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COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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BY Cmm

THURSTON COUNTY, and its BOARD OF HEALTH,

Appellants,

and

BRUCE CARTER, SHARI RICHARDSON, GEORGIA BICKFORD,  
BARBARA BUSHNELL and JANE ELDER BOGLE,

Appellant Interested Parties,

v.

JEFF GRIFFIN,

Respondent.

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**OPENING BRIEF OF APPELLANT INTERESTED PARTIES**

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## **I. INTRODUCTION**

This appeal arises from Jeff Griffin's application for an on-site sewer system (hereinafter "OSS") permit for a newly-purchased tiny vacant waterfront lot (lot 11) situated at 2820 Steamboat Island Road on Steamboat Island in northwestern Thurston County. The issue in this appeal is whether the Health Department has discretionary authority to deny an OSS permit for a waterfront vacant lot that is 77% below the current minimum lot size.

This appellants' brief is filed of behalf of the adjoining neighbors (hereinafter the "Interested Parties") on Steamboat Island, Shari Richardson and Bruce Carter, who own interests in lot 12 (northeast of lot 11) and Barbara Bushnell, Georgia Bickford and Jane Elder Bogle, who own interests in lots 10 (southwest of lot 11) and the adjoining one-half of lot 9 (hereinafter the "Bickford property").

The purpose of the pertinent regulations is to grant the Health Department discretionary authority to issue sewage permits for undersize lots in limited circumstances. Although the regulations for new construction on a vacant lot require a minimum lot size of 12,500 square feet, the applicant sought a permit for a 2850 square foot lot (a 77% reduction) under a grandfather provision providing that the health officer "May" grant permits for smaller lots platted prior to January 1, 1995 "only

when all of the following criteria are met: ... 21.4.5.3 the proposed system meets all requirements of these regulations other than minimum land area.” (Section 21, Article IV, Rules and Regulations of the Thurston County Board of Health Governing Disposal of Sewage, [“BoH Regs”] Appendix Tab B). Applicant also requested additional waivers, setback reductions and modifications.

After initial staff approval of Griffin’s OSS application, appeals led to the denial of the permit in a Decision by the Hearing Officer and then a further appeal to the Thurston County Board of Health which also issued a Decision denying the permit. The Superior Court subsequently reversed the ruling of the Board of Health.

The Board of Health’s denial of Mr. Griffin’s application for an on-site sewer system should be affirmed for three distinct reasons:

1. Denial of the Griffin permit was an appropriate exercise of the Board of Health’s inherent discretionary authority to condition or deny a permit for a too-small lot under the “may” language of 21.4 of the Board of Health’s regulations.
2. Denial is an appropriate application of the Board of Health’s expertise in the conservative application and construction of its regulatory language in 21.4.5 that the “proposed system meets all requirements of these regulations other than

minimum land area.” The Courts should defer to the agency’s wisdom and expertise in interpreting and applying their regulations, particularly where a different construction would render the regulation superfluous.

3. Denial of the permit is appropriate because the applicant’s property does not factually qualify for two of the requested setback reductions.

Granting of applicant’s request for a discretionary 77% reduction in minimum lot size together with numerous waivers, setbacks and modifications would make a mockery of the Health Department’s minimum lot size requirements for on-site septic systems.

## **II. PROCEDURAL AND FACTUAL BACKGROUND**

Steamboat Island, originally platted into 126 tiny lots in 1927, is an eight acre island in northwestern Thurston County with approximately 42 existing homes. AR 37, 60.\*

No septic tank permit has been issued for any tiny vacant lot on Steamboat Island in recent years, apparently because of negative advice from the Health Department about the availability of septic tank permits for too-small vacant lots. AR 81, para.2, 3, AR 88, AR 184, para 2.

\*The Record on Review is comprised of the Report of Proceedings (“RP”), the Clerk’s Papers (“CP”) and the Administrative Record of Adjudicative Proceedings (“AR”). An Appendix is also being filed by Appellant Interested Parties with this brief.

The vacant lot in question, lot 11, measures only 25 feet on the waterfront, with 114 feet in depth, for a size of just 2,850 square feet. AR 37, 339. Art Starry, Thurston County's Environmental Health Director, sitting as the Hearing Officer, found that a septic system on under-sized lot 11 would "equate to a density of 15.3 units per acre while new developments in Washington allow a maximum of 3.5 homes per acre." AR 43, para. 4-5. Thus the lot was approximately 1/5 (a 77% reduction) the usual minimum lot size of 12,500 feet ( $2850/12,500 = 23\%$ ). The Board of Health explicitly adopted the Hearing Officer Starry's "findings, facts, conclusions and decision . . . ." AR 1

Before Mr. Griffin purchased lot 11 on approximately July 22, 2003, he and his realtor were on notice that Thurston County's Environmental Health Department had stated that lot 11 was not buildable because the County would not issue a permit for a septic tank system. The realtor's Tax Summary Report for lot 11 indicates as follows: "This lot is not buildable for residential purposes at this time per Thurston Co. Envir. Health. Recreation use only. . . . Sold AS-IS, WHERE IS." AR 195.

Mr. Griffin applied for an on-site sewer system ("OSS) and it was approved by staff on April 1, 2005. AR 16. An appeal was pursued by some of the Interested Parties and hearings before a Hearing Officer were held on May 4 and May 6, 2005. (AR 37, transcript at AR 213-336). On

May 15, 2005, Thurston County Director of Environmental Health Art Starry, sitting as the Hearing Officer, rendered his decision denying the permit under the discretionary authority to deny permits for too small lots. AR 37-45. In reviewing the record, he found various erroneous assumptions, instances of incomplete design and analysis and a failure to meet criteria in adopted guidance documents. AR 44, Conclusions 7-9. He concluded, under the discretionary authority in Article IV and regulation 21.4, that the health officer should, as a matter of discretion, "more rigorously" apply the other code provision when minimum land area requirements are set aside and take "a conservative position when considering how to apply Section 21.4.5.3. AR 43-44, Conclusions 3-6. He concluded that the staff should not have approved the permit on the lot because all the requirements of Article IV other than minimum land area could not be met. AR 41, Conclusion 10.

Mr. Griffin then appealed to the Board of Health. On June 3, the Interested Parties, the prevailing parties before the hearing officer, applied, with the support of the Prosecuting Attorney, for permission to participate in the hearings before the Board of Health. AR 401-402, 403. The request to make arguments and question witnesses was denied, though permission to present materials was allowed. AR 404. A June 15 request to intervene

and assert cross-appeal was denied at the hearing by a 2-1 vote of the three- person Board because “it’s not timely.” AR 337, 406-08.

The exclusion of the Interested Parties from their due process rights to argue and question witnesses at the BoH hearings was particularly troublesome because the County presented the matter on a very narrow issue. The County did not make a recommendation to the Board. Instead, it asked the Board to focus on the term “any (other) requirements” found in Article IV Section 21.4.5.3 and asked the Board to interpret the meaning of the language in relation to small lot OSS applications. AR 3. par.14.

The Board of Health conducted a de novo hearing on June 21, 2005. AR 1, transcript AR 337-387. On July 6, 2005 the Board of Health announced its 2-1 decision approving the Hearing Officer’s Decision with certain additional explanation and denying the permit (AR 388-389). The written decision was filed August 1, 2005. AR 1-6.

Mr. Griffin then appealed the Board of Health decision to the Superior Court on August 12, 2005 by filing a Land Use Petition pursuant to RCW 36.70C. CP 3-13.

The Interested Parties, who had been excluded from participating before the Board of Health, were joined as parties in the Land Use Petition Act appeal pursuant to RCW 36.70C.040(2)(b). After briefing and

argument, the Superior Court rendered its oral decision and entered an order directing that the permit be issued on February 3, 2006. CP 198-199, RP pages 1-10. The Interested Parties' Motion for Reconsideration was denied on February 13, 2006 (CP 215) and Judgment including the Cost Bill was entered March 3, 2006 (CP 250-252). The Interested Parties Notice of Appeal was filed February 27, 2006. CP 238-249.

Thurston County and its Board of Health had previously filed a Notice of Appeal on February 16, 2006. C.P.200-2009.

### **III. JURISDICTION**

This appeal is pursuant to the Land Use Petition Act which provides the exclusive means of judicial review of most land use decisions. RCW 36.70.030. This Court has jurisdiction of this appeal because Appellants Bruce D. Carter, Shari Richardson, Georgia Bickford, Barbara Bushnell and Jane Elder Bogle, acting in accordance with Title 5 of the Rules of Appellate Procedure, filed their Notice of Appeal on February 27, 2006. (C.P. 238-249) from the following Orders of the Thurston County Superior Court:

1. The February 3, 2006 Order of the Thurston County Superior Court Granting Jeff Griffin's LUPA Petition reversing the Thurston County Board of Health's decision entered August 1, 2005 ( C.P.198-199).

2. The February 13, 2006 Letter Order of the Thurston County Superior Court denying Additional Respondents' Motion to Reconsider (C.P.213).

Respondent Thurston County and its Board of Health had previously filed a Notice of Appeal from the February 3, 2006 Order on February 16, 2006. CP 200-209.

#### IV. ARGUMENT

##### A. Burden Of Proof And Standards Of Review

In this matter, the Court of Appeals considers the case from the same position as the Superior Court in determining whether the Griffin applicant has met the burden of proof in establishing one of the standards in the Land Use Petition Act (RCW 36.70C.130) which provides as follows:

(1) The superior court, acting without a jury, shall review the record and such supplemental evidence as is permitted under RCW 36.70C.120. The court may grant relief only if the party seeking relief has carried the burden of establishing that one of the standards set forth in (a) through (f) of this subsection has been met. The standards are:

(a) The body or officer that made the land use decision engaged in unlawful procedure or failed to follow a prescribed process, unless the error was harmless;

(b) The land use decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise;

(c) The land use decision is not supported by evidence that is substantial when viewed in light of the whole record before the court;

(d) The land use decision is a clearly erroneous application of the law to the facts;

(e) The land use decision is outside the authority or jurisdiction of the body or officer making the decision; or

(f) The land use decision violates the constitutional rights of the party seeking relief.

When reviewing a superior court's decision on a land use petition, we stand in the same position as the superior court. *Biermann v. City of Spokane*, 90 Wn. App. 816, 821, 960 P.2d 434 (1998).

*Lakeside Industries, Inc., v Thurston County*, 119 Wn. App. 886, 893, 83 P.3d 433, review denied (October 6, 2004).

The applicant has the burden of proof under LUPA to show that he is entitled to relief from the Courts.

The plain words of the statute make clear that it is [applicant's] burden to establish that he is entitled to relief under one or more of the specified subsections of the LUPA statute. . . . It is [applicant's] burden, not the County's, to establish the right to relief under the subsections of LUPA that are at issue in this case. Thus, for purposes of this appeal, he must show that the County's land use decision is an erroneous interpretation of the law, is not supported by substantial evidence, and/or is a clearly erroneous application of the law to the facts.

*Nagle v. Snohomish County*, 129 Wn. App. 703, 707-08, 119 P. 3d 914 (Div. I 2005).

In determining the sufficiency of the evidence, we view the record and the inferences in the light most

favorable to the party that prevailed in the highest fact-finding forum. Benchmark Land Co. v. City of Battle Ground, 146 WN 2<sup>nd</sup> 685, 694, 49 P.3d 860 (2002). Consequently, we view the record in the light most favorable to [respondent]. We will find that the board made a clearly erroneous application of law only if we are left with the firm conviction that it made a mistake.(fn2) Lakeside Indus. v. Thurston County, 119 Wn. App. 886 894, 83 P.3d 433 (2004), review denied (Wash. Oct. 6, 2004). On review of a superior court's decision on a land use petition, we stand in the same position as the superior court and apply the above standards to the record created before the board. Isla Verde Int'l Holdings, Inc. v. City of Camas, 146 Wn. 2d, 740, 751, 49 P.3d 867 (2002); Lakeside, 119 Wn. App. at 893, 83 P.3d 433. [emphasis added]

*Henderson v Kittitas Co.*, 124 Wn. App. 747, 752, 100 P. 3d. 842 (2004)

Courts also defer to a statutory interpretation of the administrative agency charged with administering and enforcing the statute. *Hama Hama Co. v. Shorelines Hearings Bd.*, 85, Wn. 2d 441, 448, 536 P.2d 157 (1975); *Lakeside Industries v. Thurston County*, 119 Wn. App 886, 898, 83 P.3d 433 (2004), *rev. denied* (Wash. Oct. 6, 2004).

**B. The Board Of Health Properly Exercised Its Discretionary Authority Under The "May" Language Of Section 21.4 Of Its Regulations In Denying The Griffin Permit Application Requesting A 77% Reduction In Minimum Lot Size.**

The principal regulation under review is Article IV, Section 21.4 of the Rules and regulation of the Thurston County Board of Health governing Disposal of Sewage:

21.4 The health officer may: . . .

21.4.4 Require larger land areas or lot sizes to achieve public health protection.

21.4.5 Permit the installation of an OSS, where the minimum land area requirements or lot sizes cannot be met, only when all of the following criteria are met:

21.4.5.1 The lot is registered as a legal lot of record created prior to January 1, 1995; and

21.4.5.2 The lot is outside an area of special concern where minimum land area had been listed as a design parameter necessary for public health protection; and

21.4.5.3 The proposed system meets all requirements of these regulations other than minimum land area.

The Hearing Officer and the Board of Health denied Mr. Griffin's request for an OSS on his 77% undersize lot in reliance on the discretionary authority reflected in the term "may" and by relying on their expertise in making a rigorous, conservative construction and application of 21.4.5.3. The Interested Parties suggest that the discretionary authority in the term "may" and the conservative construction and application on 21.4.5.3 provide separate, distinct bases for denying the OSS for the tiny waterfront lot.

The term “May” in section 21.4 provides an independent basis for the exercise of discretionary authority to deny the Griffin permit without regard to the subsections which are separate conditions precedent. Article IV of the Code defines the terms “May” and “Shall” as follows:

“May” means discretionary, permissive or allowed.”

“Shall” means mandatory.

Article IV; SECTION 3 DEFINITIONS, PAGES 4-8, 4-11,  
BoH Regs.

The Court of Appeals interprets agency regulations as if they were statutes. *Cobra Roofing Service, Inc. v. Dept of Labor & Industries*, 122 Wash. App. 402, 409, 97 P. 3d 17, *rev. granted*, 154 Wash. 2d 1001, 111 P. 3d 481(2004).

The Courts have consistently held that the term “may” confers discretion on the decision maker:

Canons of Construction. We give statutory terms their plain and ordinary meaning, *State v. Hentz*, ([fn1 [99 Wn. 2d 538, 541, 663 P. 2d 476(1983)]] assuming that is possible. Where a provision contains both the words “shall” and “may,” it is presumed that the lawmaker intended to distinguish between them: “shall” being construed as mandatory and “May” as permissive or discretionary. *Carrick v. Locke*, 125 Wn. 2d 129,142, 882 P.2d 173 (1994); *see also State v. Pineda-Guzman*, 103 Wn. App. 759, 763, 14 P.3d 190 (2000).

*In Re Det. Of Rogers*, 117 Wn. App. 270, 274-75, 71 P. 3d 220 (2003).

The term “may” as used in Section 21.4 confers discretionary authority for the following: 21.4.5 relating to the permitting of an OSS where minimum land area requirements cannot be met, 21.4.3 relating to requiring larger land areas to achieve public health protection, and 21.4.4 relating to prohibiting certain development to protect public health. In fact, the term “May” with its inherent discretionary authority also appears in the footnotes 4 and 6 of section 10.1 under which the applicant seeks various setback concessions to shoehorn the proposed septic tank system onto his tiny waterfront lot.

The term “shall” is used in Article IV as an imperative as in 16.5 (persons shall not): 17.1 (When an OSS failure occurs, the OSS owner shall), or 9.1 (person proposing an OSS shall submit certain information).

Under the Washington cases, the “may” language of BoH Regulation 21.4 confers discretion on the Board of Health, as the permitting authority, to grant, deny or condition the permit in its discretion. A permitting agency even has implied authority to deny or condition a permit. *State v. Crown Zellerbach*, 92 Wn. 2d 894, 901, 602 P. 2d 1172 (1979):

Respondent first contends that RCW 75.20.100 makes no delegation of authority which allows the departments to impose requirements or conditions on permits. It argues that no such grant is created by that portion of the statute which declares it a gross

misdemeanor to fail to follow or carry out any of the requirements or conditions which are made a part of a hydraulic permit.

The statute clearly authorizes employees of the Departments of Fisheries and Game to sign on behalf of the departments written approvals of plans and specifications of proposed hydraulic projects. Even if the grant of authority to impose conditions on such permits is not expressly stated, we find that it is implied.

In STATE EX REL. PUGET SOUND NAVIGATION CO. v. DEPARTMENT OF TRANSP., 33 Wn.2d 448, 206 P.2d 456 (1949), this court recognized that the power to disapprove necessarily implies the power to condition an approval. In that case, the authority of the Department of Transportation to control rates under Rem. Supp. 1941, 10424 was recognized. Accordingly, the court held that the power vested in the department to refuse to allow a new tariff filed by a common carrier to become effective necessarily implies the power to allow the tariff to become immediately effective pursuant to reasonable conditions or limitations. This approach is consistent with that taken by the United States Supreme Court when it interpreted an act of Congress giving the Secretary of War the authority to approve construction of any obstruction for a navigable waterway. SOUTHERN PAC. CO. v. OLYMPIAN DREDGING CO., 260 U.S. 205, 67 L. Ed. 213, 43 S. Ct. 26 (1922). The court stated, at page 208: "The power to approve implies the power to disapprove and the power to disapprove necessarily includes the lesser power to condition an approval." We find this reasoning to be applicable to the statute in question.

We therefore hold that the departments have been delegated the authority to impose requirements or conditions on permits. (Emphasis added)

*State v. Crown Zellerbach*, 92 Wn. 2d 894, 899-900, 602 P. 2d 1172 (1979).

This implied discretion to deny or condition requested permits in the public interest is reiterated in *Department of Ecology v. Theodoratus*, 135 Wn. 2d 582, 597, 957 P. 2d 1241 (1998).

Generally, an agency which has authority to issue or deny permits has authority to condition them. *E.g.*, *State v. Crown Zellerbach Corp.*, 92 Wn. 2d 894, 899, 602 P.2d 1-172 (1979). The conditions of the original permit do not necessarily create a vested right to proceed under those conditions where renewal is discretionary if, for example, the law changes in the interim or the renewal decision involves consideration of information not considered when granting the original permit. *Eastlake Community Council v. Roanoke Assoc., Inc.*, 82 Wn.2d 475, 491-93, 513 P.2d 36, 76 A.L.R.3d 360 (1973) (involving issue of vested rights in building permit).

When the Department determines whether to extend the period of time for completion of a project under RCW 90.03.320, it must consider the "good faith" of the appropriator and the public interests. The Department thus has authority to condition any extension to satisfy any public interest concerns which arise, provided, of course, that it also must comply with all relevant statutes. [emphasis added]

*Id.* at 597, see also *Association of Washington Business v. Dept. of Revenue*, 155 Wn. 2d 430, 451, 120 P. 3d 46 (2005).

The term "May" in code section 21.4 clearly confers the discretionary authority on the Board of Health to apply its policies, expertise and judgment to approve or deny proposals for septic systems for undersize lots under Section 21.4. The Board of Health majority clearly emphasized their intention to exercise their "may" discretion and

expertise to reject Griffin's undersize lot by employing both "underlining" and "(emphasis added)" in the following key quotation from the Board of Health Decision:

2) That Article IV, section 21.4.5 states that the Health Officer may (emphasis added) permit the installation of an OSS where minimum land area requirements or lot sizes (sic) [cannot be met] only when . . .

21.4.5.1 The lot is registered as a legal lot of record created prior to Jan 1, 1995; and

21.4.5.2 The lot is outside an area of special concern where minimum land area has been listed as a design parameter necessary for public health protection; and

21.4.5.3 The proposed system meets all requirements of these regulations other than minimum land area. (Emphasis added)

Board of Health Decision Conclusion of Law para. 2 at AR 3 (the Emphasis is from the Decision).

Before the Board of Health, there was clearly substantial evidence, most of which was unrebutted, to indicate that the proposed system would constitute substantial reductions in standards intended to protect public health. "Substantial evidence" is a sufficient quantity of evidence to persuade a fair-minded person of the truth or correctness of the order. *Schofield v. Spokane County*, 96 Wn. App. 581, 586, 980 P.2d. 277 (1999).

The public health significance of any reduction in minimum lot size is emphasized in the Thurston County Environmental Health Department's June 12, 1998 guidance for Section 21.4 which suggests that it is to be applied very conservatively with explicit prior assessment of the impacts on ground and surface water or public health relating to the under-size lot.

- 1) The Health Officer may consider existing legal lots for single family dwelling purposes without considering the dwelling unit per acre issue. **The Health Officer may permit on-site sewage disposal on such lots if he/she finds that significant impact to ground and surface water or health hazards will not occur.** [emphasis added] AR 17.

There is no evidence that such a required assessment was ever done by the staff in this case, and the testimony before the hearing examiner suggests that staff overlooked the issues of minimum lot size and density and the public health findings required in the guidance. AR 233-238. The staff witness erroneously suggested that the granting of the permit was mandatory. AR 238. It appeared that staff was more concerned with fitting an OSS on the site rather than assessing the functional capacity of the small site for an OSS.

“Since initial review saturation of sands are secondary issue. Primary issue is space limitation for OSS.” Case Handler Report, 10/25/04) AR 79

The evidence submitted to the Board of Health on the issue of the significance of minimum lot size and density was unrebutted. “In determining the sufficiency of the evidence, we view the record and the inferences in the light most favorable to the party that prevailed in the highest fact-finding forum.” *Benchmark Land Co. v. City of Battle Ground*, 146 Wn.2d 685, 694, 49 P.3d 860 (2002); *Henderson v Kittitas Co.*, 124 Wn. App. 747, 752, 100 P. 3d. 842 (2004).

The importance of minimum lot size and density are specifically addressed in the following quotation from the Conclusions of the hearing officer explicitly adopted by The Board of Health (AR 1):

- 3 ....Article IV gives the health officer considerable discretion when deciding whether to approve on-site systems on lots that fail to meet the minimum land area provisions of Article IV.
4. When looking at Section 21.4.5 and the permitting of on-site systems on undersized lots, it must be recognized that minimum land area and density are significant public health issues. **It is well recognized that even properly operating on-site systems discharge pollutants that can be detrimental to public health at some concentrations. ... It seems logical then, that when considering undersized lots, the health officer should take a conservative position when considering how to apply Section 21.4.5.3.**
5. For the permit in question the applicant proposes to build a residence on a 2850 square foot lot. This represents a density of approximately 15.2 units per acre, which is well in excess of the maximum of 3.5 units per acre allowed for new subdivisions. **This suggests that the other code**

**provisions should be rigorously applied when minimum land area requirements are set aside.**  
[emphasis added] AR 43.

The fundamental finding on which the Board of Health's decision was predicated was finding 13 of its opinion that provides as follows:

- 13) The Hearing Officer cited the following relevant criteria that were considered in denying the permit ...:
  - a) The Hearing Officer first determined that the minimum land area requirements and density are **significant public health issues when considering the permitting of OSS on undersized lots, and the Health Officer or their designee should "take a conservative position when considering how to apply 21.4.5.3".** (emphasis added) AR 2, finding 13.

The Board reiterated this in its Conclusion of Law:

- 7) That a majority of the Board agrees with the Hearings Officer in that the language in 21.4.5.3 should be construed conservatively. "All (other) requirements" means that an application for an OSS on a too-small lot should satisfy all requirements related to permitting at the time of the application without having to result to waivers, setback adjustments or other modification of the rules found within the Code. AR 3.

The importance of maintaining lot size to minimize nitrate pollution is also highlighted in the following statements from the 2002 Washington State Department of Health Research Report- "Lot Size (Minimum Land Area)."

For soil absorption systems in sands, **the only active natural mechanism for reducing nitrate concentration in wastewater is dilution with uncontaminated groundwater and rainfall additions on the property** (Walker et al. 1973). AR 161

...

Conclusions:

1. The minimum lot sizes for development with on-site sewage systems must meet two criteria: all the development (buildings, driveway, and other pavement) and the sewage system must physically fit on the lot **while maintaining the required setbacks . . . .**
2. ...
3. ...
4. **Mitigation of the nitrogen pollution of the groundwater with dilution will require lot sizes between .5 and 1 acre.**
- 5...
6. **Lot size should apply to existing lots as well as new lots if degradation of the receiving environment is an issue, since the degradation will occur regardless of when the lots are created.** 2002 Washington State Department of Health Research Report- "Lot Size (Minimum Land Area)." p.2, 5. AR 163-164.

Sworn expert testimony establishing the inadequacy of the Griffin lot size was also provided by Richard A. Bushley, of R.W. Beck, Consulting Engineers. AR 196-198. Mr. Bushley, who has served as the principal responsible for the international consulting firm's water and wastewater business, has spent his nearly 40-year career developing water supply and wastewater treatment plans. He prepared the original Comprehensive Water and Wastewater Plans and Water Pollution and

Abatement Plans for a number of counties in Washington, including Mason and Kitsap counties. AR 196.

Mr. Bushley reached the following opinion regarding Griffin's proposed setbacks and lot size:

The reduced setbacks of the system from the shoreline and from the adjacent downhill Carter property line increase the likelihood that nutrients or partially treated sewage will reach the Carter property or leach into Puget Sound.

Finally, a lot measuring 25 feet by 114 feet with a surface area of approximately 2,850 square feet is simply too small to permit the installation of an on-site residential sewage system that will meet public health and environmental standards. As pointed out in the Hearing Officer's conclusions, new developments in Washington State that rely on on-site sewage disposal are limited to a maximum density of 3.5 homes/acre (12,500 square feet per lot). AR 197.

Similar concerns are reflected in the statement of Taylor Shellfish which farms a three-mile section of beach in Totten Inlet just southwest of Steamboat Island.

According to Department of Health statistics, between 1985 and 2002, 25% of the approved shellfish growing areas in the state have been downgraded. **Onsite sewage systems while not the sole cause for these downgrades, in many cases have been documented to be a significant contributor.** Thankfully Totten Inlet has not yet been subject to such a downgrade, however, between Eld, Nisqually and Henderson Inlet Thurston County should be well aware of the problems posed by failed systems adjacent to shellfish growing areas. On June 1<sup>st</sup> the Washington Department of Health proposed downgrading yet another 49 acres in Henderson Inlet "because fecal

coliform levels indicating the presence of human sewage and animal wastes exceed state and federal water quality standards". The southern most part of Eld Inlet as well as North Bay in Mason County, north of Steamboat Island, are currently listed as threatened.

**The Hood Canal is plagued by excess nutrients with onsite sewage systems contributing the largest percentage of the nutrients from anthropogenic sources. ... Our observations working daily in the Hood Canal and South Sound tell us the problem is likely far more serious in South Sound. ... Since approved septic technologies which address nutrients are limited in Washington, the only real immediate solution is to limit septic densities along marine shorelines. Granting a waiver for a lot which represents a density of 15.3 units per acre is not a trend in the right direction and will only exacerbate this problem [emphasis added]. AR 206-207.**

The evidence submitted in support of the Board of Health decision was unrebutted on the issue of minimum lot size and density and the need for groundwater and rainwater dilutions to minimize pollution.

Environmental Health Director Starry also testified before the Board of Health that there would be additional substantial risks involved in the construction and operation of the proposed system:

And when you look at how the lot size and how all the waivers and setbacks are applied, you see from the site plan that was submitted that there is not much room left for air [should be error]. That this whole system works providing all the system components are installed as described on the plan, and that the contractors do a good job, and that the home builder does a good job, and that when they push out for the excavation for the new home, they don't encroach too much on the septic tank areas. And that, if the permit is

issued, and certainly we hope that all that is done as shown on the plan, but it's a very difficult process. And again, there's no room for error. And should some of these components or some of those different elements-design elements not be followed, it's going to be very difficult to correct on the property. And it could compromise the integrity of the system, and potentially it could then have an impact on public health, whether it's ground water or surface water, or surfacing sewage in (sic) [and] { stenographic error not in} people coming in contact with that.

If you look at the different standards, there are reasons for them being there. The setback standards...

[Attorney] Phillips: Objection that the witness was making an argument.

Starry: ... [M]y intent was to show how the, kind of the practical implications of how the-how the-the different decisions were considered, or made by the Health Officer, kind of come into play when the whole package is considered.

And yet, there's this special section in there that talks about lots that don't meet minimum land area. At the hearing in my decision, I thought that the section actually had special meaning. And that's why-why I made the decision to overturn the permit and uphold the appeal that was filed. [emphasis added]

AR 350

Griffin's soils report and wastewater flow reports accepted by the BoH in Conclusion 5 (AR 3) contain no reference to the effects of increased density or reducing minimum lot size by 77%. The soils and waste water flow reports do not address public health or threats to the

surface water. Ms. Palazzi's soils report pertained only to soil hydrology (groundwater) that might affect the septic systems and does not discuss any issues of lot size or the threat to the surface waters of Puget Sound. In the legend to her May 26 report, she disclaims any position on "whether the site is large enough".

Neither do we comment on whether the site is large enough to support any particular system design. That part of the discussion should come from the system/site designer. Pilazzi Letter AR 108-109.

Likewise, the wastewater flow report accepted by the Board of Health pertains only to the amount of effluent flowing into the septic system from low flow appliances and has no reference to the sufficiency of dilution and treatment of effluent on the tiny lot. AR 115-116. Before the Board of Health, Mr. Griffin failed to present any evidence regarding minimum lot size and density and the recognized need to have substantial lot size to dilute pollutants with rainwater and groundwater.

Various additional discretionary issues pending before the County on the instant application also include setbacks between the disposal unit (septic tank) and the property line, between the disposal unit and the house foundation, between the disposal unit and the surface water, and between the domestic water line and the disposal unit. Other discretionary decisions included waivers of the winter water table

evaluation and the separation between the septic tank and the pump chamber and a request to allow a septic tank system with one-half the usual 240-gallons per day capacity. AR 40-44, paragraphs Findings 12-22, Conclusions 6-9. Board of Health Commissioner Diane Oberquell indicated that the multitude of additional waivers and reductions sought was also of concern:

OBERQUELL: Well, having been around a little while and having been involved when we rewrote the articles and made the exceptions and allowed the waivers and the reductions and so forth, I, it was not the intent that all of those waivers, and all of those reductions, if they were met, would allow for a septic system. AR 389

The Appellant Independent Parties contend that the Superior Court erred when it failed to acknowledge or consider the Board of Health's discretionary authority reflected in the term "May" in 21.4 and as the permitting agency's inherent authority under the Washington cases. CP 198-99, 215, 250-252. Report of Proceedings, p 1-10. The Court expressly stated that it was not getting involved in the "huge policy issues about the use of land and health concerns and what goes on around our water-connected land. There are lots of huge issues, and I'll tell you that I'm not here today to take a particular position on any policy." Report of Proceedings, p.8. When the Court stated that "I've not heard anything that

suggests to me that there is, other than lot size, a health concern” (Report of Proceedings, p.8) it missed the point of the “May” in 21.4 which grants the Health Department the discretionary authority to deny an OSS because of lot size alone. The effect of the ruling was to hold that the Board of Health has no discretionary authority to deny permits for such previously platted too- small lots, particularly the lots that are 77% below the recommended minimum lot size.

Thus, The Court should affirm the Decision of the Board of Health in light of the substantial evidence reflected in the uncontroverted public policy and public health concerns in the record concerning the unsuitability of Mr. Griffin’s too-small lot. The “May” in 21.4 and the Washington case law authorize the County to exercise its discretionary permitting authority to condition and deny the Griffin permit, regardless of Section 21.4.5.3. The tailoring of the remedy consistent with the Board of Health’s reading of 21.4.5.3 certainly would, of course, prove helpful future guidance for future applicants who might be interested in buying or developing historically platted too- small lots.

C. **The Board Of Health's Conservative Construction Of Regulation 21.4.5.3 Provides A Second, Independent Basis For Denying The Permit**

BoH regulation 21.4.5.3, which is a condition precedent to the discretionary granting of a permit for a too-small lot provides a second basis for denying the permit.

21.4 The health officer may:

21.4.5 Permit the installation of an OSS, where the minimum land area requirements or lot sizes cannot be met, only when all of the following criteria are met: . . . .

21.4.5.1 The lot is registered as a legal lot of record created prior to January 1, 1995.

21.4.5.3 The proposed system meets all requirements of these regulations other than minimum lot size. (emphasis added)

The provision establishes that permits for grandfathered too-small lots are disfavored because lot size is the only available concession or waiver. In order for 21.4.5.3 to have any meaning, it must be read as a limitation on projects permitted on too-small lots. In the instant case, Mr. Griffin's application sought a number of additional discretionary waivers, setbacks and modifications. Since the Board of Health had the "may" discretionary authority under 21.4 ("Health Officer may:"), it elected to implement its discretionary denial in terms of a "conservative construction" of the "all requirements" language of 21.4.5.3.

The “all requirements” language, considered in a vacuum, is arguably ambiguous because it does not explicitly provide whether the permitting authority should exclude waivers, setbacks and modifications that might, as here, be sought to shoehorn a septic tank system into a too small lot. For such an issue, the reviewing Court should defer to the knowledge and expertise of the Board of Health that is charged with administering the on-site sewer system program.

A statute is ambiguous when it is amenable to two reasonable interpretations. *Wingert v. Yellow Freight Sys.*, 146 Wn. 2d 841,852, 50 P.3d 256 (2002). If the statute is ambiguous, we construe it to give effect to legislative intent. *Whatcom County v. City of Bellingham*, 128 Wn. 2d 537,546, 909 P.2d 1303 (1996). We also defer to a statutory interpretation of the administrative agency charged with administering and enforcing the statute. *Hama Hama Co. v. Shorelines Hearings Bd.*, 85 Wn.2d 441, 448, 536 P.2d 157 (1975).

*Lakeside Indus. v. Thurston County*, 119 Wn. App 886, 898, 83 P.3d 433 (2004), *review denied* (Wash. Oct. 6, 2004).

And when reviewing matters within the agency’s discretion, the appellate court must “limit its function to assuring that the agency has exercised its discretion in accordance with law, and shall not itself undertake to exercise the discretion that the legislature has placed in the agency.” RCW 34.05.574(1). The reviewing court must also give due deference to the agency’s knowledge and expertise. *See Medical Disciplinary Bd. v. Johnston*, 99 Wn.2d 466, 483, 663 P.2d 457 (1983) (citing *English Bay Enters., Ltd. v. Island County*, 89 Wn.2d 16, 568 P.2d 783 (1977)).

*Clausing v. State*, 90 Wn. App. 863, 870-71, 955 P. 2d 394 (1998).

Deference is particularly important in this case where the agency based the “conservative” interpretation of the regulation on policy, knowledge, expertise and discretion:

When looking at Section 21.4.5 and the permitting of on-site systems on undersized lots, it must be recognized that minimum land area and density are significant public health issues. It is well recognized that even properly operating on-site systems discharge pollutants that can be detrimental to public health at some concentration. To address this issue public health regulations limit the density of on-site systems. In Washington, new developments are limited to a maximum of 3.5 homes per acre served by on-site sewer systems under ideal conditions. This correlates to a minimum lot size of 12,500 feet. It seems logical that, when considering undersized lots, the health officer should take a conservative position when considering how to apply Section 21.4.5.3.

Health Officer’s Conclusions, AR 43, para. 3, adopted by Board of Health,

AR 1

This basis was expressly adopted by the Board of Health as

follows:

13) The Health Officer cited the following relevant criteria that were considered in denying the permit . . .:

a) The Hearing Officer first determined that the minimum land area requirements and density are significant public health issues when considering the permitting of OSS on undersized lots, and that the Health Officer or their designee should “take a conservative position when considering how to apply Section 21.4.5.3.

b) That the only way for the lot to be developed was to allow a “substantial number” of waivers and horizontal setback reductions. AR 2.

This was reiterated and ratified in the Conclusions of the Board of Health:

7) That a majority of the Board agrees with the Hearings Officer in that the language in 21.4.5.3 should be construed conservatively. “All (other) requirements” means that an application for an OSS on a too-small lot should satisfy all requirements related to permitting at the time of application without having to result to waivers, setback adjustments or other modification of the rules found within the Code. AR 3.

The Superior Court erred when it refused to defer to the Board of Health or even consider those significant lot size policy issues which were quite appropriately the basis for the Board of Health’s decision. As noted above, the case law requires that “when reviewing matters within the agency’s discretion, the appellate court must ‘limit its function to assuring that the agency has exercised its discretion in accordance with law, and shall not undertake to exercise the discretion that the legislature has placed in the agency.’ RCW 34.05.574(1).” *Clausing v. State*, supra, at 870-71.

An additional reason supporting the Board of Health’s conservative construction of 21.4.5.3 is because the Superior Court’s reading of the of “all requirements” language to include all available waivers, setbacks and modifications renders this section’s language of

limitation superfluous because it would neither add nor detract from the language of concession, waiver or modification found elsewhere in the Code. Several aspects of applicant's proposal require one standard, but offer the health officer the discretion to relax or adjust the standard under certain circumstances. For example, Section 10.1 provides that the health officer may reduce horizontal separations between the disposal component (drain field or its equivalent) if the property line or building foundation is "upgradient" in that "liquid will flow away from it upon encountering a water table or restrictive layer." Sec. 10.1, Footnotes 6 & 7. If all the other waivers, setbacks and modifications remain operative under 21.4.5.3, the intended language of limitation would be superfluous.

The principles of statutory construction support the Board of Health's interpretation:

"Statutes must be interpreted and construed so that all the language used is given effect, with no portion rendered meaningless or superfluous." *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003) (quoting *Davis v. Dep't of Licensing*, 137 Wn.2d 957, 963, 977 P.2d 554 (1999)) (internal quotation omitted). Where the statute is ambiguous or has conflicting provisions, the court may arrive at the legislature's intent by applying recognized principles of statutory construction. *J.P.*, 149 Wn.2d at 450, 69 P.3d 318.

*Rabanco Ltd. v. King County*, 125 Wn. App. 794, 801, 106 P.3d 802 (Div. I, 2005).

If the “all requirements” provision of 21.4.5 limiting permits for small lots is waivable under other discretionary provisions found elsewhere in Article IV, the language of limitation of 21.4.5 would be rendered superfluous and meaningless.

Thus a second principal basis for affirming the Board of Health decision is acceptance of the Board’s “conservative construction” of 21.4.5.3 consistent with a reading of the regulation as a whole, due deference to the expertise of the Board of Health and the principles of statutory construction to avoid rendering a portion of the regulation meaningless or superfluous.

**D. The Griffin Application Does Not Meet The “All Requirements” Criterion Of Section 21.4.5.3 Because There Is No Factual Predicate For The Requested Setback Reductions From The Foundation And Lot Line.**

The Appellant Interested Parties contend that the Board of Health’s decision should be affirmed based upon the arguments 1 and 2 set forth above arising from Regulation 21.4. This issue 3 becomes controlling only if the Section 21.4 issues were to be decided in favor of the Griffin applicant.

As a factual matter, the Griffin application does not qualify for the requested setback reductions from the disposal component to the residence foundation or to the Bickford property line because neither the property

line nor the foundation is upgradient from the disposal component as regulations require for the requested setback reduction. AR 57-58; BoHRegs 10.1 SECTION 10 LOCATION (pages 4-28 to 4-30 in Appendix, Tab B). The Disposal component ("DCR") is defined as follows:

"Disposal component" means a subsurface absorption system (SSAS) or other soil absorption system receiving septic tank or other pretreatment device effluent and transmitting it into original, undisturbed soil. Appendix B, BoH Regs at 4-6.

These issues seem to involve remarkably sloppy staff work in which the Environmental Health staff failed to acknowledge or enforce the definition of the term "upgradient."

The procedural background for these issues is a bit muddled. The majority of the Board of Health adopted the Hearing Officer's "findings, facts, conclusions decision of the Hearing Officer denying the issuance of an OSS to the Griffins." AR 1. Included in the Hearing Officer's findings were significant concerns and findings of deficiencies in the staff analysis. The "upgradient" analysis by staff and the hearing officer was erroneously based on surface elevations, though the hearing officer concluded that the sewage system design should not have been approved because the "design and analysis" associated with the setback reduction from the disposal component to the home foundation were incomplete. AR 42, findings 18 & 19, AR 44, Para.6-8. Although the Board of Health apparently did not

deem it necessary to decide these additional issues, it did observe that Griffin had presented evidence and testimony that supported Griffin's contention that the "waivers and setbacks were plausible considering the makeup of the soil underlying the subject property." AR 3 para 19. The Interested Parties had, of course, been wrongfully denied their due process rights as aggrieved parties to "make arguments or question witnesses" in the Board of Health proceeding. AR 404. The Interested Parties suggested that the Superior Court remand these unresolved issues to the Board of Health, but the request was denied. RP pages 8-9.

In order to qualify for a setback reduction, an applicant must demonstrate an appropriate factual predicate to persuade the health officer of the wisdom of waiving a particular requirement. In two instances, there is no factual predicate for granting the requested setback waivers which turn on whether the Bickford property line is upgradient from the Disposal Component sand bed and whether the proposed building foundation is upgradient from the Disposal Component sand bed. Section 10.1 and footnotes 6 & 7. The undisputed evidence was that the building foundation was "downgradient" not "upgradient" from the foundation as required by the regulations and the property line was, at best, cross-gradient.

A little orientation is helpful based on the drawing on the upper left portion of the site plan. (AR 53, attached with annotations as Appendix Tab A). Steamboat Island Road is northwest of lot 11(left of diagram) with the disposal component sand beds (#6 & 7), pumping chamber(#4), and septic tank (#3) situated in close proximity to the building on the northwest side towards the road. On the right hand side, southeast of the proposed residence, is the bulkhead adjacent to the beach. The Bickford property, lot 10, is to the southwest of Griffin's lot 11 to the bottom of the drawing with the Carter property above on the drawing. The drawing depicts the 2' separation between the sand bed disposal component and the residence and the 2.5' separation between the sand bed disposal component and the Bickford property line.

The regulatory criterion for the requested setback reductions is whether the Bickford property line and the proposed residence are "up-gradient" from the item [DCR] under footnote 6 to 10.1. (Appendix Tab B, page 4-30).

The health officer **may** allow a reduced horizontal separation to not less than two feet where the property line, easement line, or building foundation is **up-gradient** [from the DCR].

Up-gradient and down gradient are defined in adjoining footnote 7 to 10.1 as follows:

The item is down-gradient when liquid will flow toward it upon encountering a water table or restrictive layer. **The item is up-gradient when liquid will flow away from it upon encountering a water table or restrictive layer.** [Emphasis added]

The common sense rationale for the setback reductions of 8 feet (10 to 2 for the foundation) and 2.5 feet (5 to 2.5 for the property line) is that the subsurface flow would take the effluent away from the protected foundation or property line. Concerns about this flow were raised by the Hearing Officer. AR 41, paragraph 18-19.

The Griffin hydrology expert, Lisa Palazzi, whose soils report was specifically approved by the BoH (AR 3, conclusion #5) concluded that the direction of the subsurface flow on lot 11 is “toward the shoreline, not toward the adjacent property.”

**Even then, the direction of the subsurface flow is expected to be toward the shoreline, not toward the adjacent properties.** In other words, any drainage that results from the deep trench systems right next door are not expected to flow toward the Griffin site, but rather will flow down slope toward the beach. . . . His lot and the ones to the south and north (apparently Mr. Carter and Mr. Bickford’s lots) all three slope southeast toward the beach. [emphasis added] AR 110.

Likewise, the Griffin engineer, Bob Connolly, noted the down gradient” flow in response to the question of Commissioner Oberquell. **“I guess down gradient would be the beach.”** AR 365.

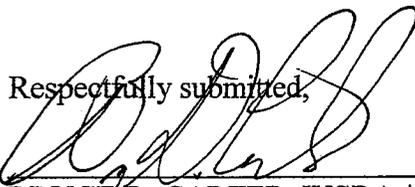
Applying this expertise to the On-Site diagram (AR 53, Appendix Tab A), the drawing at the top left hand of the page reflects the site plan with the subsurface flow from the left to right from Steamboat Island Road southeast towards the bulkhead and beach. "Down-gradient" underground discharge from the DCR sand beds marked as #6 & #7 would flow down slope directly towards the residence foundation and towards the shoreline." Thus, the DCR, being situated up gradient from the house and cross gradient from the Bickford property line, the sand bed DCR was down gradient from neither. Since the requested setback reductions are predicated on the DCR sand bed being downgradient from the foundation and the Bickford property line, the setback reductions are not factually allowable under the regulations as discretionary setbacks. The proposed permit should also have been denied for these reasons.

In the event that the Court decides to remand to the Board of Health for any reason, perhaps to review "upgradient" technical aspects that had not been previously addressed at the Board of Health, the Interested Parties request, in the interests of due process, that the Court direct that they be permitted to participate fully in presenting evidence, questioning witness and arguing to the Board.

V. CONCLUSION

The Decision of the Board of Health denying Mr. Griffin's application for an on-site septic tank system should be affirmed for the reasons stated. The Board of Health properly exercised its discretionary authority under its regulations to deny Mr. Griffin's permit for his previously platted lot that is 77% smaller than the current minimum lot size. The Superior Court Orders authorizing the permit and granting costs should be vacated.

DATED this 25<sup>th</sup> day of May, 2006.

Respectfully submitted,  


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U:\ACG\BRUCE CARTER\COURTOFAPPEALS BRIEF5-23-06PM

## CERTIFICATE OF SERVICE

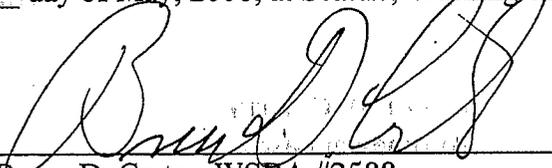
THIS IS TO CERTIFY that a copy of "Opening Brief of Appellant Interested Parties" and the accompanying Appendix were served May 24, 2006, on the following individuals by depositing the same in the United States Mail with postage paid, addressed to the following:

1. Allen Miller  
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

EXECUTED this 25<sup>th</sup> day of May, 2006, at Seattle, Washington.

  
Bruce D. Carter, WSBA #2588

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COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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THURSTON COUNTY, and its BOARD OF HEALTH,

Appellants,

and

BRUCE CARTER, SHARI RICHARDSON, GEORGIA BICKFORD, BARBARA  
BUSHNELL and JANE ELDER BOGLE,

Appellant Interested Parties,

v.

JEFF GRIFFIN,

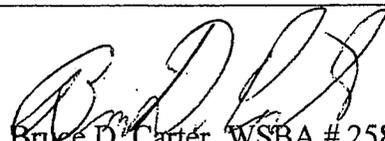
Respondent.

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AMENDED APPENDIX TO OPENING BRIEF

OF APPELLANT INTERESTED PARTIES

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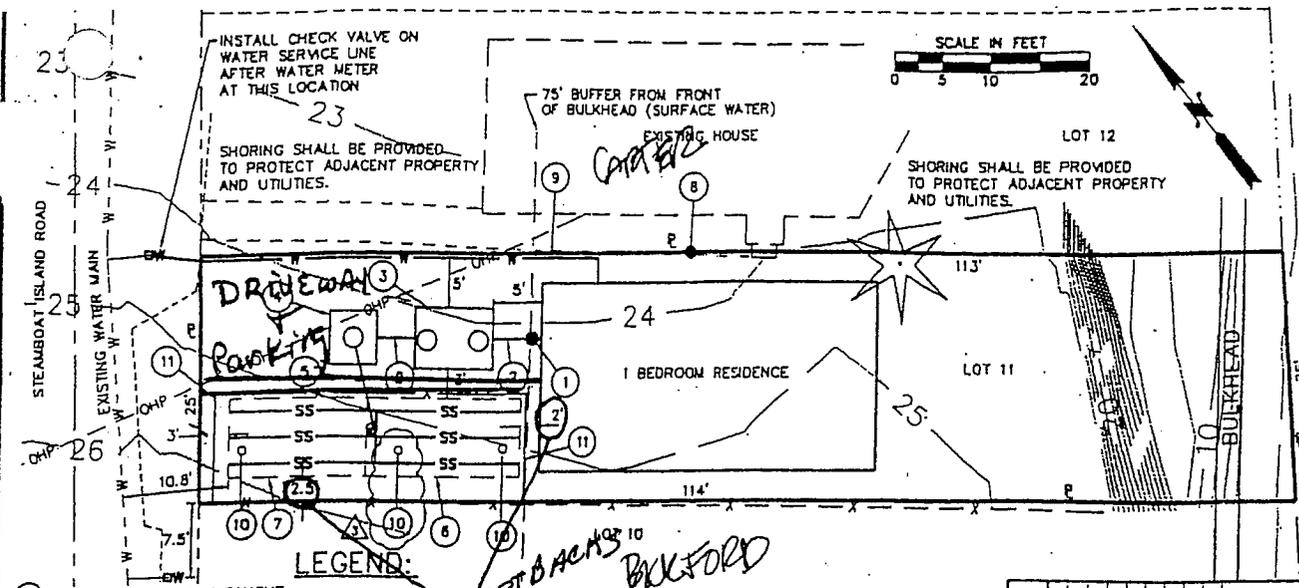


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APPELLANT INTERESTED PARTIES

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	26-28.....	4-73 to 4-81

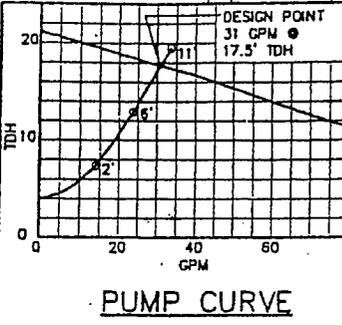


- SOIL APPL. VARIANCE REQUIRED BOTH PRIM
- \*1. HAZEN & V
  - \*2. LATERAL LI
  - \*3. LATERAL S
  - \*4. PIPE SCHE
  - \*5. NUMBER OF
  - \*10. MANIFOLD I
  - \*11. PIPE SCHE
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  - \*15. PIPE SCHE
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  - \*17. 90 DEGREE
  - ==
  - \*21. CALCULATE 2 FOOT MIN THE MINIML
  - \*22. DRAIN FIEL
- SUMM /**

- LEGEND:**
- ① 4" SCH 40 P.V.C. CLEANOUT
  - ② 4" P.V.C. SCH 40 TIGHTLINE. MIN. S=0.02 FT/FT - USE FLEX COUPLINGS AT TANK CONNECTIONS (PER ASTM C 1173)
  - ③ NEW 1000 GAL., 2 CHAMBER WATERTIGHT CONC. SEPTIC TANK (H=20 LOADING) AND 750 GAL. PUMP CHAMBER. SEE DETAIL. WATER PROOF SURFACE BARRIER TO BE APPLIED TO TANK CONSISTANT WITH MANUAL OF CONCRETE PRACTICE ACI 315.1R. TANK TO BE LEAK TESTED PER ASTM C 1227
  - ④ 750 GAL. CONC PUMP CHAMBER (H=20 LOADING) WATER PROOFED AND TESTED AS NOTED ABOVE
  - ⑤ 10 LF 1.5" PVC CL 200 DELIVERY LINE SEE NETWORK DETAIL
  - ⑥ 8' x 15' PRIMARY SAND BED W/ PVC LINER TO 7' MIN. DEPTH
  - ⑦ 8' x 15' RESERVE SAND BED W/ PVC LINER TO 7' MIN. DEPTH
- T.B.M. ELEV. = 23.59 BAR & CAP
- WATER SERVICE LINE TO BE INSTALLED WITH 3" SCH. 40 PVC SLEEVE. WATER LINE TO BE UNIFORMLY SUPPORTED BY PRESSURE GROUTING ANNULAR SPACE WITH SAND GROUT OR BENTONITE

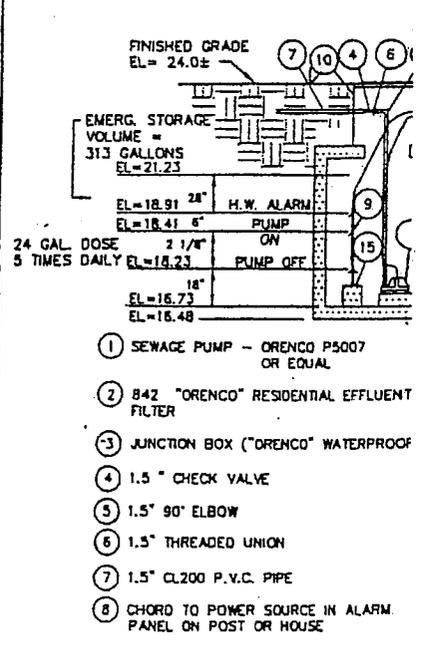
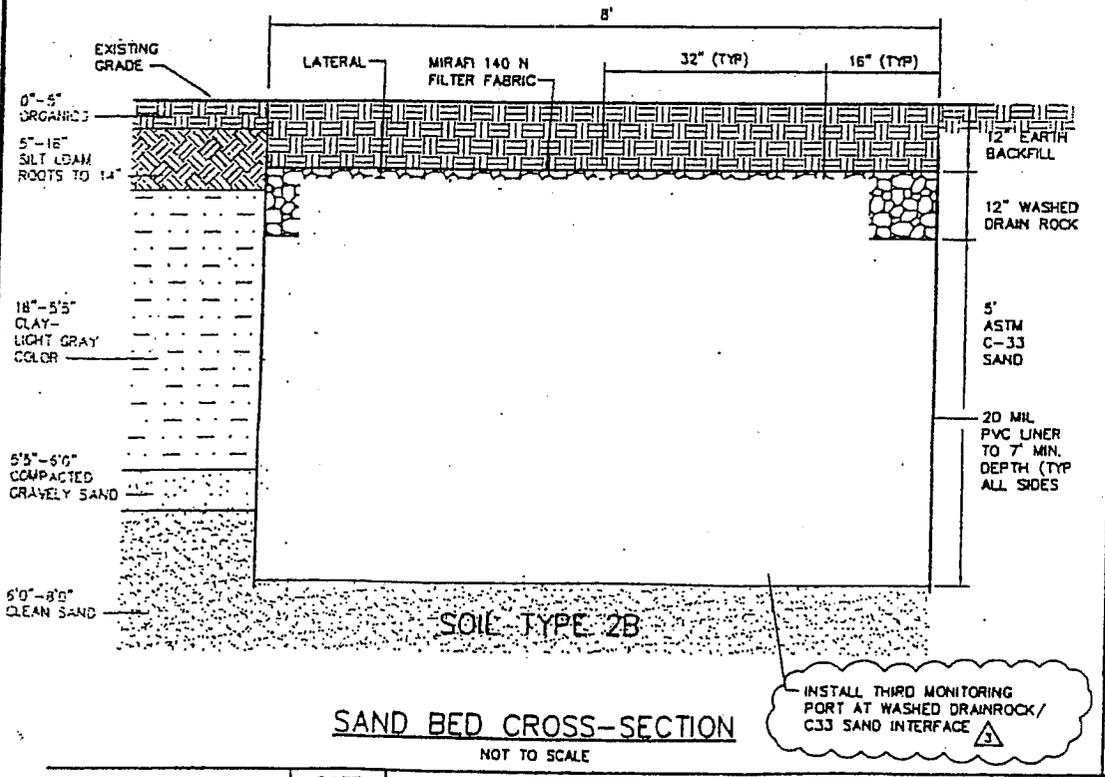
- ⑩ 4" P.V.C. MONITORING PORT. WRAPPED WITH "MIRAFI" 140N FILTER FABRIC. SEE MOUND DETAIL.
- ⑪ INSTALL TWO-TIER TEMPORARY RAILROAD TIE VEHICLE BARRIER BOLTED TOGETHER AT CORNERS. INSTALL ORANGE CONST. FENCE AT BACK OF TIES WITH SIGN STATING "DRAINFIELD AREA - DO NOT DISTURB" POSTED AT THE FRONT OF THE SITE. PERMANENT FENCING TO BE INSTALLED AT THE END OF CONSTRUCTION.

- NOTES:**
1. CONTRACTOR TO INCLUDE ALL ELECTRIC WIRING FOR CONTROL PANEL & POWER SERVICE FOR PUMPS IN BID. CONTRACTOR TO CONNECT POWER TO MAIN BREAKER BOX AT PROPOSED RESIDENCE.
  2. RESTORE ALL (LAWNS, DRIVEWAYS AND OTHER AREAS TO ORIGINAL CONDITION WITH LIKE MATERIAL.
  3. BOTH PRIMARY AND RESERVE TO BE INSTALLED AT THE TIME OF CONSTRUCTION.



RESIDUAL HEAD AT LAST ORIF (feet) (g)

2.00
3.00
4.00
5.00
6.00
7.00
8.00
9.00
10.00
11.00



DESIGNED BY:	DATE	NO.	DATE	REVISIONS
L. SATER	11/11/4			
ENTERED BY:				
L. SATER	11/11/4	1	12/23/4	REVISED PER COUNTY COMMENTS
CHECKED BY:				
		2	3/10/5	REVISED PER COUNTY COMMENTS
PROJ. ENGR.:				
B. MATTHEWS	11/11/4	3	3/23/5	REVISED PER COUNTY COMMENTS

CONTRACT NO.

5016 Lacey E (360) 491-33

FOR TYPE 2B = 1.0 GAL/DAY/S.F.  
 1 BEDROOM RESIDENCE WITH USE OF 120 GALLONS PER DAY  
 120 GPD/1.0 GPD PER S.F. = 120 S.F.  
 SERVE AREAS TO BE INSTALLED DURING CONSTRUCTION

= 140

**LATERAL DATA**

15.0 feet	*6. LATERAL DIAMETER	1.5 inch
2.7 feet	*7. ORIFICE SPACING	2 feet
200	*8. ORIFICE DIAMETER	3/16 inch
3	*9. ORIFICES PER LATERAL	8

**MANIFOLD DATA**

5.3 feet	*12. MANIFOLD DIAMETER	1.5 inch
200	*13. MANIFOLD TYPE	END

**FORCEMAIN DATA**

10.0 feet	*18. SWING CHECK VALVES	1
200	*19. GATE VALVES	3
1.5 inch	*20. OTHER VEL. HEADS LOST	3

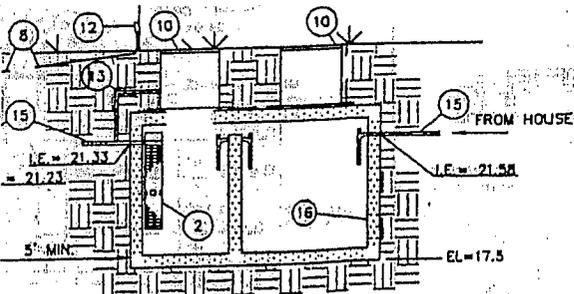
**EM HEAD - FLOW DATA**

OF PRESSURE AND FLOW AT THE PUMP USING  
 SURE ON THE LAST ORIFICE AND INCREMENTING  
 E' ON THE LAST ORIFICE BY 1 FEET.  
 ABOVE PUMP = 5 FEET

**F HEAD - DISCHARGE DATA**

DELTA LOW IN ATERIAL :10% ok	HEAD AT DISTAL LATERAL (feet)	HEAD AT FORCE MAIN (feet)	DELTA HEAD IN MANIFOLD <10% ok	TOTAL SYSTEM FLOW (gal/min)	TOTAL SYSTEM HEAD (feet)
0.2	2.01	1.97	-1.7	14.1	7.8
0.2	3.01	2.96	-1.8	17.2	8.9
0.2	4.02	3.95	-1.8	19.9	10.2
0.2	5.02	4.93	-1.8	22.3	11.5
0.1	6.03	5.92	-1.8	24.4	12.8
0.1	7.03	6.90	-1.8	26.3	14.1
0.1	8.03	7.89	-1.8	28.1	15.4
0.1	9.04	8.87	-1.8	29.9	16.7
0.1	10.04	9.86	-1.8	31.5	18.0
0.1	11.04	10.84	-1.8	33.0	19.3

Pipe System Volume = 7.3 gallons



RY FLOAT SWITCHES  
 CURED P.V.C. PIPE & SET FOR  
 CYCLE  
 ETE RISER W/ TRAFFIC RATED  
 MANHOLE COVER (H=20 LOADING)  
 AL. WATERTIGHT CONCRETE  
 CHAMBER WITH H=20  
 LOADING, CONC. RISER  
 RAFFIC RATED STEEL  
 LE COVER  
 DOSE VOLUME = 120 GAL  
 OSES/DAY  
 MER AT 1.7 MIN. ON,  
 MIN. OFF  
 INTERVAL VOLUME = 72 GAL±

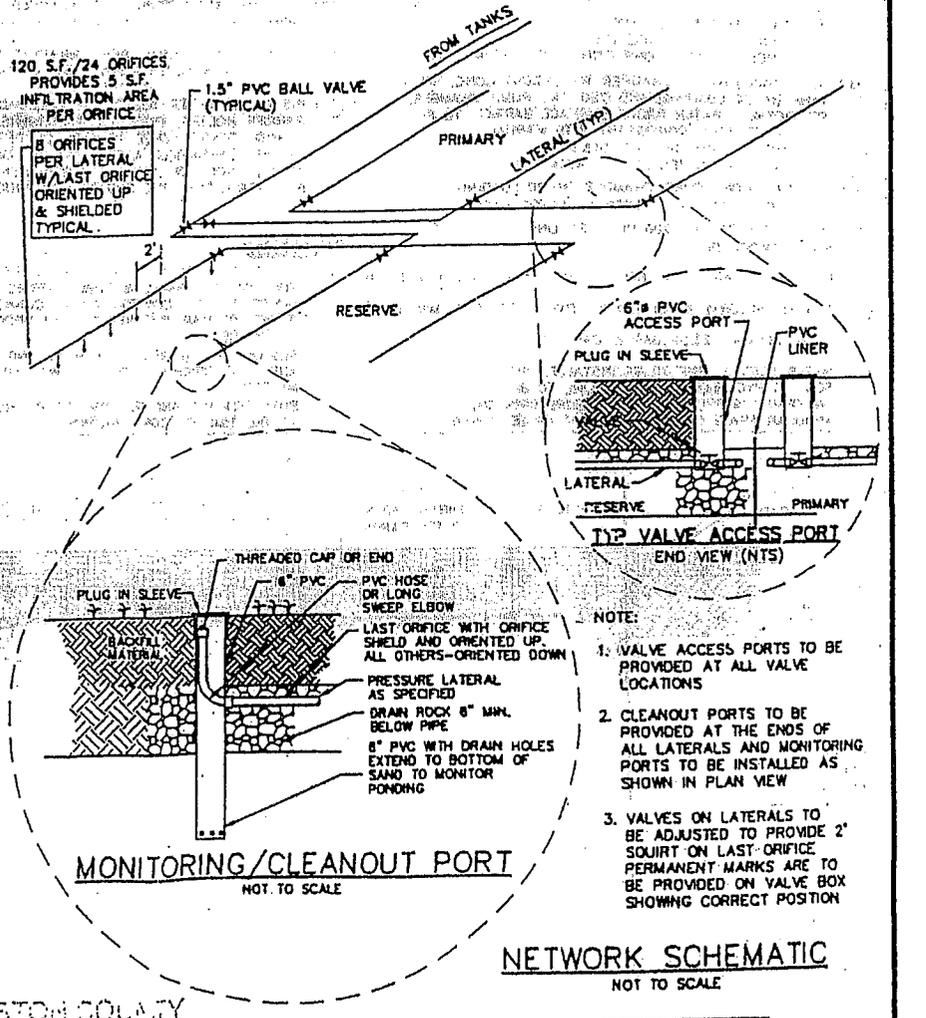
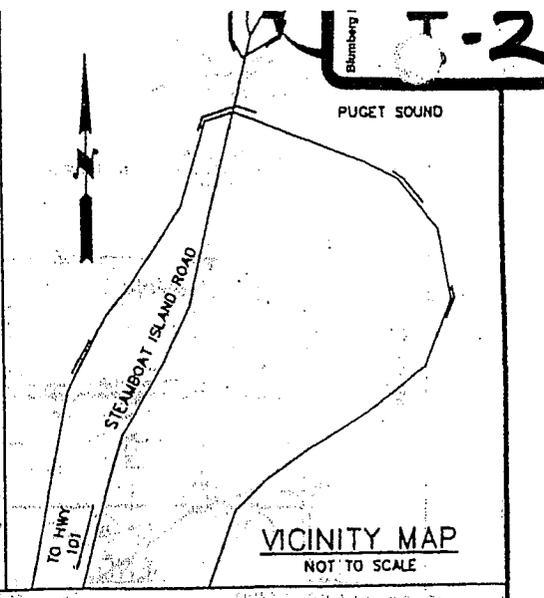
- (12) CONTROL PANEL "ORENCO" WATER PROOF
- (13) 2" P.V.C. VENT PIPE TO RISER
- (14) "ORENCO" TANK ADAPTER SEALED TO TANK.
- (15) 4" SCH 40 PVC, 2% MIN. SLOPE TO SECURED P.V.C. PIPE (NOT SHOWN) USE FLEX COUPLINGS AT ALL TANK CONNECTIONS
- (16) 1000 GAL 2 CHAMBER SEPTIC TANK H=20 RATED LOADING

DETAIL  
 SCALE

PARCEL #: 76200001100  
 OWNER: JEFF GRIFFIN  
 9812 MARINER DR NW  
 OLYMPIA, WA 98502  
 (360) 402-5207  
 DESIGNER: SKILLINGS-CONNOLLY, INC.  
 LANE SATER  
 5018 LACEY BLVD SE  
 LACEY, WA 98503  
 (360) 491-3399  
 DESIGN INFO: DAILY FLOW: 120 GAL/DAY  
 INFORMATION:  
 LOT SIZE: 25'x114'

**SOIL LOG:**

TP#1	0"-5"	ORGANICS
	5"-16"	SILT LOAM ROOTS TO 14"
	16"-5'5"	CLAY- LIGHT GRAY COLOR
	5'5"-6'0"	COMPACTED GRAVELLY SAND
	6'0"-8'0"	CLEAN SAND (SOIL TYPE 2B)



THE CONTRACTOR SHALL BE FULLY RESPONSIBLE FOR THE LOCATION AND PROTECTION OF ALL EXISTING UTILITIES.  
 THE CONTRACTOR SHALL VERIFY ALL UTILITY LOCATIONS PRIOR TO CONSTRUCTION BY CALLING THE UNDERGROUND LOCATE LINE AT 1-800-424-5555  
 A MINIMUM OF 48 HOURS PRIOR TO ANY EXCAVATION, THE CONTRACTOR WILL ALSO BE RESPONSIBLE FOR MAINTAINING ALL LOCATE MARKS ONCE THE UTILITIES HAVE BEEN LOCATED.

**SKILLINGS-CONNOLLY**  
 1E, Lacey, Washington 98503  
 54-7545 Fax (360) 491-3857

**GRIFFIN RESIDENCE**  
 THURSTON COUNTY WASHINGTON

**ON-SITE SEWAGE DISPOSAL PLAN**  
 000053

JOB NUMBER: 03061  
 SHEET 1 OF 1 SHEETS





**ARTICLE IV**  
**RULES AND REGULATIONS OF THE**  
**THURSTON COUNTY BOARD OF HEALTH**  
**GOVERNING DISPOSAL OF SEWAGE**

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## ARTICLE IV

### RULES AND REGULATIONS OF THE THURSTON COUNTY BOARD OF HEALTH GOVERNING DISPOSAL OF SEWAGE

#### SECTION 1 PURPOSE, OBJECTIVES, AND AUTHORITY.

- 1.1 The purpose of this article is to protect the public health by:
  - 1.1.1 Minimizing the potential for public exposure to sewage from on-site sewage systems; and
  - 1.1.2 Minimizing adverse effects to public health that discharges from on-site sewage systems may have on ground and surface waters; and
  - 1.1.3 Setting conditions for the withdrawal or revocation of approvals, for the cessation of use of on-site sewage systems and for the elimination of health hazards; and
  - 1.1.4 Setting conditions of project approval for integration with other water quality, land use, and wastewater management plans.
- 1.2 This article regulates the location, design, installation, operation, maintenance, and monitoring of on-site sewage systems to:
  - 1.2.1 Achieve long-term sewage treatment and effluent disposal; and
  - 1.2.2 Limit the discharge of contaminants to waters of the state.
- 1.3 This article is adopted by the Thurston County Board of Health in accordance with the authority granted in 70.05 RCW and WAC 246-272 to establish minimum requirements for the treatment and disposal of sewage and the regulation of on-site sewage disposal systems.

#### SECTION 2 ADMINISTRATION.

The health officer shall administer this article under the authority and requirements of chapter 70.05 RCW and WAC 246-272. Under chapter 70.05.060(7) RCW, fees may be charged for this administration.

#### SECTION 3 DEFINITIONS

As used in this article, the terms defined in this section shall have the meanings indicated unless the context clearly indicates otherwise.

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**"Addition"** means any proposed building activity that will not increase sewage flows but will result in an increase in the square footage of:

- (a) Living space (other than number of bedrooms) outside the envelope (the exterior shell) of the structure's existing living space for residential structures. This includes the construction of a garage or outbuildings on a parcel containing a residential structure.
- (b) The structure outside the envelope (the exterior shell) of the existing structure for non-residential structures.

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

**"Alternative system"** means an on-site sewage system other than a conventional gravity system or conventional pressure distribution system. Properly operated and maintained alternative systems provide equivalent or enhanced treatment performance as compared to conventional gravity systems.

**"Approved"** means a written statement of acceptability, in terms of the requirements in this article, issued by the health officer or the secretary.

**"Approved list"** means "List of Approved Systems and Products", developed annually and maintained by the secretary and containing the following:

- (a) List of proprietary devices approved by the secretary;
- (b) List of specific systems meeting treatment standard 1 and treatment standard 2;
- (c) List of experimental systems approved by the secretary;
- (d) List of septic tanks, pump chambers, and holding tanks approved by the secretary.

**"Area of special concern"** means an area of definite boundaries delineated through public process, where the board of health, or the secretary in consultation with the health officer, determines additional requirements for on-site sewage systems may be necessary to reduce potential failures, or minimize negative impact of on-site systems upon public health.

**"Board of Health"** means the Thurston County Board of Health established pursuant to 70.05.030 RCW.

**"Building Sewer"** means the tightline between the building stub-out and the inlet of the septic tank.

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

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"Community On-site Sewage System (COSS)" means any on-site sewage system designed to serve more than one single family residence and/or with a design flow, at any common point, more than one thousand (1,000) gallons per day and less than or equal to three thousand five hundred (3,500) gallons per day, except when dealing with leases and proposals within the designated Thurston County Urban Growth Management Area and/or covered by the Thurston County Sewerage General Plan, the lower design limit shall be six hundred (600) gallons per day.

"Conforming system" means any on-site sewage system, except an experimental system, that meets any of the following criteria:

- (a) The system is in full compliance with all requirements for new construction as specified in this article, including the provision of a reserve area. This includes:
  - (i) A repair system that meets the requirements for new construction as specified in this article; or
  - (ii) A new or repair system was permitted, but a waiver had to be obtained as per section 24 of this article; or
- (b) The system is an existing on-site sewage system approved, installed, and operated under a previous edition of this article; or
- (c) The system or repair was permitted through the waiver process which assure public health protection by higher treatment performance or other methods; or
- (d) The system is existing, not in failure, and its use is consistent with its size and design, and, where required, is in full conformance with a valid operational certificate.

"Conventional gravity system" means an on-site sewage system consisting of a septic tank and a subsurface soil absorption system with gravity distribution of the effluent.

"Conventional pressure distribution system" means an on-site sewage system consisting of a septic tank and a subsurface soil absorption system with pressure distribution of the effluent. The acceptable design, operation and maintenance, and performance monitoring requirements are described in "Guidelines for Pressure Distribution Systems" by the Washington state department of health, September 1984, as thereafter updated.

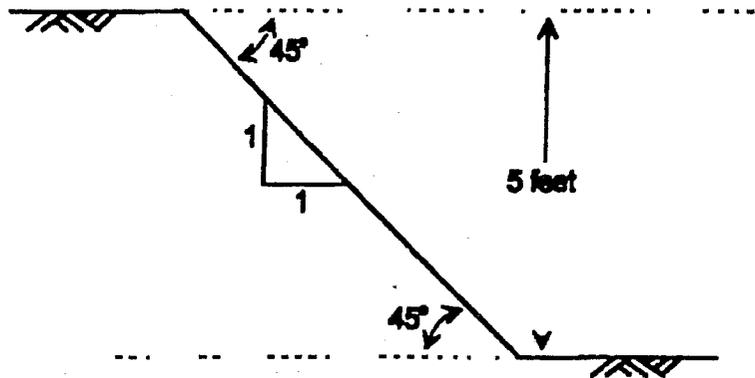
"Covenant" means an agreement recorded with the Thurston County Auditor stating certain activities and/or practices are required or prohibited.

"Cover" means soil material that is used to cover a subsurface disposal area.

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"Cut or bank" means any naturally occurring or artificially formed slope greater than one hundred percent (forty-five degrees) as follows:



"Department" means the Thurston County Public Health and Social Services Department.

"Design" means a detailed on-site sewage system plan developed in accordance with section 12 of this article and containing the details outlined in section 9.1.4.

"Design Firm" means a firm certified by the health officer to design on-site sewage systems in Thurston County.

"Designer" means an engineer, a registered sanitarian, or a person who is certified by the health officer to perform site and soils evaluations and to develop and submit designs by matching site and soil characteristics with appropriate on-site sewage technology, who is employed by a design firm, and who maintains the continuing education requirements described in this article.

"Development" means the creation of a residence, structure, facility, mobile home park, subdivision, planned unit development, site, area, or any activity resulting in the production of sewage.

"Disposal component" means a subsurface absorption system (SSAS) or other soil absorption system receiving septic tank or other pretreatment device effluent and transmitting it into original, undisturbed soil.

"Effluent" means liquid discharged from a septic tank or other on-site sewage system component.

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"Engineer" means a person who is licensed and in good standing under chapter 18.43 RCW.

"Expansion" means a change in a residence, facility, site, or use that:

- (a) Results in an increase in the strength of the sewage or in the average daily volume of sewage that may cause an on-site sewage system to exceed its existing treatment or disposal capability. Examples include, but are not limited to, when the number of bedrooms in a residence is increased, or a change in use from an office to a restaurant or from a residential use to a commercial use; or
- (b) Reduces the treatment or disposal capability of the existing on-site sewage system or the reserve area, for example, when a building is placed over existing system components or a reserve area.

"Experimental system" means any alternative system:

- (a) Without design guidelines developed by the secretary; or
- (b) A proprietary device or method which has not yet been evaluated and approved by the secretary.

"Failure" means a condition of an on-site sewage system that threatens the public health by inadequately treating sewage or by creating a potential for direct or indirect contact between sewage and the public. Examples of failure include:

- (a) Sewage on the surface of the ground;
- (b) 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. This does not apply to septage or sewage sludge handled under a valid permit issued in accordance with article V of this code;
- (c) Sewage backing up into a structure caused by slow soil absorption of septic tank effluent;
- (d) Sewage leaking from a septic tank, pump chamber, holding tank, or collection system;
- (e) Inadequately treated effluent contaminating ground water or surface water. This may be demonstrated upon testing by currently adopted sanitary survey procedures, where the following occurs: (1) positive tracing dye results and (2) a fecal coliform count of at least 200 organisms per 100 milliliters OR above established background concentrations at a sampling point (pipe, drainage channel, seep) from which a direct discharge to surface or ground water or to the surface of the ground occurs;

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- (f) Surface or ground water intrusion into a septic tank, pump chamber, holding tank, or collection system;
- (g) Cesspools;
- (h) Seepage pits where site specific evidence of ground or surface water quality degradation exists.

"Ground water" means a subsurface water occupying the zone of saturated soil, permanently, seasonally, or as the result of the tides. Indications of ground water may include:

- (a) Water seeping into or standing in an open excavation from the soil surrounding the excavation; or
- (b) 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 groundwater caused by intermittent periods of saturation and drying, and may be indicative of poor aeration and impeded drainage. Also see "Water table".

"Health officer" means the Thurston County health officer, or a representative authorized by and under the direct supervision of the health officer, as defined in chapter 70.05 RCW.

"Holding tank sewage system" means an on-site sewage system which incorporates a holding tank, the services of a sewage pump/hauler, and the off-site treatment and disposal for the sewage generated.

"Industrial wastewater" means 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.

"Installation firm" means a firm certified by the health officer to install, modify, or repair an on-site sewage system or any of its components in accordance with the provisions contained in this article.

"Installer" means a person meeting the requirements of section 23 of this article.

"Large on-site sewage system (LOSS)" means any on-site sewage system with design flows, at any common point, greater than 3,500 gallons per day.

"May" means discretionary, permissive, or allowed.

"Minor repair" means the repair of one of the following on-site sewage system components: tightline pipe between a structure and a septic tank; tightline between a

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septic tank and the disposal component; a pump; or an interceptor drain. It shall also include the replacement of a small section of the SSAS damaged as the result of digging into it as part of a system evaluation.

"Modification" means an alteration to an on-site sewage system that is not the result of new construction, a repair, or an expansion.

"Monitoring firm" means a firm certified by the health officer to operate, maintain, and/or monitor an on-site sewage system.

"Monitoring specialist" means a person meeting the requirements of section 23 of this article.

"Non-conforming system" means an on-site sewage system which is not in failure but which is: not in compliance with the conditions stipulated on the On-site Sewage System Application, or not being operated consistent with its size and design; or is not in full conformance with a valid operational certificate where one is required. A repair which is placed in the originally designated reserve area shall be considered a conforming system as long as the system is not in failure.

"On-site sewage system (OSS)" means an integrated arrangement of components for a residence, building, industrial establishment or other places not connected to a public sewer system which:

- (a) Convey, store, treat, and/or provide subsurface soil treatment and disposal on the property where it originates, upon adjacent or nearby property; and
- (b) Includes piping, treatment devices, other accessories, and soil underlying the disposal component of the initial and reserve areas.

"On-site Sewage System Application (OSSA)" means an application, including a site plan and design, by which the health officer shall evaluate and may approve or disapprove a particular lot or tract of land for the installation, modification, or repair of an on-site sewage system.

"On-site Sewage System Permit (OSSP)" means a permit issued by the health officer after reviewing and concluding an On-site Sewage System Application meets all the requirements of this article. This permit grants authority to the permit holder to install an on-site sewage system in accordance with the approved design.

"Operational Certificate" means a certificate issued for a specified period by the health officer to a person for the operation and/or use of an on-site sewage system. The operational certificate shall contain conditions for the operation, maintenance, and monitoring of the subject on-site sewage system.

"Ordinary high-water mark" means the mark on lakes, streams, and tidal waters, found by examining the beds 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

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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 this article, or as it may naturally change thereafter. The following definitions apply where the ordinary high water mark cannot be found:

- (a) The ordinary high-water mark adjoining marine water is the elevation at mean higher high tide; and
- (b) The ordinary high-water mark adjoining freshwater is the line of mean high water.

"Person" means any individual, corporation, company, association, society, firm, partnership, joint stock company, or any governmental agency, or the authorized agents of any such entities.

"Planned unit development" means a development characterized by a unified site design, clustered residential units and/or commercial units, and areas of common open space.

"Preliminary design" means a detailed design required by the health officer prior to preliminary or final plat approval to evaluate whether a proposed lot or lots can meet the site and location requirements of this article.

"Pressure distribution" means a system of small diameter pipes equally distributing effluent throughout a trench or bed, as described in the "Guidelines for Pressure Distribution Systems" by the Washington state department of health, September 1984, as thereafter updated. Also see "conventional pressure distribution."

"Proprietary device or method" means a device or method classified as an alternative system, or a component thereof, held under a patent, trademark or copyright.

"Public sewer system" means a sewerage system:

- (a) 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
- (b) Approved by or under permit from the Washington state department of ecology, the Washington state department of health and/or the Thurston County health officer.

"Pumper" means a person meeting the requirements of section 23 of this article.

"Pumping firm" means a firm certified by the health officer to remove and transport wastewater or septage from on-site sewage systems.

"Registered Sanitarian" means a person who is licensed and in good standing with the Washington State Board of Registered Sanitarians.

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"Repair" means restoration, by reconstruction, addition to, or modification or replacement of an existing on-site sewage system or component of the system due to failure.

"Reserve area" means an area of land approved for the installation of an OSS and dedicated for replacement of the OSS upon its failure.

"Resident Owner" means a person who after demonstrating competency designs, installs, or repairs an on-site sewage system for a single-family residence owned and occupied or to be owned and occupied by him/her. A resident owner is limited to designing, installing, or repairing a limit of one on-site sewage system per two-year period.

"Residential sewage" means sewage having the constituency and strength typical of wastewater from domestic households. Some typical values for residential sewage prior to entering a septic tank are: 5-day biochemical oxygen demand (BOD<sub>5</sub>) - 230 mg/l; total suspended solids (TSS) - 250 mg/l; and total nitrogen - 40 to 50 mg/l as N.

"Restrictive layer" means a stratum impeding the vertical movement of water, air, and/or growth of plant roots, such as hardpan, claypan, fragipan, caliche, some compacted soils, bedrock and unstructured clay soils. This also includes a water table.

"Secretary" means the Secretary of the Washington state department of health and his/her authorized representative.

"Seepage pit" means an excavation more than three feet deep where the sidewall of the excavation is designed to dispose of septic tank effluent.

"Septage" means the mixture of solid wastes, scum, sludge, and liquids pumped from within septic tanks, pump chambers, holding tanks, and other OSS components.

"Septic tank" means 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, detention and anaerobic digestion of the organic matter, prior to discharge of the liquid.

"Sewage" means 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 domestic wastewater. Also see "residential sewage."

"Shall" means mandatory.

"Site Plan" means a to-scale drawing of a residential or non-residential project proposed on a parcel. This drawing includes all plan detail relating to property access; drinking water and wastewater system components; designated building envelope(s); setbacks; zoning, critical areas, and other planning issues; and other pertinent aspects depending on the specific proposal.

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"Soil log" means a detailed description of soil characteristics providing information on the soil's capacity to act as an acceptable treatment and disposal medium for sewage.

"Soil type" means a numerical classification of fine earth particles and coarse fragments as described in subsection 11.2.5.

"Subdivision" means 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.

"SSAS" or "subsurface soil absorption system" means a system of trenches three feet or less in width, or beds between three and ten feet in width, containing distribution pipe within a layer of clean gravel designed and installed in original, undisturbed soil for the purpose of receiving effluent and transmitting it into the soil.

"Surface water" means any body of water, whether fresh or marine, flowing or contained in natural or artificial unlined depressions continuously for at least four consecutive months, including natural and artificial lakes, ponds, springs, rivers, streams, swamps, marshes, and tidal waters.

"Treatment standard 1" means a thirty-day average of less than 10 milligrams per liter of biochemical oxygen demand (5 day BOD<sub>5</sub>), 10 milligrams per liter of total suspended solids (TSS), and a thirty-day geometric mean of less than 200 fecal coliform per 100 milliliters.

"Treatment standard 2" means a thirty-day average of less than 10 milligrams per liter of biochemical oxygen demand (5 day BOD<sub>5</sub>), 10 milligrams per liter of total suspended solids (TSS), and a thirty-day geometric mean of less than 800 fecal coliform per 100 milliliters.

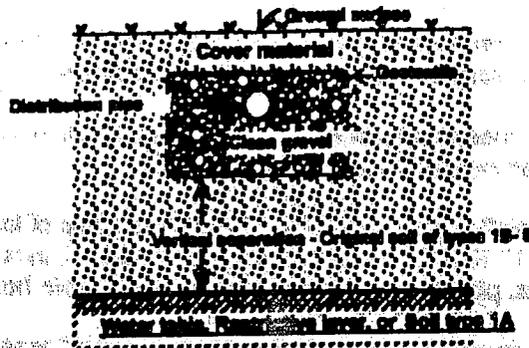
"Uniform Plumbing Code" means the Uniform Plumbing Code as adopted by Thurston County.

"Unit volume of sewage" means:

- (a) A single family residence;
- (b) A mobile home site in a mobile home park; or
- (c) 450 gallons of sewage per day where the development is not single family residences or a mobile home park.

"Vertical separation" means the depth of unsaturated, original, undisturbed soil of soil types 1B-6 between the bottom of a disposal component and the highest seasonal water table, a restrictive layer, or soil type 1A, as illustrated below by the profile drawing of a subsurface soil absorption system:

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"Water table" means the upper surface of the ground water, whether permanent or seasonal. Also see "ground water."

"Wave barrier" means a bulkhead of adequate height and construction protecting the immediate area of on-site sewage system components from wave action.

**SECTION 4. APPLICABILITY AND GENERAL REQUIREMENTS**

**4.1 The health officer:**

**4.1.1** Shall apply this article to OSS treating wastewater and disposing of effluent from residential sewage sources:

**4.1.2** Shall apply this article to OSS for sources other than residential sewage, excluding industrial wastewater, if pretreatment, siting, design, installation, and operation and maintenance measures provide treatment and effluent disposal equal to that required of residential sewage.

**4.1.3** Shall not apply the location and design requirements in this article to any OSS existing as of the effective date of this article, except when one of the following is proposed:

**4.1.3.1** A repair - requirements in section 17 of this article must be met;

**4.1.3.2** A modification - requirements in section 17 of this article must be met;

**4.1.3.3** An expansion - As noted in section 18 of this article, new construction standards as defined in this article must be met; or

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- 4.1.3.4 An addition - must be served by a conforming OSS and the addition shall not reduce the potential for a repair to the OSS should it fail in the future.
- 4.1.4 Shall apply requirements consistent with sewerage, water quality and waste management plans to proposed systems. These systems may be required to be abandoned and connection to sewer for water quality or health hazard cause or when sewer is available, in accordance with section 7.
- 4.2 Preliminary plats specifying general methods of sewage treatment, disposal, system designs and locations approved prior to the effective date of these regulations shall be acted upon in accordance with regulations in force at the time of preliminary plat approval for a maximum period of five years from the date of approval or until January 1, 1996, whichever assures the most lenient expiration date.
- 4.3 A complete, valid, unexpired OSSA submitted, but not approved, prior to the effective date of these regulations:
  - 4.3.1 Shall be acted upon in accordance with regulations in force at the time of application submittal;
  - 4.3.2 May be modified to include additional requirements if the health officer determines that a serious threat to public health exists.
- 4.4 A valid, unexpired OSSA/OSSP (other than for a repair) approved prior to January 1, 1995 shall have a validity period of five years from the date of approval or remain valid until January 1, 1996, whichever assures the most lenient expiration date.
- 4.5 The Washington state department of ecology has authority and approval over:
  - 4.5.1 Domestic or industrial wastewater under chapter 173-240 WAC; and
  - 4.5.2 Sewage systems using mechanical treatment, or lagoons, with ultimate design flows above 3,500 gallons per day.
- 4.6 The Washington state department of health has authority and approval over any Large On-site Sewage System, "LOSS", for which jurisdiction has been transferred to the department of health under conditions of memorandum of agreement with the department of ecology.
- 4.7 The health officer has authority and approval over systems with design flows through any common point up to 3,500 gallons per day and via contract with the secretary up to 14,500 gallons per day.

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- 4.8 Where this article conflicts with chapters 90.48 RCW, Water Pollution Control, the requirements under those statutes apply.
- 4.9 Every residence, place of business or other building where persons congregate, reside or are employed, to which a public sewer system is not physically accessible or available, shall be provided with a water-flush toilet or approved alternative device and shall be connected to a conforming on-site sewage system which shall be operated and maintained in such a manner to meet the requirements of this article. Other places where persons congregate (and no building exists) shall be provided with adequate sewage disposal facilities/devices as may be appropriate to protect the public health.
- 4.10 Sewage from any on-site sewage system or any other source shall not be discharged to surface water, upon the surface of the ground, or managed in any manner so as to constitute a failure as defined by this article. This requirement shall not apply to septage or sewage treatment plant waste discharged in accordance with a permit from the Washington State Department of Ecology or a permit issued pursuant to article V of this code.
- 4.11 Refusal, failure or neglect to comply with any notice or order of the health officer issued pursuant to this article shall be considered a violation of this code.
- 4.12 Whenever it is brought to the attention of the health officer that any unsanitary conditions exist or that any construction or work regulated by these rules and regulations is dangerous, unsafe, unsanitary, or a menace to life, health or property, or otherwise in violation of these regulations, the health officer shall investigate and upon determining the information to be factual, shall order any person using or maintaining any such condition or responsible for the use thereof to repair, alter, change, remove or demolish the same as the health officer may consider necessary for the proper protection of life, health or property. The health officer may also require vacation of the premises until the violation or nuisance is abated or corrected.
- 4.12.1 Any such order of the health officer shall be in writing, addressed to the owner, agent, or person responsible for the premises on which the condition exists and shall specify the date or time for compliance with such order.
- 4.12.2 Refusal, failure or neglect to comply with any such notice or order of the health officer shall be considered a violation of these regulations.

**SECTION 5 ALTERNATIVE SYSTEMS AND PROPRIETARY DEVICES.**

- 5.1 The health officer shall only permit installation of alternative systems for which there are alternative system guidelines issued by the Washington state department of health, or a proprietary device if it appears on the list of approved

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8.7 Before a new LOSS is used:

8.7.1 An engineer shall stamp, sign, and submit a LOSS construction report to the health officer within sixty days following the completion of construction of the LOSS including:

8.7.1.1 A completed form stating the LOSS was constructed in accordance with the health officer's approved plans and specifications; and

8.7.1.2 An "as built" or "record" drawing.

8.7.2 The health officer shall conduct a final inspection.

8.7.3 The owner shall:

8.7.3.1 Submit to the health officer for review and approval a final operation and maintenance manual, developed by an engineer, for the installed LOSS, containing any amendments to the draft manual submitted prior to approval; and

8.7.3.2 Obtain a LOSS operating certificate from the department in accordance with the provisions of Section 16 of this article.

8.8 The owner of a LOSS that has been approved by the health officer or constructed after July 1, 1984, shall:

8.8.1 Obtain a LOSS operating certificate from the health officer; and

8.8.2 Renew it annually.

8.9 The owner shall renew annually the LOSS operating certificate in accordance with the provisions of Section 16 of this article.

**SECTION 9 OSS UNDER 3500 GALLONS PER DAY.**

9.1 Prior to beginning the installation of an OSS or component thereof, a person proposing the installation, repair (excluding a minor repair), or modification to an OSS shall submit a complete OSSA to the health officer and obtain an OSSP. The OSSA shall contain the following, at a minimum:

9.1.1 General information including:

9.1.1.1 Name and address of the property owner and the applicant, if different; and

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- 9.1.1.2 Parcel number, address, if available, and the legal description of the site; and
  - 9.1.1.3 Source of drinking water supply. If the source is a public water supply, the name and state identification number shall be included; and
  - 9.1.1.4 Identification if the property is within the boundaries of a recognized sewer utility; and
  - 9.1.1.5 Size of the parcel; and
  - 9.1.1.6 Type of approval for which application is being made, for example, new installation, expansion, repair, or modification; and
  - 9.1.1.7 Source of sewage, for example, residential, restaurant, or other type of business; and
  - 9.1.1.8 Location of utilities; and
  - 9.1.1.9 Name of the designer; and
  - 9.1.1.10 Date of application; and
  - 9.1.1.11 Signature of applicant.
- 9.1.2 The soil and site evaluation as specified under section 11.2 of this article.
- 9.1.3 A complete, detailed, and dimensional site plan including:
- 9.1.3.1 Designated areas for the proposed initial and reserve systems; and
  - 9.1.3.2 The location of all soil logs and other soil tests for the OSS; and
  - 9.1.3.3 General topography and/or slope of the site; and
  - 9.1.3.4 Site drainage characteristics; and
  - 9.1.3.5 The location of existing and proposed encumbrances affecting system placement, including legal easements and access documents if any component of the OSS is not on the lot where the sewage originates. Copies of easements and their recording numbers must be furnished when such

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- essments are necessary for the health officer's approval of the disposal system; and
- 9.1.3.6 Location, size, shape and placement of all existing buildings on the site showing their relationship to the on-site sewage disposal systems, wells, underground and surface storage tanks, swimming pools, water supply lines, property lines and easements; and
- 9.1.3.7 The location of all wells on the subject property and on adjacent properties within one hundred (100) feet of the property lines; and
- 9.1.3.8 Any septic tank and drainfield locations on the subject property and also any on-site sewage disposal system location on adjacent property within one hundred (100) feet of any existing or proposed wells on the applicant's site; and
- 9.1.3.9 Direction of flow and discharge point of all surface and subsurface water interception drains and ditches; and
- 9.1.3.10 Location, size and shape of area in which on-site sewage disposal system is to be installed, distances from designated area to any cuts, banks, terraces, foundations, property lines, wells (including those on neighboring property), lakes, streams, swamps, marshes, salt water beaches, driveways, walkways, patios, water lines, drainage ditches or fills shall be indicated; and
- 9.1.3.11 Location of soil log holes or sieve sample holes shall be spaced uniformly over the proposed drainfield site and reserve area. The holes shall be identified by numbers. At least three (3) soil logs (2 in the proposed primary drainfield area and 1 in the proposed reserve area) shall be required for each lot. Additional soil logs may be required by the health officer as deemed necessary. The number of soil logs may be reduced if adequate soils information is available. Soil logs shall be provided in sufficient numbers or detail to allow the determination of any restrictive layer; and
- 9.1.3.12 If the property has been platted, the application shall contain the lot number and the short or large lot plat number or the plat name if a long plat. Additionally, if there have been any other land use actions pertaining to the lot, the appropriate land use action number shall be included; and

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**9.1.3.13** An arrow indicating north; and

**9.1.3.14** Information required by other local agencies.

**9.1.4** A detailed system design meeting the requirements under section 12 of this article including all of the following:

**9.1.4.1** A dimensional drawing showing the location of components of the proposed OSS, and for the reserve area if reserve site characteristics differ significantly from the initial area;

**9.1.4.2** Vertical cross-section drawings showing:

**9.1.4.2.1** The depth of the disposal component, the vertical separation, and depth of soil cover; and

**9.1.4.2.2** Other OSS components constructed at the site.

**9.1.4.3** Calculations and assumptions supporting the proposed design, including:

**9.1.4.3.1** Soil type; and

**9.1.4.3.2** Hydraulic loading rate in the disposal component; and

**9.1.4.3.3** System's maximum daily flow capacity.

**9.1.5** Using a bench mark that will remain in place throughout the development of the project as the reference point, relative elevations of the plumbing stub-out, the finished ground elevation of the drainfield area and the corners of the subject property and elevation of the drainfield trenches.

**9.1.6** Directions of surface drainage after final grading.

**9.1.7** Results of all required soil logs and soil analysis.

**9.1.8** Drawings that are to scale with dimensions indicated. Recommended scale is one (1) inch equals twenty (20) feet or one (1) inch equals thirty (30) feet. Other scales may be used as appropriate to the design and approved by the health officer. Accuracy in the design drawings shall be sufficient for review.

**9.1.9** Indication that the drainfield laterals are staked in the field for inspection and review.

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- 9.1.10 Such additional information as deemed necessary by the health officer.
- 9.2 For a "minor repair" no OSSA or OSSP is necessary.
- 9.3 The health officer shall:
- 9.3.1 Issue an OSSP when the information submitted under subsection 9.1 meets the requirements contained in this article.
- 9.3.2 Charge a fee for reviewing an OSSA and issuing an OSSP in accordance with the fee schedule contained in Appendix A of Article I.
- 9.3.3 Specify the expiration date on the OSSA:
- 9.3.3.1 For any proposal other than a repair, an OSSA shall expire one year after the date of application. This period may be extended for a single one year period without charge, if specifically requested by the applicant prior to the expiration date. (For an application approved prior to January 1, 1995 the conditions stated in section 4.4 shall apply).
- 9.3.3.2 For a proposal other than a repair, an OSSP shall expire three years after the date of design approval. If a building permit is obtained during the three year period of validity for the OSSP, the OSSP will be valid for three years or as long as the building permit is valid, whichever is greater. (For a permit approved prior to January 1, 1995 the conditions stated in section 4.4 shall apply).
- 9.3.3.3 An OSSP may be renewed after it has expired if all of the following conditions are met:
- a) The applicant pays the renewal fee as specified in Appendix A of article I; and
- b) The applicant demonstrates to the satisfaction of the health officer that there has been no change to the building site or development proposal which had been previously approved; and
- c) The health officer determines that the previous approval fully complies with all applicable laws in effect at the date of the application for renewal.

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- 9.3.3.4 For a repair the OSSA and OSSP shall expire one year after the date of application. An extension of one year may be authorized by the health officer if there are extenuating circumstances, such as difficult site conditions, abnormal rainfall, or difficulty in developing an operation and maintenance manual. If an extension is granted, the requirements that applied at the time of the application will be the applicable standards.
- 9.3.4 include a reminder on the OSSA of the applicant's right of appeal.
- 9.3.5 Within 20 working days after submittal of a complete OSSA, either issue an OSSP, disapprove the OSSA or inform the applicant or his/her representative in writing as to the status of the OSSA.
- 9.4 The health officer will allow a temporary repair to be made on a failing system without a repair OSSA and OSSP on those days when the health officer's office is closed and when such repair is essential to the continued use of the system. In such a case the owner of the OSS shall apply for a repair OSSA within five (5) working days after the temporary repair has been made. Such repairs will be subject to any additional requirements necessary to assure the repair meets the provisions of this article.
- 9.5 The health officer may revoke or deny an OSSA or OSSP for the installation of an OSS for due cause. Examples include, but are not limited to:
- 9.5.1 Exclusion, misrepresentation or concealment of material fact in information submitted to the health officer; or
- 9.5.2 Site conditions that have changed since the designer and/or health officer reviewed the site; or
- 9.5.3 Failure to meet conditions of the approval or this article.
- 9.6 Before the health officer issues an OSSP allowing the installation of an OSS to serve either structures on more than one lot or a structure or structures with multiple ownership, the applicant shall show:
- 9.6.1 An approved public entity owning or managing the OSS in perpetuity; or
- 9.6.2 An arrangement with a management entity acceptable to the health officer, recorded in covenant, lasting until the on-site system is no longer needed, and containing, but not limited to:
- 9.6.2.1 A legal easement allowing access for construction, operation and maintenance, and repair of the OSS; and

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9.6.2.2 Identification of an adequate financing mechanism to assure the funding of operation, maintenance, and repair of the OSS.

9.7 The health officer shall not delegate the authority to issue permits.

9.8 The health officer may stipulate additional requirements for approval of a particular application if necessary for public health protection.

**SECTION 10 LOCATION.**

10.1 Persons shall design and install OSS to meet the minimum horizontal separations shown in Table I, Minimum Horizontal Separations:

**TABLE I  
 MINIMUM HORIZONTAL SEPARATIONS**

Items requiring setback	From edge of disposal component and reserve area	From septic tank, holding tank, containment vessel, pump chamber, and distribution box	From building sewer, collection, and non-perforated distribution line <sup>1</sup>
Non-public well or suction line	100 ft.	50 ft.	50 ft.
Public drinking water well	100 ft.	100 ft.	100 ft.
Public drinking water spring <sup>2,3</sup>	200 ft.	200 ft.	100 ft.
Spring or surface water used as drinking water source <sup>2,3</sup>	100 ft.	50 ft.	50 ft.
Pressurized water supply line <sup>4</sup>	10 ft.	10 ft.	10 ft.
Property decommissioned well <sup>5</sup>	10 ft.	N/A	N/A
Surface water <sup>2</sup> Marine water Fresh water	100 ft. 100 ft.	50 ft. 50 ft.	10 ft. 10 ft.
Building foundation	10 ft. <sup>6</sup>	5 ft. <sup>6</sup>	2 ft.

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Items requiring setback	From edge of disposal component and reserve area	From septic tank, holding tank, containment vessel, pump chamber, and distribution box	From building sewer, collection, and non-perforated distribution line <sup>1</sup>
Property or easement line <sup>2</sup>	5 ft.	5 ft.	N/A
Interceptor / curtain drains/ drainage ditches, stormwater drywells Down-gradient <sup>2</sup> Up-gradient <sup>2</sup>	30 ft. 10 ft.	5 ft. N/A	N/A N/A
Down-gradient cut or bank with at least 5 ft. of original, undisturbed soil showing above a restrictive layer due to a structural or textural change <sup>2,3</sup>	25 ft.	N/A	N/A
Down-gradient cut or bank with less than 5 ft. of original, undisturbed, soil showing above a restrictive layer due to a structural or textural change <sup>2,3</sup>	50 ft.	N/A	N/A
Downgradient cut or bank that extends vertically less than 5 feet from the toe of the slope to the top of the slope that doesn't have a restrictive layer showing <sup>2,3</sup>	10 ft.		

<sup>1</sup> "Building sewer" as defined by the most current edition of the Uniform Plumbing Code. "Non-perforated distribution" includes pressure sewer transport lines.

<sup>2</sup> If surface water is used as a public drinking water supply, the designer shall locate the OSS outside of the required sanitary control area.

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- 3 Measured from the ordinary high-water mark.
- 4 The health officer may approve a sewer transport line within 10 feet of a water supply line if the sewer line is constructed in accordance with section 2.4 of the Washington state department of ecology's "Criteria For Sewage Works Design," revised October 1985, as thereafter updated, or equivalent.
- 5 Before any component can be placed within 100 feet of a well, the designer shall submit a "decommissioned water well report" provided by a licensed well driller, which verifies that appropriate decommissioning procedures noted in chapter 173-160 WAC were followed. Once the well is properly decommissioned, it no longer provides a potential conduit to groundwater, but septic tanks, pump chambers, containment vessels or distribution boxes should not be placed directly over the site.
- 6 The health officer may allow a reduced horizontal separation to not less than two feet where the property line, easement line, or building foundation is up-gradient.
- 7 The item is down-gradient when liquid will flow toward it upon encountering a water table or a restrictive layer. The item is up-gradient when liquid will flow away from it upon encountering a water table or restrictive layer.
- 8 This setback is unrelated to setbacks that are necessary for slope stability or other purposes.
- 10.2 Where any condition indicates a greater potential for contamination or pollution, the health officer may increase the minimum horizontal separations. Examples of such conditions include excessively permeable soils, unconfined aquifers, shallow or saturated soils, dug wells, and improperly abandoned wells.
- 10.3 The horizontal separation between an OSS disposal component and an individual water well, spring, or surface water can be reduced to a minimum of 75 feet, upon signed approval by the health officer if the applicant demonstrates:
  - 10.3.1 Adequate protective site specific conditions, such as physical settings with low hydro-geologic susceptibility from contaminant infiltration. Examples of such conditions include evidence of confining layers and or aquatards separating any potable water from the OSS treatment zone or there is an excessive depth to groundwater; or
  - 10.3.2 Design and proper operation of an OSS system assuring enhanced treatment performance beyond that accomplished by meeting the vertical separation and effluent distribution requirements described in Table IV in subsection 12.2.6 of this article; or

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10.3.3 Evidence of protective conditions involving both subsections 10.3.1 and 10.3.2.

10.4 Persons shall design and/or install disposal components only where:

10.4.1 The slope is less than forty-five percent (twenty-four degrees); and

10.4.2 The area is not subject to any of the following:

10.4.2.1 Encroachment by buildings or construction such as placement of swimming pools, power poles and underground utilities;

10.4.2.2 Cover by impervious material;

10.4.2.3 Vehicular traffic;

10.4.2.4 Other activities adversely affecting the soil or the performance of the OSS; and

10.4.3 Sufficient reserve area for replacement exists to treat and dispose 100% of the design flow; and

10.4.4 The land is stable; and

10.4.5 Surface drainage is directed away from the site.

10.5 Upon request and submission of an application on forms provided, the health officer may review:

10.5.1 An individual lot to determine the lot's potential for the installation of an OSS (On-site Evaluation Only).

10.5.1.1 In addition to the application, the following shall be submitted:

10.5.1.1.1 A site plan showing the lot's location and dimensions and the location of soil test pits. Soil test pits shall be dug as per subsections 9.1.3.11 and 11.3 of this article; and

10.5.1.1.2 A fee as specified in Appendix A of article I.

10.5.1.2 This application and review shall be completely separate from an OSSA process and shall constitute neither a valid application for purposes of future vesting nor permission from the health officer to install an OSS.

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- 10.5.2 A proposed development, prior to the submittal of a formal landuse application, that proposes using OSS.
- 10.5.2.1 In addition to the application, the following shall be submitted:
- 10.5.2.1.1 A site plan showing the property's location and dimensions and the location of soil test pits. Soil test pits shall be dug as per subsections 9.1.3.11 and 11.3 of this article; and
- 10.5.2.1.2 A fee as stated in Appendix A of article I.
- 10.5.2.2 This application and review shall constitute neither a valid application for purposes of future vesting nor permission from the health officer to install an OSS.

**SECTION 11 SOIL AND SITE EVALUATION.**

- 11.1 The health officer shall permit only engineers, designers, registered sanitarians, and registered soil scientists (American registry of certified professionals in agronomy, crops, and soils) to perform soil and site evaluations. The health officer may also perform soil and site evaluations.
- 11.2 The person evaluating the soil and site shall:
- 11.2.1 Record all of the following:
- 11.2.1.1 Unless a reduced number of soil logs is authorized by the health officer, observed conditions in soil logs from at least:
- 11.2.1.1.1 Two test pits in the initial disposal component; and
- 11.2.1.1.2 One test pit in the reserve area.
- 11.2.1.2 The ground water conditions, the date of the observation, and the probable maximum height;
- 11.2.1.3 The topography of the site;
- 11.2.1.4 The drainage characteristics of the site;
- 11.2.1.5 The existence of structurally deficient soils subject to major wind or water erosion events such as slide zones and dunes;

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- 17.5.3 Comply with all local and state requirements stipulated in the OSSP and the operational certificate issued for the system.

**SECTION 18 EXPANSIONS.**

The health officer shall require an on-site sewage system and a reserve area in full compliance with the new system construction standards specified in this article for an expansion of a residence or other facility.

**SECTION 19 ABANDONMENT.**

Persons permanently removing a septic tank, seepage pit, cesspool, or other sewage container from service shall:

- 19.1 Have the septicage removed by a certified pumping firm;
- 19.2 Remove or destroy the lid; and
- 19.3 Fill the void with soil.

**SECTION 20 SEPTAGE MANAGEMENT.**

- 20.1 Only pumping firms certified by the health officer as per subsection 23.3 of this article shall remove septage from an OSS.
- 20.2 A pumping firm removing septage from an OSS shall:
  - 20.2.1 Transport septage or sewage only in vehicles clearly identified with the name of the business and approved by the health officer;
  - 20.2.2 Record and report septage removal to the health officer;
  - 20.2.3 Dispose of septage, or apply septage biosolids to land only in a manner consistent with applicable laws.

**SECTION 21 DEVELOPMENTS, SUBDIVISIONS, AND MINIMUM LAND AREA REQUIREMENTS.**

- 21.1 A person proposing any development shall obtain approval from the health officer prior to any development where the use of OSS is proposed. Any new development proposing to use OSS shall be required to have an OSS which meets new construction standards.
- 21.2 The health officer shall require the following prior to approving any development:

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- 21.2.1 Site evaluations as required under section 11 of this article. This may include information gained in a project review as noted in subsection 10.5 of this article;
- 21.2.2 Where a subdivision with individual wells is proposed:
  - 21.2.2.1 Configuration of each lot to allow a 100-foot radius water supply protection zone to fit within the lot lines; or
  - 21.2.2.2 Establishment, through protective or restrictive covenants, as appropriate, of a 100-foot protection zone around each existing and proposed well site. Such zones shall be shown on the final plat map.
- 21.2.3 Where a subdivision to be served by a community well or wells is proposed, all requirements of WAC 246-290 and WAC 246-291 shall be met. This will include wellhead protection when applicable.
- 21.2.4 Where preliminary approval of a subdivision is requested, provision of at least one soil log per proposed lot, unless the health officer determines existing soils information allows fewer soil logs;
- 21.2.5 Determination of the minimum lot size or minimum land area required for the development using Method I and/or Method II:
  - 21.2.5.1 **METHOD I.** Table VII, Single Family Residence Minimum Lot Size or Minimum Land Area Required Per Unit Volume of Sewage, shows the minimum lot size required per single family residence. For developments other than single family residences, the minimum land areas shown are required for each unit volume of sewage.

**TABLE VII  
 MINIMUM LAND AREA REQUIREMENT  
 SINGLE FAMILY RESIDENCE OR UNIT VOLUME OF SEWAGE**

Type of Water Supply	Soil Type (defined by section 11 of this article) <sup>1</sup>					
	1A, 1B	2A, 2B	3	4	5	6
Public	0.5 acre <sup>2</sup>	12,500 sq. ft.	15,000 sq. ft.	18,000 sq. ft.	20,000 sq. ft.	22,000 sq. ft.
Individual, on or to each lot	1 acre <sup>2</sup>	1 acre	1 acre	1 acre	2 acres	2 acres

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1 When an OSS is proposed to be installed in soil types 1B or 2 through 4 that are included in the list of Category I soil series in Chapter 17.15 of the Thurston County Code (Critical Areas Ordinance), pressure distribution is required, at a minimum. In addition, for those Category I soil series the minimum lot size restrictions found in Table 3 of Chapter 17.15 shall apply, and any lots less than 1 acre in size must be served by a public water system and an OSS meeting Treatment Standard 2.

2 Due to the highly permeable nature of type 1A soil, only alternative systems which meet or exceed Treatment Standard 2 can be installed.

21.2.5.2 METHOD II. A minimum land area proposal using Method II is acceptable only when the applicant:

21.2.5.2.1 Justifies the proposal through a written analysis of the:

21.2.5.2.1.1 Soil type and depth;

21.2.5.2.1.2 Area drainage, and/or lot drainage;

21.2.5.2.1.3 Public health impact on ground and surface water quality;

21.2.5.2.1.4 Setbacks from property lines, water supplies, etc;

21.2.5.2.1.5 Source of domestic water;

21.2.5.2.1.6 Topography, geology, and ground cover;

21.2.5.2.1.7 Climatic conditions;

21.2.5.2.1.8 Availability of public sewers;

21.2.5.2.1.9 Activity or land use, present, and anticipated;

21.2.5.2.1.10 Growth patterns;

21.2.5.2.1.11 Reserve areas for additional subsurface treatment and disposal;

21.2.5.2.1.12 Anticipated sewage volume;

21.2.5.2.1.13 Compliance with current planning and zoning requirements;

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- 21.2.5.2.1.14 Possible use of alternative systems or designs;
  - 21.2.5.2.1.15 Existing encumbrances, such as listed in subsections 9.1.3.5 and 11.2.1.7; and
  - 21.2.5.2.1.16 Any other information required by the health officer.
- 21.2.5.2.2 Shows development with public water supplies having:
- 21.2.5.2.2.1 At least 12,500 square feet lot sizes per single family residence; and
  - 21.2.5.2.2.2 No more than 3.5 unit volumes of sewage per day per acre for developments other than single family residences.
  - 21.2.5.2.3 Shows development with individual water supplies having at least one acre per unit volume of sewage; and
  - 21.2.5.2.4 Shows land area under surface water is not included in the minimum land area calculation.
- 21.2.6 Regardless of which method is used for determining required minimum lot sizes or minimum land area, the maximum density permitted is 3.5 single family residences or unit volumes per acre. The applicant or his/her representative shall submit to the health officer information consisting of field data, plans, and reports supporting a conclusion the land area provided is sufficient to:
- 21.2.6.1 Install conforming OSS;
  - 21.2.6.2 Assure preservation of reserve areas for proposed and existing OSS;
  - 21.2.6.3 Properly treat and disposal of the sewage; and
  - 21.2.6.4 Minimize public health effects from the accumulation of contaminants in surface and ground water.
- 21.2.7 Evidence that a minimum of twenty-four (24) inches of original, undisturbed and unsaturated soil exists above the maximum

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seasonal water table, a layer of creviced or porous bedrock, or any other restrictive layer. Certain climatic, soil permeability, slope and system configuration factors can exist which would indicate that the required depth may be increased or decreased. In order to decrease the depth, sufficient technical justification must be developed and submitted that will:

**21.2.7.1** Allow installation of conforming OSS;

**21.2.7.2** Assure preservation of reserve areas for all proposed and existing OSS;

**21.2.7.3** Assure proper treatment and dispose of the sewage;

**21.2.7.4** Assure preservation of sufficient areas with sufficient soil depths will exist in proposed drainfield and reserve areas, as well as areas immediately downslope, when the system is ready to be installed; and

**21.2.7.5** Assure minimizing of adverse public health effects from the accumulation of contaminants in surface and ground water.

**21.2.8** The proposal is consistent with requirements in city sewerage plans and/or the Thurston County Sewerage General Plan, depending on the project's location.

**21.3** The health officer shall require lot areas of 12,500 square feet or larger except when a person proposes:

**21.3.1** OSS within the boundaries of a recognized sewer utility having a finalized assessment roll; or

**21.3.2** A planned unit development with:

**21.3.2.1** A signed, notarized, and recorded deed covenant restricting any development of lots or parcels above the approved density with the density meeting the minimum land area requirements of subsection 21.2.5 of this article; and

**21.3.2.2** A public entity responsible for operation and maintenance of all the OSS, or a single individual owning all the OSS; and

**21.3.2.3** Management requirements under section 8 of this article when installing a LOSS; and

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- 21.3.2.4 An overall density not greater than 3.5 single family residences or unit volumes per acre; and
  - 21.3.2.5 Extinguishment of the deed covenant and higher density development allowed only when the development connects to public sewers.
- 21.4 The health officer may:
- 21.4.1 Allow inclusion of the area to the centerline of a road or street right-of-way in a Method II determination under subsection 21.2.5.2 of this article to be included in the minimum land area calculation if:
    - 21.4.1.1 The dedicated road or street right-of-ways are along the perimeter of the development; and
    - 21.4.1.2 The road or street right-of-ways are dedicated as part of the proposed development; and
    - 21.4.1.3 Lots are at least 12,500 square feet in size.
  - 21.4.2 Require a preliminary design for one or more proposed lots prior to preliminary or final approval of subdivision proposals in order to verify that a proposed lot or lots can meet the requirements of this article. If a preliminary design is required, the following shall apply:
    - 21.4.2.1 At a minimum, the following is required:
      - 21.4.2.1.1 Lot corners shall be marked and shown on the preliminary design;
      - 21.4.2.1.2 Test pits shall be dug where the disposal component and the reserve area are proposed to be located on each lot for purposes of developing soil logs;
      - 21.4.2.1.3 After the soils investigation, the project designer shall submit a design to the health officer for each lot indicating the proposed locations of the disposal component and the reserve area and the specifications of the disposal component.
    - 21.4.2.2 Upon finding a preliminary design acceptable, the health officer shall approve the preliminary design. The approval of the preliminary design indicates that, for subdivision purposes, the proposed lot or lots can meet the

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requirements of this article. It shall not be considered part of an OSSA and does not give authorization to obtain an OSSP or a building permit;

**21.4.2.3** A preliminary design shall be considered valid for a period of three years from the date it was submitted regardless if it received preliminary approval;

**21.4.2.4** A fee shall be charged that covers the cost of evaluating the proposed lots, soils, and preliminary design as per Appendix A of article I.

**21.4.3** Require larger land areas or lot sizes to achieve public health protection.

**21.4.4** Prohibit development on individual lots within the boundaries of an approved subdivision if the proposed OSS design does not protect public health by meeting requirements of these regulations.

**21.4.5** Permit the installation of an OSS, where the minimum land area requirements or lot sizes cannot be met, only when all of the following criteria are met:

**21.4.5.1** The lot is registered as a legal lot of record created prior to January 1, 1995; and

**21.4.5.2** The lot is outside an area of special concern where minimum land area has been listed as a design parameter necessary for public health protection; and

**21.4.5.3** The proposed system meets all requirements of these regulations other than minimum land area.

**21.5** When a COSS or a LOSS will be used, the person responsible for the subdivision shall accomplish one of the following prior to final approval of the plat:

**21.5.1** Install the COSS or LOSS and obtain approval by the appropriate agencies; or

**21.5.2** Provide a bond in favor of the department and sign an agreement with the department. The bond and agreement shall guarantee that construction will be completed within one (1) year from the date of the approval of the agreement. The bond shall be from a reputable bonding company on a satisfactory form and in an amount based on an estimate prepared by an engineer or designer, plus thirty-five (35) percent (20% for a two-year inflationary period plus 10% for contract expenditures plus 5% for

administrative costs). The bond and agreement shall be to the satisfaction of the department and other applicable agencies and the department's legal counsel. The health officer may release a portion of the bond or surety when he/she is satisfied that a portion of the project is complete and has been certified by the appropriate agency or person. The portion(s) released shall not be in increments less than thirty-five (35) percent of the project cost.

## **SECTION 22 AREAS OF SPECIAL CONCERN.**

**22.1** The health officer may investigate and take appropriate action to minimize public health risk in formally designated areas such as:

- 22.1.1** Shellfish protection districts or shellfish growing areas;
- 22.1.2** Sole Source Aquifers designated by the U.S. Environmental Protection Agency;
- 22.1.3** Areas with a critical recharging effect on aquifers used for potable water as designated under Chapter 17.15 of the Thurston County Code (Critical Areas Ordinance);
- 22.1.4** Designated public water supply wellhead protection areas;
- 22.1.5** Up-gradient areas directly influencing water recreation facilities designated for swimming in natural waters with artificial boundaries within the waters as described by the Water Recreation Facilities Act, chapter 70.90 RCW;
- 22.1.6** Areas designated by the Washington state department of ecology as special protection areas under chapter 173-200-090 WAC, Water Quality Standards for Ground Waters of the State of Washington;
- 22.1.7** Wetland areas under production of crops for human consumption;
- 22.1.8** Frequently flooded areas delineated by the Federal Emergency Management Agency; and,
- 22.1.9** Areas identified and delineated by the board of health in consultation with the secretary to address public health threats from on-site systems.

**22.2** The board of health may impose more stringent requirements on new development and corrective measures to protect public health upon existing developments in areas of special concern, including:

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- 22.2.1 Additional location, design, and/or performance standards for OSS;
- 22.2.2 Larger land areas for new development;
- 22.2.3 Prohibition of development;
- 22.2.4 Additional operation, maintenance, and monitoring of OSS performance;
- 22.2.5 Requirements to upgrade existing OSS;
- 22.2.6 Requirements to abandon existing OSS; and
- 22.2.7 Monitoring of ground water or surface water quality.
- 22.3 Within areas of special concern, to reduce risk of system failures, a certified monitoring firm shall:
  - 22.3.1 Inspect every OSS at least once every four years;
  - 22.3.2 Submit the following written information to both the department and the property owner within 30 days following the inspection:
    - 22.3.2.1 Location of the tank;
    - 22.3.2.2 Structural condition of the tank, including baffles;
    - 22.3.2.3 Depth of solids in the tank;
    - 22.3.2.4 Problems detected with any part of the system;
    - 22.3.2.5 Maintenance needed;
    - 22.3.2.6 Maintenance provided at time of inspection; and
    - 22.3.2.7 Other information as required by the department.
  - 22.3.3 Immediately report failures to the department.

**SECTION 23. CERTIFICATION OF DESIGNERS, INSTALLERS, PUMPERS, INSPECTORS, AND MAINTENANCE PERSONNEL.**

[With the exception of subsections 23.1.1, 23.6.9, and 23.6.10 the requirements in this section shall not be applicable to engineers or registered sanitarians].

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23.6.8.2 Certification suspension shall be a specific period of not less than one (1) month or more than one (1) year. The individual or firm on suspension shall apply in writing to the health officer, at the end of the suspension period, requesting reinstatement, including documentation of intent, and pay any reinstatement fee as required in Appendix A of article I. Prior to reinstatement the firm or individual must meet all current and previous certification responsibilities and requirements. Exceeding one suspension in any one year period or two suspension in any three year period will result in revocation of certification. All suspensions shall carry over from one certification period to the next. An individual or firm on suspension will not be allowed to design, install, pump, or monitor systems during the period of suspension.

23.6.8.3 Revocation is the complete denial of the rights and privileges associated with certification of an individual or firm. An individual or firm whose certification has been revoked shall not be allowed to become certified again for a period not less than three (3) years from the date of revocation. An individual or firm seeking recertification must also successfully meet all the requirements for obtaining an initial certification prior to becoming certified, as well as any previous responsibilities or financial obligations. This includes a probationary period of one (1) year.

23.6.9 Submit evidence, in a manner required, to the Washington State board of professional engineers when an engineer has not performed their responsibilities in a manner consistent with the requirements of this article and related policies, procedures, and guidelines, and the requirements of chapter 18.43 RCW.

23.6.10 Submit evidence, in a manner required, to the Washington State Board of Registered Sanitarians when a sanitarian has not performed their responsibilities in a manner consistent with the requirements of this article and related policies, procedures, and guidelines.

**SECTION 24 WAIVER OF REGULATIONS.**

24.1 Waivers shall be considered on a site-by-site basis as follows:

24.1.1 The procedure contained in article I of the Thurston County Sanitary Code shall be followed;

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- 24.1.2 The hearing officer as specified in article I may grant a waiver from specific requirements in this article for OSS under 3500 gallons per day if:
  - 24.1.2.1 The procedure contained in article I of the Thurston County Sanitary Code has been followed; and
  - 24.1.2.2 A strict interpretation of this article will result in significant hardship; and
  - 24.1.2.3 The waiver application contains justification describing how the requested waiver is consistent with the purpose and objectives of this article to meet the public health intent of this article; and
  - 24.1.2.4 The hearing officer determines that the waiver is consistent with the standards in and the intent of this article.
- 24.1.3 On a quarterly basis, the health officer will forward to the secretary any approved or denied waivers for their records.
- 24.2 The secretary may grant a waiver from specific requirements in this article for a LOSS if a person submits a completed Washington state department of health waiver application and required fee to the secretary, including justification showing the requested waiver is consistent with the LOSS standards in WAC 246-272, and is consistent with the purpose and objectives of WAC 246-272 to assure public health protection.
- 24.3 If an applicant desires to modify and resubmit a previously denied waiver request, the process described above in subsection 24.1 of this article for OSS under 3500 gallons per day, or subsection 24.2 of this article above for a LOSS shall be followed again.

**SECTION 25 ENFORCEMENT.**

- 25.1 The health officer:
  - 25.1.1 May make inspections to determine whether a project is constructed and operated within the law and stated conditions;
  - 25.1.2 Shall enforce the provisions of this article in accordance with article I of the Sanitary Code for Thurston County.
- 25.2 When a person violates the provisions under this article, the health officer may initiate enforcement or disciplinary actions, or any other legal proceeding authorized by law, including but not limited to any one or a combination of the following:

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- 25.2.1 Informal administrative conferences, convened at the request of the health officer or owner/applicant, to explore facts and resolve problems;
  - 25.2.2 Orders directed to the owner and/or operator of the OSS and/or person causing or responsible for the violation of this article;
  - 25.2.3 Denial, suspension, modification, or revocation of permits, approvals, or certification; and
  - 25.2.4 Civil or criminal action.
- 25.3 Orders authorized under this section include the following:
- 25.3.1 Orders requiring corrective measures necessary to effect compliance with this article. Such orders may include a compliance schedule; and
  - 25.3.2 Orders to stop work and/or refrain from using any OSS or portion of the OSS or improvements to the OSS until all permits, certifications, and approvals required by this article are obtained.
- 25.4 Enforcement orders issued under this section shall follow the requirements described in article I.
- 25.5 The health officer shall have cause to deny an OSSA, an OSSP, or an operational certificate, or to revoke, suspend, or modify a required OSSP, or operational certificate of any person who has:
- 25.5.1 Failed or refused to comply with the provisions of this article, or any other statutory provision or rule regulating the operation of an OSS; or
  - 25.5.2 Obtained or attempted to obtain a permit or any other required certificate or approval by misrepresentation.

**SECTION 26 CIVIL INFRACTIONS AND PENALTIES.**

- 26.1 The violation of any provision of this article is designated as a civil infraction pursuant to Chapter 7.80 RCW as follows:
- 26.1.1 Any violation causing unsanitary conditions or any threat to public health is a Class 1 civil infraction. Each day of such violation is a separate civil infraction. A notice of infraction shall be issued in accordance with article I.

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28.1.2 Any other violation is a Class 3 civil infraction. Each day of any such violation is a separate civil infraction. A notice of infraction shall be issued in accordance with article I.

28.2 The health officer may impose civil penalties for violations of this article or for refusal to comply with lawful orders written pursuant to this article. Such penalties shall be issued and be in accordance with the provisions contained in Article I of the Thurston County Sanitary Code. Civil penalties for violations of this article shall be assessed pursuant to the following schedule:

- a) first day of each violation \$100.00
- b) second day of each violation \$200.00
- c) third day of each violation \$300.00
- d) fourth day of each violation \$400.00
- e) each additional day of each violation beyond four days \$500.00 per day

**SECTION 27 APPEALS**

27.1 Any person aggrieved by a decision, an inspection or notice made by the health officer shall have the right to appeal the matter as specified in article I, except for appeals of disciplinary actions taken pursuant to section 23 of article IV, which shall be governed by section 27.2.

27.2 Disciplinary actions taken pursuant to section 23 against a firm's or individual's certification to perform work as a designer, installer, pumper, or monitoring specialist, shall be appealable to a board of appeals established pursuant to this article.

27.3 Board of appeals established. The On-Site Sewage Disciplinary Board of Appeals is hereby established. This Board shall serve as the Board of Appeals for Thurston County for disciplinary actions taken under Article IV of the Thurston County Sanitary Code.

27.3.1 Membership and quorum. The Board of Appeals shall consist of five members and five alternates. Each member shall be appointed by the Board of Health and shall hold office at the pleasure of such Board. A quorum shall exist when at least three of the five members, or their respective alternates, are present. A quorum is required for the Board to conduct appeal hearings and make decisions.

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- 27.3.2 The Board of Appeals shall consist of:
- (a) one member and one alternate with experience and training as an on-site sewage system (OSS) designer, whose initial term shall expire on January 1, 1997; and
  - (b) one member and one alternate with experience and training as an OSS installer, whose initial term shall expire on January 1, 1998; and
  - (c) one member and one alternate with experience and training as a pumper, whose initial term shall expire on January 1, 1999; and
  - (d) one member and one alternate who is a licensed professional engineer, whose initial term shall expire on January 1, 1998; and
  - (e) one member and one alternate to represent the interests of the public who live in unincorporated Thurston County with a residence on an on-site sewage system, whose initial term shall expire on January 1, 1999.
- 27.3.3 The initial members shall be appointed for terms expiring as provided in Section 27.3.2. After the initial terms, all members shall be appointed for terms of three years expiring on January 1. No person may serve more than two consecutive terms.
- 27.3.4 A department representative shall serve as an ex officio, nonvoting member of the Board of Appeals and shall serve as Secretary to the Board of Appeals and shall schedule meetings, maintain records, prepare and publish required notices, disseminate findings and decisions, and assure that accurate minutes of meetings are kept. However, as ex-officio member the department representative shall not ask questions or take part in any deliberations which are part of a hearing or decision on an appeal.
- 27.3.5 At the first meeting of the Board of Appeals, and at its first meeting in each succeeding calendar year, the members of the Board shall elect a chair and vice chair. The chair shall preside at all meetings of the Board of Appeals and conduct all appeals according to governing rules. The vice chair shall perform all duties of the chair if the chair is absent.
- 27.4 Scope of authority. The Board of Appeals has authority to hear and decide appeals of disciplinary actions taken pursuant to section 23 against a firm' or individual's certification to perform work as a designer, installer, pumper, or monitoring specialist. The Board shall have authority to review decisions of the Department and shall enter findings of fact and conclusions of law. The Board

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shall have the authority to affirm, deny or revise any disciplinary action taken pursuant to section 23 and impose such conditions as are necessary to effectuate the purposes of this section.

**27.5 Who may appeal.** Any person aggrieved by a disciplinary action taken pursuant to Section 23 may appeal to the Board of Appeals.

**27.5.1 Filing and service.** Persons who wish to appeal a decision shall complete the application form prescribed by the Board of Appeals. This form shall require, at a minimum, a concise statement of facts relevant to the appeal, a concise explanation of the reasons why the appeal should be granted, and a description of the precise result or relief which the appellant is requesting.

**27.5.2 Appeals shall be filed with the Department at the Thurston County Courthouse.** The Board of Appeals will only hear those items specifically appealed and shall only hear the particular appeal once. All items of appeal must appear on the same appeal form.

**27.5.3 All appeal application forms shall be accompanied by an application fee as set forth in Appendix A to Article I of this Code.**

**27.5.4 Appeals must be filed and served no later than ten (10) days after the date the order, decision or determination to be appealed was served on the Appellant.** Such appeal shall operate as a stay of the order, decision or determination except where the appellant has caused the presence of an emergent health hazard as described in Section 7.4 of Article I of this Code.

**27.6. Scheduling of hearings**

**27.6.1 All hearings shall be scheduled within fifteen (15) days of the date the appeal application form is filed, unless a later hearing date is necessary to obtain a quorum of Board of Appeals members.**

**27.6.2 All Board of Appeals members and alternates shall indicate if they are unable to sit on an appeal in advance, so that the Secretary to the Board can seek the services of an alternate prior to the appeal date.**

**27.6.3 The Secretary to the Board shall provide the parties five working days written or telephonic notice of a scheduled hearing unless such is waived by the Appellant or party served.**

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**27.7 Procedure at hearings**

- 27.7.1** All meetings and hearings of appeals are open to the public in conformance with the Open Public Meeting Act, Chapter 42.30 RCW.
- 27.7.2** The parties to hearings on appeal are the Department and the Appellant(s).
- 27.7.3** At hearings of appeals, evidence, including hearsay evidence, is admissible if it is the type on which reasonably prudent persons are accustomed to rely in the conduct of their affairs. Evidence is not admissible if it is irrelevant, unduly repetitious or excludable on the grounds of evidentiary privilege recognized in the courts of this state.
- 27.7.4** Testimony shall be taken at hearings only on oath or affirmation.
- 27.7.5** At hearings, the order of presentation of evidence shall be as follows:
- (a) The Department will present his/her case, including all witnesses and documentary and physical evidence.
  - (b) The Appellant will present its case, including all witnesses and documentary and physical evidence.
  - (c) The Department may present rebuttal evidence in response to the Appellant's case.
  - (d) At the conclusion of each witnesses' testimony, the witness is subject to cross-examination by the opposing party.
  - (e) Closing argument or summation by the Department.
  - (f) Closing argument or summation by the Appellant.
  - (g) The Board of Appeals may, at any time, ask questions, request additional information, or present the testimony of additional witnesses.
- 27.7.6** Each party shall have the following rights at a hearing of an appeal:
- (a) To present and examine witnesses.
  - (b) To introduce documentary and physical evidence.

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- (c) To cross-examine opposing witnesses on any matter proper for cross-examination.
- (d) To rebut the evidence against him/her.
- (e) To represent himself/herself or to be represented by an attorney.

27.7.7 The Board of Appeals may continue hearings at its own discretion or on request of a party.

27.8 Board inspection of premises. At any time before conclusion of the hearing on an appeal, the Board of Appeals may view or inspect any building or premises involved in the appeal. The Board shall give each party reasonable notice of any such visit and afford each party the opportunity to be present. No party shall make any remark concerning the appeal to any Board of Appeals member during any such visit.

27.9 Record of proceedings. A record of each hearing on appeal shall be made by tape recording. A transcript or tape recording of the proceedings shall be made available to all parties upon request and upon advance payment of a fee equal to the cost to be incurred in preparing a transcript or tape.

27.10 Board decision

27.10.1 The burden of proof is on the Appellant by a preponderance of the evidence.

27.10.2 Decisions of the Board of Appeals shall be by majority vote of the members present. Only those Board members who heard the evidence presented at the hearing or listened to the entire record of the hearing may vote on a decision on an appeal. A tie vote results in denial of the appeal.

27.10.3 The decision on an appeal shall be in writing, signed by the Board of Appeals member who served as chair at the hearing and shall contain findings of fact and an order. A copy of the decision shall be issued by being delivered to the Appellant personally or sent to him/her by being deposited in the U.S. Mail, postage prepaid, within seven (7) days of the hearing. The findings and order shall be filed with the Department for appropriate action.

27.10.4 The decision of the Board of Appeals shall be the final decision of Thurston County and shall not be appealable to the Board of Health.

27.11 Judicial Review An appeal of any final decision by the Board of Appeals must be taken by any aggrieved party to Superior Court within twenty (20) days from the

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date the decision is delivered to the Appellant or was deposited in the U.S. Mail by the Board of Appeals under Section 27.10.3.

**27.12 Appearance of fairness.**

**27.12.1** In order to assure the appearance of fairness in matters under consideration by the Board of Appeals, no person shall have an ex parte contact with Board of Appeals members regarding such matter, and no person, including government officials and employees, shall attempt to interfere with or influence the Board of Appeals outside a public hearing.

**27.12.2** No Board of Appeals member shall conduct or participate in any hearing or discussion in which he or she may have a direct or indirect financial or personal interest or in which such conduct or participation would violate any rule of law applicable thereto.

**27.13 Computation of time.** In computing any period of time, the day of the act from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or a County legal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday or a County legal holiday.

**27.14 Supplementary rules.** The Board of Appeals may adopt supplemental rules of procedure consistent with this Resolution and other governing law. A copy of such rules shall be filed with the Department and shall be available for public inspection and copying.

**27.15** Civil infractions shall be heard and determined according to Chapter 7.50 RCW, as amended, and any applicable court rules.

**SECTION 28 SEVERABILITY.**

If any provision of this article or its application to any person or circumstances is held invalid, the remainder of this article, or the application of the provision to other persons or circumstances shall not be affected.

**CERTIFICATE OF SERVICE**

THIS IS TO CERTIFY that a copy of the attached Amended Appendix to Opening Brief of Appellant Interested Parties was served June 8, 2006, on the following individuals by depositing the same in the United States Mail with postage paid addressed to the following:

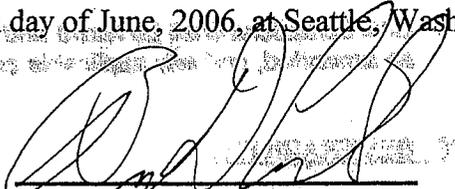
1. Allen Miller  
Prosecuting Attorney's Office, Civil Division  
2424 Evergreen Park Dr. S.W., Suite 102  
Olympia, WA 98502

2. Matthew B. Edwards  
Owens Davies, P.S.  
P.O. Box 187  
926 24<sup>th</sup> Way SW  
Olympia, WA 98507

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COURT APPEALS  
06 JUN -9 PM 12:44  
STATE JUDICIAL DIVISION  
CLERK

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

EXECUTED this 8th day of June, 2006, at Seattle, Washington.

  
Bruce D. Carter, WSBA #2588