and water supply, are subject to zoning and land use regulations, and generally meet the onsite sewage requirements that are applicable to a primary residence.

**Accessory Living Quarters** --- a secondary living unit with provisions for sleeping, cooking, and sanitation included within the primary residence. Such buildings are located on lots that meet the minimum land area requirement for each living unit for onsite sewage and water supply, are subject to zoning and land use regulations, and generally meet the onsite sewage requirements that are applicable to a primary residence.

**Additive** --- a commercial product added to an on-site sewage system intended to affect performance or aesthetics of an on-site sewage system.

**Alternative system** --- an onsite sewage system other than a standard gravity system or standard pump-to-gravity system.

**Application review period** --- a specific duration of time relating to a specific, individual application made to the Health Officer on forms approved by the Health Officer. The time period starts on the 30<sup>th</sup> day after formal submittal to the Health Officer along with applicable fees, and runs concurrently until the expiration date or termination date of the application.

**Approved** --- a written statement of acceptability issued by the local Health Officer or the Department.

**Approved Materials List** --- materials approved by the Health Officer for onsite sewage system construction.

**Area of special concern** --- an area of definite boundaries delineated through public process, where a local Health Officer, or the Department in consultation with the Health Officer, determines additional requirements for onsite sewage systems may be necessary to reduce potential failures or minimize negative impact of onsite systems upon public health.

**Atypical Wastewater:** --- wastewater produced in a building, structure, etc., that has characteristics atypical of residential strength wastewater due to the use of, volume of, or production of wastewater constituents that are not typically found in residential wastewater.

**Bed or Dispersal Bed** --- a soil dispersal component consisting of an excavation with a width greater than three (3) feet.

**Bedroom** --- a room used for sleeping in accordance with the applicable jurisdictional building department.

**Board of Health** --- a governing body formed under, and subject to, Chapters 70.05 and 70.46 RCW to protect the public health of Kitsap County.

**Building Clearance Application** --- a written application to the Health Officer, on forms provided by the Health Officer, requesting approval of a building proposal for an existing development that utilizes an onsite sewage system under the purview of these regulations.

**Building sewer** --- that part of the horizontal piping of a drainage system extending from the building drain, or main plumbing stub-out, beginning two (2) feet outside of the building wall which collects sewage from all the drainage pipes inside a building, to convey it to an onsite sewage system or public sewer.

**Building Site Application** --- a written application to the Health Officer, on forms provided by the Health Officer, requesting acceptance of a proposed onsite sewage system and water system for a particular building lot or tract of land under the purview of these regulations.

**Certification** --- a license granted by the Health Officer permitting a person to practice in the field of onsite sewage systems, such as an installer, maintenance specialist, or sewage pumper.

**Cesspool** --- a pit receiving untreated sewage and allowing the liquid to seep into the surrounding soil or rock.

**Change in use** --- when building or property converts from one type of established activity to another; e.g., residential to commercial, single-family to multi-family, office to restaurant, etc.

**Commercial** --- the non-residential use of a structure, building, or building lot or property for monetary or commercial gain; a place of business, or where work intended for commerce is performed, or where commerce is gained by use of the property (e.g., rental property).

**Community Sewage Disposal System** --- any system of piping, treatment devices and/or other facilities that convey, store, treat and/or dispose of sewage at the same property site, or on an adjacent or nearby property under the control of the users, where the system is not connected to a public sewer system and which is designed to serve more than one (1) single family dwelling, or one (1) multiple family dwelling, but does not exceed 3500 gallons of sewage volume per day. Does not include a single lot with a one single family residence and one accessory dwelling unit or one guest house or one special care unit, unless an alternative onsite sewage system is used.

**Concurrence** --- agreement in action; agreement in opinion or design.

**Conforming system** --- any onsite sewage system, except an experimental system, meeting any of the following criteria:

1. Systems in full compliance with new construction requirements under this ordinance; or
2. Systems approved, installed and operating in accordance with the conditions of Health Officer approval at the time the system was installed; or
3. Systems permitted by the waiver process under WAC 246-272A or these local regulations that assures public health protection by higher treatment

performance and/or other methods.

**Construction Living Quarters** --- a temporary living unit with provisions for sleeping, cooking, and sanitation occupied during the construction of a primary residence and connected to an approved onsite sewage and water system.

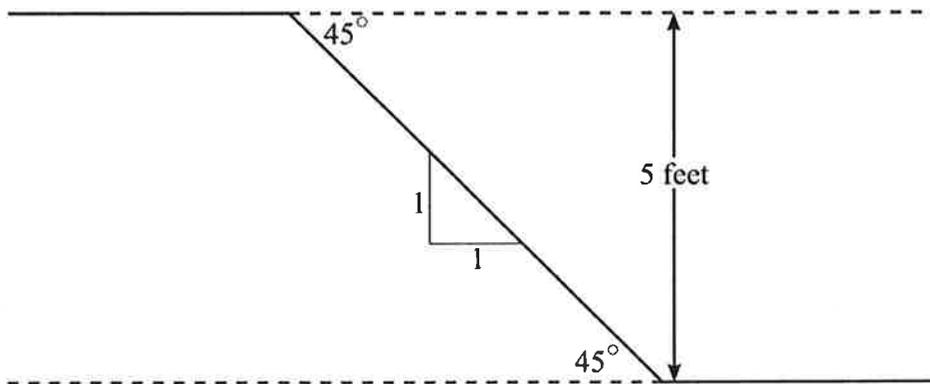
**Continuing Education Unit (CEU) Credit** --- ten (10) hours of contact participation in an organized educational experience under qualified direction and sponsorship, qualified instruction and approved by the Health Officer.

**Covenant** --- a recorded agreement stating certain activities and/or practices are required or prohibited.

**Cover material** --- soil placed over a soil dispersal component composed predominately of mineral material with no greater than ten percent organic content. Cover material may contain an organic surface layer for establishing a vegetative landscape to reduce soil erosion.

**Curtain Drain** --- a device designed and/or constructed to intercept and route groundwater, or surface sheet-flow, away from an onsite sewage system, and to maintain the required minimum vertical separation for the soil dispersal component.

**Cuts and/or banks** --- any naturally occurring or artificially formed slope which is greater than one hundred percent (forty-five (5) degrees) and extends vertically at least five (5) (5) feet from the toe of the slope to the top of the slope(See illustration below).



**Dangerous waste** --- any waste as defined by WAC 173-303-040, or as amended.

**Date of approval** --- the specific date of written Health Officer approval of an application or permit submitted under the purview of these regulations.

**Date of submittal** --- the specific date that formal application, along with respective fees, is made to the Health Officer.

**Department** --- the Washington State Department of Health.

**Design** --- plans, specifications, and scaled drawings that detail how a proposed development will be constructed, modified, or expanded to meet applicable regulations for onsite sewage systems and/or water supply.

**Design capacity** --- the maximum design flow and maximum waste strength that a specific onsite sewage system is permitted by the Health Officer to receive on a daily basis; may also be defined as the type of use a building or structure is permitted to have by the Health Officer based on the maximum design flow and waste strength (e.g.,

residential, commercial, food establishment, school, etc.)

**Design flow** --- the maximum volume of sewage a residence, structure, or other facility is estimated to generate in a twenty-four (4)-hour period. It incorporates both an operating capacity and a surge capacity for the system during periodic heavy use events. The sizing and design of the onsite sewage system components are based on the design flow.

**Designer** --- a person who matches site and soil characteristics with appropriate onsite sewage technology and regulations; this term applies to both onsite sewage treatment system designers licensed under Chapter 18.210 RCW and professional engineers licensed under Chapter 18.43 RCW.

**Detention pond** --- a storm water containment system that detains water on site with a design that allows storm water to infiltrate into the soil and/or releases storm water at a slow rate after a period of detention time.

**Development** --- the creation or existence of a residence, structure, facility, mobile home park, subdivision, planned unit development, site, area, or any activity that may result in the production of sewage on a parcel of property.

**Disinfection** --- means the process of destroying pathogenic microorganisms in sewage through the application of ultraviolet light, chlorination, or ozonation.

**Distribution Box** --- a watertight structure, which receives and conveys effluent between different components of an onsite sewage system..

**Distribution Pipe** --- an approved perforated pipe used to disperse sewage effluent into or within a soil dispersal component, including all pipe fittings.

**Distribution technology** --- any arrangement of equipment and/or materials that distributes sewage within an onsite sewage system.

**Dosing Tank** --- see pump tank.

**Down-gradient** --- the path and direction of least resistance that water will flow towards upon surface of the ground or upon encountering a water table or a restrictive layer within 60 inches the ground surface as measured on the down-slope side of a hole, soil log, or excavation; the likely path that water will travel towards from a water or sewage source, including nearby cuts and/or banks that are on the same horizontal elevation as a soil dispersal component.

**Drainage ditch** --- a man-made or natural channel that conveys surface water that is under the influence of ground water during the wet season and not wholly dependent upon a rain event to contain and convey water; seasonal surface water; not a roadside ditch. A water body that is classified as surface water cannot be classified as a drainage ditch.

**Drainfield** --- see soil dispersal component.

**Drainrock** --- clean washed gravel, or crushed rock, ranging in size from three (3)-quarters inch to two (2) and one-half inches, and containing no more than two (2) percent by weight (8) passing a US No. 8 sieve and no more than one percent by weight (8) passing a US No. 200 sieve.

**Drop box** --- see distribution box

**Easement** --- an official or formal right, such as a right of way, afforded a person(s) to make limited use of another's real property.

**Ecology** --- The Washington State Department of Ecology.

**Effluent** --- a sewage-based liquid discharged from a septic tank or other onsite sewage system component.

**Effluent Pipe** --- that part of the system of drainage piping which conveys sewage effluent out of the septic tank or other treatment facility to the distribution pipe of the onsite sewage system, including all pipe fittings.

**Engineer** --- a person who is licensed as a Civil or Sanitary Engineer in the state of Washington and in good standing under chapter 18.43 RCW.

**Equal distribution** --- a method or design to disperse effluent in equal volumes amongst soil dispersal laterals of the same length.

**Existing development** --- any type of development that was present prior to the effective date of these regulations.

**Expanding clay** --- a clay soil with the mineralogy of clay particles, such as those found in the Montmorillonite/Smectite Group, which causes the clay particles to expand when they absorb water, closing the soil pores, and contract when they dry out.

**Expansion** --- a change in a building, structure, facility, site, development, or use that:

1. Causes the sewage quality or quantity to exceed the existing design flow or design capacity of the onsite sewage system (e.g., when a residence is increased from three (3) to four (4) bedrooms, a change in use of a building from an office to a restaurant, etc.);
2. Increases the existing use of the property through the addition of new buildings or structures (e.g., adding accessory dwelling units) over and above the existing development; or
3. Reduces the treatment or dispersal capability of the existing onsite sewage system or reserve area (e.g., when a building is placed over a reserve area, when a driveway or animal pasture is allowed over a primary area, etc.).

**Expiration date** --- a specific point in time for an application, permit, etc., that when surpassed changes the status of the application, etc., from valid to invalid. The date an application or permit ceases to be valid.

**Extremely gravelly** --- soil with sixty (60) percent or more, but less than ninety (90) percent rock fragments by volume.

**Failure or Failing** --- a condition, or malfunction, of an onsite sewage system, or a connection to a public sewer system, that threatens human or public health or safety, as determined by the Health Officer, by inadequately treating, conveying, and/or dispersing of sewage, or by creating a potential for direct or indirect contact between sewage and humans. Examples of failure include:

1. Sewage on the surface of the ground;
2. Sewage discharged directly to surface water or upon the surface of the ground unless the discharge is under permit from the Washington State Department of Ecology.
3. Sewage backing up into a structure caused by slow soil absorption of sewage effluent or the state of an onsite sewage system when the sewage effluent is not conveyed to the soil dispersal component as permitted, designed, or intended;
4. Sewage leaking from a septic tank, pump chamber, holding tank, or collection system;
5. Any component of an onsite sewage system or public sewer connection found to be broken, in disrepair, or not functioning as intended;
6. Inadequately treated sewage effluent contaminating ground water or surface water. This may be demonstrated through testing and/or sampling by utilizing procedures described in the Manual of Protocol For Conducting Onsite Sewage

System Sanitary Surveys in Kitsap County, Washington, 6th Edition, as it now exists or as hereafter amended;

7. Cesspools or seepage pits where evidence of ground water or surface water quality degradation exists; or inadequately treated effluent contaminating ground water or surface water;
8. Noncompliance with standards stipulated on the permit, with the regulations in effect at the time the system was approved for use, or with the regulations in effect at the time the structure was constructed or modified.

**Fecal coliform** or FC --- bacteria, common to the digestive systems of warm-blooded animals that are cultured in standard tests. Counts of these organisms are typically used to indicate the presence of, or potential contamination from, sewage or to describe a level of needed disinfection for sewage treatment.

**Fill** --- soil materials that have been displaced from their original location, or soils that have been disturbed, compacted, etc., such that they will no longer allow the normal and intended absorption, percolation, or leaching of sewage effluent or water.

**Food service establishment** --- A building or structure where food is prepared for human consumption; see definition in WAC 246-215-011 (12).

**Footprint** --- the perimeter area of a building or structure where that building or structure meets the ground surface; may be represented by a slab foundation, footing of a wall foundation, or the perimeter of a mobile home or manufactured home, and may include driveways, patios, carports, etc.

**Functionality** --- the quality or state of being functional.

**Generator** --- any person, by site, whose act or process produces sewage.

**Gravelly** --- soils with fifteen percent or more, but less than thirty-five (5) percent rock fragments by volume.

**Gray water** --- all sewage from a building, structure, or property except that portion from toilets; also known as "grey" water.

**Gross land area** --- the horizontal area within the boundary lines of a lot, including the area to the centerline of an adjoining road or street right-of-way (Method II), but excluding tidelands, shore lands and the panhandle of a flag lot if the panhandle is less than thirty feet in width.

**Ground water** --- subsurface water occupying the zone of saturated soil, permanently, seasonally, or as the result of the tides. Indications of ground water may include: (1) Water seeping into or standing in an open excavation from the soil surrounding the excavation or monitoring ports; and/or (2) spots or blotches of different color or shades of color interspersed with a dominant color in soil, commonly referred to as mottling. Mottling is a historic indication for the presence of ground water caused by intermittent periods of saturation and drying, and may be indicative of poor aeration and impeded drainage. See also water table.

**Guest House** --- a living unit, without provisions for cooking, separated from the primary residence; not a stand-alone residence or dwelling unit.

**Guest Quarters** --- a secondary living area, without provisions for cooking, within an existing primary residence; not a stand-alone residence or dwelling unit.

**Habitable** --- buildings or structures intended for human occupancy, containing electricity, plumbing, and provisions for sleeping and/or cooking.

**Hazardous substance** --- any hazardous substance as defined by WAC 173-303-040, as amended.

**Health District** --- the Kitsap County Health District.

**Health Hazard** --- a condition or situation, as determined by the Health Officer, where disease potential exists and if unabated the disease potential will increase and may result in a public health problem or emergency.

**Health Officer** --- the Health Officer of the Kitsap County Health District, or his or her designee.

**Holding tank sewage system** --- an onsite sewage system which incorporates a sewage tank without a discharge outlet, requiring the off-site treatment and disposal for the sewage collected and removed from the holding tank by a certified pumper. A holding tank sewage system is considered an alternative system for the purposes of these regulations.

**Hydraulic loading rate** --- the amount of effluent applied to a given treatment step, normally expressed as gallons per square foot per day.

**Impervious layer** --- a layer of sediment or soil that is cemented or compacted to such an extent that little or no water or plant root penetration is possible.

**Incomplete** --- not finished or complete; deficient and lacking.

**Individual water supply** --- well or source of water serving up to two (2) single-family residences.

**Industrial wastewater** --- the water or liquid carried waste from an industrial process. These wastes may result from any process or activity of industry, manufacture, trade or business, from the development of any natural resource, or from animal operations such as feedlots, poultry houses, or dairies. The term includes contaminated storm water and leachate from solid waste facilities.

**Infiltration system** --- a designed structure or feature consisting of gravel and a network of pipe or gravelless chambers used for the purpose of dispersing or infiltrating water into soil.

**Infiltrative surface** --- the surface within a treatment component or soil dispersal component to which effluent is applied and through which effluent moves into original, undisturbed soil or other porous treatment media.

**Insanitary** --- unclean enough to endanger health; contaminated.

**Installation** --- the act of construction or installing; a system of onsite sewage system components set up for use.

**Installer** --- a qualified person approved by the Health Officer to install or repair an onsite sewage system or its components.

**Invert** --- the bottom of a pipe as measured from the interior wall of the pipe.

**Large onsite sewage system (LOSS)** --- any onsite sewage system with design flows, at any common point, greater than 3,500 gallons/day.

**Legal existence** --- construction or development that was/is permitted (e.g., onsite sewage system, building, water system, etc.) and conformed to the conditions of approval at the time the permit was issued.

**Locking type or secured cover** --- a lid to a septic tank or pump tank that is bolted down, latched or fastened tightly in place.

**Maintenance** --- the actions necessary to keep the onsite sewage system components functioning properly and as designed; required upkeep.

**Massive structure** --- the condition of a soil layer in which the layer appears as a coherent or solid mass not separated into peds of any kind.

**May** --- discretionary, permissive, or allowed.

**Moderate structure** --- well-formed distinct peds evident in undisturbed soil. When disturbed, soil material parts into a mixture of whole peds, broken peds, and material not in peds.

**Modification** --- the act of modifying; an alteration or change; to change the form of. The expansion, change in use, change in footprint, remodel of, addition to, or alteration of a development or onsite sewage system connected to the development. Includes a change of ownership, tenants, or users of commercial developments.

**Monitoring** --- periodic or continuous checking of an onsite sewage system, which is performed by observations and measurements, to determine if the system is functioning as intended and if system maintenance is needed. Monitoring also includes maintaining accurate records that document monitoring activities.

**Monitoring and Maintenance Service Provider** --- a person certified by the District to perform maintenance and monitoring of onsite sewage disposal systems.

**Native Soil** --- the top layer of the earth's surface in its natural state and undisturbed and, over time, has developed definite soil horizons from a parent material through soil forming processes. The soil horizons contain living roots and plant and animal activities, which are in part, responsible for the formation of soil structure and porosity.

**Non-conforming system** --- any onsite sewage system that has limited or restricted use and meets none of the following criteria:

1. Systems in full compliance with new construction requirements under this ordinance; or
2. Systems approved, installed and operating in accordance with the conditions of Health Officer approval at the time the system was installed; or
3. Systems permitted by Table 8 or the waiver process under these local regulations that assures public health protection by higher treatment performance and/or other methods.

**Onsite sewage system** --- an integrated system of components, located on or nearby the property it serves, that conveys, treats, stores, and/or provides subsurface soil treatment and dispersal of sewage; any system constructed or utilized to handle sewage generated on a property other than a connection to a state approved sanitary sewer system or large onsite sewage system. Also known as "septic system", "OSS", "holding tank system".

**Operation** --- the act or process of operating or functioning or using an onsite sewage system.

**Ordinary high water mark** --- the mark on all lakes, streams and tidal waters, found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, with respect to vegetation, as that condition exists on the effective date of these regulations, or as it may naturally change thereafter. The following definitions apply where the ordinary high water mark cannot be found: The ordinary high-water mark adjoining saltwater is the elevation at mean higher high tide; and the ordinary high-water mark adjoining freshwater is the line of mean high water.

**Owner** --- a person, or persons, who has legal title to, or possession of, real property, a building, structure, or place of business, etc.

**Owner's agent** --- a person or business that an owner authorizes to represent them.

**Ped** --- a unit of soil structure such as blocks, column, granule, plate or prism formed by natural processes.

**Period of validity** --- a specified time period for which an application or permit is valid.

**Permit** --- written permission issued by the Health Officer accepting the construction or repair or use of an onsite sewage disposal system, for a specific purpose, under these rules and regulations.

**Person** --- any individual, corporation, company association, society, firm, partnership, joint stock company, or any branch of state or local government or any other entity, or the authorized agent(s) of these entities.

**Planned Unit Development (PUD)** --- a development characterized by a unified site design, clustered residential units and/or commercial units, and areas of common open space.

**Plumbing fixtures** --- an object in a building or structure that is connected to both the water supply and the wastewater collection systems; e.g., toilets, kitchen or bathroom sinks, bathtubs, showers, dishwashers, laundry machines, etc.

**Pressure distribution** --- a system which equally distributes effluent under pressure throughout a trench or bed.

**Primary area** --- an area of land approved by the Health Officer for the installation of a soil dispersal component.

**Professional engineer** -- a person who is currently licensed as an engineer under the provisions of chapter 18.43 RCW.

**Project proposal** --- an idea, plan, or application for a development.

**Property conveyance** --- the transfer of title of property from an owner/owners to a different owner/owners.

**Proprietary device or method** --- a device or method classified as an alternative system or a component thereof that is held under a patent or trademark.

**Public domain technology** --- a sewage treatment and/or distribution technology, method, or material not subject to a patent or trademark.

**Public Sewer System** --- a sewerage system owned or operated by a city, town, municipal corporation, county, or other approved ownership, consisting of a collection system and necessary trunks, pumping facilities and a means of final treatment and disposal; and approved by or under permit from the Department of Ecology, the Department of Health or the Health Officer.

**Public Water System** --- any system or water supply intended or used for human consumption or other domestic uses, including source, treatment, storage, transmission, and distribution facilities where water is furnished to any community, collection, or number of individuals, but excluding a water system serving up to two (2) single family residences, where each lot is equal to or greater than one acre in size.

**Pump basin** --- a watertight receptacle that contains a pump to convey sewage from a limited use area, that is separate from the main wastewater sewer pipe leaving a structure, to the main treatment component of an onsite sewage system; typically much smaller than a pump tank and separate from the main sewer pipe due to elevation restrictions. Pump basins are intended for limited, specialized uses, and not intended as a replacement or substitute for a pump tank.

**Pump tank** --- a watertight receptacle placed after a septic tank or other treatment facility that contains the required controls and alarms to convey sewage effluent to a dispersal component.

**Pumper** --- a person approved by the Health Officer to remove and transport wastewater or septage from onsite sewage systems to approved wastewater treatment plants.

**Record of Construction** --- an accurate, scaled graphic and written record of the location and features of the onsite sewage system that are needed to properly locate, monitor and maintain that system; includes other site-specific features such as the building, well(s), storm water systems, utilities, reserve area, property lines, etc., for a specific property; typically an official record, prepared and signed by a licensed or certified sewage contractor, of an onsite sewage system associated with a Health Officer approved permit or application.

**Record drawing** --- a scaled, graphic and written record of the approximate location and type of an unpermitted septic system for a developed property, including existing structures and wells on the property; typically an unofficial record for informational purposes only created during the property conveyance process.

**Red-lined** --- the marking, or amendment, of an existing plan or application to reflect and document actual site conditions, or construction details; typically completed in red ink so that the marked details are in contrast, and readily discernable, from the original document. May also apply to corrections or qualifications made by the Health Officer to an application in review.

**Registered** --- approved and accepted for use by Washington State Department of Health in accordance with WAC 246-272A.

**Remodel** --- the modification of an existing development or structure within the existing footprint or foundation, without increasing the volume or strength of sewage above the permitted design capacity of the onsite sewage system.

**Repair** --- to restore a broken or malfunctioning system component to a sound or healthy state by fixing or replacement in the same area or configuration of the broken component; does not include relocation or replacement of an entire onsite sewage system.

**Replacement** --- the reconstruction and/or relocation of a failed onsite sewage system that cannot be repaired in-place.

**Reserve area** --- an area of land approved by the Health Officer for the installation of a conforming system and dedicated for replacement of the onsite sewage system upon its failure.

**Resident owner** --- a person who constructs, remodels or repairs a dwelling occupied by him/her or intended to be occupied by him/her for at least two (2) years.

**Residential sewage or Residential Wastewater** --- sewage having the constituency and strength typical of wastewater from domestic households. Residential strength sewage should, after normal treatment through a septic tank, be at, or below, the following levels: CBOD<sub>5</sub>=125 mg/L; TSS=80 mg/L; and Oil & Grease=20 mg/L, or meet the effluent quality criteria of their respective treatment level required for their site.

**Restrictive layer** --- a stratum impeding the vertical movement of water, air and growth of plant roots such as hardpan, claypan, fragipan, caliche, some compacted soils, bedrock and unstructured clay soils.

**Roadside ditch** --- a man-made or natural channel that conveys storm water and is mostly dependent upon a rain event to contain and convey water.

**Rock fragment** --- means rock or mineral fragments having a diameter of two (2) millimeters or more; for example, gravel, cobbles, stones, and boulders.

**Scum** --- a mass of sewage solids floating at the surface of the sewage which is buoyed up by entrained gas, grease, or other substances.

**Seasonal surface water** --- natural surface water bodies that normally do not contain

water during the dry season (June through September), or are classified as seasonal or non-significant by the Washington State Department of Fish and Wildlife, Department of Ecology, or a local planning authority.

**Seasonal water table** --- The upper surface of a saturated zone that exists only on a periodic or seasonal basis. Like a permanent groundwater table, the elevation of a temporary groundwater table may fluctuate. However, a temporary groundwater table and associated saturated zone will dissipate (dry up) for a period of time each year.

**Septage** --- the mixture of solid wastes, scum, sludge, and liquids pumped from within septic tanks, pump chambers, holding tanks, and other onsite sewage system components.

**Septic system** --- see Onsite sewage system.

**Septic tank** --- a watertight pretreatment receptacle receiving the discharge of sewage from a building sewer or sewers, designed and constructed to permit separation of settleable and floating solids from the liquid, with detention and anaerobic digestion of the organic matter, prior to discharge of the liquid.

**Septic tank effluent** --- partially treated sewage which is discharged from a septic tank.

**Serial distribution** --- an arrangement of absorption trenches, seepage pits, or seepage beds so that each is forced to pond so as to utilize the total effective absorption area before liquid flows into the succeeding absorption component.

**Sewage** --- any urine, feces, and the water carrying human wastes, including kitchen, bath, and laundry wastes from residences, buildings, industrial establishments or other places. For the purposes of these regulations, sewage is generally synonymous with household or residential wastewater.

**Sewage contractor** --- a person or business certified by the Health District to work on or with onsite sewage systems.

**Sewage producer** --- see Generator.

**Sewage quality** --- means contents in sewage that include:

1. CBOD<sub>5</sub>, TSS, and O&G;
2. Other parameters that can adversely affect treatment. Examples include pH, temperature, and dissolved oxygen;
3. Other constituents that create concerns due to specific site sensitivity. Examples include fecal coliform and nitrogen.

**Sewage tank** --- a prefabricated or cast-in-place septic tank, pump tank, holding tank, grease interceptor, recirculation filter tank or any other Department or Health Officer approved tank to contain sewage.

**Sewer pipe** --- tightline pipe that conveys sewage from a building or structure to a septic tank or other approved sewage tank, including all pipe fittings.

**Shall** --- mandatory; must, required, and/or obligatory.

**Short Subdivision** --- a division of land as defined in Kitsap County Ordinance 108-E-1991 now or as hereafter amended.

**Single-Family Residence** --- Generally a stand-alone, habitable dwelling or structure designed and intended to house one family, or a group of individuals, that will not create sewage volumes or waste strength in excess of what the onsite sewage system is intended, or approved, to handle.

**Site plan** --- see record of construction.

**Slope** --- a measure of elevation change of a defined section of land, ground surface, pipe, etc., expressed in percent or fraction and calculated by dividing the amount of rise

of elevation change over the run, or a specific horizontal distance.

**Soil dispersal component** --- a technology that releases and distributes sewage effluent from a sewage treatment component into the ground.

**Soil log** --- a detailed description of soil characteristics providing information on the soil's capacity to act as an acceptable treatment and disposal medium for sewage, constructed/excavated according to the requirements of these regulations.

**Soil permeability** --- the quality of the soil that enables it to transmit water and/or air, as outlined in the U.S. Department of Agriculture Handbook, Number 18, entitled, Soil Survey Manual.

**Soil Scientist** --- a person who by reason of special knowledge of chemical and biological sciences applicable to soils, as natural bodies and of the methods and principles of soil classifications, mapping, description and soil use evaluation as acquired by education and experience.

**Soil type** --- a numerical classification of fine earth particles and coarse fragments as described in Section 10.C.3b)(2) Table III.

**Special Care Unit (mother-in-law)** --- A temporary dwelling that is an extension of the primary residence and which requires an annual renewable permit through the Department of Community Development. The minimum design flow for onsite sewage sizing is 120 gallons/day/bedroom.

**Standard methods** -- the *20th Edition of Standard Methods for the Examination of Water and Wastewater*, prepared and published jointly by the American Public Health Association, the American Water Works Association, and the Water Environment Federation.

**Standard system** --- an onsite sewage system consisting of a septic tank (and possibly a pump tank) and gravity flow soil dispersal system; includes pump-to-gravity system configurations that operate on-demand.

**Storm dependent** --- a situation, conditions, or event that is dependent upon a storm to occur.

**Storm water infiltration dispersal area** --- a soil dispersal system for storm water, only.

**Strong structure** --peds are distinct in undisturbed soil. They separate cleanly when soil is disturbed, and the soil material separates mainly into whole peds when removed.

**Subdivision** --- a division of land or creation of lots or parcels, described under chapter 58.17 RCW, now or as hereafter amended, including both long and short subdivisions, planned unit developments, and mobile home parks.

**Subsurface drip system** -- an efficient pressurized wastewater distribution system that can deliver small.

**Subsurface infiltration system** --- a storm water control system designed to convey and discharge storm water run-off to a subsurface drainage system.

**Surface water** --- any body of water, whether fresh or marine, which either flows or is confined in a natural or artificial depression or drainage course and normally contains water (excluding rain events) during any of the months from June through September, or has been identified as a significant drainage feature or resource by the Washington State Department of Fish and Wildlife, Department of Ecology, or the applicable planning authority. Such bodies include, but are not limited to, natural and artificial lakes, ponds, rivers, streams, swamps, marshes and tidal water. Artificially constructed water bodies with an impermeable liner are not considered surface water.

**Surge capacity** --- a factor of sewage volume above the operating capacity used to determine the minimum design flow capacity for an onsite sewage system for a

particular building, property, or activity.

**Termination Date** --- the date that an application is no longer valid for review and approval by the Health Officer.

**Tightline** --- a non-perforated watertight pipe used for the purpose of conveying sewage or effluent.

**Timed dosing** --- delivery of discrete volumes of sewage to the dispersal component at prescribed time intervals.

**Total suspended solids or TSS** --- total suspended solids, a measure of all suspended solids in a liquid, typically expressed in mg/L.

**Treatment component** -- a technology that treats sewage in preparation for further treatment and/or dispersal into the soil environment. Some treatment components, such as mound systems, incorporate a soil dispersal component in lieu of separate treatment and soil dispersal components.

**Treatment level** --- -- one of six (6) levels (A, B, C, D, E, & N) used in these rules to:

1. Identify treatment component performance demonstrated through requirements specified in WAC [246-272A-0110](#); and
2. Match site conditions of vertical separation and soil type with treatment components. Treatment levels used in these rules are not intended to be applied as field compliance standards. Their intended use is for establishing treatment product performance in a product testing setting under established protocols by qualified testing entities.

**Treatment sequence** --- means any series of treatment components that discharges treated sewage to the soil dispersal component.

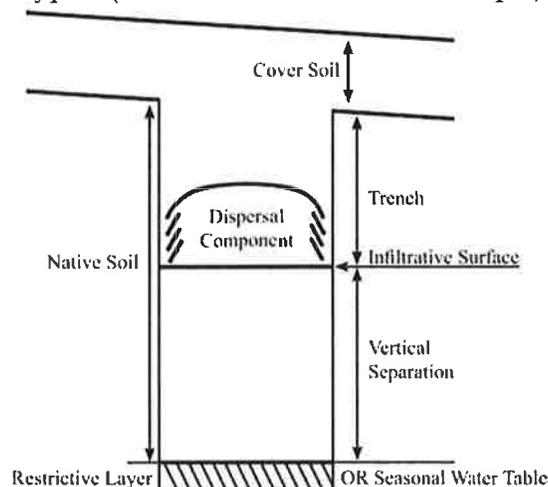
**Typical Sewage or Wastewater** --- see Residential Sewage or Wastewater.

**Undisturbed soil** --- soil that has not been disturbed.

**Unit volume of sewage** --- the flow of sewage from a single-family residence, a mobile home site in a mobile home park, or 450 gallons of sewage per day where the proposed development is not single family residences or a mobile home park.

**Up-gradient** --- opposite of down-gradient.

**Vertical separation** --- the depth of unsaturated, original, undisturbed soil of soil types 1-6 between the bottom of a disposal component and the highest seasonal water table, a restrictive layer, or soil type 7 (See illustration below as example).



**Waste management plan** --- a written procedure that details how solid and liquid wastes will be handled in conformance with applicable regulations.

**Waste strength** --- the quality and level of sewage constituents, or parameters, including, but not limited to temperature, pH, total suspended solids, carbonaceous biochemical oxygen demand (CBOD<sub>5</sub>), oils and grease, fecal coliform, etc.

**Water interceptor** --- any natural or artificial groundwater or surface water drainage system including agricultural drain tile, curtain drain, french drain, footing drain, cut banks and ditches, which intercept and divert groundwater or surface water from the area of the absorption facility.

**Water table** --- the upper surface of the ground water, whether permanent or seasonal. Also see groundwater.

**Wave barrier** --- a bulkhead of adequate height (8) and construction protecting the immediate area of onsite sewage system components from wave action.

**Wet season evaluation** --- an investigation of how a specific site is affected by rainfall conditions between the months of October and April, relative to meeting the requirements of these regulations for vertical and horizontal separations.

**Working capacity** --- the total usable and functional volume of a sewage tank.

**Working onsite sewage system** --- a system that, by all reasonable observations, testing, and investigation, appears to be functioning properly, not failing, and in conformance with the applicable regulations at the time of permit approval.

#### Acronyms

**BOD** --- biochemical oxygen demand, typically expressed in mg/L.

**CBOD<sub>5</sub>** --- carbonaceous biochemical oxygen demand, typically expressed in mg/L.

**O&G (formerly referred to as FOG)** --- oil and grease, a component of sewage typically originating from food stuffs (animal fats or vegetable oils) or consisting of compounds of alcohol or glycerol with fatty acids (soaps and lotions). Typically expressed in mg/L

**RCW** --- Revised Code of Washington

**WAC** --- Washington Administrative Code

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