SNOHOMISH COUNTY COUNCIL
INDEX TO FILE

FILE: PBSS Rural Business Rezone & Variance 25-105874 REZO; 25-105880 VAR

DATE: Closed Record Appeal Hearing - Friday, May 22, 2026 @ 10:30 a.m.

COUNCIL STAFF: Deb Bell

PDS STAFF: Melissa Place

PA: Alethea Hart

The complete Hearing Examiner record is available upon request of the Clerk of the Council

Exhibit No.

TBD Pending Council Staff Report

I. Appeal Letter

O.1 Appeal Letter received via e-mail April 10, 2026 @ 1:48 p.m. from Peter Durland, Attorney for the Appellant

II. Examiner's Decision

O.2 Decision of the Snohomish County Hearing Examiner dated March 27, 2026

Hearing Examiner List of Exhibits *(Exhibits available upon request at contact.council@snoco.org)*

Hearing Examiner Parties-of-Record

III. Copies of Hearing Examiner exhibits cited and/or germane to the appeal

L.1 Staff Recommendation

A.5 Determination of Nonsignificance with Environmental Checklist

E.1 Ownership - Zoning Map

E.2 Aerial Map

The following are additional exhibits listed in order as cited in the Appeal Letter (Exhibit O.1)

A.7 Redline Version of Revised Project Narrative & Decision Criteria Analysis, received July 21, 2025

M.3 Snohomish Job Sites

M.1 Code Enforcement Investigation 16-112234 CTx1

M.2 Code Enforcement Investigation 19-103943 CTx1

M.4 Joshua Machen legal non-confirming use email, dated July 8, 2024

A.1 Master Permit Application (for both rezone and variances), received April 3, 2025

A.3 Project Narrative and Rezone & Decision Criteria Analysis, revised and received July 21, 2025

D.2 B – Three B's Rezone Decision, Appeal & Motion 99-384 and supporting exhibits

A.6 Comprehensive Plan Analysis Matrix, received July 21, 2025

D.1 A – Amended Ordinance 98-121 and Exhibits 76, 101, 104, and 105 thereof

IV. Responses to Appeal

N/A

V. Rebuttal

N/A

VI. Submissions/Exhibits Entered for Council Closed Record Appeal

O.3 Signed Verification of Appeal Received by Casey Gray on 4/10/26

O.4 Notice of Closed Record Appeal dated 4/15/26

O.5 Affidavit of Mailing – Notice Closed Record Appeal – e-mailed and U.S. mailed on 4/15/26

O.6 Letter to Applicant/posting notice – date 4/15/26

O.7 Notarized statement/affidavit – applicant posting notice – 4/15/26

O.8 Affidavit of Publication – Notice of Closed Record Appeal – dated 4/22/26

SNOHOMISH COUNTY COUNCIL

EXHIBIT # O.1

FILE 25-105874 REZO

RECEIVED
APR 10 2026
PLANNING & DEVELOPMENT SERVICES

1:48pm

BEFORE THE COUNCIL OF SNOHOMISH COUNTY
STATE OF WASHINGTON

In re the Appeal of PBSS INVESTMENTS, LLC, Appellants, Of the Hearing Examiner Decision for PBSS Rural Business Rezone and Variance; Applicant: PBSS Investments, LLC.	File No. 25-105874 REZO and 25-105880 VAR APPLICANT PBSS INVESTMENTS, LLC'S APPEAL OF SNOHOMISH HEARING EXAMINER DECISION

Applicant PBSS Investments, LLC ("PBSS") hereby submits this limited appeal of the Hearing Examiner's decision on PBSS's application for a rezone of its property (the "Decision") located at 19125 State Route 9 SE known as tax parcel numbers 270514-003-010-00 (the "Property"). Because the rezone application concerns the activities of McClure and Sons, Inc., this appeal statement references McClure and Sons in place of PBSS. The two entities share ownership and there is no material difference between the two entities for the purposes of this appeal.

The Decision included discussion of a separate but related request for a variance from certain code criteria as part of its submission. This aspect of the hearing Decision is not relevant for the purposes of this appeal. McClure and Sons respectfully requests the Council reverse the Decision or remand to the Hearing Examiner for further proceedings.

I. FACTUAL BACKGROUND

The Property has been used for various contracting and construction-related activities dating back to at least 1974. The initial owner of the Property, Duncan "D.E." McAllister,

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engaged in construction work, equipment repair and maintenance, and storage of equipment and other items on the Property throughout his ownership. Mr. McAllister also leased space on the Property to other contractors for work including metal fabrication, wood fabrication, and the storage of construction equipment. Mr. McAllister's use likely dates back to 1974 when he initially purchased the property, although records from that time are difficult to procure. The first available County records McClure and Sons was able to obtain regarding use of the Property date back to 1987, when Snohomish County approved permitting for the construction of a new metal building "shop" (a large two-story building that includes an overhead crane and work stations) to aid with Mr. McAllister's construction work. Exhibit A.7 at 4-5. Prior to this construction, Mr. McAllister primarily used an existing brick building for his work and other wooden outbuildings that were present on the site when purchased by McClure and Sons. Mr. McAllister also used outdoor space for the storage of equipment and materials in the same manner as McClure and Sons today.

Les McClure originally purchased the Property from Duncan MacAllister in 1993 for storage of materials and equipment storage and repairs for his family-run company, McClure and Sons, Inc ("McClure and Sons"). When Les McClure and his wife Judy formed PBSS, Property ownership shifted from McClure and Sons to PBSS. This transfer in ownership had no material effect on the use of the Property by McClure and Sons.

McClure and Sons was founded as a small family construction firm based out of Mill Creek. All of McClure and Sons' contracting and business operations are conducted out of the Mill Creek office. The Property is and has been used by McClure and Sons solely for the storage and maintenance of vehicles and construction equipment related to its business operations. Since its creation, McClure and Sons has served the local community, conducting

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numerous projects in the area over the years. Exhibit M.3. A significant portion of these projects involve local public works infrastructure, such as water treatment plants, reservoirs, pump stations, extensive landscaping, and other necessary community rural and urban infrastructure. *Id.* McClure and Sons' primary work focuses on public works projects, for which it is routinely audited by the State to ensure strict compliance with government contracting requirements. Accordingly, McClure and Sons is stringently limited to the type of work and classification of employees permitted to work on the Property and only 3 to 6 employees work on site. Decision at 6.

McClure and Sons consistently operated on the same section of the Property since purchasing the Property 33 years ago with the understanding that its commercial activities on site were permitted under Snohomish County Code. McClure and Sons' understanding was primarily based on a series of County determinations and approvals spanning the course of several decades.

The first documented County action related to the Property occurred when Mr. McAllister applied for and received a development permit to construct a large 2-story "shop" in 1987. Exhibit A.7 at 4-5. McClure and Sons continue to use the constructed "shop" in their operations to this day. As illustrated further below, McClure and Sons have vested nonconforming use rights. Snohomish County Planning and Development Services (PDS) acknowledged these rights on two separate occasions since approving the development permit. The first instance occurred as the result of an anonymous code enforcement complaint in 2016 under enforcement action 16-112234 CT, when an anonymous individual alleged that McClure and Sons was conducting illegal business on site. After the PDS investigated the complaint, the investigating code enforcement officer closed the case in 2018, noting "[u]se of the

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property as a construction staging/storage yard likely "grandfathered" due to longevity of use at the property." Exhibit M.1. PDS once again received an anonymous complaint in 2018 regarding commercial equipment storage and alleged property encroachment under enforcement action 19-103943 CT. PDS again dismissed the complaint, noting that "commercial equipment storage is a non-conforming use." Exhibit M.2. McClure and Sons continued with their County-approved operations until 2022 when an employee made an unfortunate mistake. Sometime during the fall of 2022, an employee cleared a portion of the Property to make additional room for storage of overflow equipment and material storage on the Property. Unbeknownst to the employee and other McClure and Sons employees at the time, the site-clearing activity was outside the historic footprint of McClure and Son's established operations stemming from the same footprint as established by Mr. McAllister during his activities on site. McClure and Sons' understanding is the entire Property was "grandfathered" for its current use. Upon realizing the mistake, McClure and Sons promptly took steps to rectify the issue, installing screens and barriers to reduce and minimize the activity in the disturbed area, and to protect the neighboring properties from associated sounds and commercial on-site activity. PDS issued a Notice of Violation in October of 2023 and McClure and Sons has been working to establish a legal pathway to correct the issue ever since.

To address the noted issues in the NOV, McClure and Sons engaged with the County regarding an Administrative Conditional Use Permit (ACUP) and Land Disturbing Activity (LDA) permit. During this process, PDS maintained that McClure and Sons had a vested right to operate its business, noting that the activity was "considered a legally non-conforming use" in a response to public comment dated July 8, 2024. Exhibit M.4. While initially receptive to McClure and Sons' applications, PDS reversed its years-long position that its activities were

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considered a non-conforming use without explanation. To address this unexpected reversal, McClure and Sons determined the best path forward would be a rezone to RB as that would appropriately account for the existing business, define the area within which the business can operate, and allow the Applicant to then proceed with an LDA to address revegetating areas that were disturbed by the expansion. Importantly, McClure and Sons' RB rezone application is for a smaller overall footprint than the use established on the Property up until 2022.

The County's enforcement action and abrupt change in attitude regarding McClure and Sons' nonconforming use status appears to be the result of a few complaints from a few neighboring property owners. While McClure and Sons is sympathetic to neighboring property owners' concerns, the commentary and actions by neighbors indicate their desire to see the business removed entirely. Many of these neighbors moved in long after the business was established and it would be inequitable to require a longstanding community-driven business to move based on a few neighbors' desire to see it so. During McClure and Sons' ongoing discussions with County Officials regarding compliance with County Code, neighbors have taken it upon themselves to rectify the situation, in one case shooting at and damaging equipment and other company property necessary for its operations.[1] Based on the timeline of events, the PDS appears to have reversed their non-conforming use position based on neighbor's complaints and issued the NOV, leading to the rezone application before the Hearing Examiner. It is well established law that community displeasure cannot be the basis of permit denial, and, similarly, should not be the basis for code enforcement actions. *Maranatha Min., Inc. v. Pierce Cnty.*, 59 Wn. App. 795, 804, 801 P.2d 985 (1990).

Mr. McClure established his family business with the intent to one day hand over operations to his sons. Indeed, this was the foundational principle of McClure and Sons when

[1] Damage reported to the Snohomish County Sherriff's Office on December 10, 2024.

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initially established. Now, because PDS has abruptly changed its mind regarding use of the Property, that plan is in jeopardy.

II. LEGAL BACKGROUND

A. Creation of the Rural Business Zone.

Snohomish County created the Rural Business (RB) zone via Ordinance 98-121, adopted on December 16, 1998. Exhibit A.7 at 3. Adoption of Amended Ordinance 98-121 was preceded by approval of revised Motion 96-389, setting the 1996 Final Docket, wherein the Council directed PDS to prepare plan text and county code amendments to "provide a general policy and regulatory framework concerning rural commercial development" in response to the submission of seventy-five proposals to amend the comprehensive plan and implementing development regulations (inclusive of proposed zoning code amendment) that were largely requests from rural residents and businesses concerned about the impacts of zoning and regulations on rural areas and businesses. In the lead up to Amended Ordinance 98-121, requests by attorneys for CCH Construction (Richard & Charlene Imus) and the Blooms (a/k/a Three B's Construction) sought relief to address zoning issues encountered by their existing contracting businesses. Exhibit A.1 at 3. In the case of CCH Construction, a construction contractor that had been cited by the County for illegally operating a contracting use in the Rural-5 zone, requested the Council amend the proposed Rural Business zone to allow building contractor as a permitted use and provide a rezone option that would allow a use that existed before adoption of the Rural Business zone to seek a rezone. Exhibit D.1 at 68. As a result of the lobbying efforts by CCH Construction, the Blooms, and others, Amended Ordinance 98-121 included the following provisions to allow existing uses to seek a rezone to Rural Business:

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> For properties that contain a commercial use **permitted or otherwise allowed in the RB zone** that existed on or before the effective date of this section, a rezone to RB may be approved only for that portion of the site containing the existing use and may not expand beyond the location of the existing commercial use **unless the location criteria** of SCC 18.65.020(2) are met with respect to the expansion area. The locational criteria contained in SCC 18.65.020(2) and the maximum building footprint requirements of SCC 18.65.040(2) and (3) need not be met for that portion of the site containing the existing uses.

SCC 18.65.020(3). Presently, this provision is located in SCC 30.31F.020(4) and it reads:

> For properties that contain **a commercial use permitted or otherwise allowed in the RB zone that existed on or before the effective date of this section**, a rezone to RB may be approved only for that portion of the site containing the existing use and may not expand beyond the location of the existing commercial use unless the locational criteria of subsection (2) of this section are met with respect to the expansion area. The locational criteria contained in subsection (2) of this section and the maximum building footprint requirements of SCC 30.31F.110 and 30.31F.120 need not be met for that portion of the site containing the existing use.

The RB zoning classification can only be applied to properties that meet certain locational criteria, subject to a key exception for properties with a commercial use that is "permitted or **otherwise allowed** in the RB zone that existed on or before the effective date" of the code language adopted by Ordinance 98-121. SCC 30.31F.020(4) (emphasis added). The adoption of RB zoning was explicitly intended for addressing unpermitted uses located throughout rural areas, as evidenced by the carve-out language for pre-existing uses prior to the establishment of the zone in 1998. Exhibit A.3 at 1-2.

The inclusion of the phrase "otherwise allowed" was expressly interpreted by Snohomish County Council when it overturned a rezone denial by the Snohomish County Hearing Examiner for Three B's Construction. The County Council found that its own adopted language was intended to exempt businesses from location and distancing requirements for "all existing uses, whether or not they were legal nonconforming uses a (sic) the time of

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application for a rezone to Rural Business." *Three B's Construction,* Hearing Examiner Decision on Remand by Motion 99-384 at 16-17 (Exhibit D.2); *see* Exhibit A.3 at 2. Longstanding principles of statutory interpretation require "each word of a statute to be accorded meaning" and be construed to avoid statutory language rendered "superfluous, void, or insignificant." *HomeStreet, Inc. v. State, Dep't of Revenue*, 166 Wn.2d 444, 452, 210 P.3d 297, 301 (2009) (quoting *State ex rel. Schillberg v. Barnett*, 79 Wash.2d 578, 584, 488 P.2d 255 (1971); *Kasper v. City of Edmonds*, 69 Wn.2d 799, 804, 420 P.2d 346 (1966)). Further, courts are "required to assume the Legislature meant exactly what it said and apply the statute as written." *Id.* (quoting *Duke v. Boyd*, 133 Wn.2d 80, 87, 942 P.2d 351 (1997)). Because the County adopted and then interpreted its own code, the intent of the language "otherwise allowed" clearly contemplates use that would not be encompassed under the term "permitted."

B. Nonconforming Use

An important factor in this proceeding is McClure and Son's nonconforming use rights on the Property. As such, it seems appropriate to provide some background regarding nonconforming use right standards and their application to the Property.

McClure and Sons has a legally established nonconforming use right that predates the County's zoning change and would meet the County's definition of "otherwise allowed." SCC 30.91N.070 defines a nonconforming use as "a use of land or a structure which was lawful when established and which does not now conform to the use regulations of the zone in which it is located." McClure and Sons continuation of Mr. McAllister's use of the Property predates many of the zoning and use standards that exist today.

"Non-conforming uses are vested property rights which are protected." *Van Sant v. City of Everett*, 69 Wn. App. 641, 649, 849 P.2d 1276 (1993). The nonconforming rights and the

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vested rights doctrines go hand in hand. "A nonconforming use is a use which lawfully existed prior to the enactment of a zoning ordinance, and which is maintained after the effective date of the ordinance." *Seven Hills, LLC v. Chelan Cnty.*, 198 Wn.2d 371, 398, 495 P.3d 778 (2021) (quoting *Rhod-A-Zalea & 35th, Inc. v. Snohomish Cnty.*, 136 Wn.2d 1, 6, 959 P.2d 1024 (1998)). "once a non-conforming use is established, the burden shifts to the party claiming abandonment or discontinuance of the non-conforming use to prove such." *Van Sant*, 69 Wn. App. at 648. In this case, McClure and Sons and its predecessors established its right of nonconforming use by using the Property for commercial construction activities for nearly a half-century. As discussed above, the County agreed on multiple occasions that McClure and Sons had established nonconforming use rights on the Property. Therefore, the burden is on the County to show McClure and Sons does not have an established nonconforming use right to the Property. The Examiner did not determine whether the Property is a legal nonconforming use. Decision at 12.

III. STANDARD OF REVIEW

Under Snohomish County Code, any aggrieved party of record can appeal the Hearing Examiner's decision based on the following grounds: "(a) The decision exceeded the hearing examiner's jurisdiction; (b) The hearing examiner failed to follow the applicable procedure in reaching the decision; (c) The hearing examiner committed an error of law; or (d) The hearing examiner's findings, conclusions, and/or conditions are not supported by substantial evidence in the record." 30.72.080(2). PBSS appeals the Decision on the grounds that the Hearing Examiner committed an error of law and that his findings were not supported by substantial evidence in the record. Indeed, substantive portions of the Decision appear to be based on findings contrary to the established record before the Hearing Examiner.

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As the Appellant in this proceeding, PBSS has the burden of proving the Examiner's findings, conclusions, or conditions are not supported by substantial evidence in the record. SCC 30.72.080(1). "Substantial evidence is evidence that would persuade a fair-minded person of the truth of the statement asserted." *Cingular Wireless, LLC v. Thurston Cnty.*, 131 Wn. App. 756, 768, 129 P.3d 300, 306 (2006), *amended on reconsideration* (May 23, 2006).

IV. ARGUMENT AND AUTHORITY

SCC 30.42A.100 requires rezone applications to meet the following 4 criteria for approval:

1. The proposal is consistent with the comprehensive plan;
2. The proposal bears a substantial relationship to the public health, safety, and welfare;
3. The proposal is justified based on a change of circumstance since the site was previously zoned; and
4. Where applicable, minimum zoning criteria found in chapters 30.31A through 30.31F SCC are met.

The Hearing Examiner erred in finding McClure and Son's rezone application did not meet these criteria for the reasons set forth herein.

A. <u>The Hearing Examiner's finding that McClure and Sons' rezone application is inconsistent with the comprehensive plan is not supported by substantial evidence in the record.</u>

As the Hearing Examiner correctly notes in the Decision, Rural Business is an authorized implementing use for the Property. Decision at 7-8. While not dispositive, it does show that the use is contemplated within the land use policies created by the comprehensive plan and is consistent with the overall goals of the comprehensive plan. Longstanding Washington law has clearly established that comprehensive plans serve as guidelines or blueprints when making land use decisions, rather than requiring strict compliance. *Woods v.*

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Kittitas Cnty., 162 Wn.2d 597, 613, 174 P.3d 25, 33 (2007). "A comprehensive plan does not directly regulate site-specific land use decisions" and a proposed land use decision must only "generally conform, rather than strictly conform to the comprehensive plan." *Id.* Moreover, zoning ordinances and codified county code govern land use applications, not comprehensive plans. *Citizens for Mount Vernon v. City of Mount Vernon*, 133 Wn.2d 861, 873, 947 P.2d 1208 (1997). "A specific zoning ordinance will prevail over an inconsistent comprehensive plan." *Id.* McClure and Sons provided extensive evidence that it serves the immediate rural population with necessary services pursuant to Comprehensive Land Use Objective 6.E. For example, McClure has completed multiple projects for the local community, including water and sewage projects for the Silver Lake Water and Sewer District, waste water treatment plants in Marysville, Lynwood, and Monroe, and other needed infrastructure projects in the area. Exhibit M. The primary source of McClure's on-site activities supports projects and residents in the area. *See* Exhibit A.6; A.3 at 10-14.

The Hearing Examiner focuses extensively on Comprehensive Plan Goal LU 6 regarding the protection and enhancement of the character, quality, and identity of rural areas to support his finding that the rezone proposal is inconsistent with the comprehensive plan. However, the facts upon which the Examiner bases this finding is counter to the facts established in the record.

The Examiner and neighbors acknowledged that the noise and impacts from activity were not noticeable until after the additional clearing occurred outside the established footprint for on-site activity. The Examiner explicitly found that "[p]rior to 2022, [McClure and Sons'] operations were not noticeable or visible to adjacent property owners." Decision at 6. Further, the Examiner stated that McClure and Sons' site activity "changed in 2022 and disturbed and

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disrupted the rural character of the neighborhood since then." Decision at 7. As outlined above, McClure and Sons' rezone application is to establish a footprint smaller than the historic use of the Property dating back several decades. The Examiner noted that allowing a "commercial operation that disturbs the neighborhood" is not in keeping with Comprehensive Plan Goal LU 6. However, the record clearly shows that there was no neighborhood disturbance prior to the clearing that occurred in 2022. Decision at 6-7. Therefore, the Examiner's finding on this basis is not supported by substantial evidence in the record.

Similarly, the Examiner focuses his analysis regarding McClure and Son's outside business operations rather than the on-site activity and specific support to the local community. While McClure and Sons does conduct business in other parts of the State, the machinery stored on site serves the local community largely due to transportation constraints. If McClure and Sons is forced to relocate from the Property based on a denial of this rezone request, it will make local projects more difficult, if not impossible, to complete because transporting machinery to and from the project sites may no longer be feasible. While McClure and Sons completes some construction work outside the immediate area, those projects are wholly unrelated to this proceeding. *See* Decision at 10. The only consideration relevant to the rezone application is the use of the Property for projects in the area. As demonstrated, McClure and Sons uses the Property for local projects to benefit the local community. Accordingly, the Examiner's finding on this basis is not supported by substantial evidence in the record.

B. <u>The Hearing Examiner's finding that McClure and Sons' rezone application does not bear a substantial relationship to the health, safety, and welfare of the public is not supported by substantial evidence in the record.</u>

The Examiner provides little analysis regarding this rezone criterion, except to assert that the neighbors "provided credible evidence of substantial noise and disruption caused by

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[McClure and Sons'] activities" finding that the "noise and disruption are inconsistent with rural character." Decision at 11. As previously discussed, the "noise and disruption" noted by the neighbors occurred AFTER the additional clearing took place in 2022. The record established before the Examiner conclusively shows that there was no "noise and disruption" resulting from McClure and Sons' activities over the approximately 30 years prior. McClure and Sons' rezone request is not a "rezone to legalize the current use" as stated by the Examiner, but rather to rezone the historic use at levels determined not to have a detrimental impact on neighbors. Further, McClure and Sons provides a tremendous benefit to the local community through its work on local water and sewer utility infrastructure, among others. Exhibit M.3.

Because McClure and Sons' rezone request is for an area of the Property upon which McClure and Sons' activities were explicitly found to not disturb neighbors, the Examiner's finding is contrary to the established record and his finding is accordingly unsupported.

C. The Hearing Examiner committed an error of law in finding that McClure and Sons' rezone application is not justified based on a change of circumstances since the site was previously zoned and the Examiner's finding is not supported by substantial evidence in the record.

As a preliminary matter, a demonstration of changed circumstances is not required if the rezoning is consistent with an adopted comprehensive plan. *Save Our Rural Environment v. Snohomish County*, 99 Wash.2d 363, 370–71, 662 P.2d 816 (1983); *Bjarnson v. Kitsap County*, 78 Wash.App. 840, 845–46, 899 P.2d 1290 (1995). As outlined above, McClure and Sons' rezone proposal was consistent with the comprehensive plan. As the Examiner acknowledges, the proposed RB zoning is an authorized implementing use for the Property as contemplated in the future land use map in the comprehensive plan. Decision at 8. The Examiner correctly notes that a proponent of a rezone has "the burden of proof demonstrating

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that conditions have changed since the original zoning[,]" when this criteria is required. Decision at 11 (quoting *Phoenix Dev., Inc. v. City of Woodinville*, 171 Wn. 2d 820, 834, 256 P.3d 1150, 1156-57 (2011), citing *Citizens for Mount Vernon v. City of Mount Vernon,* 133 Wn.2d 861, 874–2 75, 947 P.2d 1208 (1997)). However, when the rezone request is merely an alternative, available, and consistent implementation of the approved Comprehensive Plan, the Courts have said that a change in circumstances is not necessary. While yes, County Code includes a change in circumstances as a criteria, *see* SCC 30.42A.100, this is clearly intended to be a codification of state law, and should not be invoked to preclude a rezone that is in every other respect consistent with the Comprehensive Plan. Requiring McClure and Sons to demonstrate changed circumstances on this basis is an error of law.

Assuming *arguendo* that McClure and Sons is required to show changed circumstances, the Examiner erred in finding that it did not meet this standard. "A variety of factors may indicate a **substantial** change in circumstances, including changes in public opinion, in local land use patterns, and on the property itself. *Henderson v. Kittitas Cnty.*, 124 Wn. App. 747, 754, 100 P.3d 842, 845 (2004) (emphasis added). The *Henderson* Court provides some insight into how courts have traditionally viewed a change in circumstances. The *Henderson* Court reviewed and approved a rezone from Agricultural 20 to Agricultural 3 lots (20 and 3 acre lots respectively). *Id.* The rezone request was based, in part, on development pattern shifts in the area that created smaller surrounding parcels and were subsequently developed. *Id.* Part of the Court's reasoning for upholding the rezone decision is a comment from the planning commission, stating that "the proposed amendment is appropriate because of changed circumstances due to the fact that once the area was used as a cattle ranch grazing area and over a period of time residential areas have grown up around it." *Id.* The two changes

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in circumstances present in this case are: (1) the County created a pathway to compliance for Rural Business that met the proper criteria and; (2) PDS changed its mind regarding McClure's longstanding business operations it had deemed a nonconforming use on multiple occasions based on what appears to be a change in public opinion.

i. Pathway to Compliance.

The 3 B's rezone decision evidences the pathway to compliance intent of the County envisioned for pre-existing businesses. The use of the language in SCC 30.31F.020(4) for "permitted or otherwise allowed" is ambiguous language that requires delving into the legislative intent. There is no clear definition of the term in code and PBSS has been unable to locate additional language that would help shed light on the matter.

Snohomish County Council made its intent abundantly clear when it stated that its intent was "to apply the exception language to all existing uses, whether or not they were legal nonconforming uses at the time of application for a rezone to Rural Business." Exhibit D.2. PDS agreed with this statement when adopting the language establishing the RB zone, noting that the code exception language did not distinguish between legal and illegal nonconforming uses. Exhibit D.2 at 47. Additionally, it would be impossible to have a permitted RB zone use, prior to the existence of the RB zone itself. The "otherwise allowed" language pertains to the rural business zone TODAY as we seek the rezone. The only logical way to read this language is precisely as the County stated in its intent adopting the ordinance establishing the RB zone, as well as in its decision in the 3 B's case. The Council's decision also makes sense in the context of the adopting ordinance. There are 75 motions included in 1998 final docket. Exhibit D.1. Snohomish County Council was essentially looking to harmonize comp plans and the drastic zoning changes to rural areas within the County.

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ii. Nonconforming Use Status.

PDS noted on numerous occasions that the site was a nonconforming use. Exhibit M.1, M.2, and M.4. PDS has not provided a reason for the sudden change, but the record seems to indicate the change was based on comments received from neighboring property owners. As extensively shown, McClure and Sons has proposed a rezone on the site for a smaller footprint than it previously used over the past several decades, yet PDS has not recommended approval for the rezone. It would appear to be based on community pressure, which cannot be the basis for denial alone. As the Henderson court established, changes in public opinion can constitute a SUBSTANTIAL change in circumstances, a higher standard that the Phoenix Court or County Code requires for just a change in circumstances.

The Examiner committed an error of law requiring McClure and Sons to show a change in circumstances as part of its rezone application as the proposal complies with the Comprehensive Plan. However, if McClure and Sons must show a change in circumstances, it has adequately done so, and the Examiner's contrary finding is unsupported by substantial evidence in the record.

D. The Hearing Examiner's finding that McClure and Sons' rezone application does not meet minimum zoning criteria in SCC 30.31A through 30.31F is not supported by substantial evidence in the record.

The Examiner found that McClure and Sons complied with all requisite zoning criteria under Code except for SCC 30.31F.020(2)(c) and (g). Therefore, this appeal will only focus on compliance with these code provisions.

SCC 30.31F.020(2)(g) requires that "the size and configuration of the proposed site must be capable of accommodating applicable setbacks, buffers, and critical area protection pursuant to chapters 30.62A, 30.62B and 30.62C SCC." The Examiner bases his decision on

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this criterion on the fact that McClure and Sons also applied for a variance from this code provision. This is an inappropriate basis upon which to deny McClure and Sons' application. While the variance requests are related to the rezone request, they are not integral to the application. In other words, the rezone application can be approved while denying the variance requests.

McClure and Sons has demonstrated that the area of the rezone is within the historic boundaries of use on the Property. The proposed Rural Business boundary is an overall reduction of the historic use of the Property and meets the setback and locational requirements found in Code. There was some confusion in the hearing before the Hearing Examiner regarding the boundaries of the historic use and McClure and Sons' proposed rezone, as the rezone request does not cover the entire Property. Small portions of the historic boundaries of the use were changed to accommodate for the appropriate setbacks under Code. To the extent that further analysis is required, McClure and Sons would request a reversal and remand to the Hearing Examiner to determine the appropriate boundaries of the rezoned area.

Similarly, McClure and Sons is not required to meet the distancing requirements under SCC 30.31F.020(2)(c). Code language states "[t]he proposed new site shall be located no closer than two and one-half miles from an existing RB, RFS, or commercial designation in the rural area." As written, this provision does not appear to impact the McClure and Sons' application as the Property is not a "new site," but rather an existing nonconforming use as further outlined above. The Examiner did not substantively resolve the nonconforming use matter in the Decision, but the established record supports this reading.

Accordingly, the Examiner's finding is unsupported by substantial evidence in the record.

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V. CONCLUSION

Based on the foregoing, McClure and Sons respectfully requests this Council reverse the Decision or remand to the Hearing Examiner for further proceedings.

DATED this 10th day of April, 2026.

GORDON THOMAS HONEYWELL, LLP

By: _____
Peter D.C. Durland, WSBA #61486
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SNOHOMISH COUNTY COUNCIL

EXHIBIT # O.2

FILE 25-105874 REZO

Snohomish County

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Peter Camp
Hearing Examiner

DECISION of the SNOHOMISH COUNTY HEARING EXAMINER

I. SUMMARY

DATE OF DECISION:	March 27, 2026
PROJECT:	PBSS Rural Business Rezone & Variance 19125 State Route 9 SE Snohomish WA 98290
APPLICANT:	PBSS Investments, Inc. 15714 Country Club Dr. Mill Creek, Washington 98012
FILE NOS.:	25-105874 REZO 25-105880 VAR
PROPERTY OWNER:	PBSS Investments, Inc. 15714 Country Club Dr. Mill Creek, Washington 98012
APPLICATION TYPE:	Rezone from R-5 to Rural Business and four variances
DECISION SUMMARY:	Rezone from R-5 to Rural Business and variances are denied

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III. SITE SUMMARY

LOCATION:	19125 State Route 9 SE Snohomish, Washington 98290
TAX PARCEL NO.:	270514-003-010-00
ACREAGE:	8.08 acres
COMPREHENSIVE PLAN DESIGNATION:	Rural Residential 5 (1 dwelling unit/5 acres)
ZONING:	R-5
UTILITIES:	
Water:	Private well
Sewer:	On-site sewer system (septic)-not in a sewer district
Electricity:	Snohomish County Public Utility Dist. No. 1
SCHOOL DISTRICT:	Monroe School District No. 103
FIRE DISTRICT:	Snohomish Regional Fire & Rescue, a regional fire authority
PDS STAFF RECOMMENDATION:	Deny rezone Deny variance requests nos. 1, 2 (part 1), and 4 Approve variance request no. 2 (part 2) Variance request no. 3 is not applicable

Based on a preponderance of the evidence, the Hearing Examiner finds the following facts and makes the following conclusions of law.

IV. FINDINGS OF FACT

A. VESTING

On March 28, 2025, PBSS Investments, Inc. applied to Snohomish County Planning and Development Services department (PDS) for approval of a site-specific rezone from R-5 to Rural Business and for four variances from the Rural Business zone regulations. PDS determined the

application was complete and vested on April 3, 2025. PBSS submitted additional information on July 21, 2025.

B. Open Record Hearing

An open record hearing began on February 24, 2026, and concluded on March 4, 2026. Peter Durland, Esq., of Gordon Thomas Honeywell, LLP, Seattle, Washington, appeared on behalf of applicant PBSS. Justin Kasting, Esq., Snohomish County Deputy Prosecuting Attorney, appeared on behalf of PDS. David Toyer of Toyer Strategic Advisors, Inc., Everett, Washington, and Dustin McClure and Jim Vogt of McClure and Sons, Inc., Mill Creek, Washington, testified on behalf of the applicant. Melissa Place, AICP, testified on behalf of PDS. Community members Gary Davis, Voronica Robinson, and Roderic Robinson, testified regarding their concerns. PBSS and PDS agreed to extend the deadline for issuance of the decision to March 27, 2026.

C. The Record

The Hearing Examiner considered Exhibits A.1 through N.13. A recording of the hearing is available from the Office of Hearings Administration.

D. Public Notice

PDS notified the public of the open record hearing.[1]

E. Background Information

1. Proposal

PBSS seeks approval of a site-specific rezone of 2.86 acres of an 8.08-acre parcel from R-5 to Rural Business and for four variances from Rural Business zoning regulations. The site ("Property") fronts on State Route 9 and is the object of a current Code Enforcement action. PBSS believes the proposed rezone and variances will assist in resolution of the code enforcement action.[2]

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[1] Exhibits G.1 through G.4.

[2] This background information is provided for context only. When making this decision, the Hearing Examiner did not consider whether the requested rezone and variances would resolve the code enforcement action in whole or in part. The requested rezone and variances stand or fall on their individual merits when evaluated against county code requirements and without regard to the pending enforcement case.

2. Site Description and Surrounding Uses

The Property is zoned R-5 and owned by PBSS. PBSS purchased the Property in 1993.[3] No one resides on the Property, nor is there a dwelling on the Property.

State Route 9 bounds the property to the west. Surrounding properties are zoned R-5 and developed with single-family residences. Although PDS did not observe any critical areas during a 2023 site visit, PDS did not observe the entire Property, and it is possible critical areas exist on the Property.

The surrounding area is designated as Rural Residential in the comprehensive plan. The parcels surrounding the intersection of Maltby Road (SR 524) and State Route 9 approximately 1.22 miles to the south are zoned Rural Business and developed with businesses such as a service station.

3. Use of the Property

PBSS allows a related entity, McClure and Sons, Inc., (MSI)[4] to use the Property to store, repair, and maintain construction equipment and materials. MSI is a construction contractor performing work throughout Washington, Oregon, and occasionally other states. Its headquarters are in Mill Creek, Washington. In addition to its operations on the Property, MSI has an office and equipment yard in Oregon to serve the Oregon market.[5]

MSI is a licensed construction contractor in Washington, Oregon, Idaho, Alaska, and California and has performed construction contracts in those states.[6] It provides services in barge and ship retrofitting, marine construction, ferry terminals, and marina construction[7] and performs construction work for government agencies in Washington and Oregon, such as replacing sewers, building sewer lift stations, and sidewalks.[8] Its annual volume of work is approximately $40 million[9] and it has a bonding capacity of $130 million.[10] MSI performed construction contracts

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[3] Ex. A.3, PDF pp. 5-6.

[4] Ex. A.3, PDF p. 7.

[5] Testimony of McClure, Toyer, and Vogt.

[6] Ex. H.9, PDF p. 3.

[7] Ex. H.9, PDF p. 3. The Property is miles from Puget Sound and there are no marinas, ships, or ferry terminals in the immediate rural area of the Property.

[8] Testimony of McClure.

[9] Testimony of McClure.

[10] Testimony of Vogt.

outside of Washington and Oregon as recently as five to six years ago.[11] MSI employs approximately 75 people, of which three to six work on the Property.

In 2022, MSI expanded its operations on the Property, clearing brush among trees and applying gravel or hog fuel[12] to almost two-thirds of an acre and occupied or used an additional 2.56 acres to the east.[13] It fuels equipment and machines on the Property[14] from a 1,000-gallon tank.[15] It has 200-class excavators (20-ton), D5 bulldozers, mini-excavators, and multiple forklifts. It usually has 20 to 25 construction machines of significant or noticeable size on the Property at any time and numerous smaller machines.[16] MSI transports machines and equipment between the Property to job sites. MSI does not rent construction equipment and machines.[17]

4. Comments and Concerns

Prior to 2022, MSI's operations were not noticeable or visible to adjacent property owners.[18] Neighbors noticed a change in operations in 2022. MSI cleared trees, burned debris, and pushed unburned debris to the ravine in the south and to the north on to the Robinson's property.[19] Instead of operations occurring only on the west side of the Property near State Route 9, the property was "completely filled up" with construction equipment to the property line.[20] Neighbors are no longer able to stable or keep horses on their property because of the noise from MSI's operations.[21] A neighbor to the north lost three-quarters of their chicken flock due to the noise. Backup alarms on

[11] Testimony of McClure.

[12] Mr. Davis and Ms. Robinson saw gravel trucks dumping gravel on the Property. Testimony of Davis and V. Robinson.

[13] Ex. A.2, PDF p.1.

[14] Testimony of Toyer.

[15] PBSS's counsel answered the Hearing Examiner's question regarding the size of the tank after conferring with his client.

[16] Testimony of Vogt.

[17] Testimony of Vogt.

[18] Testimony of Davis; testimony of Voronica and Roderic Robinson.

[19] Testimony of Davis; testimony of Voronica and Roderic Robinson.

[20] Testimony of Davis.

[21] Testimony of Davis and V. Robinson.

vehicles are noticeable on adjacent properties.[22] The typical rural night-time symphony of frogs and owls stopped.[23]

Considering the evidence, the Hearing Examiner credits the testimony of the neighbors and finds that MSI's operations on the Property changed in 2022 and disturbed and disrupted the rural character of the neighborhood since then.

F. SEPA Environmental Review (Chapter 30.61 SCC)

PDS did not determine whether a threshold determination under the Washington State Environmental Policy Act was necessary because PDS recommended denial of the rezone and most of the variances.

G. Site Specific Rezone Standards (Chapter 30.42A SCC)

The Hearing Examiner may approve a rezone when four criteria are met:

1. The proposal is consistent with the comprehensive plan;
2. The proposal bears a substantial relationship to the public health, safety, and welfare;
3. The proposal is justified based on a change of circumstance since the site was previously zoned; and
4. Where applicable, minimum zoning criteria found in chapters 30.31A through 30.31F SCC are met.

SCC 30.42A.100 (2020). The proposed rezone does not satisfy these criteria.

1. Consistency with Comprehensive Plan

a. The Proposed Rezone is an Implementing Use for the Zone

The comprehensive plan allows Rural Business zoning among in areas designated for Rural Residential use. The future land use map of the comprehensive plan designates the area of the

[22] Testimony of V. Robinson.

[23] Testimony of V. Robinson.

Property for Rural Residential (1 DU/5 Acres Basic) use. The proposed zoning, Rural Business, is an authorized implementing use for the zone.[24]

b. The Proposed Rezone is Inconsistent with Land Use Policies

Whether the requested zone is an implementing use for the identified comprehensive plan land use zone is not dispositive. The requested zone must also be consistent with the policies underlying the land use designation.

A comprehensive plan goal is the "protect[ion] and enhance[ment] of the character, quality, and identity of rural areas." Comprehensive Plan Goal LU 6 (2024). Rezoning to allow a commercial operation that disturbs the neighborhood by preventing stabling and pasturing of horses, driving out rural evening sounds, and making it difficult to maintain a flock of chickens neither protects nor enhances the character, quality, and rural identity of the area.

MSI is not the type of rural business contemplated by either the comprehensive plan or its implementation in county code. The Rural Business zone is intended for "limited commercial uses . . . that provide opportunities for retail sales and services to the surrounding rural population." Comprehensive Plan Land Use Element, LU Policy 6.E.1, p. LU-42 (2024[25]). Rural Business zoning and development standards allow "community facilities for the surrounding rural population and facilitate small facilitate small-scale retail and service uses at appropriate locations within rural residential areas and minimize impacts to residential areas, resource lands, and critical areas." *Id.,* LU Policy 6.E.2.

These comprehensive plan policies are implemented by title 30 SCC.

> The intent and function of the Rural Business zone is to permit the location of **small-scale commercial retail businesses and personal services which serve a limited service area and rural population** outside established UGAs. This zone is to be implemented as a "floating zone" and will be located where consistent with specific locational criteria. The Rural Business **zone permits small-scale retail sales and services located along county roads on small parcels that serve the immediate rural residential population**, and for a new rural business,

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[24] SCC 30.31F.020(2) (2013).

[25] PDS asserts that the comprehensive plan as updated in 2024 is the controlling version of the plan, while PBSS asserts that the comprehensive plan as updated in 2015 is the controlling version. PDS represented that any differences between the two were immaterial for these purposes and PBSS has not identified any significant differences. Therefore, the Hearing Examiner cites to the comprehensive plan as updated in 2024.

are located two and one-half miles from an existing rural business, rural freeway service zone, or commercial designation in the rural area. Rural businesses, which serve the immediate rural population, may be located at crossroads of county roads, state routes, and major arterials.

SCC 30.21.025(2)(d) (Amend. Ord. 24-065, adopted Dec. 4, 2024, eff. date December 22, 2024)(emphasis added).[26]

Comprehensive Plan Goals and Policy	County Code Rural Business Implementation	PBSS/MSI
Community facilities for the surrounding rural population and facilitate small-scale retail and service uses	Small-scale commercial retail businesses and personal services	$40 million industrial construction contractor storing, maintaining, and repairing approximately two dozen large construction equipment, such as 20-ton excavators and D5 bulldozers.
	Serves a limited service area	The Property serves Washington state, including King, Snohomish, and other counties.[27] Licensed to perform construction contracting and performed construction contracts in Washington, Oregon, Idaho, Alaska, and California.[28] MSI provides services in barge and ship retrofitting, marine construction, ferry terminals, and marina construction—

[26] The citation is to the version in effect on the vesting date.

[27] Testimony of McClure and Vogt. Ex. M.3. Ex. H.9 (listing projects in University Place, Seattle, Bremerton, Bonney Lake, Poulsbo, Kirkland, Poulsbo, and Winlock, Washington, and in Ketchikan, Alaska).

[28] Ex. H.9, PDF p. 3.

		none of which are in a service area near the Property.[29]
	Serves immediate rural population	Does not primarily serve the rural population immediately surrounding the Property. For example, it builds sewer lift stations that do not serve any rural community because sewers are forbidden in rural areas. Projects in Medford and McMinnville, Oregon, and Sumner and La Center, Washington, are not in the immediate rural area of the Property.[30]
Minimize impacts to residential areas		Noise prevents pasturing and stabling horses, light and visual pollution by large construction equipment, frequent backup alarms, disturbance of chicken flocks, and disappearance of typical rural night sounds such as frogs and owls.

MSI is not a small-scale commercial retail or personal service business serving a limited are of the immediate population with minimal impact on adjacent residential areas. The intended use is inconsistent with the comprehensive plan's intent and county code's implementation of the comprehensive plan intention for Rural Business.

[29] Ex. H.9, PDF p. 3.

[30] Ex. H.9.

c. Other Relevant Factors

Finally, if any other relevant factors outside of the comprehensive plan policies are apparent from the application documents or otherwise known to PDS, they must be identified and specified whether any of these other factors relate to the rezone decision or should be considered at the project level with the specific development proposal being made.[31] As noted above, the current and intended use of the Property is storage, maintenance, and operation of two dozen large construction equipment machines fueled by a 1,000 gallon tank. The planned use is relevant to the proposed rezone and is material in these circumstances. As noted above, the rezone to legalize the current use would not be consistent with the comprehensive plan goals and policies, nor county code's implementation of those goals and policies.

The Hearing Examiner concludes the proposed rezone is inconsistent with the county's comprehensive plan.

2. Relationship to Public Health, Safety, and Welfare

The proposed rezone does not bear a substantial relationship to the health, safety, and welfare of the public. Neighbors testified persuasively and provided credible evidence of substantial noise and disruption caused by MSI's activities, which noise and disruption are inconsistent with rural character. The Examiner concludes the proposed rezone does not bear a substantial relationship to the health, safety, and welfare of the public.

3. Change in Circumstances

PBSS initially argued that it did not need to demonstrate that changed circumstances justified the requested rezone.[32] The Hearing Examiner disagrees for two reasons. First, the Washington State Supreme Court requires it:

> Thus, Phoenix's claim also fails under the more general rules we apply to rezone applications: '(1) there is no presumption of validity favoring the action of rezoning; (2) **the proponents of the rezone have the burden of proof in demonstrating that conditions have changed since the original zoning**; and (3) the rezone must bear a substantial relationship to the public health, safety, morals, or welfare."

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[31] Snohomish County Council Motion 07-447 (August 8, 2007).

[32] *E.g.*, Ex. A.3, PDF p. 16. ("[I]t appears unnecessary that the Applicant . . . demonstrate changed circumstances.")

Phoenix Dev., Inc. v. City of Woodinville, 171 Wn. 2d 820, 834, 256 P.3d 1150, 1156-57 (2011) (emphasis added), citing *Citizens for Mount Vernon v. City of Mount Vernon,* 133 Wn.2d 861, 874–75, 947 P.2d 1208 (1997).

Second, county code requires it. Snohomish County code requirements must be satisfied even if *Phoenix Development* did not require proof of changed circumstances.

PBSS argued that the county's alleged change from characterizing MSI's operations as a legal nonconforming use to an illegal use is a change in circumstances justifying the rezone.[33] This argument is unpersuasive for several reasons. First, an alleged change in the county's enforcement stance is not the type of circumstance that justifies a rezone. It is not a change in the nature of the neighborhood nor a change in legislatively adopted land use controls. The county's enforcement decision that the use is not permitted under zoning regulations does not justify a rezone to bring the use of the Property into compliance with county code.

PBSS belatedly argued that the presence of businesses conducted on other R-5 parcels in the area demonstrated changed circumstances justifying a rezone. However, alleged violations[34] of the zoning regulations on other parcels are not a change in circumstances justifying a site-specific rezone. "'[T]he fact that everyone else is doing it' is not a particularly compelling justification . . .." *Griner v. King*, 104 F.4th 1, 10 (8th Cir. 2024), *cert. denied sub nom. King for Cong. v. Griner*, 145 S. Ct. 1124, 220 L. Ed. 2d 421 (2025) (citation omitted) (copyright).[35]

The Hearing Examiner concludes that PBSS did not demonstrate changed circumstances that justify rezoning part of the parcel.

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[33] Testimony of Toyer. The county disagrees that it formally determined that PBSS's use of the property was a legal nonconforming use. It is unnecessary to decide in these proceedings whether the use of the Property is a legal nonconforming use and if so, the extent of the legal nonconforming use.

[34] *N.B.* PBSS did not disprove possible exculpatory facts such whether those uses are legal non-conforming uses.

[35] *See also United States v. Sittenfeld*, 669 F. Supp. 3d 672, 689 (S.D. Ohio 2023), *aff'd,* 128 F.4th 752 (6th Cir. 2025), petition for *cert*. pending, ("Just because someone—or even everyone—else is breaking the law would not mean that Sittenfeld could too.") (campaign finance); *Koch v. Jerry W. Bailey Trucking, Inc.*, 482 F. Supp. 3d 784, 789 (N.D. Ind. 2020) ("But everyone else is doing it!" This, effectively, is the excuse that Defendants advance for not paying their employee truck drivers to perform DOT inspections, among other tasks. This rationale has not worked on a mother in recorded history and, as it turns out, is no more effective when explaining away wage and hour violations."); *In re Catfish Antitrust Litig.*, 908 F. Supp. 400, 417 (N.D. Miss. 1995) ("[S]imply because 'everyone else is doing it' is not an absolute defense and does not mean that Hormel can avoid the legal consequences of its actions.") (antitrust); *American Insurance Association v. Kentucky Bar Association*, 917 S.W.2d 568, 571 (Ky. 1996) ("Moreover, we are unswayed by Complainants' reliance on the practices of other jurisdictions and what amounts to an 'everyone else is doing it, why can't we' argument.") (review of legal ethics opinion).

4. Minimum Zoning Criteria (Chapters 30.31A through 30.31F SCC)

The minimum zoning criteria of chap. 30.31F applies to this application. The proposed creation of a new Rural Business zone does not satisfy all applicable criteria of chap. 30.31F SCC.[36]

SCC 30.31F.020(2) establishes criteria for the location of Rural Business zones. A minimum of 600 residential dwelling units must be located within a two-and-a-half-mile radius of the Property. SCC 30.31F.020(2)(a). PBSS's proposal satisfies this criterion.

The Property must be along a county road or state highway with at least 100 feet of frontage. SCC 30.31F.020(2). PBSS's proposal satisfies this criterion.

The Property must be located no closer than two and one-half miles from an existing Rural Business zone. SCC 30.31F.020(c). The Property is 1.22 miles from the existing Rural Business zone at the intersection of State Routes 524 and 9. PBSS claims exemption from .020(c), relying on a previous Hearing Examiner decision that was appealed, reversed by County Council, and remanded to the Hearing Examiner. *In Re Three B's Construction*, (Snohomish County Hearing Examiner, no. ZA 99 101988, October 22, 1999).[37] The Hearing Examiner in that case initially denied a request to rezone four acres of a 13-acre site near Stanwood from R-5 to Rural Business. On appeal, County Council reversed and remanded for entry of approval of the rezone, which the Hearing Examiner did. County Council concluded that the predecessor to the location exceptions applied to all existing uses, "whether or not they were legal nonconforming uses a[t] the time of application for a rezone to Rural Business."[38] PDS disagrees that the prior decision is binding precedent in this case. It is unnecessary for the Hearing Examiner to resolve this dispute because the rezone application fails for other reasons.

The total area zoned Rural Business at the site may not be larger than five acres of net usable area. SCC 30.31F.020(2)(d). PBSS proposes split-zoning the 8.08-acre parcel and the portion to be rezoned to Rural Business is less than three acres. PBSS's proposal satisfies this criterion.

The Property must be located outside an urban growth boundary. SCC 30.31F.020(2)(e). PBSS's proposal satisfies this criterion.

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[36] SCC 30.42A.100(4) (2020); SCC 30.31F.020 (Amend. Ord. 13-042 (adopted July 10, 2013, eff. date July 22, 2013); SCC 30.31F.100 (2017); SCC 30.31F.110 (2018).

[37] Ex. D.2.

[38] Ex. D.2, PDF pp. 16-17 (conclusion 1).

The Property must contain a rural residential designation on the Future Land Use Map and not be designated as forest land or farmland. SCC 30.31F.020(2)(f). PBSS's proposal satisfies this criterion.

The size and configuration of the Property must be able to accommodate applicable setbacks, buffers, and critical area protection. SCC 30.31F.020(2)(g). PBSS's proposal cannot satisfy this criterion without variances. PBSS did not carry its burden of proof demonstrating special circumstances applying to the Property or its intended use such as size, shape, topography, location, or surroundings that do not apply to other properties or classes of use in the same vicinity or zone. SCC 30.43B.100(1) (2003). PBSS did not carry its burden of demonstrating the need for a variance to preserve and enjoy a substantial property right or use possessed by other properties in the same vicinity and zone but which because of special circumstances is denied to the Property. *Id.* at (2). PBSS did not identify the substantial property right or use possessed by other properties in the R-5 zone denied to it because of special circumstances, except to argue that other properties zoned R-5 in the vicinity had allegedly illegal businesses on them. Alleged illegal use by others is not a substantial property right enjoyed by the other property owners. Note, too, that PBSS's request for multiple variances vitiates the requirements of the Rural Business zoning designation. The need for multiple variances to exempt the proposed use from the zone's requirements is some evidence that Rural Business is not an appropriate zoning designation.

PBSS failed to satisfy the requirements for the variances, and consequently failed to satisfy SCC 30.31F.020(2)(g).

PBSS must have submitted site information that clearly demonstrated that an adequate building and development area is located on the Property outside of identified critical areas and buffers. PBSS did so and satisfied this criterion.[39]

H. VARIANCES

PBSS also applied for four variances from the Rural Business requirements of county code, SCC 30.31F.110. Denial of the rezone to Rural Business moots the applications for variances from the requirements of SCC 30.31F.110. The requested variances are therefore denied.

[39] Ex. C.2. This preliminary conclusion is only for determining compliance with SCC 30.31F.020(2)(g) and does not replace critical areas evaluation required for future development.

V. CONCLUSIONS

1. The Hearing Examiner has authority to approve site-specific rezones and variances.[40]

2. The Hearing Examiner concludes that PBSS did not meet its burden of meeting county code's criteria for approval of the site-specific rezone. The proposal is not consistent with the comprehensive plan, county codes, and the type and character of land use permitted on the Property. The proposal does not bear a substantial relationship with the public's health, safety, and general welfare. The applicant did not prove by a preponderance of evidence that changed circumstances justified the rezone. The proposal does not satisfy all minimum zoning criteria of chap. 30.31F SCC because variances are needed to meet those criteria and the criteria for all the variances are not wholly satisfied. Without approval of the rezone request, variances are not needed and are denied as moot.

3. Any finding of fact in this decision which should be deemed a conclusion of law is hereby adopted as a conclusion of law.

4. Any conclusion of law in this decision which should be deemed a finding of fact is hereby adopted as a finding of fact.

VI. DECISION

Based on the foregoing findings of fact and conclusions of law, the Hearing Examiner denies the rezone of a portion of Property from R-5 to Rural Business and denies the proposed variances from the Rural Business zone as moot.

Decision issued this 27th day of March, 2026.

Camp, Peter
Digitally signed by Camp, Peter
Date: 2026.03.27 10:49:56 -07'00'

Peter B. Camp
Snohomish County Hearing Examiner

[40] SCC 30.70.025 table (2024); SCC 30.72.025 (2012).

VII. RECONSIDERATION AND APPEAL PROCEDURES

The following paragraphs summarize the reconsideration and appeal processes. For more information about reconsideration and appeal procedures, please see chapter 30.72 SCC and the respective Hearing Examiner and Council Rules of Procedure.

RECONSIDERATION

Who May Petition and Deadline

Any party of record may request reconsideration by the Hearing Examiner by filing a petition for reconsideration no later than **April 6, 2026**.

Filing

A petition for reconsideration must be filed in writing. A petition for reconsideration is deemed filed when:

(a) the paper original is delivered in person, by messenger, or by courier to the Office of Hearings Administration, 1st Floor, Administration West Building, 3000 Rockefeller Avenue, Everett, Washington, before or at 4 p.m. on the day of the deadline;

(b) the paper original mailed to the Office of Hearings Administration, M/S No. 405, 3000 Rockefeller Avenue, Everett WA 98201 is postmarked by the United States Postal Service on or before the day of the deadline, though the postal service may deliver such postmarked original after the day of the deadline (note that USPS postmarks mail when processed at a regional USPS facility, which may be a day or more later than the date placed in the collection box); or

(c) the emailed petition to Hearing.Examiner@snoco.org is timestamped as sent on or before midnight of the deadline day.

There is no fee for filing a petition for reconsideration. The petitioner for reconsideration shall mail or otherwise provide a copy of the petition for reconsideration to all parties of record (including the applicant) on the date of filing. SCC 30.72.065. The petitioner for reconsideration shall file with the Office of Hearings Administration a declaration of service under penalty of perjury describing the documents served, the parties or persons served, and the method of service. A sample form is available from the Clerk upon request.

Contents

A petition for reconsideration does not have to be in a special form but must:

(a) Contain the petitioner's name, petitioner's mailing address, petitioner's daytime telephone number, and the signature of the petitioner or of the petitioner's attorney, if any;

(b) Identify the specific findings, conclusions, actions, and conditions for which reconsideration is requested;

(c) State the relief requested; and,

(d) If applicable, identify the specific nature of any newly discovered evidence and changes proposed by the applicant.

The grounds for seeking reconsideration are limited to the following:

(a) The Hearing Examiner exceeded his jurisdiction;

(b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;

(c) The Hearing Examiner committed an error of law;

(d) The Hearing Examiner's findings, conclusions, or conditions are not supported by the record;

(e) The petitioner discovered new evidence which could not reasonably have been produced at the hearing and which is material to the decision; or

(f) The applicant proposed changes to the application in response to deficiencies identified in the decision.

Petitions for reconsideration will be processed and considered by the Hearing Examiner pursuant to the provisions of SCC 30.72.065. Please include the county file number in any correspondence regarding this case.

APPEAL

An appeal to the County Council may be filed by any aggrieved party of record **on or before April 10, 2026.** If the reconsideration process of SCC 30.72.065 has been invoked, no appeal may be filed until the reconsideration petition has been decided by the Hearing Examiner. An aggrieved party may file an appeal directly to the County Council without first filing a petition for reconsideration. If a petition for reconsideration is filed, issues subsequently raised by that party

on appeal to the County Council shall be limited to those issues raised in the petition for reconsideration.

Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 2nd Floor, Administration West Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S 604, 3000 Rockefeller Avenue, Everett, WA 98201), and shall be accompanied by a filing fee in the amount of five hundred dollars ($500.00) for each appeal filed. A county department does not need to pay the filing fee. The filing fee shall be refunded in any case where an appeal is summarily dismissed in whole without hearing under SCC 30.72.075.

Appeals may be accepted electronically by the Planning and Development Services Department and paid for by credit card over the phone as follows:

1. Scan the original manually signed (handwritten) copy of the appeal document;

2. Send your appeal as an email attachment to epermittech@snoco.org. Please include your phone number where you can be reliably reached.

3. Staff will call you to collect your credit card information and process your payment.

4. Mail the original to Snohomish County PDS, 3000 Rockefeller M/S 604, Everett, WA 98201.

An appeal must contain the following items in order to be complete: (a) a detailed statement of the grounds for appeal; (b) a detailed statement of the facts upon which the appeal is based, including citations to specific Hearing Examiner findings, conclusions, exhibits or oral testimony; (c) written arguments in support of the appeal, including all legal arguments on which the appeal is based; (d) the name, mailing address and daytime telephone number of each appellant or appellant's representative, together with the signature of at least one of the appellants or the appellant's representative; and (d) the required filing fee. SCC 30.72.080(1).

The grounds for filing an appeal shall be limited to the following:

(a) The decision exceeded the Hearing Examiner's jurisdiction;

(b) The Hearing Examiner failed to follow the applicable procedure in reaching his decision;

(c) The Hearing Examiner committed an error of law; or

(d) The Hearing Examiner's findings, conclusions, or conditions are not supported by substantial evidence in the record.

SCC 30.72.080(2). Appeals will be processed and considered by the County Council pursuant to the provisions of chapter 30.72 SCC. Please include the county file number in any correspondence regarding the case.

Staff Distribution:

Department of Planning and Development Services: Melissa Place, AICP

The following statement is provided pursuant to RCW 36.70B.130: "Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation." A copy of this decision is being provided to the Snohomish County Assessor as required by RCW 36.70B.130.

Before the

HEARING EXAMINER

Snohomish County, Washington

LIST OF EXHIBITS & WITNESSES

Applicant:	PBSS Investments, LLC
Applicant Contact:	David Toyer - Toyer Strategic Advisors Inc.
Case Nos.:	25 105874 REZO and 25-105880 VAR
Project Name:	PBSS/MSI RB Rezone and Variances

Submitted for the open record hearing on February 24, 2025:

A. REZONE APPLICATION

- A.1 Master Permit Application (for both rezone and variances), received April 3, 2025
- A.2 Cover Letter, revised and received on July 21, 2025
- A.3 Project Narrative and Rezone & Decision Criteria Analysis, revised and received July 21, 2025
- A.4 Processing Timeline Extension Agreement, received July 21, 2025
- A.5 SEPA Checklist, revised and received July 21, 2025
- A.6 Comprehensive Plan Analysis Matrix, received July 21, 2025
- A.7 Redline Version of Revised Project Narrative & Decision Criteria Analysis, received July 21, 2025

B. VARIANCE APPLICATION

- B.1 Variance Narrative & Decision Criteria Analysis, revised and received July 21, 2025
- B.2 Processing Timeline Extension Agreement, received July 21, 2025
- B.3 Redline Version of Revised Variance Project Narrative & Decision Criteria Analysis, received July 21, 2025

C. PLANS

- C.1 Rezoning Site Plan, revised and received July 21, 2025
- C.2 Variance Site Plan and Setback Verification Exhibit, revised and received July 21, 2025

D. APPLICANT REZONE EXHIBIT LIST (A-O DESIGNATORS ADDED BY APPLICANT)

- D.1 A – Amended Ordinance 98-121 and Exhibits 76, 101, 104, and 105 thereof
- D.2 B – Three B's Rezone Decision, Appeal & Motion 99-384 and supporting exhibits
- D.3 C – Secretary of State Background on McClure & Sons, Inc.
- D.4 D – Chain of Title for Applicant's Property
- D.5 E – Secretary of State Background on PBSS Investments, LLC
- D.6 F – PDS No Critical Areas, No FPA Letter
- D.7 G-1 – 1978 Aerial (Snohomish County Public Works)
- D.8 G-2 – 1984 Aerial (Snohomish County Public Works)
- D.9 H – 1995 Aerial (Snohomish County Public Works)
- D.10 I – 1984 Aerial with Comparison to 2022 Aerial
- D.11 J – 1995 Aerial with Comparison to 2022 Aerial
- D.12 K – 2022 Aerial (Printed from PDS Map Portal)

D.13 L – Les McClure Purchase & Sale Agreement Notes
D.14 M - MacAllister Obituary
D.15 N - Adjacent Use Analysis
D.16 O - Setback & Perimeter Landscape Exhibit

E. PROPERTY

E.1 Ownership – Zoning Map
E.2 Aerial Map
E.3 Verification of Legal Description
E.4 Site Visit Photos, dated August 25, 2025

F. HISTORICAL AERIAL PHOTOGRAPHS

County Aerials (1974-1998)

F.1 1974
F.2 1978
F.3 1991
F.4 1995
F.5 1998 (red boundary delineated in 2025 by county staff)

Google Earth Aerials (2002-2025)

F.6 2002
F.7 2005
F.8 2009
F.9 2012
F.10 2016
F.11 2018
F.12 2021
F.13 2022
F.14 2024
F.15 2025

G. NOTICE AND ROUTING DOCUMENTS

G.1 Notice of Application
G.2 Affidavit of Mailing – Notice of Open Record Hearing
G.3 Affidavit of Notification (publication) – Notice of Open Record Hearing
G.4 Posting Verification – Notice of Open Record Hearing

H. OTHER SUBMITTAL ITEMS

H.1 Letters from Applicant, placing 2024 ACUP and LDA applications on hold, dated April 4, 2025
H.2 1st Review Completion Letter

H.3 Response to 1st Review Completion Letter
H.4 Email Correspondence between County and Applicant, dated April 30, 2025, and July 25, 2025
H.5 Ordinance 91-034
H.6 Amended Ordinance No. 02-064 (relevant portion only)
H.7 Ordinance No. 03-099
H.8 Amended Ordinance No. 24-033
H.9 McClure and Sons, Inc. Website Pages (dated May 8, 2025)
H.10 Assessor's Property Summary and Sketch
H.11 Assessor's Historic Information Pre 2000 Field Notes
H.12 County's GIS records of dwelling units within a 2.5-mile radius
H.13 Email from Long Range Planning Division regarding changes between 2015 and 2024 Comprehensive Plans, dated April 28, 2025

I. GOVERNMENT / TRIBAL COMMENTS

I.1 Cross Valley Water District, received April 14, 2025
I.2 Fire Marshal's Office Review Memo for the 2024 ACUP and LDA permits, dated September 6, 2024
I.3 Critical Areas Reviewer Memo, dated September 29, 2025

J. PUBLIC COMMENTS

J.1 Gary Davis, received April 22, 2025
J.2 Jeff Holden, received April 30, 2025
J.3 Margaret Davis, received April 26, 2025
J.4 Peter Samson, received April 21, 2025
J.5 Roderic Robinson, received April 24, 2025
J.6 Veronica Robinson, received April 24, 2025
J.7 Roderic Robinson Google Share (15 files: J.7.a – J.7.o), received April 25, 2025: **All files labeled as they were received. J.7.j and J.7.k appear to be duplicates.**
J.8 Gary Davis, received September 8, 2025

K. RESPONSE TO AGENCY / PUBLIC COMMENTS

K.1 Applicant's Response to Public Comments, dated August 11, 2025
K.2 PDS Email to Parties of Record with Applicant Responses to Comments, dated August 15, 2025

L. STAFF RECOMMENDATION - Department of Planning and Development Services

L.1 Staff Recommendation

M. RESERVED FOR APPLICANT SUBMITTALS

M.0 Applicant Prehearing Statement
M.1 Code Enforcement Investigation 16-112234 CTx1
M.2 Code Enforcement Investigation 19-103943 CTx1
M.3 Snohomish Job Sites
M.4 Joshua Machen legal non-confirming use email, dated July 8, 2024
M.5 Comprehensive Plan Notice, published January 29, 2025
M.6 HE Decision Maltby Trucking, issued September 4, 2015
M.7 Applicant PBSS Consultant Presentation on Rezone, Variance
M.8 Aerial 14-27-5-1995-Hearing Edition Overlay
M.9 Aerial 14-27-5-1978-Hearing Edition Overlay
M.10 PDS Email Response on Withdrawn CI, May 16, 2023
M.11 Perimeter Landscape Buffer Variance Alternative, sheet dated March 27, 2025

N. SUBMITTED DURING THE HEARING FEBRUARY 24, 2026 – MARCH 3, 2026

N.1 Ordinance 25-010, submitted by PDS
N.2 Partial Ordinance 24-033, submitted by PDS
N.3 Voronica Robinson 2016
N.4 Voronica Robinson 2026
N.5 Voronica Robinson Before
N.6 Voronica Robinson Before 2
N.7 Voronica Robinson Before 3
N.8 Voronica Robinson Before 4
N.9 Voronica Robinson Property Line
N.10 Voronica Robinson Forest
N.11 Voronica Robinson Ring Video_20230204_114348
N.12 Roderic Robinson Comment

WITNESSES AT THE HEARING ON FEBRUARY 24, 2026

Peter Durland, Counsel for PBSS Investments
Dustin McClure, 20211 28th Ave SE, Bothell, on behalf of the applicant
David Toyer, Toyer Strategic Consultants
Justin Kasting, Counsel for PDS
Melissa Place, AICP, PDS Planner
Jim Vogt, on behalf of Applicant

PUBLIC COMMENT

Hearing Log
Tuesday, February 24, 2026:
1:32 HE opening remarks

1:35 Applicant counsel Durland remarks
1:42 Dustin McClure narrative remarks
1:50 HE Qs, D. McClure responds1:53
1:58 Toyer, HE Qs, Toyer responses
2:17 discussion
2:18 Mr. Durland interjects/HE/Toyer discussion
2:24 Toyer continues
2:38 Mr. Durland interjects/HE/Toyer discussion
2:43 HE Qs/Durland/Toyer discussion

2:53 HE Qs/Durland/Toyer discussion
3:35 return
Mr. Toyer continues presentation
3:40 HE Qs/Durland/Toyer discussion
3:45 Toyer continues
3:53 Jim Vogt/HE Q/Discussions
4:04 Dustin McClure

4:11 Housekeeping

4:11 HE questions Mr. Durland
4:48 recess

Returning Tuesday, March 3, 9:30 a.m.,
And 2:00 p.m. if needed

WITNESSES AT THE HEARING ON MARCH 3, 2026
Justin Kasting, Counsel for PDS
Melissa Place, AICP, PDS Planner

Tuesday, March 3, 2026
9:32 Opening Remarks
9:35 remarks by Justin Kasting
9:46 Melissa Place, PDS Planner testifies
10:03 Examiner questions Ms. Place; Ms. Place responds

10:05 HE gives public comment remarks
10:10 Gary Davis testifies – public comment
10:34 Voronica Robinson testifies – public comment

10:58 Roderic Robinson testifies – public comment
11:09 Public comment ends
11:09 PDS further comments; discussion

11:11
Durland comments
Break

11:23
Mr. Durland comments
11:25 Mr. Toyer testifies. Mr. Camp interjects with questions; Mr. Toyer and Mr. Durland respond.
11:47 Mr. Durland argues
11:57 Mr. Durland gives closing statement
12:01 EOP

PUBLIC COMMENT
Gary Davis, email address on file
Voronica Robinson, email address on file
Roderic Robinson, email address on file

POR & AGENCY REGISTER
25-105874 REZO and 25-105880 VAR
PBSS/MSI RB Rezone and Variances
Hearing: 02/24/2026at 1:30 p.m.

Organization	Name	Address	City	State	Zip	Email	Service by
APPLICANT(s)							
Toyer Strategic Advisors, Inc.	David Toyer					david@toyerstrategic.com	**email**
CONTACT PERSON(s)							
PBSS Investments, LLC	Jim Vogt, PBSS Investments, LLC					jim@mcclureandsons.com	**email**
OWNERS							
PBSS Investments, LLC	Les & Judy McClure	15714 Country Club Dr.	Mill Creek	WA	98012		**US Mail**
COUNSEL							
SNOCO PA	Justin Kasting, Esq.					justin.kasting@snoco.org	**email**
SNOCO PA	Jessica Kraft-Klehm, Esq.					Jessica.Kraft-Klehm@snoco.org	**email**
SNOCO PA Staff	Tara Byrne					tara.byrne@snoco.org	**email**
GTH	Peter Durland, Esq.					pdurland@gth-law.com	**email**
GTH Staff	Arjun Bhardwaj					abhardwaj@gth-law.com	**email**
GOVERNMENT/TRIBES							
SNO CO Code Enforcement	Jody Latimer					jody.latimer@snoco.org	**email**
SNO CO Code Enforcement	Stephanie Lyons					stephanie.lyon@snoco.org	**email**
SNO CO PLAN & DEV/LAND USE	Joshua Machen					joshua.machen@snoco.org	**email**
SNO CO PLAN & DEV/LAND USE	Melissa Place					melissa.place@snoco.org	**email**
SNO CO PLAN & DEV/FIRE	Seth Henderson					SETH.HENDERSON@SNOCO.ORG	**email**
SNO CO PLAN & DEV/FIRE	Christopher Drocco					christopher.drocco@snoco.org	**email**
SNO CO PLAN & DEV/ENV	Erin Harker					ERIN.HARKER@SNOCO.ORG	**email**
WSDOT	Peter Alm					peter.alm@wsdot.wa.gov	**email**
Cross Valley Water District	Mike Johnson					mjohnson@crossvalleywater.net	**email**
PARTIES OF RECORD							
	Gary Davis					gary.davis66@frontier.com	**email**
	Peter Samson					atc.clears@gmail.com	**email**
	Margaret Davis					horseygal59@yahoo.com	**email**
	Roderic Robinson					roderic.robinson@gmail.com	**email**
	Voronica Robinson					voronica@aol.com	**email**
	Jeff Holden					holdenracing@usa.com	**email**

Snohomish County
Departments of Planning and Development Services and Public Works

STAFF RECOMMENDATION

SUMMARY

FILE NUMBER:	25-105874 REZO and 25-105880 VAR
APPLICATION VESTING DATE:	April 03, 2025
PROJECT NAME:	PBSS/MSI RB Rezone and Variances
APPLICANT:	David Toyer Toyer Strategic Advisors, Inc. 3705 Colby Ave, Suite 1 Everett, WA 98201
OWNER:	PBSS Investments, LLC 15714 Country Club Dr. Mill Creek, WA 98012
PROJECT MANAGER:	Melissa Place, AICP, Principal Planner
HEARING DATE:	February 24, 2026
TYPE OF REQUEST:	Rezone 2.86 acres of an 8.08-acre parcel from Rural 5-Acre (R-5) to Rural Business (RB) to retain the existing business as per SCC 30.31F.020(4). Applicant also seeks approval of four variances concurrent with the rezone request.
RECOMMENDATION:	Denial of the Rezone, and; Denial of Variance Requests #1, #2 (Part 1), and #4 Approval of Variance Request #2 (Part 2) Variance Request # 3 is not applicable

PROPERTY INFORMATION

Tax Parcel Numbers	270514-003-010-00
Location	19125 STATE ROUTE 9 SE SNOHOMISH
Section/Township/Range0	14-27-5
Acreage	8.08 (per Assessor Property Summary)
Current Zoning	R-5
Proposed Zoning	RB
Municipal Urban Growth Area	Not in a Municipal Urban Growth Area
County Urban Growth Area	Not in an Urban Growth Area
County Comprehensive Plan Designation	Rural Residential (1 DU/5 Acres Basic)
School District	Monroe School District 103
Fire District	Snohomish Regional Fire & Rescue
Water Service	Cross Valley Water District - not connected, on private well
Sewer Service	Cross Valley Water District - Sewer Sevice Area – not connected, on private septic
Electrical Service	Snohomish County Public Utility District No. 1
Park Service Area	Nakeeta Beach
Transportation Service Area	E

FINDINGS OF FACT

Background Information

Applicant's Proposal

The applicant is seeking a rezone of 2.86 acres of an 8.08-acre parcel from the Rural 5-Acre (R5) zoning district to the Rural Business (RB) zoning district to retain the existing business as per SCC 30.31F.020(4). The current and future underlying comprehensive plan designation is Rural Residential (RR). The applicant has stated in its application materials (Exhibit A.3) that the property has been used specifically as a construction contracting company since 1993 and has been used for a similar type of commercial activity since 1974. According to the project narrative the historic footprint of the construction contracting operation was approximately 3.8 acres. The applicant was initially seeking a rezone of 3.82 acres but upon further refinement of the proposal has revised the request to be 2.86 acres; the minimum area it needs to continue to operate according to its revised project narrative (Exhibit A.3). The applicant is not proposing a concurrent development plan with this rezone request.

The county disagrees with the applicant that the property has been historically used for construction contracting, as the submitted record does not contain evidence to support that use of the property prior to 1993 was anything other than residential. Construction contracting is not listed as a permitted use in the R-5 zone per the rural zoning matrix in SCC 30.22.110. The applicant is seeking to legalize an illegal use in the R5 zone by rezoning the property to RB (see

the section below titled Chapter 30.22 SCC Uses Allowed in Zones for more detailed information regarding the use). The function and intent of the RB zone "is to permit the location of small-scale commercial retail businesses and personal services which serve a limited-service area and rural population outside established [urban growth areas]." SCC 30.21.025(2)(d). Construction contracting is however permitted in the RB zone subject to the requirements found in Footnotes 80 and 81 (see section titled SCC 30.22.130 below). The applicant has submitted for a rezone for the RB zone to allow the use of construction contracting on the property but is asking to vary from Footnote 81 subsections (b) and (c) through the variance process. If the rezone were to be approved, it would legitimize an illegal use. This would require the county and other state and local agencies to review it from a new development perspective, rather than that of an existing use.

The applicant seeks the approval of four variances from the code sections listed below concurrent with the rezone request (Exhibit B.1), including:

1. SCC 30.22.130(81):

    b. An increase in the size of outdoor storage areas;

    c. An increase in the allowance for on-site parking of vehicles and construction machines;

2. SCC 30.25.020(2) - A reduction in the required perimeter landscape buffer;

3. SCC 30.23.030 – Table 30.23.030 - A reduction in the front setback requirement; and

4. SCC 30.23.043 - Table 30.23.043 - A reduction in the setback from a road element requirement.

The applicant was initially seeking approval of two variances, but upon further refinement of the proposal has revised the request to be for four variances. Please see the section below titled *Chapter 30.43B SCC Variances* for more details on the specific code sections requested to be varied from and staff's evaluation of the variance requests.

In accordance with SCC 30.70.120, the rezone and variances are being consolidated for permit review since they are both subject to a predecision public hearing and were submitted concurrently.

Project Chronology

The rezone and variance applications were originally submitted to Snohomish County Planning and Development Services (PDS) on March 28, 2025, and were determined to be complete for regulatory purposes on April 3, 2025. On May 13, 2025, the 1st Review Completion Letter (RCL) was sent to the applicant informing them that the application did not meet the RB rezone criteria for the use, because it did not meet the specific criteria for construction contracting as an allowed use in the RB zone. In the 1st RCL, the county asked if the applicant would revise its proposal (reduce its scope) to meet the criteria for construction contracting in the RB zone (Exhibit H.2).

A resubmittal of the application was received on July 21, 2025, from the applicant responding to the county's 1st RCL, which was determined on July 23, 2025, to be sufficient for further review (Exhibit H.3). Email correspondence between the county and the applicant occurred after the resubmittal of July 21st, 2025, to clarify items with the resubmitted materials. This correspondence is included as Exhibit H.4. In addition, on August 11, 2025, the applicant provided redlined versions of its project narratives for both the rezone and variances, identifying

the changes between its first submittal and the resubmittal, as well as a response to public comments received on the project; these are included as Exhibits A.7 and B.3. Between the first submittal and second submittal, the applicant revised the proposal as follows:

- Reduced the size of the rezone area request from 3.82 acres to 2.86 acres.
- Increased the number of variances requested from two variances to four variances.
- Removed the request for a variance from SCC 30.31F.100(4) and added requests for variances from SCC 30.23.030 and SCC 30.23.043.

The 170-day clock started on April 3, 2025. The applicant submitted a letter on July 16, 2025, agreeing to an extension of the processing timeline to however many days necessary to issue a final decision (Exhibit A.4).

Related Permit Activity

In 2022, the applicant cleared additional pathways and areas on the site under the tree canopy to allow additional area for equipment and material storage; this expanded area is approximately 2.56 acres (according to the applicant). This expansion work included clearing and grading and was undertaken without a permit and the use triggered a complaint leading to a Notice of Violation (NOV) and a code enforcement case (# 23-102154 CT). The applicant appealed the NOV, but the appeal was stayed pending the efforts of the applicant to seek permits. In 2024, the applicant applied for an Administrative Conditional Use Permit (ACUP) under Permit # 24-109207 ACUP and a Land Disturbing Activities (LDA) permit under # 24-109208 LDA to expand the existing use to allow for additional space to store overflow equipment and materials and bring the business and site into compliance with the Snohomish County Code. The permits were seeking an approval to continue the existing use and recent expansion by meeting specific decision criteria and obtaining an administrative conditional use permit per SCC 30.28.072(4).

During the review process for the 2024 ACUP and LDA permits, the county requested that the applicant provide further information regarding establishment of the use as well as further evidence to justify the expanded area, as the expanded area appeared to be much larger in area than the historical extent of the use. Rather than resubmitting information on the above two permits, the applicant has decided to pursue a rezone and variances for the property and put the permit applications from 2024 on hold (Exhibit H.1). The county accommodated the request and is moving forward with processing the rezone and variances per this recommendation.

Three separate prior code enforcement investigations were identified for the property using the County's permitting software: #16-112234 CT, #19-103943 CT, and #23-102154 CT. The 2023 case, as described above, is currently stayed and is pending the review and decision on this rezone and variances. Both the 2016 and 2019 code cases were closed by the assigned code enforcement officers. While these two code enforcement cases were closed at the Code Enforcement officers' discretion, the applicant has never availed itself of the code interpretation provisions in Chapter 30.83 SCC to determine whether it is benefitted by a nonconforming use of its property.[1] As of the date of this recommendation, the county has not recognized any

[1] PDS also concludes that the intensity and scope of use changed significantly from 2019 to when the complaints were received leading to the 2023 code enforcement action that is stayed pending the applicant's rezone request.

nonconforming use of the property which would allow the commercial contracting use to continue in the rural zone.

Environmental Review (SEPA) (Chapter 30.61 SCC)

Since the county is recommending denial of the rezone and variances, the proposal has not been evaluated under the State Environmental Policy Act (SEPA), nor has a threshold determination been issued. If the Hearing Examiner approves the rezone and variances, then the project should be remanded back to the county to perform SEPA review and issue a threshold determination.

Site Description

The site is approximately 8.08 acres in size with direct access on State Route Highway 9 in Snohomish. The applicant's project materials state the total parcel size as 7.89 acres, however the county's Assessor Property Summary lists the parcel as 8.08 acres. The site is partially cleared and has several buildings and structures. Much of the property is still native trees and forest, but a recent expansion in 2022 created new hog fuel roads and storage under the existing tree canopy. There is a small ravine that runs east to west in the southern portion of the site. Based on a site visit by county environmental staff as part of the ACUP/LDA permits in 2023, no critical areas were present on the site in the area of existing impact that were accessible to staff (Exhibits D.6 and I.3). Since no formal critical areas study has been completed by the applicant, it is possible that critical areas exist in areas of the property that were not accessible to county staff. A final determination would be made using a critical areas study should that become necessary. Figure 1 below shows an aerial image of the property.

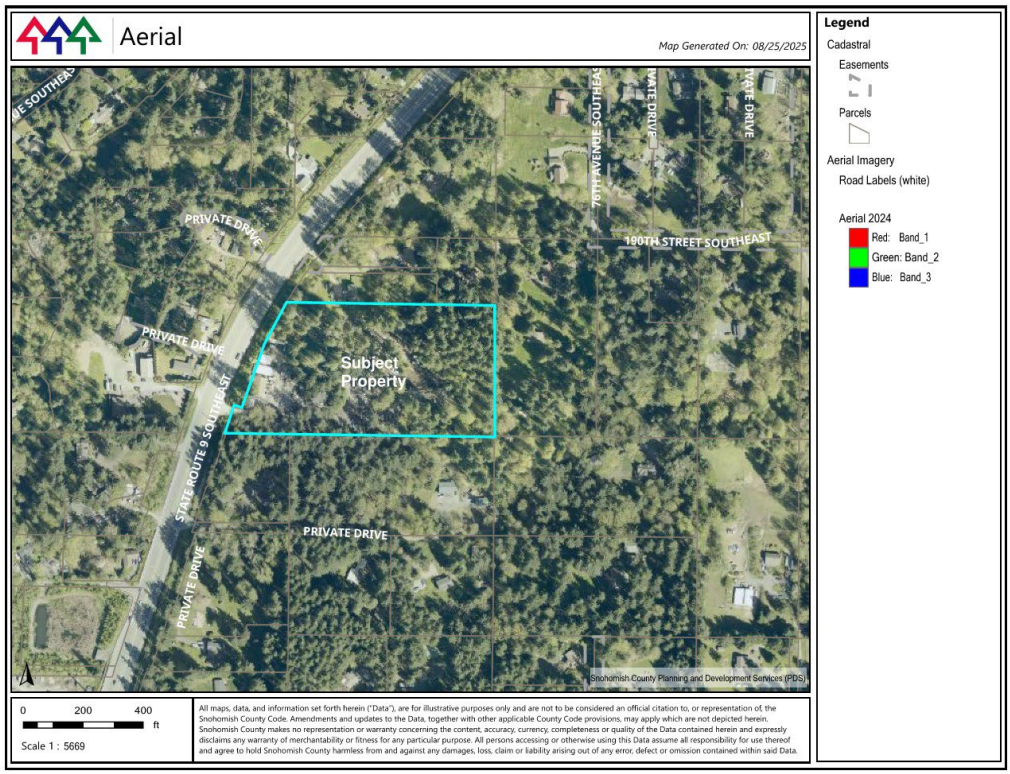


Figure 1. Aerial imagery of subject site

Zoning

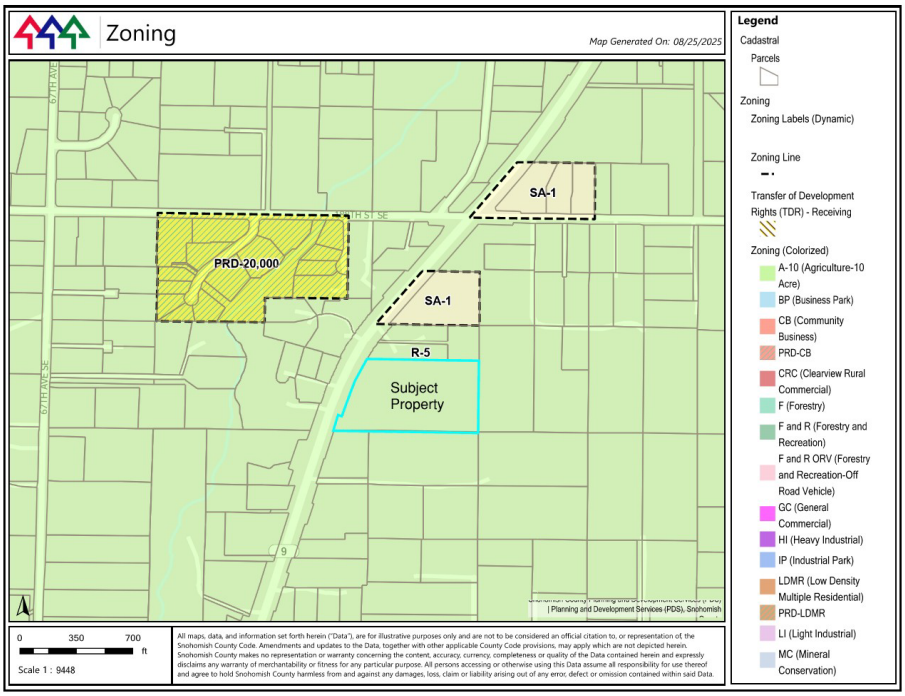


Figure 2. Current zoning map of vicinity.

As seen in Figure 2 above, the property is zoned R-5 and is surrounded by adjacent properties that are all zoned R-5. There is one Planned Residential Development (PRD) zoned property to the northwest and two properties zoned Suburban Agriculture-1 Acre (SA-1) to the north.

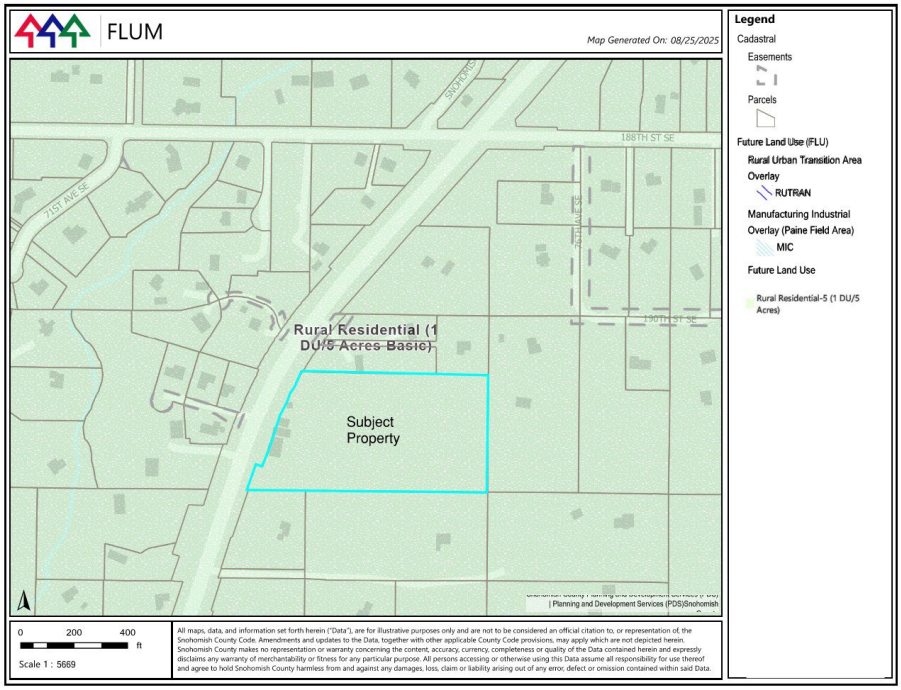


Figure 3. Current future land use map (FLUM)

As seen in Figure 3 above, the property and all adjacent properties are designated as Rural Residential (RR) on the Future Land Use map for the County.

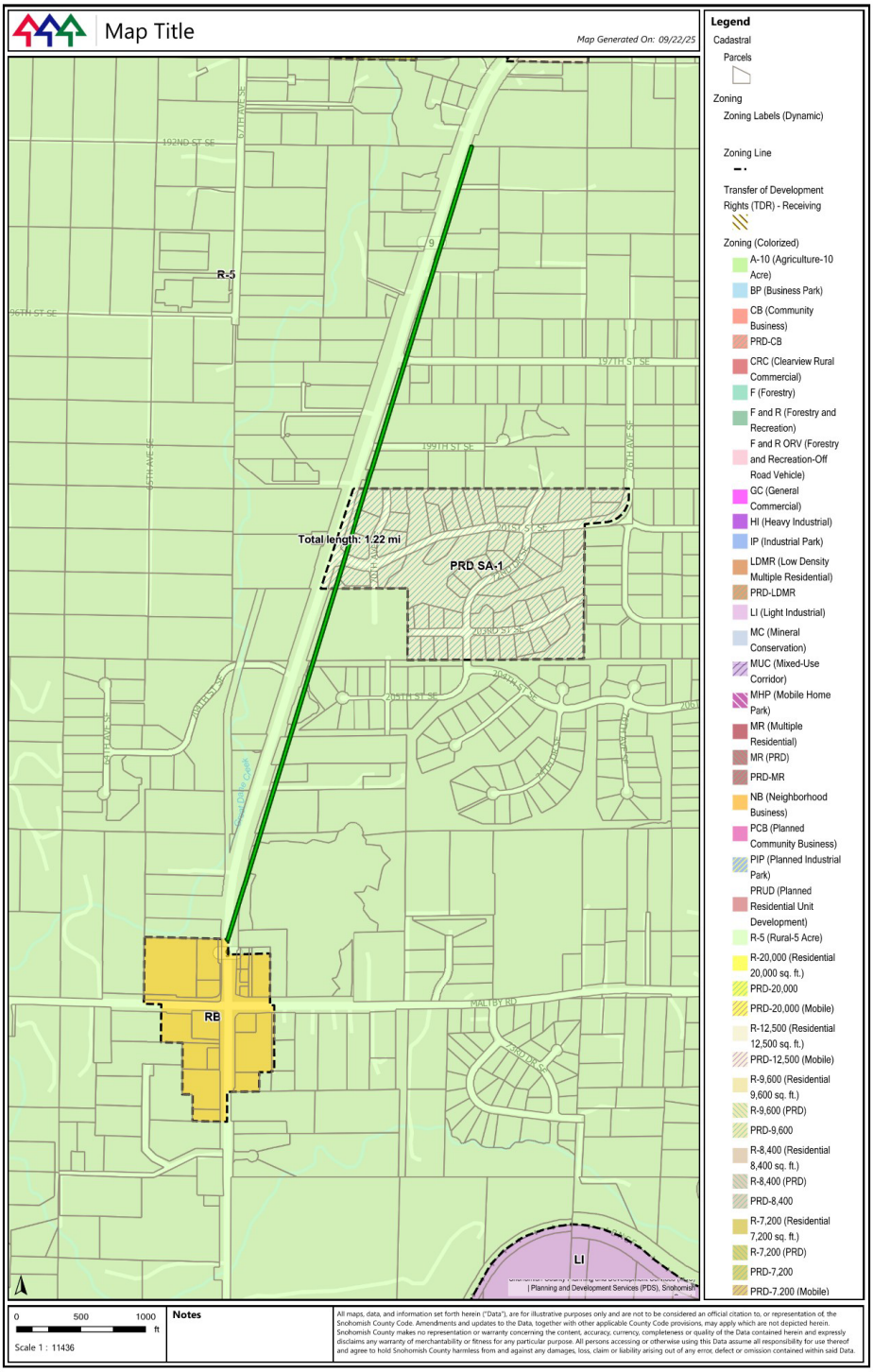


Figure 4. Map of nearest RB zoned property.

The nearest other RB zoned property is located 1.22 miles away, south of the subject property, at the intersection of Maltby Road and SR 9 as shown in Figure 4 above.

Issues of Concern

Written public comments and videos were received from six members of the community on concerns related to the proposed rezone and variances (Exhibit J).

Topics of concern received by the county include:

- Previous code violations
- Lack of permits
- Property is active construction site that never ends
- Unpermitted recent land clearing and expansion of the use
- Impacts of use upon wildlife
- Original footprint of use vs. current extent of use
- Noise impacts (loud construction machinery operating all day)
- Exhaust odor
- Vibrations from equipment
- Property value decrease
- Aesthetic concerns
- Lack of landscaping buffer due to recent clearing
- Impacts of the use upon quality of life of neighboring residents
- Critical areas impacts
- Discharge of oils/materials into the soil/creek
- Industrial contaminants leaching into the soil
- Surface water discharge/watershed concerns
- Illegal French drains
- Property line encroachments
- Debris on the property
- Water connection requirements
- Rezoning just a portion of the property
- Property's disregard for rules and regulations
- Screening/sound barriers are insufficient
- Industrial equipment stored on the property
- Future control of storage of materials on the property if application is approved

The applicant provided written responses to these concerns in a document received on August 11, 2025 (Exhibit K.1).

The county shares many of the same concerns as listed in the public comments related to the existing unpermitted commercial use of the property, which informs and supports PDS' recommendation of denial for the proposed rezone.

Project Consistency with Adopted Codes and Policies

Chapter 30.21 SCC Purpose and Establishment of Zones

This section describes the intent of each use zone. Snohomish County's use zones are categorized and implemented consistent with the comprehensive plan. The zones are established pursuant to SCC Table 30.21.020 and the intent of each zone is set forth per SCC 30.21.025 as set forth below:

Per SCC 30.21.025(2) – Intent of Zones, Rural Zones, "the rural zones category consists of zoning classifications applied to lands located outside urban growth areas (UGAs) that are not

designated as agricultural or forest lands of long-term commercial significance. These lands have existing or planned rural services and facilities, and rural fire and police protection services. Rural zones may be used as holding zones for properties that are primarily a transition area within UGAs on steep slopes adjacent to non-UGA lands designated rural or agriculture by the comprehensive plan."

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

Under SCC 30.21.025(2)(d) (with emphasis added) - Rural Business (RB). "The intent and function of the Rural Business zone is to permit the location of *small-scale commercial retail businesses and personal services which serve a limited-service area and rural population outside established UGAs*. This zone is to be implemented as a 'floating zone' and will be located where consistent with specific locational criteria. The Rural Business zone permits small-scale retail sales and services located along county roads on small parcels that serve the immediate rural residential population, and for a new rural business, are located two and one-half miles from an existing rural business, rural freeway service zone, or commercial designation in the rural area. Rural businesses, which serve the immediate rural population, may be located at crossroads of county roads, state routes, and major arterials."

The proposed rezone and proposed use are inconsistent with purpose of the RB zone as the use of construction contracting is only allowed in the RB zone if the use meets the specific criteria of the zone. As explained in detail below, the proposal recognizes that it does not meet the approval criteria as shown by the applicant's request for a variance from those very criteria. The proposed rezone also conflicts with the Comprehensive Plan policies as the services the existing use provides are not small-scale and are not directed at the surrounding rural population. Nor does it protect the character of rural areas or minimize impacts to residential areas.

Chapter 30.22 SCC Uses Allowed in Zones

The applicant stated in its project narrative that the property has been used specifically as a construction contracting company since 1993 and has been used for a similar type of commercial activity since 1974 when Duncan MacAllister acquired the property. Per the submitted documents in the narrative (Exhibit A.3), Duncan MacAllister came to an Agreement with Les McClure on June 28, 1993, for McClure to purchase the property from MacAllister; the agreement was fulfilled on January 1, 2001. Les and Judy McClure started McClure & Sons, Inc. in March of 1988. After executing the real estate contract to purchase the site from MacAllister in June 1993, McClure's business McClure and Sons, Inc. began using the site for a "Building Contractor" business. In November of 2012, Les and Judy McClure formed PBSS Investments, LLC, a Washington Limited Liability Company, and transferred ownership of the subject parcel to PBSS Investments, LLC in December of 2012. McClure and Sons, Inc. is the registered agent for PBSS Investments, LLC (Exhibits D.3 – D.5).

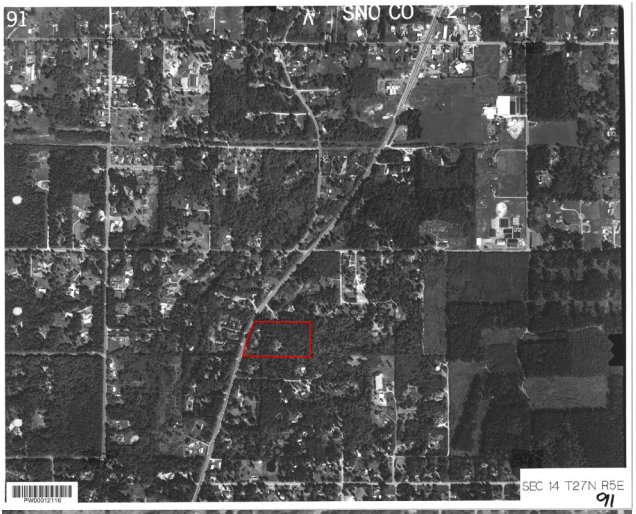
The applicant stated the property operated as a construction contracting company between MacAllister's ownership and 1993, however the submitted record does not contain evidence to support that MacAllister's use of the property was anything other than residential. In fact, historic aerial photographs maintained by the County from (1974 through 1998) and more recent Google Earth aerial images from (2002 through 2025) were reviewed to corroborate the applicant's claim that a similar use to what exists today on the site has been present since the late 1970s. While those photographs show some site disturbance in the middle of the site as early as 1978, the use that exists today is much more intense and industrial as compared to 1978. For example, equipment is not present on the site in those photographs until 1995. Below

are the photographs from 1974, 1978, 1991, 1995, 1998, 2002, 2005, 2009, 2012, 2016, 2018, 2021, 2022, 2024, and 2025 showing the evolution of the use on the site since the late 1970s. These aerial photographs are also included under Exhibit F. No aerial photographs from 1993 exist in county records nor in Google Earth. The property boundary is approximate.

County Aerials (1974 – 1998)











Google Earth Aerials (2002 – 2018)













Google Earth Aerials (2021 – 2025)













Under 30.91C.270, "Construction contracting" is defined as “a use where a person or company that does plumbing, electrical, structural, finish, landscaping or other construction work, has offices and stores or maintains construction equipment or supplies.” The “construction contracting” use was first added to the County Code in 2002 by Amended Ordinance No. 02-064 (Exhibit H.6). The definition, codified at SCC 30.91C.270, has not been amended since its adoption.

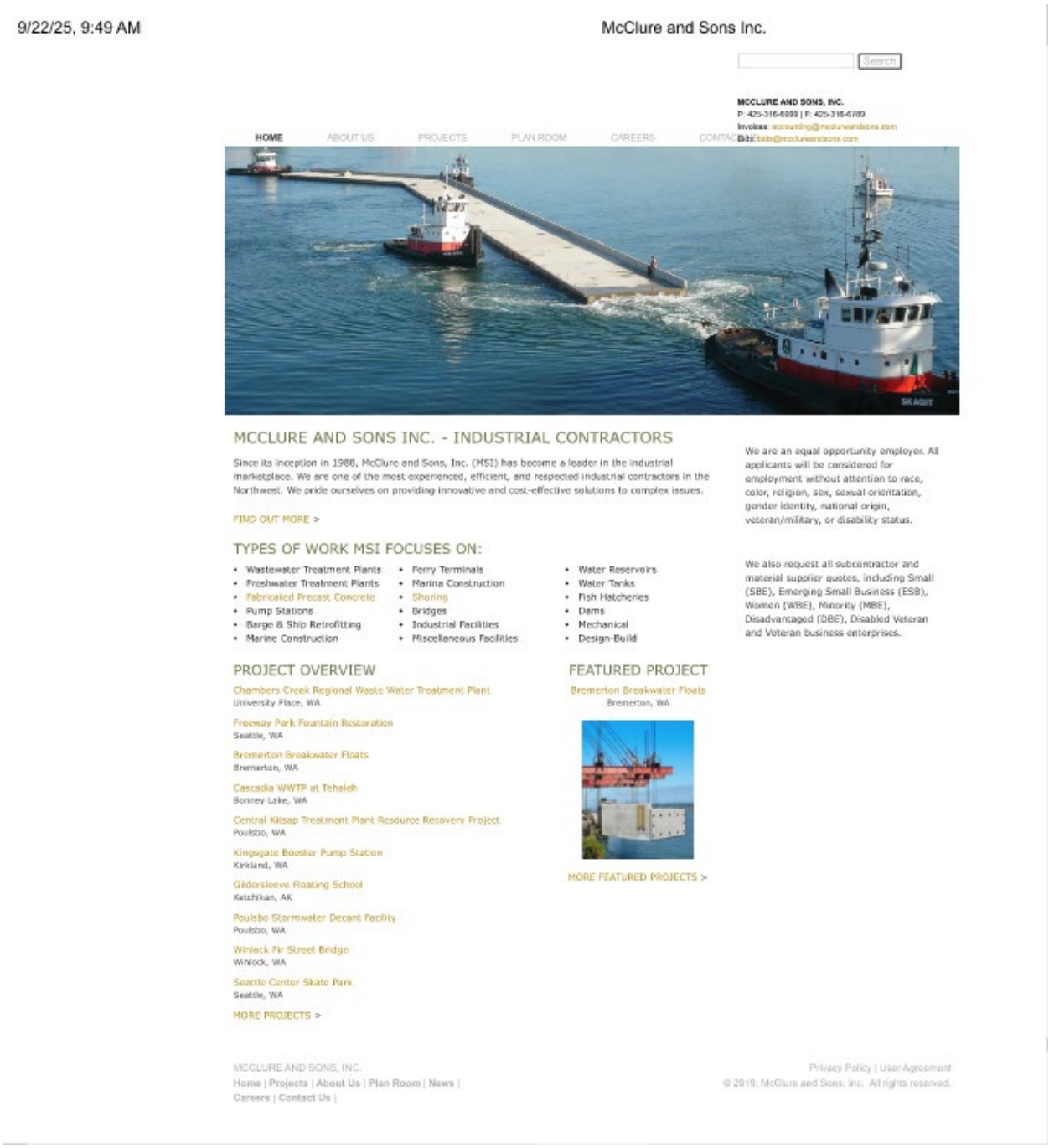
Prior to that, the term “building contractor” was included in the use matrix in the RB zone (Page 14 of Exhibit D.1). The definition for building contractor in 1998 was “means a facility where a person or company that does plumbing, electrical, structural, finish, or other construction work, stores or maintains their equipment or supplies” (Page 77 of Exhibit D.1). The “Building Contractor” use (now “Construction Contracting”) became a permitted use in the RB zone through Amended Ordinance No. 98-121 (Exhibit D.1), subject to use matrix reference notes 84 and 85 (now codified, at SCC 30.22.130(80) and (81).

Construction contracting is neither a permitted or conditional use in the R-5 zone under the rural zoning matrix in SCC 30.22.110. Construction contracting is however permitted in the RB zone subject to Footnotes 80 and 81 (see section titled SCC 30.22.130 below). The applicant has submitted for a rezone for the RB zone to allow the use of construction contracting on the property but is asking to vary from Footnote 81 subsections (b) and (c) through the variance process. This demonstrates the applicant’s proposal cannot comply with the requirements imposed on a construction contracting use in the RB zone. This alone should result in a denial of the proposed rezone.

Footnotes 80 and 81 are specific criteria that a use in the RB zone must meet in order to be permitted in the zone. The applicant’s current operations do not meet all of the criteria established under the relevant footnotes to the use matrix. Recognizing this, the applicant is now seeking variances from those criteria that it cannot meet. The applicant’s resubmittal did reduce the size of its rezone area from 3.82 acres to 2.86 acres, but did not revise the proposal to meet the criteria for construction contracting in the RB zone. Rather the applicant is still seeking formal variances from those criteria.

The applicant contends that its commercial use of the property is consistent with the “construction contracting” definition. While its operations focus mainly on construction work, together with the storage and maintenance of related construction equipment and supplies, it also has expanded the scope of its operations on the property and does not meet the criteria for construction contracting in the RB zone. The use is more similar to an industrial use as explained below.

As part of the review of this application, the county visited the applicant’s website to find out more information about its operations (http://mcclureandsons.com) (Exhibit H.9). On the home page of its website (as shown below), the applicant labels itself as an “industrial contractor”.



The applicant acknowledges that it employs a team with knowledge and experience in "industrial construction, including heavy mechanical, process piping, and conveyor systems." The types of projects listed that it constructs or provide solutions to are generally large-scale construction projects including bridges, dams, hatcheries, marine, mills, reservoirs, pump stations, water and wastewater, and other similar type projects. The applicant's business reaches throughout the Northwest including Washington, Oregon, Idaho, California and Alaska. The applicant's use is inconsistent with the intent and purpose of the RB zone articulated in SCC 30.21.025(2)(d) because of the scale, intensity, and regional scope of the applicant's business. In short, it is neither small scale nor does it serve a limited rural service area and population.

In preparing this recommendation, the county also researched the intent behind the Council's initial establishment of the RB zone which is demonstrated through the findings of fact and conclusions found in Amended Ord. 98-121 (Page 8 of Exhibit D.1), including:

- The proposed rural and commercial and industrial zone classifications of Rural Business, Rural Freeway Service, and Rural Industrial and the uses allowed in the zones are consistent with the GMA provisions that allow limited rural development and protect rural character (Finding S).

- Proposed bulk regulations, including setbacks, building size and separation for the Rural Business, Rural Freeway Service, and Rural Industrial zones are necessary for, and constitute adequate provisions for maintaining a rural scale and scope of commercial and industrial development in the county's rural areas (Finding T).

- Existing legal nonconforming commercial/industrial uses in the rural areas are preserved with limitations on expansion where appropriate (Finding V).

The Council's intent when it adopted the RB zone was to allow small scale businesses to serve a limited rural area and population since it is a rural zone with nearby residential areas and specific criteria to limit the size of the business impact upon adjacent residential properties. The applicant asking to vary from these limitations is contrary to why the criteria was established in the first place.

In its project narrative, the applicant cites the Imu's (CCH Construction) as a case that was considered by the Council during the RB zone adoption. In a letter dated November 25, 1998, from the Imu's attorney to the Council, the letter states "the small scale of their on-site uses easily distinguishes the Imu's business from the larger scale contractor uses restricted to commercial areas under the zoning code" and "we have determined that the most direct approach is to amend the zoning code matrix to include small rural building contractors as a permitted use in the RB zone. With additional limitations on scale, we believe this will have even fewer impacts...". "The additional limitations help distinguish these low intensity rural uses from larger scale contractor operations" (pgs. 67 and 68 of Exhibit D.1).

Three B's Construction is an applicant who sought to legalize an illegal use by rezoning from R5 to RB (Exhibit D.2) in 1999 after the RB zone adoption. The Hearing Examiner denied the rezone on the basis that the rezone could only be approved for an illegal nonconforming use if it met the locational criteria of the RB zone. The applicant asked for reconsideration and the Examiner affirmed the denial. The Council remanded the rezone back to the Examiner to direct that the rezone be granted.

The Examiner revised his decision on remand to grant the rezone approval, but stated "A central question in this case is whether the provisions of Snohomish County Code (SCC) 18.65.020(3) apply to illegal uses." The Council concluded that "The special exception language within 18.65.020(3) does apply to the instant application. The Council's intent in adopting amendments to Ord. 98-121 was to apply the exception language to all existing uses, whether or not they were legal nonconforming uses at the time of application for a rezone to Rural Business. This intent is reflected in the Council discussion at the hearing on Ord. 98-121,…" The Council concluded that the Three B's met all of the required criteria for approval of a rezone to RB (except the locational criteria) which the Council determined it was exempt from since it was existing.

PBSS argues that it is similar to the Imu's and Three B's in that whether its commercial use was legally or illegally established in the zone is irrelevant, as Council clarified that the exception

language applied to all existing uses. The county notes that the distinction between the Imu's and Three B's cases versus PBSS's case, is that the Three B's and Imu's met all of the special criteria for the RB zone (excepting that the Three B's did not meet the locational criteria) as well as the performance standards for the RB zone. PBSS cannot satisfy all criteria of the zone and also does not meet some of the performance standards which it specifically recognizes in its request for a variance from those criteria.

This is inconsistent with the intent and limitations of the RB zone and thus is substantially different from the cases that the applicant cites in its narrative. The conjunctive criteria for granting variances will be discussed in more detail below but are worth noting here. For a variance to be granted under the County Code, an applicant must demonstrate: 1) that there are special circumstances applicable to the property (size, shape, topography and the like) that do not generally apply to other properties or use in the area; 2) the variance is necessary to preserve and enjoy a substantial property right that is used and possessed by other properties in the area but is denied to the property seeking the variance due to special circumstances; 3) granting the variance will not be materially detrimental or injurious to other properties in the area; and 4) granting the variance will not adversely affect the comprehensive plan (SCC 30.43B.100). As shown below, the applicant is unable to satisfy all of these criteria for each of the variances it requests and PDS recommends denial of three of the four variance requests.

SCC 30.22.130 - Reference notes for use matrices:

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

There are several buildings located on the property. The Assessor's Office shows four buildings located on the property sketch with square footages and dates listed (Exhibit H.10). The Assessor's Historic Information Pre 2000 Field Notes (Exhibit H.11) includes a building permit (#70057) from 1974 (staff cannot determine which structure this is for) and a total of five structures on site. The applicant's rezone site plan shows a total of five structures on the site; two of which are storage tents. A recent site visit by county staff on August 25, 2025, confirmed the presence of five structures, as well as five small sheds/outbuildings/carport. In addition, there was also a recently erected carport, the skeleton of another tent/membrane structure, and around a dozen shipping containers. Per the site plan the following structures exist on site today (measurements were obtained from the site plan in Bluebeam[2]):

1. A mobile home from 1980 = 924 square feet
2. A pole building from 1987 = 2,400 square feet
3. A brick building = 1,064 square feet
4. Storage tent/membrane building = 1,856 square feet
5. Storage tent/membrane building = 1,230 square feet
6. Conex storage containers = 12 on site (approx.) = 240 square feet on average (as either an 8'x20' or 8'x40') = 2,880 square feet total

[2] Bluebeam is a software program used by PDS. Among its functions is ability to estimate the area of the footprint of buildings.

7. Five sheds/outbuildings/carport = square footage unknown; estimated at sheds approx. 120 sq ft each and carport approx. 8'x15' = 600 square feet total

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Total buildings on the site = 10 buildings + 12 Conex containers

Total = 4,388 (for buildings #1- #3 above only)

Total = 10,954 square feet (for all buildings listed above #1- #7)

SCC 30.31F.020(4) states that the maximum building footprint requirements of SCC 30.31F.110 need not be met for that portion of the site containing the existing use. That said, the county notes that the language in Footnote 80 and SCC 30.31F.110 are similar but not identical, in that Footnote 80 limits the gross floor area of the use whereby 30.31F.110 limits the maximum area of each building footprint on the site. Practically speaking, it would be difficult to operate a construction contracting business on RB zoned property if that use was limited to 4,000 square feet (or less than 1/10th of an acre). Thus, the county has interpreted the provisions above to mean that the main building for the construction contracting use (i.e. office etc.) would be limited to 4,000 square feet and that the use could have multiple other buildings up to a maximum of 4,000 square feet each located on site.

The applicant states that none of the buildings on the site exceed 4,000 square feet and the largest is 2,400 square feet. This is confirmed by the staff site visit and information listed above. Thus, this footnote is met by the proposal.

(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;

Please see the analysis below under the section titled *Chapter 30.31F SCC Rural Business (RB), Rural Industrial (RI), Rural Freeway Service (RFS), and Clearview Rural Commercial (CRC) Zones*.

(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;

The applicant is requesting to vary from this requirement. Please see the analysis below under the section titled *Chapter 30.43B SCC Variances*.

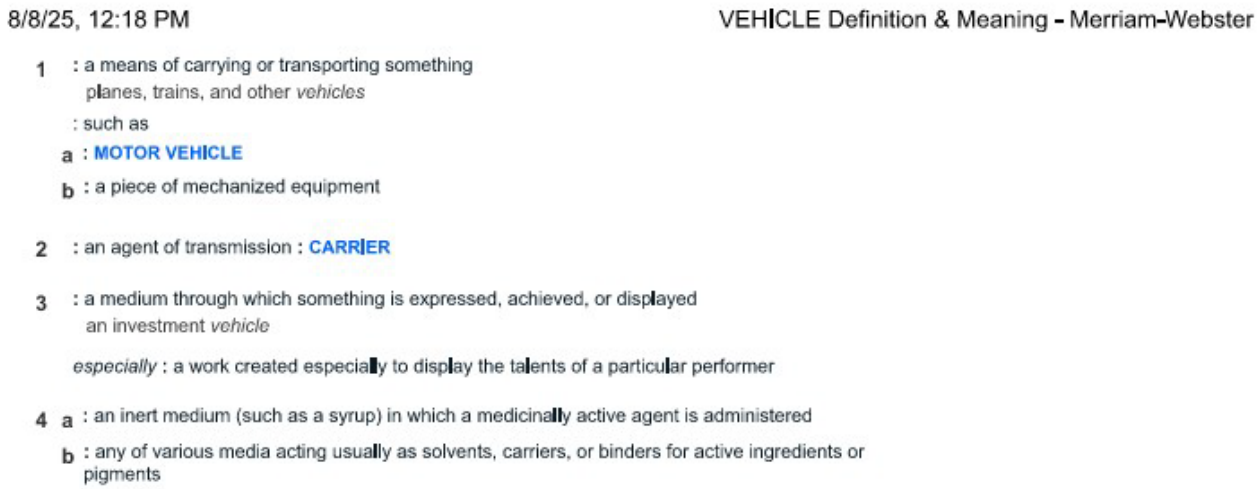
(c) In addition to the provisions of subsection (81)(b) of this section, not more than five commercial vehicles or construction machines shall be stored outdoors and shall be screened in accordance with SCC 30.25.020 and 30.25.032;

The applicant is requesting to vary from this requirement. Please see the analysis below under the section titled *Chapter 30.43B SCC Variances*.

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

The project narrative states that there is an on-site above-ground fueling tank used for fueling construction equipment. The rezone site plan shows the location of the fueling tank (Exhibit C.1). The applicant states it fuels construction equipment which it believes do not qualify as a motor vehicle. The county code does not define "vehicle" nor "construction

equipment" however construction equipment that is drivable could arguably be determined to be a vehicle. The definition of "vehicle" per the online Webster's Dictionary (https://www.merriam-webster.com) is as follows:



8/8/25, 12:18 PM VEHICLE Definition & Meaning - Merriam-Webster

1 : a means of carrying or transporting something
planes, trains, and other *vehicles*
: such as
a : MOTOR VEHICLE
b : a piece of mechanized equipment

2 : an agent of transmission : CARRIER

3 : a medium through which something is expressed, achieved, or displayed
an investment *vehicle*
especially : a work created especially to display the talents of a particular performer

4 a : an inert medium (such as a syrup) in which a medicinally active agent is administered
b : any of various media acting usually as solvents, carriers, or binders for active ingredients or pigments

The applicant admits that it is refueling mechanized equipment which is included in the common definition of "vehicle." It's argument that these criteria only apply to "motor vehicles" is unpersuasive, unsupported, and unavailing.

No definition for "construction equipment" exists in Webster's Dictionary. The term construction equipment is broad and can include both drivable and non-drivable equipment. It generally encompasses machinery and tools used during construction tasks designed for earthwork, material handling, demolition, lifting, etc. Common types include excavators, bulldozers, cranes, loaders, backhoes, forklifts, dump trucks, compactors, etc. Most of the machines listed above are drivable and therefore would meet the above definition of a vehicle. There is a difference between the term "motor vehicle" and "vehicle". According to Webster's Dictionary "motor vehicle" means "an automotive vehicle not operated on rails; especially: one with rubber tires for use on highways". The applicant did state that construction equipment is not a motor vehicle, but the code uses the term vehicle, not motor vehicle. The county disagrees with the applicant's claim that construction equipment does not qualify as a vehicle, as most of the equipment that it uses for the large-scale projects require fuel to operate, are mobile, and more specifically are drivable.

The applicant states that above ground fuel storage areas should be allowed as per SCC 30.31F.100(4). The applicant fails to recognize that Chapter 30.31F applies to the Rural Industrial, Rural Freeway Service, and Clearview Rural Commercial zones in addition to the RB zone. Unlike the RB zone, those zones may allow for on-site above ground fuel storage and refueling. However, SCC 30.22.130(81)(c) is clear that in the RB zone "[t]he on-site fueling of vehicles shall be prohibited." While the location of the applicant's fuel loading area is at least 100 feet from residential uses as per the site plan, the county disagrees that it should be allowed as the on-site fueling of vehicles is prohibited for the construction contracting use in the RB zone as per the code. The use of construction contracting has more restrictive limitations than other uses in the zones, which includes prohibiting the on-site fueling of vehicles, including equipment such as that the applicant uses in its business.

The argument of definitions and the reference to SCC 30.31F.100(4) are a distraction from the fact that the property does not meet the code requirement for on-site fueling to be prohibited since the property currently has an above ground fuel tank and is actively fueling

vehicles on site for its operations. The intent of the code is clear that on-site fueling is prohibited for the construction contracting use in the RB zone and the proposal does not meet this requirement.

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

The county was unable to determine whether the applicant was storing inoperable vehicles on the property during its August 25, 2025, site visit. During that visit roughly 20-30 vehicles were observed on the site and of those at least one of those vehicles' licenses had lapsed. Further, multiple pieces of construction equipment (including: forklifts, trailers, pipes, storage containers, excavators, telehandlers, etc.) were observed appearing to be unused for extended periods of time due to rust/decay as noted by county staff conducting the site visit. See Exhibit E.4 for site visit photos.

Conclusion for Chapter 30.22 SCC Uses Allowed in Zones

The criteria the applicant seeks to vary from is the criteria necessary for the use to be considered a use permitted or otherwise allowed in the RB zone as those criteria ensure that uses are small-scale and serve local rural areas and populations. Based on the research above, the applicant's current operations at this site do not meet the intent and criteria of the RB zone. The unpermitted use does not meet the criteria of the RB zone as it is both large scale and serves the greater Pacific Northwest region.

The applicant's continued use may only be allowed in the zone if the extent of its operations are scaled down to meet the criteria as a construction contracting business in the RB zone. If the use is not scaled down to meet the criteria for the zone, the rezone should not be approved.

The proposal does not meet Footnote 81 of SCC 30.22.130. As there are five requirements of Footnote 81, three of which are more fully discussed later in this recommendation (due to the variance requests and relative code sections) and two of which were discussed above, this conclusion is a summary of the total evaluation of the five requirements.

Chapter 30.28 General Development Standards – Miscellaneous

SCC 30.28.072 Nonconforming uses.

To the extent the applicant believes it benefits from a non-conforming use, there is a mechanism under Chapter 30.83 SCC to determine nonconforming rights to which it can avail itself. The applicant has not sought a code interpretation regarding the nonconforming status of its use. This recommendation solely looks at whether the proposed rezone and variances meet the respective criteria under SCC 30.42A and SCC 30.43B.

Chapter 30.31F SCC Rural Business (RB), Rural Industrial (RI), Rural Freeway Service (RFS), and Clearview Rural Commercial (CRC) Zones

Chapter 30.31F SCC regulates development in the Rural Business (RB), Rural Industrial (RI), Rural Freeway Service (RFS) and Clearview Rural Commercial (CRC) zones. It sets forth procedures and standards applicable to rezone and development approval in these zones.

SCC 30.31F.020 Minimum zoning criteria.

(1) The RI and RFS zones shall be applied only to properties that contain the appropriate land use designation as depicted on the Future Land Use Map (FLUM) of the General Policy Plan (GPP).

Not applicable since the applicant is proposing a rezone to the RB zone.

(2) The RB zone is a zoning classification which will be located within a rural residential land use designation. The RB zone, including expansions to the RB zone classification, shall be applied only to properties that meet all the following locational criteria, except as provided in SCC 30.31F.020(3) and (4):

The property has a Rural Residential (RR) land use designation.

(a) A minimum of 600 residential dwelling units shall be located within a two- and one-half-mile radius of the proposed site;

Approximately 8,504 residential dwelling units are located within a two- and one-half-mile radius of the proposed site per the county's GIS records (Exhibit H.12). This criterion is met.

(b) The proposed site is located along a county road or state highway with at least 100 feet of street frontage or at an intersection of two public roads;

The proposed site is located along State Route 9, a state highway and has a street frontage along SR 9 of approximately 490 linear feet. This criterion is met.

(c) The proposed new site shall be located no closer than two and one-half miles from an existing RB, RFS, or commercial designation in the rural area;

As shown in Figure 4 of the recommendation, the nearest other RB zoned property is located 1.22 miles away, south of the subject property, at the intersection of Maltby Road and SR 9. This criterion is not met.

(d) The total area zoned RB at any given location shall not include more than five acres designated as net usable area. In calculating net usable area pursuant to this chapter, net usable area shall be the total site area less critical areas and their required buffers, pursuant to chapters 30.62A and 30.62B SCC, public rights-of-way, private roads, detention/retention areas, and biofiltration swales;

The applicant is requesting an area of 2.86 acres of net useable area be rezoned to RB. This is less than the five acres maximum allowed under this provision. This criterion is met.

(e) The proposed site shall be located outside of an urban growth area (UGA) boundary;

The proposed site is located outside of any urban growth area boundary. This criterion is met.

(f) The proposed site shall contain a rural residential designation on the GPP FLUM, and not be designated forest lands or farmlands by the FLUM;

The proposed site's future land use designation is Rural Residential (1 DU/5 Acres Basic) and is not designated future forest lands or farmland. This criterion is met.

(g) The size and configuration of the proposed site must be capable of accommodating applicable setbacks, buffers, and critical area protection pursuant to chapters 30.62A, 30.62B and 30.62C SCC;

The overall size of the property is 8.08 acres. The size and configuration of the proposed site is capable of accommodating applicable setbacks, buffers, and critical area protection pursuant to chapters 30.62A, 30.62B and 30.62C SCC. This criterion is met.

(h) Site information required pursuant to SCC 30.31F.200(2) shall have been submitted by the applicant. The information shall clearly demonstrate that an adequate building and development area is located on the site outside of identified critical areas and buffers pursuant to chapters 30.62A and 30.62B SCC; and

The applicant provided a site plan associated with the rezone that appears to demonstrate an adequate building and development area is located on the site outside of possible critical areas and buffers pursuant to chapters 30.62A and 30.62B SCC. This criterion appears to be met however a final determination would be made using a critical areas study should that become necessary.

(3) Any proposed site that expands an existing RB zone shall meet the requirements of SCC 30.31F.020(2)(d) through (h) and both of the following locational criteria:

Not applicable as the applicant is not proposing an expansion of an existing RB zone.

(4) For properties that contain a commercial use permitted or otherwise allowed in the RB zone that existed on or before the effective date of this section, a rezone to RB may be approved only for that portion of the site containing the existing use and may not expand beyond the location of the existing commercial use unless the locational criteria of subsection (2) of this section are met with respect to the expansion area. The locational criteria contained in subsection (2) of this section and the maximum building footprint requirements of SCC 30.31F.110 and 30.31F.120 need not be met for that portion of the site containing the existing use.

This is the relevant section of code on which the applicant bases its rezone request.

According to the applicant, public comments, and the county's research of aerial imagery, some commercial use has existed on a portion of the site since at least 1993. Per SCC 30.91C.170, "Commercial use" means a use providing goods, merchandise or services for compensation. According to the applicant's project narrative, Duncan MacAllister used the site from 1974 until June of 1993, however the county has no record of any commercial use of the property for this time period and is unable to confirm the veracity of the applicant's statement. Les and Judy McClure started McClure & Sons, Inc., with the nature of the business listed as construction, on March 29, 1988, according to the Washington Secretary of State's records (Exhibit D.3). After executing the real estate contract to purchase the site from MacAllister, McClure and Sons Inc. moved its business to the property in June 1993 and began using the site for its building contractor business. In November of 2012, Les and Judy McClure formed PBSS Investments, LLC, a Washington Limited Liability Company, and transferred ownership of the subject parcel to PBSS Investments, LLC in December of 2012. Les and Judy McClure continue to be the governors of PBSS Investments, LLC and the registered agent is McClure and Sons, Inc. (Exhibit D.5). The principal office address listed on the Secretary of State's records is 15714 Country Club Drive, Mill Creek, WA 98012 for both McClure and Sons, Inc. and PBSS Investments, LLC. The subject property address of this rezone request is not directly listed under the Secretary of State business filing for McClure and Sons Inc. which is not uncommon. No business license from the county is required for a construction contracting use as only a few types of businesses need a County-issued license to operate per SCC Title 6.

The RB zone was first adopted by the County Council on December 16, 1998, by Amended Ordinance No. 98-121 (Exhibit D.1). The RB zone was readopted by Amended Ordinance No. 02-064 (effective February 1, 2003), (relevant portion of that ordinance is Exhibit H.6) which renumbered SCC 18.65.020(3) to SCC 30.31F.020(3) until adoption of Ordinance No. 03-099 (Exhibit H.7) which renumbered subsection SCC 30.31F.020(3) to subsection (4). Thus, the county concurs that a commercial business existed on this property prior to Dec 16, 1998, since

McClure and Sons, Inc. was using the site beginning in 1993. Keep in mind that if the use was a construction contracting or building contractor use that existed prior to 1998, that the use is not permitted in the R-20,000 and R-5 zoning districts as it was not listed in the use matrix for either zone. Implicit in the reading of (4) is that the use that existed on or before (4) became effective, is that the use was allowed or otherwise permitted at that time. As discussed above, by its own admission, the applicant's use was established in 1993. In 1993, construction contracting was not allowed or otherwise permitted in the R-5 zone. SCC 30.31F.020(4) is inapplicable here.

Per the county historic aerial photographs (in Exhibit F), there are existing features on the west half of the property to the extent shown in the red boundary drawn by county staff on the 1998 aerial (Exhibit F.5). Since it has been established that McClure and Sons, Inc. began using the property in 1993 and the 1998 aerial shows the extent of use on the property, the county has concluded that a commercial use existed on the property prior to the effective date of the RB zone, however it is an illegal commercial use since the use is not allowed in the R5 zone.

"Permitted or otherwise allowed" from the county's perspective means that the use is listed as permitted in the zoning matrix or receives special approval (such as a CUP) and has to meet any applicable footnotes also listed in the use matrix. SCC 30.22.010 states "Some uses have additional or special requirements that are listed by numbered reference notes in SCC 30.22.130." Since the existing use does not meet the applicable footnotes in the code for construction contracting, it is not a permitted use in the RB zone.

Conclusion regarding Minimum zoning criteria SCC 30.31F.020(4).

A commercial use has existed on the property to the extent shown on the aerials prior to the effective date of section SCC 30.31F.020(4), however it is an illegal commercial use since the use is not allowed in the R5 zone. Construction Contracting is a commercial use that is allowed in the RB zone. However, as demonstrated by the variance requests, the current use does not meet the specific criteria for construction contracting as an allowed use in the RB zone and does not meet the intent and purpose of the RB zone, thus the proposed operation is not permitted in the zoning district. SCC 30.31F.020(4) is inapplicable here.

(5) Any applicant proposing a rezone to the RFS zone must:

Not applicable.

(6) The CRC zone shall only be applied to those properties that contain a Clearview Rural Commercial designation on the comprehensive plan future land use map.

Not applicable.

SCC 30.31F.100 General performance standards.

The Applicant contends that these standards should only apply to new development in the RB, RI, RFS, and CRC zones. The language in SCC 30.31F.200(1), indicates that the performance standards of 30.31F.100 and 30.31F.110 are to be applied at the time of initial development in the RB zone. Performance standards regulate development based on its potential impacts on the surrounding area. These are standards that uses, whether existing or new, must meet while located in a zone unless otherwise specifically exempted.

In the case of the Three B's and Imu's from 1999, a similar rezone from R5 to RB for an existing use, the existing use did not need to meet the locational criteria nor the minimum building size, but it did meet the performance standards for the RB zone and there is nothing in the record

that says they would not need to meet it just because they were existing. In fact, the record supports the conclusion that any existing use would still need to meet the performance standards and the locational criteria for the RB zone, just not the building size around which the discussion with Council centered.

Per Exhibit #34 of the Three B's Construction Decision of the Hearing Examiner Revised on Remand, File 99-101988, (page 4 under Subsection 6.2 Couns. Larsen), "Mr. Chair, this proposal again reflects the change proposed by Mr. Erlichman on behalf of Richard and Charlie Imus and as further revised by PDS staff to address building contractor use in a rural business zone and makes that use subject to several requirements that the use comply with certain performance standards that not less than 1,000 square feet of outdoor storage materials shall be allowed and shall be screened in accordance with existing language in our code. In addition to provisions in B, not more than 5 commercial vehicles or construction machines shall be stored outdoors and they shall also be screened. On site fueling of vehicles will be prohibited and the storage spot of all those vehicles containing hazardous or earth materials shall be prohibited." This discussion demonstrates the facts considered by the County Council in the Three B's rezone are distinguishable from those presented by the applicant here.

Per Exhibit #35 of the Three B's Construction Decision of the Hearing Examiner Revised on Remand, File 99-101988, per page 3, "A review of hearing Exhibits 2 (project description)7- 5 rezone area plan); 7 (SEPA checklist); and Exh. 3 to hearing Exh. 26 (color photo of the site) together with relevant code provisions (use matrix SCC 18.32.040 and notes 84 and 85 provide that building contractor is a permitted use in RB zone; Rural Business criteria in SCC 18.65.020 and -.040) shows that Three B's satisfies the applicable criteria for the rezone to Rural Business and that its use also satisfies the applicable performance standards." As discussed in this recommendation, the applicant is unable to meet the required performance standards here again making the Three B's decision distinguishable.

In addition to other applicable standards contained in subtitle 30.2 SCC, the following general performance standards apply to development[3] in the RB, RI, RFS, and CRC zones per SCC 30.31F.100:

(1) Adequate water supplies shall be demonstrated for fire protection;

The site is located within the Cross Valley Water District and a water main runs along State Route 9, however per a letter from the district dated April 14, 2025 (Exhibit I.1), the current property is not connected to the district for water and would need to submit a water inquiry form if seeking water service. According to the applicant, a well currently serves the property and a fire hydrant is located near the entrance to the site. Since the rezone is for an existing use and there are no new project specific actions proposed with this rezone, the Fire Marshal's Office has not reviewed the rezone and variance applications. The Fire Marshal's Office did review the ACUP/LDA permits in 2024 (Exhibit I.2) and concluded that the existing fire hydrant just south of the access entrance satisfies the fire protection water supply requirements of SCC 30.53A.514. The Fire Marshal's Office Memo stated that at the time of reviewing the ACUP/LDA permits, staff was unable to determine what the required fire flow is for the existing and/or proposed structures. The applicant has offered to obtain additional fire flow information if conditioned as such.

[3] The county does not have a general definition for development under SCC 30.9; there are three definitions for the word development under SCC 30.9 and all apply to certain regulations (park and school impact mitigation, concurrency and road impact mitigation, and shoreline regulations).

(2) Stormwater detention facilities and low impact development best management practices shall be designed whenever possible as to integrate them into the overall site design and required landscaping and buffers on the site;

This standard is not applicable to the rezone and variance applications directly; however, the county's drainage reviewer did review the ACUP/LDA permits in 2024 and had substantial comments regarding the expansion of the use on drainage of the property. The applicant provided a drainage report and drainage plan with the 2024 permits. If the rezone is approved, the applicant will need to demonstrate compliance with stormwater regulations as part of the LDA and/or code enforcement process.

(3) Signage shall be consistent with the provisions of SCC 30.27.010 to 30.27.090; and

The applicant states that there is no signage on-site and that there are no plans in the future for signage. The Fire Marshal's Office when reviewing the ACUP/LDA permits in 2024 stated that the applicant shall provide a clear address sign at the access entrance for emergency response. Review and approval of the address placement shall be done through the building inspection process.

(4) Refuse collection, fuel loading, and above ground fuel storage areas, and large truck parking areas shall be located at least 100 feet from residential uses or designations and shall be screened in accordance with the landscaping requirements for outdoor storage and solid waste areas contained in SCC 30.25.024.

Based on the site plan the applicant provided (Exhibit C.1), the refuse collection, fuel loading, and above ground fuel storage areas[4] are located at least 100 feet from residential uses/designations. Per the project narrative, the applicant is proposing a six-foot high sight obscuring fence along the north, east, and south perimeter which would be integrated into the supplemented perimeter landscaping in order to achieve the landscaping requirements of SCC 30.25.024. Large truck parking areas are shown on the variance site plan (Exhibit C.2) however the six-foot-high sight obscuring fence is not shown on either site plan.

SCC 30.31F.110 Rural business zone performance standards.

Below is an evaluation of how the use meets/doesn't meet the standards:

(1) In addition to the general performance standards of SCC 30.31F.100, and other applicable standards of subtitle 30.2 SCC, each of the following standards apply to development, except churches, in the RB zone under SCC 30.31F.110:

(a) The total impervious surface of all buildings, parking, and other support areas such as storage, trash containers, etc., shall not exceed 50 percent of the net usable area of the site.

The net useable area of the site is not fully known without a current critical areas study. The applicant's rezone site plan indicates that the net usable area is 7.65 acres and that the maximum allowable rezone area is 50% of that or 3.82 acres (now 2.86 acres since revision of the rezone request - the site plan rezone calculations do not appear to have been updated). The project narrative was revised and indicates that since the proposed rezone area is now less than half of the property size at 2.86 acres, the total impervious surface of the net usable area is 37%. This standard appears to be met by the proposal.

[4] As discussed above, fueling of vehicles is prohibited in the RB zone under SCC 30.22.130(81)(d).

(b) The maximum area for each building footprint on the site shall not exceed 4,000 square feet.

As discussed earlier in this recommendation under the section SCC 30.22.130 - Reference notes for use matrices – the maximum area for each building footprint does not exceed 4,000 square feet. This standard is met by the proposal.

(2) A change of use for any existing structure, including related site improvements, that is in a Rural Business zone and does not meet the performance standards of SCC 30.31F.110 (1) shall require:

(a) A conditional use permit when the proposed use is allowed in the RB zone but prohibited in the R-5 zone; or

The performance standards of SCC 30.31F.110(1) appear to be met, however, if the rezone were to be approved, a change of use permit would likely be required to change the use of the existing structures on site from residential to commercial structures, per the county's Building Division based on the Fire Marshal's review memo from 2024 (Exhibit I.2). The memo stated:

"It is understood that all of the structures are existing. However, all uses of permitted structures were permitted for personal use and storage and not for commercial use. Therefore, any structure in a detached accessory building or attached garage shall be permitted and obtain a certificate of occupancy for the commercial uses.

Pursuant to Chapter 31 of the International Fire code, Section 3104.1, Tents and membrane structures, both temporary and permanent, shall be in accordance with this section and Sections 3106 and 3107. Permanent tents and membrane structures shall also comply with the International Building Code. Any temporary membrane/tent structure shall also be permitted. Therefore, a building permit shall be obtained for the existing membrane structures.

For informational purposes only, temporary tent or membrane structures are only allowed to be erected up to 180-days in a single calendar year. Since the membrane structures appear to be permanent, they shall be permitted and comply with the International Building Code.

All fire flow requirements will be required to be satisfied prior to building permit issuance and will not prohibit the fire approval of the administrative conditional use and land disturbing activity permit. It shall be noted as a condition of approval that the correct construction permits shall be obtained for all structures used as part of the commercial business on the subject property."

Therefore, since this application is for a proposed use that is allowed in the RB zone but prohibited in the R5 zone, a conditional use permit may be required.

(b) The approval type required under SCC 30.22.110 for the RB zone when the proposed use is allowed in both the RB zone and the R-5 zone.

Not applicable since construction contracting is not a use allowed in the R5 zone.

SCC 30.31F.200 Procedural requirements.

(1) An official site plan shall not be required at the time of rezone application for the RB and RI zones. The performance standards of SCC 30.31F.100, 30.31F.110, and 30.31F.130, and other applicable provisions of this chapter shall be applied to a site development plan otherwise required at the time of initial development in the RB and RI zones.

An official site plan is not applicable; however, the applicant has provided a site plan as part of the rezone application.

(2) For the RB zone, information shall be submitted at the time of application for the RB rezone in a form acceptable to the director of the department, and in compliance with SCC 30.70.030, that identifies the approximate location and amount of net usable area designated on the site. The submittal shall also include the approximate location and type of critical areas and their probable required buffers pursuant to chapters 30.62A and 30.62B SCC, detention/retention areas, low impact development best management practices, biofiltration swales, public rights-of-way, and private roads. This information is to be used at the time of zoning approval to determine whether an adequate development and building area exists on the site, and whether the five-acre net usable area limitation of SCC 30.31F.020(2)(d) has been met.

The applicant provided a site plan associated with the rezone that appears to demonstrate an adequate building and development area is located on the site outside of possible critical areas and buffers pursuant to chapters 30.62A and 30.62B SCC. This criterion appears to be met however a final determination would be made using a critical areas study should that become necessary.

SCC 30.31F.200(3) and (4) are each inapplicable to this proposal as those subsections relate to rezones to the RFS zone and the CRC zone respectively.

Conclusion related to SCC 30.31F Rural Business Zones

The proposal does not meet the minimum zoning criteria of SCC 30.31F.020 (2) and (4). The performance standards of 30.31F.100 and 30.31F.110 are to be applied at the time of initial development in the RB zone. If the RB zoning change were to be approved, the use would need to be modified to comply with the performance standards. The procedural requirements of SCC 30.31F.200 are largely not applicable, except (2) that would require a final determination using a critical areas study should that become necessary.

Chapter 30.42A SCC Rezones

The RB rezone request is based on a special process in SCC 30.31F.020(4), which allows for split zoning, specifically the rezone to RB of that portion of a property that contains a commercial use that is permitted or otherwise allowed in the RB zone and that existed in December of 1998 when the RB zone was created by Amended Ordinance No. 98-121 (Exhibit D.1).

The property has been zoned R-5 since 1991 when the Council adopted an areawide rezone via Ordinance 91-034 (Exhibit H.5). Prior to that time, the property was zoned RR-20,000. Like R5, construction contracting was not an allowed use in the RR-20,000 zone.

SCC 30.42A.100 Decision Criteria
The hearing examiner may approve a rezone only when all the following criteria are met:

(1) The proposal is consistent with the comprehensive plan;

(2) The proposal bears a substantial relationship to the public health, safety, and welfare;

(3) The proposal is justified based on a change of circumstance since the site was previously zoned; and

(4) Where applicable, minimum zoning criteria found in chapters 30.31A through 30.31F SCC are met.

The following is a discussion of these decision criteria:

SCC 30.42A.100(1) Consistency with the Comprehensive Plan

In the context of the Growth Management Act, development regulations and therefore rezones must be consistent with and implement the comprehensive plan (RCW 36.70.450). But, in the context of site-specific rezones, the inquiry goes beyond mere consistency with the map designation of the comprehensive plan. In determining that a proposed rezone is consistent with the Comprehensive Plan, the proposal must be consistent with the policies as well as the map designation.

The County recently adopted a newly updated Comprehensive Plan (Comp Plan) by adoption of Amended Ordinance No. 24-033 with an effective date of December 22, 2024 (Exhibit H.8). At the time of vesting of the applicant's application, the County's comprehensive plan objectives and goals in effect were those of the 2024 Comp Plan. The county disagrees with the applicant's argument that the 2015 Comprehensive Plan is the effective plan at the time of its application. Therefore, the subject application has been evaluated for consistency with the 2024 Plan. Minimal changes occurred to the relevant goals and policies between the 2015 and 2025 Comprehensive Plan versions for this proposal as per an email from long range planning staff as shown in Exhibit H.13.

The applicant is proposing a rezone of a portion of the site from R-5 to RB. The intent statements of the two zoning districts are as per *Chapter 30.21 SCC Purpose and Establishment of Zones* listed earlier in this recommendation.

The applicant has provided an analysis of how the rezone is consistent with the policies in the Comprehensive Plan in its rezone narrative (Exhibit A.3) as well as a Comprehensive Plan Analysis Matrix that compares the language of relevant goals/policies from the 2015 Comp Plan to the 2024 Comp Plan (Exhibit A.6). The applicant states that it need only demonstrate "general conformance" with the Comp Plan and cites case law. The State Supreme Court suggests otherwise. In *Woods v. Kittitas County*, 162 Wn.2d 597 (2007) the court reviewed a site-specific rezone where the county's code explicitly required the rezone application to be compatible with the county's comprehensive plan. The court determined that "if the zoning code explicitly requires that all proposed uses must comply with a comprehensive plan, then the proposed use must comply with both the zoning code and the comprehensive plan." SCC 30.42A.100(1), like the Kittitas County Code, requires rezones to be consistent with the County's Comprehensive Plan.

Below is the description of rural residential designations of the Future Land Use Map per the Comprehensive Plan per page LU-93.

Rural Residential Designations

These designations encompass residential land outside of urban growth areas (UGAs) and are intended to provide rural housing opportunities while preserving the rural character of these lands. Land in the six rural residential designations may be served by public water supplies but development may not be connected to sanitary sewers except for necessary public facilities or when public health emergencies exist.

The subject property is designated as RR (Rural Residential) on the Future Land Use Map as shown in Figure 3. The RR land use designation "includes lands which were designated as Rural or Residential Estates on pre-GMA subarea comprehensive plans. The implementing

zones within this designation are the Rural-5 Acre zone and other zones with a minimum lot size requirement larger than 5 acres" (page LU-95 of the Comp Plan). This designation primarily allows for low density residential land uses, one unit per 5 acres, however RB is also an allowed implementing zone since it is a floating zone when consistent with specific locational criteria per SCC 30.21.025(2)(d). Per 30.31F.020(2), the RB zone is a zoning classification which will be located within a rural residential land use designation.

RB is a zone that is designated as consistent with the Comprehensive Plan's future land use designation of RR for the property when implemented consistent with the criteria in SCC 30.31F.020. The property was zoned R 20,000 in 1986 when MacAllister owned the property. It was rezoned from RR-20,000 to R-5 in March 1991 as part of an area wide rezone via Ordinance 91-034 (Exhibit H.5). The property has been zoned R-5 since 1991.

The Growth Management Act (GMA) requires the county to include a rural element in its comprehensive plan. The county's rural element consists of the rural land use policies in this subelement of the Land Use Element as well as other rural-related policies addressing utilities, transportation, housing, open space, parks and recreation, economic development, and natural resources, that are each discussed in more depth within separate elements of the Plan.

In addition to the Comp Plan endorsement of RB as an appropriate implementing zone for lands designated as RR, the following are the relevant Goals and Policies of the Comp Plan that apply to this application and staff's analysis of the proposal's compliance with them:

Land Use Element

Rural Lands

- **GOAL LU 6** Protect and enhance the character, quality, and identity of rural areas.

  The proposed rezone conflicts with the portion of this goal that seeks to protect and enhance the character, quality, and identity of rural areas as it is being sought to allow a regional construction company, along with all of its associated impacts, to operate in a rural area.

- **Objective LU 6.B** Encourage land use activities and development intensities that protect the character of rural areas, avoid interference with resource land uses, minimize impacts upon critical areas, and allow for future expansion of UGAs.

  The proposed rezone conflicts with the portion of this objective that seeks to protect the character of rural areas as it is being sought to allow a regional construction company, along with all of its associated impacts, to operate in a rural area.

- **Objective LU 6.E** Within rural residential areas, recognize existing businesses that are an integral part of the rural character and provide for community facilities and small-scale commercial developments that support the immediate rural population with necessary goods and services.

  While this objective seeks to recognize existing businesses, it also speaks to the scale of a rural business being small and supporting the immediate rural population. As discussed previously, McClure and Sons, Inc. is not a small-scale business and does not support the immediate rural population with necessary goods and services. It supports the greater Pacific Northwest region's (WA, OR, CA, ID, and Alaska) population rather than providing small scale commercial for just the surrounding area.

- **LU Policy 6.E.1** Within the rural residential designations of the Future Land Use Map, limited commercial uses shall be permitted within a Rural Business zone that provide opportunities for retail sales and services to the surrounding rural population.

  The proposed rezone conflicts with this policy in that the proposal is seeking variance approvals from the limitations in the code associated with commercial uses in the RB zone which were adopted to help ensure protection of rural character.

- **LU Policy 6.E.2** The county shall maintain Rural Business zoning and development standards that allow community facilities for the surrounding rural population and facilitate small-scale retail and service uses at appropriate locations within rural residential areas and minimize impacts to residential areas, resource lands, and critical areas.

  The rezone conflicts with this policy in that the proposal does not minimize impacts to residential areas by seeking variances from the RB zoning district specific criteria for the proposed use. The use upon which the applicant relies is neither small-scale nor will serve the surrounding rural population.

- **LU Policy 6.E.3** In order to maintain the character of surrounding rural residential areas, development regulations for the Rural Business zone shall restrict development in terms of building size, height, and setback; the size, location, and type of uses; and the areas of impervious surfaces. Churches shall not be subject to restrictions on building size or areas of impervious surfaces provided by LU Objective 6.E and its associated policies.

  The code does restrict development in the RB zone to the extent listed above including types of uses. The rezone conflicts with this policy in that the proposal does not meet all of these restrictions as demonstrated by the applicant seeking variances from these very requirements.

- **LU Policy 6.E.4** Development in the Rural Business zone shall be limited to development that can be supported by services typically delivered at rural levels of service. These services may include domestic water, septic systems, and transportation facilities.

  According to the applicant's submitted materials, the existing well, fire hydrant, driveway access, and septic system suffice for their current operations. However, because there is no development proposal, PDS has not yet reviewed the application for services aside from a preliminary review associated with the prior ACUP and LDA permit applications (currently on hold).

- **LU Policy 6.E.5** Existing small-scale commercial uses within rural residential zones may be zoned Rural Business whether or not they meet the locational criteria listed in Policy LU 6.E.6 only if they are uses allowed within the Rural Business zone. If existing uses do not meet the locational criteria, no future expansion of the zone shall be allowed. This policy is not intended to preclude legal non-conforming uses from expanding consistent with Snohomish County Code provisions.

  The use of construction contracting is allowed in the RB zone however only if the use meets the specific criteria of the zone. The proposal does not meet these criteria due to the variance requests therefore, the proposal does not meet this policy.

- **LU Policy 6.E.6** New Rural Business zones may only be approved in Rural Residential plan designations if they meet the following locational criteria:

Subsection (a) A minimum of six hundred residential dwelling units should be located within a two- and one-half-mile radius of the proposed site.

Subsection (b) The site is located along a county road or state highway with at least one hundred feet of street frontage or at an intersection of two public roads.

Subsection (c) No new areas designated or zoned for commercial uses should be located closer than two and one-half miles in the rural area.

Subsection (d) The total area zoned for Rural Business at any given location should not include more than five acres of net usable area. Net usable area should be the total site area less critical areas and their required buffers, roads, detention/retention areas, and biofiltration swales. Parcels within a Rural Business location should have common boundaries unless separated by public rights-of-way.

Subsection (e) The size and configuration of the area to be zoned should be capable of accommodating setbacks, buffers, critical area protection, and other site planning and design techniques that permit small-scale, rural commercial development characteristics.

See the analysis under SCC 30.31F.020 Minimum zoning criteria. The proposed rezone does not meet subsection (c) above, as the proposed use is located closer than two and one-half miles from an existing RB commercial designation in the rural area.

- **LU Policy 6.E.7**[5] Sites within a Rural Business zone should be developed according to development regulations which incorporate the following criteria:

  Subsection (a) Existing native vegetation should be retained within required buffers. Screening of parking areas, outdoor storage and mechanical equipment should be provided.

  Subsection (b) Site disruption such as excessive grading, filling, or clearing of vegetation should be minimized through landscaping and buffer requirements.

  Subsection (c) Total permitted impervious surfaces of buildings, parking and other support areas such as storage, trash containers, etc., should not exceed fifty percent of the net usable site area, except for churches.

  Subsection (d) Stormwater management facilities should be designed and landscaped to integrate them into the overall site design and the landscaped buffers on the site.

  Subsection (e) All structures should be set back fifty feet from residentially zoned properties. Structures should be set back one hundred feet from designated agricultural and forest lands.

  Subsection (f) Sites should retain all existing trees in all required buffers along side and rear property lines. Sites should retain all existing evergreen trees in all required buffers along property frontage excluding areas for access drives and sign locations, unless tree removal is required to meet Department of Public Works Engineering Design and Development Standards or because of public health and safety concerns.

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[5] These policies have been partially codified in SCC 30.31F.100 and 30.31F.110. This shows the types of mitigation that the Council was trying to put in place for uses in the RB zone.

Subsection (g) Billboards should be prohibited within the Rural Business zone. Signage requirements should be similar to the signage provisions of the Neighborhood Business zone.

Subsection (h) Adequate water supplies should be demonstrated for commercial use and fire protection including fire flow.

Subsection (i) Refuse collection, fuel loading and storage areas, and large truck parking areas should be located at least one hundred feet from residential areas and screened by fence or landscaping.

See the analysis under SCC 30.31F.100 General performance standards and SCC 30.31F.110 Rural Business Zone performance standards above.

Conclusion:

The proposed rezone is inconsistent with the goals and policies of the Land Use Element as the use of construction contracting is allowed in the RB zone, only if the use meets the specific criteria of the zone. The proposal does not meet these criteria as demonstrated by the applicant's variance requests, therefore the proposal does not further several of the policies listed above.

The proposed rezone also conflicts with the policies as the services the existing use provides is not small-scale and is not directed at the surrounding rural population. Nor does it protect the character of rural areas or minimize impacts to residential areas.

Housing Element

- **GOAL HO 2** Ensure the vitality of existing residential neighborhoods.

  The proposed rezone conflicts with the portion of this goal that in that it proposes a use adjacent to residences that does not promote the vitality of existing residential neighborhoods.

- **Objective HO 2.A** Promote opportunities for all county residents to reside in safe and healthy neighborhoods.

  The proposed rezone conflicts with this objective that seeks to promote safe and healthy neighborhoods as the adjacent residences have provided public comments that cite numerous health and safety concerns.

Economic Development Element

- **GOAL ED 3** Encourage the retention and expansion of existing businesses and jobs while working to attract new businesses and jobs.

  The proposed rezone meets this goal by encouraging the retention of existing businesses; however, retention should be encouraged where the zoning is appropriate for such uses. In this case, the RB zoning is not appropriate for the existing use.

- **Objective ED 3** Promote and support the availability of suitable land for employment.

  The proposed rezone meets this objective by promoting and supporting the availability of suitable land for employment.

- **Policy 3.A.2** Snohomish County shall ensure a sufficient base of appropriately designated and zoned land for employment targets as delineated in the Future Land Use Map of the Comprehensive Plan. The vitality of the economy calls for large sites as well as parcels suitable for the large number of small businesses within the county.

  The proposed rezone does not meet this policy as the RB zone is to be implemented as a 'floating zone' and will be located where consistent with specific locational criteria. The RB zone is for small businesses within the county, but the proposed rezone is for a use that is not a small business and therefore does not meet this policy.

- **Policy 3.A.5** Snohomish County shall support existing industry by planning for compatible adjacent land uses.

  The proposed rezone conflicts with this policy in that it is not compatible with adjacent land uses since it does not meet the specific criteria for the zone.

SCC 30.42A.100(2) The Proposed Rezone Must Bear a Substantial Relationship to the Public Health, Safety, and Welfare

The intent of the Snohomish County codes, policies, and standards is to ensure adequate provision for the public health, safety, and welfare of the public for both existing and proposed uses. Existing uses still need to comply with County code.

Construction contracting is a use that the county allows under the RB zoning when consistent with specific criteria. The county recognizes that RB zoning helps promote the retention of small rural businesses that focus on providing goods and services to the immediate area and acknowledges that the retention of businesses is important for economic considerations.

At the time the RB zone was adopted, the Council couldn't foresee or anticipate all of the possible impacts such a use may have on adjacent residential zoned properties. It did evaluate and discuss that there would be impacts; thus, the discussion centered on small scale business uses and created the locational criteria as well as the performance standards to keep the rural businesses small and locally focused, again helping to minimize impacts upon the surrounding area and property owners. The siting criteria also help ensure that rural character in the county's rural areas is maintained. It is clear from the information submitted via the applicant, the public comments, and the previous code enforcement cases that the existing use has had ongoing and recent negative impacts upon adjacent properties, most notably noise and visual impacts that impact public health, safety, and welfare. Further, information obtained from the applicant's web site confirms the business has a reach and scope that far exceeds the immediate vicinity which supports the conclusion that the rezone proposed to accommodate the use is detrimental to the public's health, safety, and welfare.

Historically, the use was smaller in scale and intensity, but circumstances changed around 2022 (as can be seen from the aerials) when the property was substantially cleared to accommodate the storage of more of the applicant's heavy construction equipment and other materials on site. Even when the use of the property was less intense and smaller in scope than it is today, the use resulted in complaints being submitted to the county related to junkyard conditions and commercial equipment storage both in 2016 and 2019.

The applicant states that rezoning a portion of the site RB will help scale back the intensity of the use, back to the original existing area and while the county concurs that may help reduce the impacts somewhat; the county remains concerned that the existing business operations will still occur, just on the 2.86 acres now, rather than the entire property, and the noise and visual impacts will remain. Further, the fact that the use is not a "small-scale commercial retail business [or] personal services [business] which serve[s] a limited-service area and rural

population" as is the intent of the RB zone, means the rezone being sought to sanction that use is detrimental to the public's health, safety and welfare.

The noise and visual impacts created by the use are also detrimental to the public health and welfare (see video clips provided by public comments - Exhibit J.7 as well as the photographs from county staff – Exhibit E.4). In addition, the public comments of garbage and debris being placed on the property as well as encroachment across property lines of the use, have been corroborated by county staff site visits in 2023 associated with the NOV and ACUP/LDA permits, and as such, there are additional public health and welfare concerns to be mitigated.

It is evident that based on the RB zoning implementation record from the County Council in 1998 (Exhibits D.1 and D.2) and from language in both the 2024 Comp Plan and the current zoning code, that the county anticipated that the RB zone would allow uses that are small-scale and less impactful upon the public health, safety, and welfare, than uses permitted outright in the industrial or commercial zones. Hence, the creation of the floating zone, specific RB criteria under the use matrix, and the RB performance standards. By asking to vary from the criteria and performance standards intended to protect rural character, this use does not conform to the intent of the RB zoning district of small-scale commercial retail businesses and personal services which serve a limited-service area and the immediate rural residential population, which fails to bear a substantial relationship the public's health, safety, and welfare.

Conclusion

The rezone does not bear a substantial relationship to the public health, safety, or welfare because the proposed rezone has been proposed to allow a use that contradicts with the intent and purpose of the RB zone. Specifically, the impact on surrounding rural residential properties is increased noise and incompatible aesthetics/visual compatibility on the neighborhood character. If the use generates impacts that is a public nuisance it is not in the interest of the public.

The conclusion that the rezone is detrimental to public health, safety, and welfare, is also supported by public comments (including the videos) received expressing concerns about noise and visual impacts related to the use for which the rezone is being sought to accommodate, aerial imagery of the site showing the scope of the use being much more than a small-scale commercial use, and the applicant's own website showing that the use is a large-scale regional construction business that would be more appropriately sited in an industrial zone given the impacts it creates on the surrounding area.

If the applicant demonstrates that it meets the RB criteria (rather than vary from them) then the negative impacts would be mitigated to a level where the public's interest could likely be met. The county finds that the application has not demonstrated sufficient evidence that rezoning the property from R-5 to RB bears a substantial relationship to the public health, safety, and general welfare.

SCC 30.42A.100(3) Change in Circumstance

The site has not been rezoned since 1991. As discussed previously, it was rezoned from R-20,000 to R-5 in March 1991 as part of an area wide rezone via Ordinance 91-034 (Exhibit H.5). Historically the property was zoned R 20,000.

The county disagrees with the applicant's case law argument that it does not need to identify changed circumstances if a proposed rezone implements the policies of a comprehensive plan However, as explained earlier in this recommendation in the Section titled *SCC 30.42A.100(1) Consistency with the Comprehensive Plan*, the county concludes the proposed rezone does not

implement the policies of the Comp Plan because it seeks to vary from the exact policies that the Comp Plan sets forth for the RB zone.

In evaluating whether changed circumstances exist supporting a proposed rezone, the county may consider a variety of factors including changed public opinion, changes to land use patterns in the area, and changes to the property itself. Here, public comments received related to this proposal demonstrate the public's general opposition to the rezone. Further, land use patterns in the area have been stable – mostly R5 zoning and uses consistent with the rural residential zone. Finally, other than the unpermitted changes completed by the applicant itself, the applicant has not pointed to any changes to the property which support a finding of changed circumstances.

While the applicant relies on prior rezone decisions issued in Three B's and Imu's (Exhibit D.2), each involved distinguishable circumstances. In each case, the applicant demonstrated that the proposed rezone met the code's criteria to approve the rezone. Here, the applicant acknowledges that it cannot meet such criteria as shown in its requests for variances from three criteria required under chapter 30.42A SCC.

Conclusion

The applicant has not demonstrated that there has been a substantial change in circumstances that would support this rezone, as the property has been zoned for residential use since at least 1974. The burden of proof is on the applicant and the county finds that the application has not demonstrated sufficient evidence that conditions have substantially changed justifying the rezone.

SCC 30.42A.100(4) Compliance with Minimum Zoning Criteria

SCC 30.31F.020 is the minimum zoning criteria that specifically apply to the RB commercial zone. SCC 30.31A through 30.31E do not apply.

Please also see the prior discussion under the Section above titled *Chapter 30.31F SCC Rural Business (RB), Rural Industrial (RI), Rural Freeway Service (RFS), and Clearview Rural Commercial (CRC) Zones.*

The minimum zoning criteria of subsections (1), (3), (5), and (6) of SCC 30.31F.020 are not applicable to this proposal. Criterions (2) and (4) are not met as established further under Chapter 30.31F SCC Rural Business (RB), Rural Industrial (RI), Rural Freeway Service (RFS), and Clearview Rural Commercial (CRC) Zones in this recommendation. The proposed use is located closer than two and one-half miles from an existing RB commercial designation in the rural area and does not meet the criteria necessary for the use to be considered a use permitted or otherwise allowed in the RB zone at the time the RB zone was created and therefore qualify for a rezone to RB under the special process in SCC 30.31F.020(4). Implicit in the reading of (4) is that the use that existed on or before (4) became effective, is that the use was allowed or otherwise permitted at that time. As discussed above, by its own admission, the applicant's use was established in 1993. In 1993, construction contracting was not allowed or otherwise permitted in the R-5 zone. SCC 30.31F.020(4) is inapplicable here.

Conclusion

The proposed rezone does not meet the applicable minimum zoning criteria of SCC 30.31F.020(2) and (4) as the proposed use is located closer than two and one-half miles from an existing RB commercial designation in the rural area and the proposed use does not meet the criteria necessary for the use to be considered a use permitted or otherwise

allowed in the RB zone at the time the RB zone was created and therefore qualify for a rezone to RB under the special process in SCC 30.31F.020(4).

Chapter 30.43B SCC Variances

Under RCW 36.70.020(14) a variance is "the means by which *an adjustment is made in the application of the specific regulations of a zoning ordinance to a particular piece of property*, which property, because of special circumstances applicable to it, is deprived of privileges commonly enjoyed by other properties in the same vicinity and zone in which adjustment remedies disparity and privileges." Similarly, SCC 30.91V.010 defines a variance as "a permit for the purpose of *granting relief from specific development standards of [Title 30 SCC] as applied to a particular piece of property*."

The applicant is seeking approval of four variances concurrent with the rezone request. Specifically, the applicant is asking to vary from the following sections of county code:

1. SCC 30.22.130(81) – Uses Allowed in Zones Reference Note No. 81.

    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 subsection (81)(b) of this section, 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.

2. SCC 30.25.020(2) – Properties zoned RFS, CRC and RB shall provide a 50-foot Type A perimeter landscape buffer when adjacent to R-5, RD, RRT-10, A-10, F, and F&R.

3. SCC 30.23.030 – Table 30.23.030 - Rural, Resource, Urban (Non-Residential) and Other Zone Categories Bulk Matrix – RB Setback of 50 feet from Residential, Multifamily, and Rural Zones.

4. SCC 30.23.043 - Table 30.23.043 - Setbacks from Road Network Elements in Rural Zones - RB Minimum Setback For Structure of 25 feet from a Public Road 60 Feet and Over.

<u>SCC 30.43B.100 Decision criteria - variances.</u>
The department may approve or approve with conditions a variance request when the following criteria are met:

(1) There are special circumstances applicable to the subject property or to the intended use, such as size, shape, topography, location or surroundings, that do not apply generally to other properties or classes of use in the same vicinity and zone;

(2) A variance is necessary for the preservation and enjoyment of a substantial property right or use possessed by other properties in the same vicinity and zone but which because of special circumstances is denied to the property in question;

(3) The granting of the variance will not be materially detrimental to the public welfare or injurious to the properties or improvements in the vicinity and zone in which the subject property is located; and

(4) The granting of the variance will not adversely affect the comprehensive plan.

Analysis
Below is staff's analysis of each variance request against the decision criteria listed above.

The first request asking to vary from Footnote 81 is two-part; seeking variances from both subsections (b) and (c) of Footnote 81 – Reference Notes for use matrices.

1. SCC 30.22.130(81) – Reference Notes for use matrices.

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

   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.

   The applicant is seeking a variance from this requirement as the existing use contains more than 1,000 square feet of outdoor storage of materials due to the nature of the applicant's operations and is not fully screened in accordance with SCC 30.25.024.

   SCC 30.25.024 states "Outside storage areas and waste, dumpster, or recycling areas shall be screened with a six-foot high sight obscuring fence (gaps no greater than 1/4 inch), or by five feet of site-obscuring landscaping, or by a living fence at least three feet in height which will grow to at least six feet in height within three years. The director shall provide a listing of acceptable plant species and planting requirements to be used for a living fence."

   According to the applicant's narrative, the extent of existing outdoor storage is approximately 3.8 acres. Existing screening consists of what existing trees and vegetation remain on site and visual screening fabric as shown in the photos in Exhibit E.4 (erected after the 2023 code enforcement action). After reviewing the applicant's submitted documents for the variance, staff's evaluation of the variance decision criteria is as follows:

   SCC 30.43B.100(1): *There are special circumstances applicable to the subject property or to the intended use, such as size, shape, topography, location or surroundings, that do not apply generally to other properties or classes of use in the same vicinity and zone*;

   First, for each variance the applicant must demonstrate that "[t]here are special circumstances applicable to the subject property or to the intended use, such as size, shape, topography, location or surroundings, that do not apply generally to other properties or classes of use in the same vicinity and zone."

   Based on the county's review of the physical aspects of the property and the applicant's variance narrative and decision criteria analysis (Exhibit B.1), the property does not contain special circumstances (as listed above) that are not applied to other properties in the same zone/vicinity. Nothing about the property's size, shape, topography, location, or surroundings makes the property unique in a way that SCC 30.22.130(81)(1)(b) cannot

be met. Further, the fact that outdoor storage of materials is limited to an area of 1,000 square feet again demonstrates that the zone was created to cater to small-scale rural commercial uses which PDS determines to be different than the applicant's use.

The applicant uses a vast majority of the site for outdoor storage as can be seen on the aerial images and photographs. The applicant notes that approximately 3.8 acres of the site has historically and continuously been used for the outdoor storage of materials, equipment, and vehicles. The rezone and variance request is for only 2.86 acres which would reduce the size of the existing business footprint.

The extent of such outdoor storage has expanded over time as its operations have expanded. The most dramatic increase is seen in 2023 when it cleared the eastern portion of the site resulting in a Notice of Violation from the county for unpermitted work. The applicant states that it will remedy the unpermitted cleared portion by obtaining the necessary LDA permit which would include restoration of the disturbed areas, which would therefore reduce the existing outdoor storage to 2.86 acres or 124,581 square feet which represents more than a 124-fold increase over what the County Code allows.

In addition, the applicant states it will comply with the screening requirements for outdoor storage through the required perimeter landscape buffer and installation of a six-foot high sight obscuring fence. The Variance Site Plan (Exhibit C.2) shows a 50-foot Type A buffer around the perimeter of the site, except along the western half of the southern property line (as requesting to be varied from under Variance #2, down to 25 feet). The plan does not show a proposed six-foot high sight obscuring fence.

The applicant believes it qualifies for a variance from this requirement because it is an existing business that has been using the property for outdoor storage for many years, however as noted earlier in this recommendation, a non-conforming use has never been determined to exist on the site. This limitation does not equate to property-specific "special circumstances" necessary to meet this criterion as the outdoor storage is applicant induced. Any 'special circumstance' argued by the applicant results for its own actions and is not related to the physical characteristics of the property itself.

SCC 30.43B.100 (2): *A variance is necessary for the preservation and enjoyment of a substantial property right or use possessed by other properties in the same vicinity and zone but which because of special circumstances is denied to the property in question;*

The applicant does not have a substantial property right to operate a large-scale regional construction company because the use is not a legal use in the R-5 zone. The applicant's use of the property cannot be a substantial property right as the use is and has been illegal since its inception in 1993. The fact that there has been some commercial use of the property for over 30 years does not mean that that use is legal.[6] The variance requested by the applicant is not necessary to preserve and enjoy as a substantial property right that other properties in the area possess. The applicant may use its R-5 zoned property just as its neighbors use their property.

[6] The applicant originally explored seeking a determination from the County that its use was non-conforming. It abandoned that course seeking this rezone instead in an attempt to address the code violations alleged by the County in the NOV.

SCC 30.43B.100(3): *The granting of the variance will not be materially detrimental to the public welfare or injurious to the properties or improvements in the vicinity and zone in which the subject property is located; and*

After reviewing the public comments and associated photographs/videos as well as code enforcement files and aerial images, granting a variance allowing more than 1,000 square feet of outdoor storage and screening requirements would be detrimental to the public welfare or injurious to the properties or improvements in the vicinity. When the Council adopted the RB zoning district and set the specific parameters for uses in the zone, it was intended to mitigate impacts to adjacent properties and keep uses small scale. Granting of this variance would do the opposite and would allow the continued noise and visual/aesthetic impacts to adjacent properties. Allowing the applicant to operate an intense multi-state construction business on more than 1,000 square feet of the property will result in significant detriment to the public and will be specifically injurious to nearby properties in the vicinity. If a variance is granted allowing more than 1,000 square feet of the property to be used in the applicant's business, it is likely that impacts from noise, dust, light, and traffic among others will negatively impact the applicant's neighbors.

SCC 30.43B.100(4): *The granting of the variance will not adversely affect the comprehensive plan.*

The granting of this variance conflicts with goals and policies in the comprehensive plan that intend for uses in the RB zone to provide small-scale businesses that service the surrounding rural population. The variance would also conflict with the goals and policies in the Plan that aim to protect the character of rural areas and minimize impacts to residential areas. See also the Section above titled *SCC 30.42A.100(1) Consistency with the Comprehensive Plan*. Approving a variance from these standards would set a precedent that a use in the RB zone doesn't need to meet them and essentially invalidate the intent of why the County Council created the specific RB zone criteria and the zone.

Polices which conflict with the variance sought include, but are not limited to: LU Policy 6.E.1 ("limited commercial uses shall be permitted within a Rural Business zone that provide opportunities for retail sales and services to the surrounding rural population); LU Policy 6.E.2 ("The county shall maintain Rural Business zoning and development standards that allow community facilities for the surrounding rural population and facilitate small-scale retail and service uses at appropriate locations within rural residential areas and minimize impacts to residential areas, resource lands, and critical areas."); LU Policy 6.E.4 ("Development in the Rural Business zone shall be limited to development that can be supported by services typically delivered at rural levels of service. These services may include domestic water, septic systems, and transportation facilities.")

c. *In addition to the provisions of subsection (81)(b) of this section, 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.*

The applicant is seeking a variance from this requirement as it currently stores more than five commercial vehicles or construction machines outdoors and does not screen them currently in accordance with SCC 30.25.020 and 30.25.032. For the same reasons identified immediately above which are incorporated here by reference, the applicant's request for a variance allowing the storage of more than five commercial vehicles does not satisfy the four decision criteria from SCC 30.43B.100.

SCC 30.25.020(2) states "Properties zoned RFS, CRC and RB shall provide a 50-foot Type A[7] perimeter landscape buffer when adjacent to R-5, RD, RRT-10, A-10, F, and F&R."

SCC 30.25.032 states "In addition to the landscaping requirements contained in SCC 30.25.020, requirements for RB, RFS, CRC, and RI zones are as follows:

(1) Existing trees three inches in diameter and larger size shall be retained in all side and rear perimeter landscape areas, excluding areas for access drives and sign location;

(2) Existing evergreen trees of three inches in diameter and larger size shall be retained in all front perimeter landscape areas, excluding areas for access drives and sign location;

(3) Removal of trees otherwise required to be retained is allowed when required to meet the EDDS or because of public health and safety concerns as documented by a certified arborist; and

(4) Land zoned CRC in the Clearview rural area shall provide a 50-foot wide landscaping area along any property line abutting an R-5 zone.

The applicant seeks another variance from performance standards applicable to the RB zone asking that it be allowed to store more than five vehicles on the property. Currently, the applicant stores a large number of commercial vehicles or construction machines (a specific total was not provided by the applicant but estimated by staff during a site visit to be in the range of 20-30 vehicles) and existing screening consists of what existing trees and vegetation remain on site and visual screening fabric erected by the applicant as a result of code enforcement action.

The applicant's request for a "variance" to the five-vehicle maximum is inapt as it is seeking modification of a performance standard, rather than a zoning or development standard related to the property itself. The requested variance should be denied on that ground alone. Nonetheless, the criteria for granting this variance are independently analyzed immediately below.

After reviewing the applicant's submitted documents for the variance related to the request to vary the screening requirements, staff's evaluation of the variance decision criteria are as follows:

SCC 30.43B.100 (1): *There are special circumstances applicable to the subject property or to the intended use, such as size, shape, topography, location or surroundings, that do not apply generally to other properties or classes of use in the same vicinity and zone;*

Based on staff's review of the physical aspects of the property and the applicant's variance narrative and decision criteria analysis (Exhibit B.1), the property does not contain special circumstances (as listed above) that are not applied to other properties in the same zone/vicinity.

[7] Per SCC Table 30.25.017, a Type A landscaping buffer's performance standard is to "Create a dense sight barrier between uses and zones." Specific tree/shrub mixtures and planting patterns are specified.

The applicant stores many commercial vehicles or construction machines on the property, as can be seen on the aerial images and photographs.

In addition, the applicant is requesting a limited variance (limited in the sense that the variance is only for the western portion of the southern part of the property rather than the entire perimeter buffer) from SCC 30.25.020 for purposes of maintaining existing access to the site and formalizing a fire turnaround. Widening the existing access and providing a hammerhead turnaround was part of the applicant's proposal for the ACUP and LDA permits to address fire apparatus access requirements by the county's Fire Marshal's Office. The Variance Site Plan (Exhibit C.2) shows a 50-foot Type A buffer around the perimeter of the site, except along the western half of the southern property line (as requesting to be varied from, down to 25 feet).

The applicant believes it qualifies for a variance from this requirement because it is an existing business that has been storing more than five commercial vehicles or construction machines outdoors for many years, however as noted earlier in this recommendation, it has not been shown to be a legal non-conforming use. Instead, the use is an unpermitted commercial use sited in a rural residential zone. While the county understands that the number of these vehicles and machines ebb and flow with ordinary operations, the code requirement is for five or less and the applicant's current operations greatly exceed that number. The applicant is requesting that this requirement be waived in its entirety as limiting it to a specific number is difficult. The requirement exists so that uses in the RB zone be small-scale and cater to the nearby rural residents.

Again, the applicant seeks to have a performance standard eased and the county does not believe a variance is appropriate. Nonetheless, this limitation does not equate to property-specific "special circumstances" necessary to meet this criterion as the outdoor storage is applicant induced. The hardship is the result of the applicant's own actions. As explained in more detail above, any 'special circumstance' argued by the applicant results for its own actions and is not related to the physical characteristics of the property itself. The property is not unique in size, location, or topography as compared to neighboring properties in the vicinity. This criteria has not been demonstrated to exist.

SCC 30.43B.100(2): *A variance is necessary for the preservation and enjoyment of a substantial property right or use possessed by other properties in the same vicinity and zone but which because of special circumstances is denied to the property in question;*

The county again restates its conclusion that a variance is not available to ease performance standards such as the five-vehicle limitation found in the code. The applicant does not have a substantial property right because the current operation is not a legal use in the existing zone of R-5. The fact that an unpermitted commercial use has existed on the property for decades does not make the use legal nor does the length of such unpermitted commercial use create a substantial property right or use possessed by other properties in the same vicinity. Rather, the applicant is free to use its property in a manner consistent with the R-5 zone, just as its neighbors do. The applicant states that its claimed special circumstances is that it has used the property for construction contracting and its associated commercial vehicle or construction machine outdoor storage for 30+ years. However, that, does not constitute special circumstances that are denied to this property and possessed by other properties in the zone. This limitation does not equate to property-specific "special circumstances" necessary to meet this criterion as the existing number of vehicles/machines stored outdoors is applicant induced. Any claimed hardship is the result of the applicant's own actions.

SCC 30.43B.100(3): *The granting of the variance will not be materially detrimental to the public welfare or injurious to the properties or improvements in the vicinity and zone in which the subject property is located; and*

The county again restates its conclusion that a variance is not available to ease performance standards found in the code but because the applicant has sought such an approval PDS will provide a response to this variance request. After reviewing the public comments and associated photographs/videos as well as code enforcement files and aerial images, granting a variance for exceeding the number of commercial vehicles or construction machines stored outdoors and reducing the screening requirements in part, would be detrimental to the public welfare or injurious to the properties or improvements in the vicinity. When the Council created the RB zone in 1998 and set the specific parameters for uses in the zone, it was intended to mitigate impacts to adjacent rural properties by keeping allowed uses small scale and local. Granting of this variance would do the opposite and increase noise and visual/aesthetic impacts to adjacent properties. Allowing the applicant to store more than five commercial vehicles on its property in conjunction with its intense multi-state construction use will likely result in significant detriment to the public and will be specifically injurious to nearby properties in the vicinity. Specifically, if a variance is granted, it is likely that impacts from noise, dust, light, and traffic among others will negatively impact the applicant's neighbors.

SCC 30.43B.100(4): *The granting of the variance will not adversely affect the comprehensive plan.*

The county again restates its conclusion that a variance is not available to ease performance standards found in the code but because the applicant has sought such an approval PDS will provide a response to this variance request.. The granting of this variance conflicts with goals and policies in the comprehensive plan that intend for uses in the RB zone to provide small-scale businesses that service the surrounding rural population. The variance would also conflict with the goals and policies in the Plan that aim to protect the character of rural areas and minimize impacts to residential areas. See also the Section above titled *SCC 30.42A.100(1) Consistency with the Comprehensive Plan*.

Approving a variance from these performance standards would set a precedent that a use in the RB zone doesn't need to meet them, and essentially invalidate the intent of why the County Council created the specific RB zone criteria and the zone in the first place.

Policies which conflict with the variance sought include, but are not limited to: LU Policy 6.E.1 ("limited commercial uses shall be permitted within a Rural Business zone that provide opportunities for retail sales and services to the surrounding rural population); LU Policy 6.E.2 ("The county shall maintain Rural Business zoning and development standards that allow community facilities for the surrounding rural population and facilitate small-scale retail and service uses at appropriate locations within rural residential areas and minimize impacts to residential areas, resource lands, and critical areas."); LU Policy 6.E.4 ("Development in the Rural Business zone shall be limited to development that can be supported by services typically delivered at rural levels of service. These services may include domestic water, septic systems, and transportation facilities.")

Conclusion:

The county recommends denial of both variance requests of subsections (b) and (c) of Footnote 81 – Reference Notes for use matrices, under SCC 30.22.130(81) as neither request meets the decision criteria for variances under SCC 30.43B.100.

The second variance request is seeking to vary from the perimeter landscape buffer requirements of SCC 30.25.020(2).

2. SCC 30.25.020(2) – Properties zoned RFS, CRC and RB shall provide a 50-foot Type A perimeter landscape buffer when adjacent to R-5, RD, RRT-10, A-10, F, and F&R.

   The applicant is seeking to vary from two parts of the 50-foot Type A perimeter buffer:

   i. The applicant is seeking to reduce portions of the 50-foot Type A perimeter buffer along the western half of the southern property line to maintain existing access to the site and create a fire turnaround. Along this portion as shown on the Variance Site Plan (Exhibit C.2), the perimeter buffer would vary in width but not be less than 25 feet wide. The remainder of the northern, eastern, and southern property lines would comply with the 50-foot Type A perimeter buffer requirements.

   ii. The second part of this request is to vary from the 50-foot Type A perimeter buffer required along the western property line fronting State Route 9. WSDOT acquired property from the applicant several years ago when the right-of-way was used in the expansion and widening of SR-9. The applicant states that this has left it with insufficient area to provide the required perimeter landscape buffer as it cannot move existing structures on site without impacting the existing business.

   The proposal indicates that the perimeter buffer will be created by retaining existing trees and supplementing plantings as necessary. While the site is partially forested, additional plantings will be necessary to meet the definition of a Type A buffer. The videos from public comments, aerial imagery, and photos from staff's 2025 site visit show gaps in the trees where the existing vegetation alone is not creating a full buffer for the adjacent properties from the activities on the site.

   The aerial imagery for the site does show that the buildings on the western half of the property are located adjacent to the western property line which does make it hard to meet the requirement for a 50-foot perimeter buffer for the use. The county concurs that the existing building locations, combined with WSDOT's ROW acquisition, has left the property with insufficient area to provide the required perimeter landscape buffer along the SR 9 frontage.

   After reviewing the applicant's submitted documents for the variance related to the request to vary the perimeter buffer requirements, staff's evaluation of the variance decision criteria are as follows:

   SCC 30.43B.100(1): *There are special circumstances applicable to the subject property or to the intended use, such as size, shape, topography, location or surroundings, that do not apply generally to other properties or classes of use in the same vicinity and zone supporting the first buffer variance requested but special circumstances do exist for the second buffer variance;*

i. For the Westerly Portion of the Southern Property Line Variance, based on the county's review of the physical aspects of the property and the applicant's variance narrative and decision criteria analysis, the property does not contain special circumstances (as listed above) that are not applied to other properties in the same zone/vicinity. This limitation does not equate to property-specific "special circumstances" necessary to meet this criterion, as the reduction of the perimeter buffer is applicant induced, since it controls the location of its operations and as its operations are largely outdoors. The hardship is the result of the applicant's own actions. While the county desires the use to maintain access to the site and address the fire turnaround requirement and therefore understands the nature of the request, ultimately, denial of the rezone is recommended. Thus, if this variance were to be approved the next future property owner would enjoy the reduction in the perimeter buffer while the adjacent residences to the south could experience potential negative impacts; for this reason alone, the variance should be denied. Future uses must meet the code requirements of SCC 30.25.020(2) to protect adjacent R5 properties.

ii. For the western property line fronting State Route 9, based on staff's review of the physical aspects of the property and the applicant's variance narrative and decision criteria analysis, the property does contain special circumstances in that the buildings are located adjacent to the western property line which likely moved as a result of WSDOT acquisition several years ago for the expansion and widening of SR-9. The county does recognize that there are likely other properties in the R-5 zone with frontages along SR 9 that WSDOT expanded and acquired years ago and that has left frontages non-conforming with respect to the code. This criterion has been met for this particular buffer variance.

SCC 30.43B.100(2): *A variance is necessary for the preservation and enjoyment of a substantial property right or use possessed by other properties in the same vicinity and zone but which because of special circumstances is denied to the property in question;*

i. For the Westerly Portion of the Southern Property Line Variance, the applicant does not have a substantial property right because the use is not a legal use in the R5 zone. The applicant states that the special circumstance is that it has used the property for construction contracting and its associated commercial vehicle or construction equipment outdoor storage for 30+ years however that, does not constitute special circumstance that are denied to this property and possessed by other properties in the zone. This limitation does not equate to property-specific "special circumstances" necessary to meet this criterion as the reduction of the perimeter buffer is applicant induced, since it controls the location of its operations and as its operations are largely outdoors. The hardship is the result of the applicant's own actions rather than an independent property-specific special circumstance.

ii. For the western property line fronting State Route 9, the variance is necessary for the preservation and enjoyment of a substantial property right or use possessed by other properties in the same vicinity and zone, but which because of the previous expansion and widening of SR-9 by WSDOT, created a special circumstance for that portion of the property. This criterion has been met for this particular buffer variance.

SCC 30.43B.100(3): *The granting of the variance will not be materially detrimental to the public welfare or injurious to the properties or improvements in the vicinity and zone in which the subject property is located; and*

i. For the Westerly Portion of the Southern Property Line Variance, after reviewing the public comments and associated photographs/videos as well as code violation files and aerial images, granting a variance for reducing the buffering requirements along the southern portion of the western half, would be detrimental to the public welfare or injurious to the properties or improvements in the vicinity, especially for those properties directly south of the requested reduction. When the Council adopted the RB zone and set the specific parameters for uses in the zone, it was intended to mitigate impacts to adjacent properties and keep uses small scale. Granting of this variance would do the opposite and increase noise and visual/aesthetic impacts to adjacent properties.

ii. For the western property line fronting State Route 9, the granting of the variance will likely not be materially detrimental to the public welfare or injurious to the properties or improvements in the vicinity and zone in which the subject property is located due to its location fronting on SR 9. This criterion has been met for this particular buffer variance.

SCC 30.43B.100(4): *The granting of the variance will not adversely affect the comprehensive plan.*

i. For the Westerly Portion of the Southern Property Line Variance, the granting of this variance conflicts with goals and policies in the comprehensive plan that intend for uses in the RB zone to protect the character of rural areas and minimize impacts to residential areas. Granting of the variance would directly contradict LU Policy 6.E.2 to minimize impacts to residential areas and LU Policy 6.E.7 where existing native vegetation should be retained within required buffers. If the variance were to be granted, it would contradict several policies and goals in place for the RB zone in the comprehensive plan thereby adversely affecting it.

ii. For the western property line fronting State Route 9, the granting of the variance will not likely adversely affect the comprehensive plan due to its location fronting on SR 9. The site is located along a state highway with at least one hundred feet of street frontage as per LU Policy 6.E.6 and removal of vegetation along SR 9 does not create impacts to adjacent residential properties since the highway fronts the western property line.

Conclusion:

The county recommends denial of part one of the variance request (the Westerly Portion of the Southern Property Line Variance) as it does not meet the decision criteria for variances under SCC 30.43B.100.

The county recommends approval of part two of the variance request (the western property line fronting State Route 9) as it does meet the decision criteria for variances under SCC 30.43B.100.

3. SCC 30.23.030 – Table 30.23.030 Rural, Resource, Urban (Non-Residential) and Other Zone Categories Bulk Matrix – RB Setback of 50 feet from Residential, Multifamily, and Rural Zones.

The applicant's second submittal to the county revised the variance requests. The applicant is seeking a request to vary from SCC 30.23.030 but in the applicant's submitted materials lacks any reference to the exact dimensional standard that is being requesting to vary from.

The county contacted the applicant to further clarify which front setback it is requesting a variance from (Exhibit H.4). Based on the correspondence, it is understood that the applicant was seeking a variance from a 50-foot front setback along SR 9. SCC Table 30.23.030 only applies such a setback from other residential zones, which in this case, would apply to the north, east, and southern property lines, not the western property line due to the existing right-of-way.

The applicant believes the setback applies between the RB zoning and abutting R-5 zoning despite the SR 9 roadway since the county's zoning maps show zoning within in the right-of-way. The applicant believes the zoning gets split down the center of the right-of-way and since the applicant drew the boundary of the rezone request along the western property line, believe the area from the western property line to the centerline of the road is zoned R5.

Per SCC 30.21.030, the zone boundary lines are the centerlines of streets public alleys, parkways, waterways, or railroad rights-of-way. In previous rezones, the county has applied this by rezoning the property and the adjacent rights-of-way to the centerline with the new zoning district. Thus, no variance from this is required, as it is not applicable.

The only front setback dimensional standard that is applicable along the SR 9 frontage is the 25-foot building setback in the RB zone from a public road element as per Table 30.23.043. This setback is already included in the applicant's variance requests as Variance Request #4.

SCC 30.43B.100(1): *There are special circumstances applicable to the subject property or to the intended use, such as size, shape, topography, location or surroundings, that do not apply generally to other properties or classes of use in the same vicinity and zone;*

N/A

SCC 30.43B.100(2): *A variance is necessary for the preservation and enjoyment of a substantial property right or use possessed by other properties in the same vicinity and zone but which because of special circumstances is denied to the property in question;*

N/A

SCC 30.43B.100(3): *The granting of the variance will not be materially detrimental to the public welfare or injurious to the properties or improvements in the vicinity and zone in which the subject property is located; and*

N/A

SCC 30.43B.100(4): *The granting of the variance will not adversely affect the comprehensive plan.*

N/A

Conclusion:

This variance is not needed as there is no 50-foot dimensional standard in SCC Table 30.23.030 that applies along the SR 9 frontage.

4. SCC 30.23.043 - Table 30.23.043 Setbacks from Road Network Elements in Rural Zones - RB Minimum Setback of 25 Feet for a Structure from a Public Road 60 Feet and Over.

   The applicant is requesting to vary from the 25-foot structure setback from a public road 60 feet or over per SCC Table 30.23.043, along the western property line fronting State Route 9. WSDOT acquired a portion of this property from the applicant several years ago for right-of-way to be used in the expansion and widening of SR-9. The applicant states that because of this it is unable to meet the minimum setback for a structure from a road network element for the existing buildings on the west side of the property.

   After reviewing the applicant's submitted documents for the variance related to the request to vary the setback requirements, staff's evaluation of the variance decision criteria in SCC 30.43B.100 are as follows:

   SCC 30.43B.100(1): *There are special circumstances applicable to the subject property or to the intended use, such as size, shape, topography, location or surroundings, that do not apply generally to other properties or classes of use in the same vicinity and zone;*

   The property does contain special circumstances in that the buildings are located adjacent to the western property line, which likely was adjusted, as a result of WSDOT property acquisition several years ago for the expansion and widening of SR-9. The county recognizes that there are likely other properties in the R5 zone with frontages along SR 9 that WSDOT expanded and acquired that has left frontages non-conforming with respect to the code. It does create a special circumstance in that the buildings that may have met setbacks or buffer requirements when first built, no longer do.

   This special circumstance however does not require a variance; it is instead considered a non-conforming structure and is governed per SCC 30.28.070 (a nonconforming structure is "a structure which was lawful when established which does not now conform to the setback, height, or lot coverage requirements of the zone in which it is located").

   The county acknowledges that the existing buildings on site are non-conforming structures due to the State's widening of SR9. This acknowledgement makes the requested variance unnecessary given that nonconforming structures are allowed to remain in the form and location in which it existed on the effective date of the nonconformance under SCC 30.22.070. Here, the nonconformity was created upon the widening of SR9 and the structures are now allowed to remain in perpetuity. Approval of a variance for the existing buildings is not required since this is not new development. The existing buildings are simply non-conforming with aspects of the current code.

   SCC 30.43B.100(2): *A variance is necessary for the preservation and enjoyment of a substantial property right or use possessed by other properties in the same vicinity and zone but which because of special circumstances is denied to the property in question;*

   N/A

SCC 30.43B.100(3): *The granting of the variance will not be materially detrimental to the public welfare or injurious to the properties or improvements in the vicinity and zone in which the subject property is located; and*

N/A

SCC 30.43B.100(4): *The granting of the variance will not adversely affect the comprehensive plan.*

N/A

Conclusion:
The county recommends denial of the variance request as it does not meet the decision criteria for variances under SCC 30.43B.100.

CONCLUSIONS

A. Demonstration of compliance with the rezone criteria in SCC 30.42A.100 have not been met by the proposal.

B. The existing use for which the rezone is being sought, conflicts with the intent and purpose of the R5 zone, which is to allow small-scale local commercial retail and services.

C. The proposed rezone is not consistent with the Comprehensive Plan policies for small scale commercial uses within rural residential zones and does not minimize impacts to residential areas through the limitations set forth for the RB zone as it seeks variances from these limitations.

D. The proposed rezone does not meet the applicable minimum zoning criteria of SCC 30.31F.020(4) as the proposed use does not meet the criteria necessary for the use to be considered a use permitted or otherwise allowed in the RB zone at the time the RB zone was created and therefore qualify for a rezone to RB under the special process in SCC 30.31F.020(4). The criteria the applicant seeks to vary from is the criteria necessary for the use to be considered a use permitted or otherwise allowed in the RB zone.

E. With the exception of the request to reduce the required buffer along SR 9, the variance requests do not meet the decision criteria for variances under SCC 30.43B.100 and PDS recommends denial.

STAFF RECOMMENDATION

Snohomish County Planning and Development Services hereby recommends the following for the requested REZONE and VARIANCES:

1. Denial of the Rezone, and;
2. Denial of Variance Requests #1, #2 (Part 1), and #4
3. Approval of Variance Request #2 (Part 2)
4. Variance Request # 3 is not applicable

Snohomish County SEPA Environmental Checklist

25-105874 REZO

Purpose of checklist

Governmental agencies use this checklist to help determine whether the environmental impacts of your proposal are significant. This information is also helpful to determine if available avoidance, minimization, or compensatory mitigation measures will address the probable significant impacts or if an environmental impact statement will be prepared to further analyze the proposal.

Instructions for applicants

This environmental checklist asks you to describe some basic information about your proposal. Please answer each question accurately and carefully, to the best of your knowledge. You may need to consult with an agency specialist or private consultant for some questions. **You may use "not applicable" or "does not apply" only when you can explain why it does not apply and not when the answer is unknown.** You may also attach or incorporate by reference additional studies reports. Complete and accurate answers to these questions often avoid delays with the SEPA process as well as later in the decision-making process.

The checklist questions apply to **all parts of your proposal**, even if you plan to do them over a period of time or on different parcels of land. Attach any additional information that will help describe your proposal or its environmental effects. The agency to which you submit this checklist may ask you to explain your answers or provide additional information reasonably related to determining if there may be significant adverse impact.

A.Background

Find help answering background questions[1]

1. **Name of proposed project, if applicable:**

   PBSS Investments Rural Business (RB) Rezone

2. **Name of applicant:**

   PBSS Investments, LLC

3. **Address and phone number of applicant and contact person:**

PBSS Investments, LLC
Attn: Jim Vogt
19125 SR 9 SE
Snohomish, WA 98290
425-225-2037
jim@mcclureandsons.com

Toyer Strategic Advisors, Inc.
Attn: David Toyer
3705 Colby Ave, Ste 1
Everett, WA 98201
425-322-5226
david@toyerstrategic.com

[1] https://ecology.wa.gov/Regulations-Permits/SEPA/Environmental-review/SEPA-guidance/SEPA-checklist-guidance/SEPA-Checklist-Section-A-Background

4. **Date checklist prepared:**

   February 24, 2025

5. **Agency requesting checklist:**

   Snohomish County

6. **Proposed timing of schedule (including phasing, if applicable):**

Rezone Application	March 2025
Variance Application	March 2025
Application Reviewed by County	TBD
Hearing Examiner Hearing	TBD
Hearing Examiner Decision	TBD
Revised Land Disturbing Activity (LDA) Appl.	TBD
LDA Permit Issuance	TBD

7. **Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain.**

   The Applicant does not have any plans for future additions, expansions or further activity other than the continued existing use of the site for a Construction Contracting business. The Applicant is working to resolve a code violation, which originally it sought to resolve with an application for an Administrative Conditional Use Permit (ACUP) to expand its existing, legally non-conforming use at the subject property along with an associated land disturbing activity (LDA) permit to address clearing of a portion of the site for expansion of the business' outdoor storage of construction equipment and materials.

   Alternatively, the Applicant has now submitted for a rezone to Rural Business (RB) in accordance with SCC 30.31F.020(4), which allows for the rezoning of existing commercial uses that were permitted or otherwise established prior to adoption of the RB zone. Applicant is also seeking variances to the number of vehicles allowed on site, to retain its existing outdoor storage areas, and partially reduce select perimeter buffers. Applicant will be required to obtain an LDA to restore disturbed portions of the site and to supplement existing perimeter landscaping.

8. **List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal.**

Geotech Report	Terra & Associates	December 2023
No Critical Areas Memo	Planning & Development Services	August 2024
Targeted Drainage Report	Solid Ground Engineering	*In Process*

9. **Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain.**

   Yes, as mentioned in #7 above, the Applicant currently has applied for an ACUP (Appl # 24109207ACUP) and LDA (Appl. #24109208LDA). If the subject RB rezone and variances are approved, the ACUP would be withdrawn and the LDA application revised and resubmitted.

10. List any government approvals or permits that will be needed for your proposal, if known.

Rezone to RB, Variance, Land Disturbing Activity Permit

11. Give brief, complete description of your proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page. (Lead agencies may modify this form to include additional specific information on project description.)

Applicant is seeking to rezone ±2.86 acres of a ±7.89 acre parcel to Rural Business (RB) from the Rural-5 (R-5) zone consistent with the provisions in SCC 30.31F.020(4), which allows RB rezones to preserve existing commercial uses that were permitted or otherwise allowed in the RB zone before the effective date of the RB zone. The Applicant has operated its Construction Contracting business (identified as a Building Contractor use under the original RB zone enacted) at the subject location since at least 1993, which predates the adoption of the RB zone in December 1998. Further, Applicant seeks four (4) minor variances to certain requirements in SCC 30.22, 30.23 and 30.24 relating to perimeter landscaping, outdoor storage, number of vehicles and construction machines allowed on site, and setbacks (front setback and setback from road element). Some of the variances are related to the nature of the existing business' historic operations while the setback variances to the front setback are necessary as the result of WSDOT acquisition of additional property from the Applicant several years ago during the widening of SR 9.

Upon approval of the rezone and variances, the Applicant's operations would be confined to a smaller area. Applicant will also obtain approval of an LDA to revegetate approximately 2.56 acres where prior land disturbance had taken place on-site.

12. Location of the proposal. Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and topographic map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist.

A vicinity map of the location is attached however, the location can be described as:

Parcel:	#2705-003-010-00
Site Address:	19125 SR 9 SE, Snohomish, WA 98290

B.Environmental Elements

1. Earth

Find help answering earth questions[2]

a. General description of the site:

Circle or highlight one: Flat, rolling, hilly, steep slopes, mountainous, other:

b. What is the steepest slope on the site (approximate percent slope)?

>30% which areas are generally located in the SE corner of the site.

c. What general types of soils are found on the site (for example, clay, sand, gravel, peat, muck)? If you know the classification of agricultural soils, specify them, and note any agricultural land of long-term commercial significance and whether the proposal results in removing any of these soils.

According to the USDA Soil Survey Map, Alderwood gravelly sandy loam covers the site.

d. Are there surface indications or history of unstable soils in the immediate vicinity? If so, describe.

No. And according to the Snohomish County Map Portal, there are no erosion or landslide hazard areas in the immediate vicinity.

e. Describe the purpose, type, total area, and approximate quantities and total affected area of any filling, excavation, and grading proposed. Indicate source of fill.

The subject application seeks approval of a rezone which would not directly result in any filling, excavation or grading. Regardless of the outcome of the rezone application, the Applicant will be required to obtain an LDA to revegetate a previously cleared area totaling approximately 2.56 acres area of the site. A preliminary site plan for the LDA indicates that it would have less than 25 cubic feet of cut or fill.

f. Could erosion occur because of clearing, construction, or use? If so, generally describe.

Not likely. Any clearing on the site will utilize best management practices to control for runoff, if applicable, and prevent potential for any erosion. Examples of such BMPs that will be permitted installed include silt fencing and/or silt socks, quarry spall outfall protection, construction entrances, among other erosion control BMPs that will be design for site specific requirements to prevent erosion.

g. About what percent of the site will be covered with impervious surfaces after project construction (for example, asphalt or buildings)?

[2] https://ecology.wa.gov/regulations-permits/sepa/environmental-review/sepa-guidance/sepa-checklist-guidance/sepa-checklist-section-b-environmental-elements/environmental-elements-earth

Approximately 89,015 square feet (2.05 AC) of PGHS and NPGHS surfaces exist and will remain. Applicant will continue to use approximately 38% of the net area of the site for its business.

h. Proposed measures to reduce or control erosion, or other impacts to the earth, if any.

Applicant will follow the recommendations of its engineer, approved TESC plan, and best management practices. These recommendations will be further outlined in the SWPPP document that will be submitted and approved as part of the Snohomish County LDA permit documents. Appropriate BMPs will include silt fencing and/or silt socks, outlet protection, construction entrances, among other potential BMPs.

2. Air

Find help answering air questions[3]

a. What types of emissions to the air would result from the proposal during construction, operation, and maintenance when the project is completed? If any, generally describe and give approximate quantities if known.

Applicant's Construction Contracting business utilizes this site for equipment maintenance, repair and storage (awaiting relocation to job sites), which activities produce intermittent existing emissions from trucks, construction equipment/machinery, repair equipment and machinery, and passenger vehicles. These activities and emissions would continue. Temporary emissions could be expected during any future activities under the LDA to revegetate the areas of the site previously cleared with an approximately 2.56 acre portion of the site.

b. Are there any off-site sources of emissions or odor that may affect your proposal? If so, generally describe.

No. Off-site emissions from SR 9 and adjacent uses would not affect the proposal.

c. Proposed measures to reduce or control emissions or other impacts to air, if any:

None proposed. The proposed rezone only includes that portion of the site which contains an existing commercial use in business at the location since 1993.

3. Water

Find help answering water questions[4]

a. Surface:

Find help answering surface water questions[5]

[3] https://ecology.wa.gov/Regulations-Permits/SEPA/Environmental-review/SEPA-guidance/SEPA-checklist-guidance/SEPA-Checklist-Section-B-Environmental-elements/Environmental-elements-Air

[4] https://ecology.wa.gov/Regulations-Permits/SEPA/Environmental-review/SEPA-guidance/SEPA-checklist-guidance/SEPA-Checklist-Section-B-Environmental-elements/Environmental-elements-3-Water

[5] https://ecology.wa.gov/Regulations-Permits/SEPA/Environmental-review/SEPA-guidance/SEPA-checklist-guidance/SEPA-Checklist-Section-B-Environmental-elements/Environmental-elements-3-Water/Environmental-elements-Surface-water

1. **Is there any surface water body on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? If yes, describe type and provide names. If appropriate, state what stream or river it flows into.**

   A critical areas specialist has reviewed the site and has stated that no critical areas are within the vicinity of the project. Upgradient area provides seasonal surface water flow onto the site that is collected and conveyed through the site and is discharged to a historic site flowpath that exists within the same threshold discharge basin.

2. **Will the project require any work over, in, or adjacent to (within 200 feet) the described waters? If yes, please describe and attach available plans.**

   None.

3. **Estimate the amount of fill and dredge material that would be placed in or removed from surface water or wetlands and indicate the area of the site that would be affected. Indicate the source of fill material.**

   None.

4. **Will the proposal require surface water withdrawals or diversions? Give a general description, purpose, and approximate quantities if known.**

   No surface water will be withdrawn or diverted from one threshold discharge basin to another. Upgradient area provides seasonal surface water flow onto the site that is collected and conveyed through the site and is discharged to a historic site flowpath that exists within the same threshold discharge basin.

5. **Does the proposal lie within a 100-year floodplain? If so, note location on the site plan.**

   No.

6. **Does the proposal involve any discharges of waste materials to surface waters? If so, describe the type of waste and anticipated volume of discharge.**

   None proposed.

b. Ground:

Find help answering ground water questions[6]

1. **Will groundwater be withdrawn from a well for drinking water or other purposes? If so, give a general description of the well, proposed uses and approximate quantities withdrawn from the well. Will water be discharged to groundwater? Give a general description, purpose, and approximate quantities if known.**

[6] https://ecology.wa.gov/Regulations-Permits/SEPA/Environmental-review/SEPA-guidance/SEPA-checklist-guidance/SEPA-Checklist-Section-B-Environmental-elements/Environmental-elements-3-Water/Environmental-elements-Groundwater

Water from existing well is used for dust control purposes. Quantities vary seasonally but average approximately 20 gallons per day.

2. **Describe waste material that will be discharged into the ground from septic tanks or other sources, if any (domestic sewage; industrial, containing the following chemicals…; agricultural; etc.). Describe the general size of the system, the number of such systems, the number of houses to be served (if applicable), or the number of animals or humans the system(s) are expected to serve.**

   The existing business does not discharge any waste on-site. Existing operations rely on portable bathrooms for their employees and the existing residence on the site (mobile home) within the area to be rezoned RB has an approved septic system.

c. **Water Runoff (including stormwater):**

1. **Describe the source of runoff (including storm water) and method of collection and disposal, if any (include quantities, if known). Where will this water flow? Will this water flow into other waters? If so, describe.**

   An upgradient area to the north and east of the site provides surface water run-on to the site. Topographic research and site visits indicate that upgradient area provides stormwater discharge after rain events to the site. Historic runoff onto the site drained west to the SR-9 ROW conveyance system. The project proposes to collect and convey upgradient run-on around existing developed areas and discharge it to the SR-9 ROW conveyance system in two locations. Both discharge locations are within the same threshold discharge basin as existing conditions. One discharge is directly to the SR-9 ROW at the northwesterly corner of the property. The second discharge location is along the southern property boundary. Discharge travels due west along parcels #27051400302600 and #27051400303000 (both directly adjacent to the south of the project site) within an existing topographic draw that discharges into the SR-9 ROW conveyance system. Both discharges are within the same threshold discharge basin and convey along the historic downstream flowpath for the site.

2. **Could waste materials enter ground or surface waters? If so, generally describe.**

   No. There are no toxic or hazardous chemicals produced onsite. Any used equipment fluids are collected, stored then disposed of via Emerald Services, a licensed 3rd party disposal company. Equipment fluids used on site are stored in containers with secondary containment, as is the on-site fuel storage tank. BMP is used for the equipment maintenance.

3. **Does the proposal alter or otherwise affect drainage patterns in the vicinity of the site? If so, describe.**

   No, the project does not alter drainage patterns in the vicinity of the site as surface water run-on to the site is collected and conveyed around existing infrastructure with a system of closed conveyance pipe and conveyance swales and ditches. All upgradient flow is routed through the site and discharge to historic locations. All

upgradient and onsite runoff is discharged to into historic threshold discharge basin areas.

d. Proposed measures to reduce or control surface, ground, and runoff water, and drainage pattern impacts, if any:

Use of BMPs for the storage and handling of materials, fluids, etc. used for equipment maintenance. Upgradient stormwater run-on is collected and conveyed in conventional manmade systems such as swales, ditches and closed pipe systems. This reduces the opportunity for impacts to existing drainage patterns, erosion, etc as flow is routed to historic drainage outfalls and larger conveyance systems, ie, SR 9 conveyance system.

4. Plants

Find help answering plants questions

a. Check the types of vegetation found on the site:

☒ **deciduous tree: alder, maple, aspen, other**

☒ **evergreen tree: fir, cedar, pine, other**

☒ **shrubs**

☐ **grass**

☐ **pasture**

☐ **crop or grain**

☐ **orchards, vineyards, or other permanent crops.**

☐ **wet soil plants: cattail, buttercup, bullrush, skunk cabbage, other**

☐ **water plants: water lily, eelgrass, milfoil, other**

☐ **other types of vegetation**

b. What kind and amount of vegetation will be removed or altered?

Existing shrubs and undergrowth were removed from a 2.56 acre portion of the site to expand the storage of equipment and materials. Equipment and materials will be removed from this area and the area restored with vegetation consistent with a future landscape plan. Hazard and punk trees have occasionally been removed from the site over the years based on the recommendation of an arborist.

c. List threatened and endangered species known to be on or near the site.

None that consultant identified on a site walk. None that appear on the WDFW Priority Habitats and Species (PHS) map.

d. Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any.

Landscape that will be proposed along with a future LDA will include native plants and be harmonized to be consistent with and enhance existing vegetation.

e. List all noxious weeds and invasive species known to be on or near the site.

Blackberry bushes.

5. Animals

Find help answering animal questions[7]

a. **List any birds and other animals that have been observed on or near the site or are known to be on or near the site.**

   Examples include:

   - **Birds: hawk, heron, eagle, songbirds, other:**
   - **Mammals: deer, bear, elk, beaver, other:** Mice, squirrels
   - **Fish: bass, salmon, trout, herring, shellfish, other:**

b. **List any threatened and endangered species known to be on or near the site.**

   Consultant consulted the WDFW Priority Habitats and Species map for the site and a 300 foot radius around it. There were no threatened or endangered species appear on or near the site.

c. **Is the site part of a migration route? If so, explain.**

   Yes, the site is generally part of the Pacific Fly-way for birds.

d. **Proposed measures to preserve or enhance wildlife, if any.**

   None proposed.

e. **List any invasive animal species known to be on or near the site.**

   None that consultant is aware of.

6. Energy and natural resources

Find help answering energy and natural resource questions[8]

a. **What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc.**

   Electricity used for heating, operation of tools and machinery, etc.

b. **Would your project affect the potential use of solar energy by adjacent properties? If so, generally describe.**

   No. The site is heavily treed and existing buildings are not near adjacent structures.

[7] https://ecology.wa.gov/Regulations-Permits/SEPA/Environmental-review/SEPA-guidance/SEPA-checklist-guidance/SEPA-Checklist-Section-B-Environmental-elements/Environmental-elements-5-Animals
[8] https://ecology.wa.gov/Regulations-Permits/SEPA/Environmental-review/SEPA-guidance/SEPA-checklist-guidance/SEPA-Checklist-Section-B-Environmental-elements/Environmental-elements-6-Energy-natural-resou

c. What kinds of energy conservation features are included in the plans of this proposal? List other proposed measures to reduce or control energy impacts, if any.

None proposed. The proposed rezone does not change the existing business' operations, other than to create consistency between the existing business and the zoning, and thus it will not impact the amount of energy used on the site.

7. Environmental health

Health Find help with answering environmental health questions[9]

a. Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste, that could occur because of this proposal? If so, describe.

Site is an existing Construction Contractor in operation at the location since 1993. The site is used for the storage, maintenance/servicing, and repair of the business' equipment. Typical environmental hazards related to the operation and maintenance of construction equipment will not change as a result of the rezone. The subject proposal does not change the site's use or expand the area of the site used, but would bring the site into zoning compliance.

1. **Describe any known or possible contamination at the site from present or past uses.**

   None known.

2. **Describe existing hazardous chemicals/conditions that might affect project development and design. This includes underground hazardous liquid and gas transmission pipelines located within the project area and in the vicinity.**

   No existing hazardous chemicals or conditions affect the proposed rezone. Use of the site is not changing; the rezone is to bring use into compliance. There are no known hazardous liquid and gas transmission pipelines within the project area or vicinity.

3. **Describe any toxic or hazardous chemicals that might be stored, used, or produced during the project's development or construction, or at any time during the operating life of the project.**

   Small quantities of construction equipment related fluids (e.g. transmission fluid, oil, etc.) are stored on site for use during the maintenance and services on equipment. No toxic or hazardous chemicals are produced by the project.

4. **Describe special emergency services that might be required.**

   None required.

5. **Proposed measures to reduce or control environmental health hazards, if any.**

[9] https://ecology.wa.gov/Regulations-Permits/SEPA/Environmental-review/SEPA-guidance/SEPA-checklist-guidance/SEPA-Checklist-Section-B-Environmental-elements/Environmental-elements-7-Environmental-health

Employees are trained in BMPs for equipment repair and servicing. Spill kits are kept on site and equipment fluids are collected, stored and disposed of via Emerald Services, a licensed 3rd party disposal company.

Noise

1. **What types of noise exist in the area which may affect your project (for example: traffic, equipment, operation, other)?**

   Noise from traffic along Highway 9 does not affect the subject proposal.

2. **What types and levels of noise would be created by or associated with the project on a short-term or a long-term basis (for example: traffic, construction, operation, other)? Indicate what hours noise would come from the site)?**

   The site's existing business, which has been in this location since at least 1993 is responsible for the maintenance and repair of the Construction Contractor's equipment, as well as storage of equipment and materials in between job sites. Noise associated with the construction equipment, the temporary location or relocation of equipment and materials, as well as use of air compressors, pumps and other similar equipment needed to conduct maintenance is expected to continue. Temporary noise from the restoration and replacement of landscaping on approximately 2.56 acres would generate noise from equipment. The subject rezone would establish a greater perimeter buffer than that required under the existing R-5 zone.

3. **Proposed measures to reduce or control noise impacts, if any:**

   Applicant will be adding to existing landscaping to establish a perimeter landscape buffer and will install a 6-foot high sight obscuring fence on the boundaries of its rezone adjacent to abutting residential properties to the north, east and south.

8. Land and shoreline use

Find help answering land and shoreline use questions[10]

a. **What is the current use of the site and adjacent properties? Will the proposal affect current land uses on nearby or adjacent properties? If so, describe.**

   Current use of the site is for a Construction Contractor, which use has been in place since at least 1993. The site is within in the R-5 zone and surrounding land uses primarily consist of rural residences also in the R-5 zone.

   The proposal will reduce effects of the business on adjacent properties by establishing perimeter landscape buffers and fencing, as well as revegetation of an on-site ±2.56 acre area just east of the proposed RB rezone will re-establish the visual buffer from adjacent properties.

[10] https://ecology.wa.gov/Regulations-Permits/SEPA/Environmental-review/SEPA-guidance/SEPA-checklist-guidance/SEPA-Checklist-Section-B-Environmental-elements/Environmental-elements-8-Land-shoreline-use

b. Has the project site been used as working farmlands or working forest lands? If so, describe. How much agricultural or forest land of long-term commercial significance will be converted to other uses because of the proposal, if any? If resource lands have not been designated, how many acres in farmland or forest land tax status will be converted to nonfarm or nonforest use?

No.

1. **Will the proposal affect or be affected by surrounding working farm or forest land normal business operations, such as oversize equipment access, the application of pesticides, tilling, and harvesting? If so, how?**

   No.

c. Describe any structures on the site.

Several existing buildings exist on the site, including a shop, some metal buildings, several small wooden buildings/sheds and an old mobile home.

d. Will any structures be demolished? If so, what?

No.

e. What is the current zoning classification of the site?

Rural-5 (R-5)

f. What is the current comprehensive plan designation of the site?

Rural Residential 1 du / 5 acres

g. If applicable, what is the current shoreline master program designation of the site?

N/A.

h. Has any part of the site been classified as a critical area by the city or county? If so, specify.

A PDS biologist walked the site in August 2024 and issued a memo that no critical areas and wetlands exist on the site. However, steep slopes near the SE corner of the site meet the definition of a critical area. No development activity is proposed within the vicinity of the steep slope located onsite.

i. Approximately how many people would reside or work in the completed project?

There is no change in proposed employment, which has ranged between 12 and 18 employees historically. The are two people that reside on the site which won't change.

j. Approximately how many people would the completed project displace?

None. However, should the rezone not be approved, the result would displace the existing business and its employees.

k. Proposed measures to avoid or reduce displacement impacts, if any.

Approval of the rezone to RB.

l. Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any.

The subject business and use have been in this location since at least 1993 and qualifies under 30.31F.020(4) to be rezoned to RB based on that historic commercial use. The subject business intends to restore approximately 2.56 acres of vegetated area on the site (just east of the proposed rezone) and establish perimeter landscaping and fencing around the rezoned area to address compatibility.

m. Proposed measures to reduce or control impacts to agricultural and forest lands of long-term commercial significance, if any:

None proposed as there is no impact.

9. Housing

Find help answering housing questions[11]

a. Approximately how many units would be provided, if any? Indicate whether high, middle, or low-income housing.

None.

b. Approximately how many units, if any, would be eliminated? Indicate whether high, middle, or low-income housing.

None.

c. Proposed measures to reduce or control housing impacts, if any:

N/A.

10. Aesthetics

Find help answering aesthetics questions[12]

a. What is the tallest height of any proposed structure(s), not including antennas; what is the principal exterior building material(s) proposed?

No new structures are proposed.

b. What views in the immediate vicinity would be altered or obstructed?

The business' prior removal of vegetation made the businesses operations more visible from a few of the adjacent properties. The Applicant proposes to create visual screening by revegetating the 2.56 acres that were previous disturbed and by establishing perimeter landscaping buffers.

c. Proposed measures to reduce or control aesthetic impacts, if any:

Restore prior vegetation and provide the proposed perimeter landscaping and six foot high fence.

[11] https://ecology.wa.gov/Regulations-Permits/SEPA/Environmental-review/SEPA-guidance/SEPA-checklist-guidance/SEPA-Checklist-Section-B-Environmental-elements/Environmental-elements-9-Housing
[12] https://ecology.wa.gov/Regulations-Permits/SEPA/Environmental-review/SEPA-guidance/SEPA-checklist-guidance/SEPA-Checklist-Section-B-Environmental-elements/Environmental-elements-10-Aesthetics

11. Light and glare

Find help answering light and glare questions[13]

a. What type of light or glare will the proposal produce? What time of day would it mainly occur?

The existing business has outdoor lights around the main shop building for safety and security. Lights from construction equipment can be occasionally used as portable lights when working on equipment. Typically, lights are used on-site during regular business hours at those times of the year when there is extended darkness. Some glare from windshields and/or chrome on equipment and vehicles may occur but are not likely to impact adjacent properties.

b. Could light or glare from the finished project be a safety hazard or interfere with views?

No.

c. What existing off-site sources of light or glare may affect your proposal?

None. Adjacent overhead lights on Highway 9 and outdoor lighting used by adjacent residences do not impact the existing business.

d. Proposed measures to reduce or control light and glare impacts, if any:

Compliance with perimeter landscaping requirements will address light and glare impacts.

12. Recreation

Find help answering recreation questions

a. What designated and informal recreational opportunities are in the immediate vicinity?

Brightwater Park is approximately 2.4 miles south

Willis Tucker Park is approximately 4.8 miles north

Echo Falls Golf Club is approximately 5.4 miles east

b. Would the proposed project displace any existing recreational uses? If so, describe.

No.

c. Proposed measures to reduce or control impacts on recreation, including recreation opportunities to be provided by the project or applicant, if any:

None proposed.

[13] https://ecology.wa.gov/Regulations-Permits/SEPA/Environmental-review/SEPA-guidance/SEPA-checklist-guidance/SEPA-Checklist-Section-B-Environmental-elements/Environmental-elements-11-Light-glare

13. Historic and cultural preservation

Find help answering historic and cultural preservation questions[14]

a. **Are there any buildings, structures, or sites, located on or near the site that are over 45 years old listed in or eligible for listing in national, state, or local preservation registers? If so, specifically describe.**

   No.

b. **Are there any landmarks, features, or other evidence of Indian or historic use or occupation? This may include human burials or old cemeteries. Are there any material evidence, artifacts, or areas of cultural importance on or near the site? Please list any professional studies conducted at the site to identify such resources.**

   None that the consultant is aware of from observation.

c. **Describe the methods used to assess the potential impacts to cultural and historic resources on or near the project site. Examples include consultation with tribes and the department of archeology and historic preservation, archaeological surveys, historic maps, GIS data, etc.**

   Consultant evaluated WISSARD. The site does not have any GLO features on or adjacent to the site. Further, the site is not a registered site nor is adjacent registered properties. And the predictive model indicates the site has a moderately low risk.

d. **Proposed measures to avoid, minimize, or compensate for loss, changes to, and disturbance to resources. Please include plans for the above and any permits that may be required.**

   None proposed.

14. Transportation

Find help with answering transportation questions[15]

a. **Identify public streets and highways serving the site or affected geographic area and describe proposed access to the existing street system. Show on site plans, if any.**

   The project's access is via an existing driveway off State Route (SR) 9, which apron was improved by WSDOT during the most recent expansion of SR 9.

b. **Is the site or affected geographic area currently served by public transit? If so, generally describe. If not, what is the approximate distance to the nearest transit stop?**

   No.

[14] https://ecology.wa.gov/Regulations-Permits/SEPA/Environmental-review/SEPA-guidance/SEPA-checklist-guidance/SEPA-Checklist-Section-B-Environmental-elements/Environmental-elements-13-Historic-cultural-p
[15] https://ecology.wa.gov/Regulations-Permits/SEPA/Environmental-review/SEPA-guidance/SEPA-checklist-guidance/SEPA-Checklist-Section-B-Environmental-elements/Environmental-elements-14-Transportation

c. Will the proposal require any new or improvements to existing roads, streets, pedestrian, bicycle, or state transportation facilities, not including driveways? If so, generally describe (indicate whether public or private).

No.

d. Will the project or proposal use (or occur in the immediate vicinity of) water, rail, or air transportation? If so, generally describe.

No.

e. How many vehicular trips per day would be generated by the completed project or proposal? If known, indicate when peak volumes would occur and what percentage of the volume would be trucks (such as commercial and nonpassenger vehicles). What data or transportation models were used to make these estimates?

No new vehicular trips are proposed. This rezone is intended create consistency between the zone and the underlying, existing use (Building Contractor/Construction Contracting) that has been in place since at least 1993, which type of rezone to RB is allowed under SCC 30.31F.020(4). Neither the rezone nor the anticipated future LDA permit for revegetating 2.56 acres previously disturbed would result in any increased vehicular traffic.

f. Will the proposal interfere with, affect, or be affected by the movement of agricultural and forest products on roads or streets in the area? If so, generally describe.

No.

g. Proposed measures to reduce or control transportation impacts, if any:

None proposed.

15. Public services

Find help answering public service questions[16]

a. Would the project result in an increased need for public services (for example: fire protection, police protection, public transit, health care, schools, other)? If so, generally describe.

No. The rezone seeks to make the zoning consistent with the underlying, existing use that has been in place since at least 1993. The business is not expanding and no additional services would be necessary.

b. Proposed measures to reduce or control direct impacts on public services, if any.

None proposed.

[16] https://ecology.wa.gov/regulations-permits/sepa/environmental-review/sepa-guidance/sepa-checklist-guidance/sepa-checklist-section-b-environmental-elements/environmental-elements-15-public-services

16. Utilities

Find help answering utilities questions[17]

a. **Circle utilities currently available at the site: electricity, natural gas, water, refuse service, telephone, sanitary sewer, septic system, other:**

Electrical – Snohomish PUD

Natural Gas – none

Water – Cross Valley Water District

Garbage and recycling – Waste Management weekly service

Telephone – Comcast

Sanitary – Honey Bucket weekly service of portable toilet for business / Septic for mobile home

b. **Describe the utilities that are proposed for the project, the utility providing the service, and the general construction activities on the site or in the immediate vicinity which might be needed.**

No changes to utilities are proposed. The subject action is a rezone to create consistency between the underlying, existing land use that has been in place since at least 1993. The rezone to RB is permitted by SCC 30.31F.020(4) and is applicable to existing commercial businesses that were established prior to the RB zone.

C.Signature

Find help about who should sign[18]

The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Recoverable Signature

X 

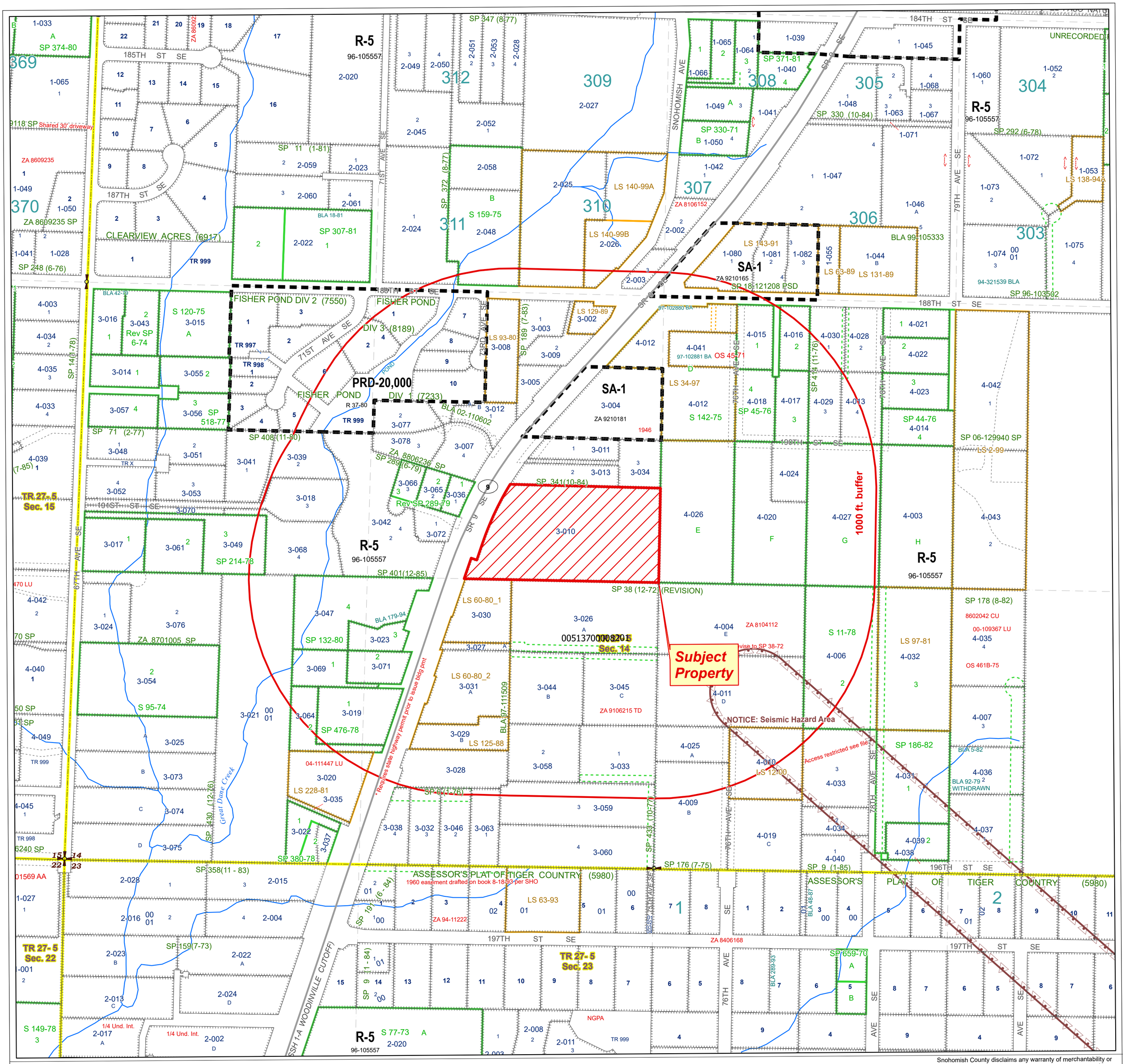
Signed by: 8470e3d4-a186-4a2d-bb39-bb43da50d68c

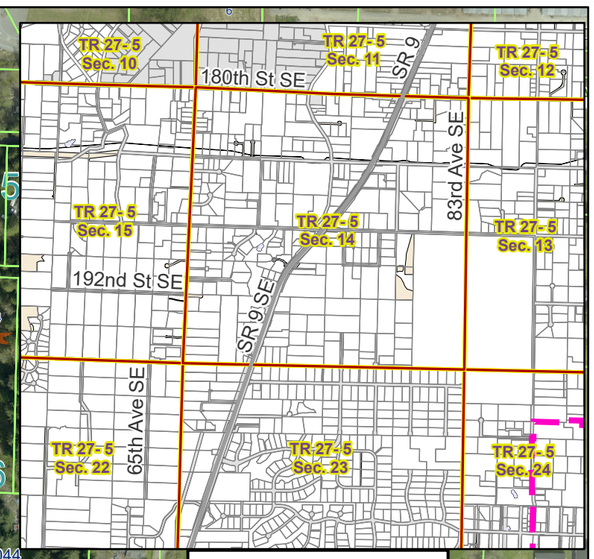
Type name of signee: DAVID K. TOYER, PRESIDENT

Position and agency/organization: APPLICANT LAND USE CONSULTANT / TOYER STRATEGIC ADVISORS, INC.

Date submitted: MARCH 27, 2025 (Original); Revised & Resubmitted JULY 18, 2025

[17] https://ecology.wa.gov/regulations-permits/sepa/environmental-review/sepa-guidance/sepa-checklist-guidance/sepa-checklist-section-b-environmental-elements/environmental-elements-16-utilities
[18] https://ecology.wa.gov/Regulations-Permits/SEPA/Environmental-review/SEPA-guidance/SEPA-checklist-guidance/SEPA-Checklist-Section-C-Signature


R-5
96-105557
SP 374-80
SP 347 (8-77)
SP 371-81
SP 330-71
SP 330 (10-84)
SP 292 (6-78)
SP 307-81
SP 11 (1-81)
SP 372 (8-77)
SP 248 (6-76)
SP 189 (7-83)
SP 144 (1-78)
SP 114 (11-76)
SP 45-76
SP 44-76
SP 408(11-80)
SP 518-77
SP 214-78
SP 401(12-85)
SP 341(10-84)
SP 38 (12-72) (REVISION)
SP 178 (8-82)
SP 186-82
SP 06-129940 SP
SP 132-80
SP 476-78
SP 380-78
SP 358(11 - 83)
SP 159(7-73)
SP 659-70
SP 176 (7-75)
SP 433 (10-77)
SP 430 (12-76)
SP 6(1-76)
SP 289(6-79)
Rev SP 289-79
ZA 8609235
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ZA 8701005 SP
ZA 8806236 SP
ZA 9210165
ZA 9210181
ZA 8106152
ZA 8104112
ZA 8406168
ZA 94-11222
ZA 9106215 TD
ZA 86092
PRD-20,000
R 37-80
FISHER POND DIV 1 (7233)
FISHER POND DIV 2 (7550)
FISHER POND DIV 3 (8189)
CLEARVIEW ACRES (6917)
ASSESSOR'S PLAT OF TIGER COUNTRY (5980)
1960 easement drafted on book 8-18-93 per SHO
ASSESSOR'S PLAT OF TIGER COUNTRY 2 (5980)
BLA 18-81
BLA 42-79
BLA 02-110602
BLA 179-94
BLA 97-111509
BLA 99-105333
BLA 5-82
BLA 92-79 WITHDRAWN
BLA 48-87
BLA 289-93
94-321539 BLA
97-102880 BA
97-102881 BA
LS 140-99A
LS 140-99B
LS 143-91
LS 129-89
LS 93-80
LS 228-81
LS 125-88
LS 60-80_1
LS 60-80_2
LS 63-89
LS 131-89
LS 34-97
LS 12-00
LS 63-93
LS 97-81
LS 138-94A
LS 2-99
OS 45-71
OS 461B-75
S 120-75
S 142-75
S 159-75
S 95-74
S 77-73
S 11-78
S 149-78
Rev SP 6-74
SA-1
ZA 9210165
SP 18-121208 PSD
SA-1
3-004
ZA 9210181
1946
SA-1
3-010
SP 341(10-84)
Subject Property
Subject Property Radius
SNOHOMISH COUNTY COUNCIL
EXHIBIT #
FILE
Vicinity Map
Refer to Snohomish County Code
SCC 30.21.020 for Zoning Definitions
Snohomish County disclaims any warranty of merchantability or warranty of fitness of this map for any particular purpose, either expressed or implied. No representation or warranty is made concerning the accuracy, currency, completeness, or quality of data depicted on this map. Any user of this map assumes all responsibility for use thereof, and further agrees to hold Snohomish County harmless from and against any damage, loss or liability arising from any use of this map. The map was produced by the Snohomish County Department of Planning & Development Services, GIS Team. For more PDS information, please call (425) 388-3311, or visit us on the Internet at <LINK>http://www1.co.snohomish.wa.us/Departments/PDS.</LINK>
This product is not a survey, nor an instrument to make definitive Critical Area determinations. Water body features (rivers, streams, canals, etc.) have been partially revised to follow digital orthophotos and field observations by the County. All geo-datasets used to create this map have spatial uncertainties, including this depiction of tax parcels, zoning, and/or future land use features. Persons seeking the most current tax parcel, zoning, or future land use designations should consult the official files with the Snohomish County Assessor or the Department of Planning & Development Services (PDS) respectively.
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Zoning Line
Urban Growth Area (UGA)
Rural/Urban Transition Area (R/UTA)
Short Plat Lots
Short Plat Easement
Lot Status
Lot Status Easement
Agriculture - RCF, UCF, LCF
Agriculture Notice 1,300 ft.
Commercial Forest (CF, LF)
Commercial Forest (CF w/FTA)
Commercial Forest Transition Area
CF, LF Notice (500 ft.)
Mineral Resource Lands (MRL)
MRL Notice 2,000 ft.
Airpark Notice 2,500 ft.; Airport Influence Area
Volcanic Lahar w/ Notice 200 ft.
Minimum Lot Size 10AC
Density Fringe
FHA-FEMA 100 Year Flood
Cities
Tribes
PLSS Section Lines
Cadastral Parcel
Cadastral Easement
Block
ROW
Vac ROW
Vac Lot
Lot
Subdiv
Other Lot
Other Subdiv
Gov Lot
Project Folder Name: PBSS/MSI RB Rezone
Project Manager: Jamie Taylor
Cart. Code: 6090
Date:12/15/2025
0 200 400 600 800 Feet
Snohomish County
PBSS/MSI RB Rezone
PFN 25-105874
Exhibit E.1
PFN: 25-105874 REZO
25-105880 VAR
Snohomish County Planning and Development Services
Permitting Division
ZONING



VICINITY MAP

All maps, data, and information set forth herein ("Data"), are for illustrative purposes only and are not to be considered an official citation to, or representation of, the Snohomish County Code. Amendments and updates to the Data, together with other applicable County Code provisions, may apply which are not depicted herein. Snohomish County makes no representation or warranty concerning the content, accuracy, currency, completeness or quality of the Data contained herein and expressly disclaims any warranty of merchantability or fitness for any particular purpose. All persons accessing or otherwise using this Data assume all responsibility for use thereof and agree to hold Snohomish County harmless from and against any damages, loss, claim or liability arising out of any error, defect or omission contained within said Data. Washington State Law, Ch. 42.56 RCW, prohibits state and local agencies from providing access to lists of individuals intended for use for commercial purposes and, thus, no commercial use may be made of any Data comprising lists of individuals contained herein.

Map Produced by
Planning & Development Services
<LINK>https://www.snohomishcountywa.gov</LINK
485.388.3311

Snohomish County

Subject Property
City Boundary
Assessor Parcel
Water Course
5ft Contour
Public Survey Section
>33% CAR Slope
UGA Boundary

N

0 200 400 600 Feet

SNOHOMISH COUNTY COUNCIL
EXHIBIT # E.2
FILE 25-105874 REZO

Date Printed: 12/15/2025

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Snohomish County Planning & Development Services
Permitting Division

Aerial Photography & Vicinity Map

PBSS/MSI RB Rezone

PFN 25-105874

Exhibit E.2
PFN: 25-105874 REZO
25-105880 VAR

Date of aerial photography: 2022

TOYER STRATEGIC ADVISORS, INC.
3705 COLBY AV, STE 1 | EVERETT, WA 98201
toyerstrategic.com | 425-322-5226

SNOHOMISH COUNTY COUNCIL
EXHIBIT # A.7
FILE 25-105874 REZO

~~March 27, 2025~~
REVISED JULY 18, 2025

Planning & Development Services Snohomish County
3000 Rockefeller Ave
Everett, WA 98201

REZONE & DECISION CRITERIA ANALYSIS – PBSS INVESTMENTS

To Whom It May Concern:

On behalf of the Applicant, PBSS Investments, LLC.[i], our firm respectfully submits the following analysis in support of an application for a rezone from Rural-5 (R-5) zone to Rural Business (RB). The subject rezone **DOES NOT** require a change to the land use designation in the comprehensive plan.

CONTEXT FOR REZONE:

SCC 30.31F.020, Minimum Zoning Criteria for the Rural Business (RB), Rural Industrial (RI), Rural Freeway Service (RFS) and Clearview Rural Commercial (CRC) zones, establishes in Section (2) that:

> The RB zone is a zoning classification which will be located within a rural residential land use designation. The RB zone, including expansions to the RB zone classification, shall be applied only to properties that meet all the following locational criteria, **except as provided in SCC 30.31F.020(3) and (4)** *Emphasis Added*

SCC 30.31F.020(4), below, establishes that the RB zone can be applied to properties having an existing commercial use as follows:

> For properties that contain a commercial use **permitted or otherwise** allowed in the RB zone that existed on or before the effective date of this section, a rezone to RB may be approved only for that portion of the site containing the existing use and may not expand beyond the location of the existing commercial use unless the locational criteria of subsection (2) of this section are met with respect to the expansion area. **The locational criteria contained in subsection (2) of this section and the maximum building footprint requirements of SCC 30.31F.110 and 30.31F.120 need not be met for that portion of the site containing the existing use**. *Emphasis Added*

The Applicant's commercial use of the subject parcel was established prior to the effective date of both the current RB zoning requirements at SCC 30.31F.020 and the original RB zoning requirements at SCC 18.65.020. Further, the Applicant's commercial use, which is consistent with the current "Construction Contracting" use is a permitted use in the RB zone.

There is nothing within either SCC 30.31F.020 (current code) or SCC 18.65.020 (the prior code) that establishes a requirement that the commercial use in question must already be a permitted or legally non-conforming use at the time a rezone to RB is sought. In fact, the RB zoning classification, which was adopted along with other substantive commercial/industrial rural zoning changes, was explicitly intended for the purpose of addressing existing small businesses located throughout the rural areas, some of which were known to be unpermitted uses. By establishing the RB zone, the County Council made a clear legislative decision to help bring existing rural businesses into compliance while simultaneously limiting the future expansion of such uses.

In fact, the legislative record for the adoption of Ordinance No. 98-121 clearly shows that the "Building

Exhibit A.7
PFN: 25-105874 REZO
25-105880 VAR

Contractor" (*the use now called Construction Contracting*) was explicitly included in the ordinance because of requests by attorneys for CCH Construction (Richard & Charlene Imus) and the Blooms (a/k/a Three B's), which parties sought relief to address zoning issues encountered by their existing rural businesses. As an example, CCH Construction, a small construction contractor that had been cited by the County for operating a use in the Rural-5 zone, asked Council to provide relief by creating a rezone process for their small, unpermitted business to continue to operate by seeking a rezone to the new Rural Business zone. This is evidenced by Council Exhibits 76, 101, 104 and 105 to Ordinance No. 98-121, which are collectively attached hereto as **Exhibit A**.

Thus, when Council added the language "*permitted or otherwise allowed in the RB zone. . .*" such provision was to be prospectively applied when the use is permitted within the newly created RB zone, making it irrelevant whether the use in question was unpermitted, permitted, or legally nonconforming under its existing zone.

This is confirmed by the County Council's decision overturning the rezone denial by the Snohomish County Hearing Examiner for Three B's Construction (File No. 99-10198 LU) because the use was an illegal business (as opposed to a legally non-conforming use) that couldn't therefore qualify for a rezone to RB.

Three B's Construction owned and operated an unpermitted contracting business on a 13-acre property, later seeking to legalize the business on 4 acres of the property through a rezone to an RB designation. The Hearing Examiner determined that Ordinance No. 98-121 was intended to address nonconforming uses, not illegal uses. Hearing Examiner Decision 99-101988 at 10. On appeal, County Council overturned the Hearing Examiner's decision, finding that the Hearing Examiner's interpretation "effectively nullifies the legislative relief intended by the Council" in adopting Ordinance 98-121, stating further that the intent behind the Ordinance "was to apply the exception language to all existing uses, whether or not they were legal nonconforming uses a (sic) the time of application for a rezone to Rural Business." Hearing Examiner Decision on Remand by Motion 99-384 at 16-17. In its findings and conclusions, the County Council instructed that its intent was to include such businesses and that such existing uses are exempt from the locational criteria. *Id.* As part of its decision in Three B's, Council further established that the rezone of such existing contractor businesses was in conformance with the comprehensive plan, which established that changed circumstances were not necessary to prove and that such rezone was in the interest of the public health, safety and welfare.

The attached **Exhibit B** is extensive catalog of documents which include the original Hearing Examiner Decision in Three B's; documents from the Council's appeal proceedings, including transcripts of its public hearing establishing the RB zone, its decision, and Motion 99-384; and the Hearing Examiner's reissued decision in the matter.

In addition to showing that Council was allowing existing business of any type to rezone to RB, the evidence at the time, including in the transcripts, reflects that relative to the Contractor use in the RB zone, the Council established the maximum building footprint to apply to future building footprints, not existing buildings. Council member Sievers shared a particular concern that existing buildings over the footprint limitation might "have to tear it down and start over again." Hearing Examiner Decision on Remand 99-384, Exhibit 34 at 1.

The record conclusively shows that Council was concerned that if they were allowing existing business to be granted a rezone, it would be an issue if the conditions they established future contractor uses in the RB zone may be challenging (or impossible) for existing businesses to comply.

The Applicant points this out as it pertains to its separate, but related request for a variance from standards that would effectively deny the continuance of their existing business should they be applied relative to the instant rezone request. Such denial of the variance would be equivalent to a denial of the rezone and prevent an existing business from obtaining the relief envisioned by the Council which established the code in question. Council's primary concern was allowing existing businesses to continue to operate as they had, or "grandfathered" into the existing zoning code. Hearing Examiner Decision on Remand 99-384, Exhibit 34 at 8 (*discussion between council members Sievers, Cothern, and Larsen and PDS' Reirsgard and Shilde regarding adherence to zoning criteria*). Council's discussion evidences its intent to allow preexisting uses, whether illegal or otherwise, and not require strict adherence to zoning requirements.

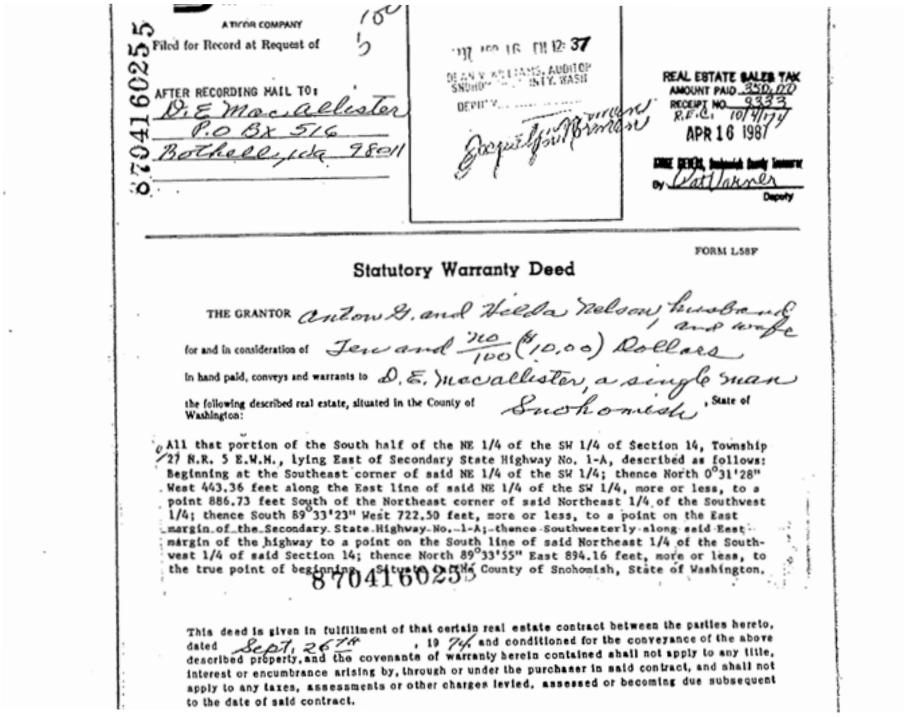
Again, whether the Applicant's use in this matter is legal, illegal or legally non-conforming is irrelevant as the fact that Applicant's use was established and has been continuously maintained prevails based on Council's clear intent.

Moreover, the use of the phrase "permitted or otherwise allowed" contemplates that future rezone, such as this, could be approved for existing rural businesses regardless of whether those businesses complied with all current development standards.

ESTABLISHMENT OF THE COMMERCIAL USE:

To demonstrate that the Applicant's commercial use existed prior to the effective date of both the original RB zone ordinance[1] and the current RB zone ordinance[2], the Applicant has provided a general history of the commercial use of the site prior to the original enactment of the RB zone:

1. Duncan (D.E.) MacAllister acquired the subject property from Anton and Hilda Nelson in 1974.



A TICOR COMPANY

Filed for Record at Request of

AFTER RECORDING MAIL TO: D.E. MacAllister P.O Box 516 Bothell, Wa 98011

87041602555

APR 16 PM 12:37

REAL ESTATE SALES TAX AMOUNT PAID 350.00 RECEIPT NO. 9333 R.F.C. 10/4/174 APR 16 1987

FORM L58F

Statutory Warranty Deed

THE GRANTOR Anton G. and Hilda Nelson, husband and wife

for and in consideration of Ten and no/100 ($10.00) Dollars

in hand paid, conveys and warrants to D. E. MacAllister, a single man

the following described real estate, situated in the County of Snohomish, State of Washington:

All that portion of the South half of the NE 1/4 of the SW 1/4 of Section 14, Township 27 N.R. 5 E.W.M., lying East of Secondary State Highway No. 1-A, described as follows: Beginning at the Southeast corner of said NE 1/4 of the SW 1/4; thence North 0°31'28" West 443.36 feet along the East line of said NE 1/4 of the SW 1/4, more or less, to a point 886.73 feet South of the Northeast corner of said Northeast 1/4 of the Southwest 1/4; thence South 89°33'23" West 722.50 feet, more or less, to a point on the East margin of the Secondary State Highway No. 1-A; thence Southwesterly along said East margin of the highway to a point on the South line of said Northeast 1/4 of the Southwest 1/4 of said Section 14; thence North 89°33'55" East 894.16 feet, more or less, to the true point of beginning. Situate in the County of Snohomish, State of Washington.

87041602555

This deed is given in fulfillment of that certain real estate contract between the parties hereto, dated Sept. 26th, 19 74 and conditioned for the conveyance of the above described property, and the covenants of warranty herein contained shall not apply to any title, interest or encumbrance arising by, through or under the purchaser in said contract, and shall not apply to any taxes, assessments or other charges levied, assessed or becoming due subsequent to the date of said contract.

2. MacAllister's background was in construction and electrical/equipment maintenance, which background is highlighted in his obituary.[3] He retired in 1980, but thereafter he continued to be personally engaged in construction work, equipment repair and maintenance, storage of equipment and other items, etc. Initially, MacAllister utilized a brick building "shop" on the site for these activities. But in 1986 he applied for permits to construct a new metal building "shop" to expand his use on the site, which was approved in 1987. The site also included several small wooden outbuildings at the time of Applicant's purchase.

---

[1] Ordinance 98-121, adopted on December 16, 1998. The presumptive effective date of the ordinance would be late December 1998 or early January 1999 depending on the timing of the Executive's signature and date of publication as the ordinance did not establish an effective and would have become effective five days after publication.

[2] The RB zone was readopted by Amended Ordinance No. 02-064 (effective January 1, 2023), which action renumbered SCC 18.65.020(3) to SCC 30.31F.020(3) until adoption of Ordinance No. 03-099, which renumbered subsection SCC 30.31F.020(3) to subsection (4)

[3] A copy is attached as Exhibit M.

Duncan E. MacAllister

THURSDAY, AUGUST 31ST, 2006

Duncan E. MacAllister, 90, a former Stanwood community resident, passed away on Thursday, August 31, 2006 at Home Place Special Care in Burlington.
He was born on June 2, 1916 in Grand Rapids, Minnesota, the son of Arnold & Teresa Syres MacAllister.
He was raised and attended school in Grand Rapids and from there joined the Civilian Conservation Corps in the early 1930's. In 1935 he moved to Marysville, WA and worked as a carpenter for the Howard Wright construction company in Seattle for several ye
During WW II he enlisted into the U.S. Army Air Corps and was a turret gunner on a Mitchell B-25 bomber. He nt time serving in India.
r his discharge he again worked in construction in King County.
e later worked for the Columbia Ward Fish Co. of Seattle as an electrical and equipment maintenance engineer in Alaska for several years, retiring in 1980. Duncan had made his home in Stanwood since 1992 until recently moving to Skagit County.
He was a member of the 22nd Bomb Squadron Assoc. and the International Brotherhood of Electrical Workers Union.
He is survived by his brother, Bill MacAllister and his wife, Lilly of Acme and several nieces and nephews. He was preceded in death by 3 brothers, Stanley R., Douglas A. and Alvin E. MacAllister and 2 sisters, Margaret Cook and Emma Wells.
Graveside Inurnment services will be held at the Green Hills Memorial Cemetery in Burlington on Thursday, September 7, 2006 at 2:00pm with Military Honors provided by the George Baldridge Post 43, American Legion. Services and cremation are under the direction of Lemley Chapel, Sedro-Woolley.

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3. On May 7th, 1986, the Snohomish County Council approved Amended Ordinance No. 86-037, repealing the existing zoning code in its entirety and replacing it with a new Title 18 (*aka 1986 Zoning*). The effective date of the new zoning code per Section 3 of the ordinance was set as July 1, 1986. Title 18 did not include a Rural Business (RB) zone, as the Rural Business zone was not established by Ordinance 98-121 until December 16, 1998.

Amended

ORDINANCE NO. 86-037

RELATING TO ZONING; REPEALING TITLE 18 SNOHOMISH COUNTY CODE, ZONING, and ENACTING A NEW TITLE 18, ZONING

BE IT ORDAINED:

Section 1. Title 18 Snohomish County Code, Zoning, is hereby repealed in its entirety.

Section 2. A new Title 18, Snohomish County Code, as attached hereto and made a part hereof, is hereby enacted.

Section 3. The effective date of this ordinance is July 1, 1986.

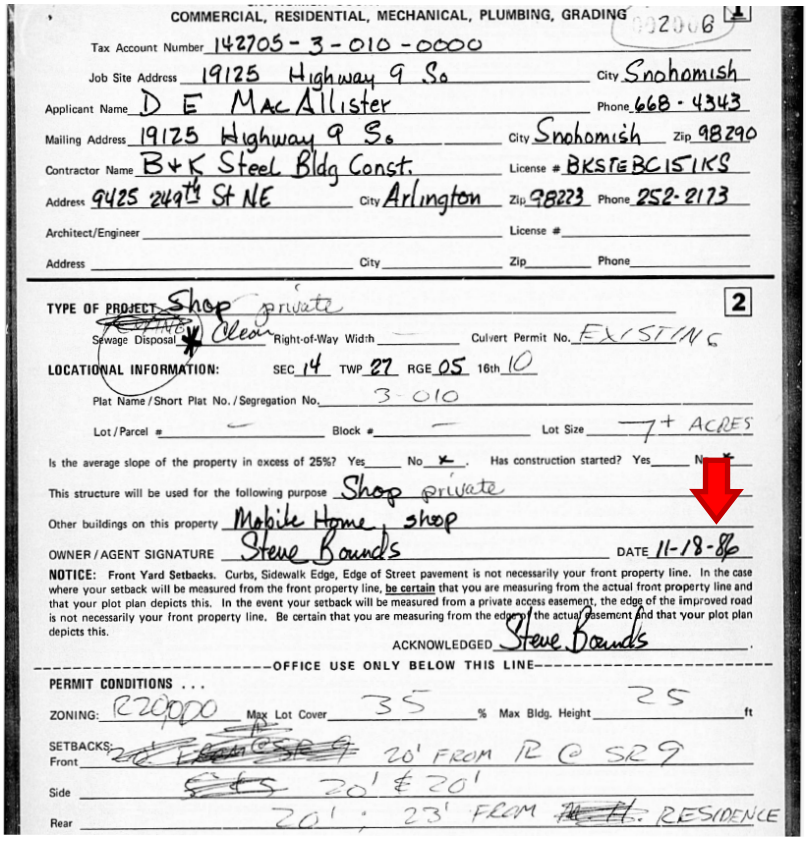
PASSED this 7th day of May, 1986.

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

Chairperson

4. On or about November 18, 1986, MacAllister through his agent Steve Bonds, applied for a development permit to construct a "shop" in the R20,000 zone[4]. This permit application (shown on the following page) denotes that there was a mobile home and "shop" (brick building) already on the premises. This newly permitted building was constructed in 1987.

[4] The underlying zone was RR 20,000 before the Council adopted an areawide rezone via Ordinance 91-034 in March 1991, which changed the subject property to R-5.



COMMERCIAL, RESIDENTIAL, MECHANICAL, PLUMBING, GRADING

Tax Account Number 142705-3-010-0000

Job Site Address 19125 Highway 9 So City Snohomish

Applicant Name D E MacAllister Phone 668-4343

Mailing Address 19125 Highway 9 So City Snohomish Zip 98290

Contractor Name B+K Steel Bldg Const. License # BKSTEBC151KS

Address 9425 249th St NE City Arlington Zip 98223 Phone 252-2173

Architect/Engineer License #

Address City Zip Phone

TYPE OF PROJECT Shop private 2

Sewage Disposal Clear Right-of-Way Width Culvert Permit No. EXISTING

LOCATIONAL INFORMATION: SEC 14 TWP 27 RGE 05 16th 10

Plat Name / Short Plat No. / Segregation No. 3-010

Lot / Parcel # Block # Lot Size 7+ ACRES

Is the average slope of the property in excess of 25%? Yes No X. Has construction started? Yes No X

This structure will be used for the following purpose Shop private

Other buildings on this property Mobile Home, shop

OWNER / AGENT SIGNATURE Steve Bounds DATE 11-18-86

NOTICE: Front Yard Setbacks. Curbs, Sidewalk Edge, Edge of Street pavement is not necessarily your front property line. In the case where your setback will be measured from the front property line, be certain that you are measuring from the actual front property line and that your plot plan depicts this. In the event your setback will be measured from a private access easement, the edge of the improved road is not necessarily your front property line. Be certain that you are measuring from the edge of the actual easement and that your plot plan depicts this.

ACKNOWLEDGED Steve Bounds

OFFICE USE ONLY BELOW THIS LINE

PERMIT CONDITIONS ...

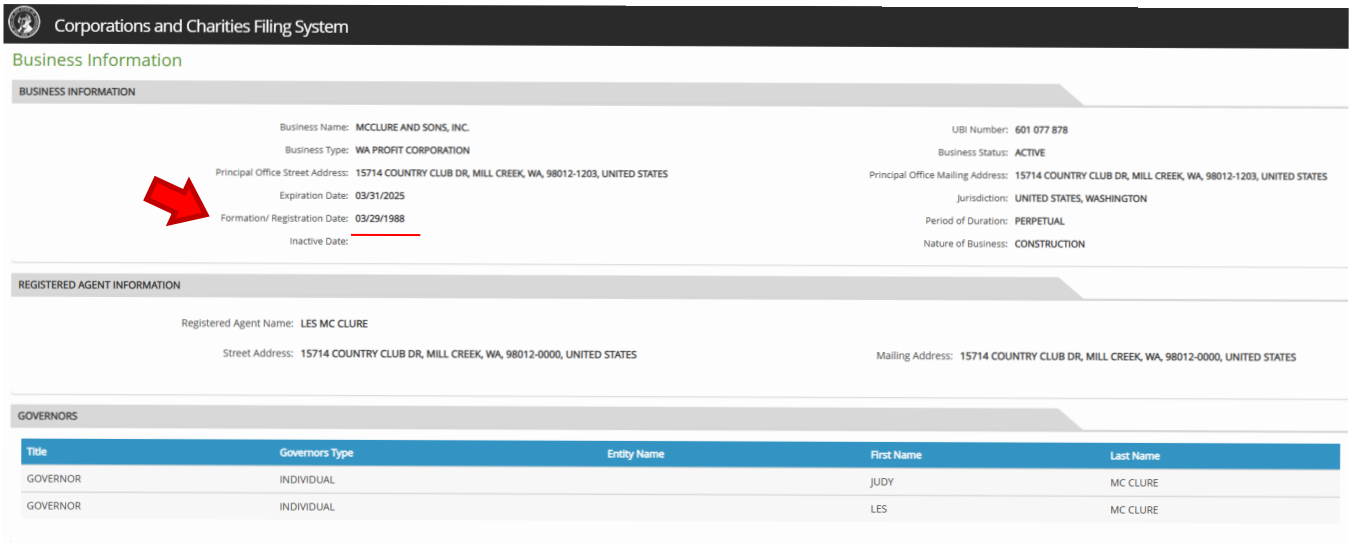
ZONING: R20000 Max Lot Cover 35 % Max Bldg. Height 25 ft

SETBACKS: Front 20' FROM R @ SR9

Side 20' & 20'

Rear 20' ; 23' FROM RESIDENCE

5. Les and Judy McClure started McClure & Sons, Inc., a construction contracting firm, in March of 1988 according to the Washington Secretary of State's records:[5]



Corporations and Charities Filing System

Business Information

BUSINESS INFORMATION

Business Name: MCCLURE AND SONS, INC.
Business Type: WA PROFIT CORPORATION
Principal Office Street Address: 15714 COUNTRY CLUB DR, MILL CREEK, WA, 98012-1203, UNITED STATES
Expiration Date: 03/31/2025
Formation/ Registration Date: 03/29/1988
Inactive Date:

UBI Number: 601 077 878
Business Status: ACTIVE
Principal Office Mailing Address: 15714 COUNTRY CLUB DR, MILL CREEK, WA, 98012-1203, UNITED STATES
Jurisdiction: UNITED STATES, WASHINGTON
Period of Duration: PERPETUAL
Nature of Business: CONSTRUCTION

REGISTERED AGENT INFORMATION

Registered Agent Name: LES MC CLURE
Street Address: 15714 COUNTRY CLUB DR, MILL CREEK, WA, 98012-0000, UNITED STATES
Mailing Address: 15714 COUNTRY CLUB DR, MILL CREEK, WA, 98012-0000, UNITED STATES

GOVERNORS

Title	Governors Type	Entity Name	First Name	Last Name
GOVERNOR	INDIVIDUAL		JUDY	MC CLURE
GOVERNOR	INDIVIDUAL		LES	MC CLURE

6. In 1993, Les McClure negotiated to purchase the property from MacAllister. Notes[6] from site visits and negotiation of a purchase and sale agreement observed that there was machinery and equipment (including heavy equipment), boats, materials and other items on the subject property. Mr. McClure can provide testimony that MacAllister was engaged in equipment and machinery repair, storage of materials and supplies – which were primarily associable to his involvement in the construction industry (note

[5] A full copy of the Secretary of State information is attached hereto as **Exhibit C**.

[6] Copies of these notes are attached as **Exhibit L**.

MacAllister's history in construction from his obituary).

Seller agrees to remove all scrap metal, trucks parts gas/oil & misc that are on the property.

9 Seller will remove all trucks, machinery boats, generators etc on prop.

Seller to leave for buyer the John Deer cat now on the property *(of which seller can borrow)

7. McClure & MacAllister came to an agreement in 1993 and the real estate contract implementing the sale of the property was executed on June 28, 1993, and fulfilled January 1, 2001, as indicated by the Statutory Warranty Deed recorded thereafter as AFN No. 200103020404 (an image of which is shown on the following page). A chain of title is attached hereto as **Exhibit D**.

200103020404

200103020404
03/02/2001 12:51 PM Snohomish County
P.0002 RECORDED

Ptn. 14-27-5

Filed for Record at Request of
Stewart Title Company of Snohomish County
Escrow Number
STEWART W320 (FULFILLMENT)

Statutory Warranty Deed

Grantor(s) D E MACALLISTER, AS HIS SEPARATE ESTATE
Grantee(s) LESLIE D MCCLURE AND JUDY F MCCLURE, HUSBAND AND WIFE
Abbreviated Legal ATTACHED HERETO AS EXHIBIT 'A' AND MADE A PART HEREOF
Additional legal(s) on page 2
Assessor's Tax Parcel Number(s): 142705301000000

THE GRANTOR D E MACALLISTER, AS HIS SEPARATE ESTATE
for and in consideration of FULFILLMENT OF REAL ESTATE CONTRACT
in hand paid, conveys and warrants to LESLIE D MCCLURE AND JUDY F MCCLURE, HUSBAND AND WIFE
the following described real estate, situated in the County of SNOHOMISH , State of Washington
See Attached Exhibit "A"
This deed is given in fulfillment of that certain real estate contract between the parties hereto, dated JUNE 28, 1993, and conditioned for the conveyance of the above described property, and the covenants of warranty herein contained shall not apply to any title, interest or encumbrance arising by, through or under the purchaser in said contract, and shall not apply to any taxes, assessments or other charges levied, assessed or becoming due subsequent to the date of said contract

Real Estate Excise Tax was paid on this sale or stamped exempt on JUNE 30, 1993, Rec No 11088
Dated this 31 day of Jan 2001

By D E MacAllister D E MACALLISTER By _____

By _____ By _____

STATE OF WASHINGTON } SS
County of Snohomish }

I certify that I know or have satisfactory evidence that D E MACALLISTER
is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledge it to be his free and voluntary act for the uses and purposes mentioned in this instrument.

Dated 1/31/01 Diane M. Hart

Notary Public in and for the State of WASHINGTON
Residing at Everett
My appointment expires 11-8-01

DIANE M. HART NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES

8. After executing the real estate contract to purchase the site from MacAllister in June 1993, McClure's business McClure and Sons, Inc., a construction contracting company, began using the site for their "Building Contractor" business[7] including using the existing shops for storage, maintenance and repair of their equipment, as well as using outdoor areas for the storage of equipment, machinery, materials and supplies awaiting either repair/service, return to a job site, or sale at auction (when the equipment reached its useful life).

9. In November of 2012, Les and Judy McClure formed PBSS Investments, LLC, a Washington Limited Liability Company, and transferred ownership of the subject parcel to the LCC in December of 2012.[8] Les and Judy McClure continue to be the Governors of PBSS Investments, LLC. and the registered agent is McClure and Sons, Inc. The change in ownership did not have any material effect on the use of the site by McClure and Sons, Inc. as a Building Contractor/Construction Contracting use (which use has been in continuous operation at this location since 1993).

10. McClure & Sons, Inc., established their commercial use on the subject property approximately 5.5 years before the adoption of Ordinance 98-121, which first allowed for rezones to the RB zone, and McClure has continuously used the site for such activities since. SCC 18.65.020, 'Minimum Zoning Criteria' included subsection (3) allowing existing commercial uses existing prior to the RB zone to apply for a rezone from their existing rural zone to the RB zone:

> *(3) For properties that contain a commercial use **permitted or otherwise allowed in the RB zone that existed on or before the effective date of this section**, a rezone to RB may be approved only for that portion of the site containing the existing use and may not expand beyond the location of the existing commercial use unless the location criteria of SCC 18.65.020(2) are met with respect to the expansion area. **The locational criteria contained in SCC 18.65.020(2) and the maximum building footprint requirements of SCC 18.65.040(2) and (3) need not be met for that portion of the site containing the existing uses**.* **Emphasis Added**

11. Current code at SCC 30.31F.020(4) similarly provides:

> *(4) **For properties that contain a commercial use permitted or otherwise allowed in the RB zone that existed on or before the effective date of this section, a rezone to RB may be approved only for that portion of the site containing the existing use** and may not expand beyond the location of the existing commercial use unless the locational criteria of subsection (2) of this section are met with respect to the expansion area. **The locational criteria contained in subsection (2) of this section and the maximum building footprint requirements of SCC 30.31F.110 and 30.31F.120 need not be met for that portion of the site containing the existing use**.* ***Emphasis Added***

12. As previously stated, the RB zone was enacted in 1998 five plus years after the McClures' established their use as a Building Contractor[3] at the subject location. In accordance with the provisions in 30.31F.020(4) they are still entitled to obtain a rezone for the portion of their site where that original use is located, which use is now referred to as Construction Contracting.

13. As the Applicant has endeavored to maintain as much tree canopy on its site as possible as it helps provide shade for its employees, visual separation, etc. Thus, the Applicant's business operations and use of the site has consisted of storing vehicles, machines, equipment, and materials around the site within the cleared areas and in between trees. Thus, given the tree canopy aerials can help establish the generally footprint used by the business, but do not necessarily reflect the full area under canopy that has been used. We collected aerials from Snohomish County Public Works Aerials that date to 1995, which aerials help establish the

[7] As referenced in Section 18.32.040 at the time "Building Contractor" means a facility where a person or company that does plumbing, electrical, structural, finish, or other construction work, stores or maintains their equipment and supplies.

[8] A copy of the Secretary of State documentation showing the registration is attached hereto as **Exhibit E**.

footprint of the Building Contractor[3] use as it existed prior to the 1998 adoption of Ordinance 98-121 which created the RB zone. The area in use at that time consistent of ±3.8 acres as shown on the site plan submitted with this application for rezone. This footprint informs the boundary for the rezone. A snip of the 1995 aerial[9] that has been marked up to highlight's the site's use at that time is shown on the following page. This image also compares the aerial from 1995 with a more recent aerial from 2022 before several punk trees were removed for safety reasons (removal which PDS previous concurred did not require an FPA, see **Exhibit F**):



14. In sum, PBSS Investments is entitled to seek a rezone for the portion of its property in existing use as a Building Contractor use when the RB zone was adopted in December 1998 and which use continues today. As of 1995 the Building Contracting use consisted of approximately 149,238 square feet or approximately 3.8 acres of the site. But in the instant application, PBSS is requesting a rezone of only 2.86 acres (approximately 124,582 square feet, the minimum area it needs to continue to operate. The location of the buildings and use on the site predating the adoption of the RB zone make this request consistent with the allowance for RB rezones in SCC 30.31F.020(4), as well as exempt from the location criteria in SCC 30.31F.020(2) and building footprint limits in SCC 30.31F.100 and .120.~~, which is the area that should be rezoned to the RB zone consistent with SCC 30.31F.020(4).~~

REZONE CHECKLIST SECTION II.A - REQUIRED INFORMATION

5. DESCRIBE HOW THE PROPOSAL IS CONSISTENT WITH THE COMPREHENSIVE PLAN

The Snohomish County Council recently adopted Amended Ordinance 2024-030 on December 4, 2024, which ordinance was published on January 29, 2025. In accordance with Section 40 of Ordinance 2024-030, its effective date is:

> *the latest of the following dates: (1) 60 days after the date of publication of notice of adoption of this ordinance, as provided in RCW 36.70A.290(2); or (2) if a petition for review to the Growth Management Hearings Board is timely filed, upon issuance of the Board's final order affirming the ordinance or a decision by a court of law concluding the ordinance complies with the GMA.*

[9] Full size aerials pre- and post-markup are included with this submittal, include a 1978 Aerial (**Exhibit G**), a 1995 Aerial (**Exhibit H**), 1984 Aerial comparison to 2022 aerial (**Exhibit I**), 1995 Aerial comparison to 2022 (**Exhibit J**), and 2022 Aerial (**Exhibit K**).

The sixtieth day is March 30, 2025, a Sunday, which means the new plan will not be effective until at least March 31st subject to an appeal dealing such effectiveness further. Thus, the plan in effect at the time this rezone application is made is the 2015 Comprehensive Plan as last amended by Amended Ordinance No. 21-060, adopted October 6, 2021. The County has contended that the Applicant needs to comply with the Comprehensive Plan goals, objecives, and policies contained within the 2024 Comprehensive Plan. As addressed in an attached "Comprehensive Plan Analysis Matrix" accompanying the Applicant's resubmittal, there have been no substantive changes to the relevant goals, objectives and policies, except that LU 6.E.7 was renumbered to 6.E.6 and LU 6.E.8 was renumbered to LU 6.E.7. Below we have updated the analysis to account for these minor changes and provide additional analysis where necessary. That said, the Applicant points to the attached "Comprehensive Plan Analysis Matrix" as a supplement to below.

The comprehensive plan goals, objectives or policies cited below in **bold** are from the ~~2015~~ 2024 Comprehensive Plan and the Applicant's responsive analysis is in *blue* font.

The Applicant notes that PDS is likely to respond that the Applicant's proposed rezone under SCC 30.31F.020(4) is inconsistent with some of the goals, objectives, and policies within the comprehensive plan. In response, the Applicant points out in its "Comprehensive Plan Analysis Matrix" that these objectives and policies are guidelines, mostly as it relates to requirements that should be included in the zoning code (not requirements hat should apply to project decisions).

Additionally, the Applicant calls attention to caselaw that makes it clear that rezones must only show "general conformance" to the comprehensive plan, and in any cases where ~~notes that Washington Courts have addressed such conflicts and clearly established that where such a~~ conflict exists between a comprehensive plan goal, objective or policy, the zoning code prevails.

¶ For reference:

Woods v. Kittitas Cty., 130 Wash. App. 573, 123 P.3d 883 (2005) citing *Tugwell v. Kittitas County*

> *Whether an application for rezoning complies with a comprehensive plan is not determinative; **only general conformance with the comprehensive plan is required**.*

Citizens for Mount Vernon v. City of Mount Vernon, 133 Wn.2d 861, 873–74, 947 P.2d 1208, 1215 (1997)

> *Since a comprehensive plan is a guide and not a document designed for making specific land use decisions, conflicts surrounding the appropriate use are resolved in favor of the more specific regulations, usually zoning regulations. A specific zoning ordinance will prevail over an inconsistent comprehensive plan. *874 Cougar Mountain Assocs. v. King County, 111 Wash.2d 742, 757, 765 P.2d 264 1988). If a comprehensive plan prohibits a particular use but the zoning code permits it, the use would be permitted. Weyerhaeuser v. Pierce County, 124 Wash.2d 26, 43, 873 P.2d 498 (1994). **These rules require that conflicts between a general comprehensive plan and a specific zoning code be resolved in the zoning code's favor**.*

Lakeside Indus. v. Thurston Cty., 119 Wn. App. 886, 894–95, 83 P.3d 433, 437 (2004), as amended (Feb. 24, 2004)

> *Generally, a specific zoning ordinance will prevail over an inconsistent comprehensive plan. Weyerhaeuser v. Pierce County, 124 Wash.2d 26, 43, 873 P.2d 498 (1994) (citing Cougar Mountain Assoc. v. King County, 111 Wash.2d 742, 757, 765 P.2d 264 (1988)). Because a comprehensive plan is a guide and not a document designed for making specific land use decisions, conflicts concerning a proposed use are resolved in favor of the more specific regulations. *895 Citizens for Mount Vernon v. City of Mount Vernon, 133 Wash.2d 861, 873, 947 P.2d 1208 (1997). Thus, **to the extent the comprehensive plan prohibits a use that the zoning code permits, the use is permitted**. Weyerhaeuser, 124 Wash.2d at 43, 873 P.2d 498.*

As such, the Applicant contends that where the comprehensive plan goals, objectives or policies may conflict with

the application for a RB rezone as permitted in SCC 30.31F.020(4), the criteria for the rezone would prevail over the comprehensive plan. ~~such conflict may not be weighed against the rezone decision.~~

Objective LU 6.E
Within rural residential areas, recognize existing businesses that are an integral part of the rural character and provide for community facilities and small-scale commercial developments that support the immediate rural population with necessary goods and services.

*This Objective ~~has **LIMITED APPLICABILITY**~~ **DOES NOT APPLY** to the subject rezone proposed. By adopting SCC 30.31F.020(4) the Council clearly exercised its flexibility to retain existing businesses in the rural area. A rezone to RB is permitted for the retention of existing businesses that were established in the rural area prior to the RB zone being adopted in 1998. Additional analysis is provided in the Applicant's attached "Comprehensive Plan Analysis Matrix."*

McClure and Sons, Inc. is an existing business that has utilized the subject rural property since June 28, 1993, which preceded adoption of both this plan and Objective LU 6.E.

¶ *McClure and Sons, Inc. is a small-scale commercial business that provides services to the rural area, as well as surrounding urban areas. Because of the use's existence prior to the adoption of the plan and this objective, we point out that retaining McClure and Sons, Inc. in this location is consistent with the Growth Management Act as follows:*

> *RCW 36.70A.020 – Findings-Rural Lands:*
> *"The legislature finds that to retain and enhance the job base in rural areas, rural counties must have flexibility to create opportunities for business development. Further, the legislature finds that rural[10] **counties must have the flexibility to retain existing businesses and allow them to expand**. The legislature recognizes that not all business developments in rural counties require an urban level of services; and that many businesses in rural areas fit within the definition of rural character identified by the local planning unit."*

~~*By adopting SCC 30.31F.020(4) the Council was clearly exercising its flexibility to retain existing businesses. A rezone to RB is permitted for the retention of existing businesses that were established in the rural area prior to the RB zone being adopted in 1998.*~~*Thus, the Applicant's proposal is in general conformance with the Comprehensive Plan.*

Policy LU 6.E.1
Within the rural residential designations of the Future Land Use Map, limited commercial uses shall be permitted within a Rural Business zone that provide opportunities for retail sales and services to the surrounding rural population.

*This policy clearly ~~applies to the County making decisions on which uses may be included in the use matrix for the RB zone. Thus, it is **NOT APPLICABLE**~~ **DOES NOT APPLY** to the subject rezone proposed. Additional analysis is provided in the Applicant's attached "Comprehensive Plan Analysis Matrix," but clearly the County Council, by and through adoption of the use matrix in SCC 30.22.110, identified those businesses it believes are "limited commercial uses" that provide retail sales and services, and these uses include the Applicant's use.*

The subject rezone follows the provisions in SCC 30.31F.020(4), which support a rezone for the retention of existing businesses that were established in the rural area prior to the RB zone being adopted. Further, the RB zone identifies Construction Contracting as a permitted use.

That said, McClure and Sons, Inc. is a small construction contractor that provides services both to the rural area, as well as surrounding urban areas. McClure and Sons, Inc. is an existing business that has utilized the subject property

[10] Neither the Growth Management Act at RCW 36.70A or the corresponding WAC 365-196 provide a definition for "rural county" or "rural counties"

since June 28, 1993, which preceded adoption of this plan and policy. Council's intent in establishing the RB zone and allowing existing contractor uses to seek rezones to RB was explicitly related to Council supporting the preservation of existing rural businesses.

*Further, the Applicant's use is consistent with other rural commercial uses in the area. To help demonstrate the consistency of Applicant's use with other rural uses, please see the attached **Exhibit N**, which shows the locations of other similar businesses within the adjacent R-5 zone. While it is unknown whether any have been in existence before adoption of the RB zone, the map still illustrates that the Applicant's use is generally consistent with other rural uses in the vicinity.*

The Applicant's proposal is in general conformance with the Comprehensive Plan.

Policy LU 6.E.2
The county shall develop Rural Business zoning and development standards that allow community facilities for the surrounding rural population and facilitate small-scale retail and service uses at appropriate locations within rural residential areas and minimize impacts to residential areas, resource lands, and critical areas.

*This policy requires the County to adopt zoning and development standards for the RB zone. Thus, it **DOES NOT APPLY** to specific land use proposals as explained further in the Applicant's "Comprehensive Plan Analysis Matrix."*

¶ *Council's intent in establishing the RB zone and allowing existing contractor uses to seek rezones to RB was explicitly related to Council supporting the preservation of existing rural businesses. When Council adopted this provision in SCC 30.31F.020(4), it did so to effectuate the Comprehensive Plan, including this policy. Thus, the proposed rezone **GENERALLY CONFORMS** with this policy and the Comprehensive Plan. ~~The subject rezone is consistent with this intent and the provision in SCC 30.31F.020(4). Thus, the proposed rezone is **CONSISTENT** with this policy.~~*

~~In accordance with this policy the county developed RB zoning in 1995, including development standards in SCC 18.65 (now renumbered and located at 30.31F). These development standards allow RB rezones for the retention of existing businesses that were established in the rural area prior to the RB zone's adoption.~~

Policy LU 6.E.3
In order to maintain the character of surrounding rural residential areas, development regulations for the Rural Business zone shall restrict development in terms of building size, height, and setback; the size, location, and type of uses; and the areas of impervious surfaces. Churches shall not be subject to restrictions on building size or areas of impervious surfaces provided by LU Objective 6.E and its associated policies.

*This policy instructs the County to adopt development regulations for the RB zone, which means it ~~it has, but~~ it **DOES NOT** establish any specific regulations or limitations applicable to a rezone. Thus, this policy is **NOT APPLICABLE** to the subject rezone because the County has development regulations that apply. This is explained further in the Applicant's "Comprehensive Plan Analysis Matrix."*

That said, Council's intent in allowing contractor (and select other) uses to seek out rezones to RB was clearly in response to requests from existing contractor businesses and ultimately intended to allow for the preservation of existing uses in the rural area. Further, Council's intent was to exclude such existing uses from application development regulations for size, location, etc. as they were already rural uses.

The subject rezone IS IN GENERAL CONFORMANCE with the Comprehensive Plan.

Policy LU 6.E.4
Development in the Rural Business zone shall be limited to development that can be supported by services typically delivered at rural levels of service. These services may include domestic water, septic systems, and transportation facilities.

This policy instructs the County to limit [future] development in the rural zone to those types of uses which can be

supported by rural services. Again, it requires the County adopt regulations, but it does not itself regulate development, which is explained further in the Applicant's "Comprehensive Plan Analysis Matrix."

That said, in creating the RB zone the Council explicitly intended to preserve existing contractor uses by allowing them to seek rezones to RB. In adopting these provisions Council recognized that there are existing developments in the county that reside in the rural area, but whose use of rural lands was in question. This is in keeping with the Rural Business rezone exception under SCC 30.31F.020(4), adopted prior to the adoption of the relevant comprehensive plan, and which the County is presumed to have considered under basic statutory construction principles.

*~~This~~ Again, this policy is **NOT APPLICABLE** to the subject rezone proposed because the subject policy is applicable to development regulations for future development, not existing uses that are permitted to seek a rezone. The subject rezone **IS IN GENERAL CONFORMANCE** with the Comprehensive Plan.*

Policy LU 6.E.5
Existing small-scale commercial uses within rural residential zones may be zoned Rural Business whether or not they meet the locational criteria listed in Policy LU 6.E.7 only if they are uses allowed within the Rural Business zone. If existing uses do not meet the locational criteria, no future expansion of the zone shall be allowed. This policy is not intended to preclude legal non-conforming uses from expanding consistent with Snohomish County Code provisions.

*The subject rezone is ~~**CONSISTENT** with this policy~~ **IS IN GENERAL CONFORMANCE** with the Comprehensive Plan.*

This policy is consistent with SCC 30.31F.020(4), which allows existing small-scale commercial uses within the rural residential zones to be rezoned to RB without meeting the locational criteria in Policy 6.E.7. The Applicant's Construction Contracting use is permitted in the RB zone because the Council previously determined that such uses are small-scale commercial uses that should be allowed in the rural area without meeting the location criteria of this policy or SCC 30.31F.020(2) and (3).

Policy LU 6.E.7
New Rural Business zones may only be approved in Rural Residential plan designations if they meet the following locational criteria:

Although poorly worded this requires the County adopt regulations, but it does not itself regulate development, which is explained further in the Applicant's "Comprehensive Plan Analysis Matrix."

*In accordance with Policy LU 6.E.5 (above) and SCC 30.31F.020(4), any locational criteria below are **NOT APPLICABLE** to the subject rezone proposed. Further, Council was clear in its decision on the Three B's appeal that these locational criteria **DOES NOT** apply to existing contractor uses.*

*The subject rezone **IS IN GENERAL CONFORMANCE** with the Comprehensive Plan.*

Subsection (a) A minimum of six hundred residential dwelling units should be located within a two and one-half mile radius of the proposed site.

*This is a locational criterion and is **NOT APPLICABLE** to the subject rezone as explained further in the Applicant's "Comprehensive Plan Analysis Matrix."*
*~~This is a locational criterion and is **NOT APPLICABLE** to the subject rezone proposed under the provisions of SCC 30.31F.020(4).~~*

Subsection (b) The site is located along a county road or state highway with at least one hundred feet of street frontage or at an intersection of two public roads.

This is a locational criterion and is NOT APPLICABLE to the subject rezone as explained further in the Applicant's "Comprehensive Plan Analysis Matrix."

~~*This qualifies as locational criterion and is **NOT APPLICABLE** to the subject rezone proposed under the provisions of SCC 30.31F.020(4).*~~

Subsection (c) No new areas designated or zoned for commercial uses should be located closer than two and one-half miles in the rural area.

This is a locational criterion and is NOT APPLICABLE to the subject rezone as explained further in the Applicant's "Comprehensive Plan Analysis Matrix."
~~*This qualifies as locational criterion and is **NOT APPLICABLE** to the subject rezone proposed under the provisions of SCC 30.31F.020(4).*~~

Subsection (d) The total area zoned for Rural Business at any given location should not include more than five acres of net usable area. Net usable area should be the total site area less critical areas and their required buffers, roads, detention/retention areas, and biofiltration swales. Parcels within a Rural Business location should have common boundaries unless separated by public rights-of-way.

*The subject rezone is ±2.86 ~~3.8~~ acres, which is **IN GENERAL CONFORMANCE** ~~**CONSISTENT**~~ with the Comprehensive Plan ~~this policy~~ that the RB zoned area be less than 5 acres of net useable area.*

Subsection (e) The size and configuration of the area to be zoned should be capable of accommodating setbacks, buffers, critical area protection, and other site planning and design techniques that permit small-scale, rural commercial development characteristics.

*The subject rezone is **IN GENERAL CONFORMANCE** with the Comprehensive Plan ~~**CONSISTENT** with this policy~~ as the size and configuration of the area to be zoned RB can accommodate the required setbacks, critical areas protections, etc.*

LU Policy 6.E.8
Sites within a Rural Business zone should be developed according to development regulations which incorporate the following criteria:

*This policy requires the County adopt regulations, but it does not itself regulate development, which is explained further in the Applicant's "Comprehensive Plan Analysis Matrix." Thus, this policy is **NOT APPLICABLE** to the subject rezone proposed as they are specific to new development (keyword in the above policy is "developed"). ~~This policy and the criteria below are **NOT APPLICABLE** to the subject rezone proposed as they are specific to new development (keyword in the above policy is "developed").~~ The subject rezone is for an existing business that Council specific intended to allow rezones to RB to preserve such existing rural uses. That said, the Applicant has prepared a site plan that shows how it generally complies with these requirements.*

*However, since the subject rezone complies with the code implementing these standards, the subject rezone **IS IN GENERAL CONFORMANCE** with the Comprehensive Plan.*

Subsection (a) Existing native vegetation should be retained within required buffers. Screening of parking areas, outdoor storage and mechanical equipment should be provided.

***APPLICANT GENERALLY CONFORMS** ~~**COMPLIES**~~. The Applicant has maintained and will supplement existing vegetation within perimeter buffers to provide screening of its parking, outdoor storage areas, and mechanical equipment.*

Subsection (b) Site disruption such as excessive grading, filling, or clearing of vegetation should be minimized through landscaping and buffer requirements.

***APPLICANT GENERALLY CONFORMS** ~~**COMPLIES**~~. The Applicant has minimized site disturbance by retaining much of the existing vegetation. Areas that were disturbed in 2023 will be revegetated under the subject rezone proposal*

and perimeter buffers established.

Subsection (c) Total permitted impervious surfaces of buildings, parking and other support areas such as storage, trash containers, etc., should not exceed fifty percent of the net usable site area, except for churches.

APPLICANT GENERALLY CONFORMS ~~COMPLIES~~. The Applicant's revised 2.86 acre rezone would use approximately 37% ~~uses 49.9%~~ of the net usable site area.

Subsection (d) Stormwater management facilities should be designed and landscaped to integrate them into the overall site design and the landscaped buffers on the site.

APPLICANT GENERALLY CONFORMS ~~COMPLIES~~. The Applicant will need to obtain an LDA to revegetation its site and gain approval of its plan for perimeter landscaping, etc. Any required stormwater management identified in Applicant's drainage report (currently being prepared by Solid Ground Engineering) will be address as part of the LDA.

Subsection (e) All structures should be set back fifty feet from residentially zoned properties. Structures should be set back one hundred feet from designated agricultural and forest lands.

APPLICANT GENERALLY CONFORMS ~~COMPLIES~~. All structures are set back 50 feet from residentially zones properties.

Subsection (f) Sites should retain all existing trees in all required buffers along side and rear property lines. Sites should retain all existing evergreen trees in all required buffers along property frontage excluding areas for access drives and sign locations, unless tree removal is required to meet Department of Public Works Engineering Design and Development Standards or because of public health and safety concerns.

APPLICANT GENERALLY CONFORMS ~~COMPLIES~~. Applicant will retain existing trees within its side and rear perimeter landscaping buffers except when tree removal is necessary for health and safety concerns.

Subsection (g) Billboards should be prohibited within the Rural Business zone. Signage requirements should be similar to the signage provisions of the Neighborhood Business zone.

APPLICANT GENERALLY CONFORMS ~~COMPLIES~~. No billboards or signage of any kind are proposed.

Subsection (h) Adequate water supplies should be demonstrated for commercial use and fire protection including fire flow.

APPLICANT GENERALLY CONFORMS ~~COMPLIES~~. A fire hydrant is located just off the edge of the Applicant's access drive and all structures are within the required distance according to fire code.

Subsection (i) Refuse collection, fuel loading and storage areas, and large truck parking areas should be located at least one hundred feet from residential areas and screened by fence or landscaping.

APPLICANT GENERALLY CONFORMS ~~COMPLIES~~. The refuse container, fueling loading and storage areas, and large truck parking areas are all located at least 100 feet from existing residences and will be screened by fencing and perimeter landscaping.

GOAL ED 3 Encourage the retention and expansion of existing businesses and jobs while working to attract new businesses and jobs.

The county identified retention of existing businesses and jobs as a goal within the comprehensive plan. The subject rezone would ensure the retention of an existing business and its jobs within Snohomish County as expressly desired by Council when it created the RB zone and allowed existing contractor uses to seek out rezones.

*Therefore, the subject rezone **GENERALLY CONFORMS** with the Comprehensive Plan.*

Objective ED 1.C Snohomish County shall recognize and address the needs of small and minority owned businesses as well as larger, established enterprises.

McClure and Sons, Inc. is a small business headquartered in Snohomish County who's been operating on the subject property since 1993. Recognizing the value of established, small business ventures in the rural areas, the County adopted SCC 30.31F.020(4) to enable small businesses to obtain rezoned to the RB zone to maintain their existing operations.

*Therefore, the subject rezone **GENERALLY CONFORMS** with the Comprehensive Plan.*

6. DESCRIBE HOW THE PROPOSAL BEARS A SUBSTANTIAL RELATIONSHIP TO THE PUBLIC HEALTH, SAFETY AND WELFARE.

The subject rezone bears a substantial relationship to the public health, safety and welfare based on the following Applicant analysis in *blue* starting on the next page.

The subject rezone conforms and is consistent with comprehensive plan Goal E 1.C[11] and policy LU 6.E.5 which both promote the retention of small business. In adopting SCC 30.31F.020(4) the Council explicitly established a pathway for existing businesses in the rural areas to comply with and become protected by the new RB zone for the purpose of retaining existing rural businesses, rural jobs, and tax revenues that have a direct impact on the public health, safety and welfare.

¶ Moreover, LU 6.E.5 was established to promote the retention of rural commercial uses that existed before the adoption of the Rural Business zone even if they do not meet the location criteria established. Thus, the subject rezone consistent with SCC 30.31F.020(4) and policy LU 6.E.5 retains an existing business in Snohomish County where the alternative would be the loss of this business location (and its tax revenues).[12]

Without approval of subject rezone, the Applicant would continue to pursue its rights to be classified as a legally, non-conforming use. And upon such a determination, the Applicant would continue with its application for an Administrative Conditional Use Permit (ACUP) to permit the expansion of the subject use across most of the property. However, approval of the rezone would allow the Applicant to remain in its location (where it has been since 1993) and prohibit any future expansion of the use outside the ±3.89 acres historically used for the business (as demonstrated by the 1995 aerials). In other words, there is a benefit to the public health, safety and welfare because the rezone would limit the footprint of the existing use.

Applicant's construction contracting business is unique in that a large portion of its business supports construction of municipal and other local government improvements, including municipal water and sewer infrastructure. Because of the public work performed by the Applicant, it's business has been considered an essential business during COVID times, etc. The ability to maintain this strategically located site for its maintenance and operations is critical to supportings the company's ability to competitively bid projects, which ~~has a~~ also benefits ~~to~~ the public.

7. DISCUSS CHANGES IN CIRCUMSTANCE SINCE THE SITE WAS LAST REZONED

In 1996, the County adopted its Growth Management Act (GMA) comprehensive plan related zoning, applying the R-5 zone to the subject property (Ordinance 96-075). This zoning action by the County came roughly three years after McClure and Sons, Inc. had started to use this site for commercial purposes.

Since application of the R-5 zoning to the subject parcel, the Applicant's business has been the subject of complaints in 2016, 2019 and 2023. The 2016 complaint alleged the Applicant was illegally operating a commercial equipment and junk business, which complaint Planning and Development Services (PDS) closed upon determining the business was grandfathered. A new complaint consisting of the same allegation plus the accusation that a pipeline was being interfered with was similarly closed by the PDS based on the use being grandfathered and the property line dispute being a civil matter. However, after receiving the 2023 complaint and initially agreeing that the Applicant had a pre-existing, pre-GMA non-conforming use, PDS reversed course and alleges the Applicant's business is illegal.

Because of PDS' change in how it treats the Applicant's business, the Applicant has limited remedies to resolve its continued use. It seeks ~~must now seek a~~ rezone to RB under SCC 30.31F.020(4), which provision was originally adopted by the County Council in Ordinance 98-121 and legislatively intended to preserve existing rural businesses, including contractor uses. The alternative would be that the Applicant seek status as a non-conforming use and apply for an Administrative Conditional Use Permit (ACUP) which would result in the business continuing to use a larger area than what it now proposes under this rezone.

That said, it is not wholly evident that the Applicant must identify "changed circumstances" as it pertains to the

[11] Furtherance of goals within a comprehensive plan has been viewed as demonstration that a proposal bears a substantial relationship to the public health, safety and welfare.

[12] Creation (and retention) of tax revenues used to support county and community services is a benefit to the public health, safety and welfare. See *Henderson v. Kittitas County*, 124 Wn. App. 747, 100 P.3d 842, 2004 Wash. App. LEXIS 2796.

subject rezone because the rezone implements a specific policy of the comprehensive plan (LU 6.E.5).

We take note of the Division III Court of Appeals decision in *Ahmann-Yamane* which, citing *Save Our Rural Env't v. Snohomish County*, 99 Wn.2d 363, 370-71, 662 P.2d 816 (1983) decided:

"*In fact, if a proposed rezone implements the policies of a comprehensive plan, a showing of changed circumstances is not required*" Division III of the Court of Appeals decision in *Ahmann-Yamane, L.L.C. v. Tabler*, 105 Wn. App. 103, 19 P.3d 436, 2001 Wash. App. LEXIS 345.

Because the County Council has clearly articulated in its decision on the Three B's appeal that such RB rezones are consistent with implementing the policies of the comprehensive plan, it unnecessary for the Applicant to demonstrate changed circumstances.

8. PROVIDE A STATEMENT THAT THE PERFORMANCE STANDARDS CITED BY SCC 30.42A.100(4) EITHER DO OR DO NOT APPLY AND WHY. *SCC 30.42A.100(4) REQUIREMENTS VARY ON THE SITUATION.*

Applicant's responses below are shown in *blue* text.

SCC 30.42A.100(4) requires that "*where applicable, minimum zoning criteria found in chapters 30.31A through 30.31F SCC are met.*"

The Applicant notes that the County's Rezone Checklist at Item 8 confuses "performance standards" in SCC 30.31F.100 and 30.31F.110 with the "minimum zoning criteria" in SCC 30.31F.020, which only the minimum criteria in subsections (2) through (4) are applicable.

(2) The RB zone is a zoning classification which will be located within a rural residential land use designation. The RB zone, including expansions to the RB zone classification, shall be applied only to properties that meet all the following locational criteria, except as provided in SCC 30.31F.020(3) and (4):

This criterion is met as the existing land use designation is Rural Residential 5 and the property meets the applicable criteria below, except as provided in SCC 30.31F.020(4). SCC 30.31F.020(3) in its entirety is ***NOT APPLICABLE*** *because of the applicability of subsection (4).*

(a) A minimum of 600 residential dwelling units shall be located within a two and one-half mile radius of the proposed site;

Location criterion ***NOT REQUIRED*** *to be met per Subsection (4).*

(b) The proposed site is located along a county road or state highway with at least 100 feet of street frontage or at an intersection of two public roads;

Location criterion ***NOT REQUIRED*** *to be met per Subsection (4).*

(c) The proposed new site shall be located no closer than two and one-half miles from an existing RB, RFS, or commercial designation in the rural area;

Location criterion ***NOT REQUIRED*** *to be met per Subsection (4).*

(d) The total area zoned RB at any given location shall not include more than five acres designated as net usable area. In calculating net usable area pursuant to this chapter, net usable area shall be the total site area less critical areas and their required buffers, pursuant to chapters 30.62A and 30.62B SCC, public rights-of-way, private roads,

detention/retention areas, and biofiltration swales;

*The subject rezone area would be approximately 3.8 acres out of an approximately 8.04 acre site. The rezone **MEETS THIS CRITERION**.*

(e) The proposed site shall be located outside of an urban growth area (UGA) boundary;

*Although the site meets this criterion as it is outside the UGA, location criteria are **NOT REQUIRED** to be met per Subsection (4).*

(f) The proposed site shall contain a rural residential designation on the GPP FLUM, and not be designated forest lands or farmlands by the FLUM;

*The subject rezone area **MEETS THIS CRITERION** as it has a designation of Rural Residential 5.*

(g) The size and configuration of the proposed site must be capable of accommodating applicable setbacks, buffers, and critical area protection pursuant to chapters 30.62A, 30.62B and 30.62C SCC;

*The subject rezone area **MEETS THIS CRITERION** as the setbacks and buffers can be provided as required.*

(h) Site information required pursuant to SCC 30.31F.200(2) shall have been submitted by the applicant. The information shall clearly demonstrate that an adequate building and development area is located on the site outside of identified critical areas and buffers pursuant to chapters 30.62A and 30.62B SCC; and

*The subject rezone **MEETS THIS CRITERION**. The buildings and development area are existing within the approximately ~~3.8 acres~~ 2.86 acres which is within the historic area of the site used for this existing business.*

(3) Any proposed site that expands an existing RB zone shall meet the requirements of SCC 30.31F.020(2)(d) through (h) and both of the following locational criteria:

***NOT APPLICABLE** to the subject rezone as this is not an expansion of an existing RB zone.*

(a) The expansion area shall have a common property boundary with the existing RB zone. A common property boundary may consist of properties separated by a public right-of-way where the centerline of the right-of-way is used as their extended front property boundary; and

***NOT APPLICABLE** to the subject rezone as this is not an expansion of an existing RB zone.*

(b) The majority of rural residential lots within a one-quarter mile radius of the proposed expansion area are not greater than one acre in size or the majority of rural residential lots that have a common property boundary with the proposed expansion area not greater than one acre in size.

***NOT APPLICABLE** to the subject rezone as this is not an expansion of an existing RB zone.*

(4) For properties that contain a commercial use permitted or otherwise allowed in the RB zone that

existed on or before the effective date of this section, a rezone to RB may be approved only for that portion of the site containing the existing use and may not expand beyond the location of the existing commercial use unless the locational criteria of subsection (2) of this section are met with respect to the expansion area. The locational criteria contained in subsection (2) of this section and the maximum building footprint requirements of SCC 30.31F.110 and 30.31F.120 need not be met for that portion of the site containing the existing use.

The subject rezone meets this criterion as has been discussed and analyzed in this narrative.

ADDITIONAL ANALYSIS

The Applicant must comply with SCC 30.2, which includes applicable Reference Notes in SCC 30.22.130 (as identified in the Rural and Resource Zone Categories Use Matrix at SCC 30.22.110) to various development standards.

For "Construction Contracting" the matrix references development standards in ~~indicates that~~ SCC 30.22.130(80) and (81)~~ apply~~.[13] However, SCC 30.31F.020(4) limits the application of reference note 80.

REFERENCE NOTE 80
As Applicant established in the preceding analysis, County Council explicitly excluded the maximum building flooring area in SCC 30.31F.020(4) from applying to existing buildings and reference note 80 should not apply to the subject rezone.

REFERENCE NOTE 81
The intent of the County Council in allowing existing commercial uses, such a building contracting, to rezone to the RB zone was to provide such rural businesses with a pathway to be recognized as a legal use. In approving Reference Note 81 (*which was Reference Note 85 at that time*) with the Council was ~~still~~ very concerned ~~about the ability of~~ whether existing business ~~uses being able to~~ could meet all the development standards ~~any performance~~ standards, because such standards may force the business to unnecessarily reduce their business activity to a point the business ~~is not~~ was no longer viable. The partial transcript included in the record of the Three B's appeal demonstrates that Council was purposefully intending to allow preexisting uses through a parallel zoning procedural pathway premised more on substantial compliance rather than strict adherence to the standards.

Reference Note 81 is a development standard and to the extent the Applicant does not meet the standards, it has proposed variances consistent with SCC 30.43B. Below reflects the development standards in Note 81 followed by the Applicant's analysis and ~~reads as follows and the Applicant has provided analysis as required. In circumstances where the existing use cannot meet the standard, the Applicant is separately seeking a variance. Applicant's~~ discussion is in *blue*.

(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;

SCC 30.31F.100, General Performance Standards
In addition to other applicable standards contained in subtitle 30.2 SCC, the following performance standards apply to development in the RB, RI, RFS, and CRC zones:

The Applicant contends that these standards should only apply to new "development" in the RB, RI, RFS, and CRC zones, whereas the Applicant's proposal is merely seeking a rezone to RB which was created as a remedy to address an existing commercial use that has already been developed. Although the following

[13] Formerly found at *18.32.040(B)(84) and (85)*, respectively.

standards are specifically not applicable to the subject RB rezone, the Applicant has indicated which standards it satisfies.

(1) Adequate water supplies shall be demonstrated for fire protection;

APPLICANT COMPLIES. *The site is served by Cross Valley Water District, and a fire hydrant is located near the entrance to the site and existing structures are within the required distance from the hydrant. Fire sprinklers are not required for the structures on site. Applicant can obtain additional fire flow information from Cross Valley Water District if conditioned to do so.*

(2) Stormwater detention facilities and low impact development best management practices shall be designed whenever possible as to integrate them into the overall site design and required landscaping and buffers on the site;

APPLICANT COMPLIES. *Existing use of the site pre-dates current stormwater regulations. However, the Applicant's site plan and related drainage report associated with the forthcoming LDA will address grading that occurred on the site and address the Applicant's compliance with stormwater requirements. Applicant intend, as part of addressing a prior code violation, to bring the site into compliance which will include addressing drainage at the time of a site plan approval.*

(3) Signage shall be consistent with the provisions of SCC 30.27.010 to 30.27.090; and

APPLICANT COMPLIES. *The Applicant has no signage and has no plans for signage.*

(4) Refuse collection, fuel loading, and above ground fuel storage areas, and large truck parking areas shall be located at least 100 feet from residential uses or designations and shall be screened in accordance with the landscaping requirements for outdoor storage and solid waste areas contained in SCC 30.25.024.

APPLICANT COMPLIES. *The Applicant's refuse collection, above ground fuel storage area, and large truck parking areas are located at least 100 feet from residential uses as shown in the attached* ***Exhibit O****.*

¶ *Applicant's portion of the site rezoned to RB will have a six-foot high sight obscuring fence along its north, east, and south perimeter ~~of the rezone area~~, which fence ~~is~~ would be integrated into ~~with~~ the supplemented perimeter landscaping. This functionally achieves the standards in SCC 30.25.024 for screening such uses from adjacent properties.*

SCC 30.31F.110, Rural Business Zone Performance Standards.

(1) In addition to the general performance standards of SCC 30.31F.100, and other applicable standards of subtitle 30.2 SCC, the following standards apply to development, except churches, in the RB zone:

(a) The total impervious surface of all buildings, parking, and other support areas such as storage, trash containers, etc., shall not exceed 50 percent of the net usable area of the site; and

APPLICANT COMPLIES*. The subject property is 7.89 acres with 7.65 net useable acres. Applicant's proposed RB rezone is for a total of 2.86 ~~3.82~~ acres, which is approximately 37% ~~under the 50~~% of the net useable area ~~limit~~ for the site.*

(b) The maximum area for each building footprint on the site shall not exceed 4,000 square feet.

APPLICANT COMPLIES*. The maximum area for each building footprint was explicitly excluded via SCC 30.31F.020(4), which provides that the "maximum building footprint requirements of SCC 30.31F.110 and 30.31F.120 need not be met for that portion of the site containing the existing use. . ." That said, none of the Applicant's buildings on the site exceed 4,000 square feet as the largest building on the*

site is 2,400 square feet.

(2) A change of use for any existing structure, including related site improvements, that is in a Rural Business zone and does not meet the performance standards of SCC 30.31F.110 (1) shall require:

(a) A conditional use permit when the proposed use is allowed in the RB zone but prohibited in the R-5 zone; or

NOT APPLICABLE. There is no proposed change of use.

(b) The approval type required under SCC 30.22.110 for the RB zone when the proposed use is allowed in both the RB zone and the R-5 zone.

NOT APPLICABLE. There is no change of use proposed, plus the Construction Contracting use is allowed in the RB zone, but not the R-5 zone.

(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;

VARIANCE REQUESTED. The Applicant is seeking a variance (see separate Variance Narrative & Analysis of Decision Criteria) to allow it to continue to use its site as it historically conducted business. This ~~has, which~~ includes the storage of materials and equipment used by its construction business. The amount of area exceeds 1,000 square feet and is seasonally variable. The Applicant will provide screening of these areas using a combination of fencing and the required perimeter landscaping.

(c) In addition to the provisions of subsection (81)(b) of this section, 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;

VARIANCE REQUESTED. The Applicant is seeking a variance (see separate Variance Narrative & Analysis of Decision Criteria) to park more than five commercial vehicles or construction machines on site consistent with its historical use.

¶ *Because of the vague description of "construction machines" and the lack of a definition in 30.91C for "construction machines" strict application of this requirement would be counter to retention of existing commercial uses in the rural area as envisioned by Council when it created the RB zone. Unfortunately, at the time the RB zone was being created, Council only had two specific examples by which it crafted these requirements, but ~~they~~ even Council acknowledged (as demonstrated by the transcript of the hearing, which was produced for the Three B's appeal) that they had concerns whether these allowances would work for other existing uses they knew existed in the rural areas.*

Further, the Applicant points out that according to use matrix at SCC 30.22.110, Commercial Vehicle Storage Facility is a permitted use in the RB zone and would have ~~as much or more impacts as~~ a greater impact than the Applicant's existing use. Commercial Vehicle Storage Facilities are defined in SCC 30.91C.175 as including the leasing of spacing for commercial vehicles including "vehicles used for the commercial transport of passengers or cargo, as well as heavy machinery or construction vehicles." There are no quantitative limitations of number of such vehicles that can be stored, except that it would need to comply with the general RB performance standard that development does not exceed 50% of the net useable area. In that regard, there are other permitted uses within the RB zone that are allowed to store more vehicles and equipment.

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

APPLICANT COMPLIES. The Applicant has an on-site, above ground fueling tank, but it is used for fueling construction equipment, not vehicles.

SCC Chapter 30.91V does not contain a definition of "vehicles" but SCC 30.91V.013 includes a definition for "Vehicle, Vessel, and Equipment Sales and Rental" that reads:

a structure or site used to primarily sell or rent automobiles, vessels, boats, construction equipment, mobile homes, recreational vehicles, travel trailers, trucks, or other similar large items.

The Applicant contends that the prohibition on fueling "vehicles" on-site ~~does not~~ refers to motor vehicles and ~~that would not include~~ construction equipment is "equipment" as made distinct in the definition above. Thus, the subject prohibition does not apply and the allowances in SCC 30.31F.100(4) permit the fuel storage area provided it is not within 100 feet of residences. Other permitted uses in the RB zone can have fueling tanks.

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

***APPLICANT COMPLIES**. The Applicant's existing use does not store inoperable vehicles, hazardous or earth materials on site. However, the Applicant's construction contracting firm relies on the use of equipment that is services and maintains on site. Thus, some small quantities of (oil, etc.) and a fuel are stored on-site in designated areas following best management practices. ~~However, should the Applicant's business operations and equipment maintenance be interpreted as the storage of hazardous materials, the Applicant respectfully requests a variance (which it addresses in the separate **Variance Narrative and Analysis of Decision Criteria**) for the limited storage and use of such items as they are essential to the existing contractor use.~~*

REZONE CHECKLIST SECTION II.B – ADDITIONAL INFORMATION

3. FOR REZONE REQUESTS TO RURAL BUSINESS (RB), RURAL INDUSTRIAL (RI), RURAL FREEWAY SERVICE (RFS), OR CLEARVIEW RURAL COMMERCIAL (CRC) ZONING, DESCRIBE HOW THE PROPOSED REZONE MEETS THE APPLICABLE CRITERIA UNDER CHAPTER 30.31F.

The following minimum zoning criteria in SCC 30.31F apply to the RB zone. The applicant's responses to each is in *blue* text below.

(2) The RB zone is a zoning classification which will be located within a rural residential land use designation. The RB zone, including expansions to the RB zone classification, shall be applied only to properties that meet all the following locational criteria, except as provided in SCC 30.31F.020(3) and (4):

*This **CRITERION IS MET** as the existing land use designation is Rural Residential 5 and the property meets the applicable criteria below, except as provided in SCC 30.31F.020(4). SCC 30.31F.020(3) is **NOT APPLICABLE** because of the applicability of (4).*

(a) A minimum of 600 residential dwelling units shall be located within a two and one-half mile radius of the proposed site;

*Location criterion **NOT REQUIRED** to be met per Subsection (4).*

(b) The proposed site is located along a county road or state highway with at least 100 feet of street frontage or at an intersection of two public roads;

*Location criterion **NOT REQUIRED** to be met per Subsection (4).*

(c) The proposed new site shall be located no closer than two and one-half miles from an existing RB, RFS, or commercial designation in the rural area;

*Location criterion **NOT REQUIRED** to be met per Subsection (4).*

(d) The total area zoned RB at any given location shall not include more than five acres designated as net usable area. In calculating net usable area pursuant to this chapter, net usable area shall be the total site area less critical areas and their required buffers, pursuant to chapters 30.62A and 30.62B SCC, public rights-of-way, private roads, detention/retention areas, and biofiltration swales;

*The subject rezone area would be approximately 3.8 acres. This **CRITERION IS MET**.*

(e) The proposed site shall be located outside of an urban growth area (UGA) boundary;

*Location criterion **NOT REQUIRED** to be met per Subsection (4). However, the site meets this criterion as it is outside the UGA.*

(f) The proposed site shall contain a rural residential designation on the GPP FLUM, and not be designated forest lands or farmlands by the FLUM;

*The subject rezone area **MEETS THIS CRITERION** as it has a designation of Rural Residential 5.*

(g) The size and configuration of the proposed site must be capable of accommodating applicable setbacks, buffers, and critical area protection pursuant to chapters 30.62A, 30.62B and 30.62C SCC;

*The subject rezone area **MEETS THIS CRITERION** as the setbacks and buffers can be provided as required.*

(h) Site information required pursuant to SCC 30.31F.200(2) shall have been submitted by the applicant. The information shall clearly demonstrate that an adequate building and development area is located on the site outside of identified critical areas and buffers pursuant to chapters 30.62A and 30.62B SCC; and

*The subject rezone **MEETS THIS CRITERION**. The buildings and development area are existing within the approximately 3.8 acres.*

(3) Any proposed site that expands an existing RB zone shall meet the requirements of SCC 30.31F.020(2)(d) through (h) and both of the following locational criteria:

***NOT APPLICABLE** to the subject rezone as this is not an expansion of an existing RB zone.*

(a) The expansion area shall have a common property boundary with the existing RB zone. A common property boundary may consist of properties separated by a public right-of-way where the centerline of the right-of-way is used as their extended front property boundary; and

***NOT APPLICABLE** to the subject rezone as this is not an expansion of an existing RB zone.*

(b) The majority of rural residential lots within a one-quarter mile radius of the proposed expansion area are not greater than one acre in size or the majority of rural residential lots that have a common property boundary with the proposed expansion area not greater than one acre in size.

NOT APPLICABLE *to the subject rezone as this is not an expansion of an existing RB zone.*

(4) For properties that contain a commercial use permitted or otherwise allowed in the RB zone that existed on or before the effective date of this section, a rezone to RB may be approved only for that portion of the site containing the existing use and may not expand beyond the location of the existing commercial use unless the locational criteria of subsection (2) of this section are met with respect to the expansion area. The locational criteria contained in subsection (2) of this section and the maximum building footprint requirements of SCC 30.31F.110 and 30.31F.120 need not be met for that portion of the site containing the existing use.

The subject rezone ***MEETS THIS CRITERION*** *as has been discussed and analyzed in previous sections of this narrative.*

4. FOR REZONE REQUESTS TO THE RURAL BUSINESS (RB) ZONE, EXPLAIN WHICH OF THE FOLLOWING OPTIONS APPLIES:

( ) This is a new location for RB zoning
( ) This will be an expansion of an existing RB zone
(**X**) This will cover only a portion of a site and is for a pre-existing commercial use permitted or otherwise allowed in the RB zone that existed on or before January 1, 2003.

Thank you for your time and consideration. Should you have any questions, please do not hesitate to contact me at david@toyerstrategic.com or 425-344-1523.

Sincerely,

David Toyer
President

APPLICANT REZONE EXHIBIT LIST

Exhibit A	Ordinance 98-121 and Exhibits 76, 101, 104, and 105 thereof
Exhibit B	Three B's Rezone Decision, Appeal & Motion 99-384 and supporting exhibits
Exhibit C	Secretary of State Background on McClure & Sons, Inc.
Exhibit D	Chain of Title for Applicant's Property
Exhibit E	Secretary of State Background on PBSS Investments, LLC
Exhibit F	PDS No Critical Areas, No FPA Letter
Exhibit G-1	1978 Aerial (Snohomish County Public Works)
Exhibit G-2	1984 Aerial (Snohomish County Public Works)
Exhibit H	1995 Aerial (Snohomish County Public Works)
Exhibit I	1984 Aerial with Comparison to 2022 Aerial
Exhibit J	1995 Aerial with Comparison to 2022 Aerial
Exhibit K	2022 Aerial (Printed from PDS Map Portal)
Exhibit L	Les McClure Purchase & Sale Agreement Notes
Exhibit M	MacAllister Obituary
Exhibit N	Adjacent Use Analysis
Exhibit O	Setback & Perimeter Landscape Exhibit
Exhibit P	Comprehensive Plan Analysis Matrix **[NEW]**

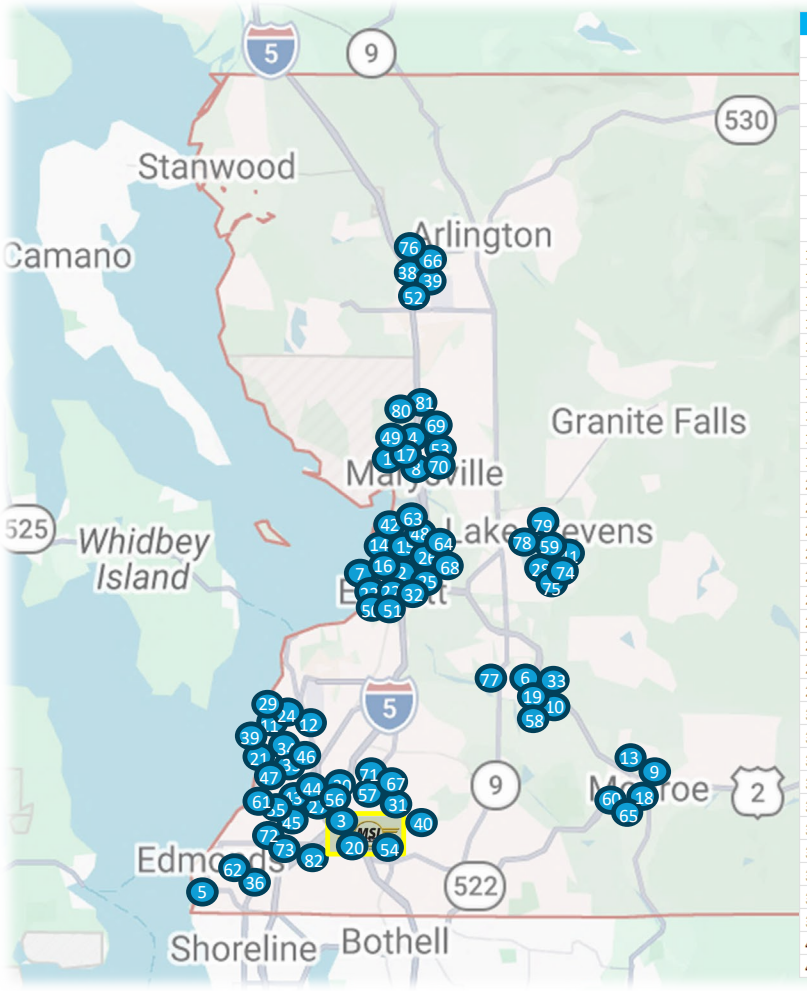
[i] PBSS Investments, LLC is owned by Les and Judy McClure, Governors, and the registered agent is McClure and Sons, Inc. PBSS Investments, LLC owns the land, but McClure and Sons, Inc. is the contracting company owned by Les and Judy McClure, which business has continuously used the site since the McClure's purchased it from MacAllister in 1993.

SNOHOMISH COUNTY COUNCIL
EXHIBIT # M.3
FILE 25-105874 REZO

Exhibit M.3
25-105874 REZO/VAR
Snohomish County
Hearing Examiner
FILED 2/23/2026

McClure and Sons, Inc.

Snohomish County Projects from 1990-2025



#	Project	Location	Year
1	Indian Health Service Sanitation Facilites	Marysville	1990
2	Replace Filter Media, Everett	Everett	1990
3	Silver Lake Pump Station	Mill Creek	1991
4	Lagoon Improvements, Marysville	Marysville	1991
5	Edmonds Ferry Terminal Sheet Pile Wall	Edmonds	1992
6	Reservoir Cover & Liner, Snohomish	Snohomish	1992
7	Port Of Everett Pier	Everett	1992
8	Indian Ridge Water System Improvements	Marysville	1993
9	Monroe WWTP Modifications	Monroe	1993
10	Snohomish WWTP	Snohomish	1994
11	Holly Drive Lift Station (Mukilteo)	Mukilteo	1996
12	Gen. Relocate Mukilteo	Mukilteo	1999
13	Monroe U.V. System	Monroe	1999
14	Pier Repair, Everett Naval Station	Everett	2001
15	Steam Line Repait, Everett Naval	Everett	2001
16	Naval Station Pile Strap Repair	Everett	2005
17	Marysville WWTP	Marysville	2002
18	171st Booster Pump Station - 3 Lakes	Monroe	2004
19	Snohomish PUD (2005 Pump Station)	Snohomish	2005
20	Mill Creek Curb	Mill Creek	2006
21	Mukilteo Float Replacement	Mukilteo	2006
22	Community Transit	Everett	2008
23	Everett Water Pollution	Everett	2008
24	Big Gulch WWT Aeration Sys	Mukilteo	2009
25	Everett WPCF Phase B-1	Everett	2010
26	Everett Trickling Filter	Everett	2010
27	Alderwood Lift Station No.11	Alderwood	2011
28	Lake Stevens Well Site Upgrade	Lake Stevens	2011
29	Big Gulch Headworks Improvements	Mukilteo	2012
30	Lynnwood Slide Gate	Lynnwood	2012
31	Silverlake Lift Station #3	Mill Creek	2012
32	Everett Lift Station #24	Everett	2012
33	Master Meter #9 and Reservoir #2	Snohomish	2012
34	Meadowdale Lift Station	Mukilteo	2012
35	Gabion Wall Replacement-Big Gulch	Mukilteo	2013
36	Mountlake Terrace Decant Fac.	Mt Lake Terrace	2013
37	Angel of the Winds	Arlington	2013
38	Angel of the Winds-Phase 2	Arlington	2014
39	Picnic Point Road Sewer Repl	Alderwood	2014
40	Silver Lake Decant Facility	Mill Creek	2014
41	Mountain Park Booster Station	Lake Stevens	2014

#	Project	Location	Year
42	Riverfront Lift Stations	Everett	2015
43	HW Bypass Stream	Lynnwood	2015
44	Hatch Replacement	Lynnwood	2015
45	Holly Drive Lift Station	Mill Creek	2016
46	Big Gulch Clarifier 2 Rehab	Mukilteo	2016
47	Lift Station #10	Mukilteo	2017
48	Three Lakes Bypass	Everett	2017
49	560 Pump Station	Marysville	2018
50	Cargo Transit Shed	Everett	2018
51	South Marina Lift Station	Everett	2018
52	AOTW Faciility Improvements	Arlington	2019
53	Headworks Retrofit	Marysville	2019
54	Exploration Park	Mill Creek	2018
55	Swamp Creek Switching Station	Lynnwood	2019
56	Lift Station 4 & 8	Lynnwood	2019
57	Waldenwood Lift Station	Mill Creek	2019
58	Peracetic Acid Disinfection	Snohomish	2019
59	Mountain View Pump Station	Lake Stevens	2020
60	DOC Reservoir	Monroe	2020
61	Lift Station 5 Upgrades	Mukilteo	2021
62	Ballinger Waterfront Improvements	Mt Lake Terrace	2021
63	Armor Rock Repair	Everett	2021
64	Trickling Filter	Everett	2021
65	Monroe WWTP CIP 1	Monroe	2021
66	Arlington WRF	Arlington	2021
67	Thomas Lake Lift Station	Mill Creek	2021
68	Evergreen Pump Station	Everett	2021
69	Downtown Stormwater	Marysville	2022
70	Tertiary Improvements	Marysville	2022
71	MCCC Mill Creek	Mill Creek	2023
72	WWTP Interim Sludge	Lynnwood	2023
73	Alderwood PPWWTF Improvements	Lynnwood	2023
74	Hisey Sewer Lift Station	Lake Stevens	2023
75	Fagerlie Sewer	Lake Stevens	2023
76	OATW Sawcutting	Arlington	2024
77	Lowell No. 1 Lift Station	Snohomish	2024
78	Lake Stevens WWTP	Lake Stevens	2024
79	Lake Stevens WWTF Digester	Lake Stevens	2025
80	Marysville Effluent Flow	Marysville	2025
81	Marysville Chemical Tank	Marysville	2025
82	Lynnwood Lift Station No. 4	Lynnwood	2025

Google Maps

Serving our Friends and Neighbors for over 30 years

Exhibit M.1
25-105874 REZO/VAR
Snohomish County
Hearing Examiner
FILED 2/23/2026

SNOHOMISH COUNTY COUNCIL
EXHIBIT # M.1
FILE 25-105874 REZO



Complaint Investigation Report

TAX ACCT #: 270514-003-010-00 **Case #:** 16 112234 CT

SEC: 14 TWP: 27 RNG: 5 Priority: 2 ZONING: R-5 Acreage: 8 04

VIOLATION LOCATION: 19125 STATE ROUTE 9 SE CITY SNOHOMISH

OWNER: PBSS Investments LLC HOME Phone:

ADDRESS: 15714 COUNTRY CLUB DR WORK Phone:

MILL CREEK, WA 98012 CELL Phone:

Email:

==========

AGENT IF DIFFERENT FROM OWNER:

NAME: McClure and Sons Inc HM PHONE:

ADDRESS: 15714 Country Club Dr. WK PHONE: 425-316-6999

CITY: Mill Creek STATE: WA ZIP: 98012-1203 CELL PHONE: 206-963-2370

Email:

==========

INVESTIGATED BY: Anders Olin DATE: 8-4-16

INITIAL INVESTIGATION: Initial drive-by revealed multiple pieces of construction heavy equipment (excavators, dump trucks, forklifts, etc.), storage containers, offices, and other miscellaneous construction parts and items. Photos in Amanda.

==========

VIOLATIONS:

In accordance with RCW 42.56, the contents of this file include all known paper records associated with this case. There may be additional paper records or electronic records (such as emails, photos, etc.) that exist associated with this project that are not included in the project case file. Upon written request, a search can be made for the existence of any such records. Please check with a PDS Records Specialist.

ACTIVITY LOG

CASE #: 16 112234 CT

Date	Activity	Summary	Initials
8-4-16	Site	Initial drive-by revealed multiple pieces of construction heavy equipment (excavators, dump trucks, forklifts, etc.), storage containers, offices, and other miscellaneous construction parts and items. Photos in Amanda.	ao
9-15-16	Ofc	Sent initial letter to PBSS Investments, LLC c/o McClure and Sons, Inc., Registered Agent. Included with letter is pertinent code provisions pertaining to prohibition of construction contracting in the R-5 zone.	ao
10-3-16	V/m	Voice message from Les McClure in reply to initial letter	ao
10-17-16	P/c	P/c to Les McClure. We discussed the complaint allegations. I explained that the subject property is zoned R-5 and that construction contracting is an un-allowed use in the R-5 zone. Les informed me that they have used the property for a construction staging/storage yard for 20-25 years if not longer. I told him I would need to conduct more in-depth research to see when the zoning was designated R-5 in the event that his use of the property as a storage yard pre-dates the R-5 zoning designation.	ao
8-6-18	Ofc	Use of the property as a construction staging/storage yard likely "grandfathered" due to longevity of use at the property. Close case	ao

Snohomish County
Planning and Development Services

Dave Somers
County Executive

Barb Mock, Interim Director
3000 Rockefeller Avenue M/S #604
Everett, WA 98201-4046
(425) 388-3311 FAX (425) 388-3832

September 15, 2016

PBSS Investments LLC
15714 COUNTRY CLUB DR
MILL CREEK, WA 98012

File Number:	16 112234 CT
Tax Account Number:	270514-003-010-00
Location:	19125 STATE ROUTE 9 SE, SNOHOMISH, WA 98296-5358

Dear PBSS Investments LLC:

I am investigating an alleged violation regarding the property located at 19125 STATE ROUTE 9 SE, SNOHOMISH, WA 98296-5358. The alleged violation involves the existence of a construction contracting business/staging facility on the property in violation of Snohomish County Code prohibiting such activity on R-5 zoned property.

Please contact me within 10 days of receipt of this letter so that I may discuss this matter with you. I can be reached at 425-388-3311 ext. 2201.

Thank you for your assistance in this matter.

Sincerely,

Anders Olin
Code Enforcement Officer

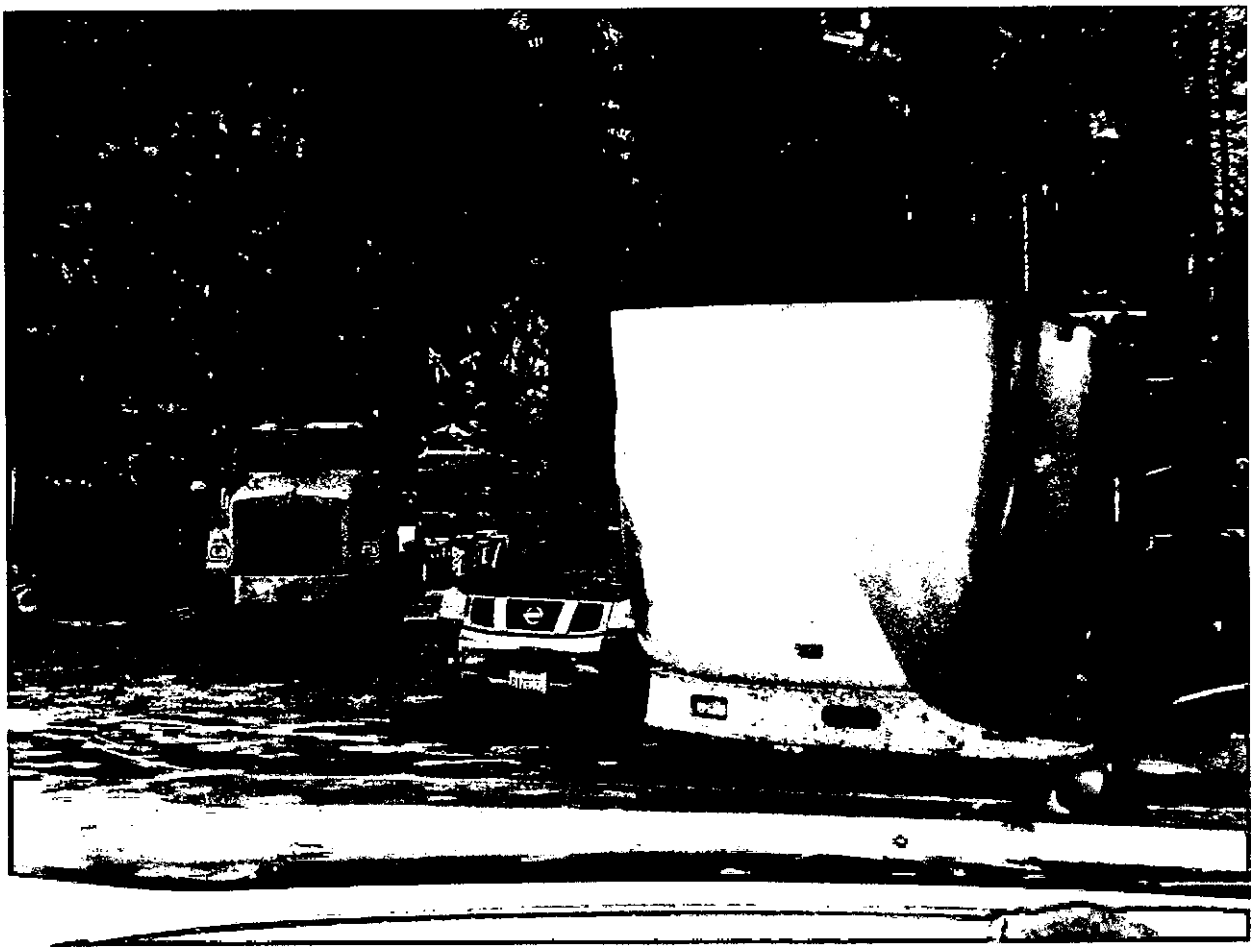
16 112234 CT PBSS Investments LLC – Olin Photos taken August 4, 2016 270514-003-010-00



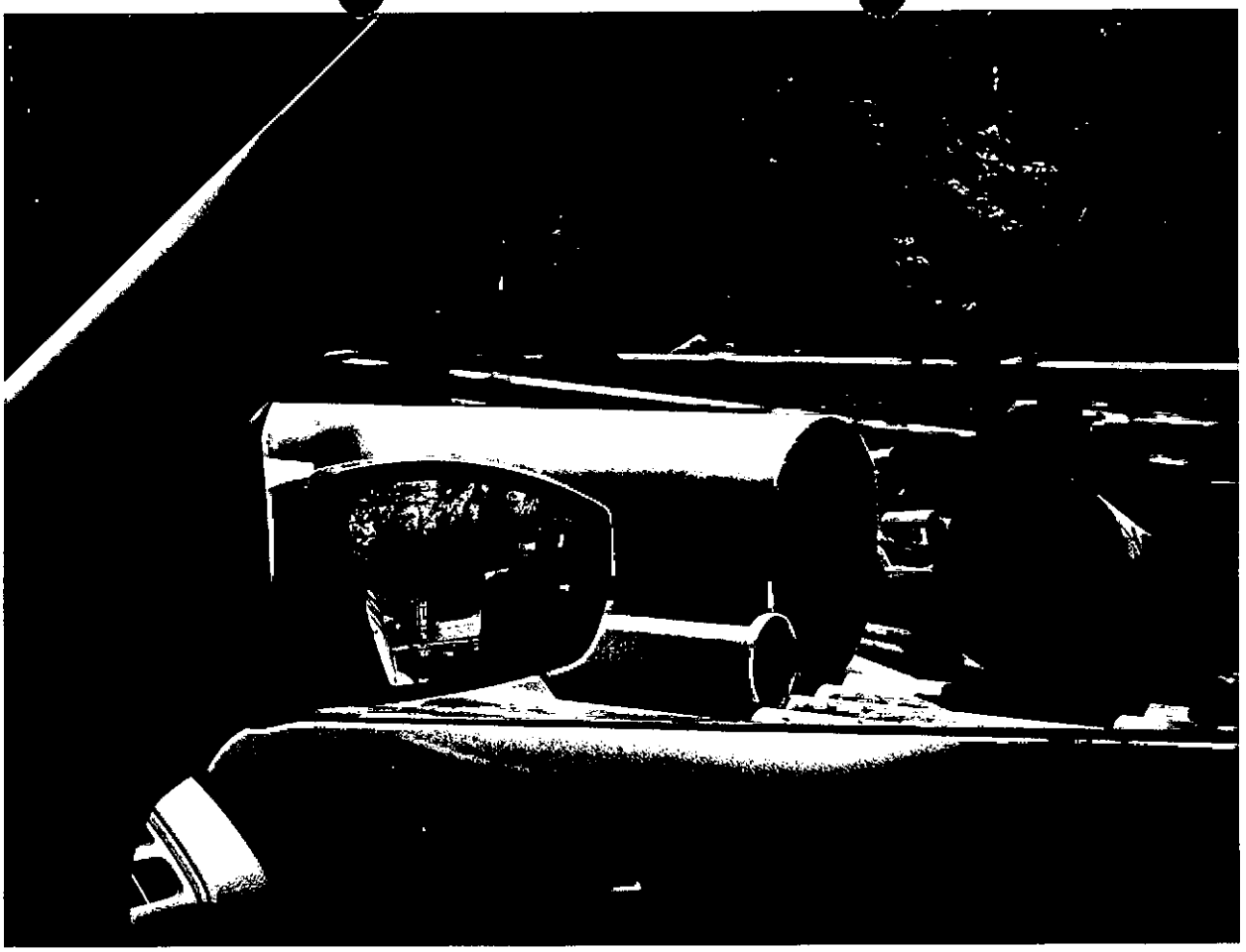


16 112234 CT PBSS Investments LLC – Olin Photos taken August 4, 2016 270514-003-010-00





16 112234 CT PBSS Investments LLC – Olin Photos taken August 4, 2016 270514-003-010-00



Due to technical difficulties some search results may not be current or reflect the most recent filing. We are hoping to have this corrected shortly. ×

PBSS INVESTMENTS, LLC

UBI Number	603255104
Category	LLC
Active/Inactive	Active
State Of Incorporation	WA
WA Filing Date	11/21/2012
Expiration Date	11/30/2016
Inactive Date	
Duration	Perpetual

Registered Agent Information

Agent Name	MCCLURE AND SONS INC.
Address	15714 COUNTRY CLUB DR
City	MILL CREEK
State	WA
ZIP	980121203

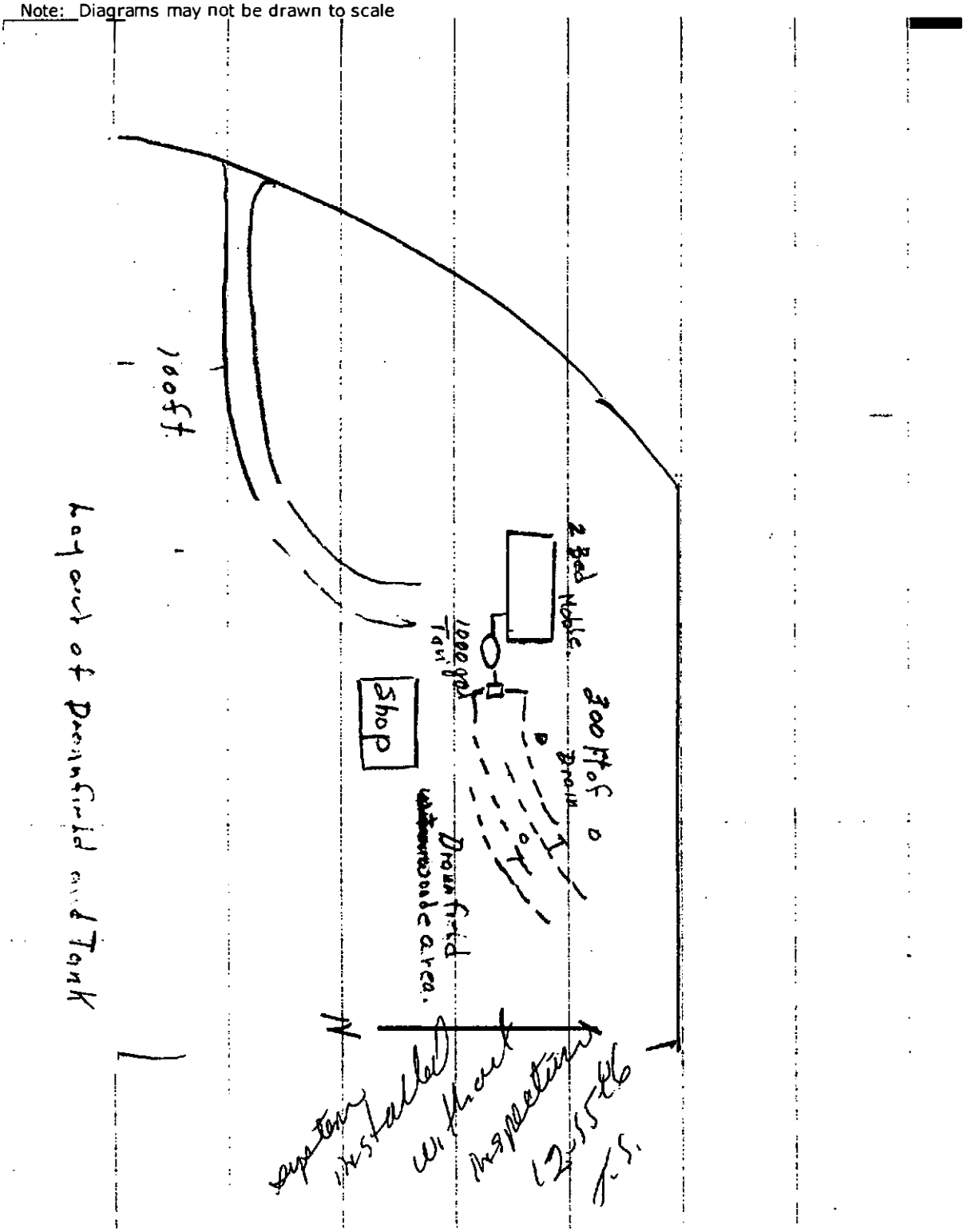
Special Address Information

Address	
City	
State	
Zip	

Governing Persons

Title	Name	Address
Member,Manager	MCCLURE , JUDY F	15714 COUNTRY CLUB DR MILL CREEK , WA 98012
Member,Manager	MCCLURE , LESLIE D	15714 COUNTRY CLUB DR MILL CREEK , WA 98012

PTANumber: 27051400301000
Note: Diagrams may not be drawn to scale



Snohomish County Recording
A Division of the Auditor's Office

Recorded Documents

Welcome Visitor.

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Recorded Documents

Criteria: Tax Parcel is 27051400301000
Showing Records 1 through 4 (4 records found as of 07/19/2016 06:45:04 AM count again)

Get a Free Copy
Results List
Selected Detail(s)
Selected Image(s) (Unofficial)

Other Options
New Search
Refine Search

Page 1 Sort By:

#	Image	☐	Instrument # Book-Page	Date Recorded	Document Type	Name Associated Name	Legal Description	Status
1			201006150603	06/15/2010	EASEMENT	[R] MCCLURE LESLIE D (+) [E] P U D #1 OF SNOHOMISH COUNTY (+)	SEC 14 TWNSHP 27 RNG 05 NE SW 27051400301000	
2			201105260517	05/26/2011	DEEDS(EXCEPT QCDS)	[R] MCCLURE LESLIE D (+) [E] STATE OF WASHINGTON (DEPT OF)	SEC 14 TWNSHP 27 RNG 05 27051400301000	
3			201105260518	05/26/2011	EASEMENT	[R] MCCLURE LESLIE D (+) [E] STATE OF WASHINGTON (DEPT OF)	SEC 14 TWNSHP 27 RNG 05 NE SW 27051400301000	
4			201212130706	12/13/2012	DEEDS(EXCEPT QCDS)	[R] MCCLURE LESLIE D (+) [E] P B S S INVESTMENTS L L C	SEC 14 TWNSHP 27 RNG 05 27051400301000	

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Other Options
New Search
Refine Search

Page 1 Sort By:

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Snohomish County Washington Online Government Information & Services

Printable Version

Home Other Property Data Help

Property Search > Search Results > Property Summary

Property Account Summary

Parcel Number	27051400301000	Property Address	19125 SR 9 SE , SNOHOMISH, WA 98290

Parties - For changes use 'Other Property Data' menu

Role	Percent	Name	Mailing Address
Taxpayer	100	PBSS INVESTMENTS LLC	15714 COUNTRY CLUB DR, MILL CREEK, WA 98012 United States
Owner	100	PBSS INVESTMENTS LLC	15714 COUNTRY CLUB DR, MILL CREEK, WA 98012 United States

General Information

Property Description	Section 14 Township 27 Range 05 Quarter SW - ALL TH PTN S1/2 NE1/4 SW1/4 SD SEC 14 LY E SSH NO 1-A DAF - BEG SE COR SD NE1/4 SW1/4 TH N00*31 28W 443.36FT ALG E LN SD NE1/4 SW1/4 M/L TAP 886.73FT SOF NE COR SD NE1/4 SW1/4 TH S89*33 23W 722.50FT M/L TAP ON E MGN SSH NO 1-A TH SWLY ALG SD E MGN HWY TAP ON S LN SD NE1/4 SW1/4 SD SEC 14 TH N89*33 S5E 894.16FT M/L TO POB EXC RDS & EXC ADDL NWLY PTNTO STATE OF WA FOR R/W PER WD REC UND AFN 201105260517
Property Category	Land and Improvements
Status	Active, Locally Assessed
Tax Code Area	03992

Property Characteristics

Use Code	118 Manufactured Home (Owned Site)
Unit of Measure	Acre(s)
Size (gross)	8.04

Related Properties

No Values Found

Active Exemptions

No Exemptions Found

Please wait while your current taxes are calculated.

Statement of Payable/Paid For Tax Year: 2016

Distribution of Current Taxes

District	Rate	Amount
FIRE DISTRICT 07	1.94	759.72
MONROE SCHOOL DISTRICT NO 103	4.95	1,941.04
PUB HOSP #1 VALLEY GENERAL	0.32	125.25
SNOISLE INTERCOUNTY RURAL LIBRARY	0.44	173.50
SNOHOMISH COUNTY - ROAD	1.52	596.60
SNOHOMISH COUNTY-CNT	0.93	365.82
STATE	2.12	832.71
SNOHOMISH CONSERVATION DISTRICT		5.40
SURFACE WATER - SWM061000		90.00
TOTALS	12.23	4,890.04

Pending Real Property Values

Pending Tax Year	Market Land Value	Market Improvement Value	Market Total Value	Current Use Land Value	Current Use Improvement	Current Use Total Value
2017	353,000	34,600	387,600	0	0	0

Property Values

Value Type	Tax Year 2016	Tax Year 2015	Tax Year 2014	Tax Year 2013	Tax Year 2012
Taxable Value Regular	392,100	325,300	333,200	309,300	361,800
Exemption Amount Regular					
Market Total	392,100	325,300	333,200	309,300	361,800
Assessed Value	392,100	325,300	333,200	309,300	361,800
Market Land	344,500	283,100	295,200	269,500	319,200
Market Improvement	47,600	42,200	38,000	39,800	42,600
Personal Property					

Levy Rate History

Tax Year	Total Levy Rate
2015	12.842725
2014	13.207261
2013	13.647520

Real Property Structures

Description	Type	Year Built	More Information
SingleWide	Mobile Home	1980	View Detailed Structure Information

Property Sales (since 7/31/1999)

Transfer Date	Receipt Date	Sales Price	Excise Number	Deed Type	Grantor (Seller)	Grantee (Buyer)	Other Parcels
12/4/2012	12/13/2012	$0	1013796	W	MCCLURE LESLIE D & JUDY F	PBSS INVESTMENTS LLC	No

Property Maps

Neighborhood Code	Township	Range	Section	Quarter	Parcel Map
3113000	27	05	14	SW	View parcel maps for this Township/Range/Section

Receipts

Date	Receipt No.	Amount Applied
04/25/2016 00:00:00	8725473	2,445.02
10/27/2015 00:00:00	8449954	2,136.57
04/23/2015 00:00:00	8181744	2,136.57
11/07/2014 00:00:00	8055428	2,270.51
04/30/2014 00:00:00	7758486	2,248.03
10/31/2013 00:00:00	7471130	2,158.29
05/01/2013 00:00:00	7215332	2,158.29
10/25/2012 00:00:00	6838276	2,413.58
04/30/2012 00:00:00	6679573	2,413.58
11/02/2011 00:00:00	6409902	2,679.20
04/29/2011 00:00:00	6129156	2,809.07

Events

Effective Date	Entry Date-Time	Type	Remarks
12/04/2012	12/13/2012 14:09:00	Excise Processed	Property Transfer Filing No.: 1013796, Statutory Warranty Deed 12/04/2012 by strphb
12/04/2012	12/13/2012 14:09:00	Taxpayer Changed	Property Transfer Filing No.: 1013796 12/04/2012 by strphb
12/04/2012	01/03/2013 08:44:00	Owner Terminated	Property Transfer Filing No.: 1013796 12/04/2012 by sascaf
12/04/2012	01/03/2013 08:44:00	Owner Added	Property Transfer Filing No.: 1013796 12/04/2012 by sascaf
07/07/2011	07/07/2011 09:05:00	Tax Bill Recalculation	Value Modification for 2011 performed by straml
06/28/2011	06/28/2011 15:53:00	Value Modification	Type: Value Change Due to Segregation/Merger, Status: Approved, Tax Year: 2011 by sassls
06/22/2011	06/22/2011 13:39:00	Value Modification	Type: Value Change Due to Segregation/Merger, Status: Under Review, Tax Year: 2011 by sassls
06/21/2011	06/21/2011 15:45:00	Property Characteristic Changed	Size (gross) changed from 8.48 to 8.04 In 2011 by sassls
06/21/2011	06/21/2011 15:45:00	Property Characteristic Changed	Surface Water Units changed from 8.48 to 8.04 In 2011 by sassls
05/26/2011	05/26/2011 14:21:00	Taxpayer Changed	Property Transfer Filing No.: 432913 05/26/2011 by strphb
05/26/2011	05/26/2011 14:21:00	Excise Processed	Property Transfer Filing No.: 432913, Warranty Deed 05/26/2011 by strphb
09/26/2005	09/26/2005 13:36:00	Taxpayer Changed	Party/Property Relationship by strsjb

Printable Version

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Snohomish County Washington — Online Government Information & Services

Structure Information

Close Window

General Description

Parcel Number **27051400301000** (R01)

Structure Class **Mobile Home**

Structure Type **SingleWide**

Year Built **1980**

MH Make ***Unknown** Model ***Unknown** Serial

Park ***Unknown**

Exterior Features

Foundation **Post & Pier**

Exterior **Metal**

ROOF Type: **Flat or Shed** Pitch **Low** Cover **Built Up**

Interior Features

Full or 3/4 Baths **2** 1/2 Baths **0**

Heat **Forced Hot Air - Gas**

Floor Area

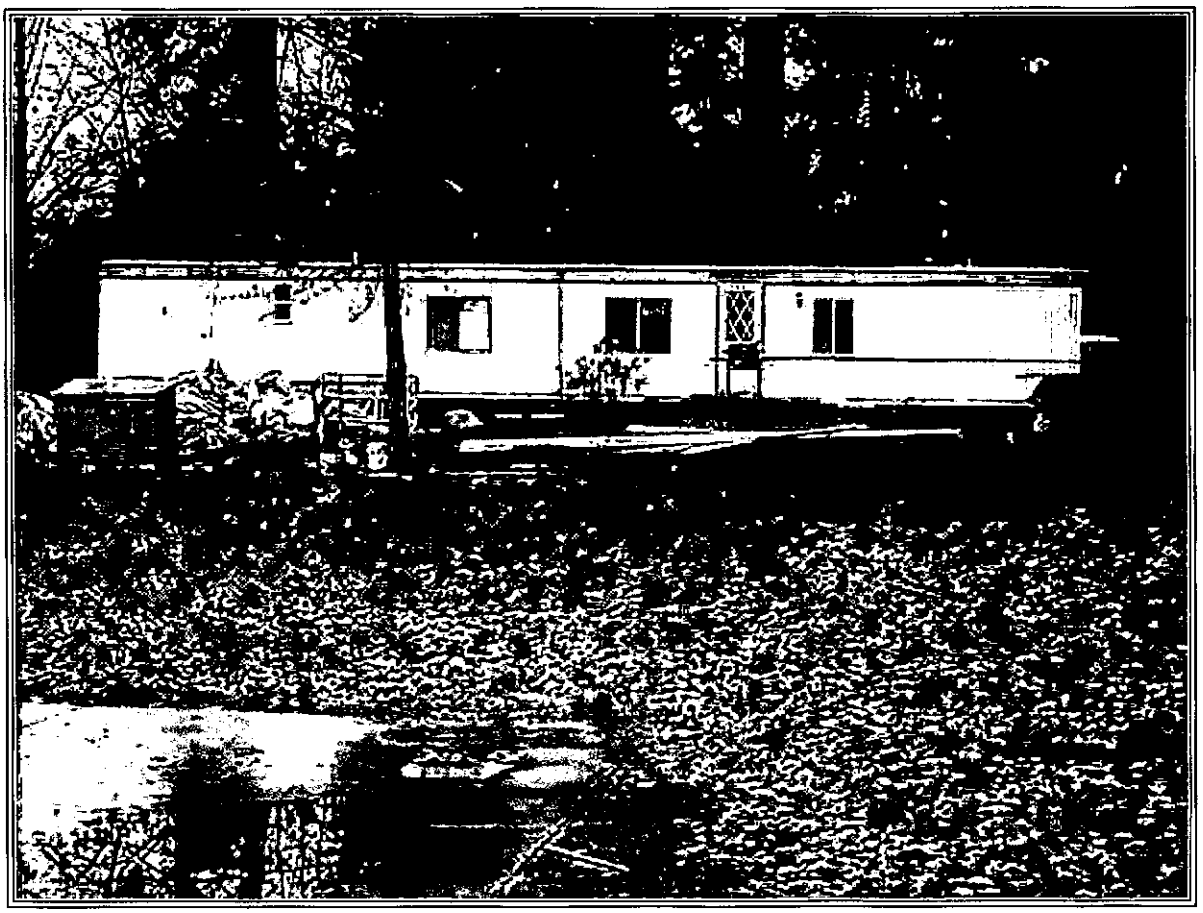
Square Feet **924**

Garage(s), Carport(s) and major outbuilding(s)

Pole Bldg SF **2400**

Shed SF **864**

Other Features

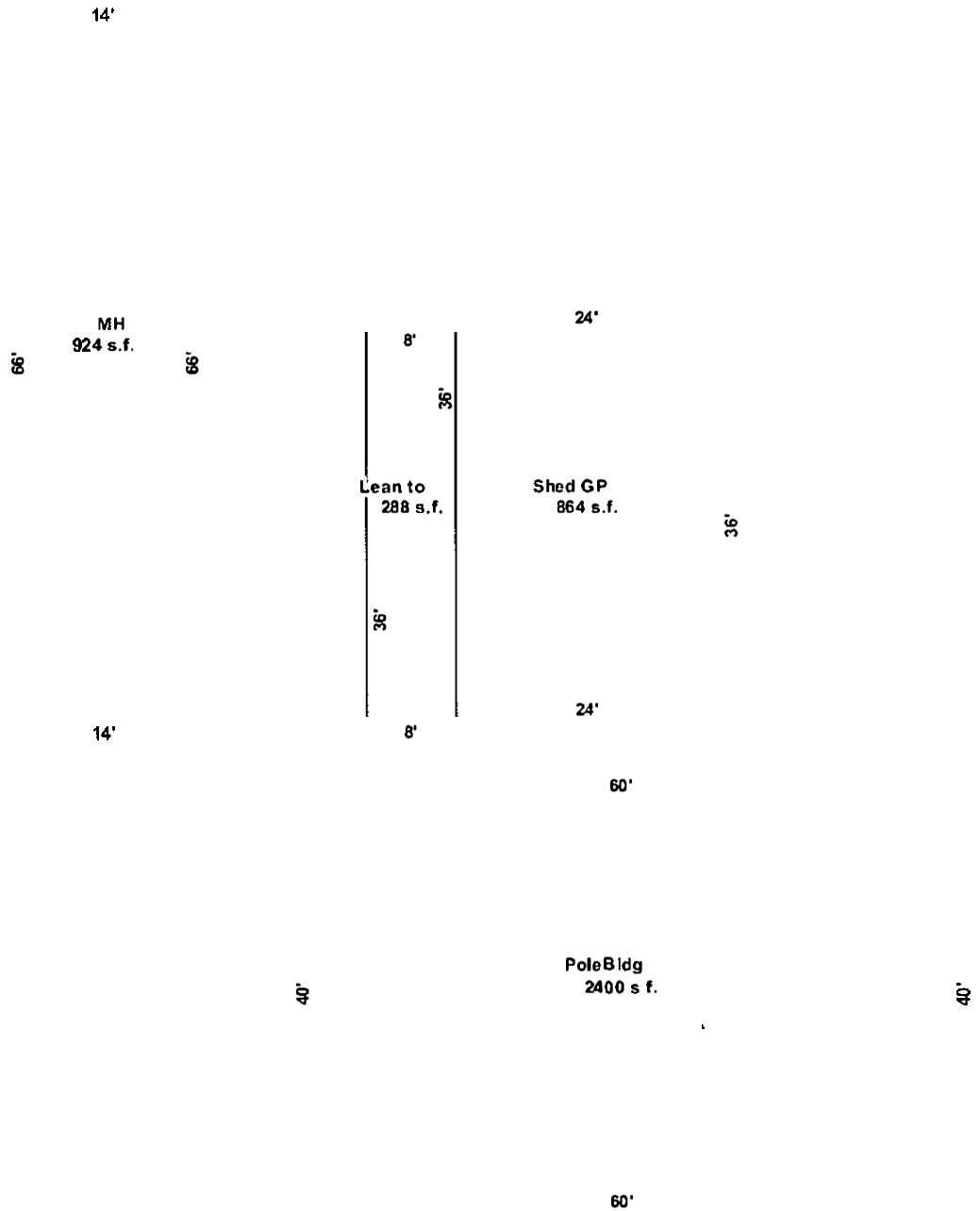


View this sketch in a separate window

Use the structure sketches and information at your own risk. Sketches are extracted from County records on a regular basis and may not be current.

All structure sketches, maps, data, and information set forth herein ("Data"), are for illustrative purposes only and are not to be considered an official citation to, or representation of, the Snohomish County Code. Amendments and updates to the Data, together with other applicable County Code provisions, may apply which are not depicted herein. Snohomish County makes no representation or warranty concerning the content, accuracy, currency, completeness or quality of the Data contained herein and expressly disclaims any warranty of merchantability or fitness for any particular purpose. All persons accessing or otherwise using this Data assume all responsibility for use thereof and agree to hold Snohomish County harmless from and against any damages, loss, claim or liability arising out of any error, defect or omission contained within said Data. Washington State Law. Ch. 42.56 RCW, prohibits state and local agencies from providing access to lists of individuals intended for use for commercial purposes and, thus, no commercial use may be made of any Data comprising lists of individuals contained herein.

Close Window


14'
MH
924 s.f.
66'
66'
8'
24'
36'
Lean to
288 s.f.
Shed GP
864 s.f.
36'
36'
24'
14'
8'
60'
PoleBldg
2400 s f.
40'
40'
60'

Snohomish County Permit, Planning, and Zoning Map



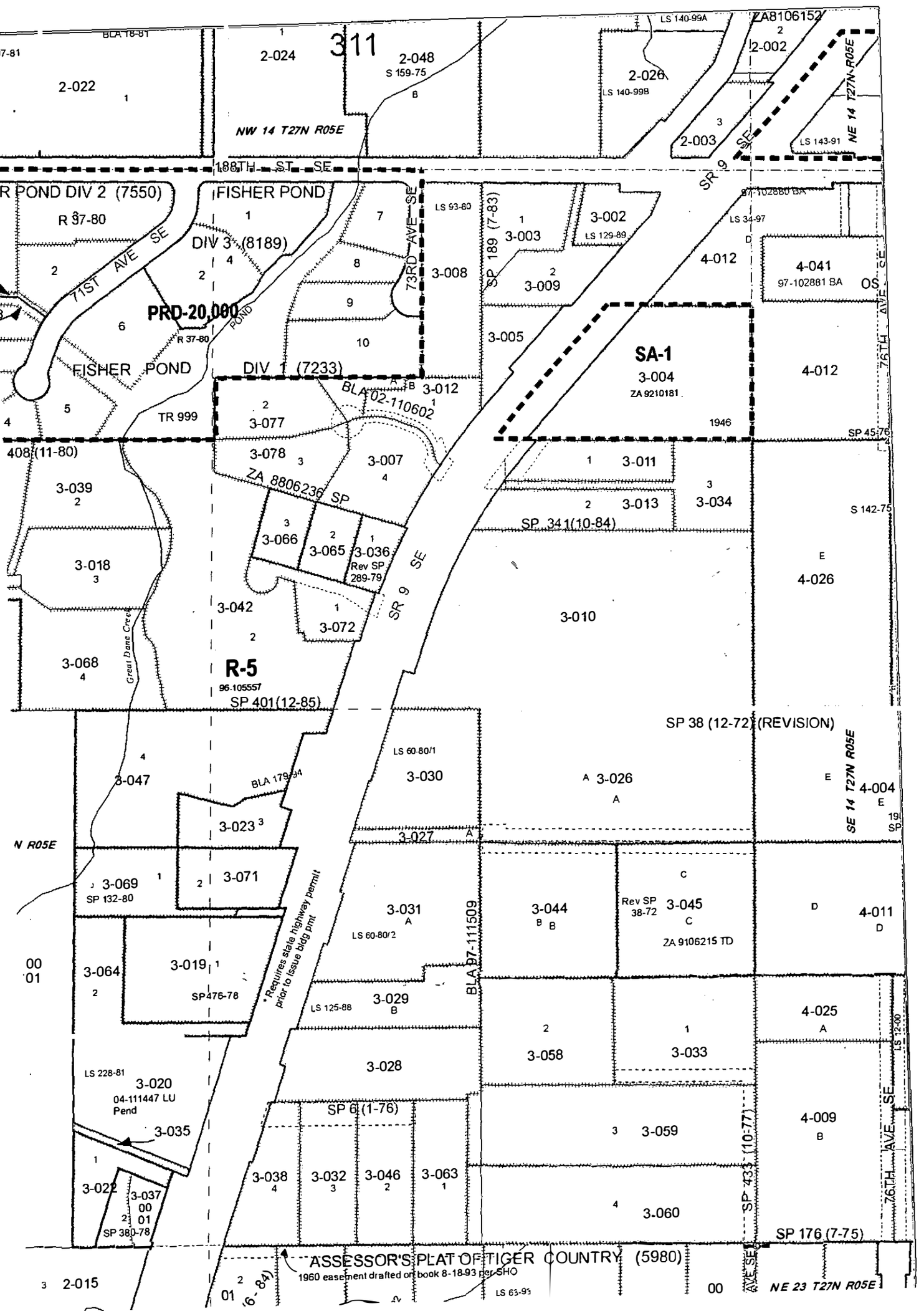
Discloimer:
Neither Snohomish County nor the Department of Planning and Development Services warrants the accuracy, reliability or timeliness of any information contained herein and shall not be held liable for losses caused by using this infonnation. Portions of this information may not be current or accurate. Any person or entity who relies on any information obtained from this system, does so at his or her own risk. All critical information should be independently verified.

RCW 42.17.260(9) prohibits the release of lists of individuals requested for commercial purposes. and requestor expressly represents that no such use of any such list will be made by user or its transferee(s) or vendee(s) "Commercial purposes" means contacting or in some way personally affecting the individuals identified on the list with the purpose of facilitating one's commercial activities

Printed on: 7/19/2016

Legend

- Highlighted Feature
- Street Names
- Cities
- Unincorporated County
- Incorporated City
- Tax Parcels
- Rural Miles
- Township/Range Grid
- Section Grid
- Base Flood Elevations
- Active Permits
- Municipal Urban Growth Area
- Urban Growth Area
- Zoning Lines
- Flood Hazard Areas
- FloodPlains
- 100-yr. flood zone
- Airports
- Railroad tracks
- Major Waterbodies
- Bays
- Flats(tidal)
- Lake or pond
- Land surrounded by a body of water
- Non-marine feature
- Sand or gravel in open water
- Stream
- Stream Names
- Streams
- Zoning Labels
- 2007 Photo Extent
- 2012 Aerial Photo


311
NW 14 T27N R05E
NE 14 T27N R05E
SE 14 T27N R05E
188TH ST SE
SR 9 SE
71ST AVE SE
73RD AVE SE
76TH AVE SE
FISHER POND DIV 2 (7550)
FISHER POND DIV 3 (8189)
FISHER POND DIV 1 (7233)
PRD-20,000
SA-1
R-5
96-105557
ZA 9210181
ZA 8806236 SP
BLA 02-110602
BLA 97-111509
BLA 179-94
SP 189 (7-83)
SP 401(12-85)
SP 341(10-84)
SP 38 (12-72) (REVISION)
SP 433 (10-77)
SP 176 (7-75)
SP 6 (1-76)
SP 380-78
SP 476-78
SP 132-80
SP 45-76
Rev SP 289-79
Rev SP 38-72
ZA 9106215 TD
ZA8106152
97-102880 BA
97-102881 BA
LS 140-99A
LS 140-99B
LS 143-91
LS 93-80
LS 34-97
LS 129-89
LS 60-80/1
LS 60-80/2
LS 125-88
LS 228-81
LS 63-93
S 159-75
S 142-75
TR 999
R 37-80
408 (11-80)
1946
Great Dane Creek
POND
* Requires state highway permit prior to issue bldg pmt
04-111447 LU
Pend
1960 easement drafted on book 8-18-93 per SHO
ASSESSOR'S PLAT OF TIGER COUNTRY (5980)
2-022
2-024
2-048
2-026
2-002
2-003
3-002
3-003
3-005
3-008
3-009
3-012
3-077
3-078
3-007
3-011
3-013
3-034
3-039
3-018
3-066
3-065
3-036
3-042
3-072
3-010
3-068
3-047
3-023
3-030
3-026
3-027
3-069
3-071
3-031
3-044
3-045
3-064
3-019
3-029
3-028
3-020
3-035
3-022
3-037
3-038
3-032
3-046
3-063
3-058
3-033
3-059
3-060
4-012
4-041
4-026
4-004
4-011
4-025
4-009
2-015

Your E-mail Address [redacted]

Step Two

PLEASE KEEP IN MIND THAT THE INFORMATION BELOW IS A PUBLIC RECORD

Violator Information:
(if known)

RECEIVED
JUL 19 2016
PLANNING & DEVELOPMENT SERVICES

Violator First Name:	PBSS Investments LLC
Violator Last Name:	*Field not completed.*
Violator Phone	*Field not completed.*

Location Information:

(Where did the alleged violation happen?)
Please describe as specifically as possible, where the violation occurred.

Address:	19125 SR9 SE
City	Snohomish
Parcel Number (if known)	27051400301000
Additional Address/Location Information:	PBSS Investments LLC mailing address 15714 Country Club Dr, Mill Creek, WA 98012 19125 SR9 SE, Snohomish, WA 98296 Parcel # 27051400301000 (R-5)

Violation Information:

Please indicate the nature of the violation(s). Up to five violations may be selected.

1st	Commercial Equipment Storage
2nd	Illegal Business
3rd	Junkyard Conditions - Rural
4th	**Select
5th	**Select
Further describe the nature of the violation(s) with as much detail as possible.	Owner has been running an illegal business with heavy trucks and equipment since 2012 on an R-5 zoned property. SCOPI shows new owner as of 12-04-2012.

PLEASE review entry above before submitting. REMINDER: Step 2 is a PUBLIC RECORD

Takayesu, Lori (PDS)

From: noreply@civicplus.com
Sent: Monday, July 18, 2016 5:50 PM
To: PDS_CE_Complaints
Subject: Online Form Submittal: PDS - Complaint Investigation Request

PDS - Complaint Investigation Request

Step 1

Your Public Disclosure Options

Under the Public Records Act, chapter 42.56 RCW, the information provided on a complaint investigation request form is subject to public disclosure. Information revealing the identity of persons who are witnesses to crimes or who file complaints with investigative agencies may be withheld from disclosure under RCW 42.56.240(2) if the complainant indicates a desire for nondisclosure of their identifying information at the time the complaint is made.

Please note, your name must be disclosed if you are identified as a witness in an administrative or court proceeding concerning this matter, or if otherwise required by an administrative or court order.	NO, you MAY NOT disclose my identity upon public inquiries regarding this complaint without my permission)

Complainant Information
(We need to know who is reporting the incident)

Your Name:	[redacted]
	[redacted]
Your Phone:	
Daytime Phone:	[redacted]
Evening Phone:	*Field not completed.*
Your Mailing Address:	[redacted]
City	[redacted]
Zip Code	[redacted]

SNOHOMISH COUNTY COUNCIL

EXHIBIT # M.2

FILE 25-105874 REZO

Exhibit M.2
25-105874 REZO/VAR
Snohomish County
Hearing Examiner
FILED 2/23/2026



Complaint Investigation Report

TAX ACCT #: 270514-003-010-00 **Case #:** 19 103943 CT

SEC: 14 TWP: 27 RNG: 5 Priority: 3 ZONING: R-5 Acreage:

VIOLATION LOCATION: 19125 STATE ROUTE 9 SE CITY: SNOHOMISH

OWNER: PBSS Investments LLC HOME Phone:

ADDRESS: 15714 COUNTRY CLUB DR WORK Phone:

MILL CREEK, WA 98012 CELL Phone:

Email:

RENTER/AGENT IF DIFFERENT FROM OWNER:

NAME: HM PHONE:

ADDRESS: WK PHONE:

CITY: STATE: ZIP: CELL PHONE:

Email:

INVESTIGATED BY: DATE: 3-8-18

INITIAL INVESTIGATION:

Complaint of commercial equipment storage and encroaching on property. Per 16-122234 CT, commercial equipment storage is non-conforming use. Advised property line is a civil matter.

VIOLATIONS:

In accordance with RCW 42.56, the contents of this file include all known paper records associated with this case. There may be additional paper records or electronic records (such as emails, photos, etc.) that exist associated with this project that are not included in the project case file. Upon written request, a search can be made for the existence of any such records. Please check with a PDS Records Specialist.

3-8-19

Spoke w/ Complainant 3/8/19 Advised Civil matter regarding Property Dis- Per 16.12.234 Commercial Equipment Storage = grandfathered

RECEIVED
MAR 08 2019
PLANNING & DEVELOPMENT SERVICES

Step Two

PLEASE KEEP IN MIND THAT THE INFORMATION BELOW IS A PUBLIC RECORD

Violator Information: *(if known)*	
Violator First Name:	*Field not completed.*
Violator Last Name:	*Field not completed.*
Violator Phone	*Field not completed.*

Location Information:

(Where did the alleged violation happen?)
Please describe as specifically as possible, where the violation occurred.

Address:	19125 State Route 9 SE
City	Snohomish
Parcel Number (if known)	*Field not completed.*
Additional Address/Location Information:	*Field not completed.*

Violation Information:

Please indicate the nature of the violation(s). Up to five violations may be selected.

1st	Illegal Occupancy
2nd	Commercial Equipment Storage
3rd	**Select
4th	**Select
5th	**Select
Further describe the nature of the violation(s) with as much detail as possible.	There is a commercial property of some kind doing junk dealing with large equipment between 188th St., Southeast and 197th St., Southeast on Highway 9. It appears as though they may have extended their commercial property use, which may or may not be a violation in and of itself, onto our private property. I'd like to get this complaint investigated and To retrieve our property line as soon as possible if there is an infringement.

PLEASE review entry above before submitting. REMINDER: Step 2 is a PUBLIC RECORD

Email not displaying correctly? View it in your browser.

Moline , Stephanie

From: noreply@civicplus.com
Sent: Wednesday, March 06, 2019 10:43 AM
To: PDS_CE_Complaints
Subject: Online Form Submittal: PDS - Complaint Investigation Request

PDS - Complaint Investigation Request

Step 1

Your Public Disclosure Options

Under the Public Records Act, chapter 42.56 RCW, the information provided on a complaint investigation request form is subject to public disclosure. Information revealing the identity of persons who are witnesses to crimes or who file complaints with investigative agencies may be withheld from disclosure under RCW 42.56.240(2) if the complainant indicates a desire for nondisclosure of their identifying information at the time the complaint is made.

Please note, your name must be disclosed if you are identified as a witness in an administrative or court proceeding concerning this matter, or if otherwise required by an administrative or court order.	NO, you MAY NOT disclose my identity upon public inquiries regarding this complaint without my permission

Complainant Information
(We need to know who is reporting the incident)

Your Name:	[redacted]
	[redacted]
Your Phone:	
Daytime Phone:	[redacted]
Evening Phone:	*Field not completed.*
Your Mailing Address:	[redacted]
City	[redacted]
Zip Code	[redacted]
Your E-mail Address	[redacted]

Snohomish County Online Government Information & Services
Washington

Home | Other Property Data | Help

Property Search > Search Results > Property Summary

Property Account Summary

3/19/2019

Parcel Number	27051400301000	Property Address	19125 SR 9 SE , SNOHOMISH, WA 98290

General Information

Property Description	Section 14 Township 27 Range 05 Quarter SW - ALL TH PTN S1/2 NE1/4 SW1/4 SD SEC 14 LY E SSH NO 1-A DAF - BEG SE COR SD NE1/4 SW1/4 TH N00*31 28W 443.36FT ALG E LN SD NE1/4 SW1/4 M/L TAP 886.73FT SOF NE COR SD NE1/4 SW1/4 TH S89*33 23W 722.50FT M/L TAP ON E MGN SSH NO 1-A TH SWLY ALG SD E MGN HWY TAP ON S LN SD NE1/4 SW1/4 SD SEC 14 TH N89*33 55E 894.16FT M/L TO POB EXC RDS & EXC ADDL NWLY PTNTO STATE OF WA FOR R/W PER WD REC UND AFN 201105260517
Property Category	Land and Improvements
Status	Active, Locally Assessed
Tax Code Area	03992

Property Characteristics

Use Code	118 Manufactured Home (Owned Site)
Unit of Measure	Acre(s)
Size (gross)	8.04

Related Properties

No Related Properties Found

Parties

Role	Percent	Name	Address
Taxpayer	100	PBSS INVESTMENTS LLC	15714 COUNTRY CLUB DR, MILL CREEK, WA 98012 United States
Owner	100	PBSS INVESTMENTS LLC	15714 COUNTRY CLUB DR, MILL CREEK, WA 98012 United States

Property Values

Value Type	Tax Year 2019	Tax Year 2018	Tax Year 2017	Tax Year 2016	Tax Year 2015
Taxable Value Regular	$438,900	$405,600	$387,600	$392,100	$325,300
Exemption Amount Regular					
Market Total	$438,900	$405,600	$387,600	$392,100	$325,300
Assessed Value	$438,900	$405,600	$387,600	$392,100	$325,300
Market Land	$409,000	$375,000	$353,000	$344,500	$283,100
Market Improvement	$29,900	$30,600	$34,600	$47,600	$42,200
Personal Property					

SNOHOMISH COUNTY COUNCIL

EXHIBIT # M.4

FILE 25-105874 REZO

Exhibit M.4
25-105874 REZO/VAR
Snohomish County
Hearing Examiner
FILED 2/23/2026

From: Machen, Joshua
Sent: Monday, July 8, 2024 8:18 AM
To: T Erickson, MA, CSP, LMHC <tomerick@juno.com>
Subject: RE: File Name: PBSS Investments ACUP File Number: 24 109207 ACUP, 24 1092 08 LDA

Tom Erickson,

Thank you for your interest and taking the time to provide comment on this application. First I would like to direct you to our public records portal: https://snoco.org/pdspublicrecords/index.html if you click on this link and choose search by permit bubble you can enter in the project file number **24 109207** ACUP and you will be able to access all of the documents related to this file. The postcard link is also an avenue to review the applicant's submittal documents, but there too you must enter the file number.

Yes, this is an after-the-fact permit. The property has been under code enforcement action and part of resolving that code enforcement action is to obtain proper permits for the activity. As part of this permit the applicant will be retroactively addressing all code requirements related to the previous expansion. The Construction Contracting business is not an allowed use in the R-5 zone, however, the business was established prior to the current zoning regulations and is considered a legally non-conforming use. According to Snohomish County Code (SCC) 30.28.072 nonconforming uses may be continued and may be expanded by 100% of their use area through the issuance of an administrative conditional use permit. The department may impose conditions upon the expansion of the use to minimize impacts and ensure compatibility with nearby existing and potential uses.

Regards,

Joshua Machen, AICP | *Principal Planner*
Snohomish County Planning & Development Services
3000 Rockefeller Ave., M/S 604 | Everett, WA 98201
425-262-2975 | Joshua.Machen@co.snohomish.wa.us

SNOHOMISH COUNTY COUNCIL
EXHIBIT # A.1
FILE 25 105874 REZO

Master Permit Application for Land Use Permits and Approvals

Snohomish County
Planning and Development Services

I. Property Location

Primary property address, general location, and all associated property tax account numbers (attach separate pages if necessary):

19125 SR-9 SE, Snohomish WA 98290

Within SW 1/4 of Sec. 14 / Township 27 / Range 05E

Legal Description Enclosed

II. General Project Information

Permits and/or approvals requested from Snohomish County (check all that apply):

☐ Administrative Conditional Use	☐ Urban Center Development Plan	☐ Subdivision[9]
☐ Conditional Use	☐ Development Agreement	☐ Preliminary
☑ Variance[1]	☐ Minor Revision[7]	☐ Final
☑ Rezone[2]	☐ Major Revision[8]	☐ Alteration[10]
☐ Binding Site Plan	☐ Landscape Modification	☐ Short Subdivision[9]
☐ Administrative Site Plan[3]	☐ Shoreline	☐ Preliminary
☐ Official Site Plan[4]	☐ Substantial Development	☐ Final
☐ Preliminary Plan Approval[5]	☐ Conditional Use	☐ Alteration[10]
☐ Final Plan Approval[6]	☐ Variance	☐ Special Use[11]

Footnotes: (1) Title 30 SCC variances, except under the Shoreline Management Program (Chapter 30.44 SCC); (2) Owner(s) must sign application; (3) Urban Residential Development Standards (Chapter 30.23A SCC), Single Family Detached Units (Chapter 30.41F SCC), and Cottage Housing (Chapter 30.41G SCC); (4) Planned Residential Development (Chapter 30.42B SCC), Mobile Home Parks (Chapter 30.42E SCC), development in existing FS and GC zones, and FS, RFS, and GC rezones; (5) BP, PCB, and NB rezones, IP zone rezones for five acres or more, and development of five acres or more in existing PCB, BP, and IP zones; (6) Development in existing PCB, BP, and IP zones; (7) Type 1 and 2 residential and nonresidential applications only; (8) Type 1 and 2 residential development applications only; (9) Inclusive of Rural Cluster Subdivision or Short Subdivisions (Chapter 30.41C SCC); (10) A majority of owners must sign application; and (11) Community Facilities for Juveniles.

Project name:

PBSS Rural Business Rezone & Variance

Explain your request and all proposed uses included in this development proposal:

Applicant, PBSS Investments, LLC, seeks a rezone to Rural Business (RB) for the westerly +/- 3.8 ac of Parcel 27051400301000, totaling +/-8.04 acres, along with related variances to 30.22.130(80) and 30.31F.100(4). Applicant seeks a pause on the further consideration of 24109207ACUP and 24109208LDA until resolution of the rezone and variance applications.

Exhibit A.1
PFN: 25-105874 REZO
25-105880 VAR

III. Applicant Information

25 105874 REZO

	Applicant	Contact person (if different)
Name:	PBSS Investments, LLC.	Toyer Strategic Advisors, Inc.
Mailing Address:	15714 COUNTY CLUB DR	3705 COLBY AVE, STE 1
City, State, Zipcode:	MILL CREEK, WA 98012	EVERETT, WA 98201
Phone:	425-225-2037	425-344-1523
Email:	jim@mcclureandsons.com	david@toyerstrategic.com

Applicant's interest to property (check one):

☑ Owner ☐ Consultant ☐ Contract Purchaser ☐ Lessee ☐ Other (specify): _____

All persons and/or entities having an ownership interest in the property:

Name:		Phone:	
Address:		Email:	
Name:		Phone:	
Address:		Email:	
Name:		Phone:	
Address:		Email:	

IV. Site Information

General site information:

Site Acreage: 8.04 Site Square Footage: 350,222

Present Zoning: R-5 Present Comprehensive Plan Designation: Rural Residential 1/5

Source of water supply (check one):

☑ Private Well ☐ Group Well ☐ Public Water (specify purveyor): _____

Method of sewage disposal (check one):

☑ On-Site Septic ☐ Off-Site Septic ☐ Public Sewer (specify purveyor): _____

V. Civil Construction Information

Proposed land disturbing activities:

☑ Clearing ☑ Grading ☑ Other (specify): _____

Is the proposal "new development" under SCC 30.91N.044? ☑ Yes ☐ No

Is the proposal "redevelopment" (35% existing hard surfaces) under SCC 30.91R.070? ☐ Yes ☑ No

Proposed hard surfaces (square feet):

New: 550 Replaced: 0 New plus replaced: 550

Proposed clearing (square feet): 27540

Conversion of native vegetation to lawn and/or landscaped areas (square feet): 0

Conversion of native vegetation to pasture (square feet): 0 25.105874.REZO

Proposed grading quantities (cubic yards):

Cut: 25 Fill: 25

VI. Project-Specific Information

For rezones:

Zoning requested: Rural Business (RB) zone

Has anyone applied for a rezone on this property within the last year? ☐ Yes ☑ No

If yes, when? _____

For subdivisions and short subdivisions:

Plat name: _____ Proposed number of lots: _____

Proposed number of tracts: _____ Public road dedication? ☐ Yes ☐ No

For variances:

Code requirements from which relief is sought: SCC 30.22.130(80)(b),(c),(d), & (e), 30.31F.100(4), and 30.25.020

_____

For Shoreline Substantial Development or Conditional Use Permits:

Total cost or fair market value, whichever is higher, of project including all construction finishing work plus permanent equipment to be installed for which the permit will be issued: $_____

Construction dates for which permit is requested (month and year): Begin: ___/_____ End: ___/_____

Does this project require a Shoreline/Floodplain location? ☐ Yes ☐ No

If yes, please explain why: _____

_____

Waterbody: _____ Shoreline Environment Designation: _____

VII. Authorization

For all applications[1, 2]:

I am the property owner or am authorized by the property owner to sign and submit this application. I grant permission for County staff and/or its agents to enter onto the subject property for the sole purpose of making any inspections of the property which are necessary to process this application in accordance with Chapter 30.81 SCC. I certify under penalty of perjury of the laws of the State of Washington that the information on this application and all information submitted herewith is true, complete, and correct.

Signature: _____ Date: 3/25/25

Printed name: Les McClure Relationship to project: Manager

Signature: _____ Date: _____

Printed name: _____ Relationship to project: _____

Footnotes: (1) For rezones, the property owner(s) must sign. If more than one owner, add authorization pages. (2) For subdivision and short subdivision plat alterations, a majority of all owners must sign the application.

TOYER STRATEGIC ADVISORS, INC.
3705 COLBY AV, STE 1 | EVERETT, WA 98201
toyerstrategic.com | 425-322-5226

SNOHOMISH COUNTY COUNCIL
EXHIBIT # A.3
FILE 25 105874 REZO

~~March 27, 2025~~
REVISED JULY 18, 2025

Planning & Development Services Snohomish County
3000 Rockefeller Ave
Everett, WA 98201

REZONE & DECISION CRITERIA ANALYSIS – PBSS INVESTMENTS

To Whom It May Concern:

On behalf of the Applicant, PBSS Investments, LLC.[i], our firm respectfully submits the following analysis in support of an application for a 2.86 acre rezone from Rural-5 (R-5) zone to Rural Business (RB). The subject rezone **DOES NOT** require a change to the land use designation in the comprehensive plan.

CONTEXT FOR REZONE:

SCC 30.31F.020, Minimum Zoning Criteria for the Rural Business (RB), Rural Industrial (RI), Rural Freeway Service (RFS) and Clearview Rural Commercial (CRC) zones, establishes in Section (2) that:

> The RB zone is a zoning classification which will be located within a rural residential land use designation. The RB zone, including expansions to the RB zone classification, shall be applied only to properties that meet all the following locational criteria, **except as provided in SCC 30.31F.020(3) and (4)** *Emphasis Added*

SCC 30.31F.020(4), below, establishes that the RB zone can be applied to properties having an existing commercial use as follows:

> For properties that contain a commercial use **permitted or otherwise** allowed in the RB zone that existed on or before the effective date of this section, a rezone to RB may be approved only for that portion of the site containing the existing use and may not expand beyond the location of the existing commercial use unless the locational criteria of subsection (2) of this section are met with respect to the expansion area. **The locational criteria contained in subsection (2) of this section and the maximum building footprint requirements of SCC 30.31F.110 and 30.31F.120 need not be met for that portion of the site containing the existing use**. *Emphasis Added*

The Applicant's commercial use of the subject parcel was established prior to the effective date of both the current RB zoning requirements at SCC 30.31F.020 and the original RB zoning requirements at SCC 18.65.020. Further, the Applicant's commercial use, which is consistent with the current "Construction Contracting" use is a permitted use in the RB zone.

There is nothing within either SCC 30.31F.020 (current code) or SCC 18.65.020 (the prior code) that establishes a requirement that the commercial use in question must already be a permitted or legally non-conforming use at the time a rezone to RB is sought. In fact, the RB zoning classification, which was adopted along with other substantive commercial/industrial rural zoning changes, was explicitly intended for the purpose of addressing existing small businesses located throughout the rural areas, some of which were known to be unpermitted uses. By establishing the RB zone, the County Council made a clear legislative decision to help bring existing rural businesses into compliance while simultaneously limiting the future expansion of such uses.

In fact, the legislative record for the adoption of Ordinance No. 98-121 clearly shows that the "Building

Exhibit A.3
PFN: 25-105874 REZO
25-105880 VAR

Contractor" (*the use now called Construction Contracting*) was explicitly included in the ordinance because of requests by attorneys for CCH Construction (Richard & Charlene Imus) and the Blooms (a/k/a Three B's), which parties sought relief to address zoning issues encountered by their existing rural businesses. As an example, CCH Construction, a small construction contractor that had been cited by the County for operating a use in the Rural-5 zone, asked Council to provide relief by creating a rezone process for their small, unpermitted business to continue to operate by seeking a rezone to the new Rural Business zone. This is evidenced by Council Exhibits 76, 101, 104 and 105 to Ordinance No. 98-121, which are collectively attached hereto as **Exhibit A**.

Thus, when Council added the language "*permitted or otherwise allowed in the RB zone. . .*" such provision was to be prospectively applied when the use is permitted within the newly created RB zone, making it irrelevant whether the use in question was unpermitted, permitted, or legally nonconforming under its existing zone.

This is confirmed by the County Council's decision overturning the rezone denial by the Snohomish County Hearing Examiner for Three B's Construction (File No. 99-10198 LU) because the use was an illegal business (as opposed to a legally non-conforming use) that couldn't therefore qualify for a rezone to RB.

Three B's Construction owned and operated an unpermitted contracting business on a 13-acre property, later seeking to legalize the business on 4 acres of the property through a rezone to an RB designation. The Hearing Examiner determined that Ordinance No. 98-121 was intended to address nonconforming uses, not illegal uses. Hearing Examiner Decision 99-101988 at 10. On appeal, County Council overturned the Hearing Examiner's decision, finding that the Hearing Examiner's interpretation "effectively nullifies the legislative relief intended by the Council" in adopting Ordinance 98-121, stating further that the intent behind the Ordinance "was to apply the exception language to all existing uses, whether or not they were legal nonconforming uses a (sic) the time of application for a rezone to Rural Business." Hearing Examiner Decision on Remand by Motion 99-384 at 16-17. In its findings and conclusions, the County Council instructed that its intent was to include such businesses and that such existing uses are exempt from the locational criteria. *Id.* As part of its decision in Three B's, Council further established that the rezone of such existing contractor businesses was in conformance with the comprehensive plan, which established that changed circumstances were not necessary to prove and that such rezone was in the interest of the public health, safety and welfare.

The attached **Exhibit B** is extensive catalog of documents which include the original Hearing Examiner Decision in Three B's; documents from the Council's appeal proceedings, including transcripts of its public hearing establishing the RB zone, its decision, and Motion 99-384; and the Hearing Examiner's reissued decision in the matter.

In addition to showing that Council was allowing existing business of any type to rezone to RB, the evidence at the time, including in the transcripts, reflects that relative to the Contractor use in the RB zone, the Council established the maximum building footprint to apply to future building footprints, not existing buildings. Council member Sievers shared a particular concern that existing buildings over the footprint limitation might "have to tear it down and start over again." Hearing Examiner Decision on Remand 99-384, Exhibit 34 at 1.

The record conclusively shows that Council was concerned that if they were allowing existing business to be granted a rezone, it would be an issue if the conditions they established future contractor uses in the RB zone may be challenging (or impossible) for existing businesses to comply.

The Applicant points this out as it pertains to its separate, but related request for a variance from standards that would effectively deny the continuance of their existing business should they be applied relative to the instant rezone request. Such denial of the variance would be equivalent to a denial of the rezone and prevent an existing business from obtaining the relief envisioned by the Council which established the code in question. Council's primary concern was allowing existing businesses to continue to operate as they had, or "grandfathered" into the existing zoning code. Hearing Examiner Decision on Remand 99-384, Exhibit 34 at 8 (*discussion between council members Sievers, Cothern, and Larsen and PDS' Reirsgard and Shilde regarding adherence to zoning criteria*). Council's discussion evidences its intent to allow preexisting uses, whether illegal or otherwise, and not require strict adherence to zoning requirements.

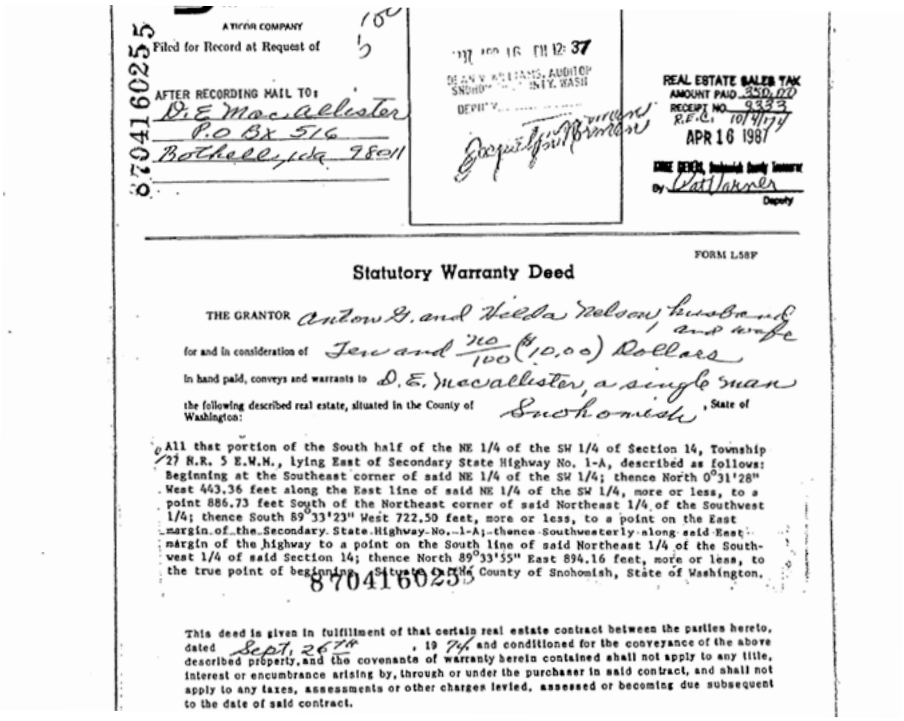
Again, whether the Applicant's use in this matter is legal, illegal or legally non-conforming is irrelevant as the fact that Applicant's use was established and has been continuously maintained prevails based on Council's clear intent.

Moreover, the use of the phrase "permitted or otherwise allowed" contemplates that future rezones, such as this, could be approved for existing rural businesses regardless of whether those businesses complied with all current development standards.

ESTABLISHMENT OF THE COMMERCIAL USE:

To demonstrate that the Applicant's commercial use existed prior to the effective date of both the original RB zone ordinance[1] and the current RB zone ordinance[2], the Applicant has provided a general history of the commercial use of the site prior to the original enactment of the RB zone:

1. Duncan (D.E.) MacAllister acquired the subject property from Anton and Hilda Nelson in 1974.



A TICOR COMPANY

Filed for Record at Request of

AFTER RECORDING MAIL TO: D.E. MacAllister P.O Box 516 Bothell, Wa 98011

8704160255

REAL ESTATE SALES TAX AMOUNT PAID 350.00 RECEIPT NO. 9333 R.E.C. 10/4/74 APR 16 1987

FORM L58F

Statutory Warranty Deed

THE GRANTOR Anton G. and Hilda Nelson, husband and wife

for and in consideration of Ten and no/100 ($10.00) Dollars

in hand paid, conveys and warrants to D. E. MacAllister, a single man

the following described real estate, situated in the County of Snohomish, State of Washington:

All that portion of the South half of the NE 1/4 of the SW 1/4 of Section 14, Township 27 N.R. 5 E.W.M., lying East of Secondary State Highway No. 1-A, described as follows: Beginning at the Southeast corner of said NE 1/4 of the SW 1/4; thence North 0°31'28" West 443.36 feet along the East line of said NE 1/4 of the SW 1/4, more or less, to a point 886.73 feet South of the Northeast corner of said Northeast 1/4 of the Southwest 1/4; thence South 89°33'23" West 722.50 feet, more or less, to a point on the East margin of the Secondary State Highway No. 1-A; thence Southwesterly along said East margin of the highway to a point on the South line of said Northeast 1/4 of the Southwest 1/4 of said Section 14; thence North 89°33'55" East 894.16 feet, more or less, to the true point of beginning. Situate in the County of Snohomish, State of Washington.

8704160255

This deed is given in fulfillment of that certain real estate contract between the parties hereto, dated Sept. 26th, 19 74 and conditioned for the conveyance of the above described property, and the covenants of warranty herein contained shall not apply to any title, interest or encumbrance arising by, through or under the purchaser in said contract, and shall not apply to any taxes, assessments or other charges levied, assessed or becoming due subsequent to the date of said contract.

2. MacAllister's background was in construction and electrical/equipment maintenance, which background is highlighted in his obituary.[3] He retired in 1980, but thereafter he continued to be personally engaged in construction work, equipment repair and maintenance, storage of equipment and other items, etc. Initially, MacAllister utilized a brick building "shop" on the site for these activities. But in 1986 he applied for permits to construct a new metal building "shop" to expand his use on the site, which was approved in 1987. The site also included several small wooden outbuildings at the time of Applicant's purchase.

---

[1] Ordinance 98-121, adopted on December 16, 1998. The presumptive effective date of the ordinance would be late December 1998 or early January 1999 depending on the timing of the Executive's signature and date of publication as the ordinance did not establish an effective and would have become effective five days after publication.

[2] The RB zone was readopted by Amended Ordinance No. 02-064 (effective January 1, 2023), which action renumbered SCC 18.65.020(3) to SCC 30.31F.020(3) until adoption of Ordinance No. 03-099, which renumbered subsection SCC 30.31F.020(3) to subsection (4)

[3] A copy is attached as Exhibit M.

Duncan E. MacAllister

THURSDAY, AUGUST 31ST, 2006

Duncan E. MacAllister, 90, a former Stanwood community resident, passed away on Thursday, August 31, 2006 at Home Place Special Care in Burlington.
He was born on June 2, 1916 in Grand Rapids, Minnesota, the son of Arnold & Teresa Syres MacAllister.
He was raised and attended school in Grand Rapids and from there joined the Civilian Conservation Corps in the early 1930's. In 1935 he moved to Marysville, WA and worked as a carpenter for the Howard Wright construction company in Seattle for several ye
During WW II he enlisted into the U.S. Army Air Corps and was a turret gunner on a Mitchell B-25 bomber. He nt time serving in India.
r his discharge he again worked in construction in King County.
e later worked for the Columbia Ward Fish Co. of Seattle as an electrical and equipment maintenance engineer in Alaska for several years, retiring in 1980. Duncan had made his home in Stanwood since 1992 until recently moving to Skagit County.
He was a member of the 22nd Bomb Squadron Assoc. and the International Brotherhood of Electrical Workers Union.
He is survived by his brother, Bill MacAllister and his wife, Lilly of Acme and several nieces and nephews. He was preceded in death by 3 brothers, Stanley R., Douglas A. and Alvin E. MacAllister and 2 sisters, Margaret Cook and Emma Wells.
Graveside Inurnment services will be held at the Green Hills Memorial Cemetery in Burlington on Thursday, September 7, 2006 at 2:00pm with Military Honors provided by the George Baldridge Post 43, American Legion. Services and cremation are under the direction of Lemley Chapel, Sedro-Woolley.

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3. On May 7th, 1986, the Snohomish County Council approved Amended Ordinance No. 86-037, repealing the existing zoning code in its entirety and replacing it with a new Title 18 (*aka 1986 Zoning*). The effective date of the new zoning code per Section 3 of the ordinance was set as July 1, 1986. Title 18 did not include a Rural Business (RB) zone, as the Rural Business zone was not established by Ordinance 98-121 until December 16, 1998.

Amended

ORDINANCE NO. 86-037

RELATING TO ZONING; REPEALING TITLE 18 SNOHOMISH COUNTY CODE, ZONING, and ENACTING A NEW TITLE 18, ZONING

BE IT ORDAINED:

Section 1. Title 18 Snohomish County Code, Zoning, is hereby repealed in its entirety.

Section 2. A new Title 18, Snohomish County Code, as attached hereto and made a part hereof, is hereby enacted.

Section 3. The effective date of this ordinance is July 1, 1986.

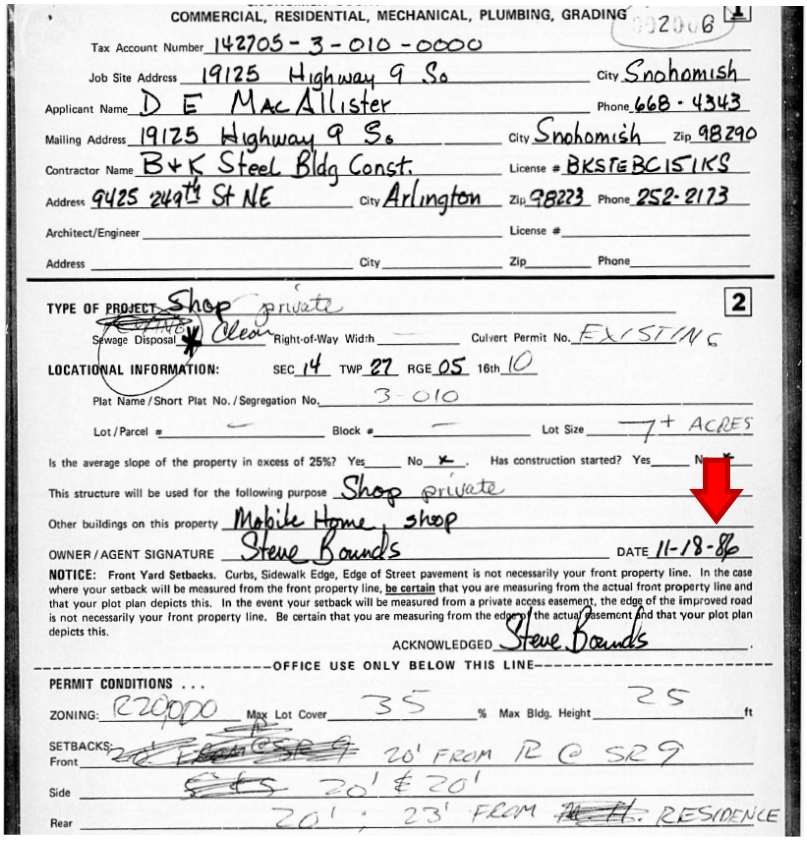
PASSED this 7th day of May, 1986.

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

Chairperson

4. On or about November 18, 1986, MacAllister through his agent Steve Bonds, applied for a development permit to construct a "shop" in the R20,000 zone[4]. This permit application (shown on the following page) denotes that there was a mobile home and "shop" (brick building) already on the premises. This newly permitted building was constructed in 1987.

[4] The underlying zone was RR 20,000 before the Council adopted an areawide rezone via Ordinance 91-034 in March 1991, which changed the subject property to R-5.



COMMERCIAL, RESIDENTIAL, MECHANICAL, PLUMBING, GRADING

Tax Account Number 142705-3-010-0000

Job Site Address 19125 Highway 9 So City Snohomish

Applicant Name D E MacAllister Phone 668-4343

Mailing Address 19125 Highway 9 So City Snohomish Zip 98290

Contractor Name B+K Steel Bldg Const. License # BKSTEBC151KS

Address 9425 249th St NE City Arlington Zip 98223 Phone 252-2173

Architect/Engineer License #

Address City Zip Phone

TYPE OF PROJECT Shop private 2

Sewage Disposal Clear Right-of-Way Width Culvert Permit No. EXISTING

LOCATIONAL INFORMATION: SEC 14 TWP 27 RGE 05 16th 10

Plat Name / Short Plat No. / Segregation No. 3-010

Lot / Parcel # Block # Lot Size 7+ ACRES

Is the average slope of the property in excess of 25%? Yes No X. Has construction started? Yes No X

This structure will be used for the following purpose Shop private

Other buildings on this property Mobile Home, shop

OWNER / AGENT SIGNATURE Steve Bounds DATE 11-18-86

NOTICE: Front Yard Setbacks. Curbs, Sidewalk Edge, Edge of Street pavement is not necessarily your front property line. In the case where your setback will be measured from the front property line, be certain that you are measuring from the actual front property line and that your plot plan depicts this. In the event your setback will be measured from a private access easement, the edge of the improved road is not necessarily your front property line. Be certain that you are measuring from the edge of the actual easement and that your plot plan depicts this.

ACKNOWLEDGED Steve Bounds

OFFICE USE ONLY BELOW THIS LINE

PERMIT CONDITIONS ...

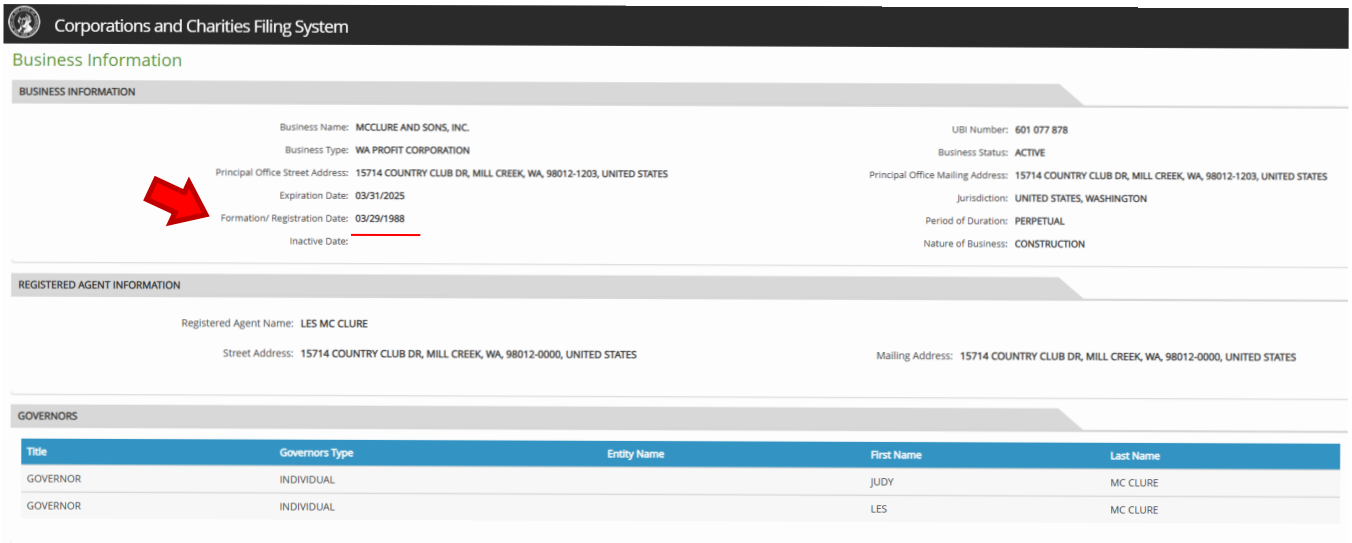
ZONING: R20000 Max Lot Cover 35 % Max Bldg. Height 25 ft

SETBACKS: Front 20' FROM R/W @ SR9

Side 20' & 20'

Rear 20' & 23' FROM RESIDENCE

5. Les and Judy McClure started McClure & Sons, Inc., a construction contracting firm, in March of 1988 according to the Washington Secretary of State's records:[5]



Corporations and Charities Filing System

Business Information

BUSINESS INFORMATION

Business Name: MCCLURE AND SONS, INC.
Business Type: WA PROFIT CORPORATION
Principal Office Street Address: 15714 COUNTRY CLUB DR, MILL CREEK, WA, 98012-1203, UNITED STATES
Expiration Date: 03/31/2025
Formation/ Registration Date: 03/29/1988
Inactive Date:

UBI Number: 601 077 878
Business Status: ACTIVE
Principal Office Mailing Address: 15714 COUNTRY CLUB DR, MILL CREEK, WA, 98012-1203, UNITED STATES
Jurisdiction: UNITED STATES, WASHINGTON
Period of Duration: PERPETUAL
Nature of Business: CONSTRUCTION

REGISTERED AGENT INFORMATION

Registered Agent Name: LES MC CLURE
Street Address: 15714 COUNTRY CLUB DR, MILL CREEK, WA, 98012-0000, UNITED STATES
Mailing Address: 15714 COUNTRY CLUB DR, MILL CREEK, WA, 98012-0000, UNITED STATES

GOVERNORS

Title	Governors Type	Entity Name	First Name	Last Name
GOVERNOR	INDIVIDUAL		JUDY	MC CLURE
GOVERNOR	INDIVIDUAL		LES	MC CLURE

6. In 1993, Les McClure negotiated to purchase the property from MacAllister. Notes[6] from site visits and negotiation of a purchase and sale agreement observed that there was machinery and equipment (including heavy equipment), boats, materials and other items on the subject property. Mr. McClure can provide testimony that MacAllister was engaged in equipment and machinery repair, storage of materials and supplies – which were primarily associable to his involvement in the construction industry (note

[5] A full copy of the Secretary of State information is attached hereto as **Exhibit C**.

[6] Copies of these notes are attached as **Exhibit L**.

MacAllister's history in construction from his obituary).

Seller agrees to remove all scrap metal, trucks parts gas/oil & mis. that are on the property.

9 Seller will remove all trucks, machinery boats, generators etc on prop.

Seller to leave for buyer the John Deer cat now on the property *(of which seller can borrow)

7. McClure & MacAllister came to an agreement in 1993 and the real estate contract implementing the sale of the property was executed on June 28, 1993, and fulfilled January 1, 2001, as indicated by the Statutory Warranty Deed recorded thereafter as AFN No. 200103020404 (an image of which is shown on the following page). A chain of title is attached hereto as **Exhibit D**.

200103020404

200103020404
03/02/2001 12:51 PM Snohomish County
P.0002 RECORDED

ptn. 14-27-5

Filed for Record at Request of
Stewart Title Company of Snohomish County
Escrow Number
STEWART W320 (FULFILLMENT)

Statutory Warranty Deed

Grantor(s) D E MACALLISTER, AS HIS SEPARATE ESTATE
Grantee(s) LESLIE D MCCLURE AND JUDY F MCCLURE, HUSBAND AND WIFE
Abbreviated Legal ATTACHED HERETO AS EXHIBIT 'A' AND MADE A PART HEREOF
Additional legal(s) on page 2
Assessor's Tax Parcel Number(s): 142705301000000

THE GRANTOR D E MACALLISTER, AS HIS SEPARATE ESTATE
for and in consideration of FULFILLMENT OF REAL ESTATE CONTRACT
in hand paid, conveys and warrants to LESLIE D MCCLURE AND JUDY F MCCLURE, HUSBAND AND WIFE
the following described real estate, situated in the County of SNOHOMISH, State of Washington
See Attached Exhibit "A"
This deed is given in fulfillment of that certain real estate contract between the parties hereto, dated JUNE 28, 1993, and conditioned for the conveyance of the above described property, and the covenants of warranty herein contained shall not apply to any title, interest or encumbrance arising by, through or under the purchaser in said contract, and shall not apply to any taxes, assessments or other charges levied, assessed or becoming due subsequent to the date of said contract

Real Estate Excise Tax was paid on this sale or stamped exempt on JUNE 30, 1993, Rec No 11088
Dated this 31 day of Jan 2001

By D E MacAllister D E MACALLISTER By _____

By _____ By _____

STATE OF WASHINGTON }
County of Snohomish } SS

I certify that I know or have satisfactory evidence that D E MACALLISTER
is the person who appeared before me, and said person acknowledged that he signed this instrument and acknowledge it to be his free and voluntary act for the uses and purposes mentioned in this instrument.

Dated 1/31/01 Diane M. Hall

Notary Public in and for the State of WASHINGTON
Residing at Everett
My appointment expires 11-8-01

8. After executing the real estate contract to purchase the site from MacAllister in June 1993, McClure's business McClure and Sons, Inc., a construction contracting company, began using the site for their "Building Contractor" business[7] including using the existing shops for storage, maintenance and repair of their equipment, as well as using outdoor areas for the storage of equipment, machinery, materials and supplies awaiting either repair/service, return to a job site, or sale at auction (when the equipment reached its useful life).

9. In November of 2012, Les and Judy McClure formed PBSS Investments, LLC, a Washington Limited Liability Company, and transferred ownership of the subject parcel to the LCC in December of 2012.[8] Les and Judy McClure continue to be the Governors of PBSS Investments, LLC. and the registered agent is McClure and Sons, Inc. The change in ownership did not have any material effect on the use of the site by McClure and Sons, Inc. as a Building Contractor/Construction Contracting use (which use has been in continuous operation at this location since 1993).

10. McClure & Sons, Inc., established their commercial use on the subject property approximately 5.5 years before the adoption of Ordinance 98-121, which first allowed for rezones to the RB zone, and McClure has continuously used the site for such activities since. SCC 18.65.020, 'Minimum Zoning Criteria' included subsection (3) allowing existing commercial uses existing prior to the RB zone to apply for a rezone from their existing rural zone to the RB zone:

> *(3) For properties that contain a commercial use **permitted or otherwise allowed in the RB zone that existed on or before the effective date of this section**, a rezone to RB may be approved only for that portion of the site containing the existing use and may not expand beyond the location of the existing commercial use unless the location criteria of SCC 18.65.020(2) are met with respect to the expansion area. **The locational criteria contained in SCC 18.65.020(2) and the maximum building footprint requirements of SCC 18.65.040(2) and (3) need not be met for that portion of the site containing the existing uses**.* **Emphasis Added**

11. Current code at SCC 30.31F.020(4) similarly provides:

> *(4) **For properties that contain a commercial use permitted or otherwise allowed in the RB zone that existed on or before the effective date of this section, a rezone to RB may be approved only for that portion of the site containing the existing use** and may not expand beyond the location of the existing commercial use unless the locational criteria of subsection (2) of this section are met with respect to the expansion area. **The locational criteria contained in subsection (2) of this section and the maximum building footprint requirements of SCC 30.31F.110 and 30.31F.120 need not be met for that portion of the site containing the existing use**.* ***Emphasis Added***

12. As previously stated, the RB zone was enacted in 1998 five plus years after the McClures' established their use as a Building Contractor[3] at the subject location. In accordance with the provisions in 30.31F.020(4) they are still entitled to obtain a rezone for the portion of their site where that original use is located, which use is now referred to as Construction Contracting.

13. As the Applicant has endeavored to maintain as much tree canopy on its site as possible as it helps provide shade for its employees, visual separation, etc. Thus, the Applicant's business operations and use of the site has consisted of storing vehicles, machines, equipment, and materials around the site within the cleared areas and in between trees. Thus, given the tree canopy aerials can help establish the generally footprint used by the business, but do not necessarily reflect the full area under canopy that has been used. We collected aerials from Snohomish County Public Works Aerials that date to 1995, which aerials help establish the

[7] As referenced in Section 18.32.040 at the time "Building Contractor" means a facility where a person or company that does plumbing, electrical, structural, finish, or other construction work, stores or maintains their equipment and supplies.

[8] A copy of the Secretary of State documentation showing the registration is attached hereto as **Exhibit E**.

footprint of the Building Contractor[3] use as it existed prior to the 1998 adoption of Ordinance 98-121 which created the RB zone. The area in use at that time consistent of ±3.8 acres as shown on the site plan submitted with this application for rezone. This footprint informs the boundary for the rezone. A snip of the 1995 aerial[9] that has been marked up to highlight's the site's use at that time is shown on the following page. This image also compares the aerial from 1995 with a more recent aerial from 2022 before several punk trees were removed for safety reasons (removal which PDS previous concurred did not require an FPA, see **Exhibit F**):



14. In sum, PBSS Investments is entitled to seek a rezone for the portion of its property that existed as a Building Contractor use when the RB zone was adopted in December 1998 and which use continues today. As of 1995 the Building Contracting use spanned approximately 149,238 square feet or approximately 3.8 acres of the site. But in the instant application, PBSS is requesting a rezone of only 2.86 acres (approximately 124,582 square feet), the minimum area it needs to continue to operate. The location of the buildings and use on the site predating the adoption of the RB zone make this request consistent with the allowance for RB rezones in SCC 30.31F.020(4), as well as exempt from the location criteria in SCC 30.31F.020(2) and building footprint limits in SCC 30.31F.110 and .120.

REZONE CHECKLIST SECTION II.A - REQUIRED INFORMATION

5. DESCRIBE HOW THE PROPOSAL IS CONSISTENT WITH THE COMPREHENSIVE PLAN

The Snohomish County Council recently adopted Amended Ordinance 2024-030 on December 4, 2024, which ordinance was published on January 29, 2025. In accordance with Section 40 of Ordinance 2024-030, its effective date is:

> *the latest of the following dates: (1) 60 days after the date of publication of notice of adoption of this ordinance, as provided in RCW 36.70A.290(2); or (2) if a petition for review to the Growth Management Hearings Board is timely filed, upon issuance of the Board's final order affirming the ordinance or a decision by a court of law concluding the ordinance complies with the GMA.*

The sixtieth day was March 30, 2025, a Sunday, which means the new plan will not be effective until at least March

[9] Full size aerials pre- and post-markup are included with this submittal, include a 1978 Aerial (**Exhibit G**), a 1995 Aerial (**Exhibit H**), 1984 Aerial comparison to 2022 aerial (**Exhibit I**), 1995 Aerial comparison to 2022 (**Exhibit J**), and 2022 Aerial (**Exhibit K**).

31st subject to an appeal dealing such effectiveness further. Thus, the plan in effect at the time this rezone application is made is the 2015 Comprehensive Plan as last amended by Amended Ordinance No. 21-060, adopted October 6, 2021. The County has contended that the Applicant needs to comply with the Comprehensive Plan goals, objectives and policies contained within the 2024 Comprehensive Plan. As addressed in an attached "*Comprehensive Plan Analysis Matrix*" accompanying the Applicant's resubmittal, there have been no substantive changes to the relevant goals, objectives and policies, except that LU 6.E.7 was renumbered to 6.E.6 and LU 6.E.8 was renumbered to LU 6.E.7. Below we have updated the analysis to account for these minor changes and provide additional analysis where necessary. That said, the Applicant points to the attached "*Comprehensive Plan Analysis Matrix*" as a supplement to below.

The comprehensive plan goals, objectives or policies cited below in **bold** are from the 2024 Comprehensive Plan and the Applicant's responsive analysis is in *blue* font.

The Applicant notes that PDS is likely to respond that the Applicant's proposed rezone under SCC 30.31F.020(4) is inconsistent with some of the goals, objectives, and policies within the comprehensive plan. In response, the Applicant points out in its "*Comprehensive Plan Analysis Matrix*" that these objectives and policies are guidelines, mostly as it relates to requirements that should be included in the zoning code (not requirements that should apply to project decisions).

Additionally, the Applicant calls attention to caselaw that makes it clear that rezones must only show "general conformance" to the comprehensive plan, and in any cases where conflict exists between a comprehensive plan goal, objective or policy, the zoning code prevails.

For reference:

Woods v. Kittitas Cty., 130 Wash. App. 573, 123 P.3d 883 (2005) citing *Tugwell v. Kittitas County*

> *Whether an application for rezoning complies with a comprehensive plan is not determinative; **only general conformance with the comprehensive plan is required**.*

Citizens for Mount Vernon v. City of Mount Vernon, 133 Wn.2d 861, 873–74, 947 P.2d 1208, 1215 (1997)

> *Since a comprehensive plan is a guide and not a document designed for making specific land use decisions, conflicts surrounding the appropriate use are resolved in favor of the more specific regulations, usually zoning regulations. A specific zoning ordinance will prevail over an inconsistent comprehensive plan. *874 Cougar Mountain Assocs. v. King County, 111 Wash.2d 742, 757, 765 P.2d 264 1988). If a comprehensive plan prohibits a particular use but the zoning code permits it, the use would be permitted. Weyerhaeuser v. Pierce County, 124 Wash.2d 26, 43, 873 P.2d 498 (1994). **These rules require that conflicts between a general comprehensive plan and a specific zoning code be resolved in the zoning code's favor**.*

Lakeside Indus. v. Thurston Cty., 119 Wn. App. 886, 894–95, 83 P.3d 433, 437 (2004), as amended (Feb. 24, 2004)

> *Generally, a specific zoning ordinance will prevail over an inconsistent comprehensive plan. Weyerhaeuser v. Pierce County, 124 Wash.2d 26, 43, 873 P.2d 498 (1994) (citing Cougar Mountain Assoc. v. King County, 111 Wash.2d 742, 757, 765 P.2d 264 (1988)). Because a comprehensive plan is a guide and not a document designed for making specific land use decisions, conflicts concerning a proposed use are resolved in favor of the more specific regulations. *895 Citizens for Mount Vernon v. City of Mount Vernon, 133 Wash.2d 861, 873, 947 P.2d 1208 (1997). Thus, **to the extent the comprehensive plan prohibits a use that the zoning code permits, the use is permitted**. Weyerhaeuser, 124 Wash.2d at 43, 873 P.2d 498.*

As such, the Applicant contends that where the comprehensive plan goals, objectives or policies appear to conflict with the application for an RB rezone as permitted by SCC 30.31F.020(4), the criteria for the rezone would prevail over the comprehensive plan.

Objective LU 6.E
Within rural residential areas, recognize existing businesses that are an integral part of the rural character and provide for community facilities and small-scale commercial developments that support the immediate rural population with necessary goods and services.

*This Objective has **DOES NOT APPLY** to the subject rezone proposed. By adopting SCC 30.31F.020(4) the Council clearly exercised its flexibility to retain existing businesses in the rural area. A rezone to RB is permitted for the retention of existing businesses that were established in the rural area prior to the RB zone being adopted in 1998. Additional analysis is provided in the Applicant's attached "Comprehensive Plan Analysis Matrix."*

McClure and Sons, Inc. is an existing business that has utilized the subject rural property since June 28, 1993, which preceded adoption of both this plan and Objective LU 6.E.

McClure and Sons, Inc. is a small-scale commercial business that provides services to the rural area, as well as surrounding urban areas. Because of the use's existence prior to the adoption of the plan and this objective, we point out that retaining McClure and Sons, Inc. in this location is consistent with the Growth Management Act as follows:

> *RCW 36.70A.020 – Findings-Rural Lands:*
> *"The legislature finds that to retain and enhance the job base in rural areas, rural counties must have flexibility to create opportunities for business development. Further, the legislature finds that rural[10] **counties must have the flexibility to retain existing businesses and allow them to expand**. The legislature recognizes that not all business developments in rural counties require an urban level of services; and that many businesses in rural areas fit within the definition of rural character identified by the local planning unit."*

Thus, the Applicant's proposal is in general conformance with the Comprehensive Plan.

Policy LU 6.E.1
Within the rural residential designations of the Future Land Use Map, limited commercial uses shall be permitted within a Rural Business zone that provide opportunities for retail sales and services to the surrounding rural population.

*This policy **DOES NOT APPLY** to the subject rezone proposed. Additional analysis is provided in the Applicant's attached "Comprehensive Plan Analysis Matrix," but clearly the County Council, by and through adoption of the use matrix in SCC 30.22.110, identified those businesses it believes are "limited commercial uses" that provide retail sales and services, and these uses include the Applicant's use.*

Further, the Council has adopted SCC 30.31F.020(4), which supports a rezone process for the retention of existing businesses that were established in the rural area prior to the RB zone being adopted. Further, the RB zone identifies Construction Contracting as a permitted use.

That said, McClure and Sons, Inc. is a small construction contractor that provides services both to the rural area, as well as surrounding urban areas. McClure and Sons, Inc. is an existing business that has utilized the subject property since June 28, 1993, which preceded adoption of this plan and policy. Council's intent in establishing the RB zone and allowing existing contractor uses to seek rezones to RB was explicitly related to Council supporting the preservation of existing rural businesses.

*Further, the Applicant's use is consistent with other rural commercial uses in the area. To help demonstrate the consistency of Applicant's use with other rural uses, please see the attached **Exhibit N**, which shows the locations*

[10] Neither the Growth Management Act at RCW 36.70A or the corresponding WAC 365-196 provide a definition for "rural county" or "rural counties"

of other similar businesses within the adjacent R-5 zone. While it is unknown whether any have been in existence before adoption of the RB zone, the map still illustrates that the Applicant's use is generally consistent with other rural uses in the vicinity.

The Applicant's proposal is in general conformance with the Comprehensive Plan.

Policy LU 6.E.2
The county shall develop Rural Business zoning and development standards that allow community facilities for the surrounding rural population and facilitate small-scale retail and service uses at appropriate locations within rural residential areas and minimize impacts to residential areas, resource lands, and critical areas.

*This policy requires the County to adopt zoning and development standards for the RB zone. Thus, is **DOES NOT APPLY** to specific land use proposals as explained further in the Applicant's "Comprehensive Plan Analysis Matrix."*

*Council's intent in establishing the RB zone and allowing existing contractor uses to seek rezones to RB was explicitly related to Council supporting the preservation of existing rural businesses. When Council adopted this provision in SCC 30.31F.020(4), it did so to effectuate the Comprehensive Plan, including this policy. Thus, the proposed rezone **GENERALLY CONFORMS** with this policy and the Comprehensive Plan.*

Policy LU 6.E.3
In order to maintain the character of surrounding rural residential areas, development regulations for the Rural Business zone shall restrict development in terms of building size, height, and setback; the size, location, and type of uses; and the areas of impervious surfaces. Churches shall not be subject to restrictions on building size or areas of impervious surfaces provided by LU Objective 6.E and its associated policies.

*This policy instructs the County to adopt development regulations for the RB zone, which means it **DOES NOT** establish any specific regulations or limitations applicable to a rezone. Thus, this policy is **NOT APPLICABLE** to the subject rezone because the County has development regulations that apply. This is explained further in the Applicant's "Comprehensive Plan Analysis Matrix."*

That said, the Applicant points out that Council's intent in allowing contractor (and select other) uses to seek out rezones to RB was clearly in response to requests from existing businesses in the rural area that were finding themselves in conflict with the code. Further it was the intent of Council to exclude such existing uses from application development standards for size, location, etc. as they were already established rural uses.

*The subject rezone **IS IN GENERAL CONFORMANCE** with the Comprehensive Plan.*

Policy LU 6.E.4
Development in the Rural Business zone shall be limited to development that can be supported by services typically delivered at rural levels of service. These services may include domestic water, septic systems, and transportation facilities.

This policy instructs the County to limit [future] development in the rural zone to those types of uses which can be supported by rural services. Again, it requires the County adopt regulations, but it does not itself regulate development, which is explained further in the Applicant's "Comprehensive Plan Analysis Matrix."
That said, in creating the RB zone the Council explicitly intended to preserve existing contractor uses by allowing them to seek rezones to RB. In adopting these provisions Council recognized that there are existing developments in the county that reside in the rural area, but whose use of rural lands was in question. This is in keeping with the Rural Business rezone exception under SCC 30.31F.020(4), adopted prior to the adoption of the relevant comprehensive plan, and which the County is presumed to have considered under basic statutory construction principles.

*Again, this policy is **NOT APPLICABLE** to the subject rezone proposed because the subject policy is applicable to development regulations for future development, not existing uses that are permitted to seek a rezone. The subject*

*rezone **IS IN GENERAL CONFORMANCE** with the Comprehensive Plan.*

Policy LU 6.E.5
Existing small-scale commercial uses within rural residential zones may be zoned Rural Business whether or not they meet the locational criteria listed in Policy LU 6.E.7 only if they are uses allowed within the Rural Business zone. If existing uses do not meet the locational criteria, no future expansion of the zone shall be allowed. This policy is not intended to preclude legal non-conforming uses from expanding consistent with Snohomish County Code provisions.

*The subject rezone **IS IN GENERAL CONFORMANCE** with the Comprehensive Plan.*

This policy is consistent with the regulations Council adopted in SCC 30.31F.020(4), which allows existing small-scale commercial uses within the rural residential zones to be rezoned to RB without meeting the locational criteria in Policy 6.E.7. The Applicant's Construction Contracting use is permitted in the RB zone because the Council previously determined that such uses are small-scale commercial uses that should be allowed in the rural area without meeting the location criteria of this policy or SCC 30.31F.020(2) and (3).

Policy LU 6.E.7
New Rural Business zones may only be approved in Rural Residential plan designations if they meet the following locational criteria:

Although poorly worded this requires the County adopt regulations, but it does not itself regulate development, which is explained further in the Applicant's "Comprehensive Plan Analysis Matrix."

*In accordance with Policy LU 6.E.5 (above) and what has been adopted into SCC 30.31F apply except where limited (such as by SCC 30.31F.020(4), which limits any locational criteria). Council was clear in its decision on the Three B's appeal that such location criteria **DOES NOT** apply to existing contractor uses.*

*The subject rezone **IS IN GENERAL CONFORMANCE** with the Comprehensive Plan.*

Subsection (a) A minimum of six hundred residential dwelling units should be located within a two and one-half mile radius of the proposed site.

*This is a locational criterion and is **NOT APPLICABLE** to the subject rezone as explained further in the Applicant's "Comprehensive Plan Analysis Matrix."*

Subsection (b) The site is located along a county road or state highway with at least one hundred feet of street frontage or at an intersection of two public roads.

*This is a locational criterion and is **NOT APPLICABLE** to the subject rezone as explained further in the Applicant's "Comprehensive Plan Analysis Matrix."*

Subsection (c) No new areas designated or zoned for commercial uses should be located closer than two and one-half miles in the rural area.

*This is a locational criterion and is **NOT APPLICABLE** to the subject rezone as explained further in the Applicant's "Comprehensive Plan Analysis Matrix."*

Subsection (d) The total area zoned for Rural Business at any given location should not include more than five acres of net usable area. Net usable area should be the total site area less critical areas and their required buffers, roads, detention/retention areas, and biofiltration swales. Parcels within a Rural Business location should have common boundaries unless separated by public rights-of-way.

*The subject rezone is ±2.86 acres, which **IS IN GENERAL CONFORMANCE** with the Comprehensive Plan that the area be less than 5 acres of net useable acres.*

Subsection (e) The size and configuration of the area to be zoned should be capable of accommodating setbacks,

buffers, critical area protection, and other site planning and design techniques that permit small-scale, rural commercial development characteristics.

*The subject rezone **IS IN GENERAL CONFORMANCE** the Comprehensive Plan as the size and configuration of the area to be zoned RB can accommodate the required setbacks, critical areas protections, etc.*

LU Policy 6.E.8
Sites within a Rural Business zone should be developed according to development regulations which incorporate the following criteria:

*This policy requires the County adopt regulations, but it does not itself regulate development, which is explained further in the Applicant's "Comprehensive Plan Analysis Matrix." Thus, this policy is **NOT APPLICABLE** to the subject rezone proposed as they are specific to new development (keyword in the above policy is "developed"). The subject rezone is for an existing business that Council specific intended to allow rezones to RB to preserve such existing rural uses. That said, the Applicant has prepared a site plan that shows how it generally complies with these requirements.*

*However, since the subject rezone complies with the code implementing these standards, the subject rezone **IS IN GENERAL CONFORMANCE** with the Comprehensive Plan.*

Subsection (a) Existing native vegetation should be retained within required buffers. Screening of parking areas, outdoor storage and mechanical equipment should be provided.

***APPLICANT GENERALLY CONFORMS**. The Applicant has maintained and will supplement existing vegetation within perimeter buffers to provide screening of its parking, outdoor storage areas, and mechanical equipment.*

Subsection (b) Site disruption such as excessive grading, filling, or clearing of vegetation should be minimized through landscaping and buffer requirements.

***APPLICANT GENERALLY CONFORMS**. The Applicant has minimized site disturbance by retaining much of the existing vegetation. Areas that were disturbed in 2023 will be revegetated under the subject rezone proposal and perimeter buffers established.*

Subsection (c) Total permitted impervious surfaces of buildings, parking and other support areas such as storage, trash containers, etc., should not exceed fifty percent of the net usable site area, except for churches.

***APPLICANT GENERALLY CONFORMS**. The Applicant's revised 2.86 acre rezone would use approximately 37% of the net usable site area.*

Subsection (d) Stormwater management facilities should be designed and landscaped to integrate them into the overall site design and the landscaped buffers on the site.

***APPLICANT GENERALLY CONFORMS**. The Applicant will need to obtain an LDA to revegetation its site and gain approval of its plan for perimeter landscaping, etc. Any required stormwater management identified in Applicant's drainage report (currently being prepared by Solid Ground Engineering) will be address as part of the LDA.*

Subsection (e) All structures should be set back fifty feet from residentially zoned properties. Structures should be set back one hundred feet from designated agricultural and forest lands.

***APPLICANT GENERALLY CONFORMS**. All structures are set back 50 feet from residentially zones properties.*

Subsection (f) Sites should retain all existing trees in all required buffers along side and rear property lines. Sites should retain all existing evergreen trees in all required buffers along property frontage excluding areas for access drives and sign locations, unless tree removal is required to meet Department of Public Works Engineering Design

and Development Standards or because of public health and safety concerns.

APPLICANT GENERALLY CONFORMS. Applicant will retain existing trees within its side and rear perimeter landscaping buffers except when tree removal is necessary for health and safety concerns.

Subsection (g) Billboards should be prohibited within the Rural Business zone. Signage requirements should be similar to the signage provisions of the Neighborhood Business zone.

APPLICANT GENERALLY CONFORMS. No billboards or signage of any kind are proposed.

Subsection (h) Adequate water supplies should be demonstrated for commercial use and fire protection including fire flow.

APPLICANT GENERALLY CONFORMS. A fire hydrant is located just off the edge of the Applicant's access drive and all structures are within the required distance according to fire code.

Subsection (i) Refuse collection, fuel loading and storage areas, and large truck parking areas should be located at least one hundred feet from residential areas and screened by fence or landscaping.

APPLICANT GENERALLY CONFORMS. The refuse container, fueling loading and storage areas, and large truck parking areas are all located at least 100 feet from existing residences and will be screened by fencing and perimeter landscaping.

GOAL ED 3 Encourage the retention and expansion of existing businesses and jobs while working to attract new businesses and jobs.

The county identified retention of existing businesses and jobs as a goal within the comprehensive plan. The subject rezone would ensure the retention of an existing business and its jobs within Snohomish County as expressly desired by Council when it created the RB zone and allowed existing contractor uses to seek out rezones.

*Therefore, the subject rezone **GENERALLY CONFORMS** with the Comprehensive Plan.*

Objective ED 1.C Snohomish County shall recognize and address the needs of small and minority owned businesses as well as larger, established enterprises.

McClure and Sons, Inc. is a small business headquartered in Snohomish County who's been operating on the subject property since 1993. Recognizing the value of established, small business ventures in the rural areas, the County adopted SCC 30.31F.020(4) to enable small businesses to obtain rezoned to the RB zone to maintain their existing operations.

*Therefore, the subject rezone **GENERALLY CONFORMS** with the Comprehensive Plan.*

6. DESCRIBE HOW THE PROPOSAL BEARS A SUBSTANTIAL RELATIONSHIP TO THE PUBLIC HEALTH, SAFETY AND WELFARE.

The subject rezone bears a substantial relationship to the public health, safety and welfare based on the following Applicant analysis in *blue* starting on the next page.

The subject rezone generally conforms and is consistent with comprehensive plan Goal E 1.C[11] and policy LU 6.E.5 which both promote the retention of small business. In adopting SCC 30.31F.020(4) the Council explicitly established a pathway for existing businesses in the rural areas to comply with and become protected by the new RB zone for the purpose of retaining existing rural businesses, rural jobs, and tax revenues that have a direct impact on the public health, safety and welfare.

Moreover, LU 6.E.5 was established to promote the retention of rural commercial uses that existed before the adoption of the Rural Business zone even if they do not meet the location criteria established. Thus, the subject rezone consistent with SCC 30.31F.020(4) and policy LU 6.E.5 retains an existing business in Snohomish County where the alternative would be the loss of this business location (and its tax revenues).[12]

Without approval of subject rezone, the Applicant would continue to pursue its rights to be classified as a legally, non-conforming use. And upon such a determination, the Applicant would continue with its application for an Administrative Conditional Use Permit (ACUP) to permit the expansion of the subject use across most of the property. However, approval of the rezone would allow the Applicant to remain in its location (where it has been since 1993) and prohibit any future expansion of the use outside the ±2.86 acres proposed to be rezoned, which area is less than the 3.89 acres historically used for the business (as demonstrated by the 1995 aerials). In other words, the rezone is a benefit to the public health, safety and welfare because the rezone limits the footprint of the existing business.

Applicant's constructing contracting business is unique in that a large portion of its business supports construction of municipal and other local government improvements, including municipal water and sewer infrastructure. Because of the public work performed by the Applicant, it's business has been considered an essential business during COVID times, etc. The ability to maintain this strategically located site for its maintenance and operations is critical to supporting the company's ability to competitively bid projects, which also benefits to the public.

7. DISCUSS CHANGES IN CIRCUMSTANCE SINCE THE SITE WAS LAST REZONED

In 1996, the County adopted its Growth Management Act (GMA) comprehensive plan related zoning, applying the R-5 zone to the subject property (Ordinance 96-075). This zoning action by the County came roughly three years after McClure and Sons, Inc. had started to use this site for commercial purposes.

Since application of the R-5 zoning to the subject parcel, the Applicant's business has been the subject of complaints in 2016, 2019 and 2023. The 2016 complaint alleged the Applicant was illegally operating a commercial equipment and junk business, which complaint Planning and Development Services (PDS) closed upon determining the business was grandfathered. A new complaint consisting of the same allegation plus the accusation that a pipeline was being interfered with was similarly closed by the PDS based on the use being grandfathered and the property line dispute being a civil matter. However, after receiving the 2023 complaint and initially agreeing that the Applicant had a pre-existing, pre-GMA non-conforming use, PDS reversed course and alleges the Applicant's business is illegal.

Because of PDS' change in how it treats the Applicant's business, the Applicant has limited remedies to resolve its continued use. It seeks a rezone to RB under SCC 30.31F.020(4), which provision was originally adopted by the County Council in Ordinance 98-121 and legislatively intended to preserve existing rural businesses, including contractor uses. The alternative would be that the Applicant seek status as a non-conforming use and apply for an Administrative Conditional Use Permit (ACUP) which would result in the business continuing to use a larger area than what it now proposes under this rezone.

[11] The furtherance of goals within a comprehensive plan has been viewed as demonstration that a proposal bears a substantial relationship to the public health, safety and welfare.

[12] Creation (and retention) of tax revenues used to support county and community services is a benefit to the public health, safety and welfare. See *Henderson v. Kittitas County*, 124 Wn. App. 747, 100 P.3d 842, 2004 Wash. App. LEXIS 2796.

That said, it is not wholly evident that the Applicant must identify "changed circumstances" as it pertains to the subject rezone because the rezone implements a specific policy of the comprehensive plan (LU 6.E.5).

We take note of the Division III Court of Appeals decision in *Ahmann-Yamane* which, citing *Save Our Rural Env't v. Snohomish County*, 99 Wn.2d 363, 370-71, 662 P.2d 816 (1983) decided:

"*In fact, if a proposed rezone implements the policies of a comprehensive plan, a showing of changed circumstances is not required*" Division III of the Court of Appeals decision in *Ahmann-Yamane, L.L.C. v. Tabler*, 105 Wn. App. 103, 19 P.3d 436, 2001 Wash. App. LEXIS 345.

Because the County Council has clearly articulated in its decision on the Three B's appeal that such RB rezones are consistent with implementing the policies of the comprehensive plan, it appears unnecessary that the Applicant to demonstrate changed circumstances.

8. PROVIDE A STATEMENT THAT THE PERFORMANCE STANDARDS CITED BY SCC 30.42A.100(4) EITHER DO OR DO NOT APPLY AND WHY. *SCC 30.42A.100(4) REQUIREMENTS VARY ON THE SITUATION.*

Applicant's responses below are shown in *blue* text.

SCC 30.42A.100(4) requires that "***where applicable, minimum zoning criteria found in chapters 30.31A through 30.31F SCC are met.***"

The Applicant notes that the County's Rezone Checklist at Item 8 confuses "performance standards" in SCC 30.31F.100 and 30.31F.110 with the "minimum zoning criteria" in SCC 30.31F.020, which only the minimum criteria in subsections (2) through (4) are applicable.

(2) The RB zone is a zoning classification which will be located within a rural residential land use designation. The RB zone, including expansions to the RB zone classification, shall be applied only to properties that meet all the following locational criteria, except as provided in SCC 30.31F.020(3) and (4):

This criterion is met as the existing land use designation is Rural Residential 5 and the property meets the applicable criteria below, except as provided in SCC 30.31F.020(4). SCC 30.31F.020(3) in its entirety is ***NOT APPLICABLE*** *because of the applicability of subsection (4).*

(a) A minimum of 600 residential dwelling units shall be located within a two and one-half mile radius of the proposed site;

Location criterion ***NOT REQUIRED*** *to be met per Subsection (4).*

(b) The proposed site is located along a county road or state highway with at least 100 feet of street frontage or at an intersection of two public roads;

Location criterion ***NOT REQUIRED*** *to be met per Subsection (4).*

(c) The proposed new site shall be located no closer than two and one-half miles from an existing RB, RFS, or commercial designation in the rural area;

Location criterion ***NOT REQUIRED*** *to be met per Subsection (4).*

(d) The total area zoned RB at any given location shall not include more than five acres designated as net usable area. In calculating net usable area pursuant to this chapter, net usable area shall be the total site area less critical areas and their required buffers,

pursuant to chapters 30.62A and 30.62B SCC, public rights-of-way, private roads, detention/retention areas, and biofiltration swales;

*The subject rezone area would be approximately 2.86 acres out of an approximately 7.89 acre site. The rezone **MEETS THIS CRITERION**.*

(e) The proposed site shall be located outside of an urban growth area (UGA) boundary;

*Although the site meets this criterion as it is outside the UGA, location criteria are **NOT REQUIRED** to be met per Subsection (4).*

(f) The proposed site shall contain a rural residential designation on the GPP FLUM, and not be designated forest lands or farmlands by the FLUM;

*The subject rezone area **MEETS THIS CRITERION** as it has a designation of Rural Residential 5.*

(g) The size and configuration of the proposed site must be capable of accommodating applicable setbacks, buffers, and critical area protection pursuant to chapters 30.62A, 30.62B and 30.62C SCC;

*The subject rezone area **MEETS THIS CRITERION** as the setbacks and buffers can be provided as required.*

(h) Site information required pursuant to SCC 30.31F.200(2) shall have been submitted by the applicant. The information shall clearly demonstrate that an adequate building and development area is located on the site outside of identified critical areas and buffers pursuant to chapters 30.62A and 30.62B SCC; and

*The subject rezone **MEETS THIS CRITERION**. The buildings and development area are existing within the approximately 2.86 acres with is within the historic area of the site used for this existing business.*

(3) Any proposed site that expands an existing RB zone shall meet the requirements of SCC 30.31F.020(2)(d) through (h) and both of the following locational criteria:

***NOT APPLICABLE** to the subject rezone as this is not an expansion of an existing RB zone.*

(a) The expansion area shall have a common property boundary with the existing RB zone. A common property boundary may consist of properties separated by a public right-of-way where the centerline of the right-of-way is used as their extended front property boundary; and

***NOT APPLICABLE** to the subject rezone as this is not an expansion of an existing RB zone.*

(b) The majority of rural residential lots within a one-quarter mile radius of the proposed expansion area are not greater than one acre in size or the majority of rural residential lots that have a common property boundary with the proposed expansion area not greater than one acre in size.

***NOT APPLICABLE** to the subject rezone as this is not an expansion of an existing RB zone.*

(4) For properties that contain a commercial use permitted or otherwise allowed in the RB zone that existed on or before the effective date of this section, a rezone to RB may be approved only for that portion of the site containing the existing use and may not expand beyond the location of the existing commercial use unless the locational criteria of subsection (2) of this section are met with respect to the expansion area. The locational criteria contained in subsection (2) of this section and the maximum building footprint requirements of SCC 30.31F.110 and 30.31F.120 need not be met for that portion of the site containing the existing use.

The subject rezone meets this criterion as has been discussed and analyzed in this narrative.

ADDITIONAL ANALYSIS

The Applicant must comply with SCC 30.2, which includes applicable Reference Notes in SCC 30.22.130 (as identified in the Rural and Resource Zone Categories Use Matrix at SCC 30.22.110) to various development standards.

For "Construction Contracting" the matrix references development standards in SCC 30.22.130(80) and (81).[13] However, SCC 30.31F.020(4) limits the application of reference note 80.

REFERENCE NOTE 80
As Applicant established in the preceding analysis, County Council explicitly excluded the maximum building flooring area in SCC 30.31F.020(4) from applying to existing buildings and reference note 80 should not apply to the subject rezone.

REFERENCE NOTE 81
The intent of the County Council in allowing existing commercial uses, such a building contracting, to rezone to the RB zone was to provide such rural businesses with a pathway to be recognized as a legal use. In approving Reference Note 81 (*which was Reference Note 85 at that time*) the Council was very concerned whether t existing businesses could meet all the development standards, because such standards might force an existing business to unnecessarily reduce their business activity to a point where the business was no longer viable. The partial transcript included in the record of the Three B's appeal demonstrates that Council was purposefully intending to allow preexisting uses through a parallel procedural zoning pathway premised more on substantial compliance rather than strict adherence to the standards.

Reference Note 81 is a development standard and to the extent the Applicant does not meet the standards, it has proposed variances consistent with SCC 30.43B. Below reflects the development standards in Note 81 followed by the Applicant Applicant's analysis and discussion in *blue*.

(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;

SCC 30.31F.100, General Performance Standards
In addition to other applicable standards contained in subtitle 30.2 SCC, the following performance standards apply to development in the RB, RI, RFS, and CRC zones:

The Applicant contends that these standards should only apply to new "development" in the RB, RI, RFS, and CRC zones, whereas the Applicant's proposal is merely seeking a rezone to RB which was created as a remedy to address an existing commercial use that has already been developed. That said, the Applicant has indicated which standards it satisfies.

[13] Formerly found at *18.32.040(B)(84) and (85)*, respectively.

(1) Adequate water supplies shall be demonstrated for fire protection;

APPLICANT COMPLIES. *The site is served by Cross Valley Water District, and a fire hydrant is located near the entrance to the site and existing structures are within the required distance from the hydrant. Fire sprinklers are not required for the structures on site. Applicant can obtain additional fire flow information from Cross Valley Water District if conditioned to do so.*

(2) Stormwater detention facilities and low impact development best management practices shall be designed whenever possible as to integrate them into the overall site design and required landscaping and buffers on the site;

APPLICANT COMPLIES. *The existing use of the site pre-dates current stormwater regulations. However, the Applicant's site plan and related drainage report associated with the forthcoming LDA will address grading that occurred on the site and address the Applicant's compliance with stormwater requirements. Applicant intends, as part of addressing a prior code violation, to bring the site into compliance which will include addressing drainage at the time of a site plan approval.*

(3) Signage shall be consistent with the provisions of SCC 30.27.010 to 30.27.090; and

APPLICANT COMPLIES. *The Applicant has no signage and has no plans for signage.*

(4) Refuse collection, fuel loading, and above ground fuel storage areas, and large truck parking areas shall be located at least 100 feet from residential uses or designations and shall be screened in accordance with the landscaping requirements for outdoor storage and solid waste areas contained in SCC 30.25.024.

APPLICANT COMPLIES. *The Applicant's refuse collection, above ground fuel storage area, and large truck parking areas are located at least 100 feet from residential uses as shown in the attached* ***Exhibit O****.*

Applicant's portion of the site rezoned to RB will have a six-foot high sight obscuring fence along its north, east, and south perimeter, which fence would be integrated into the supplemented perimeter landscaping. This functionally achieves the standards in SCC 30.25.024 for screening such uses from adjacent properties.

SCC 30.31F.110, Rural Business Zone Performance Standards.

(1) In addition to the general performance standards of SCC 30.31F.100, and other applicable standards of subtitle 30.2 SCC, the following standards apply to development, except churches, in the RB zone:

(a) The total impervious surface of all buildings, parking, and other support areas such as storage, trash containers, etc., shall not exceed 50 percent of the net usable area of the site; and

APPLICANT COMPLIES*. The subject property is 7.89 acres with 7.65 net useable acres. Applicant's proposed RB rezone is for a total of approximately 2.86 acres, which is approximately 37% of the net useable area for the site.*

(b) The maximum area for each building footprint on the site shall not exceed 4,000 square feet.

APPLICANT COMPLIES*. However, the maximum area for each building footprint was explicitly excluded via SCC 30.31F.020(4), which provides that the "maximum building footprint requirements of SCC 30.31F.110 and 30.31F.120 need not be met for that portion of the site containing the existing use. . ." That said, none of the Applicant's buildings on the site exceed 4,000 square feet as the largest building on the site is 2,400 square feet.*

(2) A change of use for any existing structure, including related site improvements, that is in a Rural Business zone and does not meet the performance standards of SCC 30.31F.110 (1) shall require:

(a) A conditional use permit when the proposed use is allowed in the RB zone but prohibited in the R-5 zone; or

NOT APPLICABLE. *There is no proposed change of use.*

(b) The approval type required under SCC 30.22.110 for the RB zone when the proposed use is allowed in both the RB zone and the R-5 zone.

NOT APPLICABLE. *There is no change of use proposed, plus the Construction Contracting use is allowed in the RB zone, but not the R-5 zone.*

(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;

VARIANCE REQUESTED. The Applicant is seeking a variance ***(see separate Variance Narrative & Analysis of Decision Criteria)*** *to allow it to continue use of the site as it historically conducted business. This includes the storage of materials and equipment used by its construction business. That amount of area exceeds 1,000 square feet and is seasonally variable. The Applicant will provide screening of these areas is already indicated using a combination of fencing and the required perimeter landscaping.*

(c) In addition to the provisions of subsection (81)(b) of this section, 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;

VARIANCE REQUESTED. The Applicant is seeking a variance ***(see separate Variance Narrative & Analysis of Decision Criteria)*** *to park more than five commercial vehicles or construction machines on site consistent with its historical use.*

Because of the vague description of "construction machines" and the lack of a definition in 30.91C for "construction machines" strict application of this requirement would be counter to retention of existing commercial uses in the rural area as envisioned by Council when it created the RB zone. Unfortunately, at the time the RB zone was being created, Council only had two specific examples by which it made it's best attempt at crafting requirements that would apply to similar uses, but even Council acknowledged (as demonstrated by the transcript of the hearing, which was produced for the Three B's appeal) that they had concerns whether these allowances would work for other existing uses they knew existed in the rural areas.

Further, the Applicant points out that according to use matrix at SCC 30.22.110, Commercial Vehicle Storage Facility is a permitted use in the RB zone and would have much greater impact than Applicant's existing use. Commercial Vehicle Storage Facilities are defined in SCC 30.91C.175 as including the leasing of spacing for commercial vehicles including "vehicles used for the commercial transport of passengers or cargo, as well as heavy machinery or construction vehicles." There are no quantitative limitations of number of such vehicles that can be stored, except that it would need to comply with the general RB performance standard that development does not exceed 50% of the net useable area. In that regard, there are other uses permitted within the RB zone that are allowed to store more vehicles and equipment.

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

APPLICANT COMPLIES. *The Applicant has an on-site, above ground fueling tank, but it is used for fueling construction equipment, not its vehicles.*

SCC Chapter 30.91V does not contain a definition of "vehicles" but SCC 30.91V.013 includes a definition for "Vehicle, Vessel, and Equipment Sales and Rental" that reads:

a structure or site used to primarily sell or rent automobiles, vessels, boats, construction equipment, mobile homes, recreational vehicles, travel trailers, trucks, or other similar large items.

The Applicant contends that the prohibition on fueling "vehicles" on-site does would refer to motor vehicles and construction equipment is "equipment" as made distinct in the definition above. Thus, the subject prohibition should not apply and what's allowed by SCC 30.31F.100(4) would permit the fuel storage area provided it is not within 100 feet of residences. Other permitted uses in the RB zone can have fueling tanks.

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

***APPLICANT COMPLIES**. The Applicant's existing use does not store inoperable vehicles, hazardous or earth materials on site. However, the Applicant's construction contracting firm relies on the use of equipment that is services and maintains on site. Thus, some small quantities of (oil, etc.) and a fuel are stored on-site in designated areas following best management practices.*

REZONE CHECKLIST SECTION II.B – ADDITIONAL INFORMATION

3. FOR REZONE REQUESTS TO RURAL BUSINESS (RB), RURAL INDUSTRIAL (RI), RURAL FREEWAY SERVICE (RFS), OR CLEARVIEW RURAL COMMERCIAL (CRC) ZONING, DESCRIBE HOW THE PROPOSED REZONE MEETS THE APPLICABLE CRITERIA UNDER CHAPTER 30.31F.

The following minimum zoning criteria in SCC 30.31F apply to the RB zone. The applicant's responses to each are in *blue* text below.

(2) The RB zone is a zoning classification which will be located within a rural residential land use designation. The RB zone, including expansions to the RB zone classification, shall be applied only to properties that meet all the following locational criteria, except as provided in SCC 30.31F.020(3) and (4):

*This **CRITERION IS MET** as the existing land use designation is Rural Residential 5 and the property meets the applicable criteria below, except as provided in SCC 30.31F.020(4). SCC 30.31F.020(3) is **NOT APPLICABLE** because of the applicability of (4).*

(a) A minimum of 600 residential dwelling units shall be located within a two and one-half mile radius of the proposed site;

*Location criterion **NOT REQUIRED** to be met per Subsection (4).*

(b) The proposed site is located along a county road or state highway with at least 100 feet of street frontage or at an intersection of two public roads;

*Location criterion **NOT REQUIRED** to be met per Subsection (4).*

(c) The proposed new site shall be located no closer than two and one-half miles from an existing RB, RFS, or commercial designation in the rural area;

*Location criterion **NOT REQUIRED** to be met per Subsection (4).*

(d) The total area zoned RB at any given location shall not include more than five acres

designated as net usable area. In calculating net usable area pursuant to this chapter, net usable area shall be the total site area less critical areas and their required buffers, pursuant to chapters 30.62A and 30.62B SCC, public rights-of-way, private roads, detention/retention areas, and biofiltration swales;

*The subject rezone area would be approximately 2.86 acres. This **CRITERION IS MET**.*

(e) The proposed site shall be located outside of an urban growth area (UGA) boundary;

*Location criterion **NOT REQUIRED** to be met per Subsection (4). However, the site meets this criterion as it is outside the UGA.*

(f) The proposed site shall contain a rural residential designation on the GPP FLUM, and not be designated forest lands or farmlands by the FLUM;

*The subject rezone area **MEETS THIS CRITERION** as it has a designation of Rural Residential 5.*

(g) The size and configuration of the proposed site must be capable of accommodating applicable setbacks, buffers, and critical area protection pursuant to chapters 30.62A, 30.62B and 30.62C SCC;

*The subject rezone area **MEETS THIS CRITERION** as the setbacks and buffers can be provided as required.*

(h) Site information required pursuant to SCC 30.31F.200(2) shall have been submitted by the applicant. The information shall clearly demonstrate that an adequate building and development area is located on the site outside of identified critical areas and buffers pursuant to chapters 30.62A and 30.62B SCC; and

*The subject rezone **MEETS THIS CRITERION**. The buildings and development area are existing within the approximately 2.86 acres.*

(3) Any proposed site that expands an existing RB zone shall meet the requirements of SCC 30.31F.020(2)(d) through (h) and both of the following locational criteria:

***NOT APPLICABLE** to the subject rezone as this is not an expansion of an existing RB zone.*

(a) The expansion area shall have a common property boundary with the existing RB zone. A common property boundary may consist of properties separated by a public right-of-way where the centerline of the right-of-way is used as their extended front property boundary; and

***NOT APPLICABLE** to the subject rezone as this is not an expansion of an existing RB zone.*

(b) The majority of rural residential lots within a one-quarter mile radius of the proposed expansion area are not greater than one acre in size or the majority of rural residential lots that have a common property boundary with the proposed expansion area not greater than one acre in size.

***NOT APPLICABLE** to the subject rezone as this is not an expansion of an existing RB zone.*

(4) For properties that contain a commercial use permitted or otherwise allowed in the RB zone that existed on or before the effective date of this section, a rezone to RB may be approved only for that portion of the site containing the existing use and may not expand beyond the location of the existing commercial use unless the locational criteria of subsection (2) of this section are met with respect to the expansion area. The locational criteria contained in subsection (2) of this section and the maximum building footprint requirements of SCC 30.31F.110 and 30.31F.120 need not be met for that portion of the site containing the existing use.

*The subject rezone **MEETS THIS CRITERION** as has been discussed and analyzed in previous sections of this narrative.*

4. FOR REZONE REQUESTS TO THE RURAL BUSINESS (RB) ZONE, EXPLAIN WHICH OF THE FOLLOWING OPTIONS APPLIES:

( ) This is a new location for RB zoning
( ) This will be an expansion of an existing RB zone
(**X**) This will cover only a portion of a site and is for a pre-existing commercial use permitted or otherwise allowed in the RB zone that existed on or before January 1, 2003.

Thank you for your time and consideration. Should you have any questions, please do not hesitate to contact me at david@toyerstrategic.com or 425-344-1523.

Sincerely,



David Toyer
President

APPLICANT REZONE EXHIBIT LIST

Exhibit A	Ordinance 98-121 and Exhibits 76, 101, 104, and 105 thereof
Exhibit B	Three B's Rezone Decision, Appeal & Motion 99-384 and supporting exhibits
Exhibit C	Secretary of State Background on McClure & Sons, Inc.
Exhibit D	Chain of Title for Applicant's Property
Exhibit E	Secretary of State Background on PBSS Investments, LLC
Exhibit F	PDS No Critical Areas, No FPA Letter
Exhibit G-1	1978 Aerial (Snohomish County Public Works)
Exhibit G-2	1984 Aerial (Snohomish County Public Works)
Exhibit H	1995 Aerial (Snohomish County Public Works)
Exhibit I	1984 Aerial with Comparison to 2022 Aerial
Exhibit J	1995 Aerial with Comparison to 2022 Aerial
Exhibit K	2022 Aerial (Printed from PDS Map Portal)
Exhibit L	Les McClure Purchase & Sale Agreement Notes
Exhibit M	MacAllister Obituary
Exhibit N	Adjacent Use Analysis
Exhibit O	Setback & Perimeter Landscape Exhibit
Exhibit P	Comprehensive Plan Analysis Matrix **[NEW]**

[i] PBSS Investments, LLC is owned by Les and Judy McClure, Governors, and the registered agent is McClure and Sons, Inc. PBSS Investments, LLC owns the land, but McClure and Sons, Inc. is the contracting company owned by Les and Judy McClure, which business has continuously used the site since the McClure's purchased it from MacAllister in 1993.

SNOHOMISH COUNTY COUNCIL
EXHIBIT # D.2
FILE 25 105874 REZO

ZA 99-101988

JUL 15 2008

Exhibit D.2
PFN: 25-105874 REZO
25-105880 VAR

25 105874 REZO

DRAWINGS

ZA # 99-101988

JUL 15 2008

2

99-101988

Three

File #: 99101988

Box #: 17

RETURN TO MISSION BLDG

25 105874 REZO

25 105874 REZO

99 101988

THREE B's CONSTRUCTION

ORIGINAL EXHIBITS

25 105874 REZO

Ernie

RECEIVED
OCT 22 1999
PLANNING & DEVELOPMENT
SERVICES - LAND USE DIV.

Snohomish County
Hearing Examiner's Office

John E. Galt
Hearing Examiner

Peter T. Donahue
Deputy

M/S #405
3000 Rockefeller Ave.
Everett, WA 98201
(425) 388-3538
FAX (425) 388-3201
Information Hotline
(425) 388-3533

DECISION of the HEARING EXAMINER REVISED ON REMAND

APPLICANT: Three B's Construction (Three B's)

LANDOWNER: Three B's

FILE NO.: 99 101988

TYPE OF REQUEST: Rezone from Rural - 5 Acre (R-5) to Rural Business (RB)

DECISION (SUMMARY): GRANT

DATE OF REVISED DECISION: October 21, 1999

BASIC INFORMATION

LOCATION: The subject property is located approximately 400 feet east of 64th Avenue NW on the north side of SR 532, approximately one-quarter mile east of the Stanwood City limits.

PLANNING SUBAREA: Northwest County

ACREAGE: 4.0 acres

ZONING: R-5; RB requested

UTILITIES:
Water: City of Stanwood
Sewage: On-site septic

SCHOOL DISTRICT: Stanwood

FIRE DISTRICT: No. 14

SELECTED AGENCY RECOMMENDATIONS (ABBREVIATED):

Department of:
Planning and Development Services (PDS): Approve (Exhibit 19)
Public Works (PW): No recommendation
Snohomish Health District (SHD): No objection (Exhibit 14)

INTRODUCTION

Three B's seeks to legalize an illegal use by rezoning four acres of a 13 acre site from R-5 to RB. Three B's filed its Master Application on February 26, 1999. (Exhibits 1 - 8) PDS deemed the application complete when filed. (Exhibit 19)

The Hearing Examiner (Examiner) made a site familiarization visit on June 28, 1999.

The Examiner held an open record hearing on June 29, 1999, day 96 of the 120 day decision making period. PDS gave public notice of the open record hearing as required by county code. (Exhibits 17 and 18) At said hearing witnesses were sworn, testimony was presented and exhibits were entered.

A central question in this case is whether the provisions of Snohomish County Code (SCC) 18.65.020(3) apply to illegal uses. The Examiner left the hearing record open through July 9, 1999 for submittal by PDS and Three B's of documents demonstrating the County Council's intent in the adoption of that code section; the parties submitted Exhibits 22 - 27 under that authority. The record remained open through July 16, 1999 for submittal of response documents; the parties submitted no response documents. Three B's executed a waiver allowing the Examiner until August 13, 1999 to issue this decision. (Exhibit 21)

Three B's, pursuant to the provisions of SCC 2.02.167(1), elected to allow a time period following decision issuance for reconsideration. (Exhibit 20)

The Examiner denied the application by Decision dated August 8, 1999. (Exhibit 28) Three B's sought reconsideration. (Exhibit 29) On August 17, 1999, the Examiner revised one Finding but otherwise denied the request for reconsideration. (Exhibit 30)

Three B's appealed to the County Council. (Exhibit 31) On October 20, 1999, the Council remanded the application to the Examiner with direction that the rezone be granted without further hearing. This Revised Decision carries out that direction.

The Examiner intends, and has no knowledge or belief to the contrary, that the requirements, limitations and conditions imposed by the instant decision are only such as are lawful and within the authority of the Examiner to impose pursuant to Chapter 2.02 SCC and applicable laws and policies.

ISSUES

No issues are before the Examiner. The Council has directed that the application be granted.

FINDINGS OF FACT

1. The County Council, by Motion No. 99-384, adopted October 20, 1999, has: Adopted all Findings from the Examiner's August 8, 1999, Decision (as amended by Order dated August 17, 1999); concluded that:

> The special exception language within SCC 18.65.020 (3) does apply to the instant application. The Council intent in adopting amendments to Ordinance 98-121 was to

> apply the exception language to all existing uses, whether or not they were legal nonconforming uses a[t] the time of application for a rezone to Rural Business. This intent is reflected in Council discussion at the hearing on Ordinance 98-121, which hearing record is part of the official county record of proceedings on that ordinance.

(Exhibit 41, New Conclusion 1); concluded that Three B's has met all required criteria for approval of a rezone to RB (Exhibit 41, New Conclusions 2 - 4); and remanded the application

> with direction to grant the rezone to Rural Business and issue the decision in conformance with the findings, conclusions and disposition as set forth in this Motion. No additional hearing by the Examiner is required.

(Exhibit 41, § 2.1)

2. The Examiner has held no additional hearings on the application nor communicated with any party to the application.

CONCLUSIONS

1. The Examiner is obligated under the concept of the law of the case to comply with the Council's remand directive. Further evaluation of the application is neither necessary nor permissible.

2. The Council has directed that the Three B's rezone be granted. That directive will be followed.

DECISION

Rezone of the subject four acres to Rural Business is GRANTED. The Department of Planning and Development Services is hereby directed to enter the instant rezone on the official zoning maps and records of Snohomish County. Continuance of this zoning classification shall be dependent on fulfillment of all of the standards established by Title 18 SCC pertaining to the instant classification.

Decision issued this 21st day of October, 1999.

John E. Galt, Hearing Examiner

EXPLANATION OF APPEAL PROCEDURES

This decision of the Hearing Examiner is final and conclusive with right of appeal to the County Council. The following paragraphs summarize the appeal process. For more information about appeals to the County Council, please see Chapter 2.02 SCC.

Appeals may be filed by any aggrieved Party of Record. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 5th Floor, County Administration Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **November 4, 1999,** and shall be accompanied by a

filing fee in the amount of one hundred dollars ($100.00); PROVIDED, that the filing fee shall not be charged to a department of the county or to other than the first appellant; and PROVIDED FURTHER, that the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of untimely filing, lack of standing, lack of jurisdiction or other procedural defect.

An appeal must contain the following items in order to be complete: a detailed statement of the grounds for appeal; a detailed statement of the facts upon which the appeal is based, including citations to specific Hearing Examiner Findings, Conclusions, exhibits or oral testimony; written arguments in support of the appeal; the name, mailing address and daytime telephone number of each appellant, together with the signature of at least one of the appellants or of the attorney for the appellant(s), if any; the name, mailing address, daytime telephone number and signature of the appellant's agent or representative, if any; and the required filing fee.

The grounds for filing an appeal are limited to the following:

(a) the Examiner exceeded his jurisdiction;

(b) the Examiner failed to follow the applicable procedure in reaching his decision;

(c) the Examiner committed an error of law or misinterpreted the applicable comprehensive plan, provisions of Snohomish County Code, or other county or state law or regulation; and/or

(d) the Examiner's findings, conclusions and/or conditions are not supported by the record.

Appeals will processed and considered by the County Council pursuant to the provisions of SCC 2.02.175 *et seq.* Please include the county file number in any correspondence regarding this case.

Staff Distribution:

Department of Planning and Development Services: Ernie Jensen

Snohomish County

Hearing Examiner's Office

John E. Galt
Hearing Examiner

Peter T. Donahue
Deputy

M/S #405
3000 Rockefeller Ave.
Everett, WA 98201
(425) 388-3538
FAX (425) 388-3201
Information Hotline
(425) 388-3533

AFFIDAVIT OF MAILING

APPLICANT: THREE B'S CONSTRUCTION

LANDOWNER: THREE B'S CONSTRUCTION

FILE NO.: 99-101988

DOCUMENTS: Decision of the Hearing Examiner Revised on Remand issued October 21, 1999

I, Odessa Annand, Clerk of the Snohomish County Hearing Examiner, certify under penalty of perjury under the laws of the State of Washington that:

1. I have been authorized by the Snohomish County Hearing Examiner to mail hearing notices required by SCC 2.02.125(10) and other official office documents.

2. I have made a good-faith effort to mail the above-described document to each person entitled thereto. The names and addresses of the persons to whom I mailed said document are listed on the attached page(s).

3. I mailed said document on Thursday, October 21, 1999.

Signed at Everett, Washington on October 21, 1999.

Odessa Annand

25 105874 REZO

PARTIES OF RECORD
THREE B'S CONST 99 101988
HRG 6-29-99
9901988/BB

DEPT OF TRANSPORTATION
ROBERT JOSEPHSON
P O BOX 330310
SEATTLE WA 98133-9710

DEPARTMENT OF PLANNING
AND DEVELOPMENT SERVICES
COONS: ERNIE JENSEN
AND KLAUS SCHILDE
M/S #604

THREE B'S CONSTRUCTION
ATTN.: LEE BLOOM
AND BILL BLOOM
26615 - 64TH AVENUE NW
STANWOOD WA 98292

SNOHOMISH HEALTH DIST
ATTN.: RICHARD OLLIVIER
3020 RUCKER
SUITE 104
EVERETT WA 98201-3900

URSULA STUART
3801 SHORE AVENUE
EVERETT WA 98203

SHOCKEY BRENT, INC
ATTN.: KATHY HARBERT
AND RICK MC ARDLE
2924 COLBY AVENUE
EVERETT WA 98201

NANCY/RICHARD CHAPMAN
NO ADDRESS PROVIDED

25 105874 REZO

Office of the

HEARING EXAMINER

Snohomish County, Washington

LIST OF EXHIBITS & WITNESSES

Applicant: Three B's Construction, LLC **Case No.** : 99 101988 LU

EXHIBITS: Entered at the June 29, 1999 Open Record Hearing

1. Land Use Permit Master Application filed 2/26/99; legal description attached
2. Project Description prepared by Shockey Brent, Inc., 2/26/99
3. Vicinity Map and Parcel Map, 2/26/99
4. Colored Photograph, 2/26/99
5. Map, Rezone Area Plan submitted 2/26/99
6. Letter to Three B's Construction, LLC from Stacey Abbott, PDS dated 9/10/98 submitted 2/26/99
7. Environmental Checklist
8. Supplemental Environmental Checklist for Nonproject Actions
9. Verification of Legal Description
10. Vicinity Map
11. Ownership - Zoning Map
12. 1995 Aerial Map - Sec 29 Twp 32 Rge 04
13. Letter to the Department of Planning and Development Services from Dept. of Transportation dated 3/6/99
14. Memo from Snohomish Health District dated 3/22/99
15. Letter to the Department of Planning and Development Services from Richard C. and Nancy S. Chapman dated 4/19/99
16. Determination of Nonsignificance dated 5/13/99
17. Affidavit of Notification (publication and mailing) - Notice of Open Record Hearing and Threshold Determination
18. Notarized Posting Notice - Notice of Open Record Hearing and Threshold Determination
19. Staff Recommendation - Department of Planning and Development Services
20. Reconsideration Election
21. Waiver of Decision Issuance Deadline (During or Post-Hearing) dated June 29, 1999
22. Memorandum to Snohomish County Planning Commission from Department of Planning and Development Services dated 11/14/97 (Staff Report and Recommendation) with attachments:
    - Attachment A - General Policy Plan (GPP) Amendments (1996 Amendments to the GMA Comprehensive Plan and Development Regulations Implementing the Plan)
    - Attachment B - Proposed Amendments to Snohomish County Code Title 18 Relating to Rural Commercial and Industrial Zone Classifications, Uses, and Development Standards

(Continued on Next Page)

Office of the

HEARING EXAMINER

Snohomish County, Washington

LIST OF EXHIBITS & WITNESSES

Applicant: Three B's Construction, LLC **Case No.:** 99 101988 LU

23. Two (2) Executive/Council Approval Forms (ECAFs) dated 10/7/98 (*re*: Amendments to Rural Commercial/Industrial Land Uses) and Letter to County Executive from Snohomish County Planning Commission dated 4/21/98 (Planning Commission Recommendation)

24. County Council Amended Ordinance No. 98-119 - Adopting Map and Text Amendments to the Growth Management Act Comprehensive Plan Regarding Rural Commercial/Industrial Land Uses Pursuant To Chapter 32.07 SCC as amended and adopted by Council on 12 /16/98

EXHIBITS: Entered at the June 29, 1999 Open Record Hearing (Continued)

25. County Council Amended Ordinance No. 98-121 - Amending Snohomish County Code Titles 18, 19 and 32 Pursuant to Chapter 32.07 SCC Relating to Rural Commercial and Industrial Zone Classifications, Uses, and Development Standards, Bed and Breakfast Uses, Access to Rural Cluster Subdivisions, and Applicability of Agricultural Land Regulations to Short Subdivisions as amended and adopted by Council on 12/16/98
26. Letter to Hearing Examiner from James H. Jones, Jr./Law Offices of Bell & Ingram, dated 7/6/99 with attachments:
    - Exhibit 1 - Copy of Exhibit 25, listed above (pages 1 and 56 only)
    - Exhibit 2 - Letter to Snohomish County Council from Tom Ehrlichman/Attorney at Law, dated 11/25/98 with attachments: Exhibits A and B
    - Exhibit 3 - Letter to Snohomish County Council from Law Offices of Bell & Ingram dated 12/7/98 with attachments: (Copies of three (3) photographs)
    - Exhibit 4 - Memorandum to Snohomish County Council from Department of Planning and Development Services dated 12/7/98 (PDS Comments on 1996 Docket Hearing Testimony)
27. Memorandum to Hearing Examiner from Klaus Schilde/Department of Planning and Development Services dated 7/8/99

WITNESSES:

Ernie Jensen, Department of Planning and Development Services
Kathy Harbert, Shockey-Brent, Inc.
Rick McArdle, Shockey-Brent, Inc.
Ursula Stuart

(Continued on Next Page)

Office of the

HEARING EXAMINER

Snohomish County, Washington

LIST OF EXHIBITS & WITNESSES

Applicant: Three B's Construction, LLC **Case No. :** 99 101988 LU

EXHIBITS: Submitted for Reconsideration

28. Decision of the Hearing Examiner issued August 6, 1999
29. Petition for Reconsideration submitted by James H. Jones/Bell & Ingram, P.S.
30. Order Granting in Part a Petition for Reconsideration and Revising the Initial Decision issued by the Hearing Examiner on August 17, 1999

Exhibits Entered for Council Closed Record Appeal

31. Appeal received from Bell & Ingram, attorney's representing Three B's Construction
32. 9/16/99 letter to Council from George Newman, PDS
33. 9/16/99 letter to Council from Bell & Ingram, with attachments
34. Transcription of a portion of tape of December 7, 1998 public hearing - Ginni Stevens Hearing Room (accepted and entered into the record by Council at 10/13/99 closed record appeal hearing)
35. 10/13/99 memo to Council from Julia Gibb, Council Staff
36. Affidavit of Mailing - Council Notice of Appeal Hearing - mailed 9/2/99
37. Affidavit of Mailing - Council Corrected Notice of Appeal Hearing - mailed 9/8/99
38. Affidavit of Publication - Council Notice of Appeal Hearing - published 9/8/99
39. Affidavit of Publication- Council Corrected Notice of Appeal Hearing - published 9/13/99
40. Affidavit of Posting - Council Corrected Notice of Appeal Hearing - posted 9/18/99
41. OFFICIAL COUNCIL DECISION - MOTION NO. 99-384 dated 10/20/99
42. Affidavit of Mailing - Council Notice of Decision - mailed 10/22/99

25 105874 REZO

DEPARTMENT OF PLANNING
AND DEVELOPMENT SERVICES
COONS: ERNIE JENSEN
AND KLAUS SCHILDE
M/S #604

SNOHOMISH COUNTY COUNCIL
SNOHOMISH COUNTY, WASHINGTON

OFFICIAL NOTICE OF COUNCIL DECISION

In re the case of an appeal from the Hearing Examiner decision in the case of Three B's Construction, File No. 99-101988, requesting approval of a rezone from Rural 5 - Acre to Rural Business. The subject property is located on the north side of SR 532 about one-quarter mile east of Stanwood.

NOTICE IS HEREBY GIVEN that on October 20, 1999, a decision in this matter was entered by the Snohomish County Council: Upon a unanimous vote, the County Council approved a motion to remand the August 8, 1999 decision of the Hearing Examiner, to the Examiner, as set forth in County Council Motion No. 99-384, attached hereto.

FURTHER NOTICE IS GIVEN that because this decision is not the final county determination on the application, it is not subject to immediate judicial review under the Land Use Petition Act, Chapter 36.70C RCW, or SCC 2.02.190. Any person having standing may seek judicial review after a final county determination is made on the application.

DATED this 20th day of October, 1999.

Sheila McCallister
Asst. Clerk of the Council

Mailed: October 22, 1999

RECEIVED
OCT 25 1999
PLANNING & DEVELOPMENT
SERVICES - LAND USE DIV.

SNOHOMISH COUNTY COUNCIL

SNOHOMISH COUNTY, WASHINGTON

MOTION NO. 99-384

APPEAL OF HEARING EXAMINER DECISION IN FILE NO. 99-101988
APPEAL FROM DECISION TO DENY REZONE FROM RURAL - 5 ACRE (R-5) TO BUSINESS (RB)
3 B's Construction, Applicant/Appellant

WHEREAS, 3 B's Construction applied to Snohomish County for a rezone from Rural 5 Acre (R-5) to Rural Business (RB) on 4 acres or property located on the north side of SR 532 about one-quarter mile east of Stanwood; and

WHEREAS, the Snohomish County Hearing Examiner (Examiner) held a public hearing on June 29, 1999 and issued his decision on August 8, 1999 denying the rezone application; and

WHEREAS, upon consideration of a petition for reconsideration filed by applicant, the Examiner on August 17, 1999 revised the decision with respect to Finding 2 but did not change the denial of the rezone; and

WHEREAS, applicant Three B's Construction appealed this decision to the Snohomish County Council (Council) according to the provisions of Snohomish County Code (SCC) 2.02.175, whereupon the Council held a closed record appeal hearing on October 13, 1999 continued to October 20, 1999 to consider the appeal; and

WHEREAS, after considering the appeal at a public hearing, the Council determined to grant the applicant's appeal and remand the case to the hearing Examiner to direct that the rezone to Rural Business (RB) be granted and in accordance with the findings and conclusions of the PDS staff recommendation contained in the record and in accordance with this Motion;

NOW, THEREFORE, ON MOTION:

Section 1. The Snohomish County Council makes the following findings of fact and conclusions:

a. The Council adopts all of the findings of the Examiner's decision (findings 1 through 12). Council notes that finding 2 was revised by the Examiner's decision on reconsideration dated August 17, 1999.

b. The Council adopts the following additional findings:

(New) Finding 13. Council accepted an appeal from applicant pursuant to SCC 2.02.175.

(New) Finding 14. Applicant/Appellant Three B's written and oral arguments assigned error to conclusions 1 and 3 through 6 of the Examiner's decision, and to the decision itself. Applicant argued that for all existing uses that do not meet the locational criteria for Rural Business zoning, such as the use of Three B's Construction, the interpretation of the zoning code by the Examiner effectively nullifies the legislative relief intended by the Council in amendments made to the zoning code by Ordinance 98-121 in late 1998.

(New) Finding 15. Applicant argued that the Council intended to make the new Rural Business zone available to all qualifying existing uses, such as applicant's, even though the existing use might not satisfy the locational criteria required for proposed new rural business uses, and even though the existing uses might not be legal nonconforming uses. Applicant argued that the wording of SCC 18.65.020(3) does not restrict its applicability only to legal nonconforming uses, but may by its terms apply to existing uses of any kind as long as the other criteria for Rural Business zoning for the particular use are satisfied.

(New) Finding 16. Applicant further argued that their existing use meets the applicable zoning code use matrix criteria of size limitation for a building contractor use located in a rural business zone.

(New) Finding 17. PDS reviewed the appeal arguments and concurred with the analysis made in the appeal concerning Council's legislative intent in establishing the Rural Business. PDS recommended that the Three B's appeal be granted and that the Rezone to Rural Business be approved.

(New) Finding 18. Applicant requested that Council accept into the record Exhibit 34, a partial transcript of Council deliberations on Ordinance 98-121 prepared by applicant. Council accepted Exhibit 34 into the record, and took official notice of the entire official hearing record including Council oral deliberations on the issues relating to the instant appeal.

c. The Council declines to adopt any of the Examiner's conclusions (conclusions 1 through 6).

d. The Council adopts the following conclusions:

(new) Conclusion 1. The special exception language within SCC 18.65.020 (3) does apply to the instant application. The Council intent in adopting amendments to Ordinance 98-121 was to apply the exception language to all existing

uses, whether or not they were legal nonconforming uses a the time of application for a rezone to Rural Business. This intent is reflected in Council discussion at the hearing on Ordinance 98-121, which hearing record is part of the official county record of proceedings on that ordinance.

(New) Conclusion 2. The proponents of the instant rezone have met their burden of proof in demonstrating compliance with applicable county plans and regulations. The application conforms with the county's adopted Growth Management Act comprehensive plan (GMACP), and with criteria in the zoning code for a rezone to Rural Business. SCC 18.32.040(A) and 18.32.040(B)(84) and (85). PDS has recommended approval of the rezone. Exhibits 19 and 32

(New) Conclusion 3. The rezone bears a substantial relationship to the public welfare based upon its conformance with applicable county plans and regulations. The rezone should therefore be approved.

(New) Conclusion 4. The Examiner's decision erred in misinterpreting the application of SCC 18.65.020(3) and holding that the special exception to the locational criteria did not apply to the instant rezone request. The exception does apply, and applicant meets other criteria for a rezone to Rural Business. The appeal is granted, and the Examiner's decision is reversed. The application will be remanded to the Examiner with direction to enter findings, conclusions and disposition consistent with this Motion, and to grant the requested rezone to Rural Business.

Section 2. The Snohomish County Council enters its decision in the appeal of the examiner's decision in the case of Proposed Rezone to Rural Business of Three B's Construction, File No. 99-101988:

1. The Council grants the appeal of applicant Three B's Construction and remands the decision to the Examiner with direction to grant the rezone to Rural Business and issue the decision in conformance with the findings, conclusions and disposition as set forth in this Motion. No additional hearing by the Examiner is required.

Dated this 20th day of October, 1999

ATTEST:

Sheila McCaustin
Ass't. Clerk of the Council

SIGNED:
Snohomish County Council

Richard Gissberg
Council Chair

Motion 99-384
Council Motion on Appeal of hearing Examiner Decision
File No. 99-101988
g:\Council\Planning\3bsmo

D-2

Snohomish County

Hearing Examiner's Office

John E. Galt
Hearing Examiner

Peter T. Donahue
Deputy

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DECISION of the HEARING EXAMINER REVISED ON REMAND

FILE COPY

APPLICANT: Three B's Construction (Three B's)

LANDOWNER: Three B's

FILE NO.: 99 101988

TYPE OF REQUEST: Rezone from Rural - 5 Acre (R-5) to Rural Business (RB)

DECISION (SUMMARY): GRANT

DATE OF REVISED DECISION: October 21, 1999

BASIC INFORMATION

LOCATION: The subject property is located approximately 400 feet east of 64th Avenue NW on the north side of SR 532, approximately one-quarter mile east of the Stanwood City limits.

PLANNING SUBAREA: Northwest County

ACREAGE: 4.0 acres

ZONING: R-5; RB requested

UTILITIES:
- Water: City of Stanwood
- Sewage: On-site septic

SCHOOL DISTRICT: Stanwood

FIRE DISTRICT: No. 14

SELECTED AGENCY RECOMMENDATIONS (ABBREVIATED):

Department of:
- Planning and Development Services (PDS): Approve (Exhibit 19)
- Public Works (PW): No recommendation
- Snohomish Health District (SHD): No objection (Exhibit 14)

INTRODUCTION

Three B's seeks to legalize an illegal use by rezoning four acres of a 13 acre site from R-5 to RB. Three B's filed its Master Application on February 26, 1999. (Exhibits 1 - 8) PDS deemed the application complete when filed. (Exhibit 19)

The Hearing Examiner (Examiner) made a site familiarization visit on June 28, 1999.

The Examiner held an open record hearing on June 29, 1999, day 96 of the 120 day decision making period. PDS gave public notice of the open record hearing as required by county code. (Exhibits 17 and 18) At said hearing witnesses were sworn, testimony was presented and exhibits were entered.

A central question in this case is whether the provisions of Snohomish County Code (SCC) 18.65.020(3) apply to illegal uses. The Examiner left the hearing record open through July 9, 1999 for submittal by PDS and Three B's of documents demonstrating the County Council's intent in the adoption of that code section; the parties submitted Exhibits 22 - 27 under that authority. The record remained open through July 16, 1999 for submittal of response documents; the parties submitted no response documents. Three B's executed a waiver allowing the Examiner until August 13, 1999 to issue this decision. (Exhibit 21)

Three B's, pursuant to the provisions of SCC 2.02.167(1), elected to allow a time period following decision issuance for reconsideration. (Exhibit 20)

The Examiner denied the application by Decision dated August 8, 1999. (Exhibit 28) Three B's sought reconsideration. (Exhibit 29) On August 17, 1999, the Examiner revised one Finding but otherwise denied the request for reconsideration. (Exhibit 30)

Three B's appealed to the County Council. (Exhibit 31) On October 20, 1999, the Council remanded the application to the Examiner with direction that the rezone be granted without further hearing. This Revised Decision carries out that direction.

The Examiner intends, and has no knowledge or belief to the contrary, that the requirements, limitations and conditions imposed by the instant decision are only such as are lawful and within the authority of the Examiner to impose pursuant to Chapter 2.02 SCC and applicable laws and policies.

ISSUES

No issues are before the Examiner. The Council has directed that the application be granted.

FINDINGS OF FACT

1. The County Council, by Motion No. 99-384, adopted October 20, 1999, has: Adopted all Findings from the Examiner's August 8, 1999, Decision (as amended by Order dated August 17, 1999); concluded that:

> The special exception language within SCC 18.65.020 (3) does apply to the instant application. The Council intent in adopting amendments to Ordinance 98-121 was to

> apply the exception language to all existing uses, whether or not they were legal nonconforming uses a[t] the time of application for a rezone to Rural Business. This intent is reflected in Council discussion at the hearing on Ordinance 98-121, which hearing record is part of the official county record of proceedings on that ordinance.

(Exhibit 41, New Conclusion 1); concluded that Three B's has met all required criteria for approval of a rezone to RB (Exhibit 41, New Conclusions 2 - 4); and remanded the application

> with direction to grant the rezone to Rural Business and issue the decision in conformance with the findings, conclusions and disposition as set forth in this Motion. No additional hearing by the Examiner is required.

(Exhibit 41, § 2.1)

2. The Examiner has held no additional hearings on the application nor communicated with any party to the application.

CONCLUSIONS

1. The Examiner is obligated under the concept of the law of the case to comply with the Council's remand directive. Further evaluation of the application is neither necessary nor permissible.

2. The Council has directed that the Three B's rezone be granted. That directive will be followed.

DECISION

Rezone of the subject four acres to Rural Business is GRANTED. The Department of Planning and Development Services is hereby directed to enter the instant rezone on the official zoning maps and records of Snohomish County. Continuance of this zoning classification shall be dependent on fulfillment of all of the standards established by Title 18 SCC pertaining to the instant classification.

Decision issued this 21st day of October, 1999.

John E. Galt, Hearing Examiner

EXPLANATION OF APPEAL PROCEDURES

This decision of the Hearing Examiner is final and conclusive with right of appeal to the County Council. The following paragraphs summarize the appeal process. For more information about appeals to the County Council, please see Chapter 2.02 SCC.

Appeals may be filed by any aggrieved Party of Record. Appeals shall be addressed to the Snohomish County Council but shall be filed in writing with the Department of Planning and Development Services, 5th Floor, County Administration Building, 3000 Rockefeller Avenue, Everett, Washington (Mailing address: M/S #604, 3000 Rockefeller Avenue, Everett, WA 98201) on or before **November 4, 1999,** and shall be accompanied by a

filing fee in the amount of one hundred dollars ($100.00); PROVIDED, that the filing fee shall not be charged to a department of the county or to other than the first appellant; and PROVIDED FURTHER, that the filing fee shall be refunded in any case where an appeal is dismissed without hearing because of untimely filing, lack of standing, lack of jurisdiction or other procedural defect.

An appeal must contain the following items in order to be complete: a detailed statement of the grounds for appeal; a detailed statement of the facts upon which the appeal is based, including citations to specific Hearing Examiner Findings, Conclusions, exhibits or oral testimony; written arguments in support of the appeal; the name, mailing address and daytime telephone number of each appellant, together with the signature of at least one of the appellants or of the attorney for the appellant(s), if any; the name, mailing address, daytime telephone number and signature of the appellant's agent or representative, if any; and the required filing fee.

The grounds for filing an appeal are limited to the following:

(a) the Examiner exceeded his jurisdiction;

(b) the Examiner failed to follow the applicable procedure in reaching his decision;

(c) the Examiner committed an error of law or misinterpreted the applicable comprehensive plan, provisions of Snohomish County Code, or other county or state law or regulation; and/or

(d) the Examiner's findings, conclusions and/or conditions are not supported by the record.

Appeals will processed and considered by the County Council pursuant to the provisions of SCC 2.02.175 *et seq.* Please include the county file number in any correspondence regarding this case.

Staff Distribution:

Department of Planning and Development Services: Ernie Jensen

25 105874 REZO

SNOHOMISH COUNTY COUNCIL
EXHIBIT # 42
FILE 99101988

SNOHOMISH COUNTY COUNCIL

SNOHOMISH COUNTY, WASHINGTON

AFFIDAVIT OF MAILING

FILE NO: 99 101988

APPLICANT: Three B's Construction

DOCUMENT: Council Notice of Decision - Notice dated October 20, 1999

I, Rochelle Terry, Secretary to the Snohomish County Council, certify under penalty of perjury under the laws of the State of Washington that:

1. I have been authorized by the Snohomish County Council to mail notices required by the Snohomish County Code.

2. I have made a good-faith effort to mail the above described document to each person entitled thereto. The names and addresses of the persons to whom said document was mailed are attached hereto.

3. I mailed said document on October 22, 1999.

Signed at Everett, Washington on October 22, 1999.

Rochelle Terry

Rochelle Terry

SNOHOMISH COUNTY COUNCIL
SNOHOMISH COUNTY, WASHINGTON

OFFICIAL NOTICE OF COUNCIL DECISION

In re the case of an appeal from the Hearing Examiner decision in the case of Three B's Construction, File No. 99-101988, requesting approval of a rezone from Rural 5 - Acre to Rural Business. The subject property is located on the north side of SR 532 about one-quarter mile east of Stanwood.

NOTICE IS HEREBY GIVEN that on October 20, 1999, a decision in this matter was entered by the Snohomish County Council: Upon a unanimous vote, the County Council approved a motion to remand the August 8, 1999 decision of the Hearing Examiner, to the Examiner, as set forth in County Council Motion No. 99-384, attached hereto.

FURTHER NOTICE IS GIVEN that because this decision is not the final county determination on the application, it is not subject to immediate judicial review under the Land Use Petition Act, Chapter 36.70C RCW, or SCC 2.02.190. Any person having standing may seek judicial review after a final county determination is made on the application.

DATED this 20th day of October, 1999.

Sheila McCrostie
Asst. Clerk of the Council

Mailed: October 22, 1999

SNOHOMISH COUNTY COUNCIL

SNOHOMISH COUNTY, WASHINGTON

MOTION NO. 99-384

APPEAL OF HEARING EXAMINER DECISION IN FILE NO. 99-101988
APPEAL FROM DECISION TO DENY REZONE FROM RURAL - 5 ACRE (R-5) TO BUSINESS (RB)
3 B's Construction, Applicant/Appellant

WHEREAS, 3 B's Construction applied to Snohomish County for a rezone from Rural 5 Acre (R-5) to Rural Business (RB) on 4 acres or property located on the north side of SR 532 about one-quarter mile east of Stanwood; and

WHEREAS, the Snohomish County Hearing Examiner (Examiner) held a public hearing on June 29, 1999 and issued his decision on August 8, 1999 denying the rezone application; and

WHEREAS, upon consideration of a petition for reconsideration filed by applicant, the Examiner on August 17, 1999 revised the decision with respect to Finding 2 but did not change the denial of the rezone; and

WHEREAS, applicant Three B's Construction appealed this decision to the Snohomish County Council (Council) according to the provisions of Snohomish County Code (SCC) 2.02.175, whereupon the Council held a closed record appeal hearing on October 13, 1999 continued to October 20, 1999 to consider the appeal; and

WHEREAS, after considering the appeal at a public hearing, the Council determined to grant the applicant's appeal and remand the case to the hearing Examiner to direct that the rezone to Rural Business (RB) be granted and in accordance with the findings and conclusions of the PDS staff recommendation contained in the record and in accordance with this Motion;

NOW, THEREFORE, ON MOTION:

Section 1. The Snohomish County Council makes the following findings of fact and conclusions:

a. The Council adopts all of the findings of the Examiner's decision (findings 1 through 12). Council notes that finding 2 was revised by the Examiner's decision on reconsideration dated August 17, 1999.

b. The Council adopts the following additional findings:

(New) Finding 13. Council accepted an appeal from applicant pursuant to SCC 2.02.175.

(New) Finding 14. Applicant/Appellant Three B's written and oral arguments assigned error to conclusions 1 and 3 through 6 of the Examiner's decision, and to the decision itself. Applicant argued that for all existing uses that do not meet the locational criteria for Rural Business zoning, such as the use of Three B's Construction, the interpretation of the zoning code by the Examiner effectively nullifies the legislative relief intended by the Council in amendments made to the zoning code by Ordinance 98-121 in late 1998.

(New) Finding 15. Applicant argued that the Council intended to make the new Rural Business zone available to all qualifying existing uses, such as applicant's, even though the existing use might not satisfy the locational criteria required for proposed new rural business uses, and even though the existing uses might not be legal nonconforming uses. Applicant argued that the wording of SCC 18.65.020(3) does not restrict its applicability only to legal nonconforming uses, but may by its terms apply to existing uses of any kind as long as the other criteria for Rural Business zoning for the particular use are satisfied.

(New) Finding 16. Applicant further argued that their existing use meets the applicable zoning code use matrix criteria of size limitation for a building contractor use located in a rural business zone.

(New) Finding 17. PDS reviewed the appeal arguments and concurred with the analysis made in the appeal concerning Council's legislative intent in establishing the Rural Business. PDS recommended that the Three B's appeal be granted and that the Rezone to Rural Business be approved.

(New) Finding 18. Applicant requested that Council accept into the record Exhibit 34, a partial transcript of Council deliberations on Ordinance 98-121 prepared by applicant. Council accepted Exhibit 34 into the record, and took official notice of the entire official hearing record including Council oral deliberations on the issues relating to the instant appeal.

c. The Council declines to adopt any of the Examiner's conclusions (conclusions 1 through 6).

d. The Council adopts the following conclusions:

(new) Conclusion 1. The special exception language within SCC 18.65.020 (3) does apply to the instant application. The Council intent in adopting amendments to Ordinance 98-121 was to apply the exception language to all existing

uses, whether or not they were legal nonconforming uses a the time of application for a rezone to Rural Business. This intent is reflected in Council discussion at the hearing on Ordinance 98-121, which hearing record is part of the official county record of proceedings on that ordinance.

(New) Conclusion 2. The proponents of the instant rezone have met their burden of proof in demonstrating compliance with applicable county plans and regulations. The application conforms with the county's adopted Growth Management Act comprehensive plan (GMACP), and with criteria in the zoning code for a rezone to Rural Business. SCC 18.32.040(A) and 18.32.040(B)(84) and (85). PDS has recommended approval of the rezone. Exhibits 19 and 32

(New) Conclusion 3. The rezone bears a substantial relationship to the public welfare based upon its conformance with applicable county plans and regulations. The rezone should therefore be approved.

(New) Conclusion 4. The Examiner's decision erred in misinterpreting the application of SCC 18.65.020(3) and holding that the special exception to the locational criteria did not apply to the instant rezone request. The exception does apply, and applicant meets other criteria for a rezone to Rural Business. The appeal is granted, and the Examiner's decision is reversed. The application will be remanded to the Examiner with direction to enter findings, conclusions and disposition consistent with this Motion, and to grant the requested rezone to Rural Business.

Section 2. The Snohomish County Council enters its decision in the appeal of the examiner's decision in the case of Proposed Rezone to Rural Business of Three B's Construction, File No. 99-101988:

1. The Council grants the appeal of applicant Three B's Construction and remands the decision to the Examiner with direction to grant the rezone to Rural Business and issue the decision in conformance with the findings, conclusions and disposition as set forth in this Motion. No additional hearing by the Examiner is required.

Dated this 20th day of October, 1999

ATTEST:

Sheila McCaustin
Ass't. Clerk of the Council

SIGNED:
Snohomish County Council

Richard Gissberg
Council Chair

PARTIES OF RECORD
THREE B'S CONST 99 101988
HRG 6-29-99
9901988/BB

DEPT OF TRANSPORTATION
ROBERT JOSEPHSON
P O BOX 330310
SEATTLE WA 98133-9710

DEPARTMENT OF PLANNING
AND DEVELOPMENT SERVICES
COONS: ERNIE JENSEN
AND KLAUS SCHILDE
M/S #604

THREE B'S CONSTRUCTION
ATTN.: LEE BLOOM
AND BILL BLOOM
26615 - 64TH AVENUE NW
STANWOOD WA 98292

SNOHOMISH HEALTH DIST
ATTN.: RICHARD OLLIVIER
3020 RUCKER
SUITE 104
EVERETT WA 98201-3900

URSULA STUART
3801 SHORE AVENUE
EVERETT WA 98203

SHOCKEY BRENT, INC
ATTN.: KATHY HARBERT
AND RICK MC ARDLE
2924 COLBY AVENUE
EVERETT WA 98201

NANCY/RICHARD CHAPMAN
NO ADDRESS PROVIDED

SNOHOMISH COUNTY COUNCIL
EXHIBIT # 41
FILE 99101988

SNOHOMISH COUNTY COUNCIL
SNOHOMISH COUNTY, WASHINGTON

OFFICIAL NOTICE OF COUNCIL DECISION

In re the case of an appeal from the Hearing Examiner decision in the case of Three B's Construction, File No. 99-101988, requesting approval of a rezone from Rural 5 - Acre to Rural Business. The subject property is located on the north side of SR 532 about one-quarter mile east of Stanwood.

NOTICE IS HEREBY GIVEN that on October 20, 1999, a decision in this matter was entered by the Snohomish County Council: Upon a unanimous vote, the County Council approved a motion to remand the August 8, 1999 decision of the Hearing Examiner, to the Examiner, as set forth in County Council Motion No. 99-384, attached hereto.

FURTHER NOTICE IS GIVEN that because this decision is not the final county determination on the application, it is not subject to immediate judicial review under the Land Use Petition Act, Chapter 36.70C RCW, or SCC 2.02.190. Any person having standing may seek judicial review after a final county determination is made on the application.

DATED this 20th day of October, 1999.

Sheila McCallister
Asst. Clerk of the Council

Mailed: October 22, 1999

SNOHOMISH COUNTY COUNCIL

SNOHOMISH COUNTY, WASHINGTON

MOTION NO. 99-384

APPEAL OF HEARING EXAMINER DECISION IN FILE NO. 99-101988
APPEAL FROM DECISION TO DENY REZONE FROM RURAL - 5 ACRE (R-5) TO BUSINESS (RB)
3 B's Construction, Applicant/Appellant

WHEREAS, 3 B's Construction applied to Snohomish County for a rezone from Rural 5 Acre (R-5) to Rural Business (RB) on 4 acres or property located on the north side of SR 532 about one-quarter mile east of Stanwood; and

WHEREAS, the Snohomish County Hearing Examiner (Examiner) held a public hearing on June 29, 1999 and issued his decision on August 8, 1999 denying the rezone application; and

WHEREAS, upon consideration of a petition for reconsideration filed by applicant, the Examiner on August 17, 1999 revised the decision with respect to Finding 2 but did not change the denial of the rezone; and

WHEREAS, applicant Three B's Construction appealed this decision to the Snohomish County Council (Council) according to the provisions of Snohomish County Code (SCC) 2.02.175, whereupon the Council held a closed record appeal hearing on October 13, 1999 continued to October 20, 1999 to consider the appeal; and

WHEREAS, after considering the appeal at a public hearing, the Council determined to grant the applicant's appeal and remand the case to the hearing Examiner to direct that the rezone to Rural Business (RB) be granted and in accordance with the findings and conclusions of the PDS staff recommendation contained in the record and in accordance with this Motion;

NOW, THEREFORE, ON MOTION:

Section 1. The Snohomish County Council makes the following findings of fact and conclusions:

a. The Council adopts all of the findings of the Examiner's decision (findings 1 through 12). Council notes that finding 2 was revised by the Examiner's decision on reconsideration dated August 17, 1999.

b. The Council adopts the following additional findings:

(New) Finding 13. Council accepted an appeal from applicant pursuant to SCC 2.02.175.

(New) Finding 14. Applicant/Appellant Three B's written and oral arguments assigned error to conclusions 1 and 3 through 6 of the Examiner's decision, and to the decision itself. Applicant argued that for all existing uses that do not meet the locational criteria for Rural Business zoning, such as the use of Three B's Construction, the interpretation of the zoning code by the Examiner effectively nullifies the legislative relief intended by the Council in amendments made to the zoning code by Ordinance 98-121 in late 1998.

(New) Finding 15. Applicant argued that the Council intended to make the new Rural Business zone available to all qualifying existing uses, such as applicant's, even though the existing use might not satisfy the locational criteria required for proposed new rural business uses, and even though the existing uses might not be legal nonconforming uses. Applicant argued that the wording of SCC 18.65.020(3) does not restrict its applicability only to legal nonconforming uses, but may by its terms apply to existing uses of any kind as long as the other criteria for Rural Business zoning for the particular use are satisfied.

(New) Finding 16. Applicant further argued that their existing use meets the applicable zoning code use matrix criteria of size limitation for a building contractor use located in a rural business zone.

(New) Finding 17. PDS reviewed the appeal arguments and concurred with the analysis made in the appeal concerning Council's legislative intent in establishing the Rural Business. PDS recommended that the Three B's appeal be granted and that the Rezone to Rural Business be approved.

(New) Finding 18. Applicant requested that Council accept into the record Exhibit 34, a partial transcript of Council deliberations on Ordinance 98-121 prepared by applicant. Council accepted Exhibit 34 into the record, and took official notice of the entire official hearing record including Council oral deliberations on the issues relating to the instant appeal.

c. The Council declines to adopt any of the Examiner's conclusions (conclusions 1 through 6).

d. The Council adopts the following conclusions:

(new) Conclusion 1. The special exception language within SCC 18.65.020 (3) does apply to the instant application. The Council intent in adopting amendments to Ordinance 98-121 was to apply the exception language to all existing

uses, whether or not they were legal nonconforming uses a the time of application for a rezone to Rural Business. This intent is reflected in Council discussion at the hearing on Ordinance 98-121, which hearing record is part of the official county record of proceedings on that ordinance.

(New) Conclusion 2. The proponents of the instant rezone have met their burden of proof in demonstrating compliance with applicable county plans and regulations. The application conforms with the county's adopted Growth Management Act comprehensive plan (GMACP), and with criteria in the zoning code for a rezone to Rural Business. SCC 18.32.040(A) and 18.32.040(B)(84) and (85). PDS has recommended approval of the rezone. Exhibits 19 and 32

(New) Conclusion 3. The rezone bears a substantial relationship to the public welfare based upon its conformance with applicable county plans and regulations. The rezone should therefore be approved.

(New) Conclusion 4. The Examiner's decision erred in misinterpreting the application of SCC 18.65.020(3) and holding that the special exception to the locational criteria did not apply to the instant rezone request. The exception does apply, and applicant meets other criteria for a rezone to Rural Business. The appeal is granted, and the Examiner's decision is reversed. The application will be remanded to the Examiner with direction to enter findings, conclusions and disposition consistent with this Motion, and to grant the requested rezone to Rural Business.

Section 2. The Snohomish County Council enters its decision in the appeal of the examiner's decision in the case of Proposed Rezone to Rural Business of Three B's Construction, File No. 99-101988:

1. The Council grants the appeal of applicant Three B's Construction and remands the decision to the Examiner with direction to grant the rezone to Rural Business and issue the decision in conformance with the findings, conclusions and disposition as set forth in this Motion. No additional hearing by the Examiner is required.

Dated this 20th day of October, 1999

ATTEST:

Sheila McCausten
Ass't. Clerk of the Council

SIGNED:
Snohomish County Council

Richard Dunn
Council Chair

25 105874 REZO

SHOCKEY BRENT, inc.

Land Use • Civil Engineering • Environmental Analysis • Public Policy
2924 Colby Avenue, Everett, Washington 98201 Phone: 425·258·9308 Fax: 425·259·4448

SNOHOMISH COUNTY COUNCIL
RECEIVED 27 TIME 1:52
SEP 27 1999
CC'D TO: JAG DWG AMB SKN BAT
DIST 1 DIST 2 DIST 3 DIST 4 DIST 5
CF KJM STM BSS FOB TCD

TRANSMITTAL

▶ ☐ *MAIL* *X HAND-DELIVERY* ☐ *COURIER* ☐ *FACSIMILE*

Send to:	Snoh. Co County Council Office	**Date:**	September 27, 1999
		Regarding:	File #99-101988-LU
		Fax Number:	
		Pages:	2

☐ For Your Information ☐ URGENT
☐ Response Requested X Provided at your request

Attached please find the notarized notice for rezone project, Three B's Construction, requested by the Office of the Snohomish County Council. Ernie Jensen is the Project Planner for the Rezone.

Feel free to contact me if you have any questions or comments.

Thank You.

SNOHOMISH COUNTY COUNCIL
EXHIBIT # 40
FILE 99101988

By: *Kathy Harbert*, Senior Planner
E-mail: KHarbert@shockey-brent.com

Copy to:

Client Code: BBB
Project #: 98194

25 105874 REZO

SNOHOMISH COUNTY COUNCIL
RECEIVED BY TIME 1:55
SEP 27 1999
CC'D TO CF
JAG DIST 1 KJM
DWG DIST 2 STM
AMB DIST 3 BSS
SKN DIST 4 FCB
SAF DIST 5 TCD

SNOHOMISH COUNTY COUNCIL
SNOHOMISH COUNTY, WASHINGTON

This form shall be notarized, a copy of the notice attached hereto and presented to the office of the Snohomish County Council prior to the scheduled closed record appeal date.

FILE: Three B's Construction
File No. 99 101988

CLOSED RECORD APPEAL DATE: October 13, 1999

I hereby certify that I posted the above property in a conspicuous place on the subject property, no less than fifteen (15) days prior to the scheduled closed record appeal date, with the attached notice, in accordance with the requirements of SCC 2.02.175.

Posted on 18th, day of Sept, 1999

Dated this 23rd, day of Sept 1999

DOREEN L. SCHMITT NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES 7-13-2002

Signed: [signature]

Notary Signature: Doreen L. Schmitt

STATE OF WASHINGTON)

COUNTY OF SNOHOMISH)

Subscribed and sworn before me this 23rd day of September, 1999.

Notary Public in and for the State of Washington residing at Stanwood

25 105874 REZO

SNOHOMISH COUNTY COUNCIL
SNOHOMISH COUNTY, WASHINGTON
CORRECTED
NOTICE OF APPEAL HEARING

NOTICE IS HEREBY GIVEN that the Snohomish County Council will hold a hearing on WEDNESDAY, OCTOBER 13, 1999 in the Henry M. Jackson Board Room, 3000 Rockefeller Avenue, Sixth Floor, County Administration Building, Everett, Washington, at the hour of 1:30 p.m. to consider an August 30, 1999 appeal from a decision of the Snohomish County Hearing Examiner dated August 6, 1999, regarding the application described below:

APPLICATION FILE NO.: 99 101988

TYPE OF APPLICATION: A request for approval of rezone from Rural - 5 Acre (R-5) to Rural Business (RB) for property located approximately 400 feet east of 64th Avenue NW on the north side of SR 532.

APPLICANT: Three B's Construction

APPELLANTS: Three B's Construction and Lee Bloom

NATURE OF APPEAL HEARING: Snohomish County Code Section 2.02.175 provides that the appeal will be heard at a closed record appeal hearing. The appeal will be on the record with no new evidence allowed unless specifically requested by the County Council. No new appeal issues may be raised by a party of record after the close of time allowed by law for filing an appeal. Because this is not an open record hearing, members of the public who are not parties of record will not be allowed to present argument.

PRESENTATION OF ARGUMENT: Parties of record may file written arguments prior to the hearing, and may present oral arguments at the hearing. In order to be considered, written arguments must be filed with the Council Clerk, County Administration Building, Sixth Floor, 3000 Rockefeller Avenue, MS/609, Everett, Washington, 98201, no later than 5:00 p.m. on Thursday, September 16, 1999. The appellants may file written rebuttal arguments with the Council Clerk no later than 5:00 p.m. on Thursday, September 23, 1999.

COUNTY COUNCIL ACTION: At the conclusion of the hearing, the County Council will adopt findings and conclusions in support of its decision, which may adopt any or all of the findings and conclusions of the Hearing Examiner. The Council may affirm the Hearing Examiner's decision, may reverse the Hearing Examiner's decision, wholly or in part, or may remand the matter to the Hearing Examiner for further proceedings in accordance with the Council's findings and conclusions.

AVAILABILITY OF RECORD: The record, including the written appeal statement and written arguments presented by parties of record, is available for inspection at the office of the Council Clerk. Copies of documents may be obtained upon request at the office of the Council Clerk.

ACCOMMODATION OF DISABILITIES: Accommodations for persons with disabilities will be provided upon request. Please make arrangements at least one week prior to the hearing by calling Sheila McCallister at (425) 388-3494, (800) 562-4367 x3494, or TDD (425) 388-3700).

Dated this 8th day of September, 1999

Kathryn J. Bratcher
Clerk of the Council

PUBLISH: Monday, September 13, 1999
Send Affidavit to: Council
Send Invoice to: Planning #25520

25 105874 REZO

SNOHOMISH COUNTY COUNCIL
EXHIBIT # 39
FILE 99 101988

Affidavit of Publication

STATE OF WASHINGTON,
COUNTY OF SNOHOMISH, } ss.

SNOHOMISH COUNTY COUNCIL
SNOHOMISH COUNTY, WASHINGTON
CORRECTED
NOTICE OF APPEAL HEARING

NOTICE IS HEREBY GIVEN that the Snohomish County Council will hold a hearing on WEDNESDAY, OCTOBER 13, 1999 in the Henry M. Jackson Board Room, 3000 Rockefeller Avenue, Sixth Floor County Administration Building, Everett, Washington, at the hour of 1:30 p.m. to consider an August 30, 1999 appeal from a decision of the Snohomish County Hearing Examiner dated August 6, 1999, regarding the application described below:

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APPELLANTS: Three B's Construction and Lee Bloom

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PRESENTATION OF ARGUMENT: Parties of record may file written arguments prior to the hearing, and may present oral arguments at the hearing. In order to be considered, written arguments must be filed with the Council Clerk, County Administration Building, Sixth Floor, 3000 Rockefeller Avenue, MS/609, Everett, Washington, 98201, no later than 5:00 p.m. on Thursday, September 16, 1999. The appellants may file written rebuttal arguments with the Council Clerk no later than 5:00 p.m. on Thursday, September 23, 1999.

COUNTY COUNCIL ACTION: At the conclusion of the hearing, the County Council will adopt findings and conclusions in support of its decision, which may adopt any or all of the findings and conclusions of the Hearing Examiner. The Council may affirm the Hearing Examiner's decision, may reverse the Hearing Examiner's decision, wholly or in part, or may remand the matter to the Hearing Examiner for further proceedings in accordance with the Council's findings and conclusions.

AVAILABILITY OF RECORD: The record, including the written appeal statement and written arguments presented by parties of record, is available for inspection at the office of the Council Clerk. Copies of documents may be obtained upon request at the office of the Council Clerk.

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Dated this 8th day of September, 1999
KATHRYN J. BRATCHER
Clerk of the Council
#25520
Published: September 13, 1999.

The undersigned, being first duly sworn on oath deposes and says that she is Principal Clerk of THE HERALD, a daily newspaper printed and published in the City of Everett, County of Snohomish, and State of Washington; that said newspaper is a newspaper of general circulation in said County and State; that said newspaper has been approved as a legal newspaper by order of the Superior Court of Snohomish County and that the notice

Corrected Notice of Appeal hearing

File No. 99 101988

Three B's Construction

a printed copy of which is hereunto attached, was published in said newspaper proper and not in supplement form, in the regular and entire edition of said paper on the following days and times, namely:

September 13, 1999

and that said newspaper was regularly distributed to its subscribers during all of said period.

K M Sanhorde
Principal Clerk

Subscribed and sworn to before me this 13th day of September, 19 99

Notary Public in and for the State of Washington, residing at Everett, Snohomish County.

NOTARY - * - PUBLIC
COMMISSION EXPIRES
MAY 19, 2002
STATE OF WASHINGTON

SNOHOMISH COUNTY COUNCIL
RECEIVED _____ TIME _____

SEP 17 1999

CC'D TO: CF____
JAG ____ DIST 1 ____ KJM ____
DWG ____ DIST 2 ____ STM ____
AMB ____ DIST 3 ____ BSS ____
SKN ____ DIST 4 ____ FCB ____
SAF ____ DIST 5 ____ FCD ____

25 105874 REZO

SNOHOMISH COUNTY COUNCIL
EXHIBIT # 38
FILE 99101988

Affidavit of Publication

STATE OF WASHINGTON,
COUNTY OF SNOHOMISH, } ss.

SNOHOMISH COUNTY COUNCIL
SNOHOMISH COUNTY, WASHINGTON
NOTICE OF APPEAL HEARING

NOTICE IS HEREBY GIVEN that the Snohomish County Council will hold a hearing on WEDNESDAY, OCTOBER 13, 1999 in the Henry M. Jackson Board Room, 3000 Rockefeller Avenue, Sixth Floor, County Administration Building, Everett, Washington, at the hour of 1:30 p.m. to consider an August 30, 1999 appeal from a decision of the Snohomish County Hearing Examiner dated August 6, 1999, regarding the application described below:

APPLICATION FILE NO.: 99 101988

TYPE OF APPLICATION: A request for approval of a rezone from Rural - 5 Acre (R-5) to Rural Business (RB) for property located approximately 400 feet east of 64th Avenue NW on the north side of SR 532, approximately one-quarter mile east of the Stanwood city limits.

APPLICANT: Three B's Construction

APPELLANTS: Three B's Construction and Lee Bloom

NATURE OF APPEAL HEARING: Snohomish County Code Section 2.02.175 provides that the appeal will be heard at a closed record appeal hearing. The appeal will be on the record with no new evidence allowed unless specifically requested by the County Council. No new appeal issues may be raised by a party of record after the close of time allowed by law for filing an appeal. Because this is not an open record hearing, members of the public who are not parties of record will not be allowed to present argument.

PRESENTATION OF ARGUMENT: Parties of record may file written arguments prior to the hearing, and may present oral arguments at the hearing. In order to be considered, written arguments must be filed with the Council Clerk, County Administration Building, Sixth Floor, 3000 Rockefeller Avenue, MS/609, Everett, Washington, 98201, no later than 5:00 p.m. on Thursday, September 16, 1999. The appellants may file written rebuttal arguments with the Council Clerk no later than 5:00 p.m. on Thursday, September 16, 1999.

COUNTY COUNCIL ACTION: At the conclusion of the hearing, the County Council will adopt findings and conclusions in support of its decision, which may adopt any or all of the findings and conclusions of the Hearing Examiner. The Council may affirm the Hearing Examiner's decision, may reverse the Hearing Examiner's decision, wholly or in part, or may remand the matter to the Hearing Examiner for further proceedings in accordance with the Council's findings and conclusions.

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ACCOMMODATION OF DISABILITIES: Accommodations for persons with disabilities will be provided upon request. Please make arrangements at least one week prior to the hearing by calling Sheila McCallister at (425) 388-3494,1 (800) 562-4367 x3494, or TDD (425) 388-3700.

Dated this 2nd day of September, 1999.

SHEILA McCALLISTER
Asst. Clerk of the Council

#25520
Published: September 8, 1999.

The undersigned, being first duly sworn on oath deposes and says that she is Principal Clerk of THE HERALD, a daily newspaper printed and published in the City of Everett, County of Snohomish, and State of Washington; that said newspaper is a newspaper of general circulation in said County and State; that said newspaper has been approved as a legal newspaper by order of the Superior Court of Snohomish County and that the notice.....

Notice of Appeal hearing

File No. 99 101988

Three B's Construction

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Principal Clerk

Subscribed and sworn to before me this 8th day of September, 19 99

Notary Public in and for the State of Washington, residing at Everett, Snohomish County.

NOTARY PUBLIC STATE OF WASHINGTON COMMISSION EXPIRES MAY 19, 2002

SNOHOMISH COUNTY COUNCIL
RECEIVED _____ TIME _____

SEP 14 1999

CC'D TO: CF
JAG ____ DIST 1 ____ KJM ____
DWG ____ DIST 2 ____ STM ____
AMB ____ DIST 3 ____ BSS ____
SKN ____ DIST 4 ____ FCB ____
SAF ____ DIST 5 ____ TCD ____

SNOHOMISH COUNTY COUNCIL
SNOHOMISH COUNTY, WASHINGTON

SNOHOMISH COUNTY COUNCIL
EXHIBIT # 37
FILE 99 101988

AFFIDAVIT OF MAILING

FILE NO: 99 101988

APPLICANT: Three B's Construction

DOCUMENT: Corrected Notice of Appeal Hearing - Notice dated September 8, 1999

I, Kathryn J. Bratcher, Clerk of the Snohomish County Council, certify under penalty of perjury under the laws of the State of Washington that:

1. I have been authorized by the Snohomish County Council to mail notices required by the Snohomish County Code.

2. I have made a good-faith effort to mail the above described document to each person entitled thereto. The names and addresses of the persons to whom said document was mailed are attached hereto.

3. I mailed said document on September 8, 1999.

Signed at Everett, Washington on September 8, 1999.

Kathryn J. Bratcher

25 105874 REZO

SNOHOMISH COUNTY COUNCIL
SNOHOMISH COUNTY, WASHINGTON
CORRECTED
NOTICE OF APPEAL HEARING

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COUNTY COUNCIL ACTION: At the conclusion of the hearing, the County Council will adopt findings and conclusions in support of its decision, which may adopt any or all of the findings and conclusions of the Hearing Examiner. The Council may affirm the Hearing Examiner's decision, may reverse the Hearing Examiner's decision, wholly or in part, or may remand the matter to the Hearing Examiner for further proceedings in accordance with the Council's findings and conclusions.

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Dated this 8th day of September, 1999

Clerk of the Council

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PARTIES OF RECORD
THREE B'S CONST 99 101988
HRG 6-29-99
9901988/BB

DEPT OF TRANSPORTATION
ROBERT JOSEPHSON
P O BOX 330310
SEATTLE WA 98133-9710

DEPARTMENT OF PLANNING
AND DEVELOPMENT SERVICES
COONS: ERNIE JENSEN
AND KLAUS SCHILDE
M/S #604

THREE B'S CONSTRUCTION
ATTN.: LEE BLOOM
AND BILL BLOOM
26615 - 64TH AVENUE NW
STANWOOD WA 98292

SNOHOMISH HEALTH DIST
ATTN.: RICHARD OLLIVIER
3020 RUCKER
SUITE 104
EVERETT WA 98201-3900

URSULA STUART
3801 SHORE AVENUE
EVERETT WA 98203

SHOCKEY BRENT, INC
ATTN.: KATHY HARBER
AND RICK MC ARDLE
2924 COLBY AVENUE
EVERETT WA 98201

NANCY/RICHARD CHAPMAN
NO ADDRESS PROVIDED

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SNOHOMISH COUNTY COUNCIL
SNOHOMISH COUNTY, WASHINGTON

SNOHOMISH COUNTY COUNCIL
EXHIBIT # 36
FILE 99101988

AFFIDAVIT OF MAILING

FILE NO: 99 101988

APPLICANT: Three B's Construction

DOCUMENT: Council Notice of Appeal Hearing - Notice dated September 2, 1999

I, Sheila McCallister, Assistant Clerk to the Snohomish County Council, certify under penalty of perjury under the laws of the State of Washington that:

1. I have been authorized by the Snohomish County Council to mail notices required by the Snohomish County Code.

2. I have made a good-faith effort to mail the above described document to each person entitled thereto. The names and addresses of the persons to whom said document was mailed are attached hereto.

3. I mailed said document on September 2, 1999.

Signed at Everett, Washington on September 2, 1999.

Sheila McCallister

25 105874 REZO

SNOHOMISH COUNTY COUNCIL
SNOHOMISH COUNTY, WASHINGTON

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Dated this 2nd day of September, 1999.

Sheila McCallister
Asst. Clerk of the Council

PUBLISH: Wednesday, Sept 8, 1999
Send Affidavit to: Council
Send Invoice to: Planning #25520

PARTIES OF RECORD
THREE B'S CONST 99 101988
HRG 6-29-99
9901988/BB

DEPT OF TRANSPORTATION
ROBERT JOSEPHSON
P O BOX 330310
SEATTLE WA 98133-9710

DEPARTMENT OF PLANNING
AND DEVELOPMENT SERVICES
COONS: ERNIE JENSEN
AND KLAUS SCHILDE
M/S #604

BELL & INGRAM
DOUGLAS BELL
JAMES JONES, JR.
JAMES SHIPMAN
1602 HEWITT AVE #700

PO BOX 1769
EVERETT WA 98201

THREE B'S CONSTRUCTION
ATTN.: LEE BLOOM
AND BILL BLOOM
26615 - 64TH AVENUE NW
STANWOOD WA 98292

SNOHOMISH HEALTH DIST
ATTN.: RICHARD OLLIVIER
3020 RUCKER
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AND RICK MC ARDLE
2924 COLBY AVENUE
EVERETT WA 98201

NANCY/RICHARD CHAPMAN
NO ADDRESS PROVIDED

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SNOHOMISH COUNTY COUNCIL
EXHIBIT # 35
FILE 99-101988

October 13, 1999

MEMO
TO: Councilmembers
FR: Julia Gibb

RE: Appeal by Three B's Construction and Lee Bloom from a Hearing Examiner Decision Denying a Rezone to Rural ~~B~~usiness

File No. 99-101988

Comment on Process of Closed Record Appeal

This is a closed record hearing held by the County Council under the provisions of Section 2.02.175 of the county code. The record is limited to that prepared by the Hearing Examiner (hereafter Examiner) and appeal documents filed by parties of record. Issues on appeal are limited to those raised by appellants which are within the jurisdiction of the County Council. At this hearing Council will take oral argument which refers to the existing record. No additional testimony or exhibits will be accepted unless specifically requested by the Council.

The Council does not have jurisdiction over appeals to the adequacy of the SEPA threshold determination. In this case the SEPA Determination of Nonsignificance (DNS), was issued on May 13, 1999. There was no appeal. Exh. 19

Summary of Examiner's Decision Exh. 28

The application is for a rezone of four acres of a 13 acre site from R-5 to Rural Business on the north side of SR 532, about 1/4 mile east of Stanwood. The applicants have an existing use that was not permitted under the county code prior to the enactment of the RB zone criteria.

The Examiner found that the primary issue was whether the application meets applicable review criteria for approval of a rezone to Rural Business, and specifically whether the special exception provisions of SCC 18.65.020(3), which allow approval of RB rezones for existing uses which do not meet the locational criteria for new proposed RB uses, may be applied to existing uses not previously allowed under the code, i.e., existing illegal uses.

This is the first privately initiated RB rezone application decided on the basis of the special exception clause;

therefore the Examiner had no prior decisions of County Council decisions to provide precedent for his decision. Exh. 28, p.2

The Examiner noted that both PDS and the applicant focused their entire analysis on meeting the various size and site restrictions in the zoning code's use matrix "under the belief that the request was exempt under SCC 18.65.020(3) from all of the locational criteria in SCC 18.65.020(2)."

SCC 18.65.020(3) provides:

"For properties that contain a commercial use permitted or otherwise allowed in the RB zone that existed on or before the effective date of this section, a rezone to RB may be approved only for that portion of the site containing the existing use and may not expand beyond the location of the existing commercial use unless the locational criteria of SCC 18.65.020(2) are met with respect to the expansion area. The locational criteria in SCC 18.65.020(2) and the maximum building footprint requirements of SCC 18.65.040(2) and (3) need not be met for that portion of the site containing the existing use."

The Examiner concluded that the intent of the exception language was to allow only previously existing uses that were legally nonconforming to obtain rezones to RB, not uses that were illegal nonconforming uses. Cs 2-4 The Examiner further concluded that the only way a rezone could be granted to RB to an existing illegal nonconforming use, was for that use to meet the locational criteria of the RB zone. C 5

Since this application cannot meet those locational criteria the Examiner denied it. C 6 and decision

Appeal by Applicant Three B's Exh.s 31, 33

Appellants appeal the decision to deny the rezone, alleging errors of law, and misinterpretation of the county code exemption from locational criteria for the rural business zone. These errors are reflected in conclusions 1 and 3-6 of the decision, and in the decision itself.

Appellants argue that: "The only basis for the Hearing Examiner's denial of the rezone was the Examiner's determinations that Three B's did not qualify for the exemption under SCC 18.65.020(3) from the locational

criteria established by SCC 18.65.020(2). If the Council agrees it is within the exemption of SCC 18.65.020(3) and not subject to the locational criteria, Three B's respectfully submits that it is entitled to the requested rezone and that the Council should grant the same." Exh. 3, p.1

A review of hearing Exhibits 2 (project description); 5 rezone area plan); 7 (SEPA checklist); and Exh. 3 to hearing Exh. 26 (color photo of the site) together with relevant code provisions (use matrix SCC 18.32.040 and notes 84 and 85 provide that building contractor is a permitted use in RB zone; Rural Business criteria in SCC 18.65.020 and -.040) shows that Three B's satisfies the applicable criteria for the rezone to Rural Business and that its use also satisfies the applicable performance standards.

In addition, appellants point out that PDS recommended rezone approval, stating that the proposal conforms with county laws and comprehensive plan policies. Exh. 19 June 22, 1999 PDS Staff Recommendation

More specifically, appellants cite the following grounds for appeal:

1. The Examiner improperly failed to give controlling effect to the plain meaning of the code language used by the Council. As such he committed legal error and misinterpreted the code in failing to give controlling effect to the plain language of SCC 18.65.020(3) which makes it exemption applicable to existing commercial uses, without exception, not just to existing non-conforming commercial uses.

"The Examiner's conclusion that non-conforming and unlawful uses can never establish precedent for future zoning, is without any legal basis. If the Council desires to do so, it does not lack the legal authority to make a rezone available to both existing lawful commercial uses (whether conforming or non-conforming) and existing unlawful commercial uses. there is no provision of the state constitution, any state statute, the County Charter, or the County Code, which imposes such a limitation on the Council's authority. Nor does any case law establish such a limitation." Page 2, Detailed Statement of Addle. Grounds for Appeal, Exh. 31

2. The Examiner improperly considered legislative history to interpret clear code language.

3. Even if the code language was unclear, the legislative history shows the intent of the Council that existing commercial uses such as that of Three B's be exempt form the locational criteria.

[Procedural Request] Appellant transcribed relevant portions of Council discussions on the record of the hearing on the code amendments being construed here, Ordinance 98-121. Appellant requests that Council include that transcript in the record of this appeal and consider it as part of the decision. As part of that hearing transcript, Klaus Schilde, PDS staff, explained the pre-existing use exception to the Council, which allows rezones of uses to RB without their meeting the locational criteria: "The pre-existing is a policy in the plan that allows existing uses to be zoned by the applicant to RB, without having to meet the locational criteria-it doesn't have to be 2 1/2 miles away from another zone property or a mile away from an urban growth area."

Appellant submits that Council discussion at this hearing reflects that the amendment to the locational criteria exemption, which added an exemption from the maximum building footprint requirements for non-expanding existing uses, were clearly intended to address questions of illegal uses, and were not intended to be limited in application to just non-conforming uses.

4. The legislative history considered by the Examiner does not support the conclusion that the exemption of SCC 18.65.020.(3) is limited to non-conforming uses. Exhibit 27, a Memo from Klaus Schilde does not state that the code provisions were intended to address only non-conforming uses, and not illegal uses as well. That Memo does not address legislative history of Ord. 98-121 which clearly shows that Council did intend to give legislative relief to recipients of code violation orders.

Relief Requested:

Appellant requests that Council:

1) Delete Fs 10A and B and Conclusion 1 and 3-6 of the decision and reverse the decision;

2) Make findings and conclusions that Three B's has satisfied each of the applicable requirements for a rezone

to RB and is not subject to the locational criteria of SCC 18.65.020(2); and

3) Grant the rezone application of Three B's.

PDS Correspondence and Recommendations

Exh. 19 Staff Report on Application recommends approval of the rezone as in conformance with county regulations and plan policies.

Exh. 27 Memo from Klaus Schilde to Hearing Examiner discusses the "rationale for allowing non-conforming commercial uses in rural residential zones to be zoned to the new Rural Business (RB) zone without having to meet the locational criteria of SCC 18.65.020(2). The report does not define what is meant by the term "non-conforming" in the context of the RB exception language, that is, it does not discuss whether that term is intended to include both legal and illegal nonconforming existing uses.

The Memo does refer to "zoning of existing commercial sites to RB" as helping to limit the potential for zoning additional vacant sites in the area to RB, thus conforming with the GMA goals which require these uses to be relatively isolated and of small scale in rural areas.

Exh. 32 is the PDS Memo to Council for Council's Appeal Hearing

PDS concurs with the analysis in the appeal, that the legislative intent in establishing the RB zone and the exception language, was to allow existing illegal nonconforming uses to apply for a rezone to RB and to take advantage of the code's exception language, which does not distinguish between legal and illegal nonconforming uses.

PDS recommends Council grant the appeal, reverse the Examiner and approve the rezone.

At the conclusion of this public hearing, the Council may adopt any or all of the findings and conclusions of the examiner which support the council's decision. Council may:

1) affirm the examiner's decision;
2) reverse the examiner's decision either in whole or in part; or
3) remand the matter to the examiner for further proceedings in accordance with the Council's findings and conclusions.

SCC 2.02.175(11)

cc Sheila McCallister, Legislative Assistant

25 105874 REZO

SNOHOMISH COUNTY COUNCIL
EXHIBIT # 34
FILE 99-101988

Julia Gibb: Okay Mr. Chair, We are now going to get back to the county initiated rural commercial and industrial, generally as recommended in this report, again back to the changes that the planning commission made. And that also raises the subject matter of the last number of exhibits that counsel received today. **There have been two proposals to add –to allow private contracting business that's listed in the zoning of matrix—to allow that under the RB designation—you've got a proposal from Imus to that end, that's exhibit 76 in your file. Mr. Erlichman testified last week on that.** You also have exhibit 101 which is PDS's response to the Imus testimony as well as a few paragraphs on some other issues that arose last week. PDS in this regard generally supports Imus's proposal to add the use of contracting to the RB designation. PDS does propose that footnote language that you will see in Exhibit 101 in pages one and two of Exhibit 101. **And today you received Exhibit 102 which is a letter from the Bell & Ingram firm which represents the Blooms, who are also a private contracting firm and they support the Imus proposal. They do have an additional concern with respect to maximum allowable square footage and footprint of the building.** In the code as proposed the footprint limitation would be 2,000 square feet and the maximum gross building area would be 4,000 square foot. The Blooms would like to either delete that limitation or to allow that limitation to apply prospectively only so that buildings that were established before the effective date of this ordinance would be allowed to be larger than those limitations—essentially that's that request, and that's exhibit 102.

Couns. Sievers: Julia, help me here, I thought that if—you know we passed something like this and there was something pre-existing that they could be, I guess grandfathered in. You're saying if there was something over this they would have to tear it down and start over again?

Julia Gibb: I'm going to pass this to Klaus and Gary Reirsgard to discuss this—it's a little bit complicated

Couns. Sievers: Klaus, if here we're saying 2,000 footprint and a second story, there's present one has 2500 and a 2500 second story, would they have to then tear down? Or rebuild? Or just continue?

Klaus: Well footprint is just a area that the building covers. If you have a two story building, it would only cover one floor.

Couns. Sievers: No, I understand that, but what Julia just said, Julia correct me if I'm wrong, that if there was pre-existing they would have to tear that

building down? If it went above that 2,000 square foot footing?

Klaus Shilde: **The pre-existing is a policy in the plan that allows existing uses to be zoned by the applicant to RB, without having to meet the locational criteria—it doesn't have to be 2 ½ miles away from another zone property or a mile away from an urban growth area.**

Couns. Sievers: So it can be larger than 2,000 square feet?

Klaus: Well they do have to meet the other requirements or they do continue to be non-conforming use.

Couns. Sievers: Okay, that answers my question, thank you.

1.0 **Couns. Larsen** **The IMUS proposals have sort of emerged recently as a result of some issues that have occurred in North Snohomish County. None of which were my fault, I want to add, but certainly if we could get it solved, it would be helpful to the people in the area. Of course I'm speaking of an incident where an entire collection of individuals were brought to the attention of PDS for violating codes and even though there were a couple of handsful of people, I can almost guarantee you that putting anyone else on the spot up in North Snohomish County, there is probably several other handsful of people that weren't identified and I think that what's important to understand here is that these are rural uses and we have large rural areas where our zoning code doesn't necessarily allow what the average person would think of as a rural use to be done on a particular sites, so as we discuss 121 and 122, I'd like you to keep that in mind as we consider the Imus and Bloom proposals. Thank you.**

5 1.4 **Couns. Sievers** Do we require suggested wording for that Mr. Larsen to accommodate these recommendations?

6.14 **Couns. Larson** Sure, there is suggested wording provided on Exhibit 101 and 102 is covered by Julia. Exhibit 101 discusses the IMUS proposal in particular and recommends a footnote 84 that sort of builds off of the footnote that was proposed by Mr. Erlichman for the Imuses and footnote 102 concurs with that except that in this particular case, they already have a building footprint that is substantially larger than the proposal as I understand it and so there is recommended language and a couple of ways to do this, if I've got this right. One way would be just to note that the maximum area of the footprint for each building erected on the site after the effective date of this Ordinance shall be X thousand square feet so that an existing building could prequalify as the footnote. Do I have that right, Klaus? Let the record show that Klaus nodded his head.

E 2.9 **Couns. Sievers** Klaus, laughter, this should not matter since you said that pre-existing does not apply.

3.0	**Klaus Shilde**	The locational criteria, that's what they are exempt from, but all the other code requirements they have to meet, so if you want to do this, you'd have to exempt existing uses from specifically the footprint requirements.
3.3	**Couns. Sievers**	So are we doing this by a footnote then?
3.4	**Couns. Sievers**	How are we going to do this if we want to do this?
3.4	**Gary Reiresgard**	Gary Reiersgard, PDS. If you wanted to add that exemption, I believe you would add to 18.65.020(3)(A), existing exemptions through the locational criteria and add into Subsection A reference to either the footprint or the gross square footage requirements at that point.
4.0	**Couns. Sievers**	Ok.
4.0	**Couns. Sievers**	Mr. Larsen, are you doing that with the motion?
4.1	**Couns. Larsen**	Yes I will, but before I do that, Mr. Chair, even though it might hurt the Council, I'd like to take a 5 minute recess to get this sorted out.
4.2	**Couns. Sievers**	At this time we have an executive meeting upstairs so we will take a 30 minute recess.
		LONG PAUSE ON TAPE.
4.6		Public hearing reconvenes on December 7, 1998 at approximately 3:30 p.m. regarding pending litigation and approximately 22 witnesses are present.
Thru 5.0		**Tape is very garbled here**
5.1	**Couns. Larsen**	Mr. Chair?
5.1	**Couns. Sievers**	Yes, Mr. Larsen.
5.2	**Couns. Larsen**	I'd like to move to amend 98-121 with regard to the use matrix to add a footnote 84 as reflected in Exhibit 101 and amend that, and regarding

that same motion, Mr. Chair, to add some executive language to 18.65.0203A . How do you want that addressed?

5.7 **Couns. Sievers** Let's address the question.

5.8 **Couns. Larsen** Sure.

5.9 **Couns. Larsen** Ok. Then I'll move to add a footnote 84 to 18.32.04 as reflected in Exhibit 101.

6.0 **Couns. Somers** Ok. Seconded. Now let's move to a discussion.

6.2 **Couns. Larsen** Mr. Chair, this proposal again reflects the change proposed by Mr. Erlichman on behalf of Richard and Charlie Imus and as further revised by PDS staff to address building contractor use in a rural business zone and makes that use subject to several requirements that the use comply with certain performance standards that not less than 1,000 square feet of outdoor storage materials shall be allowed and shall be screened in accordance with existing language in our code. In addition to provisions in B, not more than 5 commercial vehicles or construction machines shall be stored outdoors and they shall also be screened. On site fueling of vehicles will be prohibited and the storage spot of all those vehicles containing hazardous or earth materials shall be prohibited.

7.1 **Couns. Sievers** Ok. Any other discussions? Yes, Mr. . . .

7.2 **Couns. Nelson** Embodied in the letter brought to the Council today by Mr. Erlichman, there is a reference here to, in the 2nd paragraph, that there is forwarding an executive memorandum supporting that concurs with this proposal.

7.5 **Couns. Sievers** Do we have such a record?

7.5 **Couns. Larsen** It's actually Exhibit 101.

7.5 **Couns. Larsen** It was directed to us via the County Executive from PDS.

8.3 **Couns. Sievers** Mr. Larsen, on the memo from the County Executive's office to us here, in looking at item 1, there with your motion, 2, 3, 4 & 5 were maybe open for discussion?

8.5	**Couns. Larsen**	I'm not addressing that. Item 1 only.
8.6	**Couns. Sievers**	Thank you for the clarification.
8.7	**Couns. Sievers**	Also, as I was reading this, I would also like to refer to staff also if this is consistent with what we talked about this proposal? So you say that you also recommend this language?
9.1	**Klaus Shilde**	Yes, that is correct. We put that together after reviewing Mr. Erlichman's original proposal and we found some duplication, some inconsistencies and basically cleaned it up. But we always agreed in principle with the proposal.
9.3	**Couns. Sievers**	Thank you.
9.3	**Couns. Cothern**	Mr. Chair.
9.4	**Couns. Sievers**	Yes.
9.4.	**Couns. Cothern**	This does pose some requirements that may affect other people—the late breaking of this amendment concerns me seriously somewhat.
9.7	**Couns. Sievers**	We show that we have a motion that seconds this, don't we?
9.8	**Julia Gibb**	Yes, we do.
9.8	**Couns. Sievers**	So does someone want to respond to Ms. Cothern's comment concerning this discussion.
10.0	**Couns. Larsen**	Mr. Chair, I agree with Councilwoman Cothern that it will probably affect people haven't been aware of these hearings or that discussions have taken place but I think that this, as I mentioned before when I made the motion I am also going to move for some exemption language from 18.65.04.020(3) that would essentially establish it grandfathered for at least on the footprint issue that is the size of the building. If somebody is getting larger for building contractors in rural areas – larger than 4,000 to 5,000 square feet, we probably would have that problem anyway so this is probably not totally compatible with rural uses, but I think that the exemption language would address that.

11.3	**Couns. Sievers**	Mr. Larsen.

25 105874 REZO

11.3	**Couns. Larsen**	I'd like to propose some language for 18.65.020(3)(A) and this reflects a discussion which took place right before the break. Essentially it would exempt building contractor use in rural business zones except the building contractors strictly on the footprint issue. Strictly on the size of their existing building so that the maximum area for the footprint would continue
11.9	**Couns. Larsen**	If the footpr[illegible]t for existing buildings could continue to exist, people would not have to modify their buildings in order to comply with this ordinance.
12.2	**Couns. Somers**	Ok. Question for staff. Does the amendment essentially grandfather existing buildings? Is there a policy or explain to me what the procedure is now for buildings larger than this. How are you doing this? Do you make them tear it down or change it or??

12.7	**Klaus Shilde**	No. If you didn't do anything tonight, you'd still have a building out

there that would be a nonconforming use.

12.7 **Couns. Larsen** Or it would be an illegal use.

12.9 **Klaus Shilde** Right, and would be subject to the rules for non-conforming uses of structures and in this case now, what you're proposing to do is to give them an opportunity to come under this new rural business zone which actually in some ways can be more restrictive than what they are now under nonconforming rules so that's what this would do – allow some of the existing uses to come into a rural business zone. It's very different.

13.5 **Klaus Shilde** Do you have something to add to that?

13.5 **Gary Reirsgard** Do I have to?

13.6 **Klaus** No, it's up to the applicant to request such a rezone from the hearing.

13.8 **Couns. Sievers** So what's going to happen to the non-conforming after we pass this tonight? What will the county do?

13.9 **Klaus** It will still remain non-conforming until they request a rezone that would make it a conforming use in that zone, in that RB zone.

14.2 **Couns. Sievers** But still we have to negotiate some type of—we've found businesses that are nonconforming right now.

14.4 **Couns. Larsen** **No, the issue is not that they are nonconforming. The issue is that they are doing what they're doing on land that is not zoned for what they are doing. They are using the property illegally under the zoning code. That's not the same as nonconforming.**

14.6 **Couns. Sievers** So what's going to happen to these people who are doing this that do not wish to come under this?

14.8 **Gary Reirsgard** If those parties are nonconforming, nothing will happen. They will continue to exist as a nonconforming use and could be subject to, as Klaus said, to provisions in the zoning code pertaining to that. If they are illegal uses, for whatever reason, they would be subject to our zoning violation process, being dependent upon a case by case. It's hard to speculate what the outcome might be but they would presumably come into compliance with their existing code.

15.5 **Couns. Sievers** Mr. Larsen, it would be my suggestion based upon Mr. Reirsgard's comments that my suggestion is that those existing uses that may not

necessarily fit the new footnote 84 that this Council allow the exemption so that the current footprint of buildings that are larger than what is allowed in 84 can continue to be the footprint of that building so that people won't, if you will, downsize. **LOTS OF STATIC AT THIS POINT ON TAPE.**

16.3 **Couns. Sievers** The building has a larger footprint than they are passing now, we doubt that they'll make the change in the footprint, unless there is an illegal use.

16.7 **Gary Reirsgard.** I believe that is correct as I understand it.

16.8 **Couns. Cothern** So in that sense they are grandfathered.

17.0 **Gary Reirsgard.** If they are legally nonconforming, then they would be grandfathered.

17.0 **Couns. Larsen** **If they are illegal, then they are not non-conforming at all.**

17.1 **Couns. Sievers** **Even after this?**

17.1 **Couns. Larsen** **Unless the Council sees fit to allow such exemption language in 1865 for the footprint**

17.2 **Couns. Sievers** Any idea how many would be affected?

17.6 **Couns. Larsen** **I don't for building contractor use in a rural business area, I do not. I do know that I have enough concerns about the large geographical area that I represent that there might be people who are providing such services from land that has not been zoned to provide such services and they are doing so without any complaints that I'm aware of from neighbors or from anyone else for that matter. It seems to me to be prudent and reasonable to try to rectify a situation in order to prevent a situation like we had earlier this year with someone going out and basically looking for illegal uses.**

18.7 **POOR TAPE QUALITY**

18.9 **Couns. Sievers** Mr. Larsen, do you want to make a motion?

19.1	Couns. Larsen	I'll move the exception language for 18.65.020(3)(A) to create an exemption that would set a maximum area for the footprint of each building erected on the site after the effective date of this Ordinance shall be . . .
19.8	Couns. Larsen	Yes, 2,000 sq. ft.
19.9	Couns. Sievers	Do we have a second?
19.9	Couns. Cothern	OK. I'll second it.
20.0	Couns. Larsen	Before I move on, let's take our time and I would like to hear from Julia and Sheila. What's going on below?
20.3	Couns. Nelson	Is 102 the last line or the last paragraph.
20.5	Couns. Somers	Are we talking about the gross square footage allowance or the building footprint allowance, or both?
20.7	Klaus	Footprint.
20.8	Couns. Somers	So before that's done, my question is is it both, because if it's both then you'll have 2 different cites to add to that exception.
21.0	Couns. Sievers	Do you have a sentence we are reading from—it's under 102.
21.2	Couns. Sievers	The last line in the last paragraph says that the maximum area for the footprint of each building erected shall be 2,000 feet.
21.6	Couns. Larsen	Mr. Chair.
21.6	Couns. Sievers	Yes.
21.6	Couns. Larsen	If there is a feeling from the co-counsel that an exemption would be appropriate, would it be possible to direct the staff to draft a proposal for us to consider some time next week since we are going to continue the hearing anyway. Again, that would rely upon whether or not the exemption the counsel believes would be appropriate in this case and I would argue that it would.

22.2	Couns. Somers	Mr. Chair, I suggest that we, that my recommendation would be that we move forward with the drafting of the changes to the exemption and I'd like to leave the final judgment on the advisability of the exemption until we've had a chance to think about it a little more and see some language and get some staff responses and not quite as spur of the moment as this is. Then, I would support drafting the language.
22.7	Couns. Sievers	Do we have a motion to second this? Do we want to continue this?
22.9	Couns. Larsen	Yes, I would like to support that wholeheartedly.
23.0	Couns. Larsen	Ok. Council believes that it's our right and I would withdraw the motion.
23.1	Couns. Larsen	What do we need to do procedurally?
23.2	Julia	Draft some language.
23.5	Couns. Sievers	Motion to review on the 16th. All in favor state the same by saying I.
23.6	All	I.
23.6	Couns. Sievers	Opposed?
23.6	None	No.

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September 16, 1999

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SKN DIST 4 FOB
BAF DIST 5 TOB

SNOHOMISH COUNTY COUNCIL
EXHIBIT # 33
FILE 99-101988

HAND DELIVERED

Snohomish County Council
County Administration Building
Sixth Floor
3000 Rockefeller Avenue
MS/609
Everett, WA 98201

Re: Additional Written Arguments of Appellants Three B's Construction and Lee Bloom in Appeal to Council of Denial of Rezone to Rural Business (Application File No. 99-101988)

Dear Councilmembers:

On behalf of the appellants in the above-referenced appeal, Three B's Construction and Lee Bloom ("Three B's"), we submit the following additional written arguments for your consideration in the hearing set for October 13, 1999.

The following arguments supplement, and do not repeat, those made in the August 30, 1999 letter to you appealing the Hearing Examiner's denial of the rezone of Three B's property to Rural Business.

The only basis for the Hearing Examiner's denial of the rezone was the Examiner's determinations that Three B's did not qualify for the exemption under SCC 18.65.020(3) from the locational criteria established by SCC 18.65.020(2). If the Council agrees it is within the exemption of SCC 18.65.020(3) and not subject to the locational criteria, Three B's respectfully submits that it is entitled to the requested rezone and that the Council should grant the same.

The most relevant Hearing Examiner Hearing Exhibits for the Council's consideration in this regard are Hearing Exhibit 2 (the Project Description prepared for Three B's by Shockey Brent, Inc.), Hearing Exhibit 5 (Rezone Area Plan) and Hearing Exhibit 7 (environmental

checklist), and a color photograph of the site (attached to Ex. 3 to Hearing Exhibit 26). Copies of these exhibits and the photograph are attached.

A brief review of these exhibits, and relevant Code provisions, indicates that Three B's satisfies the other applicable criteria for the rezone and that its use will also satisfy the performance standards applicable in the RB zone:

1. Building Contractor is a permitted use in the RB zone. SCC 18.32.040 Use Matrix.

2. Condition/Note 84 to the use matrix provides that the gross floor area of use shall not exceed 4000 square feet. Although this condition is a use limitation that would apply after a rezone to RB, and is not a rezone criteria, Three B's use will satisfy this limitation. Three B's area of use is 3800 square feet. *See*, Hearing Exhibit 2, at page 2.

3. Condition/Note 85(a) to the use matrix requires that uses in the RB zone shall comply with the performance standards in SCC 18.65.040. Although these use limitations would apply after a rezone to RB, and are not rezone criteria, Three B's future use of its property will comply with the performance standards. *See*, Hearing Exhibit 2, at pages 2 and 3.

4. Three B's use will also comply with the special impervious surface performance standard (not more than 50%) made applicable in RB zones by SCC 18.65.040(2)(a). *See*, Hearing Exhibit 5 (rezone area plan, generally showing low percentage of impervious surface); and Hearing Exhibit 7, at page 6, item 2g (environmental checklist, showing use is 13% impervious surface and that no new impervious surface will be introduced).

5. By virtue of the exemption in SCC 18.65.020(3), the maximum building footprint requirements of SCC 18.65.040(2) and (3) do not apply ("The locational criteria . . . and the maximum building footprint requirements of SCC 18.65.040(2) and (3) need not be met for that portion of the site containing the existing use.") However, as indicated in item 1 above, Three B's use is less than the applicable gross floor area of use limitation.

6. The rezone request is solely for the portion of the site containing the existing use, and both the north and the west boundaries meet the RB zoning standards by providing the 50-foot setback required from the residential zone beyond and the Type II landscape buffer required. *See*, Hearing Exhibit 2, at page 4.

7. Condition/Note 85(b) to the use matrix requires not more than 1000 square feet of the site be used for outdoor storage of materials. Although this condition is a use limitation that would apply after a rezone to RB, and is not a rezone criteria, Three B's use will satisfy this limitation. There will be no outdoor storage of materials on the site. *See*, Hearing Exhibit 2, at page 4.

8. Condition/Note 85 (c) to the use matrix prohibits the outside storage of more than five commercial vehicles or construction machines and the screening of such machines. Although this condition is a use limitation that would apply after a rezone to RB, and is not a rezone criteria, Three B's use will comply with this requirement. *See*, Hearing Exhibit 2, at page 4.

9. Condition/Note 85(d) prohibits fueling of vehicles. Although this condition is a use limitation that would apply after a rezone to RB, and is not a rezone criteria, Three B's use will comply with this requirement. *See*, Hearing Exhibit 2, at page 4.

10. Condition/Note 85(e) to the use matrix prohibits the storage of inoperable vehicles and hazardous materials. Although this condition is a use limitation that would apply after a rezone to RB, and is not a rezone criteria, Three B's use will comply with this requirement. *See*, Hearing Exhibit 2, at page 4.

In addition to the foregoing, it should also be noted that the recommendation for rezone approval by the Department of Planning and Development Services (Hearing Exhibit 19) also recognizes that the proposed rezone conforms to County laws and Comprehensive Plan policies.

Finally, review of the attached color photograph of the site (attached to Ex. 3 to Hearing Exhibit 26) shows the well-screened and buffered nature of Three B's use. Three B's has used its property for this use for many years as a good neighbor in its neighborhood, and should be allowed to continue the use, as the Council recognized when it made the amendments to Ord. 98-121 in December of 1998, in order to allow recipients of code violation notices to continue to operate their building contractor businesses from their properties.

Very truly yours,

BELL & INGRAM, P.S.

Douglas L. Bell
James H. Jones, Jr.
James D. Shipman

cc: Clients
Shockey Brent, Inc.

 Hearing Exhibit #2

PROJECT DESCRIPTION
Bloom RB Rezone

The project proposal is a rezone from Rural-5 Acre (R-5) to Rural Business (RB) on four acres of a 13-acre site located on the northeast corner of SR-532 and 64th Avenue NW, east of Stanwood city limits. The rezone would bring the owners' existing business into Snohomish County zoning compliance. No new development or expansion of existing structures or uses of the site are included in the rezone. The projected schedule is to complete the rezone process during the spring/summer of 1999.

The 13-acre site, consisting of two tax parcels, is bordered by three right-of-ways: 268th Street NW on the north, 64th Avenue NW on the west and SR-532 on the south. The 4-acre rezone portion of the 13 acres is bordered only by SR-532 on the south. Access is by an existing driveway from 64th Avenue NW.

The proposed RB zoning would bring the 4-acre portion of the site that currently houses a construction contracting business into compliance with Snohomish County Code Section 18. The business is a permitted use under the RB zone, and it would not be expanded beyond its current size. In addition, no physical changes or additions to the existing buildings, paved areas, or landscaping are proposed.

The underlying subarea comprehensive plan is the Northwest County Area Plan, in which Rural is the land use designation at this location. Recently, the GPP adopted amendments regarding Rural Commercial/Industrial Land Uses, which supersedes the Rural Commercial goals and policies found in the Northwest County Area Plan. New objectives and policies were also added to the GPP, which support limited commercial uses within the RB zone. Specifically, Objective LU 6.F and Policies LU 6.F.1 through LU 6.F.8 support the proposed rezone. This rezone request is consistent with the GPP objectives and policies for a business located within the Rural land use designation.

Corresponding amendments to the Snohomish County Zoning Code, Title 18, also support the proposed rezone. The RB zone is intended to permit the location of small-scale commercial retail businesses and personal services that serve a limited service area and rural population outside established UGAs. It is being implemented as a "floating zone", with locational criteria and specific development standards. The following responses to applicable Title 18 regulations and standards support the use of the RB zone to accommodate the existing contractor's business, Three B's Construction:

Section 18.32.040 Use Matrix: "Building Contractor" is listed as a permitted use under the RB zone with the following special conditions:

Condition (84) The gross floor area of the use shall not exceed 4000 square feet.

Discussion: There are a total of four structures located within the proposed rezone area of the site. The main building, a 5,500 square-foot building, serves two functions. Approximately 2,000 square feet of the building is utilized for the operation of the business. This area includes an office and work space for construction equipment. The remainder is for personal use only (i.e., a workshop, storage of personal belongings, vehicles) for the single-family residence located adjacent to the west. The remaining three structures are used

for the business. They include a 1,000 square-foot carport, a 680 square-foot carport and a 200 square-foot shed. The total gross square footage utilized for the existing business is 3,880 square feet, which complies with the 4,000 square-foot limit.

Condition (85) The building contractor use in the Rural Business zone shall be subject to the following requirements:

Condition (85)(a) The use complies with all of the performance standards required by SCC 18.65.040, Performance Standards.

18.65.040 Performance Standards

(1) General. In addition to other applicable standards contained in Title 18 SCC, the following performance standards apply to development in the RB, RI and RFS zones:

(a) Existing trees of three-inch caliper and larger size shall be retained in all side and rear yard landscape buffer areas, excluding areas for access drives and sign locations.

Discussion: The perimeter of the proposed rezone area is in native forest or landscaped with well established trees, many of which are larger than three-inch caliper. All existing landscaping will remain, including landscape buffer areas. (See attached *Site Plan.*)

(b) Existing evergreen trees of three-inch caliper and larger size shall be retained in all front yard landscape buffer areas, excluding areas for access drives and sign location. Tree removal is allowed when required to meet Department of Public Works Engineering Design and Development Standards or because of public health and safety concerns.

Discussion: There is no tree removal proposed with this rezone. All existing landscaping will remain, including landscape buffer areas. In addition, there are no free standing signs existing or proposed. (See attached *Site Plan.*)

(c) The size and location of required landscape and buffer areas shall be consistent with the provisions of Chapter 18.43 SCC.

Discussion: The existing landscaping fulfills the buffer requirements for the proposed rezone area. Existing significant trees border the north rezone boundary, 50 feet in depth for the entire length. A significantly-sized forest lies to the east of the existing business and continues off-site. Both of these buffers exceed the Type II landscape requirement. Existing well-established landscaping borders and continues beyond the west rezone boundary. This buffer area meets the 50-foot setback requirement from residential uses/zones and the intent of the Type II landscape requirement. An existing 6-foot cyclone, sight-obscuring, fence and established landscaping exists along the south border of the rezone boundary, exceeding the 25-foot Type III ornamental landscape requirement. In all, the existing landscaping

(which will remain) fulfills the requirements for landscape and buffer areas for the RB zone. (See attached *Site Plan* and *Aerial*.)

(d) Adequate water supplies shall be demonstrated for fire protection.

Discussion: Snohomish County Fire Protection District 14 provides adequate fire protection for the subject site.

(e) Storm water detention facilities such as ponds and grass swales shall be designed wherever possible as to integrate them into the overall site design and required landscaping and buffers on the site.

Discussion: No expansion or construction is proposed with the rezone. No drainage facilities exist on the site. Site topography is nearly flat, with only approximately 15 percent of the rezone area covered by impervious surface. No known drainage problems occur on or adjacent to the site.

(f) Signage shall be consistent with the provisions of Chapter 18.44 SCC.

Discussion: There is one sign for the existing business, mounted on the south face of the building, which is not visible from any public right-of-way. This sign conforms to code, in that it is less than 150 square feet in size (it is approximately 24 square feet) and does not exceed one square foot for each linear foot of the rezone area frontage.

(g) Refuse collection, fuel loading and above ground fuel storage areas, and large truck parking areas shall be located at least one hundred feet from residential uses or designations and shall be screened in accordance with the landscaping requirements for outdoor storage and solid waste contained in SCC 18.43.050.

Discussion: There are two existing above ground fuel storage tanks and a large truck parking area located on the west side of the main building. The established landscaping to the east, west, south and north meets the Type II landscape requirement to screen the tank and parking area. In addition, there is no residential use or designation within 150 feet of this area. The tanks are not visible from any public right-of-way or the access to the adjacent residence.

18.65.040 (2) Rural Business zone: In addition to the general performance stands of SCC 18.65.040(1), and other applicable standards of Title 18 SCC, the following standards apply to development in the RB zone:

(a) The total impervious surface of all buildings, parking and other support areas such as storage, trash containers, etc., shall not exceed fifty percent of the net usable area of the site; and,
(b) The maximum area for each building footprint of the site shall not exceed four thousand square feet.

Discussion: Section 18.65.020(3) speaks to the exemption of existing commercial uses from the above performance standard. It reads as follows:

2015 Comprehensive Plan	2024 Comprehensive Plan	Changes	Applicable Implementing Code(s)	Applicant Discussion
Objective LU 6.E Within rural residential areas, recognize existing businesses that are an integral part of the rural character and provide for community facilities and small-scale commercial developments that support the immediate rural population with necessary goods and services.	**Objective LU 6.E** Within rural residential areas, recognize existing businesses that are an integral part of the rural character and provide for community facilities and small-scale commercial developments that support the immediate rural population with necessary goods and services.	No change	The County has adopted development regulations that are intended to "recognize existing business" in the rural area and support community facilities and small-scale commercial development for the rural population. There regulations are generally adopted in: 30.22.110, Rural & Resource Zone Categories Use Matrix 30.22.130, Reference notes for use matrices 30.31F.020, Minimum zoning criteria 30.31F.100, General performance standards 30.31F.110, Rural business zone performance standards	30.31F.020(4) allows "properties that contain a commercial use permitted or otherwise in the RB zone" in to obtain a rezone for that portion of the site where that existing business has existed. This regulation directly implements the express intent of Objective LU 6.E to "recognized existing businesses that are an integral part of the rural character" especially considering that the subject commercial business has been located on the site prior to adoption of the County's Growth Management Act (GMA) comprehensive plan and its subsequent zones and zoning requirements. As explained here and in the Applicant's narratives and analysis, the Applicant's rezone and requested variances are in "general conformance" with this Comprehensive Plan Objective.
Policy LU 6.E.1 Within the rural residential designations of the Future Land Use Map, limited commercial uses shall be permitted within a Rural Business zone that provide opportunities for retail sales and services to the surrounding rural population.	**LU Policy 6.E.1** Within the rural residential designations of the Future Land Use Map, limited commercial uses shall be permitted within a Rural Business zone that provide opportunities for retail sales and services to the surrounding rural population.	No substantive changes, retitled from "Policy LU" to "LU Policy"	30.22.110, Rural & Resource Zone Categories Use Matrix 30.31F.020, Minimum zoning criteria	The matrix at 30.22.110 implements LU Policy 6.E.1 by limiting the number of commercial uses that the county will allow to be in the Rural Business zone. However, this must also be reconciled with both the directive in Objective LU 6.E to "recognize existing businesses" and the allowance in 30.31F.020(4) for commercial businesses existing prior to the Rural Business zone's creation to obtain a rezone to Rural Business. Since this policy is not directly applicable, the Applicant's rezone and requested variances are in "general conformance" with this Comprehensive Plan Policy.
Policy LU 6.E.2 The county shall develop Rural Business zoning and development standards that allow community facilities for the surrounding rural population and facilitate small-scale retail and service uses at appropriate locations within rural residential areas and minimize impacts to residential areas, resource lands, and critical areas.	**LU Policy 6.E.2** The county shall maintain Rural Business zoning and development standards that allow community facilities for the surrounding rural population and facilitate small-scale retail and service uses at appropriate locations within rural residential areas and minimize impacts to residential areas, resource lands, and critical areas.	No substantive changes, retitled from "Policy LU" to "LU Policy"	30.22.110, Rural & Resource Zone Categories Use Matrix 30.22.130, Reference notes for use matrices 30.31F.020, Minimum zoning criteria 30.31F.100, General performance standards 30.31F.110, Rural business zone performance standards	As the Applicant has pointed out, the Policy directs the County to "maintain" Rural Business zoning and development standards. Through it's adoption of the zoning code and the codes referenced (column to the left), the County fulfills this Policy. **This Policy does not itself restrict or regulate development**. Moreover, this Policy must be harmonized against Objective 6.E, which sees value and significance in recognizing "existing business" as well as new opportunities for commercial uses that include small-scale retail and service uses. This policy does not establish what uses are permitted, conditional, etc. Since this policy is not directly applicable, the Applicant's rezone and requested variances are in "general conformance" with this Comprehensive Plan Policy.
Policy LU 6.E.3 In order to maintain the character of surrounding rural residential areas, development regulations for the Rural Business zone shall restrict development in terms of building size, height, and setback; the size, location, and type of uses; and the areas of impervious surfaces. Churches shall not be subject to restrictions on building size or areas of impervious surfaces provided by LU Objective 6.E and its associated policies.	**LU Policy 6.E.3** In order to maintain the character of surrounding rural residential areas, development regulations for the Rural Business zone shall restrict development in terms of building size, height, and setback; the size, location, and type of uses; and the areas of impervious surfaces. Churches shall not be subject to restrictions on building size or areas of impervious surfaces provided by LU Objective 6.E and its associated policies.	No substantive changes, retitled from "Policy LU" to "LU Policy"	30.22.110, Rural & Resource Zone Categories Use Matrix 30.22.130, Reference notes for use matrices 30.31F.020, Minimum zoning criteria 30.31F.100, General performance standards 30.31F.110, Rural business zone performance standards 30.43B, Variances	As the Applicant has pointed out, this Policy directs the County to have development regulations that restrict development in terms of size, height, setbacks, location, etc. to maintain "rural character" but it <u>does not</u>: • establish specific restrictions or not limit what standards the Council adopts • direct that the Council adopt prohibitions of variances in rural areas • restrict the Council's ability to adopt a variance code that applies to "any" development standards The Council has fulfilled its obligation and adopted these standards, and it has also adopted an allowance for variances. Applicant notes that the description of the development standards in LU Policy 6.E.3 includes "location criteria and types of uses" and ultimately variances can be sought for *<u>any</u>* development standards. Since this policy is not directly applicable, the Applicant's rezone and requested variances are in "general conformance" with this Comprehensive Plan Policy.

2015 Comprehensive Plan	2024 Comprehensive Plan	Changes	Applicable Implementing Code(s)	Applicant Discussion
Policy LU 6.E.4 Development in the Rural Business zone shall be limited to development that can be supported by services typically delivered at rural levels of service. These services may include domestic water, septic systems, and transportation facilities.	**LU Policy 6.E.4** Development in the Rural Business zone shall be limited to development that can be supported by services typically delivered at rural levels of service. These services may include domestic water, septic systems, and transportation facilities.	No substantive changes, retitled from "Policy LU" to "LU Policy"	30.22.110, Rural & Resource Zone Categories Use Matrix 30.22.130, Reference notes for use matrices 30.22.010(2)(b) – regarding types of roads fronted 30.31F.100(1) – requires water for fire protection	As the Applicant has pointed out, this Policy directs the County to adopt limitations on the types of development allowed to ensure that level of development can be consistent with the adequacy of rural levels of service. Again, this Policy does not restrict uses or adopt specific standards. The County has fulfilled its obligation by adopting the relevant sections of Title 30. Since this policy is not directly applicable, the Applicant's rezone and requested variances are in "general conformance" with this Comprehensive Plan Policy.
Policy LU 6.E.5 Existing small-scale commercial uses within rural residential zones may be zoned Rural Business whether or not they meet the locational criteria listed in Policy LU 6.E.7 only if they are uses allowed within the Rural Business zone. If existing uses do not meet the locational criteria, no future expansion of the zone shall be allowed. This policy is not intended to preclude legal non-conforming uses from expanding consistent with Snohomish County Code provisions.	**LU Policy 6.E.5** Existing small-scale commercial uses within rural residential zones may be zoned Rural Business whether or not they meet the locational criteria listed in Policy LU 6.E.6 only if they are uses allowed within the Rural Business zone. If existing uses do not meet the locational criteria, no future expansion of the zone shall be allowed. This policy is not intended to preclude legal non-conforming uses from expanding consistent with Snohomish County Code provisions.	No substantive changes, retitled from "Policy LU" to "LU Policy"	30.22.110, Rural & Resource Zone Categories Use Matrix 30.22.130, Reference notes for use matrices 30.31F.020, Minimum zoning criteria 30.31F.100, General performance standards 30.31F.110, Rural business zone performance standards 30.43B, Variances	Unfortunately, the wording on this policy sounds as if it is intended to regulate development, but comprehensive plan policies are not regulations (as noted above). That said, it is important to note that: • Through adoption of relevant sections in Title 30, the Council determines what uses are "small-scale commercial uses" not the Comprehensive Plan. • Per this policy and 30.31F.020(4), existing small-scale commercial uses seeking a Rural Business Rezone do not have to comply with the location criteria in Policy 6.E.6 • It makes clear that if "existing uses" don't meet locational criteria, the County should limit future expansion of the Rural Business zone. It does not direct the County to prohibit existing businesses from obtaining a Rural Business rezone. Since this policy is not applicable, the Applicant's rezone and requested variances are in "general conformance" with this Comprehensive Plan Policy.
~~Policy LU 6.E.6~~ ~~The county shall rezone existing commercial zones within rural areas and outside the Rural Commercial and Rural Freeway Service designations to the new Rural Business zone~~	***Note that Policy LU 6.E.6 was originally repealed by Ordinance No. 18-062 but not fully deleted from the comprehensive plan until 2024.*	LU Policy 6.E.7 was renumbered to LU Policy 6.E.6		

2015 Comprehensive Plan	2024 Comprehensive Plan	Changes	Applicable Implementing Code(s)	Applicant Discussion
Policy LU 6.E.7 New Rural Business zones may only be approved in Rural Residential plan designations if they meet the following locational criteria:	**LU Policy 6.E.6** New Rural Business zones may only be approved in Rural Residential plan designations if they meet the following locational criteria:	No substantive changes, retitled from "Policy LU" to "LU Policy"	30.31F.020(2) 30.31F.020(4)	The location criteria in LU Policy 6.E.6 have been adopted in full within 30.31.F.020(2). That said, both Policy LU 6.E.5 and 30.31F.020(4) exempt Rural Business rezones for existing businesses from having to meet the locational criteria.
Subsection (a) A minimum of six hundred residential dwelling units should be located within a two and one-half mile radius of the proposed site.	Subsection (a) A minimum of six hundred residential dwelling units should be located within a two and one-half mile radius of the proposed site.		30.31F.020(2)(a)	Since this policy is not applicable, the Applicant's rezone and requested variances are in "general conformance" with this Comprehensive Plan Policy.
Subsection (b) The site is located along a county road or state highway with at least one hundred feet of street frontage or at an intersection of two public roads.	Subsection (b) The site is located along a county road or state highway with at least one hundred feet of street frontage or at an intersection of two public roads.		30.31F.020(2)(b)	
Subsection (c) No new areas designated or zoned for commercial uses should be located closer than two and one-half miles in the rural area.	Subsection (c) No new areas designated or zoned for commercial uses should be located closer than two and one-half miles in the rural area.		30.31F.020(2)(c)	
Subsection (d) The total area zoned for Rural Business at any given location should not include more than five acres of net usable area. Net usable area should be the total site area less critical areas and their required buffers, roads, detention/retention areas, and biofiltration swales. Parcels within a Rural Business location should have common boundaries unless separated by public rights-of-way.	Subsection (d) The total area zoned for Rural Business at any given location should not include more than five acres of net usable area. Net usable area should be the total site area less critical areas and their required buffers, roads, detention/retention areas, and biofiltration swales. Parcels within a Rural Business location should have common boundaries unless separated by public rights-of-way.		30.31F.020(2)(d)	
Subsection (e) The size and configuration of the area to be zoned should be capable of accommodating setbacks, buffers, critical area protection, and other site planning and design techniques that permit small-scale, rural commercial development characteristics.	Subsection (e) The size and configuration of the area to be zoned should be capable of accommodating setbacks, buffers, critical area protection, and other site planning and design techniques that permit small-scale, rural commercial development characteristics.		30.31F.020(2)(g)	

2015 Comprehensive Plan	2024 Comprehensive Plan	Changes	Applicable Implementing Code(s)	Applicant Discussion
Policy LU 6.E.8 Sites within a Rural Business zone should be developed according to development regulations which incorporate the following criteria: Subsection (a) Existing native vegetation should be retained within required buffers. Screening of parking areas, outdoor storage and mechanical equipment should be provided. Subsection (b) Site disruption such as excessive grading, filling, or clearing of vegetation should be minimized through landscaping and buffer requirements. Subsection (c) Total permitted impervious surfaces of buildings, parking and other support areas such as storage, trash containers, etc., should not exceed fifty percent of the net usable site area, except for churches. Subsection (d) Stormwater management facilities should be designed and landscaped to integrate them into the overall site design and the landscaped buffers on the site. Subsection (e) All structures should be set back fifty feet from residentially zoned properties. Structures should be set back one hundred feet from designated agricultural and forest lands. Subsection (f) Sites should retain all existing trees in all required buffers along side and rear property lines. Sites should retain all existing evergreen trees in all required buffers along property frontage excluding areas for access drives and sign locations, unless tree removal is required to meet Department of Public Works Engineering Design and Development Standards or because of public health and safety concerns. Subsection (g) Billboards should be prohibited within the Rural Business zone. Signage requirements should be similar to the signage provisions of the Neighborhood Business zone. Subsection (h) Adequate water supplies should be demonstrated for commercial use and fire protection including fire flow. Subsection (i) Refuse collection, fuel loading and storage areas, and large truck parking areas should be located at least one hundred feet from residential areas and screened by fence or landscaping.	**LU Policy 6.E.7** Sites within a Rural Business zone should be developed according to development regulations which incorporate the following criteria: Subsection (a) Existing native vegetation should be retained within required buffers. Screening of parking areas, outdoor storage and mechanical equipment should be provided. Subsection (b) Site disruption such as excessive grading, filling, or clearing of vegetation should be minimized through landscaping and buffer requirements. Subsection (c) Total permitted impervious surfaces of buildings, parking and other support areas such as storage, trash containers, etc., should not exceed fifty percent of the net usable site area, exceptfor churches. Subsection (d) Stormwater management facilities should be designed and landscaped to integrate them into the overall site design and the landscaped buffers on the site. Subsection (e) All structures should be set back fifty feet from residentially zoned properties. Structures should be set back one hundred feet from designated agricultural and forest lands. Subsection (f) Sites should retain all existing trees in all required buffers along side and rear property lines. Sites should retain all existing evergreen trees in all required buffers along property frontage excluding areas for access drives and sign locations, unless tree removal is required to meet Department of Public Works Engineering Design and Development Standards or because of public health and safety concerns. Subsection (g) Billboards should be prohibited within the Rural Business zone. Signage requirements should be similar to the signage provisions of the Neighborhood Business zone. Subsection (h) Adequate water supplies should be demonstrated for commercial use and fire protection including fire flow. Subsection (i) Refuse collection, fuel loading and storage areas, and large truck parking areas should be located at least one hundred feet from residential areas and screened by fence or landscaping.	Policy LU 6.E.8 was renumbered to LU Policy 6.E.7 during the 2025 Comprehensive Plan Update	30.25.016, Tree canopy requirements 30.25.020, Perimeter landscaping requirements 30.25.032, Additional landscaping requirements Table 30.25.020(1), Perimeter Landscaping 30.25.040, Landscaping modifications 30.31F.100(4), General Performance Standards 30.31F.110(1)(a) 30.31F.110(2) 30.23.030 & Table 30.23.030 30.25.032 30.31F.100(3), and 30.27.010 to 30.27.090 30.31.100(1) 30.31F.100(4)	As the Applicant has pointed out, this Policy directs the County to develop and adopt regulations consistent with these criteria, but this Policy's criteria do not establish specific development standards that apply, not does this Policy prevent the County from allowing for certain modifications or variances from individual development standards. The County has fulfilled its obligation by adopting the relevant sections of Title 30. Since this policy is not directly applicable to the proposal, the Applicant's rezone and requested variances are in "general conformance" with this Comprehensive Plan Policy.

2015 Comprehensive Plan	2024 Comprehensive Plan	Changes	Applicable Implementing Code(s)	Applicant Discussion
Goal ED 3 Encourage the retention and expansion of existing businesses and jobs while working to attract new businesses and jobs.	**Goal ED 3** Encourage the retention and expansion of existing businesses and jobs while working to attract new businesses and jobs.	No change.	Many, but this includes adoption of 30.31F.020(4) allowing existing businesses in the rural area to seek a rezone to Rural Business as a means of protecting those businesses and retaining those jobs.	PDS has solely focused on whether the rezone and variance "comply" with Land Use Element Goals, Objectives and Policies. However, as pointed out in the discussion on Objective LU 6.E, these proposals do not have to strictly "comply" with the Comprehensive Plan, but merely be in general conformance. The County has created a specific exception in code to help protect existing businesses located in the rural area. That is clearly guided by the intent and spirit of the Economic Development Element and its goals, objectives and policies. Further, the County has adopted various mechanisms for "modifications" to certain standards as well as provides for a variance process that recognizes development regulations may not always fit every circumstance. Again, this helps to protect existing businesses, non-conforming uses, etc. Determining whether the proposals are in "general conformance" requires looking at the Comprehensive Plan more wholistically and must therefore include consideration of the Goals, Policies and Objectives in other elements of the plan. As has been stated in the Applicant's narratives and analysis for the rezone and variances, its proposals are in general conformance with the Comprehensive Plan.
Objective ED 1.C Snohomish County shall recognize and address the needs of small and minority owned businesses as well as larger, established enterprises.	**Objective ED 1.C** Snohomish County shall recognize and address the needs of small and minority owned businesses as well as larger, established enterprises.	No change.	Many, but this includes adoption of 30.31F.020(4) allowing existing businesses in the rural area to seek a rezone to Rural Business as a means of protecting those businesses and retaining those jobs.	The County has created a specific exception in code to help protect existing businesses located in the rural area. That is clearly guided by the intent and spirit of the Economic Development Element and its goals, objectives and policies. Determining whether the proposals are in "general conformance" requires looking at the Comprehensive Plan more wholistically and must therefore include consideration of the Goals, Policies and Objectives in other elements of the plan. As has been stated in the Applicant's narratives and analysis for the rezone and variances, its proposals are in general conformance with the Comprehensive Plan.
GOAL ED 2 Provide a planning and regulatory environment which facilitates growth of the local economy.	**GOAL ED 2** Provide a planning and regulatory environment which facilitates growth of the local economy.	No change.	Many, but this includes adoption of 30.31F.020(4) allowing existing businesses in the rural area to seek a rezone to Rural Business as a means of protecting those businesses and retaining those jobs. Also includes: 30.25.040, Landscaping modifications 30.43B, Variances	The County has created a specific exception in code to help protect existing businesses located in the rural area. That is clearly guided by the intent and spirit of the Economic Development Element and its goals, objectives and policies. Further, the County has adopted various mechanisms for "modifications" to certain standards as well as provides for a variance process that recognizes development regulations may not always fit every circumstance. Again, this helps to protect existing businesses, non-conforming uses, etc. Determining whether the proposals are in "general conformance" requires looking at the Comprehensive Plan more wholistically and must therefore include consideration of the Goals, Policies and Objectives in other elements of the plan. As has been stated in the Applicant's narratives and analysis for the rezone and variances, its proposals are in general conformance with the Comprehensive Plan.

SNOHOMISH COUNTY COUNCIL
EXHIBIT # D.1
FILE 25 105874 REZO

CO00019805

SNOHOMISH COUNTY COUNCIL
SNOHOMISH COUNTY, WASHINGTON
AMENDED ORDINANCE NO. 98-121

AMENDING SNOHOMISH COUNTY CODE TITLES 18, 19 AND 32 PURSUANT TO CHAPTER 32.07 SCC RELATING TO RURAL COMMERCIAL AND INDUSTRIAL ZONE CLASSIFICATIONS, USES, AND DEVELOPMENT STANDARDS, BED AND BREAKFAST USES, ACCESS TO RURAL CLUSTER SUBDIVISONS, AND APPLICABILITY OF AGRICULTURAL LAND REGULATIONS TO SHORT SUBDIVISIONS

WHEREAS, RCW 36.70A.130 and .470 direct counties planning under the Growth Management Act (GMA) to adopt procedures for interested persons to propose amendments and revisions to the comprehensive plan or development regulations; and

WHEREAS, the Snohomish County Council adopted chapter 32.07 SCC to comply with the requirements of RCW 36.70A.130 and .470; and

WHEREAS, seventy-five proposals to amend the comprehensive plan and implementing development regulations, including proposals to amend the zoning code, were submitted to the county for consideration to be included on the 1996 final docket; and

WHEREAS, the county council, after public hearings, considered recommendations from the Snohomish County Department of Planning and Development Services (PDS), and included citizen and county-initiated proposals to amend the Future Land Use Map (FLUM) and text of the GMA comprehensive plan on the 1996 final docket of proposed amendments to the plan and development regulations; and

WHEREAS, the county council adopted Revised Motion 96-389 setting the 1996 final docket of proposed amendments to the plan and development regulations, including direction to PDS to prepare plan text and county code amendments to provide a general policy and regulatory framework concerning rural commercial development; and

WHEREAS, PDS employed the services of planning consultants to assist in developing amendments to the policies and map of the GMA comprehensive plan regarding rural commercial and industrial land uses; and

WHEREAS, following two public meetings, the consultants prepared a report with recommendations for plan text and map amendments; and

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WHEREAS, PDS completed final review and evaluation of the 1996 final docket, including proposed rural commercial and industrial land use plan and zoning code amendments based on the consultants' report, and forwarded a recommendation to the Snohomish County Planning Commission; and

WHEREAS, the planning commission held hearings on the 1996 final docket including the rural commercial and industrial plan and zoning code amendments on November 25, 1997, December 16, 1997, January 27, 1998, February 24, 1998, March 10, 1998, and April 21, 1998, and forwarded a recommendation to the county council; and

WHEREAS, the county council held public hearings on November 30, 1998, December 7, 1998 and December 16, 1998 to consider the entire record and hear public testimony on Ordinance 98-121, adopting map and text amendments to the comprehensive plan and implementing development regulations.

NOW, THEREFORE, BE IT ORDAINED:

Section 1. The Snohomish County Council makes the following findings of fact and conclusions:

A. The proposed General Policy Plan (GPP) and zoning code amendments are consistent with the direction provided by the county council in Motion 96-389 (revised 1/23/97) setting the final 1996 docket of annual plan amendments and directing PDS to prepare plan amendments for consideration by the planning commission and county council to provide a general policy and regulatory framework concerning rural commercial development.

B. The county council has harmonized the goals of the GMA and considered their balance in enacting the amendments to the rural element. The proposed amendments to the rural element of the comprehensive plan are consistent with the goals of the GMA, specifically the following:

   1. Urban growth: The amendments allow carefully checked rural commercial development in the rural areas, consistent with the character of the rural area. By carefully limiting the types and scope of rural business, commercial and industrial development that may occur in the rural area, the action encourages urban growth in the urban areas.

   2. Reduce sprawl: The proposal includes requirements for maximum lot size, building size, lot coverage, buffering, landscaping and other controls which will reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.

3. Transportation: By providing limitations on size of rural commercial businesses and requirements for their location at existing crossroads or on a county road or state highway, the amendments encourage efficient use of the existing public road system. The rural freeway service amendments allow for the provision of services to the motoring public without undermining the rural character of the area.

4. Economic development: The proposal recognizes existing commercial and industrial developments in rural areas and allows for limited expansion, where appropriate, to serve the needs of the surrounding rural residential population.

5. Property rights: The proposal balances the rights of property owners who own land zoned for commercial and industrial uses in rural areas with the rights of adjacent rural residential property owners.

6. Permits: By establishing clear standards for commercial and industrial uses in the rural area, the amendments promote efficiency and predictability in the issuance of permits.

7. Natural resource industries: The proposed amendments emphasize natural resource based businesses and industries within the rural commercial and industrial designations and zones.

8. Environment: The proposed amendments require that site disruptions be minimized and that additional landscape and buffering measures be applied that facilitate the integration of environmental protection into site design.

9. Citizen participation and coordination: The amendments have been widely disseminated and the public has been given numerous opportunities to comment on the proposed amendments.

10. Public facilities and services. The proposed new plan designations and their associated policies are designed through limitations on maximum lot size and building size to require only a rural and not an urban level of service.

C. The proposal as amended by the planning commission meets the requirements of the GMA, specifically for development in rural areas as follows:

1. The proposed amendments will maintain a level of rural character outside designated urban growth areas (UGAs) consistent with the county GMA comprehensive plan and applicable GMA provisions.

2. The proposed amendments will contain or otherwise control rural development consistent with GMA provisions.

3. The proposed rural commercial plan designations and zoning classification of Rural Freeway Service, Rural Industrial and Rural Business are consistent with the GMA provisions that allow limited rural development and protect rural character.

4. The proposed policies and code amendments regarding setbacks, building size, landscaping, buffering, and use separation are necessary for, and constitute adequate provisions for maintaining visual compatibility of rural commercial and industrial uses with adjacent and vicinity rural residential uses.

D. The proposed plan and zoning code amendments as amended by the planning commission are consistent with the final review and evaluation criteria of SCC 32.07.080.

1. The proposed amendments maintain consistency with other elements of the County's GMA comprehensive plan.

2. All applicable elements of the GMA comprehensive plan support the proposed amendments.

3. The proposed amendments meets and implements the goals, objectives, and policies of the GMA comprehensive plan as discussed in the specific findings. The rural commercial amendments meet the General Policy Plan's (GPP's) direction in Policies LU 6.A.3 and 6.A.6 and Implementation Measure LU 6.C for further study of rural commercial and industrial land use issues.

4. The proposed plan and zoning code amendments are consistent with the countywide planning policies. Specifically, the proposed rural commercial amendments implement Policies RU-5 and RU-6, which call for guidelines limiting commercial and industrial development outside of UGAs. In addition, the proposed rural commercial amendments provide more detailed direction consistent with recent amendments to the GMA regarding rural development.

E. The Rural Activity plan designation, objective and policies are not adopted based on the following findings and conclusions:

1. Public testimony indicated that more time is required to work with Clearview area citizens and property owners on revisions to the proposal.

2. Current business owners are worried about the financial impacts of the proposal on their ability to operate their businesses.

3. Since the existing Clearview commercial area appears to be no longer rural, several features of the proposed Rural Activity Center designation and policies cannot be applied in this area.

4. The volume of existing and projected traffic on SR-9, its impact, and proposed road improvements need to be considered as part of the reconsideration of the proposal.

F. The Agricultural Advisory Board's proposal to allow "bed and breakfast guesthouses" as a permitted use in the A-10 zone, without reference to any specific conditions, is inconsistent with the current treatment of this use in all other zones where it is allowed. Currently, approval of a conditional use permit is required for the use in the zones where it is allowed in order to address neighborhood compatibility issues.

G. The staff alternative to the Agricultural Advisory Board's proposal will allow "bed and breakfast guesthouses" as a permitted use in the A-10 zone, subject to the conditions established for the use in other zones and subject to administrative review. The alternative responds to the Agricultural Advisory Board's desire to allow bed and breakfast establishments in the A-10 zone in an effort to provide additional opportunities for farm-related income, while ensuring compatibility with agricultural operations. The additional opportunities for farm-related income provided by relaxation of the requirements for bed and breakfast uses in the A-10 zone will reduce the pressure to convert agricultural land to other uses and will not impede the ability of property owners to use the land for agricultural purposes. The staff alternative is more consistent with the treatment of the use in other zones where it is currently allowed and it responds to the need for easier permitting of this use. The staff alternative is consistent with and implements GPP Objective LU 7.C, which provides direction to develop and adopt supporting programs and code amendments that help to conserve and enhance the agricultural industry.

H. The Michael O'Neill proposal as developed by PDS staff to permit bed and breakfast establishments as a conditional use in the Forestry zone with a maximum of three detached guest units of limited size is consistent with and implements GPP policy LU 6.B.4. Policy LU 6.B.4 provides direction to allow "resource dependent tourism" and "recreation-oriented" uses in rural areas on a conditional use basis provided they do not adversely impact adjoining rural areas. "Resource dependent tourism" and "recreation-oriented" uses are interpreted to include bed and breakfasts. The amendments require a conditional use permit approval process that will adequately address issues of compatibility with adjoining rural and resource lands. The amendments will establish in all zones a minimum size for each bed and breakfast outbuilding and a maximum aggregate size for all outbuildings together. The minimum size for outbuildings proposed as guest rooms will be one hundred-thirty square feet to ensure that inspections will be performed on these structures. Guest room structures will be reviewed under the building, health/safety and fire codes since the building code requires a permit for any structure over one hundred-twenty square feet. There is a need for this review since members of the public will be solicited for occupancy of these structures, as with motels. Also, the maximum aggregate outbuilding size will be eight hundred and fifty square feet, consistent with the maximum size for a detached Accessory Apartment, in order to provide a compatibility guideline for hearing examiner review and to help maintain an appropriate scale for bed and breakfasts.

I. The Michael O'Neill proposal, as developed by PDS staff, includes an additional condition intended to ensure that the scale of bed and breakfast uses is compatible with surrounding land uses. The additional condition addresses the occurrence of bed and breakfast uses along with an accessory apartment or temporary dwelling. In order to prevent an inappropriate amount of residential density in single-family residential zones, the maximum number of permitted bed and breakfast guest rooms shall be one less than otherwise allowed when a bed and breakfast is proposed as an ancillary use to a single family home along with an accessory apartment or temporary dwelling. For example, without this condition a small lot in the R-7200 zone could have a three-room bed and breakfast, an accessory apartment, and a single-family residence all under one roof or in detached structures. This is considered an inappropriate amount of residential development on a lot of that size.

J. The Michael O'Neill proposal, as developed by PDS staff, maintains consistency with GPP policies LU 8.C.1 and LU 8.C.2 by permitting bed and breakfast uses in the Forestry zone on a conditional use basis only if the property is not designated "Commercial Forest" by the GPP. These policies encourage uses of designated commercial forest land that rely on the forest

land itself and specifically discourage residential development within designated commercial forest lands.

K. The amendments to SCC 19.28.020 and 32.30.040 reflect the staff alternative to the Higa Engineering proposal, as modified in a compromise with the applicant, to amend the rural cluster subdivision regulations in order to allow access by private roads to the boundary of cluster development. The staff alternative maintains consistency with GPP policies LU 6.B.1 and LU 8.D.1. The amendments maintain consistency with chapter 32.30 SCC which requires that rural cluster subdivisions adhere to the Department of Public Works' engineering design and development standards for private roads.

L. The staff alternative to the Higa Engineering proposal (as modified) will allow private roads, built to the Department of Public Works' Engineering Design and Development Standards, as access to the boundary of rural cluster subdivisions. The modified staff alternative responds to Higa Engineering's desire to provide the option of rural cluster subdivision to owners of property where access is provided by existing private roads or easements. The staff alternative also maintains consistency with the subdivision and short subdivision codes. The modified staff alternative is consistent with and implements GPP policy LU 6.B.1, which encourages the use of rural cluster subdivision development in rural areas, by giving more rural property owners the option of using the cluster subdivision technique. It also is consistent with GPP policy LU 8.D.1 which states that rural cluster subdivisions shall be utilized on rural land that is immediately adjacent to designated commercial forest lands to ensure that adjacent land uses do not interfere with commercial forest management activities. The amendments will allow a property owner adjacent to designated commercial forest land to use a private road for access to a rural cluster subdivision and will be consistent with the direction of GPP policy LU 8.D.1 to allow only rural cluster subdivisions adjacent to designated commercial forest lands.

M. The Gene Miller proposal to amend the agricultural land regulations related to subdivisions in local and upland commercial farmland is consistent with GPP policy LU 7.B.1. The amendment will clarify that the regulations apply to short subdivisions as well as subdivisions, consistent with policy LU 7.B.1, which prohibits the subdivision of areas designated Upland Commercial or Local Commercial Farmland into lots of less than ten acres.

N. The amendments to the zoning code satisfy the procedural and substantive requirements of and are consistent with the GMA.

O. The amendments maintain consistency with the multi-county policies adopted by the Puget Sound Regional Council and with the countywide planning policies for Snohomish County.

P. The proposed amendments are consistent with the county's adopted GMA comprehensive plan and plan amendments enacted by Amended Ordinance No. 98-112 and Amended Ordinance No. 98-119.

Q. The proposed amendments will maintain a level of rural character outside designated UGAs consistent with the county GMA comprehensive plan and applicable GMA provisions.

R. The proposed amendments will contain or otherwise control rural development consistent with GMA provisions.

S. The proposed rural commercial and industrial zone classifications of Rural Business, Rural Freeway Service, and Rural Industrial and the uses allowed in the zones are consistent with the GMA provisions that allow limited rural development and protect rural character.

T. Proposed bulk regulations, including setbacks, building size and separation for the Rural Business, Rural Freeway Service, and Rural Industrial zones are necessary for, and constitute adequate provisions for maintaining a rural scale and scope of commercial and industrial development in the county's rural areas.

U. Proposed performance standards, including setback buffer areas, impervious surface limitations, and vegetation retention are necessary, and will be effective in maintaining visual compatibility of rural commercial and industrial uses with adjacent and vicinity rural residential uses.

V. Existing legal nonconforming commercial/industrial uses in the rural areas are preserved with limitations on expansion where appropriate.

W. There has been early and continuous public participation in the review of the proposed amendments.

X. The Draft Supplemental Environmental Impact Statement (DSEIS) (October 7, 1997) to the Final Environmental Impact Statement (FEIS) for the Snohomish County Comprehensive Plan was prepared for the proposed amendments to satisfy the State Environmental Policy Act (SEPA) requirements. A Final Supplemental Environmental Impact Statement (FSEIS) was issued on July 10, 1998 for the proposed amendments. The

FSEIS describes the proposed GMA comprehensive plan and development regulation amendments and analyzes their impacts.

Y. The recommended amendments are within the scope of analysis contained in the FSEIS and result in no new significant adverse environmental impacts. The DSEIS and FSEIS perform the function of keeping the public apprised of the refinement of the original GMA comprehensive plan proposal by adding new information.

Z. The SEPA requirements with respect to this proposed action have been satisfied by this document.

Section 2. Snohomish county code section 18.12.030, last amended by Ordinance 96-076, on November 27, 1996, is amended to read:

18.12.030 Intent of zones.

(1) Residential Zones. The intent and function of the residential zones is to provide, consistent with the comprehensive plan, zoning classifications for predominantly single family residential development that achieves a minimum net density of 4 dwelling units per acre in unincorporated urban growth areas and to act as holding zones for properties within a UGA that are designated Urban Medium Density Residential, Urban High Density Residential, Urban Commercial, Urban Industrial, or Other Land Uses in the comprehensive plan. The comprehensive plan establishes guidelines to determine compatibility and location of residential zones. Single Family Residential zones consist of the following:

(a) Residential 7,200 sq. ft. (R-7,200).
(b) Residential 8,400 sq. ft. (R-8,400).
(c) Residential 9,600 sq. ft. (R-9,600).
(d) Residential 12,500 sq. ft. (R-12,500).
(e) Residential 20,000 sq. ft. (R-20,000).
(f) Waterfront Beach (WFB).

(2) Multiple Family Zones. The intent and function of the multiple family zones is to provide, consistent with the comprehensive plan, zoning classifications for predominantly apartment and townhouse development in designated medium and high density residential locations in unincorporated urban growth areas. The comprehensive plan establishes guidelines to determine compatibility and location of multiple family zones. Multiple family zones consist of the following:

(a) Townhouse (T). The intent and function of this zone is:

(i) to provide for single-family dwellings, both attached and detached, or different styles, sizes, and prices in locations specifically designated by the county comprehensive plan for the townhouse zone with its urban

densities greater than those for strictly single-family detached development, but less than multiple family development;

(ii) to provide a flexible tool for development of physically suitable skipped-over or under-used lands in urban areas without adversely affecting adjacent development; and

(iii) to provide design standards and review which recognize the special characteristics of townhouses, to insure the development of well-planned communities and to insure the compatibility of such housing developments with adjacent existing and planned uses. Townhouses are intended to serve the housing needs of a variety of housing consumers and producers. Therefore, townhouses may be built for renter occupancy of units on a site under single ownership, owner agreements pursuant to Chapters 64.32 or 64.34 RCW, or owner or renter occupancy of separately conveyed units on individual lots created through formal subdivision pursuant to Chapter 58.17 RCW.

(b) Low Density Multiple Residential (LDMR).

(c) Multiple Residential (MR).

(3) Rural Zones. The intent and function of the rural zones is to provide, consistent with the comprehensive plan, zoning classifications for lands located outside urban growth areas, and not designated as agricultural or forest lands of long-term commercial significance, with existing or planned rural services and facilities such as domestic water systems (generally systems without fire flow), and rural fire and police protection services. Rural zones also act as holding zones for properties that are primarily a transition area within UGAs on steep slopes adjacent to non-UGA lands designated rural or agriculture. The comprehensive plan establishes guidelines to determine compatibility and location of rural zones. Rural zones consist of the following:

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

(b) Rural-5 Acre (R-5).

(c) Rural Construction (RC). The intent and function of this zone is to provide for those areas of less than prime agricultural soils unsuited to intensive development, because of its relative isolation, lack of public utilities and/or services, steep slopes or other natural conditions. Large lot areas shall be required with the intent of preserving a rural lifestyle as well as for the protection and enhancement of deltas, wetlands, steep gradients, aquifers, watersheds, shorelines and other natural features of major significance.

(d) Rural Diversification (RD). The intent and function of this zone is to provide for the orderly use and development of the most isolated, outlying rural areas of the county and at the same time allow sufficient flexibility so that traditional rural land uses and activities can continue. These areas characteristically have only rudimentary public services and facilities, steep slopes and other natural conditions which discourage intense development, and a resident population which forms an extremely rural and undeveloped environment. The resident population of these areas is small and highly

dispersed. The zone is intended to protect, maintain and encourage traditional and appropriate rural land uses, particularly those which allow residents to earn a satisfactory living on their own land.

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

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

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

(4) Natural Resource Zones. The intent and function of the natural resource zones is to provide zoning classifications that conserve and protect lands useful for agricultural, forestry or mineral extraction or lands which have long-term commercial significance for these uses, consistent with the comprehensive plan. The comprehensive plan establishes guidelines to determine compatibility and location of natural resource zones. Natural resource zones consist of the following:

(a) Forestry and Recreation (F&R). The intent and function of the forestry and recreation zone is to provide for the development and use of forest land for the production of forest products as well as certain other compatible uses such as recreation and to protect publicly owned parks in UGAs.

(b) Forestry (F).

(c) Agriculture-10 Acre (A-10).

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

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

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

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

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

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

(5) Commercial Zones. The intent and function of the commercial zones is to provide, consistent with the comprehensive plan, zoning classifications for neighborhood, community and urban center commercial and mixed use developments that provide a range of retail, office, personal service and wholesale uses. The comprehensive plan establishes guidelines to determine compatibility and location of commercial zones. Commercial zones consist of the following:

(a) Neighborhood Business (NB).

(b) Planned Neighborhood Shopping Center (PNSC). Vacant/underdeveloped land which is currently zoned PNSC shall be developed pursuant to planned community business (PCB) zone regulations (Chapter 18.60 SCC). Areas designated planned neighborhood shopping center (PNSC) by Snohomish County comprehensive plans shall be zoned either "NB" with a contract or "PCB" zoning. Sites containing less than five acres will only be eligible for "NB with contract" zoning.

(c) Planned Community Business (PCB). The intent and function of the planned community business zone is to permit community business enterprises in areas desirable for business but having highly sensitive elements of vehicular circulation, land use or natural site and environmental conditions while minimizing impacts upon these elements through the establishment of performance criteria. Performance criteria for this zone are intended to control external as well as internal effects of commercial development. It is the goal of this zone to discourage "piecemeal" and strip development by encouraging development under unified control.

(d) Community Business (CB).

(e) General Community (GC).

(f) Business Park (BP). The intent and function of the business park zone is to provide for those business/industrial uses of a professional office, wholesale, and manufacturing nature which are capable of being constructed, maintained and operated in a manner uniquely designed to be compatible with adjoining residential, retail commercial or other less intensive land uses, existing or planned. Strict zoning controls must be applied in conjunction with private covenants and unified control of land; many business/industrial uses otherwise provided for in the zoning code will not be suited to the BP zone due to an inability to comply with its provisions and achieve compatibility with surrounding uses. This zone may be applied to any area designated for any industrial or general commercial zone on an adopted county comprehensive plan.

(g) Freeway Service (FS). The intent and function of the freeway service zone is to permit the location of needed freeway commercial facilities in the vicinity of on/off ramp frontages and access roads of limited access highways with a minimum of traffic congestion in the vicinity of the ramp. Permitted uses are limited to commercial establishments dependent upon by highway uses. Certain performance standards, subject to hearing examiner review, are contained in Chapter 18.56 SCC to protect freeway design.

(h) Rural Business (RB). The intent and function of the rural business zone is to permit the location of small-scale commercial retail businesses and personal services which serve a limited service area and rural population outside established UGAs. This zone is to be implemented as a "floating zone" and will be located where consistent with specific locational criteria. The rural business zone permits small-scale retail sales and services located along county roads on small parcels that serve the

immediate rural residential population, and at least one mile from an existing UGA boundary and two and one-half miles from an existing rural business, rural freeway service or rural industrial zone, or commercial designation in the rural area. Rural businesses which serve the immediate rural population may be located at crossroads of county roads, state routes and major arterials.

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

(6) Industrial Zones. The intent and function of the industrial zones is to provide, consistent with the comprehensive plan, zoning classifications for a range of industrial and manufacturing uses and limited commercial and other non-industrial uses necessary for the convenience of industrial activities. The comprehensive plan establishes guidelines to determine compatibility and location of industrial zones. Industrial zones consist of the following:

(a) Light Industrial (LI).

(b) Heavy Industrial (HI).

(c) Industrial Park/Planned Industrial Park (IP/PIP). The intent and function of the industrial park and planned industrial park zones is to provide for heavy and light industrial development under controls to protect the higher uses of land and to stabilize property values primarily in those areas in close proximity to residential or other less intensive development. The IP and PIP zones are designed to insure compatibility between industrial uses in industrial centers and thereby maintain the attractiveness of such centers for both existing and potential users and the surrounding community. Vacant/undeveloped land which is currently zoned PIP shall be developed pursuant to industrial park (IP) zone regulations (Chapter 18.60 SCC).

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

(7) Rural Use (RU). The intent and function of this zone is to provide interim zoning control until such time as permanent zoning categories are applied and to act as a holding zone for properties within UGAs. The rural use zone is not, therefore, intended as the implementing zone for comprehensive plan nor are the provisions of the comprehensive plan, including development density prescriptions, intended to be superseded by the rural use zone.

Section 3. Snohomish county code Section 18.32.040 last amended by Ordinance 96-076, on November 27, 1996 is amended to read:

18.32.040 Use matrix

(A) The following key applies to the use matrix. Reference notes are found in SCC 18.32.040(B). Use Matrix Key

P --- Permitted Use

C --- Conditional Use

T --- Temporary Use

	F	F&R	A-10	R-5	RC & RR	RD	SA-1	RU	R 20,000	R 12,500	R 9,600	R 8,400	R 7,200	WFB	T	LDMR	MR	FS	NB	PCB	CB	GC	IP 80	BP	LI 80	HI	MC	BB	BFS	RI
Accessory Apt. Attached and Detached 66	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		P		P	P					P	P		
Adult Entertainment Business/Use 71																							P		P	P				
Agriculture	P	P	P	P	P	P	P	P	P	P	P	P	P	P		P	P		P		P	P	P	P	P	P	P	P	P	P
Airport Stage 1 Utility 1	C			C	C	C	C	C	C	C	C	C	C	C							P	P	P	P	P	P				
All Others																							P	P	P	P				
Amusement Facility 44																				P	P	P	P		P	P				
Antique Shop				48 C		C		48 C											P		P	P			P	P		83 P		
Art Gallery 44				C	C	C	C	P	C	C	C	C	C	C		C	C		P	P	P	P	P	P	P	P		83 P		
Asphalt Batch Plant &Continuous Mix Asphalt Plant																										P	P			
Auto Repair:Major																						P	P	P	P	P				
Minor																		P	P	P	P	P	P	P	P	P		82 P	P	
Auto Towing				C		C																			P	P				
Auto Wrecking Yard																									47 C	47 P				
Bakery																			73 P	P	P	P	P	P	P	P		82 P		
Bed and Breakfast Guesthouse 62	C	C	((C)) P	C	C	C	C	C	C	C	C	C	C	C		C	C											P		
Bed and Breakfast Inn 62	C	C	C	C	C	C																						P		
Billboards 49																						P			P	P				
Boat Launch: Commercial		C																			C	C			C	C				
BoatLaunch:Non-commercial 33	C	C		C	C	C	C	C	C	C	C	C	C	C		C	C				C	C			C	C		C		
Boat Sales																						P			P	P				
Building Contractor																						P	P	P	P	P		84, 85		
Campground		34 C																												

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Note: Reference numbers within matrix indicate special conditions apply. See chapter 18.32 SCC.

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	F	F&R	A-10	R-5	RC & RR	RD	SA-1	RU	R 20,000	R 12,500	R 9,600	R 8,400	R 7,200	WFB	T	LDMR	MR	FS	NB	PCB	CB	GC	IP 80	BP	LI 80	HI	MC	RB	RFS	BI
Caretaker's Quarters																							P	P	P	P	P	P		P
Carport	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Cemetery, Columbarium, Crematorium, Mausoleum 44				C	C	P	C	C	C	C	C	C	C	C		C	C				P	P	P	P	P	P				
Church 44				C	C	P	C	P	C	C	C	C	C	C		P	P		P	P	P	P	P	P	P	P		C		
Cleaning Establishment																			P	P	P	P	P	P	P	P				
Clinic 31																C	C		P	P	P	P	P	P	P	P				
Club																C	C		C	P	P	P	P	P	P	P				
Cold Storage																						P	P	P	P	P				P
Commercial Vehicle: Home Basing				35 C																										
Commercial Vehicle: Storage Facility																						P	P	P	P	P		C		P
Community Club				C	C	P	C	P	C	C	C	C	C	C		C	C		C		P	P	P	P	P	P		P		
Country Club				C	C	C	C	C	C	C	C	C	C	C									P	P	P	P		P		
Craft Shop 23																					P	P	P	P	P	P		P		
Dams & Power Plants, Associated Uses		P																												
Day Care Center 2					C	P	C	P	C	C	C	C	C	C		C	C	P	P	P	P	P	P	P	P	P		P	P	
Department Store																				P	P	P			P	P				
Distillation of Alcohol			36 C	36 C	36 C	36 C		36 C															P	P	P	P				
Distillation of Wood, Coal, Bones or Manufacturingof Their by-products																										P				
Dock & Boathouse, Private, Non-commercial 3, 44	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		P		P	P	P	P	P	P		P		
Drug Store																		24 P	P	P	P	P			P	P		83. P		
Dwelling:Single Family	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		P	4 P	P	P		54			P	P		
Mobile home	P	P	P	P	P	P	P	6 P	P	6 P	6 P	6 P	6 P	6 P	6 P	P	P		6 P		6 P	6 P					P	P		

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Duplex	P		P	P	P	P	P	P	P	45 P	45 P	45 P	45 P	45 P	P	P	P		P		P	P								
Townhouse											5 PC	5 PC	5 PC	5 PC	5 PC	P	P		P	P	P	P								
Multiple Family																P	P		P	P	P	P								
Equestrian Center 6	C	P	74 C	C	C	P																								
Excavation & Processing Minerals 30	PC	C	C	C	C	C	C	C	C	C	C	C	C	C		C	C		C		C	C	C	C	C	C	C			C
Explosives:Storage	P	C		C	C	C		C															P			P	C			C
Manufacturing																										P				
Extraction of Animal or Fish Fat or Oil																										P				
Fabrication Shop																						P	P	P	P	P				P
Fairgrounds																						P	P	P	P	P				
Fallout Shelter:Individual	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
7	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
Family Care Home	P		P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		P		P	P						P		
Family Day Care Home8	P		P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		P		P	P						P		
Family Rehabilitation Home				C	C	C	C	C	C	C	C	C	C	C		C	C				P	P						P		
Farm Product Processing			39 C	39 C	39 C	39 C		39 C															P		P	P				P
Farm Stand 9	P	P	P	P	P	P	P	P	P	P	P	P	P	P													P	P	P	P
Farm Workers Dwelling			10 P																											
Financial Institutions																			P	P	P	P	P	P	P	P				
Fish Farm	P	P	P	P	P	P	P	P															P	P	P	P				
Fix-it Shop																				P	P	P	P	P	P	P		82 P		P
Forestry	P	P	P	P	P	P	P	P															P		P	P	P			P
Forestry Industry Storage & Maintenance Facility	P	P				32 P																								P
Forge, Foundry, BlastFurnace or Melting of Ore																										P				
Foster Home	P		P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		P		P	P						P		

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	F	F&R	A-10	R-5	RC & RR	RD	SA-1	RU	R 20,000	R 12,500	R 9,600	R 8,400	R 7,200	WFB	T	LDMR	MR	FS	NB	PCB	CB	GC	IP 80	BP	LI 80	HI	MC	RB	RFS	RI
Fuel & Coal Yard																						P	P	P	P	P				
Garage, Private	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		P	P	P	P	P	P	P	P	P	P		
Garage, Public																						P	P	P	P	P				
Golf Course and DrivingRange			78 C	C	C	C	C	C	C	C	C	C	C	C							P	P	P	P	P	P				
Government Structures &Facilities 29, 44	C	C		C	C	C	C	C	C	C	C	C	C	C	C	C	C		C	P	P	P	P	P	P	P	C	C		C
Lathhouse,Nurseries Retail 55	P		P	P	P	P	P	P	C										P	P	P	P			P	P		P		P
Wholesale	P		P	P	P	P	P	P	C										P	P	P	P	P	P	P	P		P		P
Grocery Store																		24 P	P	P	P	P			P	P		84 P	84 P	
Group Care Facility 37				C	C	C										C	C				C	C								
Guesthouse	P	P	P	P	P	P	P	P	P	P	P	P	P	P		P	P		P	P	P	P						P		
Gym																				P	P	P	P	P	P	P				
Hardware Store																			P	P	P	P			P	P		84 P		
Hazardous WasteStorage &Treatment FacilitiesOnsite 69	P	P				P												P	P	P	P	P	P	P	P	P		P	P	P
70																							C	C	C	C				
Home Improvement Center																			P	P	P	P			P	P		84 P		
Home Occupation 11	68 P	68 P	68 P	68 P	68 P	68 P	68 P	P	P	P	P	P	P	P	P	P	P		P		P	P						68 P		
Homestead Parcel43			C	C	C	C																								
Hospital 31, 44				C	C	C	C	C	C	C	C	C	C	C		C	C			P	C	C		P						
Hotel/Motel 31																C	C	P		P	P	P						P	P	
Institution, Educational 44, 72				C	C	C	C	C	C	C	C	C	C	C		C	C				P	P	P	P	P	P				
Junkyard																									47 C	47 P				
KennelCommercial 12	P		C	P	C	P	C	P	C	C	C	C	C	C							P	P	P	P	P	P				
Exhibitor/Breeding 57	P		C	P	C	P	C	P	C	C	C	C	C	C		C	C		P		P	P	P	P	P	P				
Private 13	P		P	P	P	P	P	P	P	P	P	P	P	P		P	P		P		P	P						P		
Laboratory																						P	P	P	P	P				

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Library 44				C	C	C	C	P	C	C	C	C	C	C		C	C		C	P	P	P	P	P	P	P		P		
Licensed Practitioner 31, 44																C	C		P	P	P	P	P	P	P	P	P	83 P		
Livestock Auction Facility			51 C	51 C	51 C	51 C		51 C															P		P	P				P
Locksmith																			P	P	P	P	P	P	P	P		P		
Log Scaling Station	P	P	P	C	C	C																								P
Lumber Yard																						P	P	P	P	P				P
Manufacturing of: Acid																										P				
AnimalBlack/Bone Black																										P				
Cement or Lime																										P				
Chlorine																										P				
Creosote																										P				
Fertilizer																										P				
Glue or Gelatin																										P				
Potash																										P				
Pulp																										P				
All other forms ofManu. not specificallylisted																							P	P	P	P		C		C
Massage Parlor																					P	P	P	P	P	P				
Metal Working Shop																												82 P		P
Mini-equestrian Center 76	P	P	75 P	P	P	P																						P		P
Mini Self-Storage 44																				P		P	P	P	P	P				
Mobile Home Park 41																C	C				C	C								
Mobile Home & TravelTrailer Sales																						P	38 C		P	P				
Model Hobby Park 79			P	P																				P	P	P				
Model House/Sales Office	P	P		P	P	P	P	P	P	P	P	P	P	P	P	P	P		P	P	P	P								
Motor Vehicle & Equipment Sales																					25 P	P			P	P				
Mortuary																C	C				P	P	P	P	P	P				

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Museum 44			65 C	C	C	C	C	P	C	C	C	C	C	C		C	C		C	P	P	P	P	P	P	P		P		
Nursing Home 44							C		C	C	C	C	C	C		C	C				P	P								
Office, General																			P	P	P	P	P	P	P	P		P		
Park, Public 14	P	P	P	P	P	P	P	P	P	P	P	P	P	P		P	P		P	P	P	P	P	P	P	P	P	P		P
Personal Services Shop																			P	P	P	P	52 P	52 P	P	P		83 P		
Park-and-Pool Lot, Small									C	C	C	C	C		C	C	P	P	P	P	P	P	P	P	P	P		P	P	P
Park-and-Ride Lot	C	C	C	C	C	C	C	C	C	C	C	C	C		C	C	P	P	P	P	P	P	P	P	P	P		P	P	
Petroleum Products & GasStorage — Bulk								46 C														46 P	P	46 P	46 P	46 P				46 P
Petroleum Refining 44																							P							
Photo Processing Shop																				P	P	P	P	P	P	P				
Printing Plant																				P		P	P	P	P	P				
Printshop																					P	P	P	P	P	P		P		
Racetrack 26, 44				C	C			C														C	P	P	P	P				
Railroad Right-of-way	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	P	P	P	P	P	P	P	P	P	C			P
Recreational Facility NotOtherwise Listed				C	C	C	C	P	C	C	C	C	C	C		C	C		P	P	P	P	P	P	P	P				83 P
Rendering of Fat, Tallow or Lard																										P				
Resort		C																												
Restaurant																		P	P	P	P	P	52 P	52 P	P	P		84 P	P	
Retail Store																			P	P	P	P		56 P	P	P		84 P		
Retirement Apartments															P	P	P		P	P	P	P								
Retirement Housing															P	P	P		P	P	P	P								
Rolling or Blooming Mills																										P				
Rooming & Boarding house	15 P		15 P	15 P	15 P	15 P	15 P	15 P	15 P	15 P	15 P	15 P	15 P	15 P		P	P		P		P	P								
Rural Industries 44						27 P																								
Sanitary Landfill	C			C	C	C	C	C	C	C	C	C	C	C							C	C	C	C	C	C	C			
Sawmill	P	P		28 C		28 C		28 C														P	P	P	P	P				P

P -- Permitted Use
C -- Conditional Use
T -- Temporary Use

Note: Reference numbers within matrix indicate special conditions apply. See chapter 18.32 SCC.

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	F	F&R	A-10	R-5	RC & RR	RD	SA-1	RU	R 20,000	R 12,500	R 9,600	R 8,400	R 7,200	WFB	T	LDMR	MR	FS	NB	PCB	CB	GC	IP 80	BP	LI 80	HI	MC	RB	RFS	RI
Schools,K-12 & Preschool 44,72				C	C	C	C	C	C	C	C	C	C	C		C	C				P	P	P	P	P	P		P		
Other																C	C				P	P	P	P	P	P		C		C
Second Hand Store																					P	P			P	P		82 P		
Service Station 44																		P	P	P	P	P			P	P		P	P	
Shake & Shingle Mill	P			28 C		28 C		28 C														P	P	P	P	P				P
Shooting Range	C			C	C	C		C															P	P	P	P				
Sludge Utilization 42	C		C	C	C	C	C	C	C	60 C	60 C	60 C	60 C	60 C		60 C	60C				60 C	60 C	60 C		60 C	53 P	60 C			
Small AnimalHusbandry 44	P	P	P	P	P	P	P	P	40 C	40 C	40 C	40 C	40 C	40 C					P		P	P	P	P	P	P	P			
Social Services Center 17				C	C	C		C								C	C				P	P	P	P	P	P				
Specialty Store																			P	P	P	P			P	P		82 P		
Stables	P	P	P	P	P	P	P	P	P	P	P	P	P	P		P	P		P	P	P	P	P	P	P	P		P		P
Stockyard or SlaughterHouse								51 C															P			P				51 C
Storage/Retail SalesLivestock Feed			P	58 P	58 P																P	P			P	P		P		P
Storage Structure over1,000 sq.ft. on less than three acres 63	C	C	C	C	C	C	C	P	C	C	C	64 C	64 C	C	C	C	C	P	P	P	P	P	P	P	P	P	P	83 P		82 P
Swimming Pool 18, 44	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P			
Tannery																										P				
Tar Distillation orManufacturing																										P				
44																				P	P	P			P	P		P		
Television/Radio Stations																									P	P				
Temporary Logging Crew Quarters	P	P																												
Temporary EmergencyUse 20	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	I	I	I
Temporary Use,ResidentialSales Coach 77					T	T	T	T	T	T	T	T	T	T																

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Note: Reference numbers within matrix indicate special conditions apply. See chapter 18.32 SCC.

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	F	F&R	A-10	R-5	RC & RR	RD	SA-1	RU	R 20,000	R 12,500	R 9,600	R 8,400	R 7,200	WFB	T	LDMR	MR	FS	NB	PCB	CB	GC	IP 80	BP	LI 80	HI	MC	RB	RFS	RI
Temporary Use Dwelling:During Construction	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T					T	T	T	T
For Relative 19	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T	T					T			
Woodwaste Recycling 67	T					T																			T	T				T
Woodwaste Storage67	T					T																			T	T				
Tire Store																			P	P	P	P			P	P				
Tool Sales & Rental																					P	P			P	P		P		
Transit Center	C	C	C	C	C	C	C	C	C	C	C	C	C		C	C	P	P	P	P	P	P	P	P	P	P		P	P	
Travel Trailers 21	P	P	P	P	P	P	P	P																						
Travel Trailer Court		C																P			C	C								
Ultralight Airpark 22	C			C	C	C																	P	P	P	P				
Utility Facilities:Electromagnetic Transmission &Receiving Fac. 29	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	P	P	P	P	P	P	P	C	C	C	P
Transmission Wiresor Pipes & Supports 29	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P
All Other Structures 29,44	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	C	P	P	P	P	P	P	P	C	C	C	P
Veterinary Clinic			C	C	C	P	C	P								C	C		P	P	P	P	P	P	P	P		P		
Warehousing																						P	P	P	P	P				
Wholesale Establishment																				P	P	P	P	P	P	P				
Woodwaste Recycling 61	C			C		C																			C	C				C
Storage 61	C			C		C																			C	C				C
Yacht/Boat Club														C									P	P	P	P		P		P
All other uses not otherwise mentioned																							P	P	P	P				

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Note: Reference numbers within matrix indicate special conditions apply. See chapter 18.32 SCC.

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(B) 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 7200, R 8400, R 9600, 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) Private, Noncommercial Docks and Boathouses:

(a) The height of any covered overwater structure shall not exceed 12 feet as measured from the line of ordinary high water,

(b) The total roof area of covered, overwater 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 overwater structure shall extend beyond the mean low water mark a distance greater than the average length of all preexisting overwater 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) Single Family Dwelling: In PCB zones, shall be allowed only if included within the same structure as a commercial establishment.

(5) Townhouse dwellings shall be:

(a) Subject to all conditions of the chapter 18.53 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 formal subdivision process;

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

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

(a) Side and rear yard requirements may be waived by the department of planning and development services 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,

(b) The maximum size in the A-10 zone shall be 500 square feet,

(c) The maximum size in all other zones shall be 300 square feet, and

(d) At least 75 percent (by value) of the products sold must be grown or raised in Snohomish County.

(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:

(a) Not more than one person outside the family shall be employed;

(b) The occupation shall be secondary to the use of the dwelling for dwelling purposes;

(c) There shall be no external display of merchandise. No sales or fees for the use of merchandise except that produced by the inhabitants shall be made in the dwelling or on the premises;

(d) The maximum nameplate horsepower rating of any single piece of mechanical equipment used in the home occupation shall be five horsepower, and no equipment shall be three-phase motors. The electrical service for the home occupation shall not exceed 200 amps;

(e) Not more than one-fourth of the total square footage of the dwelling may be used in the occupation;

(f) Signs in connection with the occupation shall be unlighted, shall not exceed two square feet, and shall be attached flat to the building;

(g) The home occupation shall in no way affect the appearance of the building as a residence; and

(h) The home occupation shall be fully enclosed within the residence with no outside storage of equipment or materials.

(12) Kennel, commercial: There shall be a five acre minimum lot size.

(13) Kennel, private: 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 so as not to produce glare which would be unduly annoying to adjoining uses, and

(c) No amusement devices for hire are permitted.

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

(16) Riding Academies:

(a) Shall be operated in such a manner so as not to cause offense to adjoining properties by reason of dust or odor,

(b) Lighting shall be shielded or directed away from adjoining properties or rights-of-way, and

(c) Landscaping shall be provided consistent with achieving the goal of compatibility with the surrounding area.

(17) Social Service Center: Hours of operation shall be restricted to that compatible with the neighborhood and proposed usage of the facility.

(18) Swimming and 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.

(19) 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 of planning and development services for inclusion in the permit file,

(h) Adequate screening, landscaping or other measures shall be provided to protect surrounding property values and insure 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 of planning and development services 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) The temporary dwelling shall not be located on a lot on which a detached accessory apartment, as defined in SCC 18.90.018, is located.

(20) Temporary Emergency Use or Structures:

(a) Such approvals shall apply only to uses or structures normally requiring a conditional or special use permit, and

(b) The request shall be approved only where action must be taken immediately, or within a time too short to allow processing of a permit, to avoid imminent danger to public or private property, or to prevent an imminent threat of serious environmental degradation.

(21) Travel Trailer:

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

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

(22) Ultralight Airparks:

(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 airparks, and

(c) Approval shall be dependent upon a determination by the county hearing examiner 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,

(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.

(23) 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.

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

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

(26) 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.

(27) 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 as defined in SCC 18.90.170, and

(d) Outside storage, loading or employee parking in the RD zone shall provide 15 feet of type "II" buffer as defined in SCC 18.43.040.

(28) 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 "II" buffer as defined in SCC 18.43.040.

(29) Governmental and Utility Structures and Facilities: Special lot area requirements for this use are contained in SCC 18.42.050.

(30) Excavation and Processing of Minerals:

(a) All such operations shall comply with the provisions of Chapter 18.54 SCC, Mineral Excavation Procedures and Standards, and

(b) The extraction and processing of rock and gravel exclusively for forest practices shall be permitted outright in the F zone,

(c) This use shall allow only the primary reduction, treatment, and processing of minerals and materials, together with any necessary buildings,

(d) At least one of the major mineral or material constituents being exploited shall be from said property,

(e) Allowed uses shall include but not be limited to rock crushers, concrete batching, asphalt mixing, and the manufacturing of terra cotta, tile, brick, and concrete products,

(f) The use shall only be allowed in undeveloped areas and shall not be detrimental to the existing, developing, or projected land uses,

(g) In the A-10 zone, the excavation shall not reduce the area of prime agricultural soils which are located on parcels designated local, uplands, or riverway commercial farmland by the comprehensive plan;
UNLESS all of the following conditions can be demonstrated to the satisfaction of the county:

(i) The prime agricultural soils as defined by SCC 18.90.690 constitute no more than 25 percent of the proposed excavation,

(ii) Excavation of said soils is necessary to the conduct of the excavation on portions overlain by other than prime agricultural soils, and

(iii) It can be demonstrated that the use of the land underlying prime agricultural soils does not threaten other prime agricultural soils

beyond the proposed excavation through encroachment or disruptions due to operation of the excavation.

(h) If a property is designated both Rural Residential-10 and Mineral Lands on the General Policy Plan Future Land Use Map, excavation and processing of materials does not require a rezone to MC, but is subject to the requirements for a conditional use permit on sites zoned MC as set forth in chapter 18.54.

(31) Clinic, Hospital, Licensed Practitioner, Hotel/Motel:

(a) Where the abutting property is designated for residential use, type "I" or "II" buffer, as defined in SCC 18.43.040, is required, and

(b) A prescription pharmacy may be permitted when located within the main building containing licensed practitioner(s).

(32) Forest Industries, (except harvesting) adjacent to property lines in the RU zone shall provide a 15-foot type "III" buffer as defined in SCC 18.43.040.

(33) Boat Launch Facilities, commercial or non-commercial:

(a) The 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.

(34) 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.

(35) 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.

(36) 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.

(37) Group Care Facility:

(a) The number of persons to reside in the facility shall be generally consistent with the maximum allowed residential density in the zone,

(b) The allowing of the proposed use must be found to not adversely affect the surrounding area as to present use or character of future development, and

(c) In other than single family residences, yard requirements shall be as set forth for apartment structures in the allowed zone.

(38) 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 18.72.190,

(d) Such use shall not be deemed to be outside storage for the purpose of SCC 18.43.060, and

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

(39) Farm Product Processing:

(a) Where a lot of nonconforming size has been previously developed for residential use and the owner resides therein, farm product processing may be permitted by the hearing examiner when the following criteria are met:

(i) No more than one person outside of immediate family shall be employed full time in farm product processing at any one time.

(ii) Nature of operation and any structures shall not adversely affect adjacent properties. Physical scale and use intensity must be compatible with surrounding neighborhood.

(b) Retail sales of products produced on the premises for off-site consumption may be allowed.

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

(41) Mobile Home Park: Such development must fulfill the requirements of Chapter 18.55 SCC.

(42) Sludge Utilization:

(a) Minimum total project area including setbacks is 20 acres,

(b) Access to the site shall be controlled in an acceptable manner using measures such as fences, gates, posting, etc.,

(c) For the following applications, minimum setbacks between the utilization area and the property boundary shall be observed (unless a lesser setback is agreed to by the adjoining property owner(s) outside of the project boundaries):

(i) Spray application: 500 feet,

(ii) Surface application: 300 feet, and

(iii) Sub-surface injection: 200 feet,

(d) Minimum setbacks from year-round surface waters shall be 200 feet, or greater if deemed necessary to protect water quality,

(e) A joint site inspection shall be arranged by representatives of the Snohomish health district and the Snohomish County department of planning and development services at the time of initial application. The applicant shall provide said agencies with at least 10 days advance notice of such initial application,

(f) The applicant shall submit for approval by the hearing examiner a monitoring schedule suitable to the Snohomish health district, and

(g) Provided that sludge utilization at a completed sanitary landfill or on a completed cell within a sanitary landfill shall not be subject to the minimum area requirement of subsection (a).

(43) Homestead Parcels: Lot area and width requirements may be reduced, PROVIDED That:

(a) The parcel is designated as agricultural land of primary or secondary significance in the Snohomish County agricultural preservation plan or as agriculture in an adopted subarea comprehensive plan,

(b) The resultant non-homestead parcel shall not be less than the minimum lot area permitted in the zone,

(c) A dwelling currently exists on the parcel, and must have existed on the parcel prior to the effective date of this amendment,

(d) The homestead parcel shall include no more than two acres of land, unless soil conditions, topography or other unique circumstances require a greater land area,

(e) Concurrent with application under this section, the applicant shall submit an application under the Snohomish County short subdivision code, Title 20 SCC or Snohomish County boundary line adjustment, Title 29 SCC, where appropriate, and

(f) Approval shall be dependent upon a determination by the hearing examiner that the proposed use is for the purpose of consolidation of existing agricultural lands or operations, minimizes interference with the usual and normal farm practices on adjacent agricultural lands, and further that the following conditions are imposed:

(i) a declaration shall be recorded with the homestead parcel which states that the homestead parcel is located in an agricultural area which experiences activities customarily associated with agricultural practices,

(ii) the non-homestead parcel created by subdivision shall not be subdivided further for a period of 10 years following creation of the initial homestead parcel, except as provided for herein,

(iii) no dwelling shall be constructed on the non-homestead parcel created by subdivision for a period of 10 years from approval of the conditional use permit except for farm worker dwellings.

(44) Special setback requirements for this use are contained in SCC 18.42.100.

(45) Minimum lot size for duplexes shall be one and one half times the minimum lot size for single-family dwellings.

(46) Bulk Storage of Petroleum Products and Gas:

(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.

(47) Auto Wrecking Yards and Junk Yards: A sight-obscuring fence a minimum of seven feet high shall be established and maintained in the LI zone. For landscaping requirements for these uses, SCC 18.43.050 and 18.43.070 apply.

(48) Antique shops when established as a home occupation as regulated by SCC 18.32.040 (B)(11); PROVIDED FURTHER, That all merchandise sold or offered for sale shall be predominantly "antique" as defined in SCC 18.90.060, and antique related objects.

(49) See SCC 18.44.090 for specific requirements for billboards.

(50) Wholesale Nursery: 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.

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

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

(53) 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.

(54) Single family dwellings are a prohibited use, except that such 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 18.42 SCC; and 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.

(55) 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,

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

(56) See SCC 18.60.130 for specific requirements for retail stores in the BP zone.

(57) Kennel, exhibitor/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. Where the number of animals kept is 10 or more, a five acre minimum lot size and a conditional use permit are required.

(58) Retail sales of hay, grain, and other livestock feed are permitted on-site in conjunction with a livestock auction facility.

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

(60) Sludge utilization only at a completed sanitary landfill or on a completed cell within a sanitary landfill, subject to the provision of subsection 18.32.040(B)(42).

(61) Woodwaste Recycling and Woodwaste Storage Facilities: These two uses are subject to the following minimum requirements except when incidental to a primary use allowed in the applicable zone:

(a) Siting Criteria. Woodwaste recycling and woodwaste storage shall be located in compliance with the following:

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

(ii) Outside storage, recycling and processing activity areas, parking areas and other outside activity areas shall be located at least 100 feet from adjacent properties used, zoned or designated for residential purposes and at least 200 feet from any stream or wetland or land designated as an environmentally sensitive area by the Snohomish County comprehensive land use plan; PROVIDED, HOWEVER, That where such activities are fully enclosed within a structure, the minimum 200-foot setback shall be reduced to 50 feet. The character of the minimum setback area and the potential need for a greater setback shall be determined by the hearing examiner in accordance with adopted county plans and policies, including the applicable area comprehensive plan.

(b) Submittal Requirements to accompany a conditional use application: An application for a conditional use permit to allow a woodwaste recycling or woodwaste storage facility shall include the following submittals:

(i) A site development plan showing all woodwaste storage areas (active and reserve areas), recycled material storage areas, proposed structures, equipment, parking areas, access drives/fire lanes, delineation of existing vegetation, extend of clearing, buffer widths, on-site sewage disposal areas (if proposed), and existing site structures/facilities that are to remain or be removed.

(ii) A water quality control and monitoring plan. The applicant shall prepare a water quality control plan which demonstrates adequate protections for surface and groundwater quality consistent with the requirements of Snohomish health district regulation, EHD 8-30, "regulations governing solid waste handling"; contains provisions for minimizing stormwater runoff contact with woodwaste and recycled materials; and includes an independently-produced hydrogeologic report which analyzes the potential for surface water contamination, groundwater infiltration, or other types of water degradation (on-site or off-site) resulting from leachate produced by the proposal and recommends preventative measures if such contamination is anticipated.

(iii) An operational plan which contains the following elements:

(A) a fire prevention and protection plan which contains adequate provisions for the prevention of on-site fires and includes specific measures to prevent the spread of fires and protect adjacent properties. Approval of said plan shall be obtained from the county fire marshal prior to conditional use approval.

(B) a materials inspection plan which will insure control over the type of woodwaste entering the site. This plan shall include provisions for the visual inspection of all materials brought to the site during placement in the designated storage area and procedures for the immediate removal of waste material other than woodwaste and demolition or construction debris as defined by this title. The operator shall be responsible for insuring that such material does not enter the site.

(C) for woodwaste recycling, a requirement for use of specific equipment (crushers, chippers, etc.) capable of woodwaste processing at a rate in conformance with Snohomish health district regulation, EHD 8-30, "regulations governing solid waste handling", section EHD 8-30-300-3(c)(i).

(D) a landscaping and screening plan which demonstrates maximum retention of natural vegetation around the perimeter of the site and augmentation with planted landscaping materials as necessary to assure site screening capability.

(iv) The applicant shall be required to post a performance bond for site reclamation and other bonds as determined by the hearing examiner, including, but not limited to bonds for facility maintenance, water

quality control and monitoring equipment, and recovery of fire extinguishment costs.

(c) Minimum Performance Standards: A conditional use permit shall be subject to the following minimum performance standards:

(i) All woodwaste and demolition and construction debris shall be stored at or above ground level. Natural or artificially created depressions in the earth shall not be used.

(ii) The applicant shall demonstrate that an adequate water supply is available at the site to sustain necessary fire flow pressure for purposes of fire protection as determined by the applicable local fire district in consultant with the county fire marshal.

(iii) The proposed operation shall be carried out so as to avoid the emission 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.

(iv) The applicant shall provide on-site leachate collection/treatment system designed, constructed and operated in a manner that disposes of the leachate when one or more of the following circumstances exist:

(A) the hydrogeologic report prepared in accordance with SCC 18.32.040 (B)(61)(b)(ii) recommends a leachate collection/ treatment system due to site characteristics of topography, underlying geology and hydrology; or

(B) a treatment/collection system is recommended by the Snohomish health district to satisfy the requirements of Snohomish health district regulation, EHD 8-30, "regulations governing solid waste handling" relating to surface and groundwater protection.

(v) A 30-foot wide, type II buffer as described by SCC 18.43.040(2) is required around the perimeter of the proposed site. All outside activity areas and buildings used in recycling or processing shall be screened from view from the surrounding roadways. Where feasible, natural vegetation shall be used for screening purposes. If the natural buffer is inadequate to provide sight screening, additional landscaping will be required.

(vi) Woodwaste and recycled materials shall be placed in piles, and piles must be stored and recycled in compliance with the Snohomish health district's criteria for waste recycling facilities, as contained in Snohomish health district regulation, EHD 8-30, "regulations governing solid waste handling", section 8-30-300-3(c)(i).

(vii) Woodwaste and recycled material in a pile shall be stored in piles no more than 40 feet high and not more than one-half acre in size. Piles shall be separated by a fire lane with a minimum width of 40 feet.

(viii) For purposes of fire prevention, no more than 40 percent of the designated storage area shall be devoted to active storage at any

one time. At least 60 percent of the designated storage area shall be cleared and identified as a reserve storage area at all times.

(ix) Except in the LI and HI zones, a proposed woodwaste storage or woodwaste recycling facility shall be limited to wholesale distribution only, with retail sales of any woodwaste recycled product being prohibited.

(62) Bed and breakfast guesthouses and bed and breakfast inns.

(a) Where bed and breakfast inns and bed and breakfast guesthouses are allowed in the same zone, only one or the other of these facilities may be located on a subject property at the same time. An approved bed and breakfast guesthouse may be expanded to a bed and breakfast inn if a conditional use application for an inn is obtained and the original permit for the guesthouse, if necessary, is vacated.

(b) Submittal requirements to accompany a conditional use or building permit application:

(i) Site plan requirements. The site plan shall indicate the location of the off-street parking, proposed screening, the location and size of the bed and breakfast inn, and any proposed new construction to the premises, including additions, remodeling and((~~/or~~)) outbuildings.

(ii) Architectural requirements. For new construction only, the following shall apply:

(A) The applicant shall submit proposed architectural drawings and renderings of the proposed structure, including exterior elevations, which shall project a residential, rather than a commercial appearance. This architectural documentation shall be in sufficient detail to demonstrate discernible compatibility between the new construction and the existing on-site development and structures; PROVIDED FURTHER, That the applicant also shall document a design which, in scale, bulk, siding, and use of materials, is in keeping with existing buildings on adjacent properties and compatible with the surrounding character and neighborhood in which the guesthouse or inn is located.

(B) If an outbuilding or outbuildings are proposed, a grading plan, showing the extent of clearing activity, is required. Site design shall be sensitive to the natural features of the site. The use of manufactured and mobile homes is prohibited.

(iii) Screening: The owner/operator shall provide screening with shrubs, trees, fencing, and other suitable materials as necessary to minimize the impacts upon the residential character of the surrounding neighborhood.

(iv) Floor plan: The ((~~flood~~)) floor plan shall indicate bathrooms to be used by guests and the location and number of guest rooms.

(c) Minimum performance standards:

(i) Parking requirements shall be in accordance with subsection SCC 18.45.040(35). No on-street parking shall be allowed.

(ii) Meal service shall be limited to overnight guests of the establishment. Kitchens shall not be allowed in individual guest rooms.

(iii) The owner shall operate the facility and reside on the premises.

(iv) One sign for business identification and advertising shall be permitted in conjunction with the bed and breakfast establishment in accordance with SCC 18.44.070.

(v) The bed and breakfast establishment shall be conducted in such a manner as to give no outward appearance nor manifest any characteristics of a business, except as to the sign as allowed above, that would be incompatible with the ability of the neighboring residents to enjoy peaceful occupancy of their properties.

(vi) Guests shall be permitted to stay at the establishment for not more than 10 consecutive days at a time.

(vii) The applicant shall submit a letter from the applicable water purveyor and sewer district, if applicable, stating that each of them has the respective capacity to serve the bed and breakfast inn.

(viii) The applicant shall comply with all applicable county codes for fire, health and building requirements and any applicable food service regulations and on-site sewage disposal requirements of the Snohomish health district. The applicant shall comply with the applicable requirements of Chapter 258-54 WAC, "public water system rules and regulations", as now written or hereafter amended, if a water system is to be developed or connected to an existing public water system.

(ix) If three or more guest rooms are proposed, the applicant shall also meet state requirements for a "transient accommodation license", as required by Chapter 212-52 WAC, as now written or hereafter amended.

(x) If outbuilding(s) are proposed for guest rooms, each outbuilding shall be a minimum of one hundred thirty square feet. The aggregate outbuilding square footage for guest use shall not exceed eight hundred fifty square feet.

(xi) If an accessory apartment or temporary dwelling exists on the premises, the maximum number of bed and breakfast guest rooms shall be one less than otherwise permitted.

(d) In the Forestry (F) zone, bed and breakfast establishments shall not be permitted if the GPP designates the property as "Commercial Forest." In the F zone, up to three outbuildings for guest use may be permitted, provided that the aggregate outbuilding square footage does not exceed eight hundred and fifty square feet.

(63) Storage structure over 1,000 sq. ft. on less than three acres: This use is subject to the following requirements:

(a) Special setback requirements for this use are contained in SCC 18.42.100.

(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 applicant shall submit building elevations that document a residential appearance through the design and through depiction of appropriate building materials for the exterior finish.

(d) The applicant shall propose a screening plan which will result in a building screened from the view of neighboring property owners. Landscaping will be required on the subject property's boundary line or lines and/or around the building sides, as necessary, to effectively accomplish this objective.

(64) Storage structures over 1,000 sq. ft. in the R-7,200 and R-8,400 zones are limited to 20 feet in building height.

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

(66) Accessory apartments — Attached and detached:

(a) An owner-occupant of a single-family dwelling unit may establish only one accessory apartment, which may be either attached to, or detached from, the single-family dwelling. A detached accessory apartment may not be located on a lot on which a temporary dwelling, as defined in SCC 18.90.305, is located.

(b) The single-family dwelling unit to which an attached accessory apartment is to be added, or which is located on the same lot as the detached accessory apartment, must be owner-occupied on the date of application and remaining owner-occupied for as long as the attached or detached accessory apartment exists.

(c) The minimum floor area for an attached or detached accessory apartment shall be 450 square feet, but in no case shall the original single-family dwelling unit be reduced below 900 square feet. These floor areas shall be exclusive of garages, porches, or unfinished basements. The floor area of an attached accessory apartment shall not exceed the following percentage of the floor area of the single-family dwelling unit to which it is accessory, or the following fixed amount, whichever is applicable:

If the floor area of the single-family dwelling unit is:	the floor area of the attached accessory apartment shall not exceed:
Under 2,000 sq. ft.	40%
2,000 sq. ft. or more, but less than 3,000 sq. ft.	35% or 800 sq. ft. whichever is greater

3,000 sq. ft. or more, but less than 5,000 sq. ft.	30% or 1,050 sq. ft. whichever is greater
over 5,000 sq. ft.	20% or 1,500 sq. ft., whichever is greater

The floor area of a detached accessory apartment shall not exceed 40 percent of the floor area of the single-family dwelling unit to which it is accessory, or 850 square feet, whichever is less.

(d) For an attached accessory apartment, the architectural character of the single-family dwelling shall be preserved. Exterior materials, roof form, and window spacing and proportions shall match that of the existing single-family dwelling. Only one main entrance shall be permitted on the front (street face) of the dwelling. Entrances for the attached accessory apartment shall be on the side or in the rear of the dwelling.

(e) For a detached accessory apartment located within a new structure, the exterior materials, roof form, and window spacing and proportions of the detached accessory apartment structure shall approximate those of the existing single-family dwelling. For a detached accessory apartment located within an existing structure, the structure is not required to approximate the exterior features of the existing single-family dwelling.

(f) In zones categorized as residential, multiple family or commercial, no portion of a detached accessory apartment shall extend beyond the building front of the existing single-family dwelling.

(g) An applicant must provide documentation that the water supply is potable and of adequate flow and that the existing or proposed sewage or septic system is capable of handling the additional demand placed upon it by the attached or detached accessory apartment.

(h) One off-street parking space shall be provided and designated for the attached or detached accessory apartment (in addition to the two off-street parking spaces required for the primary single-family dwelling unit). Additional spaces shall be provided to accommodate any additional vehicles owned and/or used by occupants of the attached or detached accessory apartment. Driveways may be counted as one parking space but no parking areas other than driveways shall be created in front yards.

(i) An owner-occupant of a single-family dwelling with an attached or detached accessory apartment shall file, on a form available from the community development department, a declaration of owner occupancy with the community development department prior to issuance of the building permit for the attached or detached accessory apartment and shall renew the declaration annually. The initial declaration of owner occupancy shall be recorded with the county auditor prior to filing the declaration with the community development department.

(j) The owner-occupant(s) may reside in the single-family dwelling unit, the accessory apartment, or both.

(67) Temporary woodwaste recycling and temporary woodwaste storage facilities: These two uses require a temporary use permit and are subject to the following minimum requirements except when incidental to a primary use allowed in the applicable zone:

(a) An application for a temporary use permit to allow a woodwaste recycling and/or woodwaste storage facility shall include the following:

(i) A site development plan showing all woodwaste storage areas (active and reserve areas), recycled material storage areas, equipment, parking areas, access drives/fire lanes, extent of vegetation clearing, buffer widths, on-site sewage disposal areas (if proposed), proposed site structures, existing site structures that are to remain or be removed, natural drainage courses and probable alterations which will be necessary to handle the expected drainage from the site.

(ii) Operational information which demonstrates that:

(A) Adequate fire prevention and protection measures have been incorporated into the proposal. Approval of said measures shall be obtained from the county fire marshal prior to temporary use approval;

(B) Adequate provisions have been incorporated into the proposal which will ensure that the type of woodwaste brought to the site consists only of materials authorized by this title and does not contain wood pieces or particles containing chemical preservatives such as creosote, pentachlorophenol, copper-chrome-arsenate, paints or stains; the operator shall be responsible for insuring that such material does not enter the site;

(C) The woodwaste material is being stored in conformance with Snohomish health district regulation, EHD 8-30, "regulations governing solid waste handling", section EHD 8-30-300(3)(c)(i);

(b) A temporary use permit shall be subject to the following minimum performance standards:

(i) All woodwaste and demolition and construction debris shall be stored at or above ground level. Natural or artificially created depressions in the earth shall not be used. All woodwaste material shall be limited to temporary storage at a rate in conformance with the Snohomish health district regulation, EHD 8-30-300(3)(c)(i);

(ii) The applicant shall demonstrate that an adequate water supply is available at the site to sustain necessary fire flow pressure for purposes of fire protection as determined by the applicable fire district in consultation with the county fire marshal.

(iii) The proposed operation shall be carried out in conformance with all applicable provisions of county code and state law and shall avoid the emission 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.

(iv) A type I buffer as described in SCC 18.43.040(1) is required around the perimeter of all storage, recycling, processing, parking and other outside activity areas. When the subject property is zoned LI or HI, this type I buffer shall supersede the LI and HI buffer requirements described in the landscaping requirements matrix in SCC 18.43.050 for outside storage or waste areas, where the abutting property is designated commercial, or where the abutting property or use is residential.

(v) Woodwaste and recycled material placed in a pile shall be stored in piles no more than 30 feet high and not more than one-half acre in size. Piles shall be separated by a fire lane with a minimum width of 40 feet.

(vi) The combined total storage area for woodwaste and recycled materials shall not exceed two acres.

(vii) Except in the LI and HI zones, a proposed woodwaste storage or woodwaste recycling facility shall be limited to wholesale distribution only, with retail sales of any woodwaste recycled product being prohibited.

(viii) Outside storage, recycling and processing activity areas, parking areas and other outside activity areas shall be setback at least 20 feet from adjacent properties; PROVIDED, That where such activities are adjacent to properties containing an existing residential use, properties where the existing zoning is categorized as residential, multiple family or rural, or adjacent to any stream or wetland designated by Snohomish County, the minimum setback shall be 100 feet; PROVIDED FURTHER, That where such activities are fully enclosed within a structure, the minimum setback may be reduced to 50 feet depending on the sensitivity of the resource. The character of the minimum setback area shall be determined by the planning director in accordance with adopted county regulations, plans and policies.

(68) Except in the rural business zone, ((~~Home~~)) home occupations ((~~may~~)) must be conducted in an accessory building and/or an attached garage in accordance with the following:

(a) The provisions of SCC 18.32.040 (B)(11)(a), (c), (d) and (f) shall be met;

(b) A minimum lot size of one acre is required;

(c) The following table identifies the maximum allowable combined accessory building and attached garage area and the minimum required building setback for the garage and/or the accessory building from adjacent residentially zoned properties according to the home occupation lot or parcel size:

	One ac.	Two ac.	Three ac.	Four ac.	Five or more ac.
Area (sq. ft.)	500	600	700	800	900
Setback (ft.)	30	40	50	60	70

(d) The home occupation shall in no way affect the appearance of the accessory building and/or the attached garage as accessory to the residential dwelling;

(e) The home occupation shall be fully enclosed within the accessory building and/or the attached garage including no outside storage of equipment or materials;

(f) The home occupation shall not create a level of noise vibration, smoke, dust, odors, heat, light, or glare beyond that which is acceptable in a residential area;

(g) The following activities, including any similar activities, are prohibited as home occupations: minor or major automobile, truck or heavy equipment fueling, maintenance or repair; auto-body work or painting; parking or storage of heavy equipment; and any Group H occupancies as defined in the Uniform Building Code except for woodworking and spray finishing in conjunction with woodworking activities;

(h) The home occupation hours of operation shall be limited to: 8:00 a.m. to 8:00 p.m., Monday through Friday; and 9:00 a.m. to 5:00 p.m., Saturday and Sunday;

(i) A certificate of occupancy shall be obtained from the community development division prior to commencing the home occupation to ensure building and fire code compliance. The certificate of occupancy shall be subject to an annual inspection and renewal pursuant to SCC 16.04.060.

(69) 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.

(70) An application for a conditional use permit to allow an offsite 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.

(71) Adult entertainment uses must meet the following requirements:

(a) Adult entertainment businesses or uses are prohibited within the area circumscribed by a circle which has the radius shown below from any public or private school, preschool, educational institution, church or other religious facility, public or private park, youth oriented facility, establishment serving alcohol by the drink, or from the following zones: R-5, RC, RU, RD, SA-1, R-20,000, R-12,500, R-9,600, R-8,400, R-7,200, A-10, F, F and R, WFB, T, LDMR, and MR.

(1) Adult entertainment book stores — 330';
(2) Adult entertainment dance studios — 660';
(3) Adult entertainment movie theaters — 330;'
(4) Adult hotels — 330';

(5) Adult tanning salons — 330';
(6) Escort businesses — 0';
(7) Nude house cleaning businesses — 0';
(8) Panoram premises — 660';
(9) Public bathhouses and hot tub premises — 660';
(10) All other adult entertainment uses — 660'.

(b) The distances specified in this section shall be measured horizontally by following a straight line from the nearest point of the building in which the proposed adult entertainment use is to be located, to the nearest point of the parcel of property which contains a use from which the proposed adult entertainment use is to be separated, and to the nearest point of a zone listed in subsection (a).

(c) Violation of the use provisions of this section is:

(1) Declared to be a public nuisance per se, which may be abated by the county by way of civil abatement procedures only, and not by criminal prosecution; or

(2) Subject to enforcement in accordance with the provisions of Title 28 SCC but shall not be subject to SCC 28.08.080.

(d) Nothing in this section is intended to authorize, legalize or permit the establishment, operation or maintenance of any business, building or use which violates any Snohomish County ordinance or statute of the State of Washington regarding public nuisances, sexual conduct, lewdness, or obscene or harmful matter or the exhibition or public display thereof.

(72) Special building height provisions for this use are contained in SCC 18.42.030(4).

(73) 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.

(74) 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 27.36 SCC.

(75) 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 27.36 SCC.

(76) Equestrian centers and mini-equestrian centers require the following:

(a) Ten acre minimum site size for an equestrian center.

(b) Five acre minimum site size for a mini-equestrian center.

(c) 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.

(d) Any lighting of an outdoor or covered arena shall be shielded so as not to glare on surrounding properties or rights-of-way.

(e) On sites located in RC, and R-5 zones, a type I or II buffer as described in SCC 18.43.040 is required to screen any outside storage, including animal waste storage, and parking areas from adjacent properties.

(f) Riding lessons, rentals or shows shall only occur between 8 a.m. and 9 p.m.

(g) 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 18.42.100(16).

(h) Dust emissions shall be controlled by an approved dust suppression plan.

(i) The facility shall comply with all applicable county building, health and fire code requirements.

(77) Temporary Residential Sales Coach (TRSC):

(a) The commercial coach shall be installed in accordance with all applicable provisions within Chapter 17.28 SCC.

(b) The TRSC shall be set back a minimum of 20 feet from all existing and proposed road rights-of-way and 5 feet from proposed and existing property lines.

(c) Vehicular access to the temporary residential sales coach shall be approved by the county or state.

(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.

(78) 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 agricultural soils. At least 75% of prime agricultural soils on-site shall remain undisturbed.

(79) Model Hobby Park:

(a) An application for a model hobby park shall include the following:

(i) A plan for the model hobby park showing the location of all property lines, ground circulation and parking areas, runways, tracks, pits, overflight areas and other improved or active use areas. The plan shall also depict a non-use area at least 100 feet wide adjacent to and beyond all active use areas, including overflight areas.

(ii) Operational information which demonstrates that the model hobby park will be operated in conformance with all applicable provisions of county code and state law and shall avoid impacts which are unduly or unreasonably offensive or injurious to properties, residents or improvements in the vicinity.

(iii) Documentation that the improved or active use areas and the overflight areas, if any, are authorized for such use, if not fully under the ownership of the applicant.

(b) Runway, track, and pit surfaces shall be limited to natural grass or removable composite matting in the A-10 zone.

(c) Maximum allowable runway size shall be 600 feet by 100 feet, not including buffer overrun areas.

(d) The improved area, including parking, pit, track and runway areas but excluding any overflight area, shall be limited to five acres. In the A-10 zone, parking stalls and aisles shall not be paved.

(e) Minimum size of the site, including any overflight area, shall be 20 acres.

(f) Any site improvements and structures in addition to the runways, tracks and pits shall be incidental to the use of the site as a model hobby park.

(g) Operation of models shall be prohibited within identified non-use areas.

(h) In the A-10 zone, grading shall be limited in order to preserve prime agricultural soils. At least 75% of prime agricultural soils on-site shall remain undisturbed.

(i) A model hobby park permit application shall be processed in accordance with the provisions of SCC 18.72.155.

(80) 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.

(81) Studio: Studio uses may require the imposition of special conditions to ensure compatibility with adjacent residential, mulitple family, or rural zoned properties. The hearing examiner may impose such conditions when deemed necessary pursuant to the provisions of SCC 18.72.060. 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 5 for any lot less than 200,000 square feet in size.

(b) The hours of facility operation may be limited.

(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 the Type II buffer standard of SCC 18.43.040(2).

(82) The gross floor area of the use shall not exceed 1000 square feet.

(83) The gross floor area of the use shall not exceed 2000 square feet.

(84) The gross floor area of the use shall not exceed 4000 square feet.

(85) The building contractor 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 18.65.040.

(b) Not more than 1,000 square feet of outdoor storage of materials shall be allowed and shall be screened in accordance with SCC 18.43.050.

(c) In addition to the provisions of subsection (85) (b), not more than five commercial vehicles or construction machines shall be stored outdoors and shall be screended in accordance with SCC 18.43.050.

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

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

Section 4. Snohomish county code Section 18.42.020 last amended by Ordinance 96-076, on November 27, 1996 is amended to read:

18.42.020 Bulk matrix

(A) The bulk matrix contains setback, lot coverage, building height and lot dimension regulations for zones in unincorporated Snohomish County. Following is a listing of abbreviations used on the bulk matrix and their meaning:

(1) UBC — Uniform Building Code;

(2) sf — square feet;

(3) ft — feet; and

(4) r/w — right-of-way.

Reference notes to the bulk matrix are found in SCC 18.42.020(B).

Special setbacks for specific uses are contained in SCC 18.42.100(B).

		Lot Dimension (ft)			18.42.020(A) Setback Requirements From: (ft)							
Zone	Max Bldg Hgt (ft)	Minimum Lot Area	Min Lot Width	Min Corner Lot Width	Public Right of Way under 60' (10)	Public and Private Right of Way (9)	Commercially Zoned Properties (11)	Residentially Zoned Properties (11)	Resource Lands		Water Bodies*(12)	Maximum Lot Coverage(8)
									Ag	Forest		
F	45(6)	20 ac(3)	300	300	100(13)	100(13)	100(13)	100(13)	50(21)	100(22)	25(13)	35%
F&R	25(7)	200,000 sf(2),(23)	100	100	50	20	5	5	50(21)	100(22)	25	35%
A-10	45	10 ac	none	none	50	20	5	5	50(21)	100(22)	25	none
R-5	45(25)	200,000 sf(2), (23), (25)	165(25)	165(25)	50	20	5	5	50(21)	100(22)	25	35%
RC	35(26)	100,000 sf(23), (25)	165(25)	165(25)	50	20	5	5	50(21)	100(22)	25	35%
RD	45	100,000(23)	165	165	50	20	5	5	50(21)	100(22)	25	35%
SA-1	35	1 ac/43,560 sf(23)	150	150	50	20	5	5	50(21)	100(22)	25	35%
RU	35	see 18.42.150	60	65	50	20	5	5	50(21)	100(22)	25	35%
R-20,000	25	20,000 sf	85	90	50	20	5	5	50(21)	100(22)	25	35%
R-12,500	25	12,500 sf	75	80	50	20	5	5	50(21)	100(22)	25	35%
R-9,600	25	9,600 sf(24)	70	75	50	20	5	5	50(21)	100(22)	25	35%
R-8,400	25	8,400 sf(24)	65	70	50	20	5	5	50(21)	100(22)	25	35%
R-7,200	25	7,200 sf(24)	60	65	50	20	5	5	50(21)	100(22)	25	35%
WFB	25	7,200 sf(24)	60	65	50	20	5	5	50(21)	100(22)	25	35%
T	see 18.53	see 18.53	see 18.53	see 18.53	50(14)	20(14)	5(14)	5(14)		100(22)	25(14)	see 18.53
LDMR	35	7,200 sf(4)	60	70	55(15)	25(15)	see 18.42.020(B)(15)			100(22)	25(15)	30%
MR	35	7,200 sf(5)	60	70	55(15)	25(15)	see 18.42.020(B)(15)			100(22)	25(15)	40%
FS	35	none	none	none	55	25	5/15(16)	25		100(22)	none	none
NB(1)	25	none	none	none	55	25	none	10		100(22)	none	35%
PCB(1)	40	none(19)	none	none	70	40(18)	none	25		100(22)	none	none

*Greater setbacks than those listed may apply to areas subject to Shoreline Management Master Program jurisdiction. Some uses have special setbacks. See 18.42.100 for specifics.

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18.42.020(A)

		Lot Dimension (ft)			Setback Requirements From: (ft)							
Zone	Max Bldg Hgt (ft)	Minimum Lot Area	Min Lot Width	Min Corner Lot Width	Public Right of Way under 60' (10)	Public and Private Right of Way (9)	Commercially Zoned Properties (11)	Residentially Zoned Properties (11)	Resource Lands		Water Bodies*(12)	Maximum Lot Coverage(8)
									Ag	Forest		
CB(1)	35	none	none	none	55	25	none	10		100(22)	none	50%
GC(1)	45	none	none	none	55	25	none	10		100(22)	none	50%
IP	65	none	none	none	30(17)	30(17)	none(17)	25(17)		100(22)	none	50%
BP	50	none(19)	none	none	30	30	none	25		100(22)	none	35%
LI	50	none	none	none	55	25	none	50		100(22)	none	none
HI	65	none	none	none	55	25	none	50		100(22)	none	none
RB	35	none	none	none	55	25	10	50	50(21)	100(22)	none	35%
RFS	35	none	none	none	55	25	10	50	50(21)	100(22)	none	35%
RI	50	none	none	none	55	25	50	100	100(21)	100(22)	none	35%

*Greater setbacks than those listed may apply to areas subject to Shoreline Management Master Program jurisdiction. Some uses have special setbacks. See 18.42.100 for specifics.

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(B) Reference notes for bulk matrix.

(1) LDMR standards shall apply for all residential development permitted in commercial zones, except that MR standards shall apply for all residential development permitted in commercial zones located within Urban Growth Areas pursuant to the county General Policy Plan and Chapter 36.70A RCW.

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

(3) When subdivisionally described, the minimum lot size in the F zone 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 right-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 highwater mark and shall apply only to the rear setback. In the "LDMR" and "MR" zones this setback applies to single-family dwellings only.

(13) The listed setbacks apply where the adjacent property is zoned F. In all other cases, setbacks are the same as in the R-8400 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-8400 zone.

(14) The listed setbacks apply to single-family detached structures. For townhouse, see Chapter 18.53 SCC.

(15) MR and LDMR Setbacks.

(a) Single-family detached structures shall have the minimum setbacks required in the R-8400 zone.

(b) Other structures shall have minimum side and rear setbacks of five feet (ten feet where abutting residence, rural or resource zones). Building separation shall be a minimum of 15 feet.

(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 18.60.020(1) and (2) which specifies the minimum area of tract of land necessary for PCB or BP zoning.

(21) See additional setback provisions for dwellings located along the boundaries of designated farmlands contained in SCC 32.14.050.

(22) See additional setback provisions for structures located adjacent to forest lands, and/or on lands designated local forest or commercial forest contained in SCC 32.13.030 and SCC 32.13.040.

(23) The minimum lot size for properties designated Rural Residential (RR)-10 (Resource Transition) on the comprehensive plan shall be 10 acres. 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.

(24) Minimum lot area may be modified within UGAs in accordance with SCC 18.42.085.

(25) In rural cluster subdivisions approved in accordance with the provisions of Chapter 32.30 SCC, the minimum lot area shall be as provided in SCC 18.42.075. The maximum lot area shall not exceed 20,000 square feet when located in rural/urban transition areas.

Section 5. A new section is added to chapter 18.43 of the Snohomish county code to read:

18.43.045. Buffer character for the RB, RFS, and RI zones.

The type II and III buffers required in accordance with SCC 18.43.040 and 18.43.050 for the RB, RFS, and RI zones shall include existing native vegetation pursuant to the provisions of chapter 18.65 SCC.

Section 6. Snohomish county code Section 18.43.050 last amended by Ordinance 99-036, on June 12, 1996 is amended to read:

18.43.050 Landscaping requirements.

(1) The landscaping requirements matrix of SCC 18.43.050(3) indicates buffer types required by use and zone. Buffer type descriptions are contained in SCC 18.43.040. Additional landscape requirements for PCB, BP and IP zones are contained in SCC 18.60.110 through 18.60.140.

(2) An accessible route of travel may cross required landscape area(s) including buffer types I, II, or III. An accessible route of travel shall cross the width of the required landscaping area at 90 degrees or as close to 90 degrees to the street right-of-way as site conditions allow. The area devoted to an accessible route of travel may be included to satisfy site landscaping

requirements, except for those within any parking area. See 18.43-Figure 1- "Accessible Routes of Travel".

(3) Landscape requirement matrix and reference notes

(a) Landscape requirement matrix

Zone	RU	NB	CB	GC	LI	HI	PCB	BP	IP	RB	RFS	RI
Abutting residentially designated property or use if not a parking or display area.		10 feet II	10 feet II	10 feet II	20 feet II	20 feet III	10 feet III	25 feet II	25 feet II	50 feet II	50 feet II	100 feet II
Between R/W or private access road and building or parking areas.							5 feet III	30 feet III	30 feet III	25 (1) feet III	25 (1) feet III	25 (1) feet III
Outside storage or waste areas.		I	I	I	I or 5 feet II	I or 5 feet II	I	I	I	I or 5 feet II	I or 5 feet II	I or 5 feet II
Public R/W frontage if not a parking or display area.		10 feet III	10 feet III	10 feet III	20 feet III	20 feet III	5 feet III	30 feet III	30 feet III	25 (1) feet III	25 (1) feet III	25 (1) feet III
Between residential and non-residential uses or designations.	1 or 5 feet II											
Abutting commercially designated property.					20 feet III	30 feet III						

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(b) Landscape matrix reference notes:

(i) The specified standard buffer width may be reduced using buffer width averaging. When buffer width averaging is used, a minimum buffer width of ten feet shall be maintained, and the total area of the buffer shall not be less than the total area that is required if the standard buffer were used.

Section 7. Snohomish county code Section 18..44.040 last amended by Ordinance No. 87-008, March 4, 1987, is amended to read:

18.44.040 NB, CB, GC, LI, ((~~and~~)) HI, RB and RI zone requirements.

(1) Signs for identification purposes shall be permitted to have an area not to exceed one square foot for each linear foot of business property frontage;

(2) Advertising displays or signs may have an area not to exceed 150 square feet in NB, ((~~and~~)) CB, RB and RI zones, or 500 square feet in GC, LI nd HI zones, and may be divided into not more than four single or double faced signs in NB, ((~~and~~)) CB, RB and RI zones, or not more than six single or double-faced signs in GC, LI and HI zones; and

(3) Signs may extend to the front property line, PROVIDED they do not violate other requirements of this chapter.

Section 8. Snohomish county code Section 18.44.060 last amended by Ordinance No. 96-003, February 21, 1996, is amended to read:

18.44.060 FS and RFS zone requirements.

(1) Each individual FS and RFS business is allowed to erect signs under the following conditions:

(a) One wall-mounted sign identifying the business conducted therein may be permitted. The sign must be solely supported by the attachment and the uppermost portion shall not extend more than five feet higher than the building at its highest point, subject further to the overall height regulation of this zone. Such sign may be an attached, single-face sign or a back-to-back, double-face sign and shall have a surface area not to exceed 150 square feet per face;

(b) One additional business identification sign, having a surface area not in excess of 50 square feet, may be permitted when attached flat to one wall of the building, but not to extend above the exterior wall top plate line to which attached;

(c) One freestanding sign for business identification may be permitted in place of the sign provided in subparagraph (1)(a) or (1)(b)((~~only if it can be proven that such sign attached to the building cannot be made visible to any motorist approaching the interchange on the limited access highway~~)).

(2) Permit Processing — Freestanding Signs.

(a) Freestanding sign applications shall be subject to all the provisions of chapter 32.50 SCC including, notice of application, completeness

determination, consistency determination, time periods for processing, and notice of decision.

(b) Submittal/completeness requirements are contained within the "submittal checklist" attached to the commercial sign permit application.

(c) Regulation of sign type, size and location is subject to these conditions:

(i)((~~Where a sign attached to the building would be concealed by natural vegetation, the freestanding sign structure may be permitted only if the applicant agrees in writing to preserve, in full, such vegetation and replace it if destroyed. In such case, the applicant shall submit a drawing showing the location, height and diameter of each tree comprising the natural buffer;~~

((~~(ii)~~)) Where permitted, the uppermost portion of the freestanding sign shall be a height not greater than 35 feet above the ground as measured from the average finished grade at the front face of the principal building;

(((~~(iii)~~))ii) Such freestanding sign shall be located no farther than 100 feet from the principal building; and

(((~~(iv)~~))iii) Freestanding, single-face identification signs, or back-to-back double-face identification signs, shall have a surface area not to exceed 150 square feet per face. A V-shaped, double-face sign with an interior angle of 60 degrees or less shall have a total surface area not to exceed 150 square feet. All other sign configurations shall have a surface area not to exceed 300 square feet, with no single face to exceed 100 square feet.

(3) The department of planning and development services will receive the application and approve the application with or without conditions, deny the application, or return the application for revision based on compliance with SCC 18.44.060(1) and (2).

(4) Appeals of the department's decision regarding any freestanding sign shall be addressed to the hearing examiner pursuant to SCC 18.72.100.

(5) In addition to the business identification signs, advertising displays or signs may be permitted subject to the following limitations:

(a) Such signs shall not identify the business, as such, but shall be limited to advertising the product and/or service offered;

(b) The total surface area of all such signs shall not exceed 50 square feet, and no single surface area shall exceed 25 square feet;

(c) No business shall divide its display into more than four single sign faces or display surfaces;

(d) In no case shall the top of any display surface be more than seven feet above the ground as measured from the sign base;

(e) No advertising sign shall be located as to be readable primarily from a limited access highway; and

(6) Signs may be illuminated, but no rotating sign, flashing beacon or variable intensity light shall be permitted.

Section 9. Snohomish county code section 18.44.070, last amended by Ordinance No. 96-076 on November 27, 1996, is amended to read:

18.44.070 Signs for particular uses.

Signs are allowed in conjunction with the following uses wherever such uses are permitted, subject to the stated conditions:

(1) The planning and development services department may approve on-site signs for identifying residential subdivisions provided the following criteria are met:

(a) The subdivision identification sign message does not exceed six feet in height from adjacent finished grade nor have a surface area greater than 40 square feet. Surface area is measured as the smallest rectangle or circle that encloses the total message;

(b) There are a maximum of two such identification signs for each road entrance to the subdivision;

(c) Signs are located so they permit an unobstructed sight distance along road rights-of-way in accordance with the Engineering Design and Development Standards adopted under Chapter 13.05 SCC;

(d) SCC 18.42.090(3) provisions are met; and

(e) Signs are stationary and if illuminated, are to be lit with indirect lighting. Lighting which is flashing, blinking or of variable intensity is prohibited;

(2) The hearing examiner may approve on-site subdivision identification signs in conjunction with preliminary plat approval. The hearing examiner may approve signs that do not meet the criteria in SCC 18.44.070(1) only when such sign(s) are compatible with the immediate neighborhood and surrounding property values are not adversely affected. New subdivisions are allowed off-site advertising signs as allowed by the hearing examiner;

(3) Schools, churches, community clubs and public structures/buildings, may display two single or double faced signs for identification purposes which do not exceed 20 square feet of surface area per face. The total signage on-site may not exceed 60 square feet of surface area. Freestanding signs may not be more than eight feet in height and are to be stationary. Lighting which is flashing, blinking or of variable intensity is prohibited. A portion of the identification sign allotment may be used for activity reader boards. Reader boards shall not result in glare when viewed from surrounding properties or road rights-of-way. In no case shall a reader board or illuminated identification sign be located within 50 feet of an adjacent residential property;

(4) A bed and breakfast sign may be allowed in conjunction with a conditional use permit if the sign is stationary and if illuminated, is lit with indirect lighting. Lighting which is flashing, blinking or of variable intensity is prohibited.

(a) In the MR, LDMR, R-20,000, R-12,500, R-9,600, R-8,400, and R-7,200 zones, the sign shall be a single face sign with dimensions not exceeding four square feet in area.

(b) In the F, F&R, A-10, R-5, RC, RD, and SA-1 zones, the sign may be single or double-faced with dimensions not exceeding 15 square feet per face; PROVIDED, That the applicant shall submit, as part of the application for a conditional use permit, sign designs and elevations that document a common architectural breakfast guesthouse or inn and are compatible with the surrounding rural character and neighborhood in which the guesthouse or inn is located.

Section 10. A new chapter is added to Title 18 Snohomish county code to read:

Chapter 18.65
RB, RI AND RFS ZONES PROCEDURES AND STANDARDS

Sections:
18.65.010 Applicability.
18.65.020 Minimum zoning criteria.
18.65.030 Site development plan.
18.65.040 Performance standards.
18.65.050 Binding site plan (BSP).

18.65.010 Applicability.

This chapter regulates development in the Rural Business (RB), Rural Industrial (RI), and Rural Freeway Service (RFS) zones. It sets forth procedures and standards applicable to rezone and development approval in these zones.

18.65.020 Minimum zoning criteria.

(1) The RI and RFS zones shall be applied only to properties that contain the appropriate land use designation as depicted on the Future Land Use Map (FLUM) of the of the General Policy Plan(GPP).

(2) The RB zone is a zoning classification which will be located within a rural residential land use designation. The RB zone, including expansions to the RB zone classification, shall be applied only to properties that meet all the following locational criteria, except as provided in SCC 18.65.020(3):

(a) A minimum of six hundred residential dwelling units shall be located within a two and one-half mile radius of the proposed site;

(b) The proposed site is located along a county road or state highway with at least one hundred feet of street frontage or at an intersection of two public roads;

(c) The proposed site shall be located no closer than two and one-half miles from an existing RB, RFS or RI zone, or commercial designation in the rural area;

(d) The total area zoned RB at an any given location shall not include more than five acres designated as net usable area. In calculating net

usable area pursuant to this chapter, net usable area shall be the total site areas less critical areas and their required buffers, public rights-of-way, private roads, detention/retention areas, and biofiltration swales.

(e) The proposed site shall be located outside of, and no closer than one mile to an urban growth area (UGA) boundary;

(f) The proposed site shall contain a rural residential designation on the GPP FLUM, and not be designated Forest lands or Farm lands by the FLUM;

(g) The size and configuration of the proposed site must be capable of accommodating applicable setbacks, buffers, and critical area protection;

(h) Site information required pursuant to SCC 18.65.030(2) shall have been submitted by the applicant. The information shall clearly demonstrate that an adequate building and development area is located on the site outside of identified critical areas and buffers; and

(i) Any proposed site that expands an existing RB zone shall have a common property boundary with the existing RB zone at one point. A common property boundary may consist of properties separated by a public right-of-way where the centerline of the right-of-way is used as their extended front property boundary.

(3) For properties that contain a commercial use permitted or otherwise allowed in the RB zone that existed on or before the effective date of this section, a rezone to RB may be approved only for that portion of the site containing the existing use and may not expand beyond the location of the existing commercial use unless the locational criteria of SCC 18.65.020(2) are met with respect to the expansion area. The locational criteria contained in SCC 18.65.020(2) and the maximum building footprint requirements of SCC 18.65.040(2) and (3) need not be met for that portion of the site containing the existing use.

(4) Any applicant proposing a rezone to the RFS zone must

(a) demonstrate that the proposed site is abutting a frontage or access road of a limited access highway and is under a single ownership or unified control; and

(b) submit a freeway interchange evaluation in accordance with the provisions of SCC 18.56.050.

18.65.030 Site development plan.

(1) An official site plan shall not be required at the time of rezone application for the RB and RI zones. The performance standards of SCC 18.65.040, and other applicable provisions of this title shall be applied to a site development plan otherwise required at the time of initial development in the RB and RI zones.

(2) For the RB zone, information shall be submitted at the time of application for the RB rezone in a form acceptable to the director that identifies

the approximate location and amount of net usable area designated on the site. The submittal shall also include the approximate location and type of critical areas and their probable required buffers pursuant to chapter 32.10 SCC, detention/retention areas, biofiltration swales, public rights-of-way, and private roads. This information is to be used at the time of zoning approval to determine whether an adequate development and building area exists on the site, and whether the five-acre net usable area limitation of SCC 18.65.020(2)(d) has been exceeded on the site.

(3) An official site plan shall be required at the time of rezone application for the RFS zone. The plan shall be reviewed and approved in accordance with the provisions governing official site plan approval for the Freeway Service (FS) zone as provided in SCC 18.56.030. The performance standards of SCC 18.65.040, and other provisions of this title applicable to the RFS zone shall be applied at the time of official site plan review and approval.

(4) Modifications of a RFS official site plan are permitted in accordance with the provisions of SCC 18.56.040.

18.65.040 Performance standards.

(1) General. In addition to other applicable standards contained in Title 18 SCC, the following performance standards apply to development in the RB, RI and RFS zones:

(a) Existing trees of three-inch caliper and larger size shall be retained in all side and rear yard landscape buffer areas, excluding areas for access drives and sign location;

(b) Existing evergreen trees of three-inch caliper and larger size shall be retained in all front yard landscape buffer areas, excluding areas for access drives and sign location. Tree removal is allowed when required to meet Department of Public Works Engineering Design and Development Standards or because of public health and safety concerns;

(c) The size and location of required landscape and buffer areas shall be consistent with the provisions of chapter 18.43 SCC;

(d) Adequate water supplies shall be demonstrated for fire protection;

(e) Storm water detention facilities such as ponds and grass swales shall be designed whenever possible as to integrate them into the overall site design and required landscaping and buffers on the site;

(f) Signage shall be consistent with the provisions of chapter 18.44 SCC; and

(g) Refuse collection, fuel loading and above ground fuel storage areas, and large truck parking areas shall be located at least one hundred feet from residential uses or designations and shall be screened in accordance with the landscaping requirements for outdoor storage and solid waste contained in SCC 18.43.050.

(2) Rural Business zone. In addition to the general performance standards of SCC 18.65.040(1), and other applicable standards of Title 18 SCC, the following standards apply to development in the RB zone:

(a) The total impervious surface of all buildings, parking and other support areas such as storage, trash containers, etc., shall not exceed fifty percent of the net usable area of the site; and

(b) The maximum area for each building footprint on the site shall not exceed four thousand square feet.

(3) Rural Freeway Service zone. In addition to the general performance standards of SCC 18.65.040(1) and other applicable standards of Title 18 SCC, the following standards apply to development in the RFS zone:

(a) The total impervious surface of all buildings, parking and other support areas such as storage, trash containers, etc., shall not exceed sixty percent of the site; and

(b) The maximum area for each building footprint on the site shall not exceed six thousand square feet; except that, the maximum area for each building footprint for a hotel/motel use shall be ten thousand square feet.

(4) Rural Industrial zone. In addition to the general performance standards of SCC 18.65.040(1) and other applicable standards of Title 18 SCC, the total impervious surface of all buildings, parking and other support areas such as storage, trash containers, etc., shall not exceed sixty percent of the site.

18.65.050 Binding Site Plan (BSP).

(1) If an applicant chooses to divide land pursuant to Title 19A SCC, an approved RFS official site plan, or in the RB, and RI zones, a site plan approved concurrent with a building permit for the site may be used as a basis for binding site plan approval.

(2) All hearing examiner or department conditions of approval, as may be applicable, shall appear on either (a) the binding site plan with record of survey to be recorded, or (b) be referenced on said document and recorded separately as covenants, conditions, and restrictions (CCRs).

Section 11. Snohomish county code section 18.72.140, last amended by Ordinance Number 96-076 on November 27, 1996, is amended to read:

18.72.140 Filing fees.

The filing fees for requests/actions covered by this chapter shall be as follows:

(1) Variance: $1,000

(a) Except that a request for a single revision to a dimensional requirement related to a single family residence shall be: $500.00

(b) Request for time extension: $100.00

(c) Request for minor revision under SCC 18.72.192: $200.00

(d) Request for major revision under SCC 18.72.192: $800.00

(2) Special use permit: $1,000, plus a per-acre fee of $50.00, limited to a maximum fee of $3,000

(a) Request for time extension: $100.00

(b) Request for minor revision under SCC 18.72.192: $200.00

(c) Request for major revision under SCC 18.72.192: $800.00

(3) Conditional use permit: $2,100

(a) Landfill: $1,800, plus a per-acre fee of $50.00, limited to a maximum fee of $4,000

(b) Mineral extraction/processing: $1,800, plus a per-acre fee of $100.00, limited to a maximum fee of $6,000

(c) Sanitary landfill: $1,800, plus a per-acre fee of $100.00, limited a maximum fee of $6,000

(d) Modification to site plan:

Minor revision under SCC 18.72.192: $200.00

Major revision under SCC 18.72.192: $800.00

(4) Temporary use permit: $150.00

(a) Temporary woodwaste recycling and temporary woodwaste storage: $500.00

(b) Annual renewal: $40.00

(5) Accessory apartment (attached or detached) permit: $150.00

(6) Model hobby park permit: $150.00

(7) ((~~Pre-application conference fee: $400.00~~)) Bed and breakfast guesthouses (A-10 zone only): $150.00

(8) ((~~When an applicant chooses to utilize the pre-application process, the pre-application conference fee shall be credited toward the application fee upon submittal of said application if received within twelve months from the date of the pre-application conference.~~))
Pre-application conference fee: $400.00

(9) When an applicant chooses to utilize the pre-application process, the pre-application conference fee shall be credited toward the application fee upon submittal of the application if received within twelve months from the date of the pre-application conference.

Section 12. Snohomish county code section 18.72.155, last amended by Ordinance Number 96-076 on November 27, 1996, is amended to read:

18.72.155 Permit processing and notice — Attached or detached accessory apartments, model hobby parks, bed and breakfast guesthouses in the A-10 zone, and temporary dwellings or temporary emergency uses.

(1) Applications for an accessory apartment (attached or detached) permit, for a model hobby park permit, for bed and breakfast guesthouses in the A-10 zone, for a temporary permit for emergency uses or structures, for a temporary woodwaste recycling and temporary woodwaste storage permit, and

for a temporary dwelling permit for relatives, shall be made in writing to the director of the department of planning and development services.

(2) The director of the department of planning and development services may prescribe the form in which application is made and the type of information to be provided by the applicant in the application.

(3) Applications for permit types identified in SCC 18.72.155(1) shall:

(a) Provide a posted notice of application. Said notice shall be given within five working days of filing an application, and shall be given pursuant to the provisions of SCC 32.50.060(4)(a). At a minimum, such notice shall contain the information required in SCC 32.50.060(3)(a), (b), and (c); and

(b) Comply with the consistency determination provisions of SCC 32.50.100.

(4) For temporary uses, the director may grant those permits which meet the conditions listed in SCC 18.32.040, if applicable, and may also impose special conditions to assure compatibility with surrounding properties.

(5) Temporary use permits for temporary woodwaste recycling and temporary woodwaste storage are valid for two years from the date of issuance and are eligible for renewal, subject to compliance with all applicable requirements of this title.

Section 13. Snohomish county code section 18.90.097, added by Ordinance No. 90-085 on July 18, 1990, is amended to read:

18.90.097 Bed and breakfast guesthouse.

"Bed and breakfast guesthouse" means a facility in which one kitchen, a shared dining area, and not more than a total of three guest rooms are available within a single family residence and((~~/or one~~)) as many as three outbuildings, providing short-term lodging for paying guests in accordance with the provisions of SCC 18.32.040.

Section 14. Snohomish county code section 18.90.098, added by Ordinance No. 90-085 on July 18, 1990, is amended to read:

18.90.098 Bed and breakfast inn.

"Bed and breakfast inn" means a facility in which one kitchen, a shared dining area, and not more than a total of six guest rooms are available within a single family residence and((~~/or one~~)) as many as three outbuildings providing short-term lodging for paying guests in accordance with the provisions of SCC 18.32.040.

Section 15. A new section is added to chapter 18.90 Snohomish County Code to read:

18.90.577 Metal working shop.

"Metal working shop" means a small-scale commercial establishment that sells metal articles produced by skilled manual work on the premises. This term shall include establishments that produce knives, horsehoes, hand tools and similar metal articles. The term shall not include welding shops, fabrication shops, craft shops, forge and foundry uses, and general manufacturing uses.

Section 16. Snohomish county code section 19.28.020, last amended by Ordinance No. 95-034 on June 28, 1995, is amended to read:

19.28.020 Design standards - Roads.

(1) Access to Roads. All plats shall be served by an opened, constructed and maintained public road to which the road system within the plat must connect, except as provided in SCC 19.28.020(2) and (8).

(2) Access to the boundary of subdivisions where all lots are five acres in size or larger, or one-one-hundred-twenty-eighth of a section or larger when described as a fraction of a section, shall be provided by an open, constructed and maintained county road or county roads or approved trail permit, except that access to the boundary of the subdivisions by private road may be permitted where such private road is within an adjoining subdivision and conforms to all the standards of this title and further, written permission is obtained from all owners of record of said private road; PROVIDED, That the county engineer may waive some or all improvement standards of SCC 19.28.020(4)(a) when he finds that the existing private road is adequate to serve the additional tracts, and that the applicant demonstrates full standards are unnecessary, impossible to achieve or result in an inequitable financial burden.

(3) Road Standards. All plat roads shall be dedicated public roads designed and constructed in conformance with the department of public works' engineering design and development standards adopted under chapter 13.05 SCC (EDDS),except as provided in SCC 19.28.020 (4).

(4) Roads within subdivisions where all lots are five acres in size or larger, or one-one-hundred-twenty-eighth of a section or larger when described as a fraction of a section, may be public roads or private roads.

(a) All roads within such subdivisions shall be designed and constructed in accordance with the ((~~Engineering Design and Development Standards adopted under chapter 13.05 SCC~~)) EDDS. Additional right-of-way or easement width shall be provided if necessitated by cut or fill slopes;

(b) The overall road network and access needs of lands in the area of the subdivision shall be considered in determining road location within the subdivision;

(c) Where a road right-of-way extending to a boundary property line is not needed to provide improved legal access to the abutting lots, then said right-of-way need not be initially constructed where not providing access, PROVIDED, That the right-of-way is capable of being constructed to the minimum required standards;

(d) Utilities located within the road right-of-way shall be placed in accordance with the ((~~Engineering Design and Development Standards adopted under chapter 13.05 SCC~~)) EDDS unless waiver is granted by the county engineer;

(e) Utility easements meeting the standards of all involved utilities shall be established as part of the final plat map. Prior to installation of utilities, the developer shall receive approval from the involved utility district as to the acceptability of such location and minimum standards for installation;

(f) Stop signs constructed to department of public works standards shall be installed as required by the department of public works;

(g) Lots shall generally be designed to have a minimum of individual accesses on the public road serving the property.

(5) Sidewalk Standards. Sidewalks and/or walkways shall be provided in accordance with the ((~~Engineering Design and Development Standards adopted under chapter 13.05 SCC~~)) EDDS.

(6) Street Signs. Street signs shall be as specified by the department of public works.

(7) Landscaping Within Road Rights-of-way. A developer proposing landscaped areas within county rights-of-way shall submit a landscape design plan to the department of planning and development services for approval. Further, the landscape design plan shall also be reviewed by the department to insure that fire apparatus access is not impeded by planned landscaping within county right-of-way. If approved, the final plat for such subdivision shall contain a covenant that such areas shall be maintained by the developer and his successor and may be reduced or eliminated if deemed necessary for or detrimental to county road purposes and/or fire apparatus access.

(8) In rural cluster subdivisions, private roads may be permitted in accordance with the ((~~department of public works engineering and development standards~~)) EDDS and where specifically approved by the county engineer. Access to the boundary of a rural cluster subdivision by a private road may be permitted in accordance with the EDDS and where specifically approved by the county engineer. Where pedestrian walkways are required, modifications to the ((~~department of public works engineering design and development standards~~)) EDDS may be considered by the department of public works to allow pedestrian walkways in buffers and/or open space, adjacent to public or private road rights-of-way, where consistent with the public health, safety and welfare and subject to the provision of a private maintenance agreement. Applicants are encouraged to propose such modifications as are appropriate for their specific circumstances.

Section 17. Snohomish county code section 32.14.020, added by Amended Ordinance No. 95-049 on July 10, 1995, is amended to read:

32.14.020 Subdivisions and short subdivisions in upland commercial farmland.

Areas designated upland commercial farmland and not zoned agriculture 10-acre, shall not be ((~~subdivided~~)) divided into lots less than 10 acres unless a properly executed deed restriction which runs with the land and which provides that the land ((~~subdivided~~)) 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.

Section 18. Snohomish county code section 32.14.030, added by Amended Ordinance No. 95-049 on July 10, 1995, is amended to read:

32.14.030 Subdivisions and short subdivisions in local commercial farmland.

Areas designated local commercial farmland shall not be ((~~subdivided~~)) divided into lots of less than 10 acres unless, (1) a properly executed deed restriction which runs with the land and which provides that the land ((~~subdivided~~)) 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 (2) a rural cluster subdivision at the underlying zoning is approved.

Section 19. Snohomish county code section 32.30.040, last amended by Ordinance No. 96-076 on November 27, 1996, is amended to read:

32.30.040 Criteria for preliminary approval.

In addition to all other requirements of state law and county code for approval of a subdivision or short subdivision, a rural cluster subdivision shall meet all the following standards:

(1) When environmentally sensitive areas such as streams, shorelines, wetlands, fish and wildlife habitat areas and corridors, areas of unique vegetation or wildlife species, steep slopes, and other critical areas are present, and when such areas are identified and protected pursuant to Title 23 SCC and/or other applicable county ordinances or policies, the areas shall be designated as native growth protection areas as defined in SCC 32.30.015;

(2) The transition from any proposed residences within the rural cluster subdivision to uses on adjoining property or adjoining public roadways classified as an arterial (any type) or a non-arterial collector, according to the Snohomish County Arterial Plan and the Snohomish County Engineering Design and Development Standards, shall be provided with a sight obscuring buffer of native vegetation, or where no native vegetation exists, landscape screening comprised

of fast growing, low maintenance, native trees and shrubs in accordance with the requirements of Table 1 in SCC 32.30.050. Existing wind resistant vegetation providing such a screen shall be preserved. Between proposed residences and any adjoining natural resource area, a setback shall be established consistent with the setback shown in Table 1 in SCC 32.30.050;

(3) All roads, whether public or private, shall be provided in accordance with the department of public works engineering design and development standards. Access to the boundary of a rural cluster subdivision by a private road may be permitted as specified in SCC 19.28.020(1) and (8). Location of public or private roads and access points to the existing public roadway system shall be carefully controlled with no more than two access points allowed per cluster unless specifically requested by the county road engineer:

(4) Electric, telephone and other utility lines shall be designed, located and screened so as to minimize their visibility from adjacent properties and the site or shall be located underground;

(5) All unbuildable land shall be designated as native growth protection areas unless they are designated as natural resource areas within restricted open space as defined in this chapter;

(6) When agricultural or forestry uses are proposed for the open space area(s), adequate buffers to minimize conflicts between resource and residential uses shall be provided;

(7) When agricultural or forestry uses are proposed within an open space tract within a rural cluster subdivision, a disclosure statement, as described in SCC 32.30.040(8), shall be placed on the final plat or final short plat in a location determined by the director. The disclosure statement shall apply to the real property which is subject to the final plat or final short plat as of the date of approval and may not be applicable thereafter if the agricultural or forestry uses are discontinued;

(8) The following disclosure statement shall constitute the disclosure required by this section for notice of agricultural or forestry uses within required or optional open space:

Lots within a rural cluster subdivision and adjacent to or within 1,300 feet of agricultural or forestry uses located in a designated open space tract may be subject to inconvenience or discomforts arising from agricultural or forestry activities, INCLUDING BUT NOT LIMITED TO NOISE, ODORS, FUMES, DUST, SMOKE, THE OPERATION OF MACHINERY OF ANY KIND, TIMBER HARVEST, BRUSH CONTROL, THE STORAGE AND DISPOSAL OF MANURE, THE APPLICATION BY SPRAYING OR OTHERWISE OF CHEMICAL OR ORGANIC FERTILIZERS, SOIL AMENDMENTS, HERBICIDES AND PESTICIDES, HOURS OF OPERATION, AND OTHER AGRICULTURAL OR FORESTRY ACTIVITIES.

(9) Where practicable open space tracts within a rural cluster subdivision shall be located contiguous to designated open space tracts on adjacent properties;

(10) A management plan which details the required maintenance and management tasks and responsibilities shall be provided for all restricted open space and other open space areas which require continuing maintenance or management;

(11) Each rural cluster development shall be divided into physically separated clusters with a maximum of 30 residential lots per cluster. The minimum physical separation shall consist of a buffer of wind resistant native vegetation with an average width of 75 feet and a minimum width of 50 feet (see Table 1 in SCC 32.30.050);

(12) At least 75 percent of the residential lots within a rural cluster subdivision development shall abut a required buffer or an open space tract;

(13) The rural cluster subdivision shall be designed, to the greatest extent possible, to configure the residential lots in accordance with the natural features of the site and minimize topographic alteration, to maintain rural character, and to maximize the visibility of the open space tracts from adjoining collector roads, arterials, or state and federal highways;

(14) Rural cluster subdivisions shall not be served by public sanitary sewers unless the Snoho-mish health district requires the development to connect to a public sewer system to protect public health;

(15) Each individual cluster within the subdivision shall be located near the interior of the site, if feasible, and also located where the cluster and/or the building sites are within existing forested areas of the site. Individual clusters shall not be located on ridgelines and other prominent topographic features visible to adjacent and vicinity properties when other locations are available;

(16) Rural cluster subdivisions shall be located in a rural fire district;

(17) Rural cluster subdivisions shall meet applicable rural concurrency standards.

Section 20. Severability. If any provision of this ordinance or its application to any person or circumstance is held invalid, the remainder of the ordinance or the application of the provision to other persons or circumstances is not affected.

PASSED this 16th day of December, 1998.

SNOHOMISH COUNTY COUNTY COUNCIL
Snohomish County, Washington

Chair

ATTEST:

Clerk of the Council, asst

(✓) APPROVED
( ) EMERGENCY
( ) VETOED

Date: 12-17-98

Robert J. Drewel
County Executive
JEAN M. EARL
Deputy Executive

APPROVED AS FORM:

Deputy Prosecuting Attorney

ATTEST:

12-17-98

D-25

TOM EHRLICHMAN
ATTORNEY AT LAW

SNOHOMISH COUNTY COUNCIL
RECEIVED DFA TIME 4:55
NOV 25 1998

SNOHOMISH COUNTY COUNCIL
EXHIBIT # 76
FILE 96 Docket

CC'D TO: CF
JAG ___ DIST 1 ___ KJM ___
DWG ___ DIST 2 ___ STM ___
AMB ___ DIST 3 ___ BSG ___
SKN ___ DIST 4 ___ Other ___
TCD ___ DIST 5 ___ All Staff ___

November 25, 1998

Snohomish County Council
c/o Mr. Kirke Sievers, Chairman
3000 Rockefeller Avenue
M/S/ 609
Everett, WA 98201

Re: Richard & Charlene Imus
Request to Modify Proposed Rural Business Zoning Amendments,
Ordinances 98-121, 98-122

Dear Councilmembers:

On behalf of our clients, Richard & Charlene Imus, we are writing to support the County-initiated proposed amendments to the General Policy Plan (GPP) and zoning code. Proposed Ordinances 98-119 through 122. We appreciate the Council's efforts to develop a Rural Business (RB) land use classification that allows existing rural small business owners to retain their livelihoods.

We are writing to propose a change in the County's use matrix for the new Rural Business zone we developed after meetings with County staff. Our proposal would allow the Imus' to continue operating an established family-owned business of limited scale. A mark-up describing the amendment is attached as Exhibit A for your review.

By way of brief background, the Imus family runs CCH Construction - a small general contractor - from an office/garage building on their property adjacent to I-5 near Stanwood. A vicinity map is attached for your review. The property is sandwiched between Interstate-5 and Old Highway 99 in a narrow ½-acre lot of record. The business office operates in an existing building constructed in 1995 by County building permit. Mrs. Imus and her two daughters-in-law work in the office on-site, while Dick Imus and his crews provide construction services entirely off-site. The small scale of their on-site uses easily distinguishes the Imus business from the larger scale contractor uses restricted to commercial areas under the zoning code. Their use includes storage of materials and equipment outdoors, but in much smaller areas that are easily screened, consistent with the proposed RB performance criteria and our additional proposed limitations. Despite the ease with which the Imus' can screen the impacts of their existing use, the Imus' have unfortunately been cited by the County for operating a use not yet permitted in the Rural-5 zone. The proposed amendment will give the Imus' an opportunity to continue an existing small-scale rural business through a rezone.

CENTRAL BUILDING, STE 504
1721 HEWITT AVENUE
EVERETT, WA 98201
TEL (425) 258-4212
FAX (425) 258-6202

Prior to presenting our proposal to you, we reviewed our proposed text with Planning and Development Services staff. Based on these meetings, we have determined that the most direct approach is to amend the zoning code use matrix to include small rural building contractors as a permitted use in the RB zone. With additional limitations on scale, we believe this use will have even fewer impacts than many other uses proposed by staff and the Planning Commission for the rural business zone (see, e.g., home improvement center, tool sales & rental, etc.).

We appreciate your consideration of the Imus' circumstances and their proposed amendment, attached as Exhibit A. Our proposal includes a footnote that imposes strict limitations on the scale and impacts of the proposed rural contractor use. The proposed text amendment: (i) adds building contractors as a permitted use; (ii) incorporates the proposed RB zone performance standards (SCC 18.65.040); and (iii) includes additional limitations on outside vehicle and material storage to distinguish these low intensity rural uses from larger scale contractor operations.

In our view this amendment would preserve the rural character of the RB zone; it is consistent with the relevant policies and requirements of the Growth Management Act, RCW ch. 36.70A; the State Environmental Policy Act, RCW ch. 43.21C; the GPP; and the intent of the proposed RB zone amendments in Ordinances 98-119 through 122. A more detailed analysis of how the proposed amendment conforms to applicable policies and standards is attached as Exhibit B.

In closing, it is important to note that this amendment does not apply in the rural area unless the use existed prior to adoption of the ordinance. Our proposed amendment does not apply to rural uses other than construction contractors (electrical, plumbing, structural finish, etc.) under the existing zoning code definition (attached). We look forward to answering any questions you may have at the public hearing. Thank you for your consideration.

Very truly yours,

Tom Ehrlichman

cc: Mr. and Mrs. Charlene Imus
Mr. Steve Holt, Director, PDS
Mr. John Roney, PDS
Mr. Gary Reiersgard, PDS
Mr. Klaus Schilde, PDS
Mr. Frank Wyckoff, PDS
Ms. Barbara Dykes, Deputy Pros. Attorney

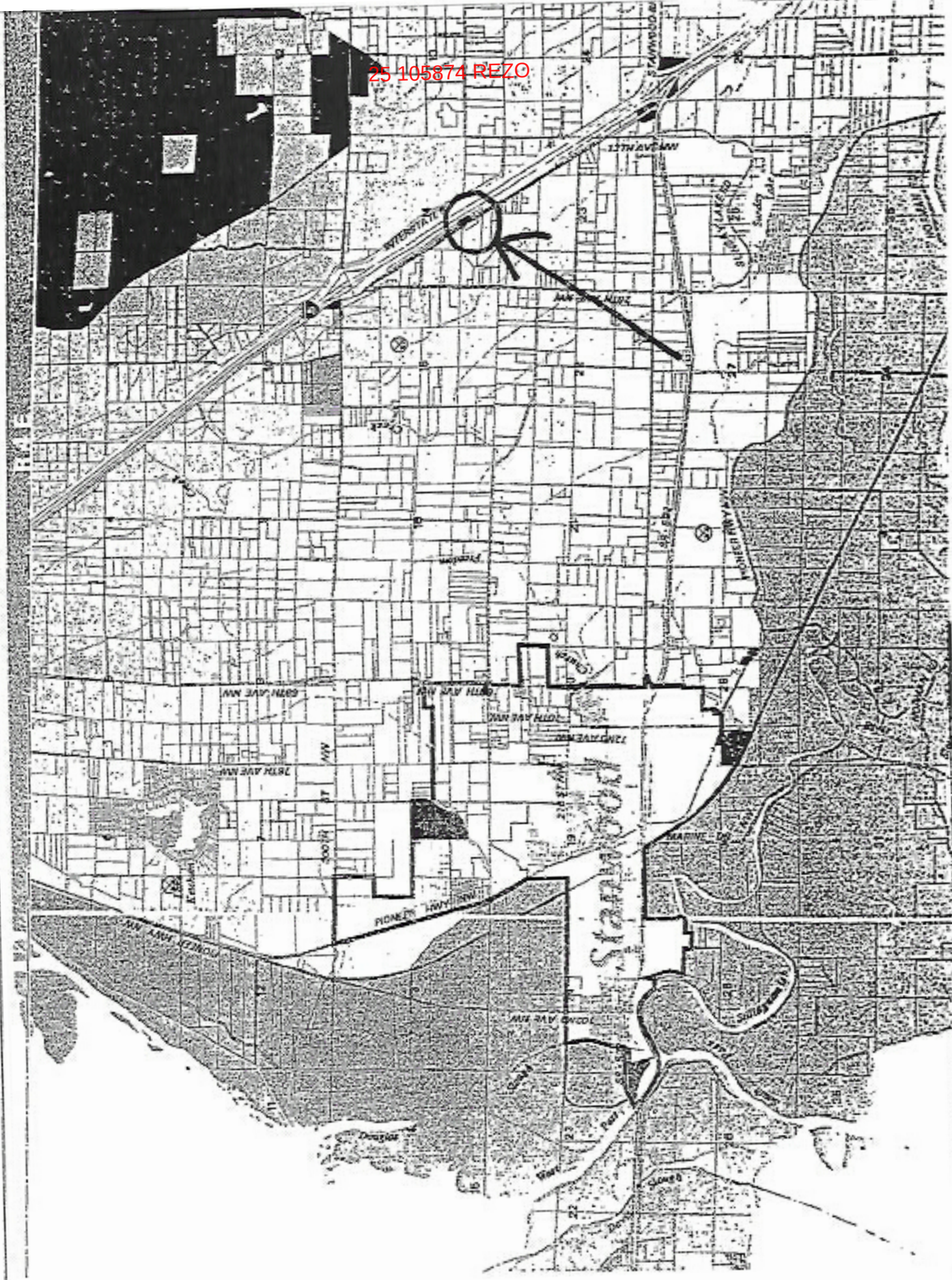

25 105874 REZO
INTERSTATE
PIONEER HWY
MARINE DR
Stanwood

EXHIBIT A

Proposed Amendment to Ord. Nos. 98-121, 98-122

- Preliminary Language of Section 3
  (no changes to text)
- Use Matrix
  (Imus proposal adds Building Contractor use with Reference Notes 83 and 84)
- Reference Note 83
  (no change from proposed ordinances)
- Reference Note 84
  (new reference note proposed by Imus limiting scale and intensity of Building Contractor use within RB zone)

Note: County-initiated Ordinance Nos. 98-121 and 98-122 are alternative versions of a single proposed ordinance. The ordinance amends the text of the Snohomish County zoning code to create the Rural Business zoning classification. No map amendments are proposed. The Rural Business zone is applied to land through the County's existing process for approval of rezones.

Ordinance No. 98-121
Ordinance No. 98-122

Section 3: Snohomish County code Section 18.32.040 last amended by Ordinance No. 96-076 on November 27, 1996 is amended to read:

18.32.040 Use matrix

(A) The following key applies to the use matrix. Reference notes are found in SCC 18.32.040(B). Use Matrix Key:

P --- Permitted Use
C --- Conditional Use
T --- Temporary Use

[No Change Proposed]

SCC 18.32.040 Use Matrix as amended by Ordinances 98-121, 98-122

	F	F&R	A-10	R-5	RC & RR	RD	SA-1	RU	R 20,000	R 12,500	R 9,600	R 8,400	R 7,200	WFB	T	LDMR	MR	FS	NB	PCB	CB	GC	IP 80	BP	LI 80	HI	MC	BB	RES	RU
Accessory Apt. Attached and Detached 66	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P	P		P		P	P					P	P		
Adult Entertainment Business/Use 71																							P		P	P				
Agriculture	P	P	P	P	P	P	P	P	P	P	P	P	P	P		P	P		P		P	P	P	P	P	P	P	P	P	P
Airport Stage 1 Utility 1	C			C	C	C	C	C	C	C	C	C	C	C							P	P	P	P	P	P				
All Others																							P	P	P	P				
Amusement Facility 44																				P	P	P	P		P	P				
Antique Shop				48 C		C		48 C											P		P	P			P	P		82 P		
Art Gallery 44				C	C	C	C	P	C	C	C	C	C	C		C	C		P	P	P	P	P	P	P	P		82 P		
Asphalt Batch Plant &Continuous Mix Asphalt Plant																									P	P				P
Auto Repair:Major																						P	P	P	P	P				
Minor																		P	P	P	P	P	P	P	P	P		B1 P	P	
Auto Towing				C		C																			P	P				
Auto Wrecking Yard																									47 C	47 P				
Bakery																			73 P	P	P	P	P	P	P	P		B1 P		
Bed and Breakfast Guesthouse 62	C	C	(C)) P	C	C	C	C	C	C	C	C	C	C	C		C	C											P		
Bed and Breakfast Inn 62	C	C	C	C	C	C																						P		
Billboards 49																						P			P	P				
Boat Launch: Commercial		C																			C	C			C	C				
BoatLaunch:Non-commercial 33	C	C		C	C	C	C	C	C	C	C	C	C	C		C	C				C	C			C	C		C		
Boat Sales																						P			P	P				
Building Contractor																						P	P	P	P	P				
Campground		34 C																												

P -- Permitted Use
C -- Conditional Use
T -- Temporary Use

Note: Reference numbers within matrix indicate special conditions apply. See chapter 18.32 SCC.

p 83, 84

25-105874-REZO

Use Matrix Reference Note No. 83:

(83) The gross floor area of the use shall not exceed 4000 square feet.

[No Change Proposed]

Use Matrix Reference Note No. 84:

(84) Rural building contractor uses as described in this Title and as limited below existing on or before the effective date of this section shall be permitted in the Rural Business (RB) zone, PROVIDED the use meets the following limitations:

(a) the use complies with all of the performance standards required by SCC 18.65.040 (Rural Business); and

(b) the use does not involve:

(i) more than 1000 square feet of outdoor storage of materials;

(ii) outdoor storage of more than five commercial vehicles or construction machines at any one time;

(iii) the on-site fueling of vehicles; and

(iv) the storage of inoperable vehicles, junk, hazardous materials, woodwaste, or earth materials.

[Imus' Proposed Amendment]

RURAL BUSINESS PERFORMANCE STANDARDS CITED IN PROPOSED REFERENCE NOTE 84

25.105874 REZO

18.65.040, and other provisions of this title applicable to the RFS zone shall be applied at the time of official site plan review and approval.

(4) Modifications of a RFS official site plan are permitted in accordance with the provisions of SCC 18.56.040.

18.65.040 Performance standards.

(1) General. In addition to other applicable standards contained in Title 18 SCC, the following performance standards apply to development in the RB, RAC, RI and RFS zones:

(a) Existing trees of three-inch caliper and larger size shall be retained in all side and rear yard landscape buffer areas, excluding areas for access drives and sign location;

(b) Existing evergreen trees of three-inch caliper and larger size shall be retained in all front yard landscape buffer areas, excluding areas for access drives and sign location;

(c) The size and location of required landscape and buffer areas shall be consistent with the provisions of chapter 18.43 SCC;

(d) Adequate water supplies shall be demonstrated for fire protection;

(e) Storm water detention facilities such as ponds and grass swales shall be designed whenever possible as to integrate them into the overall site design and required landscaping and buffers on the site;

(f) Signage shall be consistent with the provisions of chapter 18.44 SCC; and

(g) Refuse collection, fuel loading and above ground fuel storage areas, and large truck parking areas shall be located at least one hundred feet from residential uses or designations and shall be screened in accordance with the landscaping requirements for outdoor storage and solid waste contained in SCC 18.43.050.

(2) Rural Activity Center zone. In addition to the general performance standards of 18.65.040(1) and other applicable standards of Title 18 SCC, the following standards apply to development in the RAC zone:

(a) The total impervious surface of all buildings, parking and other support areas such as storage, trash containers, etc., shall not exceed fifty percent of the site;

(b) The maximum area for each building footprint on the site shall not exceed four thousand square feet; and

(c) Access shall be taken from secondary side roads whenever possible. When allowed, access drives from major arterials and highways shall be at least three hundred feet apart.

(3) Rural Business zone. In addition to the general performance standards of SCC 18.65.040(1), and other applicable standards of Title 18 SCC, the following standards apply to development in the RB zone:

(a) The total impervious surface of all buildings, parking and other support areas such as storage, trash containers, etc., shall not exceed fifty percent of the site; and

(b) The maximum area for each building footprint on the site shall not exceed two thousand square feet.

? CONFLICT

(4) Rural Freeway Service zone. In addition to the general performance standards of SCC 18.65.040(1) and other applicable standards of Title 18 SCC, the following standards apply to development in the RFS zone:

(a) The total impervious surface of all buildings, parking and other support areas such as storage, trash containers, etc., shall not exceed sixty percent of the site; and

(b) The maximum area for each building footprint on the site shall not exceed four thousand square feet.

(5) Rural Industrial zone. In addition to the general performance standards of SCC 18.65.040(1) and other applicable standards of Title 18 SCC, the total impervious surface of all buildings, parking and other support areas such as storage, trash containers, etc., shall not exceed sixty percent of the site.

18.65.050 Binding Site Plan (BSP).

(1) If an applicant chooses to divide land pursuant to Title 19A SCC, an approved RFS official site plan, or in the RB, and RI zones, a site plan approved concurrent with a building permit for the site may be used as a basis for binding site plan approval.

(2) All hearing examiner or department conditions of approval, as may be applicable, shall appear on either (a) the binding site plan with record of survey to be recorded, or (b) be referenced on said document and recorded separately as covenants, conditions, and restrictions (CCRs).

18.90.145 Building contractor.

"Building Contractor" means a facility where a person or company that does plumbing, electrical, structural, finish, or other construction work, stores or maintains their equipment or supplies. (Added Ord. 86-037, § 2, May 7, 1986).

18.90.150 Building front.

"Building front" means that side of the main building facing the front lot line. (Added Ord. 86-037, § 2, May 7, 1986).

18.90.155 Building height.

"Building height" means the vertical distance from the average adjoining curb elevation to the

EXHIBIT B

EXHIBIT B

Background on Proposed Modification to Rural Business(RB) Zone

1. Proponent.

Richard Imus
CCH Construction
8504 180th St. NW
Stanwood, WA 98292

Richard Imus, owner of CCH Construction, was recently cited for operating a business within the Rural 5-Acre zone not currently permitted within the zone. Many other rural property owners with businesses were also cited.

Mr. Imus purchased an existing large storage shed built in 1995 under a County building permit located on one half acre of property. His property is located in the narrow strip of land between Interstate 5 and Old State Highway 99 north of the Stanwood I-5 exit. Mr. Imus purchased the lot and shed in order to operate an office from which he, his wife and daughters-in-law direct various employees at construction projects off-site throughout various counties.

CCH is a small, family-run business. Their use of the site is limited in nature and does not fit within the typical large building contractor/logger scenario. Given the existing use of the property and neighboring properties, and the proximity to major highways, this property is appropriate for a rural commercial use which is limited in scope and intensity. Mr. Imus proposes a modification of the current proposal concerning the Rural Business zone that would allow the continued low intensity use of the site.

2. Proposal.

Mr. Imus proposes a modification clarification of the Rural Business (RB) zone proposal currently scheduled for hearing before the County Council on November 30, 1998. Our proposal adds small rural contractors as a permitted use within the Rural Business zone. Our proposal also limits the scale of permissible building contractor uses, including limits on building size and outdoor storage of materials and equipment, in keeping with rural character.

The proposed text amendment to SCC 18.32.040(A), (B) (limited Building Contractor use within the Rural Business (RB) zone) is described in Exhibit A.

3. This proposed modification is consistent with the Growth Management Act.

- Our proposed rural Building Contractor use "minimizes and contains" existing areas and uses of more intensive rural development. RCW 36.70A.070(5)(d)(iv).
    - No new pattern of sprawl.
    - Logical boundary delineated predominately by the built environment (between two state highways).
- Rural character includes rural based economics. RCW 36.70A.030(14)(b).
- Rural element provides job opportunities in rural areas. RCW 36.70A.070(5)(d)(iii).
- Restrictions on rural Building Contractor use will preserve traditional rural landscapes and environment. RCW 36.70A.030(14)(a),(c),(d).

4. The proposal is also consistent with the proposed amendments to the Snohomish County GPP as described in proposed Ords. 98-119, 120.

- Recognize existing businesses that are an integral part of rural character. Objective LU 6.F.

5. The proposal is consistent with rural character and the proposed RB zone performance standards.

- Impacts and rural character would be similar to if not less than other uses already permitted in the proposed RB zone.
    - Auto Repair-Minor.
    - Commercial Vehicle Storage (by conditional use).
    - Home Improvement Center (includes storage of materials).
    - Service Station
    - Tool Sales & Rental (would include heavy equipment).

- Incorporates RB zone performance standards (screening, signs, setback, height, impervious surface, etc.) SCC 18.65.040.

6. The proposal contains specific restrictions on the scale of rural Building Contractor office uses consistent with preservation of rural character.

- Limited to 4000 square feet floor space (similar to other rural business uses).
- Limited outdoor storage of vehicles and equipment.
- No fueling of vehicles.
- No storage of hazardous materials, wood waste, earth or fill materials.

7. This proposed amendment is within the scope of the County's existing environmental review for the Rural Business zone.

- The County analyzes environmental impacts for the proposed Rural Business zone in Section 1, Findings X, Y and Z (Ord. No. 98-121); Section 1, Findings W, X and Y (Ord. No. 98-122).
- Imus' proposed rural Building Contractor use has impacts similar to if not less intensive than the uses already proposed for the RB zone (see above).

Snohomish County
PLANNING & DEVELOPMENT SERVICES
3000 Rockefeller Avenue, M/S #604
Everett, WA 98201
(425) 388-3311 FAX (425) 388-3670

SNOHOMISH COUNTY COUNCIL
EXHIBIT # 101
FILE 96. Docket

SNOHOMISH COUNTY COUNCIL
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SKN ____ DIST 4 ____ Other ____
TCD ____ DIST 5 ____ All Staff ____

MEMORANDUM

TO: Snohomish County Council

VIA: Robert J. Drewel, County Executive (RJH for RJD)

FROM: Stephen L. Holt, Director (SLH)
Larry Springer, Planning Division Manager
Klaus Schilde, Principal Planner
Jo Perryman, Senior Planner
Joe Sparr, Senior Planner

DATE: December 7, 1998

SUBJECT: **PDS Comments on 1996 Docket Hearing Testimony**

As requested by the County Council during the hearing on the 1996 docket, PDS would like to provide comments on the code amendment proposed by Tom Ehrlichman on behalf of his clients, Richard and Charlene Imus. PDS staff would also like to take this opportunity to provide additional comments on testimony provided at the hearing. The comments are grouped by several issues that were raised at the hearing.

1. Richard and Charlene Imus proposal

PDS concurs with the proposal in principal. A building contractor with the limitations proposed would be an appropriate use within the new Rural Business (RB) zone. Specifically, the limitations proposed on outdoor storage and the general screening and landscaping requirements of the RB zone would make this an appropriate use in a rural environment. In addition, the proposal is within the scope and intent of the draft ordinances that were advertised for the public hearing.

However, PDS suggests several modifications to the proposed code amendment to provide more clarity and avoid duplication of code language. Staff also recommends that this amendment should not just apply to sites with existing uses but to any RB zoned sites. The language proposed by staff is as follows:

Add new footnote (84) to SCC 18.32.040 (Reference notes for use matrix):

(84) The building contractor 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 18.65.040.

(b) Not more than 1,000 square feet of outdoor storage of materials shall be allowed and shall be screened in accordance with SCC 18.43.050.

(c) In addition to the provisions of subsection (84)(b), not more than 5 commercial vehicles or construction machines shall be stored outdoors and shall be screened in accordance with SCC 18.43.050.

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

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

2. Proposed Rural Industrial plan designation south of Monroe

Several people testified regarding the Rural Industrial designation and its application to an area south of Monroe. PDS and the Planning Commission are proposing to re-designate this 35 acre site from Rural Residential to Rural Industrial. This site is currently zoned LI. The proposal is to designate this site on the comprehensive plan map with an RI designation, making the plan map consistent with the zoning map. The proposed plan text amendments regarding Rural Industrial (see Exhibit A, Ordinance 98-119, pp. 6-8, and Ordinance 98-120, pp. 7-9) provide for general and more specific policy guidance on the location and development of RI designated sites. The proposed code amendments provide for very specific requirements for allowed uses and site development standards. In general, the proposed RI zone would allow uses similar to the existing LI zone but with more restrictive site development standards due to its location in rural areas.

3. Rural Business zone

Testimony was provided by and on behalf of several owners who had applied for new rural commercial designations on mainly undeveloped rural properties throughout the county. In 1996, these applicants were deferred to subsequent docket years and PDS was instructed by the County Council at the time to develop new criteria and standards for rural commercial development consistent with the GMA and the policies of the County GMA Comprehensive Plan. The Rural Business (RB) zone is one of the products of the rural commercial planning effort and has been recommended for adoption by the Planning Commission. RB is a zone only, not a new comprehensive plan designation. It will not be shown on the comprehensive plan map. The plan text will, however, provide for criteria as to where this new zone may be located and how development should occur once a site is zoned.

If the County Council amends the plan and the code as recommended by PDS and the Planning Commission, the 1996 applicants for new rural commercial designations will no longer need a comprehensive plan amendment. If their proposed sites meet the criteria of the RB plan policies and zone as adopted by the County Council, they may receive RB zoning without a plan amendment. The County Council's 1996 docket decision regarding

RB pertains to plan criteria and code requirements, not to site specific rezones which may occur at a later time through the Hearing Examiner process.

4. Clearview

The Rural Activity Center (RAC) designation and zone were developed to address two issues: (1) future expansion of Clearview businesses that are currently zoned and designated for commercial uses (100 acres) and (2) requests submitted in 1996 by several property owners of 25 mostly undeveloped parcels along the SR-9 corridor that are not currently designated or zoned for commercial uses (83 acres). The RAC designation was proposed by PDS to be applied to the existing commercial plan designations with a potential future expansion to include some or all of the proposed 83 acres in a follow-up docket action.

The Planning Commission recommended not to include the RAC designation in the GPP nor include the RAC zone in the zoning code. The Commission recommended to delay adoption of the RAC designation and zone to allow more time for additional study and community involvement. PDS concurs with this recommendation and will undertake additional planning efforts in the Clearview area as directed by the County Council.

5. 132nd St./35th Ave. plan amendment and zoning

The "Intermediate Development" Alternative 2 to the Johnson/Nodland/Wibbleman proposal at 132nd Street SE and 35th Avenue SE mitigates the proposal's significant adverse impacts identified in the Supplemental EIS. This alternative was recommended for adoption by PDS and the Planning Commission. The alternative directly addresses concerns expressed by the Department of Public Works, the City of Mill Creek, and downstream property owners and residents that the original proposal would contribute to increased flood problems. The alternative does this by limiting commercial land uses to portions of the properties outside of the 100 year flood prone area identified by the applicant's consultant (Shockey/Brent) in the SEIS. The alternative will also be implemented by the Planned Community Business zone rather than the Community Business zone proposed by the applicants. This will allow the county some flexibility during development review to respond to the concerns of the cities of Mill Creek and Everett.

Exhibit 104

TOM EHRLICHMAN
ATTORNEY AT LAW

December 7, 1998

Via Hand Delivery

Snohomish County Council
c/o Mr. Kirke Sievers, Chairman
3000 Rockefeller Avenue
M/S/ 609
Everett, WA 98201

Re: Richard & Charlene Imus
Request to Modify Proposed Rural Business Zoning Amendments,
Ordinances 98-121, 98-122

Dear Councilmembers:

On behalf of our clients, Richard & Charlene Imus, we are writing to follow up on our earlier letter to you concerning a proposed change in the County's use matrix for the new Rural Business (RB) zone. As you know, we developed our proposal after meetings with County staff, with the intent of allowing the Imus family to continue operating a small general contractor business on a limited scale in the RB zone.

At the public hearing, Council requested that Planning & Development Services staff comment upon our proposal. It is our understanding that the Executive is forwarding a memorandum to you that concurs with our proposal in principle and suggests revisions to our proposed code language. We are writing to let you know that the Imus family supports and endorses the revised proposal as developed by PDS staff.

It is our understanding from meetings with PDS staff and reviewing the PDS memorandum that inclusion of the small general contractor business as a permitted use would allow rezones to RB on a case-by-case basis, including businesses like the Imus' as described in our proposal, provided the specific performance criteria can be met.

Based on our discussions with staff, it is also our understanding that our proposed change to the uses permitted in the RB zone is within the scope and intent of the draft

CENTRAL BUILDING, STE 504
1721 HEWITT AVENUE
EVERETT, WA 98201
TEL (425) 258-4212
FAX (425) 258-6202

ordinances which were advertised for the public hearing. In addition, the revised proposal is within the scope of the County's review of the RB proposal under the State Environmental Policy Act, RCW ch. 43.21C ("SEPA"). Draft Supplemental Environmental Impact Statement (DSEIS) (October 7, 1997) at 2-8; DSEIS, Attachment A at 9; DSEIS, Attachment B at 49-50.

Thank you for your consideration.

Very truly yours,

TOM

Tom Ehrlichman

cc: Mr. and Mrs. Richard Imus
Mr. Bob Drewel, County Executive
Mr. Steve Holt, Director, PDS
Ms. Barbara Dykes, Deputy Pros. Attorney
Ms. Julia Gibb, Legislative Analyst

SNOHOMISH COUNTY COUNCIL
EXHIBIT # 105
FILE 96 Docket

December 14, 1998
MEMO

TO: Councilmembers
FR: Julia Gibb, Legislative Analyst
RE: Final Adoption of 1996 Docket Ordinances

Based upon Council discussion and decisions at the December 7th continued hearing, staff recommends action on the ordinances which were introduced for hearing as follows:

1. **Ord. 98-112** GPP Amdts. (except rural commercial).

a. **Motion to amend Ord. 98-112** to incorporate changes shown on Attachment A to Exhibit 105 (this Memo). These changes approve the Crawford/Concrete Nor'west application (Map #8). The map designation changes from Local Commercial Farmland to Rural Residential-5.

b. **Motion to approve Ord. 98-112 as amended.**

2. **Motion to deny Ord. 98-113** (alternate of 98-112).

3. **Motion to approve Ord. 98-114** Arl/Msvlle UGA Amendments (Carlson, Faucett, Jensen et al, Roetcisoender).

4. **Motion to approve Ord. 98-115** Sultan UGA Amendment (PDS)

5. **Motion to deny Ord. 98-116** SW Co. UGA Amendment (Evt).

6. **Motion to approve Ord. 98-117** Rezones (PC rec). These are consistent with Council decisions in Ord. 98-112.

7. **Motion to deny Ord. 98-118** Rezones (alt. of 98-117).

8. **Ord. 98-119** GPP Rural Commercial Amendments (PC rec).

a. **Motion to amend Ord. 98-119** to incorporate changes as shown on Att. B to Exh. 105: require 600 instead of 300 dwelling units within 2 1/2 miles of an RB zone, and one mile distance to UGA for RB zones.

b. **Motion to approve Ord. 98-119 as amended.**

9. **Motion to deny Ord. 98-120** GPP Amdts. (alt. of 98-119).

10. **Ord. 98-121** Code Amendments (PC recommended)

a. **Motion to amend Ord. 98-121** to incorporate changes as shown in Attachment C to Exh. 105: adopt Higa and O'Neill applicant proposals, 600 unit radius and 1 mile distance for new RB zones, add building contractor as permitted use in RB zones on conditions, and exempt existing RB buildings from 2000 sq. ft. footprint limits.

b. **Motion to approve Ord. 98-121 as amended.**

11. **Motion to deny Ord. 98-122** (alternate of 98-121).

Amendments to Ord. 98-112 **Attachment A**

re: Mike Crawford application

1. Add following findings and conclusions to Section 1:

(New) V. The Mike Crawford proposal (Exhibit B, Figure d2) to redesignate the site from Local Commercial Agriculture (1 du/10 acres) with a Mineral Lands overlay to Rural Residential-5 (1 du/5 acres) with a Mineral Lands overlay, is appropriate because the 1) existing dual resource designation of the site is both agricultural land and mineral land; 2) extended timing of the county review of mineral resource-designated lands and development of criteria for dual designated sites leaves parcels such as the subject site vulnerable to interim residential development in the surrounding areas which could preclude later consideration of the site for mineral conservation zoning and permitting; 3) parcel size of 80 acres is more desirable for mineral excavation than the minimum 10 acre size for sites allowed under county code and 3) applicant's stated intention is to expand the sand and gravel mining site adjacent to the south boundary of the site, which has been mined since 1979.

A rural residential designation will provide the potential for greater use of sand and gravel mineral reserves on the site, and will allow application for a rezone to Mineral Conservation and conditional use permit for the site. This redesignation will continue to support resource lands use of the site through a change from one type of resource designation (agricultural) to another (mineral excavation). The site is proposed to be reclaimed as open space in the form of a man-made lake which would connect with the existing man-made lake to the south.

2. Add Figure d2 (attached) to Exhibit B of the ordinance.

3. **Re: Everett proposal to reduce the UGA at Lowell Larimer**, add to Section 1, at the end of paragraph E:

Evidence was presented to the Council that the area is already or can be provided with urban services.

4. **Re: Roetcisoender and Parkinson proposal**, add to Section 1, at the end of paragraph O:

67th Ave. NE and the Burlington Northern railway provide a natural boundary for the UGA at the site's eastern edge.

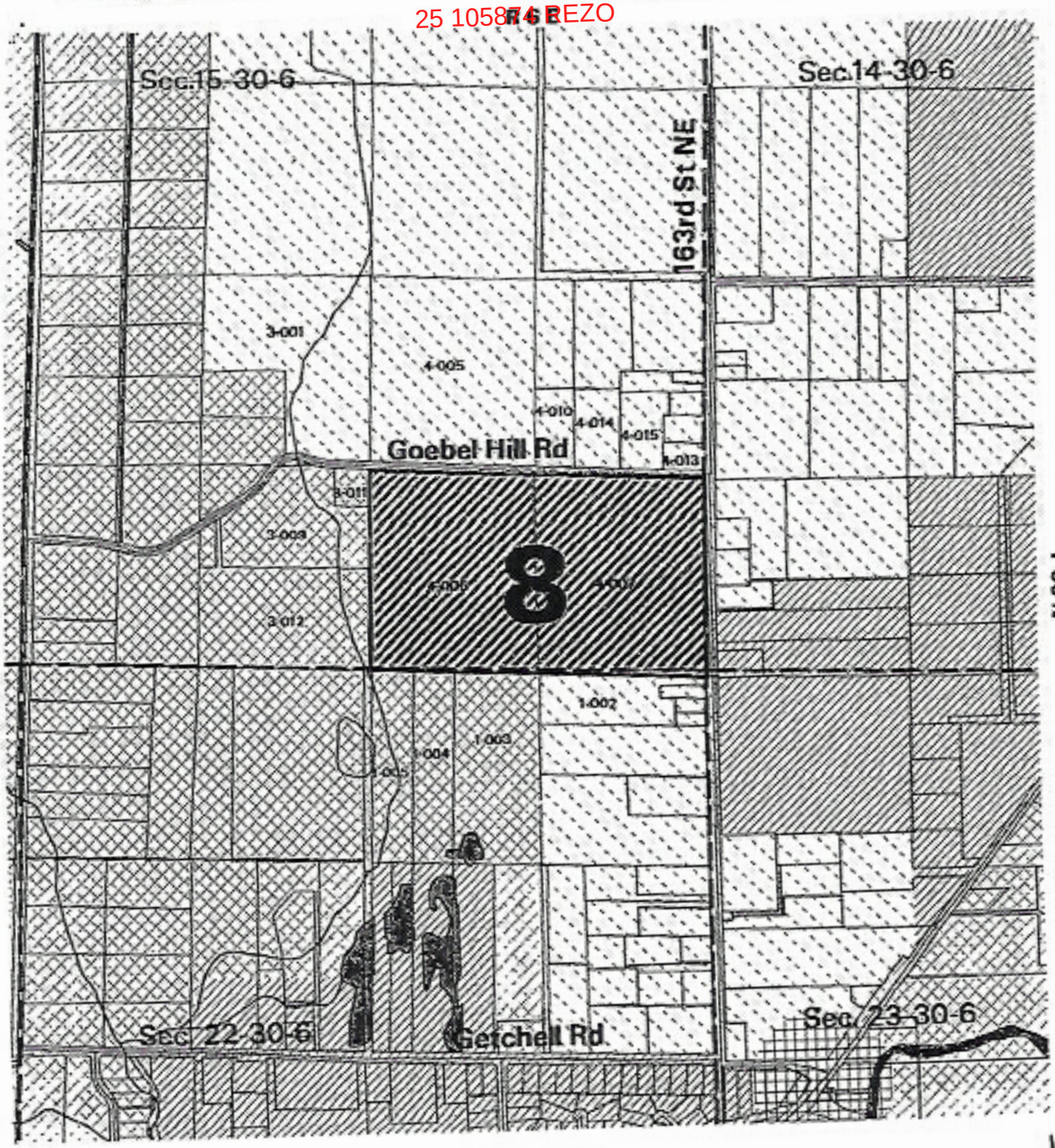


Figure d2

Proposed Comprehensive Plan Amendment - CRAWFORD (#8)

August 1997

LEGEND

Existing Plan Designations

- Local Commercial Farmland
- Rural Residential-5 (1 du/5 acres)
- Rural Residential (5-Basic)
- Rural Commercial

Proposed Plan Amendment Designations

- Crawford of Concrete Nor'West (# 8) Change from Local Commercial Farmland to Rural Residential-5 (1 du/5 acres)

- Incorporated Cities
- Existing Urban Growth Area Boundary

Produced by Snohomish County Department of Planning and Development Services, Cartography Section, GIS, Aug. 1997, lgb/pdg/cwt/addc/dcp-8.mxd

This map is a graphical representation derived from the Snohomish County Geographic Information System. It does not represent survey accuracy. Property lines are for illustrative purposes and display only generalized parcel data. Use of this map is based on the best available information as of the date shown on the map.

0 2½ 5 Miles Scale in Feet

Amendments to Ord. 98-119 Attachment B

1. Amend Exhibit A, LU 6.F.7 to read:

LU 6.F.7 ...

(a) A minimum of ~~three~~ six hundred residential dwelling units shall be located within a two and one-half mile radius of the proposed site.

...

(f) Sites shall be located no closer than one mile to a UGA boundary.

Amendments to Ord. 98-121 Attachment C

1. The Higa staff alternative proposal is approved. Section 1 of the ordinance, paragraphs K and L are amended to read:

~~"K. Higa Engineering proposes to amend the rural cluster subdivision regulations in order to allow access by private roads to the boundary of cluster developments. County staff and Higa have agreed upon amendments to allow references to the department of public works engineering design and development standards (EDDS) in Chapter 19.28 SCC. The code amendment proposal is consistent with GPP Policy LU 6.B.1 which encourages the use of the clustering technique in rural residential areas and would further implement GPP Policy LU 8.D.1 which requires that rural cluster subdivisions shall be utilized for division of rural land adjacent to designated commercial forest lands. The code amendment proposal will allow private road access to a rural cluster subdivision with the full density bonus potential of up to thirty-five percent. The code amendment proposal will continue to require that all private roads that access to the boundary of a rural cluster subdivision shall meet the EDDS.~~

~~L. The staff alternative to the Higa Engineering proposal would allow private road access to a rural cluster subdivision if no density bonus is proposed. This alternative would not encourage the use of rural cluster subdivisions in outlying rural areas that are served only by private roads. Without the incentive of a density bonus, the staff alternative would be inconsistent with GPP Policy LU 6.B.1 which encourages the use of "modest density incentives" with the clustering technique to preserve rural character.~~

"K. The amendments to SCC 19.28.020 and 32.30.040 reflect the staff alternative to the Higa Engineering proposal, as modified in a compromise with the applicant, to amend the rural cluster subdivision regulations in order to allow access by private roads to the boundary of cluster development. The staff alternative maintains consistency with GPP policies LU 6.B.1 and LU 8.D.1 The amendments maintain consistency with chapter 32.30 SCC which requires that rural cluster subdivisions adhere to the department of public works engineering design and development standards for private roads.

L. The staff alternative to the Higa Engineering proposal (as modified) will allow private roads, built to the

department of public works' engineering design and development standards, as access to the boundary of rural cluster subdivisions. The modified staff alternative responds to Higa Engineering's desire to provide the option of rural cluster subdivision to owners of property where access is provided by existing private roads or easements. The staff alternative also maintains consistency with the subdivision and short subdivision codes. The modified staff alternative is consistent with and implements GPP Policy LU 6.B.1, which encourages the use of rural cluster subdivision development in rural areas, by giving more rural property owners the option of using the cluster subdivision technique. It is also consistent with GPP Policy LU 8.D.1 which states that rural cluster subdivisions shall be utilized on rural land that is immediately adjacent to designated commercial forest lands to ensure that adjacent land uses do not interfere with commercial forest management activities. The amendments will allow a property owner adjacent to designated commercial forest land to use a private road for access to a rural cluster subdivision and will be consistent with the direction of GPP Policy LU 8.D.1 to allow only rural cluster subdivisions adjacent to designated commercial forest lands.

2. The O'Neill applicant proposal is approved. Section 1 of the ordinance, paragraph H. is amended to read:

"H. The Michael O'Neill proposal as developed by PDS staff to permit bed and breakfast establishments as a conditional use in the Forestry zone with a maximum of ~~six~~ three detached guest units of limited size is consistent with and implements GPP policy LU 6.B.4. Policy LU 6.B.4 provides direction to allow "resource dependent tourism" and "recreation-oriented" uses in rural areas on a conditional use basis provided they do not adversely impact adjoining rural areas. "Resource dependent tourism" and "recreation-oriented" uses are interpreted to include bed and breakfasts. The amendments require a conditional use permit approval process and will adequately address issues of compatibility with adjoining rural and resource lands. The amendments will establish in all zones a minimum size for each bed and breakfast outbuilding and a maximum aggregate size for all outbuildings together. The minimum size for outbuildings proposed as guest rooms will be one hundred-thirty square feet to insure that inspections will be performed on these structures. Guest room structures will be reviewed under the building, health/safety and fire codes since the building code requires a permit for any structure over one hundred-twenty square feet. There is a need for this review since members of the public will be solicited

for occupancy of these structures, as with motels. Also, the maximum aggregate outbuilding size will be ~~four thousand square feet in the Forestry zone~~ eight hundred and fifty square feet, consistent with the maximum size for a detached Accessory Apartment, in order to provide a compatibility guideline for hearing examiner review and to help maintain an appropriate scale for bed and breakfasts."

3. Reinstate 600 dwelling unit radius and one mile UGA distance for new RB zone uses as follows:

a. Section 2 of Ord. 98-121 is amended to read:

"18.12.030 Intent of zones.

...

(5) Commercial Zones.

...

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

b. Revise Section 10, SCC 18.65.020 to read:

"18.65.020 Minimum zoning criteria.

...

(2)...

(a) A minimum of ~~three~~ six hundred residential dwelling units shall be located within a two and one-half mile radius of the proposed site;

...

(e) The proposed site shall be located outside of, and no closer than one mile to an urban growth area (UGA) boundary;

..."

4. Add "building contractor" as a permitted use in the RB zone in the zoning matrix of SCC 18.32.040, with footnotes 83 and 84.

5. Add new footnote 84 to 18.32.040, building contractor use in RB zone as recommended in PDS Memo, Exhibit 101 to read:

"(84) The building contractor 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 18.65.040.

(b) Not more than 1,000 square feet of outdoor storage of materials shall be allowed and shall be screened in accordance with SCC 18.43.050.

(c) In addition to the provisions of subsection (84)(b), not more than five commercial vehicles or construction machines shall be stored outdoors and shall be screened in accordance with SCC 18.43.050.

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

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

6. Amend 18.65.020(3) to read:

"SCC 18.65.020(3) For properties that contain a commercial use permitted or otherwise allowed in the RB zone that existed on or before the effective date of this section, a rezone to RB may be approved only for that portion of the site containing the existing use and may not expand beyond the location of the existing commercial use unless the locational criteria of SCC 18.65.020(2) are met with respect to the expansion area. The locational criteria contained in SCC 18.65.020(2) and the maximum building footprint requirements of SCC 18.65.040(2) and (3) need not be met for that portion of the site containing the existing use."

SNOHOMISH COUNTY COUNCIL

EXHIBIT # O.3

FILE 25-105874 REZO

Snohomish County
Planning and
Development Services

VERIFICATION OF APPEAL RECEIVED

FILE NO(S): 25 105874 REZO, 25 105882 VAR

APPELLANT: PBSS Investments, LLC

DOCUMENT: Appeal for **PBSS/MSI RB Rezone**

I, ***Casey Gray***, Permit Technician, Planning & Development Services, certify under penalty of perjury under the laws of the State of Washington that:

1. I received in person an appeal on 4/10/2026 at 1:48pm.

1. Fees were paid by check in the amount of $500.00 on 4/10/2026 @ 1:48pm.

2. Receipt # 26402-1067259

Gray, Casey Digitally signed by Gray, Casey
DN: E=Casey.Gray@co.snohomish.wa.us, CN="Gray, Casey"
Date: 2026.04.10 14:49:56-07'00'

Signature

SNOHOMISH COUNTY COUNCIL

EXHIBIT # O.4

FILE 25-105874 REZO

SNOHOMISH COUNTY COUNCIL
SNOHOMISH COUNTY, WASHINGTON
NOTICE OF CLOSED RECORD APPEAL HEARING
SPECIAL MEETING

NOTICE IS HEREBY GIVEN that the Snohomish County Council will hold a Special Meeting closed record appeal hearing on **Friday, May 22, 2026**, at the hour of 10:30 a.m. in the Henry M. Jackson Board Room, 3000 Rockefeller Avenue, 8th Floor, Robert J. Drewel Building, Everett, Washington, in conjunction with a remote meeting platform via the following Zoom link, to consider an appeal received on April 10, 2026, from a decision of the Snohomish County Hearing Examiner dated March 27, 2026, regarding the application described below:

Zoom Webinar Information:
Join online at https://zoom.us/j/94846850772
or by telephone call 1-253-215-8782 or 1-301-715-8592

PROJECT NAME & APPLICATION FILE NO: PBSS Rural Business Rezone & Variance 25-105874 REZO 25-105880 VAR

LOCATION: 19125 State Route 9 SE, Snohomish WA, 98290

TYPE OF APPLICATION: Rezone from R-5 to Rural Business and four variances

APPLICANT: PBSS Investments, Inc

APPELLANT: PBSS Investments, Inc

NATURE OF APPEAL HEARING: Snohomish County Code Section 30.72.110 provides that the appeal will be heard at a closed record appeal hearing. **Appeal issues shall be limited to those expressly raised in the written appeal.** The appeal will be on the record with no new evidence allowed unless specifically requested by the County Council. No new appeal issues may be raised by a party of record after the close of time allowed by law for filing an appeal. Because this is not an open record hearing, members of the public who are not parties of record will not be allowed to present argument.

PRESENTATION OF ARGUMENT: Parties of record, other than the appellant, may file written arguments with the council clerk no later than 5:00 p.m. on April 29, 2026. **Arguments are limited to the issues expressed in the written appeal; no new appeal issues may be raised. The appellant** may file written rebuttal arguments with the council clerk, no later than 5:00 p.m. on May 6, 2026. **Such rebuttal is limited to the issues raised in written arguments filed by parties of record.** Arguments are encouraged to be submitted to the County Council through e-mail to contact.council@snoco.org. They may also be submitted or mailed to 3000 Rockefeller Ave., M/S 609, Everett, WA, 98201. Any party of record may present oral argument at the hearing.

AVAILABILITY OF RECORD: The record, including the written appeal statement and written arguments presented by parties of record, is available upon request at the County Council Office, at the above address. Copies of documents may also be obtained by calling the Asst. Clerk of the Council at 425-388-3901or by e-mailing contact.council@snoco.org.

WEBSITE ACCESS: Copies of the record will also be available through the council website at: https://snohomish.legistar.com/Calendar.aspx or http://www.snohomishcountywa.gov/2134/County-Hearings-Calendar.

COUNTY COUNCIL ACTION: At the conclusion of the hearing, the County Council will adopt findings and conclusions in support of its decision, which may adopt any or all of the findings and conclusions of the Hearing Examiner. The Council may affirm the Hearing Examiner's decision, may reverse the Hearing Examiner's decision, wholly or in part, or may remand the matter to the Hearing Examiner for further proceedings in accordance with the Council's findings and conclusions.

ACCOMMODATION OF DISABILITIES: Accommodations for persons with disabilities will be provided upon request. Please make arrangements at least one week prior to the hearing by calling Lisa Hickey at (425) 388-3494, (800) 562-4367 x3494, or TTY/Voice Communication 1-800-877-8339.

Dated this 15th day of April 2026.

Asst. Clerk of the Council

PUBLISH: April 17, 2026
Send Affidavit to: Council
Send Invoice to: Planning #107010

SNOHOMISH COUNTY COUNCIL

EXHIBIT # O.5

FILE 25-105874 REZO

SNOHOMISH COUNTY COUNCIL

SNOHOMISH COUNTY, WASHINGTON

AFFIDAVIT OF MAILING

PROJECT NAME FILE NO: PBSS Rural Business Rezone & Variance 25-105874 REZO 25-105880 VAR

APPLICANT: PBSS Investments, Inc

DOCUMENT: Notice of Public Hearing
E-mailed and U.S. Mailed April 15, 2026

I, Lisa Hickey, Asst. Clerk of the Snohomish County Council, certify under penalty of perjury under the laws of the State of Washington that:

1. I have been authorized by the Snohomish County Council to mail notices required by the Snohomish County Code.

2. I have made a good-faith effort to mail the above described document to each person entitled thereto. The names, mail addresses and e-mail addresses of the persons to whom said document was mailed are attached hereto.

3. I E-mailed and U.S. Mailed said document on April 15, 2026.

Signed at Everett, Washington on April 15, 2026.

Lisa Hickey
Asst. Clerk of the Council

David Toyer	david@toyerstrategic.com	**email**	**Emailed and U.S. Mailed Notice of Closed Record Appeal Hearing April 15, 2026 LH**
Jim Vogt, PBSS Investments, LLC	jim@mcclureandsons.com	**email**	
Justin Kasting, Esq.	justin.kasting@snoco.org	**email**	
Jessica Kraft-Klehm, Esq.	Jessica.Kraft-Klehm@snoco.org	**email**	
Tara Byrne	tara.byrne@snoco.org	**email**	
Peter Durland, Esq.	pdurland@gth-law.com	**email**	
Arjun Bhardwaj	abhardwaj@gth-law.com	**email**	
Jody Latimer	jody.latimer@snoco.org	**email**	
Stephanie Lyons	stephanie.lyon@snoco.org	**email**	
Joshua Machen	joshua.machen@snoco.org	**email**	
Melissa Place	melissa.place@snoco.org	**email**	
Seth Henderson	SETH.HENDERSON@SNOCO.ORG	**email**	
Christopher Drocco	christopher.drocco@snoco.org	**email**	
Erin Harker	ERIN.HARKER@SNOCO.ORG	**email**	
Peter Alm	peter.alm@wsdot.wa.gov	**email**	
Mike Johnson	mjohnson@crossvalleywater.net	**email**	
Gary Davis	gary.davis66@frontier.com	**email**	
Peter Samson	atc.clears@gmail.com	**email**	
Margaret Davis	horseygal59@yahoo.com	**email**	
Roderic Robinson	roderic.robinson@gmail.com	**email**	
Voronica Robinson	voronica@aol.com	**email**	
Jeff Holden	holdenracing@usa.com	**email**	
Les & Judy McClure	15714 Country Club Dr., Mill Creek, WA 98012	**US Mail**	

SNOHOMISH COUNTY COUNCIL

EXHIBIT # O.6

FILE 25-105874 REZO

Snohomish County

County Council

Megan Dunn
Sam Low
Nat Nehring
Jared Mead
Strom Peterson

3000 Rockefeller Avenue
Everett, WA 98201-4046
(425)388-3494
FAX (425)388-3496
TTY (800)877-8339

April 15, 2026

PBSS Investments Inc
Jim Vogt
15714 Country Club Dr
Mill Creek, WA 98012

RE: Posting of Notice
Snohomish County Council Closed Record Appeal Hearing
PBSS Investments

Mr. Vogt,

Snohomish County Code 30.72.100(4) and 30.70.045 describe posting requirements required by the applicant. Enclosed are two copies of the notice of closed record appeal hearing for the aforementioned case and two sets of "bumper stickers". These are for posting on the large signs on the subject site.

After posting, please have the posting affidavit signed and notarized and return it to me at the Council office.

If you have any questions, please call me at (425) 388-3901. Thank you.

Sincerely,

Lisa Hickey
Asst. Clerk of the Council

Encl.

SNOHOMISH COUNTY COUNCIL

EXHIBIT # O.7

FILE 25-105874 REZO

SNOHOMISH COUNTY COUNCIL
SCANNED AND RECEIVED
DATE: 04/17/26 Time 1:05 p.m.

SNOHOMISH COUNTY COUNCIL
SNOHOMISH COUNTY, WASHINGTON

This form shall be notarized, a copy of the notice attached hereto and presented to the office of the Snohomish County Council prior to the scheduled closed record appeal date.

FILE: PBSS Rural Business Rezone & Variance
File No: 25-105874 REZO; 25-105880 VAR

CLOSED RECORD APPEAL HEARING DATE: May 22, 2026 @ 10:30 a.m.

I hereby certify that I, Jim Vogt, posted the above property in two or more conspicuous places on the subject property, in accordance with the requirements of SCC 30.72.100(4).

Posted on the 15, day of April, 2026.

Dated this 15, day of April, 2026.

Print Name: Jim Vogt

Signed: Jim Vogt

Notary Signature: Judy McClure

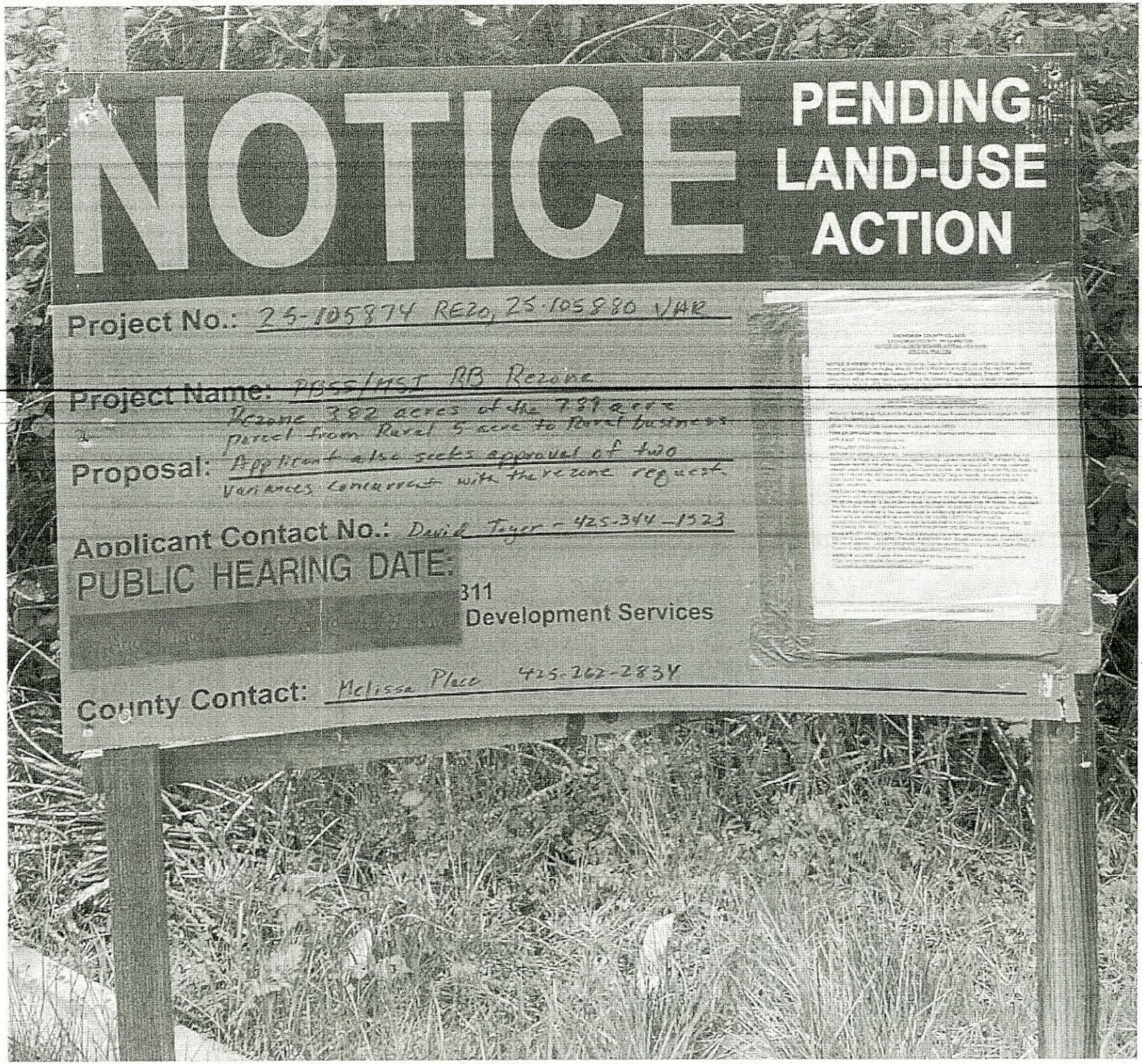
STATE OF WASHINGTON)

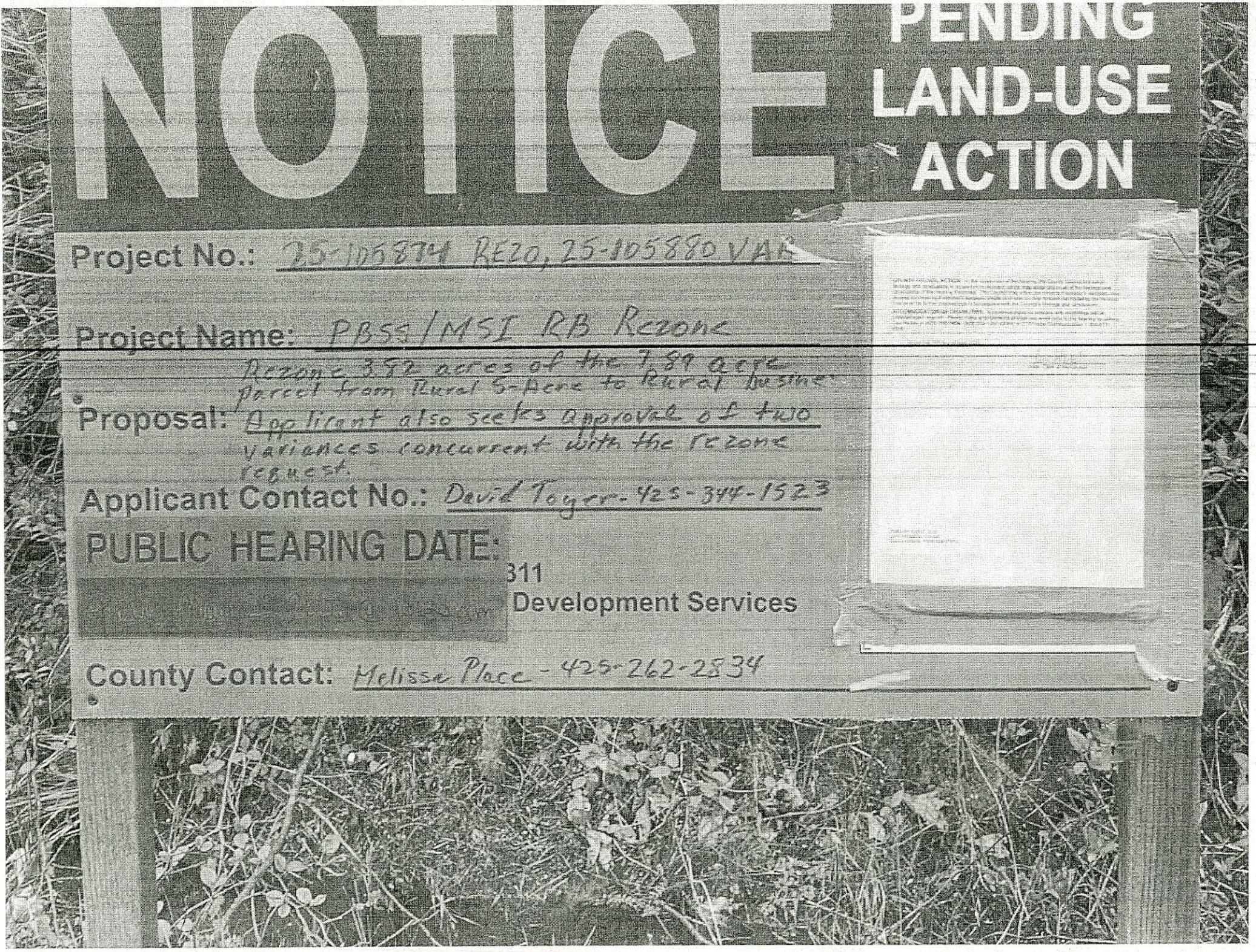
COUNTY OF SNOHOMISH)

Subscribed and sworn before me this 16 day of April, 2026.

JUDY MCCLURE NOTARY PUBLIC 48954 COMMISSION EXPIRES 5-10-28 STATE OF WASHINGTON

Notary Public in and for the State of Washington residing at Mill Creek, WA


NOTICE
PENDING
LAND-USE
ACTION
Project No.: 25-105874 REZO, 25-105880 VAR
Project Name: POSTMST RB Rezone
Proposal: Rezone 3.82 acres of the 7.39 acre
Parcel from Rural 5-acre to Rural business
Applicant also seeks approval of two
Variances concurrent with the rezone request.
Applicant Contact No.: David Tyger - 425-344-1523
PUBLIC HEARING DATE:
311
Development Services
County Contact: Melissa Place 425-262-2834


NOTICE
PENDING
LAND-USE
ACTION
Project No.: 25-105874 REZO, 25-105880 VAR
Project Name: PBSJ/MSI RB Rezone
Proposal: Rezone 3.82 acres of the 7.89 acre parcel from Rural 5-Acre to Rural Business. Applicant also seeks approval of two variances concurrent with the rezone request.
Applicant Contact No.: David Toger - 425-344-1523
PUBLIC HEARING DATE:
311
Development Services
County Contact: Melissa Place - 425-262-2534

JIM VOGT
MCCLURE + SONS, INC
15714 COUNTRY CLUB DR
MILL CREEK, WA 98012

Snohomish County Council
Lisa Hickey
3000 Rockefeller Ave. M/S #609
Everett, WA 98201

SNOHOMISH COUNTY COUNCIL

EXHIBIT # O.8

FILE 25-105874 REZO

Everett Daily Herald

Affidavit of Publication

State of Washington }
County of Snohomish } ss

Michael Gates being first duly sworn, upon oath deposes and says: that he/she is the legal representative of the Everett Daily Herald a daily newspaper. The said newspaper is a legal newspaper by order of the superior court in the county in which it is published and is now and has been for more than six months prior to the date of the first publication of the Notice hereinafter referred to, published in the English language continually as a daily newspaper in Snohomish County, Washington and is and always has been printed in whole or part in the Everett Daily Herald and is of general circulation in said County, and is a legal newspaper, in accordance with the Chapter 99 of the Laws of 1921, as amended by Chapter 213, Laws of 1941, and approved as a legal newspaper by order of the Superior Court of Snohomish County, State of Washington, by order dated June 16, 1941, and that the annexed is a true copy of EDH1029522 APPEAL HEARING as it was published in the regular and entire issue of said paper and not as a supplement form thereof for a period of 1 issue(s), such publication commencing on 04/17/2026 and ending on 04/17/2026 and that said newspaper was regularly distributed to its subscribers during all of said period.

The amount of the fee for such publication is $114.70.

Subscribed and sworn before me on this 22nd day of April, 2026.

Notary Public in and for the State of Washington.

RANDIE POSPICAL
Commission Expires 10-20-2027
NOTARY PUBLIC
License Number 23034934
STATE OF WASHINGTON

Snohomish County Planning & Development | 14107010
LISA HICKEY

SNOHOMISH COUNTY COUNCIL
SNOHOMISH COUNTY, WASHINGTON
NOTICE OF CLOSED RECORD APPEAL HEARING
SPECIAL MEETING

NOTICE IS HEREBY GIVEN that the Snohomish County Council will hold a Special Meeting closed record appeal hearing on Friday, May 22, 2026, at the hour of 10:30 a.m. in the Henry M. Jackson Board Room, 3000 Rockefeller Avenue, 8th Floor, Robert J. Drewel Building, Everett, Washington, in conjunction with a remote meeting platform via the following Zoom link, to consider an appeal received on April 10, 2026, from a decision of the Snohomish County Hearing Examiner dated March 27, 2026, regarding the application described below:

Zoom Webinar Information:
Join online at https://zoom.us/j/94846850772
or by telephone call 1-253-215-8782 or 1-301-715-8592

PROJECT NAME & APPLICATION FILE NO: PBSS Rural Business Rezone & Variance 25-105874 REZO 25-105880 VAR

LOCATION: 19125 State Route 9 SE, Snohomish WA, 98290

TYPE OF APPLICATION: Rezone from R-5 to Rural Business and four variances

APPLICANT: PBSS Investments, Inc

APPELLANT: PBSS Investments, Inc

NATURE OF APPEAL HEARING. Snohomish County Code Section 30.72.110 provides that the appeal will be heard at a closed record appeal hearing. Appeal issues shall be limited to those expressly raised in the written appeal. The appeal will be on the record with no new evidence allowed unless specifically requested by the County Council. No new appeal issues may be raised by a party of record after the close of time allowed by law for filing an appeal. Because this is not an open record hearing, members of the public who are not parties of record will not be allowed to present argument.

PRESENTATION OF ARGUMENT: Parties of record, other than the appellant, may file written arguments with the council clerk no later than 5:00 p.m. on April 29, 2026. Arguments are limited to the issues expressed in the written appeal; no new appeal issues may be raised. The appellant may file written rebuttal arguments with the council clerk, no later than 5:00 p.m. on May 6, 2026. Such rebuttal is limited to the issues raised in written arguments filed by parties of record. Arguments are encouraged to be submitted to the County Council through e-mail to contact.council@snoco.org. They may also be submitted or mailed to 3000 Rockefeller Ave., M/S 609, Everett, WA 98201. Any party of record may present oral argument at the hearing.

AVAILABILITY OF RECORD: The record, including the written appeal statement and written arguments presented by parties of record, is available upon request at the County Council Office, at the above address. Copies of documents may also be obtained by calling the Asst. Clerk of the Council at 425-388-3901or by e-mailing contact.council@snoco.org.

WEBSITE ACCESS: Copies of the record will also be available through the council website at:
https://snohomish.legistar.com/Calendar.aspx or
http://www.snohomishcountywa.gov/2134/County-Hearings-Calendar.

COUNTY COUNCIL ACTION: At the conclusion of the hearing, the County Council will adopt findings and conclusions in support of its decision, which may adopt any or all of the findings and conclusions of the Hearing Examiner. The Council may affirm the Hearing Examiner's decision, may reverse the Hearing Examiner's decision, wholly or in part, or may remand the matter to the Hearing Examiner for further proceedings in accordance with the Council's findings and conclusions.

ACCOMMODATION OF DISABILITIES: Accommodations for persons with disabilities will be provided upon request. Please make arrangements at least one week prior to the hearing by calling Lisa Hickey at (425) 388-3494, (800) 562-4367 x3494, or TTY/Voice Communication 1-800-877-8339.

Dated this 15th day of April 2026.

/s/Lisa Hickey

Asst. Clerk of the Council

107010
Published: April 17, 2026. EDH1029522