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

NO. 63531-0-I
(Snohomish County Superior Court No. 08-2-06059-2)

ELLEN HIATT WATSON; ROGER C. HILL;
ROBERT LANDLES; and 7-LAKES, INC.,

Respondents,

v.

SNOHOMISH COUNTY and CRAIG LADISER,
Snohomish County Planning and Development Director,

Respondents,

and

BROCK BAKER, RALPH JOHNSON, WILLIAM STOOPS,
and DANIEL WICKSTROM,

Appellants.

BRIEF OF RESPONDENTS ELLEN HIATT WATSON,
ROGER C. HILL, ROBERT LANDLES, AND 7-LAKES, INC.

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I. INTRODUCTION

The Snohomish County Code prohibits new development on lots that are smaller than 200,000 square feet in the Rural 5-Acre (R-5) zone. SCC 30.23.030.¹ The code does, however, allow for an exception to this rule. The code allows the development of single family homes on these so-called substandard lots (less than 200,000 square feet) in certain limited circumstances. SCC 30.23.240. But, the exception is for single family homes only. *Id.* Other exceptions exist in other sections of the Code (for utility facilities, for example), but for most uses, including duplexes, there is no exception. Most uses, including duplexes, are subject to the outright prohibition and cannot, under any circumstance, be developed on substandard lots, *i.e.*, lots smaller than 200,000 square feet in the Rural 5-Acre (R-5) zone.

Relying on a mistaken interpretation of the code and ignoring the advice of the County Prosecutor's Office,² Craig Ladiser, the Snohomish County Planning Director, decided that the Snohomish County Code allows developers to build duplexes on substandard lots in the R-5 zone. CP 179-185. To reach this conclusion, the Planning Director essentially turned the

¹ Frequently referenced County Code sections are reprinted in the Appendix to this brief.

Code inside out. The general prohibition on development of substandard lots (except for single family homes under some circumstances) became an outright allowance of *all uses* of substandard lots (except for single family homes under some circumstances). The specific language of the key sections of the Code does not support Mr. Ladiser's Humpty Dumpty conclusion. Neither do the basic goals and policies of the County's land use plans and regulations which seek to keep urban developments – like duplexes – out of rural areas. The County Council – author of the disputed language – also concluded that Mr. Ladiser's interpretation was wrong.

The Superior Court saw the error in the Planning Director's reasoning and reversed it. We request this Court do the same and affirm the Superior Court.

II. COUNTER-STATEMENT OF ISSUES

1. Whether the Snohomish County Code generally prohibits the use of substandard lots in the Rural-5 zone, with limited exceptions created for single family residences, public facilities, utilities, and other limited uses – but with no exception created for duplexes?

² The evidence of the Prosecutor's contrary advice was not admitted by the trial court. That ruling is being appealed, *infra* at Section VII.

2. Whether the trial court correctly refused to grant the post-trial motion seeking admission of evidence of the County staff's historic practices where no party ever sought reconsideration or amendment of the trial court's order limiting the evidence to the administrative record and whether the subject Code section is unambiguous, rendering the proffered evidence irrelevant?

3. Whether the "absolute waiver" rule or the "balanced approach" is applicable to inadvertent disclosures of privileged information?

4. Whether the trial court erred in ruling that the County did not waive the attorney-client privilege when it disclosed an otherwise privileged document?

III. STATEMENT OF FACTS

A. The Snohomish County Code Prohibits Development on Substandard Lots in the R-5 Zone With Limited Exceptions

The Snohomish County Code establishes a minimum size for lots. SCC 30.23.030. The minimum size varies from zone to zone. *Id.* In the Rural-5 (R-5) zone, the minimum lot size is 200,000 square feet. *Id.* Any lots in the R-5 zone that are less than 200,000 square feet are considered "substandard."

Many lots in the R-5 zone were created long ago before minimum lot sizes were established. The Code allows development of these lots (legally established at the time, but now non-conforming) under limited circumstances:

Residential Use of Substandard Lots.

Use of lots in residential zones for single-family dwellings when such lots have substandard area for their present zone is permitted if the lot was legally created and satisfied the lot area and lot width requirements applicable at the time of creation; but such lots may be used only in a manner and upon the conditions set forth below:

- (1) A person, who owns a single substandard lot or two or more substandard lots which were not contiguous and under single ownership on December 31, 1989, may use such lot or lots, either individually or in combination, for building sites, one dwelling per building site if the building sites meet the setbacks and lot coverage requirements and the Snohomish Health District's standards for the zone in which they are located;
- (2) A person who owns two or more substandard lots which were contiguous and under single ownership on December 31, 1989, may use such lots, either individually or in combination, for up to two building sites, one dwelling per building site if the building sites meet the setbacks and lot coverage requirements and the Snohomish Health District's standards for the zone in which they are located. . . .
- (3) Notwithstanding the provisions of SCC 30.23.240(2), a person who owns two or more substandard lots which were established on or after April 15, 1957, and which were contiguous and under single ownership on December 31,

1989, may use such lots, either individually or in combination, for building sites, one dwelling per building site if the building sites meet the setbacks and lot coverage requirements and the Snohomish Health District's standards for the zone in which they are located.

SCC 30.23.240.

This exception does not allow duplexes nor does it allow any other structures – only single family dwellings can be built on substandard lots if they meet the specific criteria listed in SCC 30.23.240. *Id.*

For those landowners who cannot meet the criteria in SCC 30.23.240, the lot may be used for utility or public facilities (SCC 30.23.200) or, pursuant to SCC 30.23.250, contiguous substandard lots may be aggregated to meet lot area requirements. Thus, owners of substandard lots are afforded various opportunities to develop lots which do not meet the minimum lot size established in SCC 30.23.030.

B. Property Owners in the County Submitted Applications Proposing to Build Duplexes on Substandard Lots

On April 29, 2008, Dan Wickstrom, a construction contractor, submitted 27 building permit applications proposing to build duplexes on 27 substandard lots. CP 179-185. These applications were submitted on behalf of Brock Baker and three other property owners (hereinafter “Baker”) who have contiguous ownership of substandard lots in the Warm Beach area. *Id.*

Along with the applications, the Baker's attorney, Charles Klinge, submitted a letter that was characterized by him as "notice" to the County of the legal basis for submitting building permit applications for duplexes on substandard lots. CP 187-190. In his letter, the attorney twice threatened to sue the County if the County did not accept the building permit applications. *Id.* He then offered his legal opinion as to why the "substandard lot ordinance does not apply to duplexes." *Id.*

The Klinge letter set forth an interpretation of the code that completely disregarded SCC 30.23.030 -- the provision that generally prohibits development on substandard lots. *Id.* Rather than recognizing the general prohibition in SCC 30.23.030 and viewing SCC 30.23.240 as creating a limited exception to that prohibition, Klinge suggested that SCC 30.23.240 established limits on single family development of substandard lots -- and all other uses were allowed outright without any limitation at all! According to Klinge, all uses allowed in the R-5 zone -- like mining operations, agricultural processing facilities, juvenile community facilities and duplexes -- are allowed on substandard lots. Only single family residential uses are restricted. Klinge never explained why the legislative body would restrict single family

homes on substandard lots and impose no restrictions on any other use of a substandard lot.

C. Under Threat of Litigation, the Planning Director Concluded that SCC 30.23.240 Allowed Duplexes to be Constructed on Substandard Lots

On July 1, 2008, Planning and Development Services Director Craig Ladiser issued a code interpretation of SCC 30.23.240. CP 284-290. With Mr. Klinge's litigation threat hanging over his head, Mr. Ladiser concluded that SCC 30.23.240 allowed duplexes to be constructed on substandard lots in the R-5 zone residential areas. *Id.* He stated: "PDS determines that when comprehensively read in its entirety, SCC 30.23.240 applies only to the residential use of substandard lots for single family dwellings." CP 284.³

Shortly thereafter, plaintiff Ellen Hiatt Watson filed a Petition for Writ of Review and Petition for Declaratory Judgment to obtain judicial review of the code interpretation by Craig Ladiser, Director of the Snohomish County Planning and Development Services (PDS). CP 5-18.

³ Despite being urged by several non-profit organizations, including the Warm Beach Stewards, Pilchuck Audubon Society, 7-Lakes, and Futurewise, to utilize the Type 1 process and allow public input at the administrative level and an appeal to the Hearing Examiner, the Director chose not to process the interpretation as a Type 1 decision. *See* CP 352-359.

D. Superior Court Proceedings

Baker's recitation of the Superior Court proceedings is generally accurate. However, we are not aware of any evidence in the record that Baker "belatedly" learned of the pending lawsuit (Baker Br. at 10) or that Baker's lots were taxed as if they could be developed with duplexes (*id.* at 1, 7). The record is silent as to when Baker learned of the lawsuit or the basis of Baker's tax assessment.

This portion of Baker's brief also highlights arguments made by Baker throughout the trial court proceedings. We do not join in those arguments, of course. We merely acknowledge that Baker has correctly recited the course of proceedings and the trial court's rulings.

IV. STANDARD OF REVIEW AND RULES
OF STATUTORY CONSTRUCTION

The interpretation of a statute is inherently a question of law and such issues are reviewed *de novo*. *King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 142 Wn.2d 543, 555, 14 P.3d 133 (2000). "Where statutory language is plain and unambiguous, courts will not construe the statute but will glean the legislative intent from the words of the statute itself, regardless of contrary interpretation by an administrative agency."

Agrilink Foods, Inc. v. Department of Revenue, 153 Wn.2d 392, 396, 103 P.3d 1226 (2005) (citations omitted). It is ultimately for the Court to determine the purpose and meaning of the statute, even when the Court's interpretation is contrary to that of the agency charged with carrying out the law. *Faben Point Neighbors v. City of Mercer Island*, 102 Wn. App. 775, 781, 11 P.3d 322 (2000), quoting *Clark County Natural Resources Council v. Clark County Citizens United, Inc.*, 94 Wn. App. 670, 677, 972 P.2d 941 (1999).

A fundamental rule of statutory construction provides that when a statute is clear and unambiguous on its face, it need not and cannot be construed by a court; only those statutes which are of doubtful meaning are subject to the process of statutory interpretation. *Nisqually Delta Ass'n v. City of Dupont*, 103 Wn.2d 720, 745, 696 P.2d 1222 (1985). "Where the language is plain and admits of no more than one meaning, the duty of interpretation does not arise and the rules which are used a doubtful meaning need no discussion." *Id.* Moreover, "a statute is not ambiguous merely because different interpretations are conceivable." *Agrilink Foods, Inc. v. Department of Revenue, supra*, 153 Wn.2d at 396 (quoting *State v. Hahn*, 83 Wn. App. 825, 831, 924 P.2d 392 (1996)). Because the language of SCC

30.23.240 and SCC 30.23.030 is unambiguous, the duty of interpretation does not arise and the rules which are used to aid doubtful meanings need no discussion. *Id.*

The primary goal of statutory construction is to ascertain and give effect to the intent of the authors of the provision. *City of Olympia v. Drebeck*, 156 Wn.2d 289, 295, 126 P.3d 802 (2006); *King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 142 Wn.2d at 555, citing *National Elec. Contractors Ass'n v. Riveland*, 138 Wn.2d 9, 19, 978 P.2d 481 (1999). The Court is required to read legislation as a whole and to determine intent from more than a single sentence. *King County v. Cent. Puget Sound Growth Mgmt. Hearings Bd.*, 142 Wn.2d at 560. Effect should be given to all of the provisions and the provisions must be considered in relation to each other and harmonized to ensure proper construction. *Id.*

Baker argues that the Code interpretation must be construed in favor of the landowners. Baker Br. at 17. To the contrary, “the law does not require strict construction in favor of the landowner” when that interpretation is inconsistent with the legislative intent. *Development Services of America v. Seattle*, 138 Wn.2d 107, 117, 979 P.2d 387 (1999). In *Development Services*, a Seattle business appealed the Seattle City Council’s construction

of the local ordinance for conditional use permits regarding helipads. *Id.* Development Services argued that the zoning ordinance was ambiguous and should be construed in favor of the landowner. *Id.* But because the purpose and intent of the ordinance was to limit use of helipads, the Court construed the ordinance to attain that purpose, even though that construction was not in the landowner's favor.

V. ARGUMENT

A. The Legislative Intent of the Relevant Snohomish County Code Provisions is to Maintain Rural Character in Rural Zoning Districts

Because the primary goal is to ascertain and give effect to the legislative intent of this language, we begin with an examination of the overall intent of the legislative body with respect to regulating land use in rural areas. The Snohomish County Uniform Development Code (Title 30, SCC) was adopted under the direction and mandate of the Washington State Growth Management Act, Ch. 36.70A RCW. It is the intent of the Growth Management Act that counties recognize the importance of rural lands and rural character to Washington's economy, its people, and its environment. RCW 36.70A.011; RCW 36.70A.030(15). Under the Act, counties adopt comprehensive land use plans that, among other things, include provisions for

the protection of rural character and the prohibition of urban densities in rural parts of the county. RCW 36.70A.070(5), -.110(1). Snohomish County's Comprehensive Plan appropriately establishes policies implementing these GMA requirements. These policies are then given regulatory effect in the County Code. The Code states:

The intent and function of the rural-5 acre zone is to maintain rural character in areas that lack urban services.

SCC 30.21.025.

Specific to the issue at hand, the County Council authorized small lots in urban zones and allowed development only on larger lots in the rural zone. *See* SCC 30.23.030 (minimum residential lot sizes in urban zones vary from 7,200 to 9,600 square feet; minimum residential lot sizes in rural zones vary from 100,000 to 200,000 square feet). Obviously, the County Council intended to keep densities for residential development far lower in the rural area.

B. Overview of the Snohomish County Code's Zoning and Development Standards

All building and land development within unincorporated Snohomish County is regulated by the Snohomish County Unified Development Code (UDC), which is Title 30 of the Snohomish County Code (SCC). Chapters

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30.21, 30.22, and 30.23 of the County Code are the heart of the County’s zoning ordinance. Chapter 30.21 establishes the various zoning districts. Chapter 30.22 establishes the uses allowed in each district. Chapter 30.23 establishes the dimensional requirements (*e.g.*, lot area and setbacks) for each district. We examine each of these chapters briefly in the following subsections.

1. Chapter 30.21 establishes various zoning districts

Chapter 30.21 SCC establishes and describes the land use zones throughout the County. Land use zones include Urban Zones, Rural Zones, Resources Zones, and other miscellaneous zones. SCC Table 30.21.020. Within each category of zone, there are several different sub-categories of zones. *Id.* For example, within the Urban Zone, there is a General Commercial zone, Residential 9,600 zone, Industrial zone and more. *Id.* Within the Rural Zone, there is a Rural Business zone, Rural 5-Acre (R-5) zone, Rural Industrial zone and more. *Id.*

Relevant to this matter is the Rural 5-Acre zone (R-5). The intent and function of the R-5 zone is to maintain the rural character in areas that lack urban services. SCC 30.21.025(2)(c).

2. Chapter 30.22 specifies uses permitted in each of the zones

Chapter 30.22 SCC establishes the types of uses permitted in each of the zones. The code includes several tables for each zone, each of which is referred to as a “Use Matrix,” that list the types of “uses” that are allowed in each zone. *See* SCC 30.22.100-.120.

There are a number of different uses that are allowed in the R-5 Zone. SCC 30.22.110. For example, single family homes, duplexes, kennels, community facilities for juveniles, agricultural processing facilities, certain mining activities, and family day cares in the home are permitted. *Id.* Other uses are prohibited in the R-5 zone, such as drug stores, craft shops, and restaurants. *Id.*

3. Chapter 30.23 establishes dimensional requirements within each of the zones

Chapter 30.23 SCC establishes general dimensional requirements such as setback, lot coverage, and building height for each of the zones in unincorporated Snohomish County.⁴

⁴ A “setback” is the distance that a building or use must be removed from the lot lines of the property. SCC 30.91S.160. “Lot coverage” is that portion of the total area of a lot that is covered by buildings. SCC 30.91L.150. Particularly relevant to this matter, “lot area” means the total horizontal area within the lot lines of a lot. SCC 30.91L.130.

These standards for each zone are set forth in the “Bulk Matrix.”

SCC 30.23.030(1). Critically, these standards apply to “all lots” unless an exception is provided elsewhere:

All lots and structures shall conform to the requirements listed on the Bulk Matrix, SCC 30.23.030(1), unless modified elsewhere in this title.

SCC 30.23.010.

The minimum lot area in the R-5 zone is 200,000 square feet. SCC 30.23.030.

The exceptions referenced in SCC 30.23.010 are found in SCC 30.23.100-.250. For instance, SCC 30.23.100 establishes setback exceptions for certain uses enumerated in that section. Exceptions from the minimum lot area requirements are found in SCC 30.23.200-30.23.240. For instance, SCC 30.23.200 exempts government structures and utility facilities from minimum lot area requirements and SCC 30.23.220 reduces the minimum lot area requirement for lots created pursuant to a special “rural cluster” subdivision procedure.

The last section establishing exceptions from the minimum lot area requirements is the section at issue here, SCC 30.23.240. It allows single-family dwellings to be built on substandard lots, as long as the lot was legally

created and satisfied the lot area requirements at the time it was created and as long as certain other conditions set forth in that section are met:

Residential use of substandard lots.

Use of lots in residential zones for single family dwellings when such lots have substandard area for their present zone is permitted if the lot was legally created and satisfied the lot area and lot width requirements applicable at the time of lot creation; but such lots may be used only in the manner and upon the conditions set forth below: . . .

SCC 30.23.240.

SCC 30.23.240 deals specifically with the residential use of substandard lots. Under this section, construction of “single family dwellings” on substandard lots in residential zones is permitted where certain conditions are met. *Id.* There is no similar exception for duplexes in this section or in any of the other sections of the Code (SCC 30.23.200-.240) which create exceptions from the general lot size requirements which apply to “all lots.” SCC 30.23.030.

“Single family dwellings” and “duplexes” are defined as distinct uses. SCC 30.91D.480, -.510. SCC 30.23.240 creates an exception only for “single family dwellings.” Because that exception applies only to single family dwellings and no other exception applies to duplexes, the general prohibition still holds for duplexes – there is no exception for duplexes on a substandard

lot. Therefore, the Code does not allow development of a duplex on a lot that is less than 200,000 square feet in an R-5 zone. The Superior Court decision was correct.

C. Mr. Ladiser's Conclusion That the Code Allows Development of a Duplex on a Substandard Lot in an R-5 Zone Was in Error

In his interpretation of SCC 30.23.240, Mr. Ladiser concluded that the provisions of SCC 30.23.240 do not apply to duplex dwellings because a duplex dwelling is not a single-family dwelling. CP 284-290. True enough. But he failed to recognize that SCC 30.23.240 is an exception to the general rule and that the omission of duplexes from that section means that duplexes can not be sited on substandard lots, not that they may. Instead, he concluded that the omission of duplexes from SCC 30.23.240 meant that “there is no minimum lot size established in Title 30 SCC for duplexes proposed on existing substandard lots.” CP 289. In doing so, Mr. Ladiser completely disregarded the general rule that prohibits development on substandard lots unless permitted pursuant to an exception. SCC 30.23.010. Instead, like Mr. Klinge, he focused solely on the “exception” provision, SCC 30.23.240, totally ignoring the general rule. As a result, he concluded precisely the

opposite of what the code actually states. This conclusion was legal error and is entitled to no deference.

In his analysis leading to the conclusion, after recounting the legislative history of the provision, Mr. Ladiser started not with the bulk regulations chapter (30.23), but with the use chapter (30.22). He stated that “[d]uplexes are a permitted use in the R-5 zone pursuant to SCC 30.22.100.” CP 287 (¶ 5). But SCC 30.22.100 applies to Urban Zones and is, therefore, irrelevant to his interpretation. Even if we assume that he meant to refer to SCC 30.22.110, which pertains to the Rural Zone (since he references this later in his findings), the logic still fails. SCC 30.22.110 is a Rural *Use* Matrix, defining what types of *uses* are allowed in each Rural Zone. The Use Matrix reflects that duplexes are a permitted use in the R-5 zone. But determining whether or not a specific *use* is permitted in a zone does not answer the question of what development standards and bulk regulations will apply to the proposed use. Chapter 30.22 only specifies the “Uses allowed in Zones” and does not purport to define lot dimensions or other specific development standards.⁵

⁵ “Uses” in the Snohomish Code refer to “the purpose, land, buildings, or structures now serve or for which they are occupied, maintained, arranged, designed, or intended.” SCC 30.91U.100. Uses refer to uses such as duplexes, mobile homes, single-family homes, and the like. On the other hand, “development standards” refer to setbacks, lot

Tellingly, Mr. Ladiser never mentions the bulk matrix or the general prohibition in SCC 30.23.010 anywhere in his decision. Yet it is SCC 30.23.010 which requires “all lots” to comply with the bulk matrix (unless an exception applies) and SCC 30.23.030(1) which contains the minimum lot area requirements for each zone, including R-5. Omitting analysis of these key sections led Mr. Ladiser astray.

Baker’s brief makes a similar effort to confuse the “use” provisions in Chapter 30.22 with the bulk regulations in Chapter 30.23. Baker argues that the general prohibition on development of substandard lots in SCC 30.23.010 should be ignored because in the “Use” chapter, there is a statement that “uses shall be established upon legally created lots that conform to the current zoning requirements or on legal nonconforming lots.” Baker Br. at 24 (*quoting* SCC 30.22.030). But if this “use” provision trumps the general prohibitions of development on substandard lots in SCC 30.23.010, there would be no need for the allowance in SCC 30.23.240 for development of single family homes on substandard lots (subject to the conditions set forth in that section). All parts of the Code must be read together. *King County*,

coverage, building height, and lot dimension requirements for each of the zones. *See* Chapter 30.23. Relevant to this matter, “lot area” means the total horizontal area within the lot lines of a lot. SCC 30.91L.130. It makes no sense to refer to a *use* matrix to determine what the

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supra. It is impossible to read SCC 30.22.030 as trumping the general prohibition in SCC 30.23.010 without rendering SCC 30.23.240 wholly superfluous. See *Nisqually Delta Ass'n v. DuPont*, 95 Wn.2d 563, 568, 627 P.2d 956 (1981) (avoid construction which renders words or section superfluous).

Baker's reading also ignores that SCC 30.22.030 is in the "Use" chapter which specifies which uses are allowed and does not generally establish dimensional or other bulk regulations. SCC 30.22.030 makes clear that uses may not be established on illegally established non-conforming lots, but the rules regarding lot dimensions for legal non-conforming lots are found in Chapter 30.23, not Chapter 30.22.

Mr. Ladiser also pointed out that in other zones (*e.g.*, R 7,200, R 8,400 and R 9,600), the Code provides that "Minimum Lot Size for duplexes shall be one and one-half times the minimum lot size for single family dwellings." CP 289 (*citing* SCC 30.22.130(92)). This section is irrelevant to determining a minimum lot size for duplexes in an R-5 zone, which is clearly established in SCC 30.23.030(1).⁶

development standards are for a specific zone. Instead, Mr. Ladiser should have referred to the bulk matrix in SCC 30.23.030(1).

⁶ If anything, SCC 30.22.130(42) further reveals the irrationality of Mr. Ladiser's analysis. In other zones, the County has required that the minimum lot size for

Mr. Ladiser's opinion also references SCC 30.23.250, pertaining to the aggregation of existing lots. He uses this section to assert that there is no minimum lot size established if lots are aggregated for construction of a duplex. Again, Mr. Ladiser is looking in the wrong sections for minimum lot size requirements and ignoring the clear requirements of SCC 30.23.030(1). Even where lots are aggregated under SCC 30.23.250, they must still meet the minimum lot size requirement under SCC 30.23.030(1).

There is no ambiguity in SCC 30.23.010 and SCC 30.23.030. "All" structures must conform to the requirements, including minimum lot area, of SCC 30.23.030(1). This includes duplexes.

There is no ambiguity in SCC 30.23.240. This section provides an exception to the minimum lot requirement for single-family residences only. There is no similar exception for duplexes. Thus, duplexes must always meet the minimum lot size requirements of SCC 30.23.030(1).

As the rules of statutory interpretation require, when a statute is clear and unambiguous on its face, the Court will rely upon that clear statement without proceeding to engage in the exercise of "statutory interpretation." *Nisqually Delta Ass'n v. City of Dupont*, 103 Wn.2d at 745. An agency's

duplexes be greater than the minimum lot size for single family residences. Mr. Ladiser's interpretation inexplicably leads to the opposite result in the R-5 zone.

interpretation should be upheld only if it reflects a plausible construction of a statute's language and is not contrary to legislative intent. *Seatoma Convalescent Center v. Department of Social & Health Services*, 82 Wn. App. 495, 518, 919 P.2d 602 (1996); *Fabin Point Neighbors v. City of Mercer Island*, 102 Wn. App. 775, 781, 11 P.3d 322 (2000). Because the language of SCC 30.23.010, SCC 30.23.030, and SCC 30.23.240 is clear, and because Mr. Ladiser's interpretation flies in the face of the unambiguous language, Mr. Ladiser's code interpretation is erroneous and was correctly reversed by the Superior Court.⁷

Mr. Ladiser's construction of the Code results in absurd outcomes – none of which he considered. Mr. Ladiser's interpretation arose in the context of duplexes, but the logic applies equally to every other use allowed in the R-5 zone and proposed on a substandard lot. All such uses would be allowed on substandard lots because – according to Mr. Ladiser – those uses are not called out in SCC 30.23.240 (the section specifying the conditions under which single family homes can be built on substandard lots). Thus, per

⁷ The title of SCC 30.23.240 states that the section is intended to regulate “**Residential Use** of Substandard Lots”—not just single family uses (emphasis supplied). The section then goes on to allow some residential uses (single family residential uses meeting specified conditions) and, by necessary implication, precludes all other residential uses -- *i.e.*, single family houses that do not fit the conditions; duplexes and multi-family structures. While the title does not have regulatory effect (*see* SCC 1.01.050), it does suggest a legislative intent consistent with the foregoing analysis.

Mr. Ladiser's logic, every lot in the unincorporated County that was legally created would be exempt from all lot dimension regulations in every zone. See SCC 30.23.030. Boarding houses, community facilities for juveniles, family daycare homes, farm product processing, foster homes, health and social service facilities, and kennels would be allowed on substandard lots, even tiny, postage-stamp lots (see CP 192), despite the 200,000 square foot minimum established in the Code. All of these uses would be allowed with no conditions whatsoever, while single family homes are allowed only under the strict conditions set forth in SCC 30.23.240.

In determining the meaning of SCC 30.23.240, the Court's overarching task is to divine the intent of the legislative body. *City of Olympia, supra*. The authors of the Code clearly intended to avoid any negative effects to the character of rural communities. See, Section IV.A., *supra*. Applying conditions to single-family dwellings on substandard lots, but not duplexes, conflicts with the intent of the Code by allowing duplexes at densities higher than allowed for single-family residences.

In his brief, Baker does not dispute that 7-Lakes' interpretation furthers the Council's purpose and intent of requiring large lots in rural areas (at least 200,000 square feet) and allowing development of smaller

grandfathered lots only if the development is limited to the least impact possible -- a single home or certain other limited exceptions, like public facilities and utilities. Baker does not offer any principled rationale to support the suggestion that the legislative intent is to set detailed conditions for single-family homes on substandard lots, while throwing the door open for duplexes with no conditions whatsoever. Why, given the clear legislative intent to protect rural areas from urban intensity development, would the Council limit single-family development on substandard lots, but not duplexes? Baker has no answer to this fundamental -- indeed dispositive -- question.

A statute's subsequent history may be used to clarify the Legislature's and intent. *State v. McKinley*, 84 Wn. App. 677, 686, 929 P.2d 1145 (1997). Here, any doubt about legislative intent was eliminated when the County Council adopted Resolution No. 08-021 ("Regarding the County Council's Position on the Correct Interpretation of SCC 30.23.240 Regulating Residential Development on Substandard Lots") (CP 155-56) and Ordinance 08-090 (CP 298-301) (reprinted in Appendix C hereto). In Resolution No. 08-021, the Council set forth ten whereas clauses that establish, without question, that the intent of SCC 30.23.240 was only to allow residential

development on existing legal lots that do not meet the minimum size required by current zoning regulations, provided that certain conditions are met. The Council established that allowing duplexes at densities higher than allowed for single-family residences and higher than anticipated by current zoning and land use designations could negatively affect the character of rural communities and create infrastructure, drainage, traffic, and other challenges in areas that are planned for rural densities. *Id.* The Council stated that interpreting SCC 30.23.240 in a manner that applies its conditions to single-family dwellings, but leaves duplex development unchecked, would conflict with the intent of the Code by allowing duplexes at densities higher than allowed for single-family residences. The Council resolved:

(1) The County Council believes the correct interpretation of SCC 30.23.240 is and always has been that it applies to all residential development of substandard lots, including single-family dwellings, duplexes, and all other residential development, prohibiting development of substandard lots except as allowed by the conditions in SCC 30.23.240(1) through (3).

(2) As expressed in emergency Ordinance 08-090 and Motion 08-412, the County Council is interested in revisiting the regulations for use of substandard lots so that the community can have substantial input into the appropriate amount of development to allow in these areas, and the County Council requests that PDS and the Planning Commission undertake this review as soon as possible.

CP 389.

The Snohomish County Council also adopted Emergency Ordinance No. 08-090 two days prior to the Resolution. In that Ordinance (reprinted in Appendix B hereto), the County Council stated:

WHEREAS, the intent of SCC 30.23.240 is and always has been to regulate all residential development on substandard lots, including the development of duplexes and multi-family structures as well as single-family dwellings; and

WHEREAS, the wording and structure of SCC 30.23.240 is complex and potentially confusing, raising questions about whether it applies to all residential development or only to the construction of single-family dwellings; and

WHEREAS, the county has received a number of applications for building permits for duplexes on substandard lots; and

WHEREAS, allowing the development of duplexes at densities higher than allowed for single-family residences in rural areas would be in conflict with the code and would negatively affect the character of rural communities; . . .

CP 298. The Council then concluded: “It is in the best interest of the community to immediately clarify that SCC 30.23.240 applies to all residential development while the review and update of the Rural element is proceeding.” CP 299 (§ 1.G.).

These formal enactments by the legislative body eliminate any possible reading of SCC 30.23.240 as suggested by Mr. Ladiser or, now,

appellant Baker. The Superior Court's ruling respected the authority and manifest intent of the legislative body that authored the disputed language. The Superior Court's ruling should be affirmed.⁸

D. Mr. Ladiser's Interpretation Is Not Supported by Evidence of Decades of County Policy or a Pattern of Practice

Baker claims that Mr. Ladiser's interpretation is supported by evidence of a long history of County policy and practice. Baker Br. at 30-32.

The argument has several flaws.

First, the County's historic practices are irrelevant if the Court agrees with 7-Lakes that the relevant Code provisions are unambiguous. *Nisqually Delta Ass'n, supra*.

Second, even if past practices were relevant, there must be evidence of a long-established and consistently applied policy. One letter written 20 years ago by itself does not comprise "20 years of policy." *See Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 815, 828 P.2d 549 (1992)

⁸ Baker contends that our reading of the Code creates absurd results, in that while single family homes, public facilities and utilities may be allowed on substandard lots, other "commonplace" uses like bed and breakfasts, farm stands, and vet clinics are not allowed. Baker Br. at 33. But the Council's judgment as to which uses may be allowed on substandard lots cannot be questioned in this proceeding. There is nothing "absurd" in the Council authorizing some uses, but not others, as a way of creating incentives for re-aggregation of those substandard lots.

“isolated action” by agency does not constitute agency policy entitled to deference).

Third, “[m]isunderstanding or misinterpretation of a statute or an ordinance by those charged with its enforcement does not alter its meaning or create a substitute enactment.” *Fabin, supra*, 102 Wn. App. at 781. The 20-year old letter referenced by Baker is so contrary to the plain meaning of the ordinance under review that it should be given no weight.

Fourth, the letter construed a different code, *i.e.*, the 1986 Code, not the language being interpreted in this matter. In 1986, the Snohomish County Code contained a substandard lots provision that that was different from the SCC 30.23.240 being analyzed in this appeal. The relevant provision stated:

In any zone except the LI and HI zones, a single-family dwelling may be established on a lot which cannot satisfy the lot area requirements of the zone or on each of two such lots when they have a common side lot line, provided that all other bulk regulations shall apply and provided further that the owner of the lot or lots was of public record or under bona fide contract of purchase prior to the effective date of the zoning. The above exception shall not apply to three (3) or more such lots which are contiguous, vacant lots fronting on the same street and are held under the same ownership on or after the effective date of the zoning. However, it is not intended that a building permit will be issued if the lot size is so inadequate as to create a serious health, sanitation, or safety hazard.

CP II-257 (§ 26.03). The 20-year old letter referenced by Baker is essentially a recital of the contents of § 26.03 and has no relevance here.

VI. THE TRIAL COURT DID NOT ERR IN DENYING BAKER'S MOTION TO SUPPLEMENT THE RECORD

Baker seeks reversal of the trial court's order denying Baker's motion to supplement the record. The motion was correctly denied for several reasons.

First, Baker, as an intervenor, lacked standing to challenge the procedural posture of the case. The original parties to the action had stipulated at the beginning of the case that the matter would be tried on a closed record. CP II:381. The trial judge entered an order accepting that stipulation. CP II:383. Later, Baker sought to intervene in the action and intervention was granted. CP II:263-67. When a party intervenes in an action, the intervenor takes the action as it stands. *See, e.g., Casebere v. Clark County Civil Service Commission*, 21 Wn. App. 73, 77, 584 P.2d 416 (1978). Baker, as an intervenor, had no standing to challenge that previously entered court order.

Second, even if Baker had the right to seek reconsideration of the order, Baker did not seek reconsideration in a timely manner. Baker was granted intervention on January 20, 2009. CP II:265. Baker never filed a

motion seeking reconsideration of the order limiting the evidence to a closed record. In the absence of a motion seeking reconsideration of the previously entered order, Baker waived his right to supplement the evidentiary record with new information.

Third, rather than filing a motion for reconsideration of the order limiting the evidence to a closed record, Baker waited until after the briefing was complete, after oral argument, and after the court rendered its oral opinion before moving to supplement the record with two declarations. CP 38. The trial court did not abuse its discretion in declining to allow that exceedingly tardy proffer of evidence.

VII. THE TRIAL COURT ERRED IN DENYING 7-LAKES' MOTION TO INCLUDE IN THE ADMINISTRATIVE RECORD AN ATTORNEY-CLIENT COMMUNICATION RELEASED BY THE COUNTY TO THE PUBLIC

A. Facts Relevant to Cross-Appeal

Prior to issuing the Code Interpretation, PDS staff communicated with the Assistant Chief of the Civil Division (John Moffat) regarding the correct legal interpretation of SCC 30.23.240. Mr. Moffat construed the section the same way as did 7-Lakes and, later, the Superior Court, *i.e.*, he concluded that duplexes are not allowed on sub-sized lots in the R-5 zone. Mr. Moffat stated, in part:

SCC 30.23.240 constitutes an **exception** to the usual bulk matrix regulations for lot sizes for the limited purpose of allowing single family dwellings under certain circumstances. In other words, if a type of development, *i.e.*, anything other than single family dwellings doesn't come within the language of SCC 30.23.240, then that type of development is not allowed **at all** on substandard lots. That is the situation with duplexes. Since SCC 30.23.240 doesn't apply to duplexes (since they aren't single family dwellings) duplex development is not allowed on substandard lots.

Supp. CP ___ (E-mail from Moffat to Kuller (PDS) (June 24, 2008))

(emphasis in original).

On June 23, 2008, intervenor Robert Landles submitted a request to PDS to review records related to this issue. In pertinent part, Mr. Landles requested:

Copy of any preliminary administrative determination regarding residential use of substandard lots for duplexes, and all correspondence and e-mails pertaining to such determinations, including communications to and from County Council. Copy of any legal analysis or administrative analysis pertaining to the above (use of substandard lots for duplexes).

Supp. CP ___ (Letter from Phillips to Landles (Jun. 26, 2008)).⁹

By letter dated June 26, 2008, Suzie Phillips, a PDS employee, responded to Landles' records request. Phillips is identified as a "records

⁹ Mr. Landles did not retain a copy of the records request form he filled out at the PDS counter that day. His request was quoted by PDS staff in its response several days later. We cite to that response.

specialist/public disclosure specialist.” *Id.* Phillips advised Landles that PDS would have the requested records available no later than July 10, 2008. *Id.*

On July 10, 2008, Mr. Landles went to the Snohomish County Administration Building to review the documents provided in response to his records request. Supp. CP ____ (Landles Declaration, ¶ 5). He was provided with a file which he was told contained all the records prepared in response to his request. The file was not large. There were approximately 20 to 30 documents in the file, totaling no more than 150 pages. *Id.*

Mr. Landles requested copies of certain documents within the file. He requested only a small number of documents, totaling 20 pages or less. The Moffat e-mail (Supp. CP ____) was among the documents that was produced by the County and which Landles requested be copied and provided to him. *Id.* The documents Mr. Landles requested were copied while he waited. He left the building with them that day. *Id.*

Mr. Landles shared the documents with other citizens working on this issue including plaintiff/respondent Ellen Hiatt Watson. Among other things, the document would be useful to Ms. Watson who had a meeting scheduled with the Director of PDS (Craig Ladiser) on July 16, 2008. *Id.* ¶ 6.

On July 11, 2008 (the day after receiving the Moffat e-mail from PDS staff), Mr. Landles wrote a letter to PDS Director Craig Ladiser regarding the proper interpretation of SCC 30.23.240. Supp. CP ____ (Letter from Landles to Ladiser (Jul. 11, 2008)). In that letter, in support of his position, Mr. Landles quoted from the e-mail written by Mr. Moffat who had concurred in the citizens' interpretation of the disputed code provision. *Id.* at 1.

On July 17, 2008, the Manager of PDS' Customer Support Center (Pamela Miller) wrote Mr. Landles a letter stating that PDS had "discovered that a document [the Moffat e-mail] was released to you inadvertently. This document is a privileged communication between attorney and client. We had no intention of waiving, nor do we waive the attorney-client privilege." Supp. CP ____ (Letter from Miller to Landles (Jul. 17, 2008)).

On July 21, 2008, 7-Lakes initiated this lawsuit to seek judicial review of PDS' interpretation of SCC 30.23.240. CP _____. The parties agreed to a stipulated order that the case would be reviewed on a closed record. CP II:383.

On December 12, 2008, the County's Deputy Prosecuting Attorney, Laura Kisielius, submitted a proposed index of the record to be reviewed in

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this matter. CP II:360-378. The Moffat e-mail was not included in the record.

7-Lakes filed a motion to add the disputed Moffat memorandum to the administrative record. Supp. CP _____. The motion was denied. Supp. CP _____. This decision “prejudicially effects” the ruling under appeal and was entered before that ruling and, therefore, is reviewable pursuant to RAP 2.4(b). *See, e.g., Sardam v. Morford*, 51 Wn. App. 908, 911, 756 P.2d 174 (1988) (respondent may challenge a trial court determination not designated in the Notice of Appeal if it “prejudicially effects” the decision designated in the notice). In the event this Court does not affirm the Superior Court on the record before it, 7-Lakes seeks review of the Superior Court’s decision to exclude this document from the evidentiary record and requests that this Court consider this document in its review.

B. Argument on Cross-Appeal

1. Either of two rules may apply to address the inadvertent release of privileged information: an absolute waiver rule and a more subjective “balanced” approach

Until recently, there was no case law in Washington State addressing the issue of inadvertent disclosures of attorney-client information. Last year, however, Division II addressed the issue in a case of first impression. *Sitterson v. Evergreen School District No. 114*, 147 Wn. App. 576, 196 P.3d 735 (2008). As summarized in *Sitterson*, the “traditional approach to waiver of the attorney-client privilege by voluntary disclosure is that all such disclosures (oral or written) made to the opposing party in the course of taking adverse steps in litigation are ‘receivable as being made under an implied waiver of privilege.’” *Sitterson*, at 739 (citing 8 Wigmore, Evidence § 2325 at 63; other citations omitted).

The *Sitterson* court went on to explain, though, that “[m]ore recently, many courts have been more flexible in analyzing waiver because of ‘the scope of modern discovery and the realities of contemporary litigation.’ Specifically, such courts have expressed concern that the ‘**enormous quantities of documents** sought by an opponent through discovery’ in

modern litigation creates an impossible burden on attorneys to attempt to avoid inadvertent disclosure, the consequences of which are ‘potentially staggering.’” *Id.* at 740 (citing 1 McCormick on Evidence, § 93 at 372 (5th ed. 1999) (emphasis supplied)). These courts have adopted a “balanced approach,” weighing various factors.

A third approach, used by yet other courts, is the “absolute ‘no waiver’ approach.” *Id.*

In *Sitterson*, neither party advocated the traditional “absolute waiver” rule. *Id.* As a result, the court did not analyze that rule in its opinion. The *Sitterson* court did not rule out that the “absolute waiver” rule might be applied in another case where one of the parties argues for that approach. *Id.* The *Sitterson* court did not consider the “absolute waiver” approach only because it had not been addressed by the parties in that case:

Because neither party advocates an “absolute waiver” rule, we discuss only whether we should hold that (1) an inadvertent production never waives the privilege or (2) an inadvertent production can waive the privilege depending on the circumstances of the case, particularly those surrounding the production.

Sitterson, supra at 740.

The *Sitterson* court rejected the “no waiver rule.” That rule “deceases incentives for attorneys to guard the confidentiality of their communications

in the first place. Yet once those communications are revealed, the privilege is left ‘with no legitimate function to perform.’” *Id.* at 741 (*quoting* McCormick on Evidence, § 93 at 371-72; other citations omitted). *Sitterson* also quoted a federal case that explained that once a document was inadvertently produced for inspection, it “entered the public domain. Its confidentiality was breached, thereby destroying the basis for the continued existence of the privilege.” *Id.* (*quoting Underwater Storage, Inc. v. U.S. Rubber Company*, 314 F. Supp. 546, 549 (D.B.C. 1970)).

Having rejected the “absolute no waiver” rule and not considering the “absolute waiver” rule, the *Sitterson* court settled on the “balanced approach:”

According to commentators, decisions in other jurisdictions are tending toward a more “balanced” approach to waiver of the attorney-client privilege. One such decision, *Alldread v. City of Grenada*, 988 F.2d 1425 [5th Cir. 1993], adopted a five-part test under which courts consider the circumstances surrounding the disclosure. These factors are (1) the reasonableness of precautions taken to prevent disclosure, (2) the amount of time taken to remedy the error, (3) the scope of discovery, (4) the extent of disclosure, and (5) the overriding issue of fairness. *Alldread*, 988 F.2d at 1433.

Sitterson at 741. *Sitterson* adopted the *Alldread* balanced approach because it takes “into account both the principles underlying the attorney-client privilege and the realities of modern litigation. The approach will

continue to provide incentives for attorneys to protect confidential communications with their clients, but it also recognizes that truly unpreventable and inadvertent disclosures occur at great costs to the client's interest." *Id.* As another court explained:

"One of the most important circumstances affecting the reasonableness of the precautions taken is the number of documents involved in the discovery request. As noted above, the courts have adopted the balanced approach in large part because of the exigencies of modern litigation where tens of thousands or even millions of documents may be produced." Thus, a party may be excused from the waiver consequences of an inadvertent disclosure where the number of documents to be screened is large and the time for screening is short. *See Transamerica Computer [v. IBM]*, 573 F.2d 646 (9th Cir. 1978). (17,000,000 documents to be screened in three months.)

Federal Deposit Insurance Corp. v. Marine Midland Credit Corp., 138 F.R.D. 479, 483 (E.D. Va. 1991).

2. Application of the absolute waiver rule¹⁰

As noted above, *Sitterson* did not explicitly reject the "absolute waiver" rule, but rather declined to discuss it because it had not been the subject of briefing by the parties in that case. As *Sitterson* notes, Washington follows the absolute waiver rule for *deliberate* disclosures of privileged

¹⁰ The document at issue here was not released through discovery, but through a "Public Records Act" request (Chapter 42.56 RCW). We are aware of no cases

documents during discovery. *Id.* at 740. The rule “creates a very strong incentive for attorneys to protect their client’s confidential communications.”

Id.

In this case, the disclosure was made not by an attorney, but by the client. Applying the “absolute waiver” rule to inadvertent disclosures would retain that “very strong incentive” for clients (like their attorneys) to protect confidential communications.

Further, the “balanced” approach was developed to deal with the problems of modern litigation where “enormous quantities of documents [are] sought by an opponent through discovery,” creating an “impossible burden” to “avoid inadvertent disclosure.” There is no need for that approach in a case like this involving a request for copies of fewer than 20 pages of paper. Supp. CP ____.

The rule protecting attorney-client communications is in derogation of the truth-seeking information of the trial court. Every time evidence is excluded pursuant to the privilege, the truth-seeking function of the trial court is impaired. *See generally Dietz v. DOE*, 131 Wn.2d 835, 843, 935 P.2d 611 (1997). Thus, the privilege is construed narrowly. *Id.* at 843, 849.

addressing which rule is to be applied in that context, so we apply the rules developed for disclosures during litigation.

Exceptions from the Public Records Act also are narrowly construed. *O’Neill v. Shoreline*, 145 Wn. App. 913, 922, 187 P.3d 822 (2008).

Implying a waiver where a disclosure is made, deliberately or otherwise, is consistent with cases narrowly construing the attorney-client privilege in the interest of furthering the truth-seeking functions of the trial court. We urge this court to use the “absolute waiver” rule – at least for cases involving requests for small numbers of documents -- and then rule that the Moffat e-mail is not shielded by the attorney-client privilege and must be added to the administrative record if the Superior Court is not affirmed on the existing record.

3. The balanced approach

If this Court elects to use the “balanced approach,” the same result should obtain. The Moffat e-mail should be considered. We address each of the “balanced approach” five factors in the following subsections.

a) The reasonableness of precautions taken to prevent disclosure

“The reasonableness of precautions taken to avoid inadvertent disclosures is the primary factor to take into account and will vary according to the circumstances presented.” *Scott v. Glickman*, 199 F.R.D. 174, 178

(E.D.N.C. 2001). Here, there is no evidence that the County took any reasonable steps to avoid disclosure of attorney-client information.

In response to 7-Lakes' motion, the County filed a declaration that set forth the procedures it employed to avoid disclosing confidential information. Supp. CP _____. The County's declarations disclose a fundamentally flawed and inadequate procedure for guarding against inadvertent disclosures of protected documents. First and foremost, the procedures are not even written. Rather, the County claims to have "an established practice." But there is no evidence of how well "established" this unwritten practice is or how it is communicated to employees.

The precautions failed here because the unwritten precautions were not reasonably likely to guard against inadvertent disclosures. The "established practice" included three steps, none of which were employed here.

First, according to the supposedly "well established" procedure, the employee who has custody of the documents is supposed to do an initial review to identify attorney-client material. Linda Kuller originally had possession of documents responsive to Mr. Landles' document request, including the Moffat e-mail. But obviously Ms. Kuller did not conduct the

first screening called for by the County’s supposedly “established practice,” because Ms. Kuller did not flag a document which was emblazoned with the legend:

*** PRIVILEGED AND CONFIDENTIAL ***” and
“CONFIDENTIALITY STATEMENT: This message may contain information that is protected by the attorney-client and/or work product privilege.

Indeed, Ms. Kuller’s declaration does not even include a statement that she conducted the initial review that supposedly is included within the County’s “established procedures.” For that matter, Ms. Kuller’s declaration does not even state that she is familiar with the supposedly “well established” procedures.

Second, the County’s supposed standard practice calls for all records responsive to a document request to be centralized with one person (Ms. Phillips). It is supposedly the customary practice for Ms. Phillips “to retain exclusive control over” the records responsive to a Public Records Act (PRA) document request. Supp. CP ____ (Miller Dec., ¶ 7). Yet here, it is clear that Ms. Phillips did not maintain “exclusive control” over the records. Rather, she left them unattended on her desk and apparently allowed another employee to add records to the pile, unbeknownst to Ms. Phillips. *See* Supp. CP ____ (Phillips Dec., ¶ 10); Supp. CP ____ (Kuller Dec., ¶ 5). Notably,

neither Ms. Kuller nor Ms. Phillips state in their declarations that they are aware of a standard procedure requiring Ms. Phillips to retain “exclusive control” over the documents. Of course, since the procedure is not in writing, it is understandable that they were not familiar with it and did not employ it here.

Third, as a result of the failure of Ms. Phillips to maintain “exclusive control” over the documents subject to review, she did not conduct a second screen of the documents apparently added to the pile belatedly by Ms. Kuller.

In other words, the County’s supposed procedures, unwritten, include three steps: initial review by the initial holder of the documents; exclusive control by Ms. Phillips; and a second review by Ms. Phillips -- and not one of those three steps was employed in this case as to the Moffat e-mail. Procedures like these are not reasonably calculated to guard against the inadvertent disclosure of confidential information when they are unwritten and staff demonstrates little or no familiarity with them -- as the facts of this case vividly demonstrate.

Snohomish County did not dispute that Mr. Landles’ document request was very, very small. Instead, it noted that the County must respond to many other document requests each year. The County compared the

disclosure of this single Moffat e-mail to the 2,500 PRA requests the County handles annually. But that is a false comparison. There is no evidence of how many other privileged documents have been disclosed in the course of those other PRA requests. The relevant comparison is the number of inadvertently disclosed documents here (one) versus the number of documents requested here (less than 30). Given the very small number of documents requested by Mr. Landles, the County's inability to avoid the inadvertent disclosure of even a single document (especially one labeled "PRIVILEGED AND CONFIDENTIAL") is almost inexplicable and certainly demonstrates that the County did not have (or inform its employees) of procedures reasonably calculated to avoid this kind of error.

Courts have adopted the "balanced approach" to deal with "enormous quantities of documents" subject to discovery in modern litigation. *Sitterson* at 740. In this case, Snohomish County was not reviewing tens of thousands or millions of documents. Snohomish County produced no more than 30 documents totaling no more than 150 pages. Mr. Landles requested copies of less than 20 pages. One of those documents clearly identified itself as "PRIVILEGED AND CONFIDENTIAL." Yet the County neglected to withhold this document. Given the small number of documents being

produced and the clarity with which this document was identified as privileged, the County clearly did not have in place reasonable procedures for avoiding the disclosure of privileged material.

b) The amount of time taken to remedy the error

Snohomish County reacted relatively promptly to remedy the error -- but only after Mr. Landles had already disseminated the document to other citizens and only after those citizens had brought the error to the County's attention. *Sitterson* noted a federal case where there was a long delay before the privilege was asserted by which time the documents had been copied, digested, and analyzed. The court found that "the disclosure cannot be cured simply by return of the documents. The privilege has been permanently destroyed." *Sitterson* at 742 (quoting *In Re: Grand Jury Investigation of Ocean Trans P.*, 604 F.2d 672, 675 (D.C. Cir. 1979)). In like vein here, the privilege had been "permanently destroyed" by the time the County asserted the privilege. Mr. Landles had already conveyed the document to other citizens. The disclosure could not be cured simply by Mr. Landles returning the document to the County.

c) The scope of discovery

This factor overlaps with the first factor regarding the reasonableness of the efforts undertaken to avoid inadvertent disclosure. As noted there, this is not a situation where Snohomish County was making a disclosure of thousands or millions of documents. In *Sitterson*, the court noted that the “District produced 439 documents in response to Sitterson’s request for production. This is not the ‘enormous’ quantity of documents that would excuse an inadvertent production of documents.” *Id.* at 742. Here, Snohomish County produced less than 30 documents. This situation provides an even stronger case for precluding a belated effort to invoke the privilege.

d) The extent of the disclosure

Consideration of this factor weighs in the County’s favor, but only to a limited extent. If this were a case involving an enormous document production, and the County had allowed a single document to slip through its fingers, this factor might weigh more heavily in the County’s favor. *See, e.g., Business Integration Services, Inc. v. AT&T Corp.*, 251 F.R.D. 121, 130 (S.D. N.Y. 2008) (“extent of inadvertent disclosure” factor is mainly a concern “where the extent of disclosure is measured against the overall volume of

documents involved in the discovery”). But where the County was releasing only about 16 or so documents, its inadvertent disclosure of even a single document is hardly a commendable achievement.

e) The overriding issue of fairness

The reported cases have identified two situations where admitting the document was considered to be “unfair” to the disclosing party: (1) where the disclosing party had no control over the disclosure; or (2) where the disclosure was a result of a conflict of interest. *Business Integration Services, Inc. v. AT&T Corp.*, 251 F.R.D. 121, 131 (S.D.N.Y. 2008). Neither are applicable here. In contrast, excluding the Moffat email would be extremely unfair to the citizens. The email reveals that Mr. Ladiser’s code interpretation was issued in direct conflict with the interpretation he received from the County’s attorney. This Court should consider that information if it does not affirm the Superior Court on the existing record.

The appellants claim in their Opening Brief that the construction the County staff gave to the disputed code section is entitled to some deference by the Court. In that context, it will be very relevant for the reviewing court to be aware that County staff was divided on the proper interpretation of the disputed Code section. In that situation, the Court should not give any

deference to the interpretation of the planning staff. The advice given by legal counsel certainly may be relevant, too. *Cf. Mission Springs, Inc. v. City of Spokane*, 134 Wn. 2d 947, 959, 954 P.2d 250 (1998) (City Council liable for damages when it improperly directed staff in direct contravention of city attorney's advice expressed "in no uncertain terms").

VIII. CONCLUSION

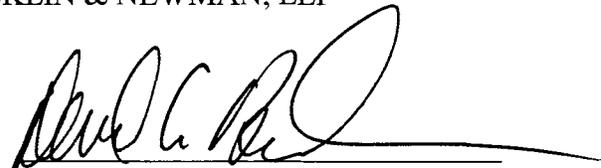
The Superior Court should be affirmed, with or without consideration of the improperly excluded e-mail from the County Prosecutor.

Dated this 2 day of November, 2009.

Respectfully submitted,

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By:



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Attorneys for Respondents

SNOHOMISH COUNTY CODE EXCERPTS

APPENDIX A

Chapter 30.21

Purpose and Establishment of Zones

30.21.010 Purpose and applicability.

This chapter establishes and describes the use zones applicable in unincorporated Snohomish County, as provided for in the comprehensive plan. The provisions of this chapter shall apply to all land within unincorporated Snohomish County.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.21.020 Establishment of zones.

Snohomish County's use zones are established and categorized pursuant to SCC Table 30.21.020.

[Click here for link to Table 30-21-020 pdf file](#) *See Exhibit 6 (Table 30.21.020)*

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003; Amended Ord. 07-029, April 25, 2007, Eff date May 10, 2007)

30.21.025 Intent of zones.

This section describes the intent of each use zone. Snohomish County's use zones are categorized and implemented consistent with the comprehensive plan. The comprehensive plan establishes guidelines to determine compatibility and location of use zones. The intent of each zone is established pursuant to SCC Table 30.21.020 and is set forth below in SCC 30.21.025(1) - (4).

(1) Urban Zones. The urban zones category consists of residential, commercial, and industrial zoning classifications in Urban Growth Areas (UGAs) located outside of cities in unincorporated Snohomish County. These areas are either already characterized by, or are planned for, urban growth consistent with the comprehensive plan.

(a) Single Family Residential. The intent and function of single family residential zones is to provide for predominantly single family residential development that achieves a minimum net density of four dwelling units per net acre. These zones may be used as holding zones for properties that are designated urban medium-density residential, urban high-density residential, urban commercial, urban industrial, public/institutional use (P/IU), or other land uses in the comprehensive plan. The official Snohomish County zoning maps prepared pursuant to SCC 30.21.030 shall use the suffix "P/IU" to indicate all areas in which these zones implement the P/IU designation (e.g., R-7,200-P/IU). Single family residential zones consist of the following:

- (i) Residential 7,200 sq. ft. (R-7,200);
- (ii) Residential 8,400 sq. ft. (R-8,400); and
- (iii) Residential 9,600 sq. ft. (R-9,600).

(b) Multiple Family Residential. Multiple family residential zones provide for predominantly apartment and townhouse development in designated medium- and high-density residential locations. Multiple family residential zones consist of the following:

- (i) Townhouse (T). The intent and function of the townhouse zone is to:

- (A) provide for single family dwellings, both attached and detached, or different styles, sizes, and prices at urban densities greater than those for strictly single family detached development, but less than multifamily development;
- (B) provide a flexible tool for development of physically suitable, skipped-over or under-used lands in urban areas without adversely affecting adjacent development; and
- (C) provide design standards and review which recognize the special characteristics of townhouses, to

ensure the development of well-planned communities, and to ensure the compatibility of such housing developments with adjacent, existing, and planned uses. Townhouses are intended to serve the housing needs of a variety of housing consumers and producers. Therefore, townhouses may be built for renter occupancy of units on a site under single ownership, owner agreements pursuant to chapters 64.32 or 64.34 RCW, or owner or renter occupancy of separately conveyed units on individual lots created through formal subdivision pursuant to chapter 58.17 RCW;

(ii) Low-Density Multiple Residential (LDMR). The intent and function of the low-density multiple residential zone is to provide a variety of low-density, multifamily housing including townhouses, multifamily structures, and attached or detached homes on small lots; and

(iii) Multiple Residential (MR). The intent and function of the multiple residential zone is to provide for high-density development, including townhouses and multifamily structures generally near other high-intensity land uses; and

(iv) Mobile Home Park (MHP). The intent and function of the Mobile Home Park zone is to provide and reserve high density, affordable residential development consisting of mobile homes for existing mobile home parks.

(c) Commercial. The commercial zones provide for neighborhood, community and urban center commercial, and mixed use developments that offer a range of retail, office, personal service and wholesale uses. Commercial zones consist of the following:

(i) Neighborhood Business (NB). The intent and function of the neighborhood business zone is to provide for local facilities that serve the everyday needs of the surrounding neighborhood, rather than the larger surrounding community. Urban villages implemented under chapter 30.34A SCC Urban Centers Demonstration Program are only permitted within the Neighborhood Business (NB) zone;

(ii) Planned Community Business (PCB). The intent and function of the planned community business zone is to provide for community business enterprises in areas desirable for business but having highly sensitive elements of vehicular circulation, or natural site and environmental conditions while minimizing impacts upon these elements through the establishment of performance criteria. Performance criteria for this zone are intended to control external as well as internal effects of commercial development. It is the goal of this zone to discourage "piecemeal" and strip development by encouraging development under unified control. Urban centers implemented under chapter 30.34A SCC Urban Centers Demonstration Program are only permitted within the Planned Community Business (PCB) zone;

(iii) Community Business (CB). The intent and function of the community business zone is to provide for businesses and services designed to serve the needs of several neighborhoods;

(iv) General Commercial (GC). The intent and function of the general commercial zone is to provide for a wide variety of retail and nonretail commercial and business uses. General commercial sites are auto-oriented as opposed to pedestrian or neighborhood oriented. Certain performance standards, subject to review and approval of an official site plan, are contained in chapter 30.31B SCC;

(v) Freeway Service (FS). The intent and function of the freeway service zone is to provide for needed freeway commercial facilities in the vicinity of on/off ramp frontages and access roads of limited access highways with a minimum of traffic congestion in the vicinity of the ramp. Allowed uses are limited to commercial establishments dependent upon highway users. Certain performance standards, subject to review and approval of an official site plan, are contained in chapter 30.31B SCC to protect freeway design;

(vi) Business Park (BP). The intent and function of the business park zone is to provide for those business/industrial uses of a professional office, wholesale and manufacturing nature which are capable of being constructed, maintained, and operated in a manner uniquely designed to be compatible with adjoining residential, retail commercial, or other less intensive land uses, existing or planned. Strict zoning controls must be applied in conjunction with private covenants and unified control of land; many business/industrial uses otherwise provided for in the zoning code will not be suited to the BP zone due to an inability to comply with its provisions and achieve compatibility with surrounding uses. The BP zone, under limited circumstances, may also provide for residential development where sites are large and where compatibility can be assured for on-site mixed uses and for uses on adjacent properties;

(vii) Light Industrial (LI). The intent and function of the light industrial zone is to promote, protect, and provide for light industrial uses while also maintaining compatibility with adjacent nonindustrial areas;

(viii) Heavy Industrial (HI). The intent and function of the heavy industrial zone is to promote, protect, and provide for heavy industrial uses while also maintaining compatibility with adjacent nonindustrial areas; and

(ix) Industrial Park (IP/PIP). The intent and function of the industrial park and planned industrial park zones is to provide for heavy and light industrial development under controls to protect the higher uses of land and to stabilize

property values primarily in those areas in close proximity to residential or other less intensive development. The IP and remaining Planned Industrial Park (PIP) zones are designed to ensure compatibility between industrial uses in industrial centers and thereby maintain the attractiveness of such centers for both existing and potential users and the surrounding community. Vacant/undeveloped land which is currently zoned PIP shall be developed pursuant to industrial park zone regulations (chapter 30.31A SCC).

(d) Industrial Zones. The industrial zones provide for a range of industrial and manufacturing uses and limited commercial and other nonindustrial uses necessary for the convenience of industrial activities. Industrial zones consist of the following:

- (i) Business Park (BP). See description under SCC 30.21.025(1)(c)(vi);
- (ii) Light Industrial (LI). See description under SCC 30.21.025(1)(c)(vii);
- (iii) Heavy Industrial (HI). See description under SCC 30.21.025(1)(c)(viii); and
- (iv) Industrial Park (IP). See description under SCC 30.21.025(1)(c)(ix).

(e) Mixed use zone. The mixed use (MU) zone shall only be applied to properties approved for an fully contained communities (FCC) in accordance with Chapter 30.33A SCC. Allowed and/or prohibited uses for the MU zone shall be administered through the FCC permit Master Plan pursuant to SCC 30.33A.100(9).

(i) Purposes. The MU zone is established to achieve the following purposes:

- (A) To enable FCC development, pursuant to this chapter, with imaginative site and building design in a compatible mixture of land uses that will encourage pedestrian rather than automotive access to employment opportunities and goods and services;
- (B) To ensure sensitivity in land use and design to adjacent land uses in the MU district, and avoid the creation of incompatible land uses;
- (C) To ensure that all development in the FCC gives adequate consideration to and provides mitigation for the impacts it creates with respect to transportation, public utilities, open space, recreation and public facilities, and that circulation, solid waste disposal and recycling, water, sewer and storm water systems are designed to adequately serve the FCC; and
- (D) To ensure that development protects and preserves the natural environment to the maximum extent possible, including but not limited to protection of the water quality of the county's rivers, contribution to the long-term resolution of flooding problems, protection of wetlands and critical areas and protection of views of the county's foothills, mountains, open space areas, or other scenic resources within the county.

(ii) Objectives. Each proposal for development within the MU zone shall be in conformity with the FCC permit master plan and advance the achievement of the foregoing purposes of the MU zone and the following objectives:

- (A) The preservation or creation of open space for the enjoyment of the residents of the FCC, employees of business located within the FCC and the general public;
- (B) The creation of attractive, pedestrian-oriented neighborhoods with a range of housing types, densities, costs and ownership patterns;
- (C) The provision of employment opportunities and goods and services in close proximity to, interspersed with, or attached to residential uses;
- (D) The provision of a balanced mix and range of land uses within and adjacent to the development that minimize the necessity for the use of automobiles on a daily basis;
- (E) The use of highest quality architectural design and a harmonious use of materials;
- (F) The provision of a range of street sizes and designs, including narrow streets designed principally for the convenience of pedestrians as well as streets of greater width designed primarily for vehicular traffic;
- (G) The provision of commons, greens, parks or civic buildings or spaces as places for social activity and assembly for the community; and
- (H) The provision of clustered development to preserve open space within the FCC while still achieving an overall desired density for the FCC.

(2) Rural Zones. The rural zones category consists of zoning classifications applied to lands located outside UGAs that are not designated as agricultural or forest lands of long-term commercial significance. These lands have existing or planned rural services and facilities, and rural fire and police protection services. Rural zones may be used as holding zones for properties that are primarily a transition area within UGAs on steep slopes adjacent to non-UGA lands designated rural or agriculture by the comprehensive plan. Rural zones consist of the following:

(a) Rural Diversification (RD). The intent and function of the rural diversification zone is to provide for the orderly use and development of the most isolated, outlying rural areas of the county and at the same time allow sufficient flexibility so that traditional rural land uses and activities can continue. These areas characteristically have only rudimentary public services and facilities, steep slopes and other natural conditions, which discourage intense development, and a resident population, which forms an extremely rural and undeveloped environment. The resident population of these areas is small and highly dispersed. The zone is intended to protect, maintain, and encourage traditional and appropriate rural land uses, particularly those which allow residents to earn a satisfactory living on their own land. The following guidelines apply:

(i) a minimum of restrictions shall be placed on traditional and appropriate rural land uses;

(ii) the rural character of these outlying areas will be protected by carefully regulating the size, location, design, and timing of large-scale, intensive land use development; and

(iii) large residential lots shall be required with the intent of preserving a desirable rural lifestyle as well as preventing intensive urban- and suburban-density development, while also protecting the quality of ground and surface water supplies and other natural resources;

(b) Rural Resource Transition - 10 Acre (RRT-10). The intent and function of the rural resource transition - 10 acre zone is to implement the rural residential-10 (resource transition) designation and policies in the comprehensive plan, which identify and designate rural lands with forestry resource values as a transition between designated forest lands and rural lands;

(c) Rural-5 Acre (R-5). The intent and function of the rural-5 acre zone is to maintain rural character in areas that lack urban services. Land zoned R-5 and having an RA overlay, depicted as R-5-RA on the official zoning map, is a Transfer of Development Rights (TDR) receiving area and, consistent with the comprehensive plan, will be retained in the R-5 RA zone until regulatory controls are in place which ensure that TDR certificates issued pursuant to SCC 30.35A.050 will be required for development approvals within the receiving area;

(d) Rural Business (RB). The intent and function of the rural business zone is to permit the location of small-scale commercial retail businesses and personal services which serve a limited service area and rural population outside established UGAs. This zone is to be implemented as a "floating zone" and will be located where consistent with specific locational criteria. The rural business zone permits small-scale retail sales and services located along county roads on small parcels that serve the immediate rural residential population, and for a new rural business, are located two and one-half miles from an existing rural business, rural freeway service zone, or commercial designation in the rural area. Rural businesses, which serve the immediate rural population, may be located at crossroads of county roads, state routes, and major arterials;

(e) Clearview Rural Commercial (CRC). The intent and function of the CRC zone is to permit the location of commercial businesses and services that primarily serve the rural population within the defined boundary established by the CRC land use designation. Uses and development are limited to those compatible with existing rural uses that do not require urban utilities and services.

(f) Rural Freeway Service (RFS). The intent and function of the rural freeway service zone is to permit the location of small-scale, freeway-oriented commercial services in the vicinity of on/off ramp frontages and access roads of interstate highways in areas outside a designated UGA boundary and within rural areas of the county. Permitted uses are limited to commercial establishments dependent upon highway users; and

(g) Rural Industrial (RI). The intent and function of the rural industrial zone is to provide for small-scale light industrial, light manufacturing, recycling, mineral processing, and resource-based goods production uses that are compatible with rural character and do not require an urban level of utilities and services.

(3) Resource Zones. The resource zones category consists of zoning classifications that conserve and protect lands useful for agriculture, forestry, or mineral extraction or lands which have long-term commercial significance for these uses. Resource zones consist of the following:

(a) Forestry (F). The intent and function of the forestry zone is to conserve and protect forest lands for long-term forestry and related uses. Forest lands are normally large tracts under one ownership and located in areas outside UGAs and away from residential and intense recreational use;

(b) Forestry and Recreation (F&R). The intent and function of the forestry and recreation zone is to provide for the development and use of forest land for the production of forest products as well as certain other compatible uses such as recreation, including recreation uses where remote locations may be required, and to protect publicly-owned parks in

GAs;

(c) Agriculture-10 Acre (A-10). The intent and function of the agricultural-10 acre zone is:

(i) To implement the goals and objectives of the County General Policy Plan, which include the goals of protecting agricultural lands and promoting agriculture as a component of the County economy;

(ii) To protect and promote the continuation of farming in areas where it is already established and in locations where farming has traditionally been a viable component of the local economy; and

(iii) To permit in agricultural lands, with limited exceptions, only agricultural land uses and activities and farm-related uses that provide a support infrastructure for farming, or that support, promote or sustain agricultural operations and production including compatible accessory commercial or retail uses on designated agricultural lands.

(iv) Allowed uses include, but are not limited to:

(A) Storage and refrigeration of regional agricultural products;

(B) Production, sales and marketing of value-added agricultural products derived from regional sources;

(C) Supplemental sources of on-farm income that support and sustain on-farm agricultural operations and production;

(D) Support services that facilitate the production, marketing and distribution of agricultural products;

(E) Off farm and on-farm sales and marketing of predominately regional agricultural products from one or more producers, agriculturally related experiences, products derived from regional agricultural production, products including locally made arts and crafts, and ancillary sales or service activities.

(F) Accessory commercial or retail uses which shall be accessory to the growing of crops or raising of animals and which shall sell products predominately produced on-site, agricultural experiences, or products, including arts and crafts, produced on-site. Accessory commercial or retail sales shall offer for sale a significant amount of products or services produced on-site.

(v) Allowed uses shall comply with all of the following standards:

(A) The uses shall be compatible with resource land service standards.

(B) The allowed uses shall be located, designed and operated so as not to interfere with normal agricultural practices.

(C) The uses may operate out of existing or new buildings with parking and other supportive uses consistent with the size and scale of agricultural buildings but shall not otherwise convert agricultural land to non-agricultural uses.

(d) Mineral Conservation (MC). The intent and function of the mineral conservation zone is to comprehensively regulate excavations within Snohomish County. The zone is designed to accomplish the following:

(i) preserve certain areas of the county which contain minerals of commercial quality and quantity for mineral conservation purposes and to prevent incompatible land use development prior to the extraction of such minerals and materials and to prevent loss forever of such natural resources;

(ii) preserve the goals and objectives of the comprehensive plan by setting certain guidelines and standards for location of zones and under temporary, small-scale conditions to permit other locations by conditional use permit;

(iii) permit the necessary processing and conversion of such material and minerals to marketable products;

(iv) provide for protection of the surrounding neighborhood, ecological and aesthetic values, by enforcing controls for buffering and for manner and method of operation; and

(v) preserve the ultimate suitability of the land from which natural deposits are extracted for rezones and land usages consistent with the goals and objectives of the comprehensive plan.

(4) Other Zones: The other zones category consists of existing zoning classifications that are no longer primary implementing zones but may be used in special circumstances due to topography, natural features, or the presence of extensive critical areas. Other zones consist of the following:

(a) Suburban Agriculture-1 Acre (SA-1);

(b) Rural Conservation (RC);

(c) Rural Use (RU);

(d) Residential 20,000 sq. ft. (R-20,000);

(e) Residential 12, 500 sq. ft. (R-12,500); and

(f). Waterfront beach (WFB).

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003; Amended Ord. 03-051, June 4, 2003, Eff date June 27, 2003; Ord. 03-107, Sept. 10, 2003, Eff date Sept. 25, 2003; Ord. 03-099, Sept. 10, 2003, Eff date October 6, 2003; Ord. 04-070, July 28, 2004, Eff date Aug. 23, 2004; Amended Ord. 04-074, July 28, 2004, Eff date Aug. 23, 2004; Amended Ord. 05-087, December 21, 2005, Eff date Feb. 1, 2006; Amended Ord. 05-101, December 21, 2005, Eff date Feb. 1, 2006; Amended Ord. 06-046, July 19, 2006, Eff date August 5, 2006; Amended Ord. 06-137, December 13, 2006, Eff date Jan. 1, 2007; Amended Ord. 07-029, April 25, 2007, Eff date May 10, 2007)

30.21.030 Zoning maps and boundaries.

Official zoning maps designating the exact boundaries of each zone, as adopted by the hearing examiner and/or county council, shall be available for public review at the department during business hours. The location and boundaries of the zones shall be shown on the official zoning maps and subject to the following rules of interpretation:

(a) Any property not zoned by map shall be classified as R-5 outside of the UGAs, and R-9,600 within the UGAs;

b) Unless otherwise referred to established points, lines, or features, the zone boundary lines are the centerlines of streets, public alleys, parkways, waterways, or railroad rights-of-way. In the case of navigable water, the outer harbor line shall be the boundary line. If the outer harbor line is not established, then the zone boundary shall extend 500 feet from the ordinary high water mark; and

(c) Zone classification will not change as a result of vacating a street or alley. The boundaries originally established will continue to apply.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.21.040 Flood hazard and noise impact areas.

Those areas defined as special flood hazard areas by chapter 30.65 SCC may be depicted on the official zoning maps. Where available, noise impact contours surrounding large airports may also be depicted on these maps. Such depictions are advisory only. They are provided in an attempt to assist the public in identifying properties located in special flood hazard or noise impact areas, but because they may be neither complete nor entirely accurate, they should not be relied upon and will not be used by the county for regulatory purposes.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

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Chapter 30.22 Uses allowed in Zones

30.22.010 Purpose and applicability.

This chapter establishes which uses or types of uses are permitted, which require special approvals, and which are prohibited in the various county zones. Zones are grouped into four categories, as shown below, with each of the zones listed from left to right in increasing intensity of use in a matrix. Some uses have additional or special requirements that are listed by numbered reference notes in SCC 30.22.130. The categories and zones are as follows:

- (1) Urban Zones - R-9,600, R-8,400, R-7,200, T, LDMMR, MR, NB, PCB, CB, GC, FS, IP, BP, LI, HI, MHP;
- (2) Rural Zones - RD, RRT-10, R-5, RB, CRC, RFS, RI;
- (3) Resource Zones - F, F&R, A-10, MC; and
- (4) Other Zones - SA-1, RC, RU, R-20,000, R-12,500, WFB.

For a description of each zone, see SCC 30.21.025.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003; Amended Ord. 07-029, April 25, 2007, Eff date May 10, 2007)

30.22.020 Categories of uses.

(1) SCC 30.22.100, 30.22.110, and 30.22.120 comprise the use matrix. The use matrix lists uses and indicates whether uses are permitted (P), require conditional use (C) or administrative conditional use (A) approval, or are prohibited in a particular zone.

(a) Permitted uses (P) are those permitted outright. Certain uses have special requirements indicated by footnotes in the use matrices.

(b) Conditional uses (C) are those which require special review in order to ensure compatibility with permitted uses in the same zone. Conditional use permits are granted by the hearing examiner following a review and recommendation from the department and an open record public hearing.

(c) Administrative conditional uses (A) also require special review to ensure compatibility with permitted uses in the same zone. Administrative conditional uses are granted by the department. Uses formerly categorized as temporary uses or special uses are now processed as administrative conditional uses.

(d) Special use permits (S) require a local, state, or regional land use permit issued for a facility at a particular location subject to conditions placed on the proposed use to ensure compatibility with adjacent land uses.

(e) Prohibited uses are those which are not allowed in a zone. A blank box in the use matrix indicates a use is not allowed.

(2) Essential public facilities shall be permitted in any zone in which they are listed as a permitted or conditional use upon the approval of a development agreement under SCC 30.75.020, 30.75.100 and 30.75.130.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003; Amended Ord. 03-006, February 19, 2003, Eff date March 9, 2003; Emergency Ordinance No. 04-019, February 11, 2004, Eff date February 11, 2004; Amended Ord. 05-040, July 6, 2005, Eff date Aug. 8, 2005; Emergency Ord. 06-009, Feb. 22, 2006; Eff date Feb. 22, 2006)

30.22.025 Incidental uses.

Uses which are incidental to a conforming permitted, conditional, or administrative conditional use may be placed on lots in conjunction with the permitted, conditional, or administrative conditional use.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

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30.22.030 Number of uses per lot.

Uses shall be established upon legally created lots that conform to current zoning requirements or on legal nonconforming lots. A lot may have more than one use placed within its bounds, except that only one single family dwelling may be placed on a lot. This exception shall not apply to model homes as defined herein, to planned residential developments proposed and approved pursuant to chapter 30.42B SCC, center projects proposed and approved pursuant to chapter 30.34A SCC, or to land zoned commercial or multiple family residential. Multifamily structures may be placed on lots at densities controlled by chapter 30.23 SCC.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003; Amended Ord. 05-087, December 21, 2005, Eff date Feb. 1, 2006)

30.22.040 Interpretation of matrices.

The following rules apply to interpretation of the use matrices:

- (1) Specific regulations or requirements shall supersede general or implied regulations;
- (2) If a use is listed in one category matrix but not in another, the use is prohibited where not listed; and
- (3) If a proposed use is not specifically mentioned in any of the category matrices, the department shall determine whether it closely fits or matches another listed use.
 - (a) Any use which is determined not to closely fit or match a listed use shall not be permitted (except as allowed by default in the industrial zoning classifications for urban zones).
 - (b) Determinations regarding unlisted uses shall be considered code interpretations as prescribed under chapter 30.83 SCC.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.22.050 Temporary emergency use or structure.

The department may approve a temporary emergency use or structure in order to avoid imminent danger to the public, or to public or private property, or to prevent imminent and serious environmental degradation. Emergency approvals shall be granted in writing and only when action must be taken immediately, or within a time too short to allow for processing of a permit. A building permit and related inspections and approvals may be required.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.22.100 Urban Zone Categories: Use Matrix

Click [HERE](#) or a link to 30.22.100 Urban Use Matrix .pdf file

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003; Amended Ord. 03-051, June 4, 2003, Eff date June 27, 2003; Ord. 03-107, Sept. 10, 2003, Eff date Sept. 25, 2003, Amended Ord. 04-010, Mar. 3, 2004, Eff date Mar. 15, 2004; Amended Ord. 04-055, June 2, 2004, Eff date July 1, 2004; Amended Ord. 04-074, July 28, 2004, Eff date Aug. 23, 2004; Amended Ord. 05-040, July 6, 2005, Eff date Aug. 8, 2005; Ord. 05-094, Sept. 14, 2005, Eff date Sept. 29, 2005; Amended Ord. 05-038, November 30, 2005, Eff date Dec. 16, 2005; Amended Ord. 05-083, December 21, 2005, Eff date Feb. 1, 2006; Amended Ord. 05-087, December 21, 2005, Eff date Feb. 1, 2006; Amended Emerg. Ord. 06-011, Feb. 15, 2006, Eff date Feb. 15, 2006; Amended Ord. 06-057, Aug. 2, 2006, Eff date Aug. 14, 2006; Amended Ord. 06-137, December 13, 2006, Eff date Jan. 1, 2007; Amended Ord. 07-029, April 25, 2007, Eff date May 10, 2007)

30.22.110 Rural and Resource Use Matrix

Click [HERE](#) for a link to 30.22.110 Rural & Resource Use Matrix .pdf file *— Sec Exhibit I*

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003, Amended Ord. 04-010, Mar. 3, 2004, Eff date Mar. 15, 2004; Amended Ord. 04-055, June 2, 2004, Eff date July 1, 2004; Amended Ord. 04-074, July 28, 2004, Eff date Aug. 23, 2004; Amended Ord. 05-021, May 11, 2005, Eff date May 28, 2005; Amended Ord. 05-040, July 6, 2005; Eff date Aug. 8, 2005; Ord. 05-094, Sept. 14, 2005, Eff date Sept. 29, 2005; Amended Ord. 05-038, November 30, 2005, Eff date Dec. 16, 2005; Amended Ord. 05-083, December 21, 2005, Eff date Feb. 1, 2006; Amended Ord. 05-146, Jan. 18, 2006, Eff date Feb. 12, 2006; Amended Emerg. Ord. 06-011, Feb. 15, 2006, Eff date Feb. 15, 2006; Amended Ord. 06-004, March 15, 2006, Eff date April 4, 2006; Amended Ord. 06-046, July 19, 2006, Eff date August 5, 2006; Amended Ord. 06-057, Aug. 2, 2006, Eff date Aug 14, 2006; Amended Ord. 06-137, December 13, 2006, Eff date Jan. 1, 2007; Amended Ord. 07-090, Sept. 5, 2007, Eff date Sept. 21, 2007)

30.22.120 Other Zone Categories Use Matrix

Click [HERE](#) for a link to 30.22.120 Other Zone Categories Use Matrix .pdf file

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003, Amended Ord. 04-010, Mar. 3, 2004, Eff date Mar. 15, 2004; Amended Ord. 04-055, June 2, 2004, Eff date July 1, 2004, Amended Ord. 04-074, July 28, 2004, Eff date Aug. 23, 2004; Amended Ord. 05-021, May 11, 2005, Eff date May 28, 2005; Amended Ord. 05-040, July 6, 2005, Eff date Aug. 8, 2005; Ord. 05-094, Sept. 14, 2005, Eff date Sept. 29, 2005; Amended Ord. 05-038, November 30, 2005, Eff date Dec. 16, 2005; Amended Ord. 05-083, December 21, 2005, Eff date Feb. 1, 2006; Amended Emerg. Ord. 06-011, Feb. 15, 2006, Eff date Feb. 15, 2006; Amended Ord. 06-057, Aug. 2, 2006, Eff date Aug. 14, 2006)

30.22.130 Reference notes for use matrix.

(1) Airport, Stage 1 Utility:

- (a) Not for commercial use and for use of small private planes; and
- (b) In the RU zone, they shall be primarily for the use of the resident property owner.

(2) Day Care Center:

- (a) In WFB, R-7,200, R-8,400, R-9,600, R-12,500, R-20,000, and SA-1 zones, shall only be permitted in connection with and secondary to a school facility or place of worship; and
- (b) Outdoor play areas shall be fenced or otherwise controlled, and noise buffering provided to protect adjoining residences.

(3) Dock and Boathouse, Private, Non-commercial:

- (a) The height of any covered over-water structure shall not exceed 12 feet as measured from the line of ordinary high water;
- (b) The total roof area of covered, over-water structures shall not exceed 1,000 square feet;
- (c) The entirety of such structures shall have a width no greater than 50 percent of the width of the lot at the natural shoreline upon which it is located;
- (d) No over-water structure shall extend beyond the mean low water mark a distance greater than the average length of all preexisting over-water structures along the same shoreline and within 300 feet of the parcel on which proposed. Where no such preexisting structures exist within 300 feet, the pier length shall not exceed 50 feet;
- (e) Structures permitted hereunder shall not be used as a dwelling, nor shall any boat moored at any wharf be used as a dwelling while so moored; and
- (f) Covered structures are subject to a minimum setback of three feet from any side lot line or extension thereof. No side yard setback shall be required for uncovered structures. No rear yard setback shall be required for any structure permitted hereunder.

(4) Dwelling, Single family: In PCB zones, shall be allowed only if included within the same structure as a commercial establishment.

(5) Dwelling, Townhouse shall be:

- (a) Subject to all conditions of chapter 30.31E SCC;

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(b) Subject to the maximum density allowed by the appropriate implementing zone for the comprehensive plan designation applied to the site;

(c) A permitted use when placed on individual lots created by the subdivision process; and

(d) A conditional use when located on individual lots not created through the subdivision process.

(6) Dwelling, Mobile Home:

(a) Shall be multi-sectioned by original design, with a width of 20 feet or greater along its entire body length;

(b) Shall be constructed with a non-metallic type, pitched roof;

(c) Except where the base of the mobile home is flush to ground level, shall be installed either with:

(i) skirting material which is compatible with the siding of the mobile home; or

(ii) a perimeter masonry foundation;

(d) Shall have the wheels and tongue removed; and

(e) In the RU zone the above only applies if the permitted lot size is less than 20,000 square feet.

(7) Fallout Shelter, Joint, by two or more property owners:

Side and rear yard requirements may be waived by the department along the boundaries lying between the properties involved with the proposal, and zone; provided that its function as a shelter is not impaired.

(8) Family Day Care Home:

(a) No play yards or equipment shall be located in any required setback from a street; and

(b) Outdoor play areas shall be fenced or otherwise controlled.

(9) Farm Stand:

(a) There shall be only one stand on each lot; and

(b) At least 50% by farm product unit of the products sold shall be grown, raised or harvested in Snohomish County, and 75% by farm product unit of the products sold shall be grown, raised or harvested in the State of Washington.

(10) Farm Worker Dwelling:

(a) At least one person residing in each farm worker dwelling unit shall be employed full time in the farm operation;

(b) An agricultural farm worker dwelling unit affidavit must be signed and recorded with the county attesting to the need for such dwellings to continue the farm operation;

(c) The number of farm worker dwellings shall be limited to one per each 40 acres under single contiguous ownership to a maximum of six total dwellings, with 40 acres being required to construct the first accessory dwelling unit. Construction of the maximum number of dwelling units permitted shall be interpreted as exhausting all residential potential of the land until such time as the property is legally subdivided; and

(d) All farm worker dwellings must be clustered on the farm within a 10-acre farmstead which includes the main dwelling. The farmstead's boundaries shall be designated with a legal description by the property owner with the intent of allowing maximum flexibility while minimizing interference with productive farm operation. Farm worker dwellings may be located other than as provided for in this subsection only if environmental or physical constraints preclude meeting these conditions.

(11) Home Occupation: See SCC 30.28.050(1).

(12) Kennel, Commercial: There shall be a five-acre minimum lot area; except in the R-5 and RD zones, where 200,000 square feet shall be the minimum lot area.

(13) Kennel, Private-breeding, and Kennel, Private Non-breeding: Where the animals comprising the kennel are housed within the dwelling, the yard or some portion thereof shall be fenced and maintained in good repair or to contain or to confine the animals upon the property and restrict the entrance of other animals.

(14) Parks, Publicly-owned and Operated:

(a) No bleachers are permitted if the site is less than five acres in size;

(b) All lighting shall be shielded to protect adjacent properties; and

(c) No amusement devices for hire are permitted.

(15) Boarding House: There shall be accommodations for no more than two persons.

(16) RESERVED for future use (Social Service Center - DELETED by Amended Ord. 04-010 effective March 15, 2004)

(17) Swimming/Wading Pool (not to include hot tubs and spas): For the sole use of occupants and guests:

(a) No part of the pool shall project more than one foot above the adjoining ground level in a required setback; and

(b) The pool shall be enclosed with a fence not less than four feet high, of sufficient design and strength to keep out children.

(18) Temporary Dwelling for a relative:

(a) The dwelling shall be occupied only by a relative, by blood or marriage, of the occupant(s) of the permanent dwelling;

(b) The relative must receive from, or administer to, the occupant of the other dwelling continuous care and assistance necessitated by advanced age or infirmity;

(c) The need for such continuous care and assistance shall be attested to in writing by a licensed physician;

(d) The temporary dwelling shall be occupied by not more than two persons;

(e) Use as a commercial rental unit shall be prohibited;

(f) The temporary dwelling shall be situated not less than 20 feet from the permanent dwelling on the same lot and shall not be located in any required yard of the principal dwelling;

(g) A land use permit binder shall be executed by the landowner, recorded with the Snohomish County Auditor and a copy of the recorded document submitted to the department for inclusion in the permit file;

(h) Adequate screening, landscaping, or other measures shall be provided to protect surrounding property values and ensure compatibility with the immediate neighborhood;

(i) An annual renewal of the temporary dwelling permit, together with recertification of need, shall be accomplished by the applicant through the department in the same month of each year in which the initial mobile home/building permit was issued;

(j) An agreement to terminate such temporary use at such time as the need no longer exists shall be executed by the applicant and recorded with the Snohomish County Auditor; and

(k) Only one temporary dwelling may be established on a lot. The temporary dwelling shall not be located on a lot on which a detached accessory apartment is located.

(19) Recreational Vehicle:

(a) There shall be no more than one per lot;

(b) Shall not be placed on a single site for more than 180 days in any 12-month period; and

(c) Shall be limited in the floodways to day use only (dawn to dusk) during the flood season (October 1 through March 30) with the following exceptions:

(i.) Recreational vehicle use associated with a legally occupied dwelling to accommodate overnight guests for no more than a 21-day period;

(ii.) Temporary overnight use by farm workers on the farm where they are employed subject to SCC 30.22.130(19)(a) and (b) above; and

(iii) Subject to SCC 30.22.130(19)(a) and (b) above and SCC 30.22.120(7)(b), temporary overnight use in a mobile home park, which has been in existence continuously since 1970 or before, that provides septic or sewer service, water and other utilities, and that has an RV flood evacuation plan that has been approved and is on file with the Department of Emergency Management and Department of Planning and Development Services.

(20) Ultralight Airpark:

(a) Applicant shall submit a plan for the ultralight airpark showing the location of all buildings, ground circulation, and parking areas, common flight patterns, and arrival and departure routes;

(b) Applicant shall describe in writing the types of activities, events, and flight operations which are expected to occur at the airpark; and

(c) Approval shall be dependent upon a determination by the county decision maker that all potential impacts such as noise, safety hazards, sanitation, traffic, and parking are compatible with the site and neighboring land uses, particularly those involving residential uses or livestock or small animal husbandry; and further that the proposed use can comply with Federal Aviation Administration regulations (FAR Part 103), which state that ultralight vehicle operations will not:

(i) create a hazard for other persons or property;

(ii) occur between sunset and sunrise;

(iii) occur over any substantially developed area of a city, town, or settlement, particularly over residential areas or over any open air assembly of people; or

(iv) occur in an airport traffic area, control zone, terminal control area, or positive control area without prior authorization of the airport manager with jurisdiction.

(21) Craft Shop:

(a) Articles shall not be manufactured by chemical processes;

(b) No more than three persons shall be employed at any one time in the fabricating, repair, or processing of materials; and

(c) The aggregate nameplate horsepower rating of all mechanical equipment on the premises shall not exceed two.

(22) Grocery and Drug Stores: In the FS zone, there shall be a 5,000-square foot floor area limitation.

(23) Motor Vehicle and Equipment Sales: In the CB and CRC zone, all display, storage, and sales activities shall be conducted indoors.

(24) Race Track: The track shall be operated in such a manner so as not to cause offense by reason of noise or vibration beyond the boundaries of the subject property.

(25) Rural Industry:

(a) The number of employees shall not exceed 10;

(b) All operations shall be carried out in a manner so as to avoid the emission or creation of smoke, dust, fumes, odors, heat, glare, vibration, noise, traffic, surface water drainage, sewage, water pollution, or other emissions which are unduly or unreasonably offensive or injurious to properties, residents, or improvements in the vicinity;

(c) The owner of the rural industry must reside on the same premises as the rural industry and, in the RD zone, the residence shall be considered as a caretaker's quarters; and

(d) Outside storage, loading or employee parking in the RD zone shall provide 15-foot wide Type A landscaping as defined in SCC 30.25.017.

(26) Sawmill, Shake and Shingle Mill:

(a) Such uses shall not include the manufacture of finished wood products such as furniture and plywood, but shall include lumber manufacturing;

(b) The number of employees shall not exceed 25 during any eight-hour work shift;

(c) All operations shall be carried out in a manner so as to avoid the emission or creation of smoke, dust, fumes, odors, heat, glare, vibration, noise, traffic, surface water drainage, sewage, water pollution, or other emissions which are unduly or unreasonably offensive or injurious to properties, residents or improvements in the vicinity; and

(d) Sawmills and shakemills adjacent to a state highway in the RU zone shall provide 25 feet of Type A landscaping as defined in SCC 30.25.017.

(27) Governmental and Utility Structures and Facilities:

Special lot area requirements for this use are contained in SCC 30.23.200.

(28) Excavation and Processing of Minerals:

(a) This use, as described in SCC 30.31D.010(2), is allowed in the identified zones only where these zones coincide with the mineral lands designation in the comprehensive plan (mineral resource overlay or MRO), except for the MC zone where mineral lands designation is not required.

(b) An Administrative Conditional Use Permit or a Conditional Use Permit is required pursuant to SCC 30.31D.030.

(c) Excavation and processing of minerals exclusively in conjunction with forest practices regulated pursuant to chapter 76.09 RCW is permitted outright in the Forestry zone.

(29) Medical Clinic, Licensed Practitioner: A prescription pharmacy may be permitted when located within the main building containing licensed practitioner(s).

(30) Forest Industry Storage & Maintenance Facility (except harvesting) adjacent to property lines in the RU zone shall provide 15-foot wide Type A landscaping as defined in SCC 30.25.017.

(31) Boat Launch Facilities, Commercial or Non-commercial:

(a) The hearing examiner may regulate, among other factors, required launching depth, lengths of existing docks and piers;

(b) Off-street parking shall be provided in an amount suitable to the expected usage of the facility. When used by the general public, the guideline should be 32 to 40 spaces capable of accommodating both a car and boat trailer for each

ramp lane of boat access to the water;

(c) A level vehicle-maneuvering space measuring at least 50 feet square shall be provided;

(d) Pedestrian access to the water separate from the boat launching lane or lanes may be required where it is deemed necessary in the interest of public safety;

(e) Safety buoys shall be installed and maintained separating boating activities from other water-oriented recreation and uses where this is reasonably required for public safety, welfare, and health; and

(f) All site improvements for boat launch facilities shall comply with all other requirements of the zone in which it is located.

(32) Campground:

(a) The maximum overall density shall be seven camp or tent sites per acre; and

(b) The minimum site size shall be 10 acres.

(33) Commercial Vehicle Home Basing:

(a) The vehicles may be parked and maintained only on the property wherein resides a person who uses them in their business;

(b) Two or more vehicles may be so based; and

(c) The vehicles shall be in operable conditions.

(34) Distillation of Alcohol:

(a) The distillation shall be from plant products, for the purpose of sale as fuel, and for the production of methane from animal waste produced on the premises;

(b) Such distillation shall be only one of several products of normal agricultural activities occurring on the premises; and

(c) By-products created in this process shall be used for fuel or fertilizer on the premises.

(35) RESERVED for future use (Group Care Facility - DELETED by Amended Ord. 04-010 effective March 15, 2004)

(36) Mobile Home and Travel Trailer Sales:

(a) Property shall directly front upon a principal or minor arterial in order to reduce encroachment into the interior of IP designated areas;

(b) The hearing examiner shall consider the visual and aesthetic characteristics of the use proposal and determine whether nearby business and industrial uses, existing or proposed, would be potentially harmed thereby. A finding of potential incompatibility shall be grounds for denial;

(c) The conditional use permit shall include a condition requiring mandatory review by the hearing examiner at intervals not to exceed five years for the express purpose of evaluating the continued compatibility of the use with other IP uses. The review required herein is in addition to any review which may be held pursuant to SCC 30.42B.100, SCC 30.42C.100 and SCC 30.43A.100;

(d) Such use shall not be deemed to be outside storage for the purpose of SCC 30.25.024; and

(e) Such use shall be temporary until business or industrial development is timely on the site or on nearby IP designated property.

(37) Small Animal Husbandry: There shall be a five-acre minimum site size.

(38) Mobile Home Park: Such development must fulfill the requirements of chapter 30.42E SCC.

(39) Sludge Utilization: See SCC 30.28.085.

(40) Homestead Parcel: See SCC 30.28.055.

(41) Special Setback Requirements for this use are contained in SCC 30.23.110(20).

(42) Minimum Lot Size for duplexes shall be one and one-half times the minimum lot size for single family dwellings. In the RU zone, this provision only applies when the minimum lot size for single family dwellings is 12,500 square feet or less.

(43) Petroleum Products and Gas, Bulk Storage:

(a) All above ground storage tanks shall be located 150 feet from all property lines; and

(b) Storage tanks below ground shall be located no closer to the property line than a distance equal to the greatest dimensions (diameter, length or height) of the buried tank.

(44) Auto Wrecking Yards and Junkyards: A sight-obscuring fence a minimum of seven feet high shall be established and maintained in the LI zone. For requirements for this use, SCC 30.25.020 and 30.25.050 applies.

(45) Antique Shops when established as a home occupation as regulated by SCC 30.28.050(1); provided further that all merchandise sold or offered for sale shall be predominantly "antique" and antique-related objects.

(46) Billboards: See SCC 30.27.080 for specific requirements.

(47) Nursery, Wholesale: In R-20,000 zone, a wholesale nursery is permitted on three acres or more; a conditional use permit is required on less than three acres.

(48) Stockyard and Livestock Auction Facility: The minimum lot size is 10 acres.

(49) Restaurants and Personal Service Shops: Located to service principally the constructed industrial park uses.

(50) Sludge Utilization: A conditional use permit is required for manufacture of materials by a non-governmental agency containing stabilized or digested sludge for a public utilization.

(51) Single Family and Multifamily Dwellings are a prohibited use, except for the following:

(a) Existing dwellings that are nonconforming as a result of a county-initiated rezone to BP may make improvements or additions provided such improvements are consistent with the bulk regulations contained in chapter 30.23 SCC; provided further that such improvements do not increase the ground area covered by the structural portion of the nonconforming use by more than 100 percent of that existing at the existing date of the nonconformance; and

(b) New single family and multifamily dwellings in the BP zone authorized pursuant to the provisions of SCC 30.31A.140.

(52) Greenhouses, Lath Houses, and Nurseries:

(a) Incidental sale of soil, bark, fertilizers, plant nutrients, rocks, and similar plant husbandry materials is permitted;

(b) The sale of garden tools and any other hardware or equipment shall be prohibited; and

(c) There shall be no on-site signs advertising other than the principal use.

(53) Retail Store: See SCC 30.31A.120 for specific requirements for retail stores in the BP zone.

(54) Retail Sales of Hay, Grain, and Other Livestock Feed are permitted on site in conjunction with a livestock auction facility.

(55) Noise of Machines and Operations in the LI and HI zones shall comply with chapter 10.01 SCC and machines and operations shall be muffled so as not to become objectionable due to intermittence, beat frequency, or shrillness.

(56) Sludge Utilization only at a completed sanitary landfill or on a completed cell within a sanitary landfill, subject to the provision of SCC 30.28.085.

(57) Woodwaste Recycling and Woodwaste Storage Facility: See SCC 30.28.095.

(58) Bed and Breakfast Guesthouses and Bed and Breakfast Inns: See SCC 30.28.020.

(59) Detached accessory or non-accessory private garages and storage structures are subject to the following requirements:

(a) Special setback requirements for these uses are contained in SCC 30.23.110(20);

(b) Artificial lighting shall be hooded or shaded so that direct outside lighting, if any, will not result in glare when viewed from the surrounding property or rights-of-way;

(c) The following compatibility standards shall apply:

(i) proposals for development in existing neighborhoods with a well-defined character should be compatible with or complement the highest quality features, architectural character and siting pattern of neighboring buildings. Where there is no discernable pattern, the buildings shall complement the neighborhood. Development of detached private garages and storage structures shall not interrupt the streetscape or dwarf the scale of existing buildings of existing neighborhoods. Applicants may refer to the Residential Development Handbook for Snohomish County Communities to review techniques recommended to achieve neighborhood compatibility;

(ii) building plans for all proposals larger than 2,400 square feet in the Waterfront Beach, R 7,200, R 8,400, R 9,600 and R 12,500 zones and rural cluster subdivisions shall document the use of building materials compatible and consistent with existing on-site residential development exterior finishes;

(iii) in the Waterfront Beach, R 7,200, R 8,400, R 9,600 and R 12,500 zones and rural cluster subdivisions, no portion of a detached accessory private garage or storage structure shall extend beyond the building front of the existing single family dwelling, unless screening, landscaping, or other measures are provided to ensure compatibility with adjacent properties; and

(iv) in the Waterfront Beach, R 7,200, R 8,400, R 9,600 and R 12,500 zones and rural cluster subdivisions, no portion of a detached non-accessory private garage or storage structure shall extend beyond the building front of existing single family dwellings on adjacent lots where the adjacent dwellings are located within 10 feet of the subject property line. When a detached non-accessory private garage or storage structure is proposed, the location of existing dwellings on adjacent properties located within 10 feet of the subject site property lines shall be shown on the site plan;

(d) All detached accessory or non-accessory private garages and storage structures proposed with building footprints larger than 2,400 square feet shall provide screening or landscaping from adjacent properties as follows:

(i) the permit application site plan shall depict existing and proposed screening, landscaping or other measures that ensure visual compatibility with adjacent properties;

(ii) the site plan shall show the amount, type and spacing of proposed planting materials. Plant materials, species and design shall be approved by the department. Landscaping modifications, installation and maintenance requirements are regulated by SCC 30.25.040, SCC 30.25.043 and SCC 30.25.045. The minimum planting standards set forth at SCC 30.25.015(5) and (6) shall apply;

(iii) at the director's discretion, existing natural vegetation or other adequate visual screening located on the subject site may be approved in lieu of the requirements of SCC 30.22.130(59)(d)(ii) if it is determined that the existing screening or landscaping meets the intent of SCC 30.22.130(59)(d). Photographs shall be submitted with the permit application and the existing features shall be shown to scale on the site plan;

(iv) approval of other screening measures that ensure visual compatibility shall be determined on a case by case basis at the discretion of the director; and

(v) after a site visit, the director may determine that screening or landscaping is not warranted due to existing circumstances on the site or adjacent properties and may waive the screening or landscaping requirements of SCC 30.22.130(d);

(e) On lots less than ten acres in size having no established residential use, only one non-accessory private garage and one storage structure shall be allowed. On lots 10 acres or larger without a residence where the cumulative square footage of all existing and proposed non-accessory private garages and storage structures is 6,000 square feet or larger, a conditional use permit shall be required.

(f) Where permitted, separation between multiple private garages or storage structures shall be regulated pursuant to subtitle 30.5 SCC.

(60) The cumulative square footage of all detached accessory and non-accessory private garages and storage structures shall not exceed 6,000 square feet on any lot less than 5 acres, except this provision shall not apply in the LDMMR, MR, T, NB, GC, PCB, CB, FS, BP, IP, LI, HI, RB, RFS, CRC and RI zones.

(61) Museums: Museums within the agriculture A-10 zone are permitted only in structures which are legally existing on October 31, 1991.

(62) Accessory Apartments: See SCC 30.28.010.

(63) Temporary Woodwaste Recycling and Temporary Woodwaste Storage Facilities: See SCC 30.28.090.

(64) Home Occupation: See SCC 30.28.050(2).

(65) On-site Hazardous Waste Treatment and Storage Facilities are allowed only as an incidental use to any use generating hazardous waste which is otherwise allowed; provided that such facilities demonstrate compliance with the state siting criteria for dangerous waste management facilities pursuant to RCW 70.105.210 and WAC 173-303-282 as now written or hereafter amended.

(66) An application for a conditional use permit to allow an off-site hazardous waste treatment and storage facility shall demonstrate compliance with the state siting criteria for dangerous waste management facilities pursuant to RCW 70.105.210 and WAC 173-303-282 as now written or hereafter amended.

(67) Adult Entertainment Uses: See SCC 30.28.015.

(68) Special Building Height provisions for this use are contained in SCC 30.23.050(4).

(69) Bakery: In the NB zone, the gross floor area of the use shall not exceed 1,000 square feet and the bakery business shall be primarily retail in nature.

(70) Equestrian Centers are allowed with a conditional use permit on all lands zoned A-10 except in that portion of the special flood hazard area of the lower Snohomish and Stillaguamish rivers designated density fringe as described in chapter 30.65 SCC.

(71) Mini-equestrian Centers are allowed as a permitted use on all lands zoned A-10 except in that portion of the

special flood hazard area of the lower Snohomish and Stillaguamish rivers designated density fringe as described in chapter 30.65 SCC.

(72) Equestrian Centers and Mini-equestrian Centers require the following:

- (a) Five-acre minimum site size for a mini-equestrian center;
- (b) Covered riding arenas shall not exceed 15,000 square feet for a mini-equestrian center; provided that stabling areas, whether attached or detached, shall not be included in this calculation;
- (c) Any lighting of an outdoor or covered arena shall be shielded so as not to glare on surrounding properties or rights-of-way;
- (d) On sites located in RC and R-5 zones, Type A landscaping as defined in SCC 30.25.017 is required to screen any outside storage, including animal waste storage, and parking areas from adjacent properties;
- (e) Riding lessons, rentals, or shows shall only occur between 8 a.m. and 9 p.m.;
- (f) Outside storage, including animal waste storage, and parking areas shall be set back at least 30 feet from any adjacent property line. All structures shall be set back as required in SCC 30.23.110(8); and
- (g) The facility shall comply with all applicable county building, health, and fire code requirements.

(73) Temporary Residential Sales Coach (TRSC):

- (a) The commercial coach shall be installed in accordance with all applicable provisions within chapter 30.54A SCC;
- (b) The TRSC shall be set back a minimum of 20 feet from all existing and proposed road rights-of-way and five feet from proposed and existing property lines;
- (c) Vehicular access to the temporary residential sales coach shall be approved by the county or state; and
- (d) Temporary residential sales coaches may be permitted in approved preliminary plats, prior to final plat approval, when the following additional conditions have been met:
 - (i) plat construction plans have been approved;
 - (ii) the fire marshal has approved the TRSC proposal;
 - (iii) proposed lot lines for the subject lot are marked on site; and
 - (iv) the site has been inspected for TRSC installation to verify compliance with all applicable regulations and plat conditions, and to assure that grading, drainage, utilities infrastructure, and native growth protection areas are not adversely affected.

(74) Golf Course and Driving Range: In the A-10 zone, artificial lighting of the golf course or driving range shall not be allowed. Grading shall be limited in order to preserve prime farmland. At least 75 percent of prime farmland on site shall remain undisturbed.

(75) Model Hobby Park: SCC 30.28.060.

(76) Commercial Retail Uses are not allowed in the Light Industrial and Industrial Park zones when said zones are located in the Maltby UGA of the comprehensive plan, and where such properties are, or can be served by railway spur lines.

(77) Studio: Studio uses may require the imposition of special conditions to ensure compatibility with adjacent residential, multiple family, or rural-zoned properties. The hearing examiner may impose such conditions when deemed necessary pursuant to the provisions of chapter 30.42C SCC. The following criteria are provided for hearing examiner consideration when specific circumstances necessitate the imposition of conditions:

- (a) The number of nonresident artists and professionals permitted to use a studio at the same time may be limited to no more than 10 for any lot 200,000 square feet or larger in size, and limited to five for any lot less than 200,000 square feet in size;
- (b) The hours of facility operation may be limited; and
- (c) Landscape buffers may be required to visually screen facility structures or outdoor storage areas when the structures or outdoor storage areas are proposed within 100 feet of adjacent residential, multiple family, and rural-zoned properties. The buffer shall be an effective site obscuring screen consistent with Type A landscaping as defined in SCC 30.25.017.

(78) The gross floor area of the use shall not exceed 1,000 square feet.

(79) The gross floor area of the use shall not exceed 2,000 square feet.

(80) The gross floor area of the use shall not exceed 4,000 square feet.

(81) The construction contracting use in the Rural Business zone shall be subject to the following requirements:

(a) The use complies with all of the performance standards required by SCC 30.31F.100 and 30.31F.110;

(b) Not more than 1,000 square feet of outdoor storage of materials shall be allowed and shall be screened in accordance with SCC 30.25.024;

(c) In addition to the provisions of SCC 30.22.130(81)(b), not more than five commercial vehicles or construction machines shall be stored outdoors and shall be screened in accordance with SCC 30.25.020 and 30.25.032;

(d) The on-site fueling of vehicles shall be prohibited; and

(e) The storage of inoperable vehicles and hazardous or earth materials shall be prohibited.

(82) Manufacturing, Heavy includes the following uses: Distillation of wood, coal, bones, or the manufacture of their by-products; explosives manufacturing; manufacture of fertilizer; extraction of animal or fish fat or oil; forge, foundry, blast furnace or melting of ore; manufacturing of acid, animal black/black bone, cement or lime, chlorine, creosote, fertilizer, glue or gelatin, potash, pulp; rendering of fat, tallow and lard, rolling or booming mills; tannery; or tar distillation and manufacturing. See SCC 30.91M.028.

(83) "All other forms of manufacture not specifically listed" is a category which uses manufacturing workers, as described under the Dictionary of Occupational Titles, published by the US Department of Labor, to produce, assemble or create products and which the director finds consistent with generally accepted practices and performance standards for the industrial zone where the use is proposed. See SCC 30.91M.024 and 30.91M.026.

(84) Home Occupations: See SCC 30.28.050(3).

(85) A single family dwelling may have only one guesthouse.

(86) Outdoor display or storage of goods and products is prohibited on site.

(87) Wedding Facility:

(a) Such use is permitted only on undeveloped land or in structures which are legally existing on January 1, 2001;

(b) The applicant shall demonstrate that the following criteria are met with respect to the activities related to the use:

(i) compliance with the noise control provisions of chapter 10.01 SCC;

(ii) adequate vehicular site distance and safe turning movements exist at the access to the site consistent with the EDDS as defined in title 13 SCC; and

(iii) adequate sanitation facilities are provided on site pursuant to chapter 30.52A SCC and applicable Snohomish Health District provisions;

(c) Adequate on-site parking shall be provided for the use pursuant to SCC 30.26.035;

(d) A certificate of occupancy shall be obtained pursuant to chapter 30.52A SCC for the use of any existing structure. The certificate of occupancy shall be subject to an annual inspection and renewal pursuant to SCC 30.53A.060 to ensure building and fire code compliance;

(e) In the A-10 zone, the applicant must demonstrate that the activities related to the use are subordinate to the use of the site for agricultural purposes; and

(f) In the A-10 zone, any grading or disturbances required to support the use shall be limited to preserve prime farmland. At least 90 percent of prime farmland on site shall remain undisturbed.

(88) Public/Institutional Use Designation (P/IU): When applied to land that is (a) included in an Urban Growth Area and (b) designated P/IU on the Snohomish County Future Land Use Map concurrent with or prior to its inclusion in a UGA, the R-7,200, R-8,400 and R-9,600 zones shall allow only the following permitted or conditional uses: churches, and school instructional facilities. All other uses are prohibited within areas that meet criteria (a) and (b), unless the P/IU designation is changed.

(89) Hotel/Motel uses are permitted in the Light Industrial zone when the following criteria are met:

(a) The Light Industrial zone is located within a municipal airport boundary;

(b) The municipal airport boundary includes no less than 1000 acres of land zoned light industrial; and

(c) The hotel/motel use is served by both public water and sewer.

(90) Health and social service facilities regulated under this title do not include secure community transition facilities (SCTFs) proposed pursuant to chapter 71.09 RCW. See SCC 30.91H.095.

(a) Snohomish County is preempted from regulation of SCTFs. In accordance with the requirements of state law

the county shall take all reasonable steps permitted by chapter 71.09 RCW to ensure that SCTFs comply with applicable siting criteria of state law. Every effort shall be made by the county through the available state procedures to ensure strict compliance with all relevant public safety concerns, such as emergency response time, minimum distances to be maintained by the SCTF from "risk potential" locations, electronic monitoring of individual residents, household security measures and program staffing.

(b) Nothing herein shall be interpreted as to prohibit or otherwise limit the county from evaluating, commenting on, or proposing public safety measures to the state of Washington in response to a proposed siting of a SCTF in Snohomish County.

(c) Nothing herein shall be interpreted to require or authorize the siting of more beds or facilities in Snohomish County than the county is otherwise required to site for its SCTFs pursuant to the requirements of state law.

(91) Level II health and social service uses are allowed outside the UGA only when the use is not served by public sewer.

(92) The area of the shooting range devoted to retail sales of guns, bows, and related equipment shall not exceed one-third (1/3) of the gross floor area of the shooting range and shall be located within a building or structure.

(93) Farmers Market: See SCC 30.28.036.

(94) Farm Product Processing and Farm Support Business: See SCC 30.28.038.

(95) Farmland Enterprise: See SCC 30.28.037.

(96) Public Events/Assemblies on Farmland: Such event or assembly shall:

(a) Comply with the requirements of Chapter 6.37 SCC; and

(b) Not exceed two events per year. No event shall exceed two weeks in duration.

(97) Bakery, Farm: The gross floor area of the use shall not exceed 1,000 square feet.

(98) Recreational Facility Not Otherwise Listed in Ag-10 zone: See SCC 30.28.076.

(99) Farm Stand: See SCC 30.28.039.

(100) Farm Stand: Allowed as a Permitted Use (P) when sited on land designated riverway commercial farmland, upland commercial farmland or local commercial farmland in the comprehensive plan. Allowed as an Administrative Conditional Use (A) when sited on land not designated riverway commercial farmland, upland commercial farmland or local commercial farmland in the comprehensive plan.

(101) Farmers Market: Allowed as a Permitted Use (P) when sited on land designated riverway commercial farmland, upland commercial farmland or local commercial farmland in the comprehensive plan. Allowed as an Administrative Conditional Use (A) when sited on land not designated riverway commercial farmland, upland commercial farmland or local commercial farmland in the comprehensive plan.

(102) Community Facilities for Juveniles in R-5 zones must be located within one mile of an active public transportation route at the time of permitting.

(103) All community facilities for juveniles shall meet the performance standards set forth in SCC 30.28.025.

(104) Personal wireless telecommunications service facilities: See chapter 30.28A SCC and landscaping standards in SCC 30.25.025.

(105) Personal wireless telecommunications service facilities are subject to a building permit pursuant to SCC 30.28A.020 and the development standards set forth in chapter 30.28A SCC and landscaping standards in SCC 30.25.025.

(106) A building permit only is required for facilities co-locating on existing utility poles, towers, and/or antennas unless otherwise specified in 30.28A SCC.

(107) RESERVED for future use (R-5 w/MRO - DELETED by Ord. 07-090 effective September 21, 2007)

(108) Projects submitted under the Urban Centers Demonstration Program (chapter 30.34A SCC) and located within the NB or PCB zones may include the permitted uses in these zones. Uses listed in SCC 30.34A.100(5) and conditional uses in the NB and PCB zones are prohibited in these projects.

(109) Privately operated off-road vehicle (ORV) use areas shall be allowed by conditional use permit on Forestry and Recreation (F&R) zoned property designated Forest on the comprehensive plan future land use map. These areas shall be identified by an F&R ORV suffix on the zoning map. Privately operated ORV use areas are regulated pursuant to SCC 30.28.080, SCC 30.28.085 and other applicable county codes.

(110) Recreational Facility Not Otherwise Listed: Playing fields permitted in accordance with chapter 30.33B SCC are allowed as a Permitted Use (P) when sited on designated recreational land as identified on the future land use map in

he county's comprehensive plan.

(111) Recreational Facility Not Otherwise Listed: Playing fields not permitted in accordance with chapter 30.33B SCC are allowed as an Administrative Conditional Use (A) when sited on designated recreational land as identified on the future land use map in the county's comprehensive plan.

(112) Land zoned R-5 and having an RA overlay, depicted as R-5-RA on the official zoning map, is a Transfer of Development Rights (TDR) receiving area and, consistent with the comprehensive plan, will be retained in the R-5-RA zone until regulatory controls are in place which ensure that TDR certificates issued pursuant to SCC 30.35A.050 will be required for development approvals within the receiving area.

(113) Privately operated motocross racetracks are allowed by conditional use permit, and are regulated pursuant to SCC 30.28.100, SCC 30.28.105, and other applicable county codes. Motocross racetracks are allowed in the Forestry and Recreation (F&R) zone only on commercial forest lands.

(114) Mobile Home Park zone:

(a) The Mobile Home Park zone is intended to promote the retention of mobile home parks as a source of affordable detached single-family and senior housing. This zone is assigned to certain existing mobile home parks which contain rental pads, as opposed to fee simple owned lots, and as such are more susceptible to future development.

(b) The only use permitted in the Mobile Home Park zone is mobile home parks. No other use is permitted on property zoned Mobile Home Park. For any mobile home park regulated by a conditional use permit, an application for vacation of the conditional use permit must be submitted for approval concurrently with rezone approval.

(115) This use is prohibited in the R-5 zone with the Mineral Resource Overlay (MRO). Public park is a permitted use on reclaimed portions of mineral excavation sites with the MRO.

Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003; Amended Ord. 03-051, June 4, 2003, Eff date June 27, 2003; Ord. 03-107, Sept. 10, 2003, Eff date Sept. 25, 2003; Ord. 03-113, Sept. 24, 2003, Eff date Oct. 6, 2003, Emergency Ord. 03-145, October 22, 2003, Eff date October 22, 2003; Emergency Ord. 04-020, Feb. 11, 2004, Eff date Feb. 11, 2004; Amended Ord. 04-010, Mar. 3, 2004, Eff date Mar. 15, 2004; Amended Ord. 04-055, June 2, 2004, Eff date July 1, 2004; Amended Ord. 04-074, July 28, 2004, Eff date Aug. 23, 2004; Amended Ord. 05-040, July 6, 2005, Eff date Aug. 8, 2005; Ord. 05-094, Sept. 14, 2005, Eff date Sept. 29, 2005; Amended Ord. 05-038, November 30, 2005, Eff date December 16, 2005; Amended Ord. 05-083, December 21, 2005, Eff date Feb. 1, 2006; Amended Ord. 05-087, December 21, 2005, Eff date Feb. 1, 2006; Amended Ord. 05-146, Jan. 18, 2006, Eff date Feb. 12, 2006; Emerg. Ord. 06-011, Feb. 15, 2006, Eff date Feb. 15, 2006; Amended Ord. 06-004, March 15, 2006, Eff date April 4, 2006; Amended Ord. 06-046, July 19, 2006, Eff date August 5, 2006; Amended Ord. 06-057, Aug. 2, 2006, Eff date Aug. 14, 2006; Amended Ord. 06-137, December 13, 2006, Eff date Jan. 1, 2007; Amended Ord. 06-114, December 20, 2006, Eff date Jan. 19, 2007; Amended Ord. 07-005, Feb. 21, 2007, Eff date March 4, 2007; Amended Ord. 07-029, April 25, 2007, Eff date May 10, 2007; Ord. 07-090, Sept. 5, 2007, Eff date Sept. 21, 2007; Amended by Resolution No. 07-028, Nov. 19, 2007, Eff date Nov. 19, 2007; Emergency Ord. 08-070, April 23, 2008, Eff date April 23, 2008)

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30.22.110 Rural and Resource Zone Categories: Use Matrix

Type of Use	Rural Zones							Resource Zones			
	RD	RRT-10	R-5 1tz	RB	CRC	RFS	RI	F	F&R	A-10	MC
Accessory Apartment ⁶²	A	A	A	A				A	A	A	A
Agriculture ⁴¹	P	P	P	P	P	P	P	P	P	P	P
Airport: Stage 1 Utility ¹	C	C	C ¹¹⁵					C			
Antique Shop	C		C ^{45, 115}	P ⁷⁹	P						
Art Gallery ⁴¹	C		C ¹¹⁵	P ⁷⁹	P						
Asphalt Batch Plant & Continuous Mix Asphalt Plant											P
Auto Repair, Minor				P ⁷⁸	P	P					
Auto Towing	C		C								
Bakery				P ⁷⁸	P						
Bakery, Farm ⁹⁷	P	P	P	P			P		P	P	
Bed and Breakfast Guesthouse ⁵⁸	C		C ¹¹⁵	P				C	C	A	
Bed and Breakfast Inn ⁵⁸	C		C ¹¹⁵	P				C	C	C	
Boarding House	P ¹⁵	P ¹⁵	P ^{15, 115}					P ¹⁵		P ¹⁵	
Boat Launch, Commercial ³¹		C							C		
Boat Launch, Non-commercial ³¹	C		C	C				C	C		
Campground									C ³²		
Caretaker's Quarters	P		C				P				P
Cemetery, Columbarium, Crematorium, Mausoleum ⁴¹	P		C ¹¹⁵								
Church ⁴¹	P		C ¹¹⁵	C	P						
Cold Storage							P				
Commercial Vehicle Home Basing			C ³³								
Commercial Vehicle Storage Facility				C			P				
Community Club	P		C ¹¹⁵	P	P						

P - Permitted Use	<p>A blank box indicates a use is not allowed in a specific zone.</p> <p>Note: Reference numbers within matrix indicate special conditions apply; see SCC30.22.130.</p> <p>Check other matrices in this chapter if your use is not listed above.</p>
A - Administrative Conditional Use	
C - Conditional Use	
S - Special Use	

30.22.110 Rural and Resource Zone Categories: Use Matrix

Type of Use	Rural Zones							Resource Zones			
	RD	RRT-10	R-5 112	RB	CRC	RFS	RI	F	F&R	A-10	MC
Community Facilities for Juveniles ¹⁰³											
1 to 8 residents			P ^{102, 115}	P	P						
9 to 24 residents			S ^{103, 115}	P	P						
Construction Contracting				P ^{80, 81}							
Country Club	C		C ¹¹⁵	P							
Craft Shop ²¹				P							
Dams, Power Plants, & Associated Uses									P		
Day Care Center ²	P		C ¹¹⁵	P	P	P					
Distillation of Alcohol	C ³⁴		C ^{34, 115}							C ³⁴	
Dock & Boathouse, Private, Non-commercial ^{3, 41}	P	P	P	P				P	P	P	
Drug Store				P ⁷⁹	P						
Dwelling, Duplex	P	P	P					P		P	
Dwelling, Mobile Home	P	P	P		P ⁶			P	P	P	P
Dwelling, Single Family	P	P	P		P			P	P	P	P
Equestrian Center ^{41, 70, 72}	P	C	C ¹¹⁵					C	P	C ⁷⁰	
Excavation & Processing of Minerals ²⁸	A C	A, C	A, C				A, C	A, P, C	A, C		A, C
Explosives, Storage	C	C	C				C	P	C		C
Fabrication Shop							P				
Fallout Shelter, Individual	P	P	P ¹¹⁵	P	P	P	P	P	P	P	P
Fallout Shelter, Joint ⁷	P		P	P	P	P	P	P	P	P	P
Family Day Care Home ⁸	P		P ¹¹⁵	P	P			P		P	
Farm Product Processing											
Up to 5,000 sq ft	P	P	P ¹¹⁵	P			P	P		P	
Over 5,000 sq ft ⁹⁴	A	A	A ¹¹⁵	A			A	A		A	
Farm Support Business ⁹⁴	A	A	A ¹¹⁵	A			P			A	

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30.22.110 Rural and Resource Zone Categories: Use Matrix

Type of Use	Rural Zones							Resource Zones			
	RD	RRT-10	R-5 112	RB	CRC	RFS	RI	F	F&R	A-10	MC
Farm Stand											
Up to 400 sq ft ⁹	P	P	P ^{100, 115}	P	P	P	P	P	P	P	P
401 – 5,000 sq ft ^{99, 100}	P	P	P, A ^{100, 115}	P	P	P	P	P	P	P	
Farm Workers Dwelling										P ¹⁰	
Farmers Market ⁹³	P	P	P ^{101, 115} A ^{101, 115}	P	P	P	P			P	
Farmland Enterprises ⁹⁵		A	A ¹¹⁵							A	
Fish Farm	P	P	P ¹¹⁵					P	P	P	
Fix-it Shop				P ⁷⁸	P		P				
Forestry	P	P	P				P	P	P	P	P
Forestry Industry Storage & Maintenance Facility	P ³⁰	P					P	P	P		
Foster Home	P	P	P	P				P		P	
Garage, Detached Private Accessory ⁶⁰											
Up to 2,400 sq ft	P	P	P	P	P	P	P	P	P		P
2,401 – 4,000 sq ft on More than 3 Acres ^{41, 59}	P	P	P	P	P	P	P	P	P		P
2,401- 4,000 sq ft on Less than 3 acres ^{41, 59}	A	A	A	A	A	A	A	A	A		A
4,001 sq ft and Greater ^{41, 59}	C	C	C	C	C	C	C	C	C		C
Garage, Detached Private Non-accessory ⁶⁰											
Up to 2,400 sq ft	P	P	P	P	P	P	P	P	P	P	P
2,401 sq ft and greater ^{41, 59}	C	C	C	C	C	C	C	C	C	C	C
Golf Course and Driving Range	C		C ¹¹⁵							C ⁷⁴	
Government Structures & Facilities ^{27, 41}	C	C	C ¹¹⁵	C	P		C	C	C		C
Greenhouse, Lath House, Nurseries: ⁵² Retail	P	P	P ¹¹⁵	P	P		P	P		P	
Greenhouse, Lath House, Nurseries: ⁵² Wholesale	P	P	P ¹¹⁵	P	P		P	P		P	
P - Permitted Use	A blank box indicates a use is not allowed in a specific zone.										
A - Administrative Conditional Use	Note: Reference numbers within matrix indicate special conditions apply; see SCC30.22.130.										
C - Conditional Use	Check other matrices in this chapter if your use is not listed above.										
S - Special Use											

30.22.110 Rural and Resource Zone Categories: Use Matrix

Type of Use	Rural Zones							Resource Zones			
	RD	RRT-10	R-5 112	RB	CRC	RFS	RI	F	F&R	A-10	MC
Grocery Store				P ⁸⁰	P	P ⁸⁰					
Grooming Parlor					P						
Guesthouse ⁸⁵	P	P	P	P				P	P	P	
Hardware Store				P ⁸⁰	P						
Hazardous Waste Storage & Treatment Facilities Onsite ⁶⁵	P			P		P	P	P	P		
Health and Social Service Facility ⁹⁰											
Level I	P	P	P ¹¹⁵	P	P			P	P	P	P
Level II ^{41 91}			C ¹¹⁵	C							
Level III											
Home Improvement Center				P ⁸⁰	P						
Home Occupation ^{11, 84}	P ⁶⁴	P ⁶⁴	P ⁶⁴	P ⁶⁴	P			P ⁶⁴	P ⁶⁴	P ⁶⁴	P ⁶⁴
Homestead Parcel ⁴⁰	C		C ¹¹⁵							C	
Hotel/Motel				P		P					
Kennel, ⁴¹ Commercial ¹²	P	P	P ¹¹⁵					P		C	
Kennel, ⁴¹ Private-Breeding ¹³	P	P	P					P		P	
Kennel, ⁴¹ Private-Non-Breeding ¹³	P	P	P	P				P		P	
Kitchen, farm	P	P	P	P			P			P	
Library ⁴¹	C		C ¹¹⁵	P							
Licensed Practitioner ^{29, 41}				P ⁷⁹							
Livestock Auction Facility	C ⁴⁸		C ^{48, 115}		P		P			C ⁴⁸	
Locksmith				P	P						
Log Scaling Station	C	C	C ¹¹⁵				P	P	P	P	
Lumberyard							P				
Manufacturing-All Other Forms Not Specifically Listed ⁸³				C			C				
Metal Working Shop				P ⁷⁸			P				
Mini-equestrian Center ^{41, 72}	P	P	P ¹¹⁵	P			P	P	P	P ⁷¹	

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A - Administrative Conditional Use	
C - Conditional Use	
S - Special Use	

30.22.110 Rural and Resource Zone Categories: Use Matrix

Type of Use	Rural Zones							Resource Zones			
	RD	RRT-10	R-5 112	RB	CRC	RFS	RI	F	F&R	A-10	MC
Model Hobby Park ⁷⁵			A ¹¹⁵							A	
Model House/Sales Office	P	P	P ¹¹⁵					P	P		
Motocross Racetrack			C ¹¹³						C ¹¹³		
Motor Vehicle & Equipment Sales					P ²³						
Museum ⁴¹	C		C ¹¹⁵	P						C ⁶¹	
Office, General				P	P						
Off-road vehicle use area, private									C ¹⁰⁹		
Park, Public ¹⁴	P	P	P	P	P		P	P	P	P	P
Park-and-Pool Lot				P	P	P	P				
Park-and-Ride Lot	C	C	C	P		P		C	C	C	
Personal Services Shop				P ⁷⁹	P						
Personal Wireless Communications Facilities <small>27, 41, 104, 105, 106</small>	C	C	C	C	C	C	C	C	C	C	C
Petroleum Products & Gas Storage – Bulk							P ⁴³				
Print shop				P							
Public Events/Assemblies on Farmland ⁹⁶										P	
Race Track ^{24, 41}			C ¹¹⁵								
Railroad Right-of-way	C	C	C ¹¹⁵		P		P	C	C	C	C
Recreational Facility Not Otherwise Listed ⁹⁸	C		C ¹¹⁵		P		P ⁷⁹			C, P ¹¹⁰ , A ¹¹¹	
Recreational Vehicle ¹⁹	P	P	P					P	P	P	
Recreational Vehicle Park									C		
Resort									C		
Restaurant				P ⁸⁰	P	P					
Retail Store				P ⁸⁰	P						
Rural Industries ⁴¹	P ²⁵										
Sanitary Landfill	C	C	C ¹¹⁵					C			C

P - Permitted Use	<p>A blank box indicates a use is not allowed in a specific zone.</p> <p>Note: Reference numbers within matrix indicate special conditions apply; see SCC30.22.130.</p> <p>Check other matrices in this chapter if your use is not listed above.</p>
A - Administrative Conditional Use	
C - Conditional Use	
S - Special Use	

30.22.110 Rural and Resource Zone Categories: Use Matrix

Type of Use	Rural Zones							Resource Zones			
	RD	RRT-10	R-5 112	RB	CRC	RFS	RI	F	F&R	A-10	MC
Sawmill	C ²⁶	C ²⁶	C ^{26, 115}				P	P	P		
Schools											
K-12 & Preschool ^{41, 68}	C		C ¹¹⁵	P							
College ^{41, 68}	C		C ¹¹⁵								
Other ^{41, 68}				C			C				
Second Hand Store				P ⁷⁸	P						
Service Station ⁴¹				P	P	P					
Shake & Shingle Mill	C ²⁶	C ²⁶	C ^{26, 115}				P	P			
Shooting Range ⁹²	C	C	C					C			
Sludge Utilization ³⁹	C	C, P ⁵⁰	C ¹¹⁵					C		C	C ⁵⁶
Small Animal Husbandry ⁴¹	P		P		P			P	P	P	P
Specialty Store				P ⁷⁸	P						
Stables	P	P	P	P			P	P	P	P	
Stockyard or Slaughter House							C ⁴⁸				
Storage, Retail Sales Livestock Feed			P ^{54, 115}	P			P			P	
Storage Structure, Accessory ⁶⁰											
Up to 2,400 sq ft	P	P	P	P	P	P	P	P	P	P	P
2,401 – 4,000 sq ft on More than 3 Acres ^{41, 59}	P	P	P	P	P	P	P	P	P	P	P
2,401 – 4,000 sq ft on Less than 3 acres ^{41, 59}	A	A	A	A	A	A	A	A	A	A	A
4,001 sq ft and Greater ^{41, 59}	C	C	C	C	C	C	C	C	C	C	C
Storage Structure, Non-accessory ⁶⁰											
Up to 2,400 sq ft	P	P	P	P	P	P	P	P	P	P	P
2,401 sq ft and greater ^{41, 59}	C	C	C	C	C	C	C	C	C	C	C
Studio ⁴¹	C ⁷⁷		C ^{77, 115}								
Swimming/Wading Pool ^{17, 41}	P	P	P					P	P	P	P
Tavern ⁴¹				P	P						

P - Permitted Use	<p>A blank box indicates a use is not allowed in a specific zone.</p> <p>Note: Reference numbers within matrix indicate special conditions apply; see SCC30.22.130.</p> <p>Check other matrices in this chapter if your use is not listed above.</p>
A - Administrative Conditional Use	
C - Conditional Use	
S - Special Use	

30.22.110 Rural and Resource Zone Categories: Use Matrix

Type of Use	Rural Zones							Resource Zones			
	RD	RRT-10	R-5 112	RB	CRC	RFS	RI	F	F&R	A-10	MC
Temporary Dwelling During Construction	A	A	A	A	A	A	A	A	A	A	A
Temporary Dwelling For Relative ¹⁸	A	A	A					A	A	A	A
Temporary Logging Crew Quarters								P	P		
Temporary Residential Sales Coach ⁷³	A		A ¹¹⁵								
Temporary Woodwaste Recycling ⁶³	A						A	A			
Temporary Woodwaste Storage ⁶³	A							A			
Tire Store					P						
Tool Sales & Rental				P	P						
Transit Center	C	C	C ¹¹⁵	P		P		C	C	C	
Ultralight Airpark ²⁰	C	C	C ¹¹⁵					C			
Utility Facilities, Electromagnetic Transmission & Receiving Facilities ²⁷	C	C	C	C	P	C	P	C	C	C	C
Utility Facilities, Transmission Wires or Pipes & Supports ²⁷	P	P	P	P	P	P	P	P	P	P	P
Utility Facilities-All Other Structures ^{27, 41}	C	C	C	C	P	C	P	C	C	C	C
Veterinary Clinic	P		C ¹¹⁵	P	P					C	
Wedding Facility ⁸⁷		P	P ¹¹⁵							P	
Woodwaste Recycling ⁵⁷	C	C	C				C	C			
Woodwaste Storage ⁵⁷	C	C	C				C	C			
Yacht/Boat Club				P			P				

P - Permitted Use	<p>A blank box indicates a use is not allowed in a specific zone.</p> <p>Note: Reference numbers within matrix indicate special conditions apply; see SCC30.22.130.</p> <p>Check other matrices in this chapter if your use is not listed above.</p>
A - Administrative Conditional Use	
C - Conditional Use	
S - Special Use	

Chapter 30.23

GENERAL DEVELOPMENT STANDARDS - BULK REGULATIONS

30.23.010 Dimensional requirements.

(1) All lots and structures shall conform to the requirements listed on the Bulk Matrix, SCC 30.23.030(1), unless modified elsewhere in this title.

(2) Lot area in the RU zone shall be as set forth in SCC 30.23.030(41).

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.23.020 Minimum net density for residential development in UGAs.

(1) A minimum net density of four dwelling units per acre shall be required in all UGAs for:

(a) New subdivisions, short subdivisions, PRDs, and mobile home parks; and

(b) New residential development in the LDMMR, MR, and Townhouse zones.

(2) Minimum net density is the density of development excluding roads, critical areas and required buffers, drainage detention/retention areas, biofiltration swales, and areas required for public use.

(3) Minimum net density is determined by rounding up to the next whole unit or lot when a fraction of a unit or lot is 0.5 or greater.

(4) For new subdivisions and short subdivisions, the minimum lot size of the underlying zone may be reduced as necessary to allow a lot yield that meets the minimum density requirement. Each lot shall be at least 6,000 square feet, except as otherwise allowed by this title.

(5) The minimum net density requirement of this section shall not apply:

(a) In the Darrington, Index, and Gold Bar UGAs; and

(b) Where regulations on development of steep slopes, SCC 30.41A.250, or sewerage regulations, SCC 30.29.100, require a lesser density.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.23.030 Bulk matrix.

The bulk matrix contains standard setback, lot coverage, building height, and lot dimension regulations for zones in unincorporated Snohomish County. Additional setback and lot area requirements and exceptions are found at SCC 30.23.100 - 30.23.260.

Click [HERE](#) for a link to Table 30.23.030(1) Bulk Matrix .pdf file.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003; Ord. 03-107, Sept. 10, 2003, Eff Date Sept. 25, 2003; Ord. 05-094, Sept. 14, 2005, Eff date Sept. 29, 2005)

30.23.040 Reference notes for bulk matrix:

(1) MR bulk requirements shall apply for all residential development permitted in urban commercial zones.

(2) When subdivisionally described, the minimum lot area shall be 1/128th of a section.

(3) When subdivisionally described, the minimum lot area shall be 1/32nd of a section.

(4) In the LDMMR zone, the maximum density shall be calculated based on 4,000 square feet of

Table 30.23.030(1)
BULK MATRIX

Category	Zone	Max. Bldg. Height (ft) ²⁷	Lot Dimension (ft) ⁵⁴			Setback Requirements From: (ft) ^{28, 53}							
			Min. Lot Area ²⁹	Min. Lot Width	Min. Corner Lot Width	Public Right of Way under 60' ^{34, 42}	Public and Private Right of Way ^{9, 11, 34, 42}	Commercial and Industrial Zones ¹¹	Residential, Multifamily, and Rural Zones ¹¹	Resource Lands Ag ²⁰	Forest ²¹	Water Bodies ¹²	Max. Lot Coverage ⁸
Resource	MC ³¹		10 ac ³²			50	50		100 ³³				
	F ³⁸	45 ⁶	20 ac ³	300	300	130 ^{10, 13}	100 ¹³	100 ¹³	100 ^{13, 33}	50	100 ³⁰	25 ¹³	35%
	F&R ^{38, 39}	25 ⁷	200,000 sf ^{2, 23}	100	100	50 ¹⁰	20	5	5 ³³	50	100 ³⁰	25	35%
	A-10 ^{37, 40, 52}	45	10 ac	none	none	50 ¹⁰	20	5	5 ³³	50	100 ³⁰	25	none
Rural	RRT-10	45	10 ac	225	225	50	20	5	5 ³³	50	100 ³⁰	25	35%
	R-5 ^{37, 38, 39, 40, 46}	45 ²⁵	200,000 sf ^{2, 24}	165 ²⁴	165 ²⁴	50 ¹⁰	20	5	5 ³³	50	100 ³⁰	25	35%
	RC ^{37, 38, 39, 40}	35	100,000 sf ²⁴	165 ²⁴	165 ²⁴	50 ¹⁰	20	5	5 ³³	50	100 ³⁰	25	35%
	RD ³⁸	45	200,000	165	165	50 ¹⁰	20	5	5 ³³	50	100 ³⁰	25	35%
	RB	35	none	none	none	55	25	none	50 ³³	50	100	none	35%
	CRC	35 ⁽⁴³⁾	none	none	none	25 ²⁶	25 ²⁶	none	25	50	100	none	50% ⁴⁴ 30% ⁴⁵
	RFS	35	none	none	none	55	25	none	50	50	100	none	35%
	RI	50	none	none	none	55	25	none	100	100	100	none	35%
Other	SA-1 ^{37, 39}	35	1 ac/ 43,560 sf	150	150	50 ¹⁰	20	5	5 ³³	50	100	25	35%
	RU ^{37, 39}	35	⁴¹	60	65	50 ¹⁰	20	5	5 ³³	50	100	25	35%
	R20,000 ^{37, 39}	25	20,000 sf	85	90	50 ¹⁰	20	5	5	50	100	25	35%
	R12,500 ⁴⁰	25	12,500 sf	75	80	50 ¹⁰	20	5	5	50	100	25	35%
	WFB	25	7,200 sf ²³	60	65	50 ¹⁰	20	5	5	50	100	25	35%

Table 30.23.030(1) (continued on next page)

*land per dwelling unit.

- (5) In the MR zone, the maximum density shall be calculated based on 2,000 square feet of land per dwelling unit.
- (6) Commercial forestry structures shall not exceed 65 feet in height.
- (7) Non-residential structures shall not exceed 45 feet in height.
- (8) Lot coverage includes all buildings on the given lot.
- (9) Includes public rights-of-way 60 feet and wider; public rights-of-way under 60 feet in a recorded plat with curbs and gutters; and private roads and easements. These setbacks shall be measured from the edge of the right-of-way.
- (10) Applies to public rights-of-way under 60 feet. These setbacks shall be measured from the center of the right-of-way.
- (11) These setbacks shall be measured from the property line.
- (12) These setbacks shall be measured from the ordinary high-water mark and shall apply only to the rear setback. In the LDMR and MR zones this setback applies to single family dwellings only. Greater setbacks than those listed may apply to areas subject to Shoreline Management Master Program jurisdiction. Some uses have special setbacks. See SCC 30.23.110 for specifics.
- (13) The listed setbacks apply where the adjacent property is zoned F. In all other cases, setbacks are the same as in the R-8,400 zone. In the F zone, the setbacks for residential structures on 10 acres or less which were legally created prior to being zoned to F shall be the same as in the R-8,400 zone.
- (14) The listed setbacks apply to single family detached structures. For a townhouse, see chapter 30.31E SCC.
- (15) MR and LDMR setbacks.
 - (a) Single family detached structures and duplexes shall have the minimum setbacks required in the R-8,400 zone. Building separation between single family detached structures or duplexes shall be a minimum of 10 feet.
 - (b) Other structures shall have minimum side and rear setbacks of five feet (10 feet where abutting residential, rural, or resource zones). Building separation between primary MR and LDMR structures shall be a minimum of 15 feet. Building separation between primary structures and secondary/accessory structures, including but not limited to carports and garages, and separation between secondary structures themselves, shall be determined by the applicable sections of the Uniform Building Code (UBC).
 - (c) Multi-story structures shall increase all setbacks by three feet and building separations by five feet for each additional story over two stories.
- (16) In the FS zone, the setback from non-residential property shall be five feet for side setbacks and 15 feet for rear setbacks.
- (17) In the IP zone there shall be an additional one foot setback for every one foot of building height over 45 feet.
- (18) In the PCB zone the setback from private roads and easements is 25 feet.
- (19) See SCC 30.31A.020(1) and (2) which specifies the minimum area of a tract of land necessary for PCB or BP zoning.
- (20) See additional setback provisions for dwellings located along the boundaries of designated farmland contained in SCC 30.32B.130.
- (21) See additional setback provisions for structures located adjacent to forest lands, and/or on lands designated local forest or commercial forest contained in SCC 30.32A.110.
- (22) The minimum lot size for properties designated Rural Residential (RR) - 10 (Resource Transition) on the comprehensive plan shall be 10 acres. For properties designated Rural Residential - 10 (Resource Transition) and located outside the Tulalip Reservation the lot/unit yield for rural cluster subdivisions or housing demonstration program projects using PRD provisions shall be based on a minimum lot size of 200,000 square feet.
- (23) Minimum lot area requirements may be modified within UGAs in accordance with SCC

30.23.020.

(24) In rural cluster subdivisions approved in accordance with the provisions of chapter 30.41C SCC, the minimum lot area shall be as provided in SCC 30.23.220. The maximum lot area shall be 20,000 square feet or less when located in rural/urban transition areas.

(25) These setbacks shall be measured from the edge of the right-of-way as determined by the director of the department of public works.

(26) Except where specifically prohibited by the hearing examiner, the director of the department may waive or modify building setback requirements abutting private roads and/or private access easements serving lots within commercial and industrial zones only if such waiver or modification will not have a likely impact upon future right-of-way needs and/or right-of-way improvements.

(27) See SCC 30.23.050 for height limit exceptions.

(28) See SCC 30.23.100 et seq. for additional setback requirements and exceptions.

(29) See SCC 30.23.200 et seq. for additional lot area requirements and exceptions.

(30) SCC 30.32A.120 (Siting of new structures: commercial forest land) requires an application for a new structure on parcels designated commercial forest, but not within a designated commercial forest-forest transition area, to provide a minimum 500-foot setback, which shall be a resource protection area, from the property boundaries of adjacent commercial forest lands except that if the size, shape, and/or physical site constraints of an existing legal lot do not allow a setback of 500 feet, the new structure shall maintain the maximum setback possible, as determined by the department.

(31) Performance standards and minimum zoning criteria to establish and continue a MC zone are set forth in chapter 30.31D SCC.

(32) The site shall be a contiguous geographic area and have a size of not less than 10 acres, except in the case of subsurface shaft excavations, no minimum acreage is required, pursuant to SCC 30.31D.020(1)(a).

(33) See SCC Table 30.28.050(3)(i) for setback requirements for structures containing a home occupation.

(34) See SCC 30.23.120 for other setback exceptions.

(35) See chapter 30.31E SCC, for more complete information on the Townhouse Zone height, setback, and lot coverage requirements.

(36) RESERVED for future use (MR and LDMR setbacks - DELETED by Ord. 05-094 effective September 29, 2005.

(37) Agriculture: All structures used for housing or feeding animals, not including household pets, shall be located at least 30 feet from all property lines and dwellings, as provided in SCC 32.23.110(1).

(38) There shall be no subdivision of land designated commercial forest in the comprehensive plan except to allow installation of communication and utility facilities if all the following requirements are met:

- (a) The facility cannot suitably be located on undesignated land;
- (b) The installation cannot be accomplished without subdivision;
- (c) The facility is to be located on the lowest feasible grade of forest land; and
- (d) The facility removes as little land as possible from timber production.

(39) On parcels designated commercial forest, but not within a designated commercial forest - forest transition area, establish and maintain a minimum 500-foot setback, which shall be a resource protection area, from the property boundaries of adjacent commercial forest lands except when the size, shape, and/or physical site constraints of an existing legal lot do not allow a setback of 500 feet, the new structure shall maintain the maximum setback possible as provided in SCC 30.32A.120.

(40) Land designated local commercial farmland shall not be divided into lots of less than 10 acres unless:

(a) A properly executed deed restriction which runs with the land and which provides that the land divided is to be used exclusively for agriculture, forestry, utility purposes, or for gift or dedication to a public or not-for-profit park or conservation agency and specifically not for a dwelling(s), is

recorded with the Snohomish County Auditor; or

(b) A rural cluster subdivision at the underlying zoning is approved, as provided for in SCC 30.32B.120.

(41) Minimum lot area in the rural use zone shall be the minimum allowed by the zone identified as the implementing zone by the comprehensive plan for the plan designation applied to the subject property. Where more than one implementing zone is identified for the same designation, the minimum lot size shall be that of the zone allowing the smallest lot size.

(42) Figure 30.23.040(42) EASEMENT SETBACKS PER BULK MATRIX.

(43) Additional bulk requirements may apply. Refer to SCC 30.31F.100 and 30.31F.140.

(44) The 50% maximum lot coverage limitation applies solely to the portion of the area within the CRC comprehensive plan designation and zone that is centered at 180th Street SE and SR 9, generally extending between the intersection of 172nd Street/SR 9 to just south of 184th Street/SR 9, as indicated on the County's FLUM and zoning map.

(45) The 30% maximum lot coverage limitation applies solely to the portion area located within the CRC comprehensive plan designation and zone that is centered at State Route (SR) 9 and 164th Street SE, as indicated on the County's Future Land Use Map (FLUM) and zoning map.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003; Ord. 05-094, Sept. 14, 2005, Eff date Sept. 29, 2005)

30.23.050 Height limit exceptions.

The following types of structures or structural parts shall not be subject to height limitations:

(1) Tanks and bunkers, church spires, belfries, domes, monuments, chimneys, water towers, fire and hose towers, observation towers, stadiums, smokestacks, flag poles, towers and masts used to support commercial radio and television antennae, bulkheads, water tanks, scenery lofts, cooling towers, grain elevators, gravel and cement tanks and bunkers, and drive-in theater projection screens.

(Structures or parts shall be 50 feet or more from any adjoining lot line);

(2) Towers and masts used to support private antennae. These structures shall meet minimum setback requirements of the zone in which they are located, and the horizontal array of the antennae shall not intersect the vertical plane of the property line;

(3) Towers, masts, or poles supporting electric utility, telephone and/or other communication lines;

(4) Schools and educational institutions, when approved as part of a conditional use permit, shall not exceed 45 feet in height. The portion of any building that exceeds the maximum building height of the underlying zone shall be set back 50 feet or more from any external lot line;

(5) Aircraft hangars, when located in industrial zones. The hangar shall be set back 100 feet or more from any non-industrial zone; and

(6) Rooftop heating, ventilation and air conditioning (HVAC) and similar systems, when located on commercial, industrial, or multifamily structures. The systems shall not exceed the maximum building height of the underlying zone by more than 30 percent or 15 feet, whichever is less. Sight-obscuring screening shall be required unless otherwise approved by the director of the department.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.23.060 Binding site plans (BSP).

Land divided pursuant to a recorded binding site plan shall be governed by the bulk regulations of the underlying zone. The entire land area subject to the BSP shall be treated as a single lot when applying minimum lot area, minimum lot width, setbacks, maximum lot coverage, off-street parking, sign, and landscaping requirements.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.23.100 Setbacks and sight triangles.

(1) All structures shall be placed on their lots in compliance with the requirements of the Bulk Matrix, SCC 30.23.030(1), except as otherwise provided in this title.

(2) Except as otherwise provided in this title, every required setback shall be open and unobstructed from the ground to the sky except for trees and other natural vegetation. No setback or open space provided around any building for the purpose of complying with the provisions of this title shall be considered as providing a setback or open space on the adjacent building site whereon a building is located or is to be erected. SCC 30.23.250 establishes the setback requirements for aggregated lots. When the common boundary line separating two or more contiguous lots is covered by a building or permitted group of buildings or when two or more lots are used as a single building site, the lots shall constitute a single building site and the setbacks as required by this title shall then apply to the aggregate of the lots.

(3) All corner lots shall maintain a vehicular sight triangle for safety purposes. A sight triangle is a triangular area, one angle of which shall be formed by the front and side lot lines. These two sides of the triangle, forming the corner angle, shall be 15 feet in length measured from the aforementioned corner angle. The third side of the triangle shall be a straight line connecting the two 15 foot lines. Within the area comprising the triangle, no tree, fence, shrub, or other physical obstruction higher than 42 inches above the established street grade shall be permitted. No fences or freestanding walls more than four feet in height shall be permitted in the sight triangle when the sides forming the street corner angle measure 40 feet or less. Figure 30.23.100(3) illustrates how this subsection is applied:

Click [here](#) for a link to 30.23.100 .pdf file

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.23.110 Special setbacks for certain uses.

This section supplements the normal setbacks required by the underlying zone for the specified use.

(1) Agriculture: All structures used for housing or feeding animals, not including household pets, shall be located at least 30 feet from all property lines and dwellings.

(2) Amusement Facilities: Theaters must be at least 300 feet from the property line of any preschool or K-12 school. Other amusement facilities must be at least 500 feet from the property line of any park, playground, preschool, or K-12 school. Distances shall be measured horizontally by following a straight line from the nearest point in the building in which the amusement facility will be located, to the nearest property line of a parcel which contains a park, playground, preschool, or K-12 school.

(3) Art Gallery: All buildings must be at least 20 feet from any other lot in a residential zone.

(4) Cemetery, Mausoleum, and Crematoriums: All buildings must be at least 50 feet from external boundaries of the property.

(5) Church: All buildings must be at least 25 feet from any other lot in a residential zone.

(6) Dock and Boathouse: Covered structures must be at least three feet from any side lot line or extension thereof. No setback from adjacent properties is required for any uncovered structure, and no setback from the water is required for any structure permitted hereunder.

(7) Educational Institutions:

(a) All buildings must be at least 35 feet from all external property lines; and

(b) All buildings must be at least 75 feet from the centerlines of all street rights-of-way, or 45 feet from the edges of all such rights-of-way, whichever is greater.

(8) Equestrian Center and Mini-Equestrian Center: Open or covered arenas must be at least 50 feet from any external property line. New structures located on or adjacent to lands subject to chapter 30.32A SCC shall comply with all applicable setbacks.

(9) Governmental Structure or Facility: All structures must be at least 20 feet from any other lot in a residential zone.

(10) Health and Social Service Facility, Level II: All buildings must be at least 30 feet from all external property boundaries.

(11) Kennel, Commercial; Kennel, Private-Breeding; or Kennel, Private-Non-Breeding: All animal runs, and all buildings and structures devoted primarily to housing animals, must be at least 30 feet from all external property lines.

(12) Library: All buildings must be at least 20 feet from any other lot in a residential zone.

(13) Museum: All buildings must be at least 20 feet from any other lot in a residential zone.

(14) Office, Licensed Practitioners: All buildings must be at least 20 feet from any other lot in a residential zone.

(15) Race Track: The track must be at least 50 feet from all external property lines.

(16) Rural Industry: All buildings and structures, storage areas, or other activities (except sales stands) occurring outside of a residential structure must be at least 20 feet from any property line.

(17) School Preschool and K-12:

(a) All buildings must be at least 35 feet from all external property lines; and

(b) All buildings must be at least 75 feet from the centerlines of all street rights-of-way, or 45 feet from the edges of all such rights-of-way, whichever is greater.

(18) Service Station:

(a) Where the right-of-way is less than 60 feet, pump islands shall meet a minimum setback of 45 feet from the centerline of the right-of-way. Where the right-of-way is 60 feet or more, pump islands shall meet a minimum set-back on one-half the right-of-way plus 15 feet. Setbacks shall apply to private rights-of-way and easements.

(b) Where the right-of-way is less than 60 feet, canopies shall meet a minimum setback of 35 feet from the centerline of the right-of-way. Where the right-of-way is 60 feet or more, canopies shall meet a minimum setback of one-half the right-of-way plus five feet. Setbacks shall apply to private rights-of-way and easements.

(19) Small Animal Husbandry: All structures used for housing or feeding animals must be at least 30 feet from all property lines.

(20) Storage structure over 1,000 square feet on less than three acres: The building must be at least 15 feet from any external property line.

(21) Studio: All buildings must be at least 20 feet from any other lot in a residential, multiple-family, or rural zone. The hearing examiner may require an additional setback distance when necessary to maintain compatibility of the proposed building with residential uses on adjoining properties.

(22) Swimming or Wading Pool: The pool must be at least five feet from any property line.

(23) Tavern: The use must be at least 500 feet from the external property lines of all public school grounds and public parks or playgrounds.

(24) Utility Structures: All structures must be at least 20 feet from any other lot in a residential zone.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003; Amended Ord. 04-010, Mar. 3, 2004, Eff date Mar. 15, 2004)

30.23.115 Setback exceptions for minor architectural features.

1) Minor architectural features, including cornices, eaves, sills, fireplaces, chimneys and flues, open beams, bay windows, greenhouse windows, trellises, ornamental elements, and other similar features of a minor nature may extend or project into a required setback a distance of not more than 30

percent of the required setback if the following conditions are met:

(a) Except for eaves, cornices, and sills, the combined length of all such features along any one building wall shall not exceed 20 percent of the length of that building wall; and

(b) Minor architectural features may not be used to extend building floor area into the required setback. Only fireplace chimneys and flues may extend to finished grade.

(2) Uncovered porches, steps, and decks may project into a required setback, if they are no more than four feet above the finished ground level, at least 30 inches from any lot line, and project no more than six feet into a setback required from a street.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.23.120 Front setback exceptions.

(1) Averaging: In any zone when at least 50 percent of the frontage in any block front is improved with permitted buildings, some of which have setbacks from the street of less than the required depth, any new building shall provide a setback from the street of at least the average of setbacks provided by all properties 165 feet on either side of the subject lot. Vacant lots shall be considered as having the setback required in the zone.

(2) Steep slopes: On any lot where the natural gradient or slope, as measured from the front lot line along the centerline of the lot for a distance of 60 feet, is in excess of 35 percent, then the required front setback may be reduced one foot for each one percent of gradient or slope in excess of 35 percent.

(3) Hammerheads: The required setback from a street on any lot abutting a hammerhead on a dead-end street shall be measured from the extended right-of-way line of the street before entering the hammerhead. The setback from the extended right-of-way line shall be computed the same way as any other setback, and shall be at least 15 feet. Figure 30.23.120(3) illustrates this methodology:

Click [here](#) for a link to 30.23.120 .pdf file

(4) Existing building setback from new private road:

(a) The minimum setback of five feet shall be required for buildings existing at the time of creation of a private road and having legal right of access to the private road; provided that the private road is less than 50 feet in width and is not capable of

(i) providing access for more than eight lots;

(ii) generating more than 80 average daily trips in designated urban growth areas or more than 90 average daily trips in areas not included within the urban growth areas. Trip generation shall be determined based on the latest edition of the ITE trip generation report published by the Institute of Traffic Engineers; or

(iii) being converted to a street.

(b) A minimum of two off-street parking stalls shall be provided within the unencumbered portion of the property in conformance with chapter 30.26 SCC.

(c) When the existing structure is less than 20 feet from the private road, the existing structure may not be moved or expanded to encroach closer to the private road than existed at the time of creation of the private road.

(5) New building setback from private road with no access: The minimum setback requirement from private roads for structures which do not have legal right of access to the private road shall be five feet from the edge of the private road easement; provided that the private road is less than 50 feet in width and is not capable of either providing access for more than eight lots or being converted to a street.

(6) Setbacks from limited access easements: The setback from a private road or easement capable of serving only one or two lots shall be considered a side or rear setback if the lot also fronts on a public

right-of-way.

(7) Corner or through lots on limited access right-of-way: Where one of the roads creating a corner or through lot is a limited access right-of-way, side or rear yard setbacks shall apply along the limited access right-of-way.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.23.125 Setback exceptions from alleys.

A building setback shall not be required from an alley. Vehicular parking shall not be permitted in an alley.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003; Amended Ord. 04-003, March 31, 2004, Eff date May 17, 2004)

30.23.150 Setback exception for lots combined as a single building site.

If two or more lots are built upon as one unit, and are held under common ownership, the boundary line separating the two or more lots may be covered by a building or permitted group of buildings. Such lots shall constitute a single building site, and the setbacks required by this chapter shall apply to the aggregate of the lots.

(Added Ord. 03-068, July 9, 2003, Eff date July 28, 2003)

30.23.200 Reductions to lot area.

No minimum lot area shall be so reduced or diminished that the setbacks or other open spaces shall be smaller than prescribed by this title, nor shall the density of population be increased in any manner except in conformity with the regulations established by this title. Government structures and facilities, and utilities structures and facilities, shall have no minimum lot area.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.23.210 Lot size averaging.

(1) A subdivision or short subdivision will meet the minimum lot area of the zone in which it is located if the area in lots plus critical areas and their buffers and areas designated as open space or recreational uses, if any, divided by the total number of lots equals or exceeds the minimum lot area of the zone in which the property is located. In no case shall the density achieved be greater than the gross site area divided by the underlying zoning.

(2) This section shall only apply within zones having a minimum lot area requirement of 12,500 square feet or less.

(3) Each single lot shall be at least 3,000 square feet in area.

(4) Lots in subdivisions and short subdivisions created under the provisions of this section shall have a maximum lot coverage of 55%;

(5) Lots with less than the prescribed minimum lot area for the zone in which they are located shall have a minimum lot width of at least 40 feet, and right-of-way setbacks of 15 feet except that garages must be setback 18 feet from the right-of-way (with the exception of alleys) and corner lots may reduce one right-of-way setback to no less than 10 feet;

(6) Preliminary subdivisions approved utilizing lot averaging shall not be recorded by divisions unless such divisions individually or together as cumulative, contiguous parcels, satisfy the requirements

of this section.

(7) Roadways and surface detention/retention facilities shall not count toward the calculations for lot size averaging. However, surface detention/retention facilities shall count toward calculations for lot size averaging if the detention/retention facility: (1) is designed to not require security fencing under the EDDS standards and (2) the facility is either (a) designed so as to appear as a natural wetland system, or (b) provides active or passive recreational benefits in a natural landscaped setting.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003; Amended Ord. 03-075, September 24, 2003, Eff date October 6, 2003; Amended Ord. 04-081, September 1, 2004, Eff date September 24, 2004)

30.23.220 Rural cluster minimum lot area.

(1) A rural cluster subdivision or short subdivision will meet the minimum lot area of the zone in which it is located if the average lot size of all lots is at least 7,200 square feet and each lot contains sufficient area to comply with the Snohomish Health District's rules and regulations for on-site sewage disposal.

(2) Lots with less than the prescribed minimum lot area for the zone in which they are located shall conform to the minimum lot width, setbacks, and other bulk regulations of this chapter for lots located in the R-7,200 zone.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.23.230 Lot area when land is taken for public use.

(1) If a portion of a legally existing lot or parcel of land in any zone is acquired for public use in any manner, including condemnation or purchase, the remainder of the lot or parcel shall be considered having the required minimum lot area. However:

(a) The portion of the lot or parcel remaining after the acquisition for public use has an area of at least one-half of that required for the minimum lot area in the zone in which the lot or parcel is located except that, in a zone requiring a minimum lot area of one-half acre or more, a minimum lot area of at least 6,000 square feet shall be required; and

(b) After all applicable setback requirements are met, the remainder of the lot or parcel contains a rectangular space at least 30 feet by 40 feet in size which is usable for a main building.

(2) The setback requirements of this title shall not apply to existing legal structures located on legally-created lots or parcels where the setbacks for such structures have been reduced by governmental acquisition of a portion of the lots or parcels and such acquisition complies with the standards promulgated for decent, safe, and sanitary housing in Section 12, Right-of-Way Manual, Washington State Department of Transportation. Any structural expansion of these existing structures which would increase the degree of setback nonconformity is prohibited.

(3) Lots with less than sufficient square footage to meet minimum zoning requirements may be created in approving a short subdivision, when all of the following apply:

(a) As a condition of short subdivision approval, land must be dedicated for county road purposes pursuant to SCC 30.41B.200(4) and such dedication would cause the short subdivision to lose one or more lots due to insufficient square footage to meet minimum zoning requirements;

(b) No lot area may be reduced more than 10 percent below minimum zoning requirements; and

(c) All lots shall meet minimum Snohomish Health District requirements.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.23.240 Residential use of substandard lots.

Use of lots in residential zones for single family dwellings when such lots have substandard area for their present zone is permitted if the lot was legally created and satisfied the lot area and lot width requirements applicable at the time of lot creation; but such lots may be used only in the manner and upon the conditions set forth below:

(1) A person, who owns a single substandard lot or two or more substandard lots which were not contiguous and under single ownership on December 31, 1989, may use such lot or lots, either individually or in combination, for building sites, one dwelling per building site if the building sites meet the setbacks and lot coverage requirements and the Snohomish Health District's standards for the zone in which they are located;

(2) A person who owns two or more substandard lots which were contiguous and under single ownership on December 31, 1989, may use such lots, either individually or in combination, for up to two building sites, one dwelling per building site if the building sites meet the setbacks and lot coverage requirements and the Snohomish Health District's standards for the zone in which they are located. Additional contiguous substandard lots owned by the same person may be used for additional building sites, one dwelling per building site if the additional building sites contain at least one acre (43,560 square feet) or 50 percent of the lot area required for the zone in which such building sites are located, whichever is less and if the building sites meet the setbacks and lot coverage requirements and the Snohomish Health District's standards for the zone in which they are located; and

(3) Notwithstanding the provisions of SCC 30.23.240(2), a person who owns two or more substandard lots which were established on or after April 15, 1957, and which were contiguous and under single ownership on December 31, 1989, may use such lots, either individually or in combination, for building sites, one dwelling per building site if the building sites meet the setbacks and lot coverage requirements and the Snohomish Health District's standards for the zone in which they are located.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

30.23.250 Aggregation of lots.

(1) If two or more lots are built upon as a unit, are under one ownership, and when the common boundary line separating the lots is covered by a building or permitted group of buildings, the lots shall be considered a single lot, except as otherwise specifically allowed by this code.

(2) The aggregated lot shall constitute a single building site and the setbacks required by this title shall then apply to the aggregated lot.

(Added Amended Ord. 02-064, December 9, 2002, Eff date February 1, 2003)

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SNOHOMISH COUNTY ORDINANCE

NO. 08 - 090

APPENDIX B

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

EMERGENCY ORDINANCE NO. 08-~~010~~

RELATING TO GROWTH MANAGEMENT, ADOPTING AN INTERIM OFFICIAL CONTROL
REGULATING RESIDENTIAL DEVELOPMENT OF SUBSTANDARD LOTS, AMENDING SCC
30.23.240, DECLARING AN EMERGENCY, AND SETTING A HEARING DATE

WHEREAS, the county council adopted regulations in SCC 30.23.240 to allow residential development on existing legal lots that do not meet the minimum size required by current zoning regulations, provided that certain conditions are met; and

WHEREAS, SCC 30.23.240, and the conditions in its subsections, were established to balance the desire to protect the character and quality of existing residential communities as envisioned in the Snohomish County General Policy Plan (GPP) and current zoning code with the desire to allow residential development on legally existing lots that were created before the current zoning was in place; and

WHEREAS, the intent of SCC 30.23.240 is and always has been to regulate all residential development on substandard lots, including the development of duplexes and multi-family structures as well as single family dwellings; and

WHEREAS, the wording and structure of SCC 30.23.240 is complex and potentially confusing, raising questions about whether it applies to all residential development or only to the construction of single family dwellings; and

WHEREAS, the county has received a number of applications for building permits for duplexes on substandard lots; and

WHEREAS, allowing the development of duplexes at densities higher than allowed for single family residences in rural areas would be in conflict with the code and would negatively affect the character of rural communities; and

WHEREAS, the county is undertaking a comprehensive review of its land use policies and regulations for development in rural areas, where the use of substandard lots has been controversial, in order to better protect and enhance the character of our rural areas; and

WHEREAS, the county council is interested in revisiting the regulations for use of substandard lots as early as possible in the update of the rural policies and codes so that the community can have substantial input into the appropriate amount of development to allow in these areas; and

WHEREAS, a complete update of SCC 30.23.240 would be useful to make it clearer and more aligned with the GPP and the community's preferences for rural development; and

WHEREAS, such an update may take a period of several months, during which confusion about the application of the current code could lead to unnecessary conflicts and disagreements between owners and neighbors of substandard lots; and

WHEREAS, clarifying the code immediately to reduce confusion while engaging the community in discussions about the best long term solution is in the best interest of the community; and

WHEREAS, RCW 36.70A.390 provides that the county council may adopt a moratorium, interim zoning ordinance, interim zoning map, and/or interim official control; and

WHEREAS, moratoria, interim zoning ordinances, and interim official controls enacted under RCW 36.70A.390 are methods by which local governments may preserve the status quo so that new plans and regulations will not be rendered moot by intervening development;

NOW, THEREFORE, BE IT ORDAINED:

Section 1. The county council makes the following findings of fact and conclusions:

- A. The county council adopts and incorporates the foregoing recitals as findings as if set forth fully herein.
- B. A large number of legally existing lots were created prior to the adoption of the current zoning map and code, and many of them are smaller than allowed by the current code.
- C. SCC 30.23.240 provides that lots that have substandard area for their present zone may be used only in the manner and upon the conditions set forth in that section.
- D. The structure and wording of SCC 30.23.240 is complex and confusing.
- E. The county has received applications to build duplexes on substandard lots from applicants who believe that the provisions of SCC 30.23.240 do not apply to duplexes.
- F. The county will work with affected communities and stakeholders to update the regulations for development on substandard lots as part of the review of the Rural element of the GPP.
- G. It is in the best interest of the community to immediately clarify that SCC 30.23.240 applies to all residential development while the review and update of the Rural element is proceeding.
- H. The amendment to SCC 30.23.240 adopted by this ordinance implements the Growth Management Act (GMA) Goal 2 (RCW 36.70A.020(2)), "Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development."
- I. The amendment to SCC 30.23.240 adopted by this ordinance implements the GMA requirements for planning for rural areas, including RCW 36.70A.070(5), by controlling rural development in a manner that protects rural character.
- J. The amendment to SCC 30.23.240 adopted by this ordinance implements GPP Goal LU 6, "Protect and enhance the character, quality, and identity of rural areas."
- K. The amendment to SCC 30.23.240 adopted by this ordinance complies with the GMA requirement to adopt development regulations that are consistent with and implement the GPP.
- L. The amendment to SCC 30.23.240 adopted by this ordinance satisfies the procedural and substantive requirements of and is consistent with the GMA.
- M. The amendment to SCC 30.23.240 adopted by this ordinance bears a substantial relationship to the public health, safety and welfare.

Section 2. Findings and effective date. Pursuant to section 2.120 of the Snohomish County Charter, the county council finds and concludes that preventing a potentially large number of applications for dense clusters of duplexes in rural areas that are zoned for lower density rural uses from being filed and processed is necessary for the immediate preservation of the public peace, health or safety. Non-emergency options for amending the substandard lot regulations would not prevent such applications from being filed. Based on the foregoing, the county council declares that an emergency exists and this ordinance shall take effect immediately.

Section 3. SEPA. Pursuant to WAC 197-11-880 and SCC 30.61.020, the adoption of this ordinance is exempt from the requirements for a threshold determination under the State Environmental Policy Act (SEPA).

Section 4. The county council hereby adopts the following interim official control:

A. Snohomish County Code Section 30.23.240, last amended by Ordinance No. 02-064 on December 9, 2002, is amended to read:

30.23.240 Residential use of substandard lots.

Use of lots (~~(in residential zones for single family dwellings)~~) for residential development when such lots have substandard area for their present zone is permitted if the lot was legally created and satisfied the lot area and lot width requirements applicable at the time of lot creation; but such lots may be used only in the manner and upon the conditions set forth below:

(1) A person, who owns a single substandard lot or two or more substandard lots which were not contiguous and under single ownership on December 31, 1989, may use such lot or lots, either individually or in combination, for building sites, one dwelling per building site if the building sites meet the setbacks and lot coverage requirements and the Snohomish Health District's standards for the zone in which they are located;

(2) A person who owns two or more substandard lots which were contiguous and under single ownership on December 31, 1989, may use such lots, either individually or in combination, for up to two building sites, one dwelling per building site if the building sites meet the setbacks and lot coverage requirements and the Snohomish Health District's standards for the zone in which they are located. Additional contiguous substandard lots owned by the same person may be used for additional building sites, one dwelling per building site if the additional building sites contain at least one acre (43,560 square feet) or 50 percent of the lot area required for the zone in which such building sites are located, whichever is less and if the building sites meet the setbacks and lot coverage requirements and the Snohomish Health District's standards for the zone in which they are located; and

(3) Notwithstanding the provisions of SCC 30.23.240(2), a person who owns two or more substandard lots which were established on or after April 15, 1957, and which were contiguous and under single ownership on December 31, 1989, may use such lots, either individually or in combination, for building sites, one dwelling per building site if the building sites meet the setbacks and lot coverage requirements and the Snohomish Health District's standards for the zone in which they are located.

B. This amendment shall be effective for six months.

Section 5. Public hearing. The county council will hold a public hearing on this matter on July 30, 2008, at the hour of 10:30 a.m. in the Henry M. Jackson Board Room, 8th Floor, Robert J. Drewel Building, 3000 Rockefeller, Everett, Washington, for the purpose of hearing public testimony on this matter in accordance with RCW 36.70A.390. The notice for the public hearing

shall specifically indicate that this ordinance may be renewed for one or more six month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal.

Section 6. The county council requests that the county executive engage affected stakeholders and communities in the review of the regulations for development of substandard lots in rural areas and propose any policies and regulations deemed appropriate to serve the public health, safety, and welfare in Snohomish County.

Section 7. Severability and savings. If any section, sentence, clause, or phrase of this ordinance shall be ruled to be invalid or unconstitutional by the Growth Management Hearings Board or a court of competent jurisdiction, such ruling shall not affect the validity or constitutionality of any other section, sentence, clause, or phrase of this ordinance, and the section, sentence, clause, or phrase in effect prior to the effective date of this ordinance shall be in full force and effect for that individual section, sentence, clause, or phrase as if this ordinance had never been adopted.

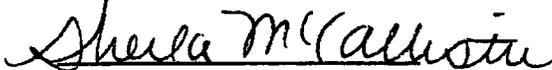
PASSED this 10th day of June, 2008.

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington



Chairperson

ATTEST:


Clerk of the Council, *asst.*

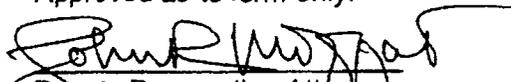
- () APPROVED
- () VETOED
- (X) EMERGENCY

DATE: _____

County Executive

ATTEST:

Approved as to form only:


Deputy Prosecuting Attorney
6-16-08

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SNOHOMISH COUNTY RESOLUTION

NO. 08 - 021

APPENDIX C

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

RESOLUTION NO. 08-021

REGARDING THE COUNTY COUNCIL'S POSITION
ON THE CORRECT INTERPRETATION OF SCC 30.23.240
REGULATING RESIDENTIAL DEVELOPMENT ON SUBSTANDARD LOTS

WHEREAS, the county council adopted regulations in SCC 30.23.240 to allow residential development on existing legal lots that do not meet the minimum size required by current zoning regulations, provided that certain conditions are met; and

WHEREAS, SCC 30.23.240 and the conditions in its subsections were established to balance the desire to protect the character and quality of existing residential communities as envisioned in the Snohomish County General Policy Plan and current zoning code with the desire to allow residential development on legally existing lots that were created before the current zoning was in place; and

WHEREAS, the wording and structure of SCC 30.23.240 is complex and potentially confusing, raising questions about whether it applies to all residential development or only to the construction of single family dwellings; and

WHEREAS, the county has received a number of applications for building permits for duplexes on substandard lots; and

WHEREAS, allowing duplexes at densities higher than allowed for single family residences and higher than anticipated by current zoning and land use designations could negatively affect the character of rural communities and create infrastructure, drainage, traffic, and other challenges in areas that are planned for rural densities; and

WHEREAS, the county council adopted Emergency Ordinance No. 08-090 on June 16, 2008, amending SCC 30.23.240 to remove any potential confusion about whether it applies to all residential development on substandard lots; and

WHEREAS, the county council adopted Motion No. 08-412 on June 16, 2008, referring the amendment in Emergency Ordinance No. 08-090 to the Planning Commission and the Department of Planning and Development Services (PDS) so that they may work with affected communities and stakeholders to develop a proposed revised permanent set of regulations for development on substandard lots; and

WHEREAS, interpreting SCC 30.23.240 in a manner that applies its conditions to single family dwellings but not duplexes would conflict with the intent of the code by allowing duplexes at densities higher than allowed for single family residences; and

WHEREAS, interpreting SCC 30.23.240 in a manner that applies its conditions to single family dwellings but not duplexes would conflict with the letter of the code because the code specifically states that substandard lots, "... may be used only in the manner and upon the conditions set forth below...;" and

WHEREAS, the opening clause of SCC 30.23.240 prior to June 16, 2008, "Use of lots in residential zones for single family dwellings when such lots have substandard area for their present zone is permitted if the lot was legally created and satisfied the lot area and lot width requirements applicable at the time of lot creation..." is permissive, allowing single family dwellings if certain conditions are met, and it does not limit the scope of the following clause of that sentence, which reads, "... but such lots may be used only in the manner and upon the conditions set forth below." The phrase "such lots" in that clause refers to all lots that "have substandard area for their present zone" and were "legally created and satisfied the lot area and lot width requirements applicable at the time of lot creation," not simply those for which single family dwellings have been proposed, so the conditions that follow apply to single family dwellings, duplexes, and all other proposed uses of such lots;

NOW, THEREFORE BE IT RESOLVED:

1. The county council believes the correct interpretation of SCC 30.23.240 is and always has been that it applies to all residential development of substandard lots, including single family dwellings, duplexes, and all other residential development, prohibiting development of substandard lots except as allowed by the conditions in SCC 30.23.240 (1) through (3).
2. As expressed in Emergency Ordinance 08-090 and Motion 08-412, the county council is interested in revisiting the regulations for use of substandard lots so that the community can have substantial input into the appropriate amount of development to allow in these areas, and the county council requests that PDS and the Planning Commission undertake this review as soon as possible.

PASSED this 18th day of June, 2008.

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

/s/ Dave Somers
Chairperson

ATTEST:

/s/ Barbara Sikorski
Asst. Clerk of the Council

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