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No. 63531-0-I

(Snohomish County Superior Court No. 08-2-06059-2)

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WASHINGTON STATE COURT OF APPEALS  
DIVISION ONE

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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.

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**APPELLANTS' OPENING BRIEF**

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ORIGINAL

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## INTRODUCTION

Appellants are property owners Brock Baker, Ralph Johnson, William Stoops, and Daniel Wickstrom (collectively “Property Owners”). Property Owners own numerous legally recognized and taxed land parcels in the Warm Beach community of unincorporated Snohomish County (“County”), and sought to make use of those parcels, rather than letting the parcels sit idle. These parcels consist of combinations of historic lots, which though legally platted, are considered by the County to be “substandard” solely in area *i.e.* less than the current zoning minimum lot size. In other words, the lots are smaller than allowed for new plats, but are still considered legal lots that can be transferred and are taxed accordingly by the County.

The Warm Beach community consists of hundreds of these existing substandard lots and the community is a well-developed area consisting of primarily residential housing that has existed for decades but also includes a substantial number of newer homes constructed more recently. Despite the neighborhood nature of the area, the County declared the entire Warm Beach community as part of the Rural area with Rural R-5 zoning that requires a minimum lot size of 200,000 square feet—slightly less than five acres at 4.6 acres.

Property Owners were precluded from using their parcels for single-family homes by the County Code provision entitled Residential

Use of Substandard Lots. That Code provision explicitly targeted land that was in contiguous ownership on December 31, 1989, for special treatment, namely a restriction on the ability to use otherwise legitimate building sites for *single-family homes*. Other land owners that separated their land holdings into non-contiguous building sites before that date were allowed to build single-family homes in the same area, no matter how many building sites they owned. Property Owners own parcels subject to this restriction and sought to find some other legal use of these otherwise legally recognized and taxed land parcels.

For that purpose, Property Owners combined sufficient land to comply with all health and safety requirements, and submitted applications to Snohomish County (“County”) to build duplexes on their land. The Property Owners took the position that the construction of duplexes was consistent with the residential substandard lot code provision that only restricted construction of *single-family residential* uses, and not any other uses. The applications created controversy at the County. As a result, the County undertook a substantial effort to research the entire history of the code and to essentially look for a way to use the code to preclude duplexes. After this unusual effort, the County Planning Director determined in a formal Code Interpretation that the Property Owners were correct and that the residential substandard lot code provision did not preclude duplexes.

Plaintiffs challenged the County's formal Code Interpretation through an action for declaratory relief, and failed to name or serve the affected Property Owners who were forced to intervene to protect their rights. Plaintiffs did not offer any alternative reading of the County Code that would allow any use at all to the land owned by Property Owners. Instead, Plaintiffs focused on a few provisions of the County Code to argue that *any parcel* less than current minimum lot size could *be used only for a single-family house but if, and only if*, the parcel qualified for that use under the residential substandard lot provision. The Plaintiffs specifically argued that: (1) one single family home was the only legal use of **any** parcel in the County that was below minimum lot size, *e.g.* less than 4.6 acres in the R-5 zoning prevalent in the rural area; and, (2) Property Owners' so-called legally recognized and taxed parcels did not qualify for single-family use *or any other use* since their parcels did not qualify under the residential substandard lot provision and were less than the current minimum lot size.

Plaintiffs called the residential substandard lot provision an "exception" to the Bulk Matrix, such that parcels below minimum lot size were "prohibited" from any other use, and argued: "the exception is for single family homes only . . . **All other types of uses**, including duplexes, **are subject to the outright prohibition** and cannot, under any

circumstance, be developed on lots that are smaller than 200,000 square feet in the Rural 5-Acre (R-5) zone.” Saying that “all other uses are prohibited” means that the following uses are prohibited on parcels even slightly smaller than 4.6 acres: agriculture, bed and breakfast, farm stand, detached garage, swimming/wading pool, and veterinary clinic.

County Code contains a different provision that seems to be directly to the contrary to Plaintiffs’ contention in allowing these uses on substandard lots: “Uses shall be established upon legally created lots that conform to the current zoning requirements **or on legal nonconforming lots.**” Plaintiffs’ reading of the County Code is inconsistent with the plain meaning of the Code, and also is inconsistent with the undisputed, decades-long, and contrary interpretation by the County. The court below erred in agreeing with Plaintiffs’ view, thereby necessitating this appeal.

#### **ASSIGNMENTS OF ERROR**

- A. The trial court erred when it issued its Facts, Conclusions of Law, and Declaratory Judgment entered on April 2, 2009. See Appendix A attached, CP 83-89.
- B. The trial court erred in entering the Order Denying Motion for Reconsideration, entered on April 24, 2009. See Appendix B attached, CP 19-20.

#### **ISSUES RELATING TO ASSIGNMENTS OF ERROR**

- 1. Whether the trial court erred in concluding that duplexes

are not an allowed use on existing substandard lots under relevant provisions of the former Snohomish County Code? Error A.

2. Whether the trial court erred in concluding that relevant provisions of the former Snohomish County Code were not ambiguous as they pertained to the construction of duplexes on substandard lots? Error A.

3. Whether the trial court erred in declining to consider Snohomish County's historical interpretation of its own Code regarding the application of minimum lot size requirements to existing substandard lots because the provisions are ambiguous? Error A.

4. Whether the trial court erred in denying the motion for reconsideration and motion to supplement the record based upon a stipulation that the record was closed, even though Property Owners were not a party to the stipulation and even though the Property Owners objected at the first available opportunity and made an offer of proof at the hearing? Error B.

## **STATEMENT OF THE CASE**

The trial court decided this case as a claim for Declaratory Judgment based on a closed record created in the County's administrative process related to the formal Code Interpretation. CP 92-93 (Judgment), CP 381-385 (Stipulated Order). The County prepared an Index to the Record (CP 360-364), but pursuant to the Stipulated Order, the entire record was not filed with the trial court, and instead the parties attached portions of the administrative record deemed pertinent to the briefs, along with Code provisions. CP 383:17-19. The administrative record then is incorporated as attachments within the Clerk's Papers, pages 1-410, hereafter "CP" and cited as "CP page # : line #," with the line number when appropriate. Property Owners have designated as Clerk's Papers all portions of the administrative record that the parties included as attachments to the briefs below. In addition, a Verbatim Report of Proceedings was made for three court hearings and combined into a single volume, pages 1-82, hereafter "RP" and cited as "RP page # : line #." Important parts of the record are attached for the Court's convenience to this brief as Appendices, hereafter "App." The Snohomish County Code is hereafter referred to as "Code" or "SCC."

### **A. Background Facts and Formal Code Interpretation**

Property Owners Brock Baker, Ralph Johnson, William Stoops, and Daniel Wickstrom submitted building permit applications to

Snohomish County to construct duplexes on their existing legal lots in the Warm Beach area. CP 179-185, App. C (formal Code Interpretation without attachments); CP 187-190, App. D (application submittal letter dated April 28, 2008 by Groen Stephens & Klinge, LLP). These lots, though legally platted, are considered by the County to be substandard in area (*i.e.* less than the current zoning minimum lot size). CP 187. In other words, the lots are smaller than the current minimum lot size, but are still considered legal lots and are taxed accordingly by the County. *Id.* Warm Beach consists of hundreds of these existing substandard lots and is well-developed area consisting of primarily residential housing, all part of C.D. Hillman's Birmingham Waterfront Addition platted in 1909. CP 192, App. E (map showing portion of plat with applications numbered) and CP 187, App D. Each duplex application requires the use of several of these existing substandard lots in order to meet relevant health codes, *i.e.* for a legal septic system. *Id.* The total number of applications was 27. CP 179.

At the time of application, the County code contained a provision related to substandard lots, which limits the development of substandard lots in certain circumstances, and only applied to “[u]se of lots in residential zones *for single family dwellings.*” CP 190, App. D, former SCC 30.23.240 (emphasis added). Inasmuch as the Code separately defines single-family dwellings and duplexes, CP 189, App. D (*see* SCC 30.91D.510 defining “dwelling, single family” and SCC 30.91D.480

defining “duplex”), Property Owners justifiably submitted their building permit applications with the expectation that duplexes were permitted uses on their substandard lots. CP 188, App. D. Property Owners’ lots did not qualify for single family dwellings under the contiguous ownership restrictions of Section 30.23.240, and: “The County previously refused to process applications for single-family residences.” CP 187.

The applications created a controversy, which resulted in the Snohomish County Council enacting an emergency ordinance about two months later. CP 198-200. The new Ordinance amended the substandard lot code provision, Section 30.23.240, to change the rule so that duplexes were no longer permitted by the Code. CP 200, Sec. 4. The Ordinance itself expressly stated that the impetus for its enactment was Property Owners’ permit applications. CP 199, Sec. 1.E (“Whereas the County received a number of applications for building permits for duplexes on substandard lots...”). It is undisputed that Property Owners’ permit applications are vested and must be considered under the former version of Section 30.23.240 and represent the only permit applications so vested.

Two weeks after the County Council amended the substandard lot code provision to prohibit duplexes, Craig Ladiser, Director of Snohomish County Planning and Development Services, issued a formal Code Interpretation regarding the application of former Section 30.23.240 to duplexes. CP 179, App. C. (without attachments). That Code

Interpretation expressly stated that its impetus was Property Owners' applications: "27 building permit applications of...Brock Baker (19 permit applications), Bill Stoops (2 permit applications), Ralph Johnson (5 permit applications), and Dan Wickstrom (1 permit application)." *Id.* The Code Interpretation concluded as follows:

SCC 30.23.240 pertaining to the use of residential substandard lots does not apply to duplexes. It only applies to single family dwellings. There is no minimum lot size established in Title 30 SCC for duplexes proposed on existing substandard lots.

CP 184, App. C. The formal Code Interpretation represents the interpretation of the rules applicable to the vested applications, regardless of subsequent amendments.

**B. Trial Court Proceedings**

Plaintiffs Ellen Hiatt Watson, Roger C. Hill, and Robert Landles filed the underlying lawsuit against the County seeking, among other relief, a declaration that the County's Code interpretation is "arbitrary and capricious" and "based upon an inaccurate reading of the relevant Code language." (Hill and Landles were subsequently re-titled as Plaintiff-Intervenors by stipulation, CP 382.). Subsequently, the trial court entered an order granting status to 7 Lakes, Inc. as Plaintiff-Intervenor. CP 379-380. Plaintiff and Plaintiff-Intervenors are referred to herein jointly as "Plaintiffs." The complaint was not a Land Use Petition and Property Owners were not named, served, or otherwise notified by Plaintiffs or the

County. *See* CP 399-410 (Summons and Complaint), CP 395-398 (declaration of service of summons).

The County and the original Plaintiffs stipulated to an agreed process—the Stipulated Order Addressing Preliminary Matters and Setting Case Schedule entered on December 10, 2008. CP 381-385. In that Stipulation, the original Plaintiffs and the County agreed that the matter would be heard under the Uniform Declaratory Judgments Act and that the case would, “be heard on a closed record.” CP 382:1-3. The Stipulation included a process for the County to prepare the record and for Plaintiffs to move to supplement the record. CP 383.

Property Owners Brock Baker, Ralph Johnson, William Stoops, and Daniel Wickstrom, having belatedly learned of the pending lawsuit that was attempting to decide their rights, sought to intervene. By that time, the Plaintiffs and the County had already settled their disputes regarding the record, and the record was closed per the Stipulation. On January 20, 2009, the trial court entered an order granting Property Owners status as Defendant-Intervenors. CP 263-267. On that same day, January 20, 2009, Plaintiffs filed their Opening Brief. CP 268-359. The County filed a response brief arguing that the Code Interpretation was correct and that the request for declaratory relief should be denied. CP 219-262. Property Owners filed a Response Brief on February 12, 2009 (CP 163-218), just three weeks after being allowed to intervene, and in

that brief objected to the closed record review created by the Stipulation to which Property Owners were not a party. CP 175-176.

Property Owners pointed out that additional evidence of past practice could be provided if the case was not based on a closed record, namely to support the point that minimum lot size applied only to newly created lots. *Id.* However, the record already included undisputed substantial evidence that the County's interpretation had been consistently followed for over 20 years. The County conceded that the interpretation, "was consistent with at least 20 years of policy related to the development of existing, legally-created substandard lots." CP 234:14-20. The County pointed out that the County policy that minimum lot size applied only to new lots was set forth in writing as early as 1986. *Id.* Specifically, the policy was stated in a letter to *Ralph Johnson, one of the Property Owners in this matter*, which stated as follows with respect to this issue:

**The 2.3 acre and 5 acre minimum lot sizes apply only to newly created lots. Your ownership consists of several lots which were platted some time ago. The County recognizes already platted lots as legal building lots regardless of the minimum lot size and width requirements of the applicable zone.**

CP 214, App. F. As confirmed by the County's Code Interpretation, the County's interpretation remains the same today—minimum lot size applies only to new lots: "There is no minimum lot size established in Title 30 SCC for duplexes proposed on existing substandard lots." CP 184

App. C (Conclusion).

On March 5, 2009, the trial court held a hearing and at that time Property Owners made an offer of proof that additional evidence could be produced in support of the past practice of the County. RP 44:25 to 45:1; RP 45-46, 49:21 to 50:17. The court took the matter under submission until March 18, 2009, when the court gave its decision. RP 66-71.

Plaintiffs prepared Proposed Findings of Fact and Conclusions of Law, and Declaratory Judgment, and Property Owners objected to Plaintiffs' proposal for a number of reasons (CP 90-132). One objection was that the matter was an administrative review on a closed record and not a trial, so the court's decision did not constitute Findings of Fact based on a trial at which testimony was taken. CP 92-93. The court held a hearing on presentment of the order and the objections on April 2, 2009. RP 72-82. Plaintiffs accepted some changes urged by Property Owners. RP 72:20-25 to 73:1-3. The trial court stated that no trial was held (RP 76:2), and so the court agreed with Property Owners' objection and said:

I didn't really make findings. There were, I guess, operative facts that I was presented with. But that's different. On top of which, the whole thing really is just the interpretation of the code.

RP 75:23 to 76:10; *see also* 80:6-9. To implement that change simply, the court changed "Findings of Fact" to just "Facts" in the document title and Heading I on page 1 (RP 81:1-3), and entered the Facts, Conclusions of

Law, and Declaratory Judgment. CP 83-89 (hereafter “Decision”).

The trial court orally and in its Decision made it clear that its ruling was that the Code was not ambiguous, that the plain meaning of the Code prohibited duplexes on substandard lots, and that the County’s historical interpretation and past practice to the contrary could not be relied upon because it would alter the plain meaning in the court’s opinion. CP 87:16-24 (Judgment ¶ 9); RP 76:12 to 80:4. In particular, the trial court ruled that: “There is no inconsistency among the various sections of the Code and there is no need to harmonize ostensibly inconsistent sections.” CP 87:23-24.

Property Owners filed a Motion for Reconsideration (CP 27-82), which argued primarily that the Code was ambiguous, that the past practice of enforcement was clear and contrary to the ruling. A request to supplement the record was made to include two declarations regarding the historical practice—making the point that the information was offered only if the trial court had any doubts that the County’s past practice was contrary to the ruling. CP 37-38. The two declarations would fulfill Property Owners’ offer of proof at the hearing that the County’s consistent practice was to allow permitted and conditional uses on substandard lots, except single-family homes subject to former SCC 30.23.240. CP 38:9-18. The court apparently had no doubts since the motion and request to supplement were rejected. CP 19-20. This timely appeal followed. CP 5.

## ARGUMENT

### I

**STANDARD OF REVIEW:  
UNAMBIGUOUS CODE PROVISIONS ARE  
AFFORDED THE PLAIN MEANING WHILE  
AMBIGUOUS CODE PROVISIONS MAY BE  
INTERPRETED ACCORDING TO A PATTERN OF  
PAST ENFORCEMENT**

This case requires this Court to carefully review and apply provisions of the Snohomish County Code. The State Supreme Court’s most recent pronouncement regarding interpretation or construction of code provisions is the **unanimous** decision in *Sleasman v. City of Lacey*, 159 Wn.2d 639, 151 P.3d 990 (2007). In *Sleasman*, the property owners cut down trees without a permit, and were notified by the city that the tree cutting violated a city ordinance. The city’s contention was that according to its code the property was “undeveloped” or “partially developed,” and therefore the tree cutting violated the requirement to obtain a permit. The *Sleasman* case turned precisely on the meaning of terms in the city’s code, so the *Sleasman* case provides an important precedent for this case, which also turns on the meaning of code provisions—here the County’s.

The Supreme Court in *Sleasman* first stated the longstanding standard of review for such a case. Namely, construction of local ordinances, or code provisions, is the same as statutory construction, which “is a question of law and our review is de novo.” *Id.* at 642; *see*

*also id.* at 643 (“We interpret local ordinances the same as statutes”). This standard of review applies here.

The *Sleasman* court states the important rule that: “An unambiguous ordinance will be applied by its plain meaning.” *Id.* In determining the plain meaning, however, the Supreme Court recognizes that local code provisions are interpreted the same as statutes, which includes the direction that: “Full effect must be given to the legislature’s language, with no part rendered meaningless or superfluous.” *Id.* at 646. This short description of how to ascertain the plain meaning is more fully explained in a recent decision of this Court:

As part of the determination of whether a plain meaning can be ascertained, it is appropriate to look at the language in the context of the statutory scheme as a whole. The “plain meaning” is thus derived from all that the legislative body has said in the statute and related statutes which disclose legislative intent about the provision in question.

*Belleau Woods II, LLC v. City of Bellingham*, 150 Wn. App. 228, 240-241, 208 P.3d 5 (2009) (citing *Dep’t of Ecology v. Campbell & Gwinn, L.L.C.*, 146 Wn.2d 1, 9-12, 43 P.3d 4 (2002) [extensive discussion of need to look at related provisions to ascertain plain meaning]).

After considering the plain meaning, the *Sleasman* court then turned to the city’s argument that the city’s interpretation of the code was entitled to deference. The Court stated that deference would only be

appropriate for ambiguous ordinances. 159 Wn.2d at 646. The Court went on to analyze whether deference was due the city's interpretation as an alternative ground for its decision. The court rejected deference because the city's interpretation was, "not part of a pattern of past enforcement, but a by-product of current litigation." The Court explained that the city's interpretation arose for the first time when, "the trial court asked for further briefing," and that the only other example occurred when the city fined the Sleasman's neighbors after Sleasman's action in cutting the trees. *Id.* at 647. The Court compared the instant case to one in which the Supreme Court rejected an agency interpretation based on two instances in 14 years. *Id.* (citing *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 828 P.2d 549 (1992)). Division Two followed this aspect of *Sleasman* in concluding that the appellant "cannot show a pattern of enforcement." *Milestone Homes, Inc. v. City of Bonney Lake*, 145 Wn. App. 118, 130, 186 P.3d 357 (2008).

The discussion in *Sleasman* about deference to prior agency interpretation follows longstanding Supreme Court authority. For example, the Supreme Court said:

It is a familiar rule of statutory construction that, in any doubtful case, the court should give great weight to the contemporaneous construction of an ordinance by the officials charged with its enforcement.

*Morin v. Johnson*, 49 Wn.2d 275, 279, 300 P.2d 569 (1956). In *Morin*, the

court afforded deference because the city had uniformly construed the disputed ordinances for many years and had issued numerous permits accordingly. *See also Mall, Inc. v. City of Seattle*, 108 Wn.2d 369, 378, 739 P.2d 668 (1987) (giving deference to planning department’s “long-standing expertise in calculating lot areas”); *Hama Hama Co. v. Shorelines Hearings Board*, 85 Wn. 2d. 441, 448-49, 536 P.2d 157 (1975) (formal rules adopted to interpret statute); *Keller v. City of Bellingham*, 92 Wn.2d 726, 731, 600 P.2d 1276 (1979) (prior tacit approval of interpretation by city council); *see also* RCW 36.70C.130(1)(b), Land Use Petition Act (“The land use decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise”). In short, the courts afford **reasonable** deference to an agency interpretation in cases where such an interpretation has some meaningful historical basis.

The Courts should also keep in mind the general rule that zoning ordinances should be construed in favor of property owners. As stated by the Supreme Court in the *Morin* case:

It must also be remembered that zoning ordinances are in derogation of the common-law right of an owner to use private property so as to realize its highest utility. Such ordinances must be *strictly construed in favor of property owners* and should not be extended by implication to cases not clearly within their scope and purpose.

*Morin*, 49 Wn.2d at 279 (emphasis added). This quote was cited again

with approval by the unanimous Supreme Court in the *Sleasman* case. 159 Wn.2d at 643, fn. 4. Similarly, the courts routinely avoid reaching constitutional questions (*id.* at 647), and the courts specifically seek to construe code provisions in a manner to avoid unconstitutional results. As noted by this Court: “Moreover, we recognize that we are obligated to construe the ordinance, if possible, in such a manner as to uphold its constitutionality.” *Grader v. City of Lynnwood*, 45 Wn. App. 876, 881, 728 P.2d 1057 (1986). This principle is not a new one. The Supreme Court stated the same principle in a 1900 case:

If a statute is susceptible of two constructions, one of which would render it constitutional, and the other not, it is to receive the former construction, as presumptively expressing the legislative intent.

*State v. Schomber*, 23 Wash. 573, 578, 63 P. 221 (1900).

With these principles in mind, we now turn to this case to determine whether the County Code provisions at issue are unambiguous and whether the above rules apply to assist in the interpretation of any Code provisions determined to be ambiguous.

## II

### **THE PLAIN MEANING OF THE FORMER RESIDENTIAL SUBSTANDARD LOT CODE PROVISION APPLIED SOLELY TO SINGLE FAMILY DWELLINGS AND DID NOT APPLY TO, OR PROHIBIT, DUPLEXES**

The Property Owners contend that the former residential substandard lot code provision plainly applied only to single-family homes, and did not apply to, or prohibit, duplexes. Former Section 30.23.240, CP 190, App. D. The Property Owners provided a persuasive and straightforward interpretation of the former Section 30.24.240 in the letter to Snohomish County Planning and Development Services that accompanied their permit applications. CP 187-190, App. D. Thus, the County knew precisely what was at stake. Yet, with great reluctance, the County agreed with the Property Owners in the formal Code Interpretation. As we shall see, Plaintiffs never seriously disputed this aspect of the Code Interpretation.

The language of the former residential substandard lot provision could not be clearer, as it is addressed to: “Use of lots in residential zones for single family dwellings.” CP 190, App. D. Thus, by its express terms, the County’s former substandard lot code provision applied only to “single family dwellings.” The only clarification here is to determine whether “single family dwellings” is defined, and if so, whether the definition encompasses duplexes. The County Code definitions are absolutely

crystal clear in defining “single-family dwellings” to exclude duplexes. Four definitions quickly answer this question: “Dwelling”; “Dwelling, single family” (“Single family dwelling”); “Duplex”; and, “Dwelling, multiple family.” CP 189, App. D (all four set forth).

Specifically, SCC 30.91D.510, defines “single family dwelling” as “a dwelling containing one dwelling unit.” SCC 30.91D.480, defines “duplex” as “a residential structure containing two dwelling units that have a contiguous wall.” SCC 30.91D.500 defines “multiple family dwelling” as “a dwelling containing three or more dwelling units.” CP 189, App. D. Similarly, the zoning matrix for the rural zone clearly differentiates between single-family dwellings and duplexes, placing different restrictions on their use depending upon the type of zone in which they are located. CP 330, App. G.

For convenience in reviewing the code, Plaintiffs included the applicable Code Chapters, including procedural provisions, attached to their brief below as exhibits. The primary Code Chapters are attached here as Appendix G with the exhibit label cover sheets, Exhibits H-L (CP 314-350), to facilitate reference to all the clerk’s paper page numbers and because the two relevant tables *are called out by hand notation* as exhibits, *i.e.* Rural Use Matrix called out as Exhibit I (CP 317, 328-335) and the Bulk Matrix called out as Exhibit K (CP 337, 347-348).

Craig Ladiser, Director of Snohomish County Planning and Development Services, issued a formal Code Interpretation regarding the application of former Section 30.23.240 to duplexes. CP 179-185, App. C (without attachments). The Code Interpretation repeats the obvious nature of the provision by stating that:

The first paragraph of SCC 30.23.240 sets forth the applicability of the provision and specifies that the provision applies to use of lots in *residential* zones for *single family dwellings*.

CP 182, App. C (§ 7). The Code Interpretation also reviews the entire history of the code provision and after substantial analysis finally concludes as follows:

SCC 30.23.240 pertaining to the use of residential substandard lots does not apply to duplexes. It only applies to single family dwellings. There is no minimum lot size established in Title 30 SCC for duplexes proposed on existing substandard lots.

CP 184, App. C (Conclusion). In short, the County Planning Director, as the person in charge of interpreting and enforcing these code provisions, determined that the plain meaning did not prohibit duplexes in the R-5 Rural zoning that applied to the Property Owners' permit applications.

Importantly, the Planning Director used multiple staff people to carefully consider all the code provisions to see if the plain meaning of the former Section 30.23.240 could be avoided. This fact is clear from an email exchange between Planning Director Craig Ladiser and Will Hall,

Legislative Analyst for the County Council. Hall related a proposed interpretation by Councilmember Dave Somers and asked: “whether there is any possible way to interpret and apply the current code in a way that prohibits duplexes?” CP 211. Planning Director Ladiser explained that he and his staff had been looking for any possible way to deny the permits:

Pam, Neil, and Linda Kuller looked into my authority originally to see if I had discretion through the existing code language to deny the placement of duplexes. It was clear to them that the code was too specific... In any case, they looked pretty hard at this and determined I could not deny them [the applications].

CP 211. The County Council was apparently hoping that the Planning Director would create a “made to order” interpretation for this situation, yet despite that pressure from the Council and efforts to do so, the Planning Director’s formal Code Interpretation concludes that duplexes are allowed—and that as to that issue, the applications should be granted.

This interpretation of the residential substandard lot provision, former SCC 30.23.240, was not challenged by Plaintiffs below, and the trial court did not rule to the contrary. Instead, Plaintiffs came up with a new spin to change the debate.

### III

**THE BULK MATRIX PROVISIONS PLAINLY DO  
NOT RESTRICT USES ON EXISTING LEGAL LOTS  
AND THIS INTERPRETATION IS SUPPORTED BY  
DECADES OLD COUNTY POLICY AND PAST  
PRACTICE**

Plaintiffs did not challenge the plain language of Section 30.23.240 that, combined with the definitions, clearly applies only to single family dwellings, and does not preclude construction of duplexes. Instead, Plaintiffs argued that duplexes, *and all other new uses and structures*, were banned on any existing lot or combination of lots less than minimum lot size. Plaintiffs' argument is summarized best using their own words:

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. . . . the exception is for single family homes only. All other types of uses, including duplexes, are subject to the outright prohibition and cannot, under any circumstance, be developed on lots that are smaller than 200,000 square feet in the Rural 5-Acre (R-5) zone.

...

[A] developer is not allowed to build a new structure on a lot that is smaller than 200,000 square feet. Any lots in the R-5 zone that are less than 200,000 square feet are considered "substandard" and cannot be built upon.

...

[T]here is an exception . . . . SCC 30.23.240. That 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 the exception.

CP 268:20-26, 269:16-20, 21-26. Plaintiffs rely almost exclusively on a couple of Code provisions introducing the Bulk Matrix wherein the minimum lots sizes are set forth. Specifically, Plaintiffs cite Sections 30.23.010 and .030, the pertinent parts of which follow:

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.

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.

CP 337, App. G. In short, Plaintiffs are arguing that Section 30.23.010 says all lots must conform to minimum lot size. Therefore, Plaintiffs conclude, if the lots don't meet minimum lot size, then the land can't be used for **any** use at all, except single family dwellings in compliance with Section 30.23.240. The problem in this argument is attempting to force minimum lot sizes on existing, legally defined lots that already have a designated lot area. Plaintiffs' interpretation is based too narrowly on these Code provisions while failing to harmonize other related provisions. In particular, Plaintiffs ignore Section 30.22.030, which states as follows: "Uses shall be established upon legally created lots that conform to the current zoning requirements **or on legal nonconforming lots.**" CP 316, App. G. As a result, Plaintiffs' interpretation cannot withstand scrutiny under the plain meaning test, and to the extent the Code is ambiguous, decades of past practice also demonstrate that Plaintiffs' interpretation is unsupportable.

**A. The Plain Meaning of the Code is Contrary to the Plaintiffs' Strained and Unsustainable Interpretation**

The Plaintiffs' interpretation of the County Code is simply a contortion that reads provisions a certain way, while ignoring contrary provisions. As such, Plaintiffs' interpretation cannot be sustained. The County's formal Code Interpretation was correct in coming to the opposite conclusion after considering the same provisions.

Plaintiffs' interpretation assumes an unsupported premise based on the line in the bulk matrix that lists minimum lot size for each zone, including specifically the minimum lot size for the R-5 zone applicable to these applications. The bulk matrix is referenced at Section 30.23.030, while the matrix itself is a separate table. CP 337, 348 (Table), App. G. The Table indicates that the minimum lot area is 200,000 square feet for the R-5 zone, but otherwise does not provide any substantive explanation of the meaning of this provision. CP 348. Numerous other provisions must be considered to understand the complex nature of the minimum lot size rules.

Importantly, one code provision provides a direct and plain answer to these questions. Section 30.22.030 states as follows: "Uses shall be established upon legally created lots that conform to the current zoning requirements **or on legal nonconforming lots.**" CP 316, App. G. If Section 30.22.030 stopped before the "or," then Plaintiff's approach might

stand. But, the additional language “or on legal nonconforming lots” is a direct expression of legislative intent, the plain meaning of which can only be that uses in the use matrix are allowed on legal nonconforming, i.e. substandard lots. The plain meaning of this Section is only consistent with an understanding of Section 30.23.010 that “all lots shall conform” was **not intended** to mean that existing legal lots of record below minimum lot area could not be used.

This meaning is clarified by the Code definition of “lot,” which specifically and carefully addresses existing legal lots and defines lot to include a parcel of land that was legally subdivided as long as the parcel is, “of sufficient area and dimension to meet minimum zoning requirements that were in effect at the time the tract or parcel was created.” Section 30.91L.120, CP 61. Thus, this definition recognizes that these legal lots already met the minimum lot area requirement when created; in other words, existing subdivided parcels are defined as “lots” if created in conformance with the then existing area requirements. The Code defines “lot area” as follows: “‘Lot area’ means the total horizontal area within the lot lines of a lot.” CP 61.

The Plaintiffs rely heavily on Section 30.23.010, entitled “Dimensional Requirements”, which states that: “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.” Section

30.23.010(1), CP 337, App. G. The fundamental problem with Plaintiffs' interpretation is that they never address the inconsistency in attempting to use the Bulk Matrix to regulate the minimum size of lots that already have an existing size that is less than the minimum. Section 30.23.010 provides that, "all lots . . . shall conform," to the bulk matrix, which Plaintiffs take to mean, shall meet the minimum lot area therein or cannot be used without an exception. But, the existing, legally defined lots already have a designated lot area, have already been created, have already **conformed** to a minimum lot area. Importantly, nothing in Section 30.23.010 and .030 says anything about **uses** and **whether any particular use can be made of an existing legal lot** that does not contain the minimum lot area.

Additionally, Section 30.23.010 says "unless modified elsewhere in this title," which means Title 30 and that includes Chapter 30.22 entitled "Uses Allowed in Zones." CP 337, App. G. Chapter 30.22 is where the Code deals with uses, not Chapter 30.23. CP 315-335, App. G. Section 30.22.010 makes this clear by beginning as follows: "This chapter establishes which uses or types of uses are permitted, which require special approvals, and which are prohibited in the various county zones." CP 315, App. G. Thus, the focus of Plaintiffs on Chapter 30.23 and the Bulk Matrix to determine uses is wholly misplaced. And, that leads back to Section 30.22.030: "Uses shall be established upon legally created lots that conform to the current zoning requirements **or on legal**

**nonconforming lots.”** *Id.* Plaintiffs read too much into Section 30.23.010 when Section 30.22.030 makes a plain statement to the contrary.

Furthermore, the use matrix contains other provisions that specifically addresses minimum lot size for duplexes in certain zones, but not in the R-5 zone applicable here. Duplexes are a permitted use in the R-5 zone pursuant to the Use Matrix in Section 30.22.110, Rural and Resource Zone categories. CP 330. The line in the Use Table for “Dwelling, Duplex” is marked “P” in the column for R-5, and “P” at the bottom is defined as a “Permitted Use.” The Use Table contains numerous footnotes, called “Reference notes for use matrix,” which are set forth at Section 30.22.130. CP 317. The line in the Use Table for “Dwelling, Duplex” does not contain any footnote/reference note. However, other zones include footnote/reference note 42 in the line for “Dwelling, Duplex” attached to the “P” for Permitted Use, namely the zones R 7,200, R 8,400, and R 9,600 are qualified by reference note 42. CP 184 (¶ 13), App. C. Reference note 42 in Section 30.22.130 applies to duplexes in these urban zones:

(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.

CP 321, App. G. Thus, the Code contains a specific provision that

requires lot size greater than the minimum lot size found in the Bulk Matrix expressly for duplexes, but this restriction does not apply to the R-5 zone. CP 184, App. G (Code Interpretation). Plaintiffs contend that the Code demands that minimum lot size, as stated in the Bulk Matrix, must be met to construct duplexes. Yet, this reference note provision demonstrates that the Use Matrix notes address **whether a duplex is an appropriate use on an existing lot of a certain size in relation to minimum lot size**, and that Code provision applies to certain zones, but the Code does not contain any such limitation for the R-5 zone applicable here. Plaintiffs' interpretation focuses too narrowly on Sections 30.23.010 and .030, and would mean that the "one and one-half times the minimum lot size" has no effect.

Another provision in the Code specifically authorizes "Aggregation of lots" under common ownership and that provision requires the "aggregated lot" to be considered a "single building site." The provision then says that, "setbacks required by this title shall then apply to the aggregated lot," with no mention of compliance with minimum lot size. Section 30.23.250, CP 346. This provision also ties into Section 30.22.030: "Uses shall be established upon legally created lots that conform to the current zoning requirements **or on legal nonconforming lots.**" *Id.*

In summary and as explained by the Planning Director, only new lots are required to comply with the minimum lot size requirements in the Bulk Matrix. CP 184. Plaintiffs' interpretation fails to harmonize the other provisions of the Code, which when fully considered, demonstrate that the plain meaning of Sections 30.23.010 and .030 is that duplexes on existing legal lots are not required to have a minimum lot size set forth in the Bulk Matrix. Clearly, the trial court erred by ruling that: "There is no inconsistency among the various sections of the Code and there is no need to harmonize ostensibly inconsistent sections." CP 87:23-24. At a minimum, these inconsistencies create ambiguities in the Code that justify looking at the County's past practice.

**B. Any Doubts Are Resolved By Recognizing that the County's and Property Owners' Interpretation is Supported by Decades Old County Policy and Historical Pattern of Past Practice**

Plaintiffs' argument and the Decision by the trial court essentially place Sections 30.23.010 and .030, and former Section 30.23.240 in a superceding position as clearer or more important than the provisions in Chapter 30.22. Yet, that primacy is misplaced as even the Plaintiffs said in that regard: "This case presents a classic case of a local government's inartful efforts at crafting legislation. The Code's linguistic treatment of substandard lots is confusing." CP 135:17-18. Thus, Plaintiffs agree that the Code is ambiguous, and at the same time argue that the Code is not ambiguous. The trial court seems to invoke the strictest of plain meaning

in this case, but what is more plain than Section 30.22.030 stating: “Uses shall be established upon legally created lots that conform to the current zoning requirements **or on legal nonconforming lots.**”

The trial court concluded that the Code was not ambiguous, so the trial court concluded that the County’s contrary past practices cannot affect the plain meaning of the Code. The trial court explained it’s ruling as follows:

The Code is not ambiguous in this regard. The Court has considered PDS’ historical interpretation of Code provisions relating to development on substandard lots and a letter evidencing that historical interpretation. AR Index No. 7. However, PDS’s historical interpretation does not alter the plain meaning of the code.

CP 87:16-20, App. A. Thus the Court *considered* the contrary historical interpretation in the letter to Ralph Johnson (Index No. 7), that “minimum lot sizes apply only to newly created lots,” but since the Code was not ambiguous, the Court *did not rely* upon the information. CP 214, App. F and RP 76:12 to 80:4. Thus, the trial court did not follow the rule that when ordinances are ambiguous the courts defer to County interpretation based on “an established practice of enforcement.” *Sleasman*, 159 Wn.2d at 647. The County made it clear that this longstanding rule or policy has not changed since 1986, and that the policy is necessarily a basis of the Code Interpretation, which construes the Code consistent with that policy. CP 234-235.

In sum, if the court finds the Code provisions are ambiguous, then the Court must rely upon the long history of County policy and historical pattern of past practices in concluding that the minimum lot size in the Bulk Matrix applies only to “newly created lots,” not existing, legal created lots:

The 2.3 acre and 5 acre minimum lot sizes apply only to newly created lots. Your ownership consists of several lots which were platted some time ago. The County recognizes already platted lots as legal building lots regardless of the minimum lot size and width requirements of the applicable zone.

CP 214, App. F (Letter to Ralph Johnson, Index No. 7). The Code Interpretation continued that long standing policy and practice, based on a full reading of the Code:

When existing lots are combined to form one lot for a duplex in the R-5 zone, there is no minimum lot size established.

CP 184, App. C.

**C. The Court Should Interpret The County Code In A Manner That Avoids Absurd Results and Avoids Violation Of The Property Owners’ Constitutional Rights**

Plaintiffs’ interpretation of the Code, in particular Section 30.23.010, is that all uses are prohibited on substandard lots, unless the use is single family within the narrow limits of Section 30.23.240. Plaintiffs are very clear in what this means:

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. . . . the exception is for single family homes

only. **All other types of uses, including duplexes, are subject to the outright prohibition** and cannot, under any circumstance, be developed on lots that are smaller than 200,000 square feet in the Rural 5-Acre (R-5) zone.

CP 268:20-26 (emphasis added). Plaintiffs' interpretation though styled in the context of the R-5 zone, in fact applies to all zones. So, according to Plaintiffs, single family is the only use allowed on substandard lots and only if the limitation of Section 30.23.240 can be met. No other use and no other structure can be built on lots less than minimum lot size for any parcel in the County.

[A] developer is **not allowed to build a new structure** on a lot that is smaller than 200,000 square feet. Any lots in the R-5 zone that are less than 200,000 square feet are considered "substandard" and cannot be built upon.

...  
[T]here is an exception . . . . SCC 30.23.240. That 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 the exception.

CP 269:16-20, 21-26 (emphasis added).

Saying that "all other uses are prohibited" means that such commonplace uses as agriculture, bed and breakfast, farm stand, detached garage, swimming/wading pool, and veterinary clinic are prohibited on parcels in the R-5 zone prevalent in the rural area, even if those parcels are 3-4 acres, just slightly smaller than the minimum of 200,000 square feet (4.6 acres). CP 329-335. These permitted and conditionally permitted uses, and numerous others, are perfectly suitable for many properties of 3-

4 acres. *Id.* Some of the uses may not be appropriate for smaller parcels, but the County has multiple layers of regulations to address any conflicts that might arise, including health standards for septic systems and water supply, typical conditional use requirements necessitating that the use be compatible with the neighborhood and other factors, compliance with State Environmental Policy Act including mitigation requirements, road standards requirements, and critical area requirements under the Growth Management Act. All these rules still apply to the any “new” use or structure that could be built on an existing lot or combination of lots.

Yet, Plaintiffs’ interpretation of the Code as a whole is that an existing single-family house on 3-4 acres **is prohibited** from adding new structures, such as a swimming pool or detached garage. The reality is that these and other uses of existing substandard lots have been allowed by the County for decades. Plaintiffs’ interpretation can only be described in one manner—patently absurd. As a result, the Court should reject Plaintiffs’ absurd interpretation in favor of the interpretation set forth in the County’s own formal Code Interpretation.

In addition, rejecting Plaintiffs’ interpretation is necessary to avoid the unconstitutional application to these properties and others. Property Owners’ lots do not qualify for single family uses under the contiguous ownership provisions of Section 30.23.240, and the County has previously rejected applications for single family homes. CP 187, App. D. Without

single-family or duplex, Plaintiffs' interpretation means that **Property Owners have no use at all** that can be made of lots considered legal lots by the County and taxed accordingly. Clearly, this denial of all economic use would, in and of itself, constitute a *per se* taking of private property. *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 112 S.Ct. 2886, 120 L.Ed.2d 798 (1992) (holding that a taking occurs when a government regulation denies all economically viable use of a legal lot.). This Court followed *Lucas* in *Powers v. Skagit County*, 67 Wn. App. 180, 835 P.2d 230 (1992). The property owner claimed that county regulations precluded economical use of the property, even precluding residential structures. The Court said: "In this case, Powers apparently sought to build residential structures on his property. As in *Lucas*, [i]t seems unlikely that common-law principles would have prevented the erection of any habitable or productive improvements on [his] land.'" *Id.* at 191 (citing *Lucas*, 112 S.Ct. at 2901). The Court went on to say: "The County claims that even if Powers is denied all economically viable use of his property, the law prohibits compensation. In light of the *Lucas* holding, the County's argument goes too far and is incorrect." *Id.*

The rule from *Powers* applies here. Plaintiffs' interpretation would mean that Property Owners would have no use of legal lots, and would amount to a taking of the property without just compensation. The Court should avoid this result and reject Plaintiffs' interpretation.

Further, the restrictions in Section 30.23.240 are expressly set up to discriminate between one set of owners that held two or more contiguous historic lots as of December 31, 1989, and another set of owners that held contiguous historic lots prior to that date **but transferred the property into separate ownership prior to December 31, 1989.** Thus, remainder lots that previously were part of a group of lots in contiguous ownership, such as those held by Property Owners are prohibited from any use, yet adjacent or nearby substantially similar lots may be used for single family homes if the parcels were transferred to separate ownership prior to December 31, 1989. This Court previously reviewed a similar code provision that discriminated against property owners of historic lots that held remainder property based on contiguous ownership, and the Court found that the code should be interpreted to avoid a potential “constitutional infirmity.” *Grader*, 45 Wn. App. at 880-882. While the facts of the current case are not well-developed due to the closed record, the Court should interpret the County Code to avoid any potential “constitutional infirmity.”

#### IV

#### **THE TRIAL COURT ERRED IN DENYING PROPERTY OWNERS' REQUEST TO SUPPLEMENT THE RECORD ON THE MOTION FOR RECONSIDERATION**

The procedure in this case was clearly unique and basically created

by Stipulation before the Property Owners could even intervene in the case, let alone agree to the closed record. Despite their status as real parties in interest, Property Owners were not given notice of the lawsuit by either the Plaintiffs or the County, and had to seek to intervene which was granted on January 20, 2009—the same day that the Plaintiffs filed their Opening Brief. Thus, the record was closed and briefing started by the time Property Owners entered the case, through no fault of their own. Plaintiffs' brief developed for the first time the argument that the Code was inconsistent with the Ralph Johnson letter.

The Stipulation regarding the closed record had been entered back in December. In January, Plaintiffs and the County stipulated to intervention by Property Owners **and that stipulation made no restriction on Defendant-Intervenors regarding the record.** The proceeding itself was not a summary judgment hearing or a trial, but an administrative review created by Stipulation of the original Plaintiffs and the County. Given these facts, Property Owners' objection to the closed record in their Response Brief (the first chance to respond to Plaintiffs' brief) and by way of an Offer of Proof at the hearing was totally justified in trying to participate in the already agreed proceeding without a major disruption. Since there were no formal rules for the proceeding, there was no mandate in the Stipulation for the closed record or otherwise that required Property Owners to make a motion to supplement the record,

especially when they were not a party to the Stipulation. *Cf.* CP 85:24-25 to 86:1-2 (Decision at Conclusion No. 1 “did not follow the correct procedure”).

The whole point of the objection and the Offer of Proof was to request consideration of additional evidence **only if needed**, only if the Court was unclear about the historical treatment on the issue. The position of the County and Property Owners was that the Code was clear and was consistent with the undisputed historical interpretation applied since at least 1986. The trial court seemed to agree that the historical interpretation was not in dispute by not formally ruling on the Offer of Proof either then or in its oral ruling. As a result, it appears that the trial court agreed that the established historical interpretation was that minimum lot size has not applied to existing legal substandard lots, but the trial court determined that any such interpretation did not matter given the contrary unambiguous Code. Thus, the trial court did not need the additional information that may have come in through the Offer of Proof. However, this point is not entirely clear in the Decision since the court stated in the Decision that Property Owners’ request was untimely and improper, but the Court also ruled that it considered the historical interpretation and that the Code was unambiguous.

It must also be remembered that the record below was not created to address the interpretation of minimum lot size on existing lots. As

stated by the County:

The furor over Mr. Ladiser's code interpretation initially was not over whether minimum lot size requirements . . . applied to existing, legally-created substandard lots. Rather, the furor was over the "loophole" in the code that did not make SCC 30.23.240 applicable to duplexes.

CP 232:5-9 (citing to CP 239-241). The record was created accordingly.

Thus, to ensure that they were fully heard in this case, Property Owners offered the two declarations and moved to supplement the record accordingly. CP 38:9-11, CP 77-78 (Declaration of Brian McCallum) CP 80-82 (Declaration of Sheryl L. Purnell-Albritton). The McCallum Declaration demonstrates that PDS has previously approved duplex applications on substandard lots in Warm Beach consistent with the Code Interpretation. CP 77-78. The Purnell-Albritton Declaration confirms that the 1986 letter to Ralph Johnson represented the consistent interpretation in the time period from 1995 through 2008 that legally created substandard lots are considered legal building sites for "all permitted and conditional uses under the use matrix," except for single-family dwellings subject to former Section 30.23.240. CP 80-82. Further, Purnell-Albritton explains that the new ruling creates a new severe limitation on the use of properties permitted for uses under the prior interpretation, including the inability of a nursery use on three acres to add caretaker quarters.

With respect to considering additional evidence, the trial court had discretion to consider new evidence in this case under CR 59(a)(4) (new

evidence) or under CR 59(a)(1) (irregularity) and (a)(9) (substantial justice has not been done). Teglund states that the court has some discretion to consider additional evidence even if it could have been presented earlier (though here the record was closed so there was no such right):

**Has some discretion.** In one case, the court stated that the practice of basing a motion for reconsideration on evidence that was available earlier was “not encouraged,” but the court declined to flatly prohibit the practice.

Teglund, 14A Wash. Prac., Civil Procedure § 26.2 fn. 4 (2009) (citing *Meridian Minerals Co. v. King County*, 61 Wn. App. 195, 810 P.2d 31 (1991)). The court discussing a summary judgment proceeding somewhat akin to the case here said: “In the context of a summary judgment, unlike trial, there is no prejudice to any findings if additional facts are considered.” *Id.* at 203. However, the court concluded that it was appropriate for the trial court to preclude the additional evidence, “because it was offered in disregard of the parties’ stipulation.” *Id.*

Of course, here, Property Owners were not a party to the Stipulation setting the closed record, then immediately objected to the closed record in their Response Brief, and then filed the motion for reconsideration and request to supplement the record to attempt to clarify the record if needed. The Court should consider the new evidence because it could not be produced due to the closed record, and/or to avoid the irregularity or injustice of the Property Owners being stuck with a closed

record that was not agreed to. For these reasons, the trial court's denial of the motion for reconsideration and request to supplement the record was in error. Property Owners argued that accepting the additional evidence is not prejudicial since it merely further supports and clarifies information already in the record about the County's historical interpretation. This Court should rule in favor of Property Owners on this issue and should accept the evidence to ensure that Property Owners are given the full opportunity to participate that is otherwise denied.

#### **CONCLUSION**

Plaintiffs convinced the trial court that the County Code provisions unambiguously precluded duplexes, and any other use, on substandard lots that were in the same situation as Property Owners. As demonstrated, Plaintiffs focused on a couple of Code provisions to reach this result, without adequate attention to the Code as a whole. Many other Code provisions need to be harmonized and reading them together supports an interpretation contrary to that offered by Plaintiffs.

In addition, this Court may find that the Code provisions are ambiguous and disagree with the trial court. If so, the historical information of long held County policy and past practices clearly supports the interpretation proposed by the Property Owners and confirmed in the County's formal Code Interpretation. That County policy was explained in writing to Ralph Johnson, one of the Property Owners here, way back in

1986:

The 2.3 acre and 5 acre minimum lot sizes apply only to newly created lots. Your ownership consists of several lots which were platted some time ago. The County recognizes already platted lots as legal building lots regardless of the minimum lot size and width requirements of the applicable zone.

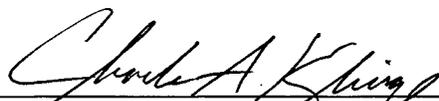
Property Owner Ralph Johnson deserves to have the County and the courts respect the long held County policy that was communicated to him in 1986 and confirmed in the Code Interpretation. This result is also supported by the harsh result caused by Plaintiffs' interpretation that no use other is allowed on these substandard lots.

Appellants and Property Owners Brock Baker, Ralph Johnson, William Stoops, and Daniel Wickstrom respectfully request this Court to reverse the trial court, deny declaratory relief to Plaintiffs, and uphold the County's formal Code Interpretation that provides to them a minimum use of their private property, which otherwise will continue to be taxed and will continue to sit idle.

RESPECTFULLY submitted this 30<sup>th</sup> day of September, 2009.

GROEN STEPHENS & KLINGE LLP

By:

  
Charles A. Klinge, WSBA #26093  
Samuel A. Rodabough, WSBA #35347

Attorneys for Appellants Brock Baker,  
Ralph Johnson, William Stoops, and  
Daniel Wickstrom

**DECLARATION OF SERVICE**

I, Linda Hall, declare:

I am not a party in this action.

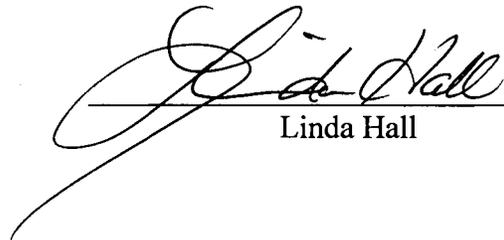
I reside in the State of Washington and am employed by Groen Stephens & Klinge LLP in Bellevue, Washington.

On September 30, 2009, a true copy of Appellants' Opening Brief was placed in envelopes, which envelopes with postage thereon fully prepaid were then sealed and deposited in a mailbox regularly maintained by the United State Postal Service in Bellevue, Washington addressed to:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct and that this declaration was executed this 30<sup>th</sup> day of September, 2009 at Bellevue, Washington.

  
\_\_\_\_\_  
Linda Hall

# **APPENDIX A**

FILED

2009 APR -2 AM 10: 30

SONYA KRASKI  
COUNTY CLERK  
SNOHOMISH CO. WASH



CL13795654

IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON  
IN AND FOR SNOHOMISH COUNTY

ELLEN HIATT WATSON,

Plaintiff/Petitioner,

NO. 08-2-06059-2

ROGER C. HILL; ROBERT LANDLESS;  
and 7 LAKES, INC.,

Intervenors,

FINDINGS ~~OF~~ FACTS  
CONCLUSIONS OF LAW, AND  
DECLARATORY JUDGMENT

BY  
CAX  
LCC

v.

SNOHOMISH COUNTY, and CRAIG  
LADISER,

Defendants/Respondents,

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

Defendant/Intervenors.

I. ~~FINDINGS OF FACTS~~

BY  
CAX  
LCC

1. On April 29, 2008, defendant-intervenors Brock Baker, Ralph Johnson, William Stoops, and Daniel Wickstrom submitted 27 building applications proposing to build duplexes on substandard lots in an unincorporated portion of Snohomish County zoned R-5. AR Index No.

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND  
DECLARATORY JUDGMENT - 1

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1 20. The lots were "substandard" in that they are smaller than the 200,000 square foot minimum  
2 lot size allowed by the current zoning code for the R-5 zone. These applications were submitted  
3 on behalf of four property owners, defendant-intervenors, who each own substandard lots in the  
4 Warm Beach area. *Id.* Along with the applications, the property owners' attorney submitted a  
5 letter that offered his legal opinion as to why the "substandard lot ordinance does not apply to  
6 duplexes." AR Index No. 8.

8 2. On June 16, 2008, the Snohomish County Council adopted Emergency Ordinance  
9 No. 08-090. AR Index No. 22. On June 18, 2008, the Snohomish County Council adopted  
10 Resolution No. 08-021 ("Regarding the County Council's Position on the Correct Interpretation  
11 of SCC 30.23.240 Regulating Residential Development on Substandard Lots"). AR Index No.  
12 34. The Ordinance amended SCC 30.23.240, one of the zoning code sections in dispute in this  
13 case. The amendment was adopted as an "interim official control" and, by its own terms, was  
14 effective for six months. *Id.*

16 3. On July 1, 2008, the Director of the Snohomish County Planning and  
17 Development Services Department, Craig Ladiser, issued a Code Interpretation of SCC 30.23.240  
18 as it existed prior to being amended by Emergency Ordinance No. 08-090. AR Index No. 20.  
19 Mr. Ladiser's Code Interpretation concluded that SCC 30.23.240 allowed duplexes to be  
20 constructed on substandard lots in the R-5 residential zone: "PDS [Planning and Development  
21 Services] determines that when comprehensively read in its entirety, SCC 30.23.240 applies only  
22 to the residential use of substandard lots for single family dwellings." *Id.*

24 4. Shortly thereafter, this action was commenced by Ellen Hiatt Watson, Robert  
25 Landles, and Roger C. Hill. The plaintiffs sought, *inter alia*, a declaratory judgment that the  
26

1 Snohomish County Code does not allow duplexes to be developed on substandard lots in the R-5  
2 zone.

3 5. Subsequently, Mr. Hill and Mr. Landles were recharacterized as intervenors and  
4 were joined in that status by 7-Lakes, Inc., all supporting the position of the remaining plaintiff,  
5 Ellen Hiatt Watson.  
6

7 6. On December 10, 2008, a Stipulated Order was entered addressing preliminary  
8 matters and setting the case schedule. Among other things, this Order adopted the parties'  
9 stipulation that the case would be reviewed on a closed record pursuant to the Declaratory  
10 Judgment Act.

11 7. On or about January 14, 2009, the owners of the substandard lots who are seeking  
12 to build duplexes (Brock Baker, Ralph Johnson, William Stoops, and Daniel Wickstrom) sought  
13 intervention in defense of Mr. Ladiser's decision. The other parties stipulated to the intervention  
14 and intervention was granted. The defendant-intervenors did not object to the Stipulated Order  
15 that had previously been entered limiting this case to a closed record when they sought to  
16 intervene nor at any other time prior to plaintiff filing her Opening Brief. There was a brief  
17 objection to the stipulation noted on page 14 of the defendant-intervenors' Response Brief.  
18

19 8. Many of the 27 building applications for duplexes which precipitated this dispute  
20 are still pending. The outcome of this litigation will have a significant impact on those pending  
21 applications.  
22

## 23 II. CONCLUSIONS OF LAW

24 1. The defendant-intervenors' challenge to the order entered into pursuant to the  
25 stipulation of the original parties is untimely and improper. The defendant-intervenors did not  
26

1 file a motion to challenge the order. Defendant-intervenors did not follow the correct procedure  
2 to bring the issue before the Court.

3 2. Further, the Court does not believe the evidence that the defendant-intervenors  
4 seek to add to the record would assist the Court in resolving the legal issues before it.  
5 Construction of a county ordinance is a question of law. The County Code means what it says  
6 and is not changed by the manner in which County staff may have interpreted it in the past. *See,*  
7 *e.g., Faben Point Neighbors v. City of Mercer Island*, 102 Wn. App. 775, 781, 11 P.3d 322  
8 (2000).  
9

10 3. The plaintiffs' lawsuit is not moot. There are pending building permit applications  
11 that may be impacted by a resolution of the issues here. Further, while one of the applicable code  
12 sections was temporarily amended by Emergency Ordinance 08-090, there is a possibility future  
13 applications may be impacted by the resolution of the legal issues in this case, too.  
14

15 4. Jurisdiction over this matter is appropriate pursuant to the Declaratory Judgment  
16 Act. Defendant-intervenors argue that jurisdiction should be pursuant to the Land Use Petition  
17 Act, but that statute applies to project-specific decisions. The decision by Craig Ladiser at issue  
18 here applies to more than a single project. Mr. Ladiser described his decision as a "code  
19 interpretation" which "is non-project specific as it applies in all similar circumstances and is not  
20 unique to a particular project." AR Index No. 20. The Court agrees with that characterization  
21 and, therefore, finds that this case does not fall within the scope of the Land Use Petition Act.  
22

23 5. In construing the Code, the Court's ultimate job is to determine legislative intent.  
24 The Court gives effect to the plain meaning of the words used in the Code.

25 6. The Code defines "lot" in SCC 30.91L.120. The Code does not say that the term  
26 "lot" has multiple meanings depending on whether the lot is substandard or not. To paraphrase

1 Gertrude Stein, a lot is a lot is a lot -- as long as the lot was of legal dimensions when originally  
2 created. No one questions that the lots here met legal requirements when they were created. But  
3 as "lots" they still are subject to the bulk matrix requirements in SCC 30.23.030(1), just as are  
4 any other parcels of land meeting the definition of "lot" in the Snohomish County Code.

5  
6 7. SCC 30.23.030(1) provides that all lots shall meet the requirements set forth in the  
7 bulk matrix, unless an exception applies. Several exceptions are provided for in SCC 30.23.100-  
8 .260. The exception in SCC 30.23.240 is at issue here.

9 8. SCC 30.23.240 provides an exception to the general rule that all lots must meet  
10 bulk matrix requirements and provides, in particular, that single family dwellings may be built on  
11 substandard lots if the conditions set forth in that section are met. That section does not provide  
12 an exception for any type of dwelling other than a single family dwelling. In particular, SCC  
13 30.23.240 does not exempt duplexes from the general rule precluding development of  
14 substandard lots.  
15

16 9. The Code is not ambiguous in this regard. The Court has considered PDS's  
17 historical interpretation of Code provisions relating to development on substandard lots and a  
18 letter evidencing that historical interpretation. AR Index No. 7. However, PDS's historical  
19 interpretation does not alter the plain meaning of the code. Although PDS and Mr. Ladiser acted  
20 in good faith in this matter, the interpretation that the Code provides an exception for duplexes or  
21 allows duplexes to be built on substandard lots despite the prohibition in SCC 30.23.030(1) is  
22 incorrect as a matter of law. There is no inconsistency among the various sections of the Code  
23 and there is no need to harmonize ostensibly inconsistent sections.  
24

25 III. DECLARATORY JUDGMENT

26 Based on the foregoing, the Court hereby enters declaratory judgment as follows:

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND  
DECLARATORY JUDGMENT - 5

Bricklin Newman Dold, LLP  
Attorneys at Law  
1001 Fourth Avenue, Suite 3305  
Seattle WA 98154  
Tel. (206) 264-8600  
Fax. (206) 264-9300

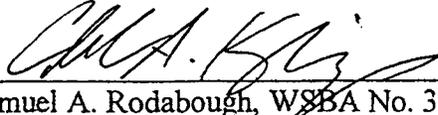


1 GROEN STEPHENS & KLINGE LLP

2

3

By:



Samuel A. Rodabough, WSBA No. 35347

Charles A. Klinge, WSBA No. 26093

Attorneys for Defendant-Intervenors

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5

7-Lakes\Superior\Findings of Fact and Conclusions-040109

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FINDINGS OF FACT, CONCLUSIONS OF LAW, AND  
DECLARATORY JUDGMENT - 7

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# **APPENDIX B**

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IN THE SUPERIOR COURT FOR THE STATE OF WASHINGTON  
IN AND FOR SNOHOMISH COUNTY

ELLEN HIATT WATSON,  
Plaintiff/Petitioner,

NO. 08-2-06059-2

ROGER C. HILL; ROBERT LANDLE; and 7 LAKES, INC.,

ORDER DENYING MOTION FOR RECONSIDERATION

Intervenors,

~~PROPOSED~~

v.

SNOHOMISH COUNTY, and CRAIG LADISER,

Defendants/Respondents,

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

Defendant/Intervenors.

The defendant-intervenors have moved for reconsideration of the Declaratory Judgment entered by the Court on April 2, 2009. The motion is denied.

*Defendant-Intervenors request to supplement the record is Denied.*

ORDER DENYING MOTION FOR RECONSIDERATION

~~PROPOSED~~ - 1

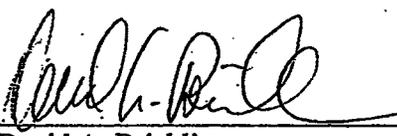
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Dated this 24 day of April, 2009.

  
HONORABLE MICHAEL T. DOWNES  
SNOHOMISH SUPERIOR COURT

Presented by:  
BRICKLIN NEWMAN DOLD, LLP

By:   
David A. Bricklin  
WSBA No. 7583  
Attorneys for Plaintiff Watson, Intervenor  
Hill and Landles, and Petitioner 7-Lakes

Approved as to form and notice of presentation waived:  
SNOHOMISH COUNTY PROSECUTING ATTORNEY'S OFFICE

By: \_\_\_\_\_  
Deputy Prosecutor Laura Kisielius  
WSBA No. 28255  
Attorneys for Defendant

GROEN STEPHENS & KLINGE

By: \_\_\_\_\_  
Samuel A. Rodabough, WSBA #35347  
Charles A. Klinge, WSBA #26093  
Attorneys for Defendant-Intervenor Baker et al.

7-lakes/snocty 08-2-06059-2/order denying mot for reconsideration

ORDER DENYING MOTION FOR RECONSIDERATION  
~~PROCESSED~~ - 2

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# **APPENDIX C**



Snohomish County  
Planning & Development Services

Aaron Reardon  
County Executive

July 1, 2008

Snohomish County Council  
Council Chairman Dave Somers  
3000 Rockefeller Avenue M/S 609  
Everett, WA 98201-4046

Subject: Code interpretation issued pursuant to Snohomish County Code (SCC)  
30.23.240

Dear Chairman Somers:

The Director of Planning & Development Services (PDS) has completed an interpretation of SCC 30.23.240 pertaining to residential use of substandard lots.

Pursuant to SCC 30.83.010(1)(c), 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.

This determination is consistent with the code interpretation proposed in the April 28, 2008, GROEN STEPHENS & KLINGE, LLP letter submitted with building permit applications for duplexes within the C.D. Hillman plat near Warm Beach.

This code interpretation is non-project specific as it applies in all similar circumstances and it is not unique to a particular project. It is issued under the authority provided in SCC 30.83.020(1) based upon the enclosed findings of facts and conclusions.

### **Background**

On April 29, 2008, applicant Dan Wickstrom, a construction contractor, submitted 27 building permit applications on behalf of the following property owners who have contiguous ownership of substandard lots in the C.D. Hillman plat: Brock Baker (19 permit applications), Bill Stoops (2 permit applications), Ralph Johnson (5 permit applications) and Dan Wickstrom (1 permit application). GROEN STEPHENS & KLINGE, LLP submitted a legal basis for the submittal of the 27 duplex building permit applications on substandard lots. Mr. Klinge presented an interpretation of SCC

30.23.240 at the application submittal. In his interpretation, he concluded that SCC 30.23.240 does not apply to duplexes (copy attached).

Residential use of substandard lot provisions have existed in the Snohomish County Code since 1966. Lot aggregation requirements were in effect between 1966 and 1980 for owners of contiguous substandard lots. These lot aggregation requirements were deleted from code due to the difficulty of enforcing such provisions. Lot aggregation provisions were reinstated in 1989.

Throughout the years, the County has regulated residential use of substandard lots for either "single family dwellings" or "any dwelling." Currently SCC 30.23.240 applies to single family dwellings.

### **Findings and Conclusions**

1. This code interpretation is issued pursuant to chapter 30.83 SCC and the specific provisions of SCC 30.83.010(1) as provided below:

#### **30.83.010 Code interpretations.**

(1) This chapter is intended to provide a process for administrative interpretation of the provisions of this title. Code interpretations:

- (a) Clarify ambiguous provisions of the code applied to a specific project;
- (b) Determine nonconforming rights;
- (c) Determine whether a use is allowed in a particular zone; and
- (d) Interpret the meaning of terms.

(2) This chapter applies to written interpretations of this title. This chapter does not apply to:

- (a) Interpretations relating to the Fire Code, chapter 30.53A, which are made by the fire marshal pursuant to section 101.4 of the Fire Code; and
- (b) Interpretations relating to the construction codes, chapters 30.52A - 30.52G SCC, which are made by the building official or fire marshal pursuant to SCC 30.50.020(2).

2. There are no previously issued code interpretations or administrative determinations regarding the application of SCC 30.23.240 to duplex dwellings (or earlier codified versions of the substandard lot code provision).
3. This is the first time PDS has received building permit applications for duplexes proposed on multiple substandard lots held in contiguous ownership and on platted lots created prior to April 15, 1957.
4. Residential use of substandard lot regulations were initially adopted in 1966 and were amended over the course of many years. In 1975, the code was amended to apply to "any dwelling." This applicability remained in place until 1983, when the provision was amended to apply to a "single family dwelling," which is the

term used in SCC 30.23.240 today. The bullets below provide a summary of the changes in these provisions since 1966:

- The County adopted Zoning Resolution VIII on January 31, 1966. It regulated development on substandard lots in Section 26.03 - Lot area exceptions for One or Two Lots of Single Ownership. This provision provided that in any zone except the Light and Heavy industrial Zones, a single family dwelling could be established on 2 lots with common side lines, meeting bulk regulations and certain ownership criteria, and that did not create a serious health, sanitation or safety hazard. Owners of three or more contiguous lots were not excepted and had to meet bulk regulations and health district requirements.

This substandard lot provision applied to single family dwellings, which was defined as a detached building containing one and only one dwelling unit in Section 2.05.

At this time, most of the County was zoned Rural Use (RU), except for the southwest portion of the County and the areas around the cities. Duplexes were a permitted use in the RU zone on lots of 7,200 square feet pursuant to Sections 22.01 and 4.02(19).

The substandard lot exception was not applied to duplexes.

- When Zoning Resolution No. VIII was transferred to Title 18 in 1969, the provisions pertaining to substandard lots adopted in January 31, 1966, were codified in SCC 18.76.080. Title 18 regulations applied the term "single family dwellings" to residential use of substandard lots. SCC 18.08.225 provided that a single family dwelling meant a detached building containing one and only one dwelling unit. At this time, duplex was included in the definition of multiple family dwelling in SCC 18.08.220. A multifamily dwelling was defined as a building designed to or used to house two or more families living independently of each other. Duplexes were not addressed in the original legislation restricting development on substandard lots.
- The substandard lot provisions in SCC 18.76.080 were amended in an Amendment to Zoning Resolution No. VIII, adopted on October 15, 1974. The provision pertained to "any dwelling." Finding of fact number two states:

By substituting "dwelling" for "single family residence" an owner is not precluded from installation of a mobile home upon such a lot where such dwellings are a permitted use within a zone.

- In a resolution adopted November 17, 1975, SCC 18.76.080 was amended to apply the provision to "any dwelling." At this time, the

definition of dwelling in SCC 18.08.210 meant a building or portion thereof designed or used for residential purposes including one family and multiple family residences. SCC 18.08.220, the definition of multiple family dwelling, means "a building designed or used to house two or more families living independently of each other, but which term shall not include mobile homes as defined in Section 18.08.455." A duplex was a multiple family dwelling and the provision applied. Specific minimum lot size requirements for duplexes in the RU zone were required by Section 18.64.020(b).

- Ordinance No. 80-22 adopted June 23, 1980, pertained to "any dwelling" and required no lot aggregation requirement except for health district standards.
  - In Ordinance No. 82-153 adopted January 17, 1983, SCC 18.76.080 was amended again to apply the term "single family dwelling." SCC 18.08.225 defined single family dwelling units as a dwelling containing one and only one dwelling unit.
  - Ordinance No. 86-037 adopted on May 7, 1986, amended SCC 18.42.040 and pertained to "single family dwellings."
  - Ordinance No. 89-152 adopted December 8, 1989, in SCC 18.42.045 (This is the current version) and pertained to "single family dwellings."
  - Ordinance No. 91-071 adopted on May 15, 1991, contained minor amendments to SCC 18.42.045 to clarify lot creation regulations. This regulation pertained to "single family dwellings."
  - The County adopted SCC 30.23.240 during the update to the Unified Development Code in Amended Ordinance No. 02-064 on December 9, 2002.
5. Duplexes are a permitted use in the R-5 zone pursuant to SCC 30.22.100.
  6. Pursuant to SCC 1.01.050, headings "shall not be deemed to govern, limit, modify or in any manner affect the scope, meanings or intent of the provisions of any title, chapter, or section of this code."
  7. The first paragraph of SCC 30.23.240 sets forth the applicability of the provision and specifies that the provision applies to use of lots in *residential zones for single family dwellings* as emphasized in italics and bolded below:

#### **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)

8. In SCC 30.23.240, the term residential use of substandard lots is modified by the phrase "for single family dwellings."
9. SCC 30.91D.490 defines "Dwelling" to mean a structure designed or used as a residence.
10. SCC 30.91D.510 defines "Single family dwelling" to mean a dwelling containing one dwelling unit, or the dwelling unit and an attached or detached accessory.
11. SCC 30.91D.480 defines "Duplex" to mean a residential structure containing two dwelling units that have a contiguous wall, which structure is located on one lot. The term does not include a mobile home, or a structure containing an attached or detached accessory apartment.
12. By definition in Title 30 SCC, a duplex is not a single family dwelling. Therefore, the provisions of SCC 30.23.240 do not apply to duplex dwellings.

13. As noted earlier, duplexes are a permitted use in the R-5 zone pursuant to SCC 30.22.110, Rural and Resource Zone Categories: Use Matrix. Minimum lot sizes for duplexes on existing lots are established using use matrix reference notes included on the use matrix. The reference notes are provided in SCC 30.22.130. There is no reference note for duplexes in SCC 30.22.110 to establish a minimum lot size for duplexes in the R-5 zone on existing lots.

In other zones (i.e. R 7,200, R 8,400 and R 9,600), the following reference note in SCC 30.22.130 applies to duplexes in these urban zones:

(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.

Two provisions in SCC 30.23.250, pertaining to the aggregation of existing lots, require:

(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.

When existing lots are combined to form one lot for a duplex in the R-5 zone, there is no minimum lot size established. The setbacks in SCC Table 30.23.030(1) apply to a duplex on an existing lot.

Newly created lots proposed for duplex development must meet the lot area requirements established in SCC Table 30.23.030(1).

### **Conclusion**

SCC 30.23.240 pertaining to the use of residential substandard lots does not apply to duplexes. It applies only to single family dwellings.

There is no minimum lot size established in Title 30 SCC for duplexes proposed on existing substandard lots. Pursuant to SCC 30.23.250, duplexes proposed on substandard lots must meet the setback requirements of SCC Table 30.23.030(1).

### **Effect of this Code Interpretation**

Pursuant to SCC 30.83.050, the director shall render only one interpretation per issue. In addition, an interpretation issued pursuant to chapter 30.83 SCC shall have the same effect and be enforceable as a provision of Title 30 SCC.

## Appeals

This code interpretation may not be appealed under the provisions provided in SCC 30.71.050.

Please feel free to contact me at (425) 388-3412, if you have any questions regarding this code interpretation. For any future correspondence on this matter, please include the project file number.

Sincerely,



Linda Kuller, AICP  
Chief Planning Officer  
(for) Craig Ladiser, PDS Director

cc:

Neil Anderson, PDS  
Pam Miller, PDS  
Tom Rowe, PDS

### Attachments:

April 28, 2008, letter from Groen, Stephens and Klinge, LLP to Snohomish County PDS  
Snohomish County Draft resolution regarding the interpretation of SCC 30.23.240  
Various versions of Snohomish County substandard lot provisions  
SCC 30.22.110 Rural and Resource Zone Categories: Use Matrix

# **APPENDIX D**



April 28, 2008

Snohomish County Planning and Development Services  
3000 Rockefeller Avenue  
Everett, WA 98201

**Re: Applications for Duplexes Within Warm Beach**

To whom it may concern:

On behalf of my clients, this letter is intended to serve as notice to the County regarding the legal basis for submitting the accompanying building permit applications for duplexes on lots within the Warm Beach neighborhood. The County previously refused to process applications for single-family residences based upon a specific substandard lot ordinance, Snohomish County Code ("SCC") 30.23.240. However, these applications are different—they are for duplexes. The acceptance of a building permit application for mere filing is a ministerial, nondiscretionary duty. Accordingly, if the County does not accept these permit applications for filing, my clients will have no option other than to immediately seek an order of mandamus from superior court requiring the County to accept them and to pay all associated costs and attorneys fees.

**A. Duplexes are Permitted Uses in the R-5 Zone**

The accompanying applications are on legal lots originally created by the recording of C.D. Hillman's Birmingham Waterfront Addition to the City of Everett in 1909. These lots are currently zoned R-5. Pursuant to SCC 30.22.110, duplexes are permitted uses in the R-5 zone.

**B. The Substandard Lot Ordinance Does Not Apply to Duplexes**

As previously indicated, the accompanying building permit applications seek to construct duplexes on lots that are zoned R-5. Inasmuch as none of these lots are comprised of 5 acres, they are considered substandard lots for certain purposes. However, by its express terms, the County's substandard lot ordinance does not apply to duplexes, but only applies to single family dwellings. See SCC 30.23.240 (referring solely to "single family dwellings").

Duplexes are not single family dwellings as the County's code clearly defines single-family dwellings as containing one dwelling unit, duplexes containing two units, and multiple family dwellings as containing three or more dwelling units. See SCC 30.91D.510 (defining "single family dwelling" as "a dwelling containing one dwelling unit..."); SCC 30.91D.480 (defining "duplex" as "a residential structure containing two dwelling units that have a contiguous wall, which structure is located on one lot..."); SCC 30.91D.500 defining "multiple family dwelling" as "a dwelling containing three or more dwelling units..."). Similarly, the zoning matrix for the R-5 zone clearly differentiates between single family dwellings and duplexes, placing different

restrictions on their use depending upon the type of zone in which they are located. See SCC 30.22.110. Moreover, notwithstanding the clear inapplicability of the substandard lot ordinance, my clients' proposals have been designed to comply with the Snohomish Health District's standards for the zone in which they are located.

There is no conceivable basis upon which the County could conclude that the substandard lot ordinance applies to my clients' proposals. A recent unanimous decision by the Washington State Supreme Court, *Sleasman v. City of Lacey*, 159 Wn.2d 639 (2007), provides binding guidance on how Washington Courts construe local ordinances. Specifically, in *Sleasman*, the Court held that "[a]n unambiguous ordinance will be applied by its plain meaning...while only ambiguous ordinances will be construed." *Id.* at 643 (citations omitted). Similarly, the Court concluded that "ambiguous...land-use ordinances must be strictly construed in favor of the landowner [because]... zoning ordinances are in derogation of the common-law right of an owner to use private property so as to realize its highest utility." *Id.* at n.4.

Here, SCC 30.23.240 is unambiguous—it clearly does not apply to duplexes. Moreover, even if ambiguous, the only way to apply the ordinance is to conclude that it does not apply to duplexes.

**C. Building Permit Fees Must Be Refunded if Not Expended in Reviewing the Permits**

Significant building permit fees accompany my clients' building permit applications. In the event that the County concludes that the permits cannot be approved because they violate the substandard lot ordinance, the County must refund the permit fees, or the remainder of the fees not expended in reviewing the permits.

My clients have relied upon the plain language of the substandard lot ordinance in expending the resources to prepare and submit the accompanying building permit applications for duplexes. If the County refuses to accept these permit applications for filing, my clients will have no option other than to immediately seek an order of mandamus from superior court requiring the County to accept them and to pay all associated costs and attorneys fees.

Sincerely,

GROEN STEPHENS & KLINGE LLP

  
Charles A. Klinge  
[klinge@GSKlegal.pro](mailto:klinge@GSKlegal.pro)  
Samuel A. Rodabough  
[sam@GSKlegal.pro](mailto:sam@GSKlegal.pro)

Enclosure

**30.91D.480 "Duplex"** means a residential structure containing two dwelling units that have a contiguous wall, which structure is located on one lot. The term does not include a mobile home, or a structure containing an attached or detached accessory apartment.

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

**30.91D.490 "Dwelling"** means a structure designed or used as a residence.

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

**30.91D.500 "Dwelling, multiple family"** ("Multiple family dwelling") means a dwelling containing three or more dwelling units, but excluding townhouses and mobile homes.

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

**30.91D.510 "Dwelling, single family"** ("Single family dwelling") means a dwelling containing one dwelling unit, or the dwelling unit and an attached or detached accessory apartment. This term shall also include factory built housing constructed pursuant to the standards delineated in RCW 43.22.455, as amended, and rules and regulations promulgated pursuant thereto.

### **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)

# **APPENDIX E**



# **APPENDIX F**

October 30, 1986

Mr. Ralph F. Johnson  
1620 E 3 Goshen Road  
Augusta, Georgia 30906

Dear Mr. Johnson:

The new Northwest County Area Comprehensive Plan was adopted by the County Council on October 15, 1986. The land use designation on the plan for your property is Rural with a recommended minimum lot size of 5 acres per residence. This area will be rezoned to a Rural 5 zone to make zoning consistent with the new comprehensive plan. Currently, your property is zoned Rural Use with a minimum lot size of 100,000 square feet or 2.3 acres.

The 2.3 acre and 5 acre minimum lot sizes apply only to newly created lots. Your ownership consists of several lots which were platted some time ago. The County recognizes already platted lots as legal building lots regardless of the minimum lot size and width requirement of the applicable zone. However, all other requirements of the zone (set backs, height, coverage, etc.) apply and must be met. In addition, the Snohomish Health District's requirements for domestic water supply and sewage disposal have to be met and may result in the combination of several of your lots.

I trust that this information answers your questions. If not, please write again or call toll free 1-800-562-4367 and ask for extension 2203.

Sincerely,

  
Klaus Schilde  
Principal Planner

:ra

# **APPENDIX G**

# EXHIBIT H

## Chapter 30.22 Uses allowed in Zones

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### 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, LDMR, 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)

**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;

(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 LDMR, 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/TU): When applied to land that is (a) included in an Urban Growth Area and (b) designated P/TU 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/TU 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

the 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 developmen..

(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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# EXHIBIT I

30.22.110 Rural and Resource Zone Categories: Use Matrix

Type of Use	Rural Zones							Resource Zones			
	RD	RR-10	R-5 R-11	RB	CRC	RFS	RI	F	F&R	A-10	MC
Accessory Apartment <sup>82</sup>	A	A	A	A				A	A	A	A
Agriculture <sup>41</sup>	P	P	P	P	P	P	P	P	P	P	P
Airport: Stage 1 Utility <sup>1</sup>	C	C	C <sup>115</sup>					C			
Antique Shop	C		C <sup>45, 115</sup>	P <sup>79</sup>	P						
Art Gallery <sup>41</sup>	C		C <sup>115</sup>	P <sup>79</sup>	P						
Asphalt Batch Plant & Continuous Mix Asphalt Plant											P
Auto Repair, Minor				P <sup>78</sup>	P	P					
Auto Towing	C		C								
Bakery				P <sup>78</sup>	P						
Bakery, Farm <sup>97</sup>	P	P	P	P			P		P	P	
Bed and Breakfast Guesthouse <sup>58</sup>	C		C <sup>115</sup>	P				C	C	A	
Bed and Breakfast Inn <sup>58</sup>	C		C <sup>115</sup>	P				C	C	C	
Boarding House	P <sup>15</sup>	P <sup>15</sup>	P <sup>15, 115</sup>					P <sup>15</sup>		P <sup>15</sup>	
Boat Launch, Commercial <sup>31</sup>		C							C		
Boat Launch, Non-commercial <sup>31</sup>	C		C	C				C	C		
Campground									C <sup>32</sup>		
Caretaker's Quarters	P		C				P				P
Cemetery, Columbarium, Crematorium, Mausoleum <sup>41</sup>	P		C <sup>115</sup>								
Church <sup>41</sup>	P		C <sup>115</sup>	C	P						
Cold Storage							P				
Commercial Vehicle Home Basing			C <sup>33</sup>								
Commercial Vehicle Storage Facility				C			P				
Community Club	P		C <sup>115</sup>	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 II	RB	CRS	RFS	RI	F	F&R	A-10	MO
Community Facilities for Juveniles <sup>103</sup>											
1 to 8 residents			P <sup>102, 115</sup>	P	P						
9 to 24 residents			S <sup>103, 115</sup>	P	P						
Construction Contracting				P <sup>80, 81</sup>							
Country Club	C		C <sup>115</sup>	P							
Craft Shop <sup>21</sup>				P							
Dams, Power Plants, & Associated Uses								P			
Day Care Center <sup>2</sup>	P		C <sup>115</sup>	P	P	P					
Distillation of Alcohol	C <sup>34</sup>		C <sup>34, 115</sup>							C <sup>34</sup>	
Dock & Boathouse, Private, Non-commercial <sup>3, 41</sup>	P	P	P	P				P	P	P	
Drug Store				P <sup>79</sup>	P						
Dwelling, Duplex	P	P	P					P		P	
Dwelling, Mobile Home	P	P	P		P <sup>6</sup>			P	P	P	P
Dwelling, Single Family	P	P	P		P			P	P	P	P
Equestrian Center <sup>41, 70, 72</sup>	P	C	C <sup>115</sup>					C	P	C <sup>70</sup>	
Excavation & Processing of Minerals <sup>28</sup>	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 <sup>115</sup>	P	P	P	P	P	P	P	P
Fallout Shelter, Joint <sup>7</sup>	P		P	P	P	P	P	P	P	P	P
Family Day Care Home <sup>8</sup>	P		P <sup>115</sup>	P	P			P		P	
Farm Product Processing											
Up to 5,000 sq ft	P	P	P <sup>115</sup>	P			P	P		P	
Over 5,000 sq ft <sup>94</sup>	A	A	A <sup>115</sup>	A			A	A		A	
Farm Support Business <sup>94</sup>	A	A	A <sup>115</sup>	A			P			A	

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Type of Use	Rural Zones							Resource Zones			
	RD	RR-10	R-5 112	RB	CRC	RFS	RJ	F	F&R	A-10	MC
Farm Stand Up to 400 sq ft <sup>9</sup> 401 – 5,000 sq ft <sup>99, 100</sup>	P P	P P	P <sup>100, 115</sup> P, A <sup>100, 115</sup>	P P	P P	P P	P P	P P	P P	P P	P P
Farm Workers Dwelling										P <sup>10</sup>	
Farmers Market <sup>93</sup>	P	P	P <sup>101, 115</sup> A <sup>101, 115</sup>	P	P	P	P			P	
Farmland Enterprises <sup>95</sup>		A	A <sup>115</sup>							A	
Fish Farm	P	P	P <sup>115</sup>					P	P	P	
Fix-it Shop				P <sup>78</sup>	P		P				
Forestry	P	P	P				P	P	P	P	P
Forestry Industry Storage & Maintenance Facility	P <sup>80</sup>	P					P	P	P		
Foster Home	P	P	P	P				P		P	
Garage, Detached Private Accessory <sup>60</sup> Up to 2,400 sq ft 2,401 – 4,000 sq ft on More than 3 Acres <sup>41, 59</sup> 2,401- 4,000 sq ft on Less than 3 acres <sup>41, 59</sup> 4,001 sq ft and Greater <sup>41, 59</sup>	P P A C	P P A C	P P A C	P P A C	P P A C	P P A C	P P A C	P P A C	P P A C		P P A C
Garage, Detached Private Non-accessory <sup>60</sup> Up to 2,400 sq ft 2,401 sq ft and greater <sup>41, 59</sup>	P C	P C	P C	P C	P C	P C	P C	P C	P C	P C	P C
Golf Course and Driving Range	C		C <sup>115</sup>							C <sup>74</sup>	
Government Structures & Facilities <sup>27, 41</sup>	C	C	C <sup>115</sup>	C	P		C	C	C		C
Greenhouse, Lath House, Nurseries: <sup>52</sup> Retail	P	P	P <sup>115</sup>	P	P		P	P		P	
Greenhouse, Lath House, Nurseries: <sup>52</sup> Wholesale	P	P	P <sup>115</sup>	P	P		P	P		P	

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

30.22.110 Rural and Resource Zone Categories: Use Matrix

Type of Use	Rural Zones							Resource Zones			
	RD	RRT-10	RJ5 112	RB	CRC	RFS	RJ	F	F&R	A-10	MC
Grocery Store				P <sup>80</sup>	P	P <sup>80</sup>					
Grooming Parlor					P						
Guesthouse <sup>85</sup>	P	P	P	P				P	P	P	
Hardware Store				P <sup>80</sup>	P						
Hazardous Waste Storage & Treatment Facilities Onsite <sup>85</sup>	P			P		P	P	P	P		
Health and Social Service Facility <sup>90</sup>											
Level I	P	P	P <sup>115</sup>	P	P			P	P	P	P
Level II <sup>41 91</sup>			C <sup>115</sup>	C							
Level III											
Home Improvement Center				P <sup>80</sup>	P						
Home Occupation <sup>11, 84</sup>	P <sup>84</sup>	P <sup>84</sup>	P <sup>84</sup>	P <sup>84</sup>	P			P <sup>84</sup>	P <sup>84</sup>	P <sup>84</sup>	P <sup>84</sup>
Homestead Parcel <sup>40</sup>	C		C <sup>115</sup>							C	
Hotel/Motel				P		P					
Kennel, <sup>41</sup> Commercial <sup>12</sup>	P	P	P <sup>115</sup>					P		C	
Kennel, <sup>41</sup> Private-Breeding <sup>13</sup>	P	P	P					P		P	
Kennel, <sup>41</sup> Private-Non-Breeding <sup>13</sup>	P	P	P	P				P		P	
Kitchen, farm	P	P	P	P			P			P	
Library <sup>41</sup>	C		C <sup>115</sup>	P							
Licensed Practitioner <sup>29, 41</sup>				P <sup>79</sup>							
Livestock Auction Facility	C <sup>48</sup>		C <sup>48, 115</sup>		P		P			C <sup>48</sup>	
Locksmith				P	P						
Log Scaling Station	C	C	C <sup>115</sup>				P	P	P	P	
Lumberyard							P				
Manufacturing-All Other Forms Not Specifically Listed <sup>83</sup>				C			C				
Metal Working Shop				P <sup>78</sup>			P				
Mini-equestrian Center <sup>41, 72</sup>	P	P	P <sup>115</sup>	P			P	P	P	P <sup>71</sup>	

P - Permitted Use	<p style="text-align: center;">A blank box indicates a use is not allowed in a specific zone.</p> <p style="text-align: center;">Note: Reference numbers within matrix indicate special conditions apply; see SCC30.22.130.</p> <p style="text-align: center;">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	RR1-10	R15 (11)	RB	CRC	RFS	RI	F	F&R	A-10	MC
Model Hobby Park <sup>75</sup>			A <sup>115</sup>							A	
Model House/Sales Office	P	P	P <sup>115</sup>					P	P		
Motocross Racetrack			C <sup>113</sup>						C <sup>113</sup>		
Motor Vehicle & Equipment Sales					P <sup>23</sup>						
Museum <sup>41</sup>	C		C <sup>115</sup>	P						C <sup>81</sup>	
Office, General				P	P						
Off-road vehicle use area, private									C <sup>109</sup>		
Park, Public <sup>14</sup>	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 <sup>79</sup>	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 <sup>43</sup>				
Print shop				P							
Public Events/Assemblies on Farmland <sup>96</sup>										P	
Race Track <sup>24, 41</sup>			C <sup>115</sup>								
Railroad Right-of-way	C	C	C <sup>115</sup>		P		P	C	C	C	C
Recreational Facility Not Otherwise Listed <sup>98</sup>	C		C <sup>115</sup>		P		P <sup>79</sup>			C <sup>110</sup> A <sup>111</sup>	
Recreational Vehicle <sup>19</sup>	P	P	P					P	P	P	
Recreational Vehicle Park									C		
Resort									C		
Restaurant				P <sup>80</sup>	P	P					
Retail Store				P <sup>80</sup>	P						
Rural Industries <sup>41</sup>	P <sup>25</sup>										
Sanitary Landfill	C	C	C <sup>115</sup>					C			C

P - Permitted Use	A blank box indicates a use is not allowed in a specific zone. Note: Reference numbers within matrix indicate special conditions apply; see SCC30.22.130. Check other matrices in this chapter if your use is not listed above.
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-5 114	RB	ORC	RFS	RI	F	F&R	A-10	MC
Sawmill	C <sup>28</sup>	C <sup>28</sup>	C <sup>28, 115</sup>				P	P	P		
Schools											
K-12 & Preschool <sup>41, 68</sup>	C		C <sup>115</sup>	P							
College <sup>41, 68</sup>	C		C <sup>115</sup>								
Other <sup>41, 68</sup>				C			C				
Second Hand Store				P <sup>78</sup>	P						
Service Station <sup>41</sup>				P	P	P					
Shake & Shingle Mill	C <sup>28</sup>	C <sup>28</sup>	C <sup>28, 115</sup>				P	P			
Shooting Range <sup>52</sup>	C	C	C					C			
Sludge Utilization <sup>39</sup>	C	C, P <sup>60</sup>	C <sup>115</sup>					C		C	C <sup>58</sup>
Small Animal Husbandry <sup>41</sup>	P		P		P			P	P	P	P
Specialty Store				P <sup>78</sup>	P						
Stables	P	P	P	P			P	P	P	P	
Stockyard or Slaughter House							C <sup>48</sup>				
Storage, Retail Sales Livestock Feed			P <sup>54, 115</sup>	P			P			P	
Storage Structure, Accessory <sup>60</sup>											
Up to 2,400 sq ft	R	P	P	P	P	P	P	P	P	P	P
2,401 – 4,000 sq ft on More than 3 Acres <sup>41, 59</sup>	P	P	P	P	P	P	P	P	P	P	P
2,401 – 4,000 sq ft on Less than 3 acres <sup>41, 59</sup>	A	A	A	A	A	A	A	A	A	A	A
4,001 sq ft and Greater <sup>41, 59</sup>	C	C	C	C	C	C	C	C	C	C	C
Storage Structure, Non-accessory <sup>60</sup>											
Up to 2,400 sq ft	P	P	P	P	P	P	P	P	P	P	P
2,401 sq ft and greater <sup>41, 59</sup>	C	C	C	C	C	C	C	C	C	C	C
Studio <sup>41</sup>	C <sup>77</sup>		C <sup>77, 115</sup>								
Swimming/Wading Pool <sup>17, 41</sup>	P	P	P					P	P	P	P
Tavern <sup>41</sup>				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 LH	RB	GRC	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 <sup>18</sup>	A	A	A					A	A	A	A
Temporary Logging Crew Quarters								P	P		
Temporary Residential Sales Coach <sup>73</sup>	A		A <sup>115</sup>								
Temporary Woodwaste Recycling <sup>63</sup>	A						A	A			
Temporary Woodwaste Storage <sup>63</sup>	A							A			
Tire Store					P						
Tool Sales & Rental				P	P						
Transit Center	C	C	C <sup>115</sup>	P		P		C	C	C	
Ultralight Airpark <sup>20</sup>	C	C	C <sup>115</sup>					C			
Utility Facilities, Electromagnetic Transmission & Receiving Facilities <sup>27</sup>	C	C	C	C	P	C	P	C	C	C	C
Utility Facilities, Transmission Wires or Pipes & Supports <sup>27</sup>	P	P	P	P	P	P	P	P	P	P	P
Utility Facilities-All Other Structures <sup>27, 41</sup>	C	C	C	C	P	C	P	C	C	C	C
Veterinary Clinic	P		C <sup>115</sup>	P	P					C	
Wedding Facility <sup>87</sup>		P	P <sup>115</sup>							P	
Woodwaste Recycling <sup>57</sup>	C	C	C				C	C			
Woodwaste Storage <sup>57</sup>	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	

# **EXHIBIT J**

## 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 LDMR, 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

*(See Exhibit K.)*

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

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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# EXHIBIT K

Table 30.23.030(1)  
BULK MATRIX

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

Table 30.23.030(1) (continued on next page)

# EXHIBIT L

**30.91D.480 "Duplex"** means a residential structure containing two dwelling units that have a contiguous wall, which structure is located on one lot. The term does not include a mobile home, or a structure containing an attached or detached accessory apartment.

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

**30.91D.490 "Dwelling"** means a structure designed or used as a residence.

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

**30.91D.500 "Dwelling, multiple family"** ("Multiple family dwelling") means a dwelling containing three or more dwelling units, but excluding townhouses and mobile homes.

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

**30.91D.510 "Dwelling, single family"** ("Single family dwelling") means a dwelling containing one dwelling unit, or the dwelling unit and an attached or detached accessory apartment. This term shall also include factory built housing constructed pursuant to the standards delineated in RCW 43.22.455, as amended, and rules and regulations promulgated pursuant thereto.