



CO00001196

SNOHOMISH COUNTY COUNCIL
SNOHOMISH COUNTY, WASHINGTON

ORDINANCE NO. 04- 050

AMENDING THE LAKE STEVENS URBAN GROWTH AREA PLAN, A COMPONENT OF THE SNOHOMISH COUNTY GROWTH MANAGEMENT ACT COMPREHENSIVE PLAN, AND AMENDING AMENDED ORDINANCE NO. 01-073

WHEREAS, chapter 30.33C of the Snohomish County Code (SCC) contains regulations implementing the Development Phasing Overlay (DPO) policies contained in the General Policy Plan (GPP) and Lake Stevens Urban Growth Area (LSUGA) Plan, both of which are elements of the Snohomish County Growth Management Act (GMA) Comprehensive Plan adopted by Amended Ordinance No. 94-125 on June 28, 1995, as thereafter amended;

WHEREAS, the DPO is an optional planning and regulatory tool designed to limit urban development within infrastructure poor areas of urban growth areas (UGAs) until adequate urban infrastructure is provided or commitments are made to provide it;

WHEREAS, the only area of the County for which application of the DPO is required under the GPP is located in the western portion the LSUGA, as detailed by policies and maps included in the SUGA Plan;

WHEREAS, on April 30, 2003, the County Council adopted Ordinance No. 03-019 and on April 9, 2003, the County Council adopted Ordinance No. 03-021, both of which amended the DPO regulations contained in chapter 30.33C SCC;

WHEREAS, the amendments adopted by Ordinance Nos. 03-019 and 03-021 (1) expanded exemptions from the DPO to include developments generating 50 or fewer peak hour trips; (2) eliminated the requirement restricting the quasi-judicial process for removing the DPO to developments of 40 or more acres; and (3) streamlined the process for removing the DPO by areawide rezone;

WHEREAS, the Council's decision to eliminate the 40-acre minimum required to remove the DPO through quasi-judicial rezones was based on citizen testimony and record evidence indicating that the requirement (1) bears no relation to the central purpose of the DPO, which is to condition the approval of urban development on the availability of necessary facilities; (2) imposes unfair hardship on owners of smaller property who are willing to fund the necessary facilities required to serve proposed developments; and (3) discourages urban growth and economic development in Lake Stevens by reducing the availability of capital needed to fund required projects and making it more to obtain project financing;

WHEREAS, on April 30, 2003, the County Council adopted Amended Ordinance No. 03-020, which adopted an areawide rezone removing the DPO from a portion of the LSUGA Plan;

WHEREAS, following adoption of Ordinance Nos. 03-019 and 03-021 and Amended Ordinance No. 03-020, Citizens for Responsible Growth, Jody McVittie, and Ruth Brandal filed petitions challenging the ordinances with the Central Puget Sound Growth Management Hearings Board (Board);

WHEREAS, on December 9, 2003, the Board issued its Final Decision and Order in *Citizens for Responsible Growth et al. v. Snohomish County (Citizens for Responsible Growth)*, CPSGMHB Case No. 03-3-0013, which remanded Ordinance Nos. 03-019 and 03-021 on the grounds that the 50 peak hour trip exemption, the elimination of the 40-acre minimum required for removal of the DPO through quasi judicial rezones, and amendments to the areawide rezone process were noncompliant with the GMA;

WHEREAS, the Board's order in *Citizens for Responsible Growth* found the 50 peak hour trip exemption to be substantively non-compliant and invalid under RCW 36.70A.020(12), but the Board's holding with respect to elimination of the 40-acre minimum required for quasi-judicial rezones was based solely on inconsistency with portions of the LSUGA Plan that mention the 40-acre minimum in discussing the 2001 DPO ordinance; and

WHEREAS, the Board's order in *Citizens for Responsible Growth* held that the areawide rezone adopted by Amended Ordinance No. 03-020 complied with the GMA, but the Board ordered the County to update the DPO maps included in the LSUGA Plan "no later than its next annual Plan review cycle" to reflect areas from which the DPO has been removed following adoption of the LSUGA Plan in 2001.

NOW, THEREFORE, BE IT ORDAINED:

Section 1. The County Council adopts and incorporates the foregoing recitals as findings and conclusions.

Section 2. The County Council makes the following additional findings and conclusions:

- A. The amendments adopted by this ordinance update the DPO maps included in the LSUGA Plan. These amendments also revise background discussion included in the LSUGA Plan to reflect testimony and record evidence indicating that the 40-acre minimum required for removal of the DPO through quasi-judicial rezones unnecessarily discourages urban growth and economic development within UGAs. Through this amendment, the County has cured the inconsistency identified by the Board's decision in *Citizens for Responsible Growth* between the LSUGA Plan and the provision of Ordinance No. 03-019 eliminating the 40-acre restriction.
- B. The amendments adopted by this ordinance are consistent with the GPP, which requires the County to:

1. Phase land development and the provision of public facilities and services within portions of UGAs that lack adequate infrastructure, as determined by an adopted subarea plan. See GPP Objective LU 2.C.
 2. Where feasible, identify growth phasing areas within UGA plans to encourage compact urban development and efficient, adequate service provision. See GPP Policy LU 2.C.1.
 3. Where appropriate, use urban growth phasing to direct development first in areas where existing infrastructure capacity is available before extending infrastructure into predominantly undeveloped areas. See GPP Policy LU 2.C.2.
 4. Concurrency requirements for land development in unincorporated areas shall be pursued by considering adopted level of service standards and the financial resources available to make needed transportation improvements for county roads. See GPP Policy TR 5.A.4.
- C. A public hearing was held before the County Council on May 12, 2004, which meets state and local public participation requirements for an ordinance adopted in response to a board remand.
- D. Pursuant to the State Environmental Policy Act (SEPA), chapter 43.21C RCW and chapter 30.61 SCC, the Snohomish County Environmental Review Ordinance, the County issued Addendum No. 34 on November 21, 2002. The County conducted environmental review of the original amendments through issuance of Addendum No. 34 on November 21, 2002. The Addendum is based on previous environmental review of the DPO conducted by Addendum No. 21 to the Final Environmental Impact Statement (FEIS) for the County's GMA Comprehensive Plan, which was issued on October 27, 2000. Environmental review of this ordinance is also supported by environmental review completed for the LSUGA Plan.
- E. The requirements of chapter 30.61 SCC and SEPA with respect to this proposed action have been satisfied by the aforementioned documents.
- F. This ordinance is adopted pursuant to the GMA, chapter 36.70A RCW, the Snohomish County Charter, and the Washington State Constitution, art. XI, sec. 11.

Section 3. The County Council bases its findings of facts and conclusions on the entire record before the County Council, including all testimony and exhibits relating to these amendments, as well as the entire record before the County Council and Planning Commission for the adoption of Ordinance Nos. 03-019 and 03-021 and Amended Ordinance No. 03-020.

Section 4. Based on the foregoing findings and conclusions, the LSUGA Plan, adopted as Exhibit A to Amended Ordinance No. 01-073 on November 7, 2001, and last amended by Ordinance No. 02-092 on January 13, 2003, is hereby amended and Figure 8A-1 (Red/Green Area—Roads) is replaced by Exhibit A (Amendments to Figure 8A-1 of Lake Stevens UGA Plan Adopted in Response to the Board's Order in *Citizens for Responsible Growth*), which is attached hereto and incorporated herein by this reference as though set forth in full.

Section 5. Based on the foregoing findings and conclusions, the LSUGA Plan, adopted as Exhibit A to Amended Ordinance No. 01-073 on November 7, 2001, and last amended by Ordinance No. 02-092 on January 13, 2003, is hereby amended and Figure 8A-2 (Red/Green Area—Surface Water) is replaced by Exhibit B (Amendments to Figure 8A-2 of the Lake Stevens UGA Plan Adopted in Response to the Board's Order in *Citizens for Responsible Growth*), which is attached hereto and incorporated herein by this reference as though set forth in full.

Section 6. Based on the foregoing findings and conclusions, the LSUGA Plan, adopted as Exhibit A to Amended Ordinance No. 01-073 on November 7, 2001, and last amended by Ordinance No. 02-092 on January 13, 2003, is hereby amended and Figure 8-4 (Red/Green Areas) is replaced by Exhibit C (Amendments to Figure 8-4 of the Lake Stevens UGA Plan Adopted in Response to the Board's Order in *Citizens for Responsible Growth*), which is attached hereto and incorporated herein by this reference as though set forth in full.

Section 7. Based on the foregoing findings and conclusions, the LSUGA Plan, adopted as Exhibit A to Amended Ordinance No. 01-073 on November 7, 2001, and last amended by Ordinance No. 02-092 on January 13, 2003, is hereby amended as indicated in the text amendments set forth in Exhibit D (Text Amendments to the Lake Stevens UGA Plan Adopted in Response to the Board's Order in *Citizens for Responsible Growth*), which is attached hereto and incorporated herein by this reference as though set forth in full.

Section 8. Severability and Savings. If any section, sentence, clause, or phrase of this ordinance shall be held to be invalid or unconstitutional by the Growth Management Hearings Board (Board), or court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance. Provided, however, that if any section, sentence, clause or phrase of this ordinance is held to be invalid by the Board or court of competent jurisdiction, then the section, sentence, clause or phrase in effect prior to the effective date of this ordinance shall be in full force and effect for that individual section, sentence, clause or phrase as if this ordinance had never been adopted.

PASSED this 12th day of May, 2004.

SNOHOMISH COUNTY COUNCIL
Snohomish County, Washington

John M. Koster
Chairperson

ATTEST:

Sheila McCallister
Asst. Clerk of the Council

- APPROVED
- EMERGENCY
- VETOED

DATE: 5/27/04

[Signature]
For Snohomish County Executive

ATTEST: Connie McNeill

Approved as to form only:

[Signature]
Brent D. Lloyd
Deputy Prosecuting Attorney





D-10

EXHIBIT A

Amendments to Figure 8A-1 of the Lake Stevens UGA Plan

Red/Green Area- Roads

January 2004

-  Incorporated City
-  Green Area
-  Red Area
-  UGA Boundary

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This map is a graphic representation derived from
 the Crohamith County Geographic Information
 System. It does not represent current accuracy.
 This map is based on the best available information
 as of the date shown on the map.

For the purpose of land use applications, review,
 and determination of boundaries will be based on
 the 19th floor corner maps.
 Produced by Crohamith County Department
 of Planning and Development Services.

0 2000 4000 Feet



Figure 8A-1

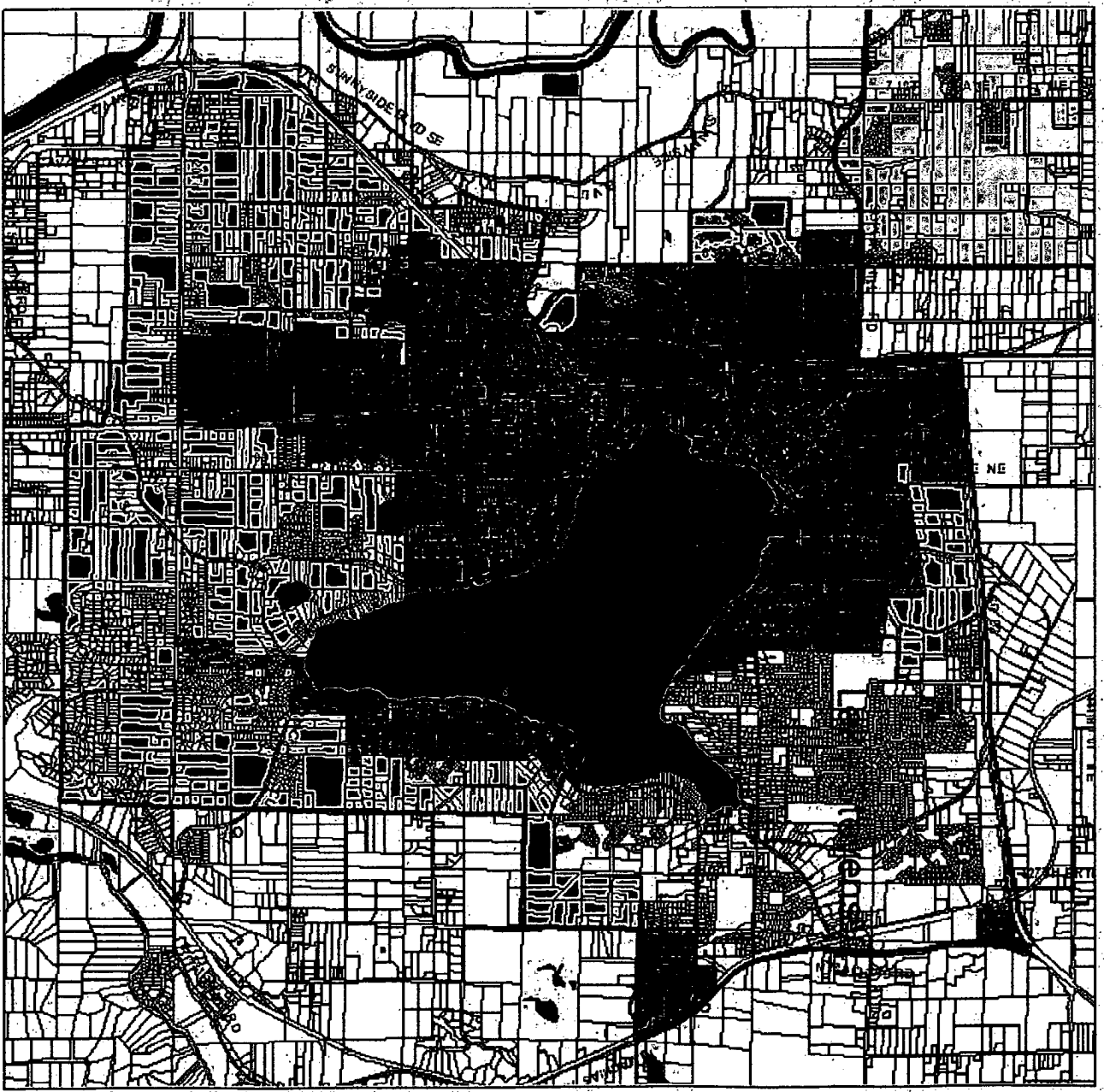






EXHIBIT B

Amendments to Figure 8A-2 of the Lake Stevens UGA Plan

Red/Green Area- Surface Water

January 2004

-  Incorporated City
-  Green Area
-  Red Area
-  UGA Boundary

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This map is a graphic representation derived from the Crohamlin County Geographic Information System. It does not represent survey accuracy. This map is based on the best available information as of the date shown on the map.

For the purpose of official application review, final determination of boundaries, shall be made from the 1/10" to 1" contour map.

Produced by Crohamlin County Department of Planning and Development Services.

0 2000 4000 Feet

Figure 8A-2

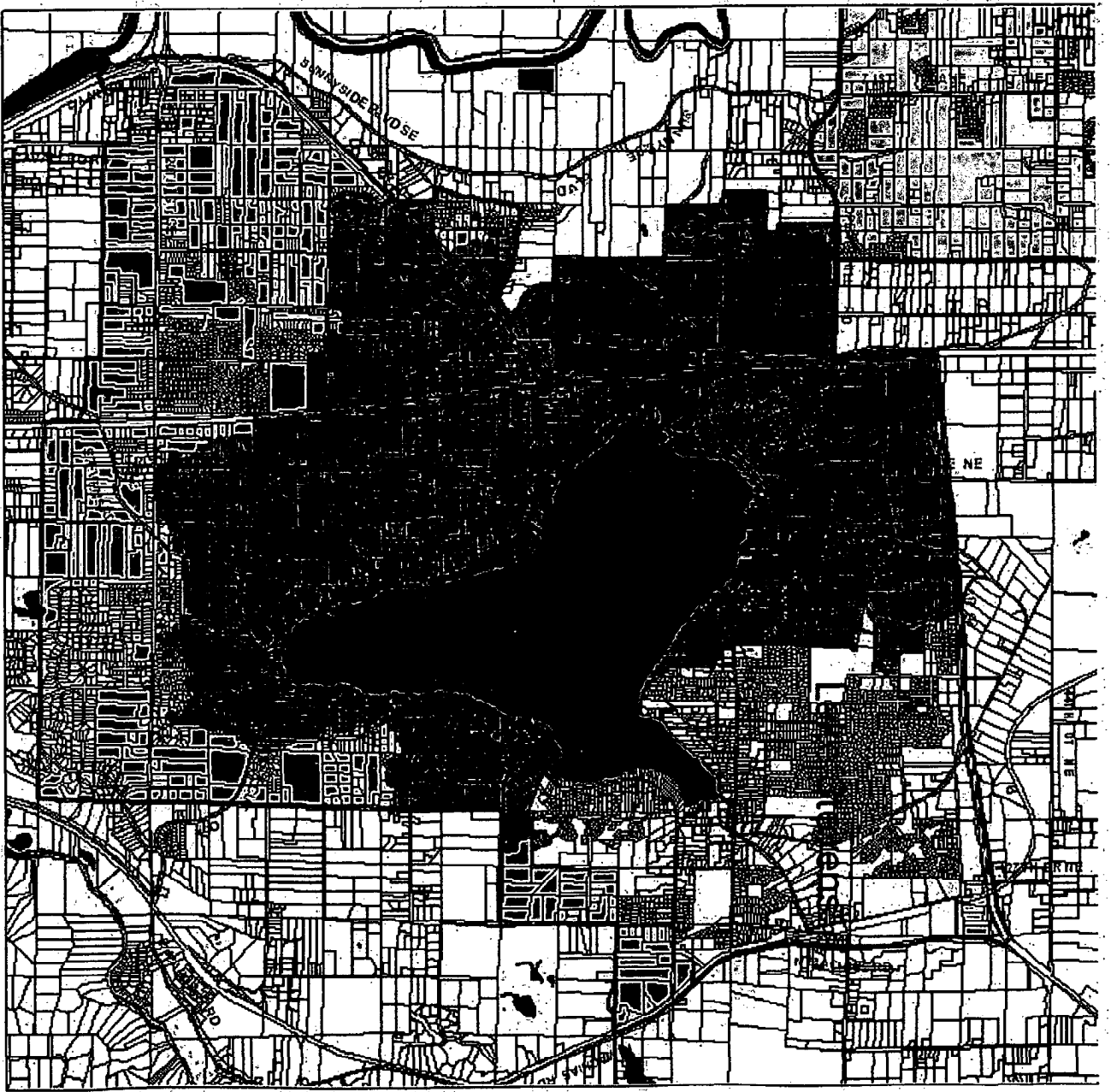


EXHIBIT C

Amendments to Figure 8-4 of the Lake Stevens UGA Plan

Red/Green Areas

January 2004

- Incorporated City
- Green Area
- Red Area
- UGA Boundary

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This map is a graphic representation derived from
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System. It does not represent survey accuracy.
This map is based on the best available information
as of the date shown on the map.

For the purpose of land use application review,
final determination of boundaries will be made from
the final plat counter maps.

Produced by Chatham County Department
of Planning and Development Services.

0 2000 4000 Feet

Figure 8-4

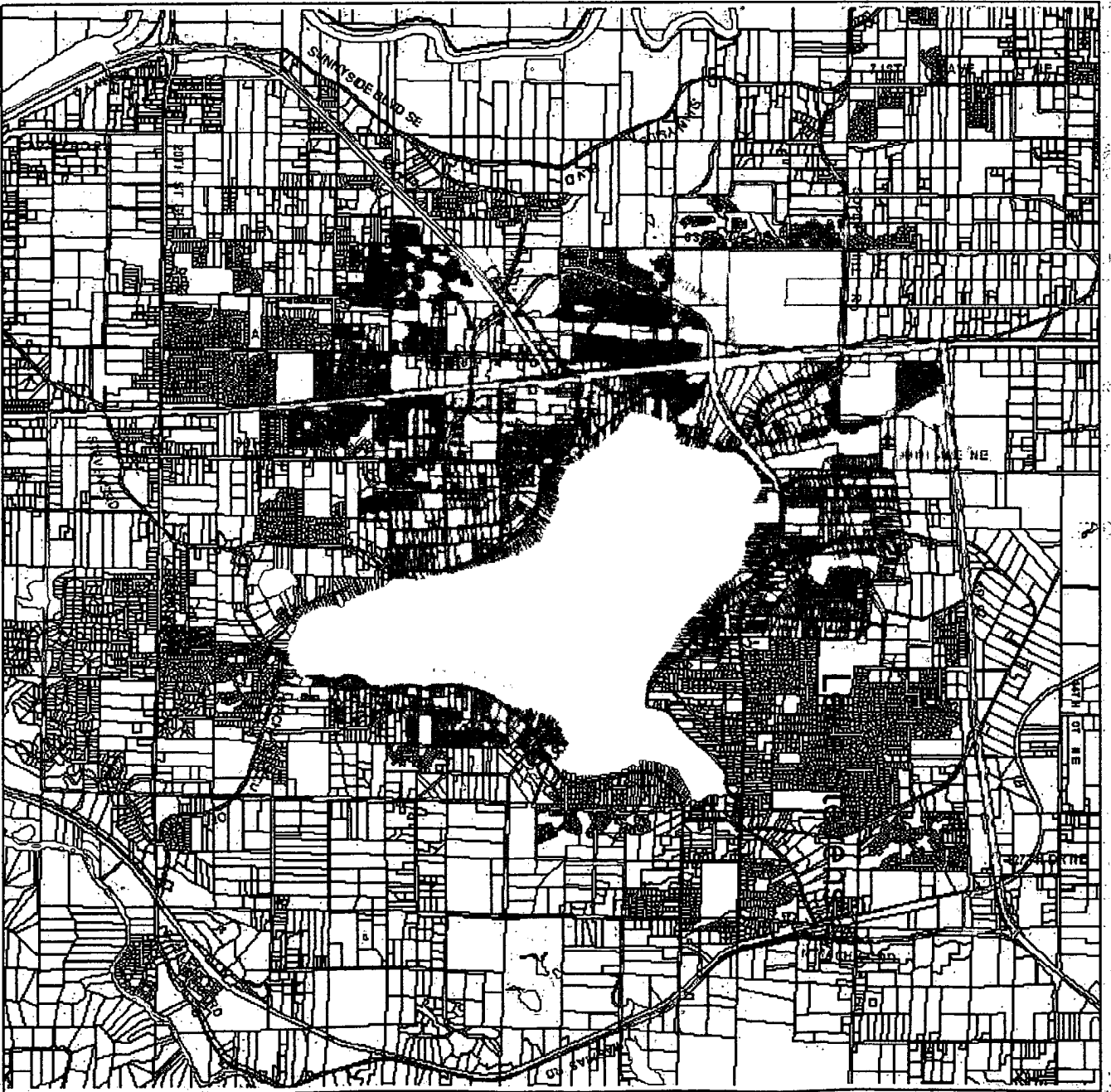


EXHIBIT D

Text Amendments to the Lake Stevens UGA Plan Adopted in Response to an Order of the Central Puget Sound Growth Management Hearings Board

The portion of the chapter entitled "Capital Facilities and Utilities" that appears under the heading "4. The DPO Ordinance Governs Acceptance of Applications for Urban Development" and precedes the heading "5. Monitoring" and which appears on pages 8-26 and 8-27 of the *Lake Stevens UGA Plan for The Unincorporated Urban Growth Area*, last amended by Ordinance No. 02-092 on January 13, 2003, is amended to read as follows:

4. The DPO Ordinance Governs Acceptance of Applications for Urban Development

Concurrent with this plan a DPO ordinance was developed, which was subsequently amended in April 2003 and May 2004. The ordinance basically works in the following way. Within an adopted DPO, the County will not accept an application for urban development (i.e., applications for residential development such as subdivisions and rezones, or any commercial/industrial use; single family buildings on existing lots would still be allowed) until the County removes the DPO.

All or portions of DPO area may be removed through updates to a UGA plan, or through a standard quasi-judicial rezone process proposed by an individual or group. Originally, ((F))the minimum acreage for a proposal to remove the DPO by quasi-judicial rezone was ((is)) 40 acres, with an allowance for smaller areas to be considered under limited circumstances. However, evidence demonstrated that the 40-acre restriction bore no relation to the DPO's fundamental purpose of ensuring the availability of adequate facilities and that it unnecessarily curtailed urban growth and economic development by limiting the availability of capital necessary to fund required facilities and making it more difficult to obtain project financing. The restriction was also perceived as unfair to smaller property owners who were willing to fund the facilities necessary to serve their proposed developments. Based on these considerations, the County subsequently eliminated the 40-acre restriction for quasi-judicial rezones. ((although smaller areas may be considered if the proposed boundary is logical, extension of facilities can occur in logical way and is adjacent to an area that is not in a DPO suffix. In general the process for lifting the DPO is as follows:))

In general the process for lifting the DPO is as follows:

1. A determination is made as to the facilities required for removal. Administrative rules will guide the creation of a list of facilities. This list can be comprised of projects from the UGA, SEPA and a concurrency determination.
2. The Director of PDS (in consultation with DPW and Parks) makes a Finding of Adequacy.

The finding of adequacy includes the following criteria:

- The applicant has provided evidence that the necessary facilities will be provided or financed, or are shown in the county capital improvement program.

- Facilities must be committed for construction within 3 years for all developments. The Director of PDS may grant an additional extension of 3 years.
- ~~((• All proposals must be 40 acres in size. Smaller areas may be considered if they are a logical grouping and adjacent to a "green" area.))~~
- The project must be deemed concurrent.
- Alternative technical solutions may be considered.

3. The Finding of Adequacy is submitted to the Hearing Examiner. The Hearing Examiner is responsible for conducting a public hearing and making a decision to remove all or portions of the DPO from the County's Official Zoning map. The Hearing Examiner shall base any action taken regarding the DPO on the Director's finding of adequacy of capital facilities. The Hearing Examiner may impose conditions of approval on any development within the area proposed to be lifted, to ensure that necessary capital facilities are operational. These conditions may include, but are not limited to, limitations on the density and intensity of development and restrictions on the timing of occupancy and development. The conditions imposed would be pursuant to adopted policies and regulations. The Hearing Examiner's decision may be appealed to Council.

4. Upon approval the applicant may apply for subdivision or building permits. All other County codes and SEPA still apply.

The Director of PDS is authorized to develop administrative rules, policies, procedures, and criteria for the actual operation of the DPO ordinance. These administrative rules, policies, etc...are not regulatory, but they provide direction to the Director in the application of the ordinance requirements. The departmental procedures include criteria to be used to certify adequate capital facilities in the areas of surface water and transportation. Procedures for releasing the DPO and what the Director should consider during the application review are also included. The initial administrative rules, policies, and procedures will be issued within 120 days from the effective date of the ordinance, and will be available to the public.