



CO00029725

ORDINANCE NO. 80-115

PERTAINING TO GENERAL COUNTY
GOVERNMENT INCLUDING THE CREATION OF THE OFFICE OF HEARING EXAMINER
FOR THE PURPOSE OF PROVIDING FOR A HEARING PROCESS FOR
LAND USE DEVELOPMENT PROPOSALS AND OTHER QUASI-JUDICIAL HEARINGS

BE IT ORDAINED:

Section 1. A new chapter is added to the Snohomish County Code
entitled Hearing Examiner, SCC Chapter 2.02, to read as follows:

CHAPTER 2.02 HEARING EXAMINER

Sections:

- 2.02.010 Purpose
- 2.02.020 Creation of Hearing Examiner
- 2.02.030 Appointment and Terms
- 2.02.040 Qualifications
- 2.02.050 Removal
- 2.02.060 Freedom from Improper Influence
- 2.02.070 Conflict of Interest
- 2.02.080 Organization
- 2.02.090 Rules
- 2.02.100 Powers
- 2.02.110 Applications
- 2.02.120 Master Applications
- 2.02.130 Report of Department
- 2.02.140 Public Hearing
- 2.02.150 Examiner's Decision
- 2.02.160 Notice of Examiner's Decision
- 2.02.170 Appeal from Examiner's Decision
- 2.02.180 Council Consideration
- 2.02.190 Effect of Council Action
- 2.02.200 Examiner's Report to Council and
Planning Commission
- 2.02.210 Interlocal Agreements

2.02.010 Purpose. The purpose of this chapter is to establish a quasi-judicial hearing system which will ensure procedural due process and appearance of fairness in regulatory hearings and will provide an efficient and effective hearing process for quasi-judicial matters.

2.02.020 Creation of hearing examiner. Pursuant to those powers inherent in the home rule charter county, the office of Snohomish County hearing examiner, hereinafter referred to as examiner, is hereby created. The examiner shall interpret, review and implement land use regulations as provided by ordinance and may perform such other quasi-judicial functions as are delegated by ordinance. Unless the context requires otherwise, the term examiner as used herein shall include deputy examiners and examiners pro-tem.

2.02.030 Appointment and terms. The council shall appoint the examiner and any deputy examiners for terms which shall initially expire one year following the date of original appointment and thereafter expire four (4) years following the

date of each reappointment. The council may also by professional service contract appoint for terms and functions deemed appropriate by the council, examiners pro-tem to serve in the event of absence or inability to act of the examiner or deputy examiners.

2.02.040 Qualifications. Examiners shall be appointed solely with regard to their qualifications for the duties of their office and will have such training and experience as will qualify them to conduct administrative or quasi-judicial hearings on regulatory enactments and to discharge such other functions conferred upon them. Examiners shall hold no other elective or appointive office or position in county government.

2.02.050 Removal. An examiner may be removed from office for cause by the affirmative vote of the majority of the council.

2.02.060 Freedom from improper influence. No person, including county officials, elected or appointed, shall attempt to influence an examiner in any matter pending before him, except at a public hearing duly called for such purpose, or to interfere with an examiner in the performance of his duties in any other way; provided, that this section shall not prohibit the county prosecuting attorney from rendering legal service to the examiner upon request.

2.02.070 Conflict of interest. No examiner shall conduct or participate in any hearing, decision or recommendation in which the examiner has a direct or indirect substantial financial or familial interest or concerning which the examiner has had substantial prehearing contacts with proponents or opponents. Nor, on appeal from an examiner decision, shall any member of the council who has such an interest or has had such contacts participate in consideration thereof.

2.02.080 Organization. The office of the examiner shall be under the administrative supervision of the examiner and shall be separate and not a part of the executive branch and shall be considered a part of the county council support staff for purposes of budget consideration.

2.02.090 Rules. The examiner shall have the power to prescribe rules for the scheduling and conduct of hearings and other procedural matters related to the duties of his office. Such rules may provide for cross examination of witnesses.

2.02.100 Powers. The examiner shall receive and examine available information, conduct public hearings and prepare a record thereof and enter decisions on all matters for which jurisdiction is assigned by county ordinance. The examiner's decision shall be a final decision subject to appeal to the council or court. The nature of the examiner's authority shall be as specified in this chapter and in each ordinance which grants jurisdiction.

2.02.110 Applications. Applications for permits or approvals within the jurisdiction of the examiner shall be presented to the appropriate county department as specified by the ordinance governing the application. The department of community affairs shall be responsible for assigning and/or coordinating hearing dates and assuring that due notice of public hearing is given for each application, which notice shall be in accordance with the statute or ordinance governing the application.

2.02.120 Master application. Any person proposing a land use project which would require more than one of the permits or approvals over which the examiner has jurisdiction, may submit a

master application to the department of community affairs on forms furnished by the department containing all necessary information. The master application shall thereafter be jointly processed by the examiner subject to the most lengthy time limitation applicable to any of the required permits or approvals. If the examiner's decision on any of the required permits or approvals would be final subject to appeal to the council, then the decision of the examiner on the master application shall be final subject to appeal to the council.

2.02.130 Report of department.

(1) The department of community affairs shall coordinate and assemble the reviews of the other county departments and governmental agencies having an interest in the subject application when the application deals with a land use matter and shall prepare a report summarizing the factors involved and the department's findings and recommendations.

(2) Where the hearing to be conducted before the examiner concerns a matter evolving from a statute or ordinance other than one dealing with land use matters, the department involved shall be responsible for preparing a report summarizing the factors involved and the department's findings and recommendations.

(3) At least seven (7) calendar days prior to the scheduled hearing, the report shall be filed with the examiner and copies thereof shall be mailed to the applicant and made available for public inspection. Copies thereof shall be provided to interested parties upon payment of reproduction costs.

2.02.140 Public hearings. Prior to rendering a decision on any matter, the examiner shall hold at least one public hearing thereon. Notice of the time and place of the public hearing shall be given as required by county ordinance. At the commencement of the hearing the examiner shall give oral notice regarding the register as provided for in Section 2.02.160.

2.02.150 Examiner's decision. Within fifteen (15) calendar days of the conclusion of a hearing, unless a longer period is agreed to in writing or verbally on the record at a public hearing by the applicant, the examiner shall render a written decision which shall include at least the following:

(1) Findings based upon the record and conclusions therefrom which support the decision. Such findings and conclusions shall also set forth the manner by which the decision would carry out and conform to the county's comprehensive plan, other official policies and objectives and land use regulatory enactments (land use matters only).

(2) A decision on the application which may be to grant, grant in part, return to the applicant for modification, deny or grant with such conditions, modifications, restrictions as the examiner finds necessary to make the application compatible with its environment, the comprehensive plan, other official policies and objectives, and land use regulatory enactments as applicable.

3) A statement which indicates the procedure for appealing an examiner decision

2.02.160 Notice of examiner's decision. Not later than five (5) calendar days following the rendering of a written decision, copies thereof shall be mailed to the applicant and other parties of record in the case. "Parties of Record" shall include the applicant and all other persons who specifically request notice

of decision by signing a register provided for such purpose at the public hearing.

2.02.170 Appeal from examiner's decision.

(1) A decision of the examiner shall be final and conclusive unless appealed as set forth in the ordinance governing the applicable permit. Where the examiner's decision is appealable to the council, the examiner's decision shall be final and conclusive unless within ten (10) calendar days following the rendering of such decision an appeal therefrom is filed with the department of community affairs by the applicant, a department of the county or other interested person or agency. Appeals filed with the department of community affairs shall be in writing, shall contain a brief statement of the reason why error is assigned to the examiner's decision, and shall be accompanied by a fee of twenty-five dollars (\$25.00); PROVIDED, that such appeal fee shall not be charged to a department of the county or to other than the first appellant.

(2) If the appeal is to the council, the timely filing of an appeal shall stay the effective date of the examiner's decision until such time as the appeal is adjudicated or withdrawn.

(3) Within seven (7) calendar days following the timely filing of an appeal with the department of community affairs, notice thereof and of the date, time and place for council consideration shall be mailed by the examiner's office to the applicant and to all other parties of record. Such notice shall additionally indicate the deadline for submittal of written comments as prescribed in Section 2.02.180.

(4) Where the examiner's decision is final and conclusive, unless appealed to court, the procedures for appeal are as set out in the underlying ordinance or statute governing the land use permit or other quasi-judicial hearing.

2.02.180 Council consideration.

(1) An examiner decision which has been timely appealed pursuant to Section 2.02.170 shall come on for council consideration in open public meeting no sooner than fourteen (14) nor longer than twenty-eight (28) calendar days from the date an appeal was filed. The council shall consider the matter based upon the written record before the examiner, the examiner's decision, the written appeal and any written comments received by the council before closure of the council's office on the next to last working day prior to the date set for council consideration; PROVIDED, that the council may publically request additional information of the applicant, the examiner, the county department or other interested parties.

(2) The council may concur with the findings and conclusions of the examiner and decline to hear the appeal; or the council may determine to hear the appeal at public hearing; or the council may remand the decision to the examiner for further hearing.

(3) In those instances in which the council determines to conduct a public hearing, notice thereof shall be given pursuant to council rules and written notice shall also be given to all parties of record by the council. Any such hearing before the council shall be de novo. The decision of the council shall be supported by findings and conclusions.

2.02.190 Effect of council action. The council's decision not to hear an appeal or the council's decision after public

hearing on an appeal, shall be final and conclusive unless an application is made to a court of competent jurisdiction by writ of certiorari, writ of prohibition or writ of mandamus within thirty (30) calendar days of final county action.

2.02.200 Examiner's report to council and planning commission. The examiner shall report in writing to and meet with the Snohomish County council and the planning commission at least semi-annually for the purpose of reviewing the administration of the county's land use policy and regulatory ordinances. Such report shall include a summary of the examiner's decisions since the last report.

2.02.210 Interlocal agreements. The examiner may provide services similar to those prescribed herein for other municipalities when authorized by interlocal agreement.

Section 2. A new subsection 9.12.090(1)(f) is added to the Snohomish County Code and reads as follows:

(f) A statement that the notice of violation may be appealed to the hearing examiner by filing written notice of appeal, in duplicate, with the department of community affairs within fifteen (15) calendar days of service of the notice of violation and that the per diem civil penalty shall not accrue during the pendency of such administrative appeal.

Section 3. Subsections of 9.12.100 which now read:

(1) Any person appealing from Sections 9.08.070 or 9.12.090 within this title shall file in writing with the Snohomish County zoning adjustor and within twenty (20) days of the notice of adverse action, a written appeal containing:

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(2) Upon filing an appeal, a place and time for hearing, not more than thirty (30) days from such notice of appeal shall be set by the zoning adjustor.

(3) Failure of any person to file an appeal in accordance with section above shall constitute a waiver of his right to an administrative hearing.

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(5) The Snohomish County zoning adjustor shall preside personally or by means of his appointed representative over all appeals authorized within this title, and he or his appointed representative shall have the power and authority to make all final determinations in matters brought before him under this title including the authority to alter, modify, reverse or affirm the violations appealed from. The director of the animal control agency and his officers shall have the burden of proving the violation, which burden shall be met by a preponderance of the evidence.

(6) A copy of the final order shall be mailed to the appeal's parties of record within three (3) days, exclusive of Saturdays, Sundays, and holidays, following the entering of a written order under this section.

(7) An order by the zoning adjustor relating to an appeal under this section shall be final and conclusive unless within

ten (10) days from the date thereof any party of record makes application to a court of competent jurisdiction.

are amended to read as follows:

(1) Any person appealing from the issuance of any license required by this title, the denial of a license pursuant to section 9.08.070 or the issuance of a notice of violation pursuant to section 9.12.090 shall file in duplicate with the department of community affairs within fifteen (15) calendar days of the date of the decision being appealed a written appeal containing:

. . . .

(2) Upon filing an appeal, a place and time for hearing, not more than thirty (30) calendar days from such notice of appeal shall be set by the department of community affairs. Notice of the date, time and place of the hearing shall be mailed to the appellant, the licensee and any known interested party of record by the department of community affairs at least fifteen (15) calendar days prior to the hearing date. The appeal shall be processed in accordance with the provisions of Chapter 2.02, Snohomish County Code.

(3) Failure of any person to file an appeal in accordance with Section (1) above shall constitute a waiver of his right to an administrative hearing.

. . . .

(5) The hearing examiner shall preside personally or by means of his appointed representative over all appeals authorized within this title, and he or his appointed representative shall have the power and authority to make all final determinations in matters brought before him under this title including the authority to alter, modify, reverse, or affirm the violations appealed from. The director of the animal control agency and his officers shall have the burden of proving the violation, which burden shall be met by a preponderance of the evidence.

(6) An order by the hearing examiner relating to an appeal under this section shall be final and conclusive unless appealed to the council pursuant to Chapter 2.02 SCC.

Section 4. Section 18.08.190 Conditional Use, of the Snohomish County Code which now reads as follows:

18.08.190 Conditional use. "Conditional use" means a use listed among those classified in any given use zone but permitted to locate only after review by the board of adjustment, or zoning adjustor if there be such, and the granting of a conditional use permit imposing such performance standards as will make the use compatible with other permitted uses in the same vicinity and zone and assure against imposing excessive demands upon public utilities.

is amended to read as follows:

18.08.190 Conditional use. "Conditional use" means a use listed among those classified in any given use zone but permitted

to locate only after review by the hearing examiner and the granting of a conditional use permit imposing such performance standards as will make the use compatible with other permitted uses in the same vicinity and zone and assure against imposing excessive demands upon public utilities.

Section 5. A new section 18.08.205(A) is added to the Snohomish County Code to read as follows:

18.08.205(A) Day. Day means calendar day unless otherwise specified.

Section 6. Subsections of 18.18.030 Conditional Uses, of the Snohomish County Code which now read as follows:

. . . .

(21) Noncommercial boat launch facilities with their design, extent and location subject to approval of the board of adjustment, except when contained in a preliminary plat or the development plan of a planned residential development where they shall be permitted outright subject to approval of the Snohomish County planning commission and board of commissioners. In both cases considerations shall include, but not be limited to, required launching depth, lengths of existing docks and piers, surface area of water covered, interference with public navigation and other water uses, lighting, screening, roadway surfacing, nuisance and safety factors, and provided that:

. . . .

(22) Family rehabilitative home, subject to the following conditions:

(A) The zoning adjustor shall place limitations on the number of occupants and impose any additional conditions necessary to insure the impact on adjoining residential property is similar to that normally associated with a family dwelling;

. . . .

are amended to read as follows:

. . . . (21) Noncommercial boat launch facilities. Considerations may include, but not be limited to, required launching depth, lengths of existing docks and piers, surface area of water covered, interference with public navigation and other water uses, lighting, screening, roadway surfacing, nuisance and safety factors, and provided that:

. . . .

(22) Family rehabilitative home.

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Section 7. Subsections of 18.35.030 Conditional Uses, of the Snohomish County Code which now read as follows:

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(6) Antique sales when established as a home occupation PROVIDED the following conditions are met:

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(H) Any other conditions as may be deemed necessary by the Zoning Adjustor or Board of Adjustment;

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are amended to read as follows:

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(6) Antique sales when established as a home occupation PROVIDED the following conditions are met:

.....

(H) Any other conditions as may be deemed necessary by the hearing examiner;

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Section 8. A subsection of 18.36.030 Conditional Uses, of the Snohomish County Code, which now reads as follows:

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(7) Aircraft landing field when solely for the use of small private aircraft primarily for the use of the resident property owner, and not for commercial use, subject to the regulations of the Federal Aviation Agency and additional regulations or conditions as may be imposed by the Zoning Adjustor;

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is amended to read as follows:

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(7) Aircraft landing field when solely for the use of small private aircraft primarily for the use of the resident property owner, and not for commercial use, subject to the regulations of the Federal Aviation Agency and additional regulations or conditions as may be imposed by the hearing examiner;

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Section 9. Section 18.62.050 Height Variances, of the Snohomish

County Code which now reads as follows:

Section 18.62.050 Height variances. Variances as to height of structures may be granted, on application to the board of adjustment, and shall be allowed where a literal application or endorsement of the regulation would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but do substantial justice and be in the spirit of the regulations and this chapter; provided, that any variance may be allowed subject to any reasonable conditions that the board of adjustment may deem necessary to effectuate the purpose of this chapter.

In granting any permit or variance under this chapter, the commission and/or the board of adjustment may, if it deems such action advisable to effectuate the purpose of this chapter and reasonable in the circumstances, so condition such permit or variance as to require the owner of the tree or structure in question to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard.

is amended to read as follows:

Section 18.62.050 Height variances. Variances as to height of structures may be granted, on application to the hearing examiner, and shall be allowed where a literal application or endorsement of the regulation would result in practical difficulty or unnecessary hardship and the relief granted would not be contrary to the public interest but do substantial justice and be in the spirit of the regulations and this chapter; provided, that any variance may be allowed subject to any reasonable conditions that the hearing examiner may deem necessary to effectuate the purpose of this chapter.

In granting any permit or variance under this chapter, the hearing examiner may, if he deems such action advisable to effectuate the purpose of this chapter and reasonable in the circumstances, so condition such permit or variance as to require the owner of the tree or structure in question to install, operate, and maintain thereon such markers and lights as may be necessary to indicate to flyers the presence of an airport hazard.

Section 10. A Subsection of 18.70.020 Qualifying criteria and guidelines for establishing and continuing MC zones, of the Snohomish

County Code which now reads as follows:

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(3) The zoning of land for mineral conservation reserves the affected area for future excavation and provides reasonable assurance that such operation will not be disqualified by reason of site location for issuance of a conditional use permit by the board of adjustment. Sites not eligible for MC zone

classification may be operated only as a conditional use where permitted.

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is amended to read as follows:

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(3) The zoning of land for mineral conservation reserves the affected area for future excavation and provides reasonable assurance that such operation will not be disqualified by reason of site location for issuance of a conditional use permit by the hearing examiner. Sites not eligible for MC zone classification may be operated only as a conditional use where permitted.

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Section 11. Subsections of 18.70.050 Application and review for conditional use permit, Snohomish County Code which now read as follows:

18.70.050 Application and review for conditional use permit.

(1) In addition to those requirements set forth in Chapter 18.88, all applications for excavation permits shall contain the following:

A. A copy of the reclamation plan being submitted to the appropriate state regulatory agency in application for a state permit and, when available, an approved copy of the final plan, and in those cases where such a plan is not required by the state, a special reclamation plan acceptable to the board of adjustment, which shall consider the following: compatibility with existing neighboring land uses, present land use of the site, transportation systems, utility extensions, the physical character of the site and the surrounding landscape, zoning patterns and the comprehensive plan; and

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F. Cross section diagrams at intervals acceptable to the board of adjustment indicating present and proposed elevations; and

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(2) Applications for conditional use permits on sites zoned mineral conservation shall not be denied unless the board of adjustment makes a finding of fact and a determination that any of the following situations exist:

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(3) Application for conditional use permits on sites not zoned MC may be denied upon the unfavorable findings of the board of adjustment under Section (2) above or the provisions of Chapter 18.88, and in addition, the board of adjustment shall consider:

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are amended to read as follows:

18.70.050 Application and review for conditional use permit.

(1) In addition to those requirements set forth in Chapter

18.88, all applications for excavation permits shall contain the following:

A. A copy of the reclamation plan being submitted to the appropriate state regulatory agency in application for a state permit and, when available, an approved copy of the final plan, and in those cases where such a plan is not required by the state, a special reclamation plan acceptable to the hearing examiner, which shall consider the following: compatibility with existing neighboring land uses, present land use of the site, transportation systems, utility extensions, the physical character of the site and the surrounding landscape, zoning patterns and the comprehensive plan; and

. . . .

F. Cross section diagrams at intervals acceptable to the hearing examiner indicating present and proposed elevations; and

. . . .

(2) Applications for conditional use permits on sites zoned mineral conservation shall not be denied unless the hearing examiner makes a finding of fact and a determination that any of the following situations exist:

. . . .

(3) Application for conditional use permits on sites not zoned MC may be denied upon the unfavorable findings of the hearing examiner under Section (2) above or the provisions of Chapter 18.88, and in addition, the hearing examiner shall consider:

. . . .

Section 12. Subsections of 18.70.060 Performance standards,

Snohomish County Code which now read as follows:

18.70.060 Performance standards. (1) In granting conditional use permits and setting performance standards for excavations in land zoned MC or land regulated solely by conditional use permit the following conditions shall apply in all cases except when specifically modified by the board of adjustment:

A. The operator shall bury or remove all metal, lumber or other refuse on the site in a method approved by the board of adjustment;

B. After completion of excavation operations, the operator shall dismantle and remove within three (3) months all equipment introduced to the site in support of the operations, with the exception of equipment necessary for reclamation, which equipment shall not be removed until such reclamation is completed to the satisfaction of the state or local authorities. This three month period shall not be assumed to include time between projects or times when the plan is temporarily inoperative due to economic, weather or other similar conditions recognized as reasonable by the board of adjustment. Such temporary discontinuance of operations shall not be the cause for removal of equipment;

C. All excavation operations and trucking directly related to such operations may be permitted only between the

hours of 7:00 a.m. and 5:30 p.m., Monday through Saturday, unless the board of adjustment determines at a public hearing that no nuisance exists, or that unusual and justifying circumstances are present, in which case the relaxation of this regulation shall terminate when such conditions and circumstances are deemed by the board of adjustment to no longer exist;

D. If property to be developed for excavation has an exterior boundary line which shares a common property line with developed property, or if in the judgment of the board of adjustment, the nature and location of the operation is such as to constitute a hazard to public safety, then a solid wall or fence not less than five feet in height shall be installed and maintained no closer than fifty (50) feet from the excavated area. All openings in the fence shall be barred by locked gates when the permittee or his agent are not on the premises;

. . . .

F. Whenever property developed for excavation is adjacent to developed residential property, public roads, streets or highways, streams, lakes or other public installations, there shall be installed and maintained or cultivated in addition to any required fence, a view-obscuring planting screen not less than fifteen (15) feet in width, and in such planting strip shall be shrubs, bushes or trees which shall be selected to be evergreen, indigenous, fast-growing, compatible with the soil, and on the basis of size, form and minimum maintenance requirements. Said planting screen shall be planted according to acceptable practice in good soil, irrigated as necessary and maintained in good condition at all times at the expense of the operator. Such view-obscuring planting screen herein required shall be installed as a yard improvement at or before the time excavation operations commence or within a reasonable time thereafter, in the judgment of the board of adjustment, giving due consideration of local planting conditions. Where natural flora does not exist, a view-obscuring fence may be installed, subject to the conditions given above, which fence shall maintain a fifteen (15) foot setback from the property line and may also satisfy the requirement of Section 18.70.060(1)D if satisfying the provisions contained therein;

. . . .

H. Operators shall observe and comply with all state water pollution control laws, shall divert or protect all natural drain courses to prevent pollution or reduction of natural flow, shall impound runoff as necessary to hold run-off to levels existing prior to the introduction of excavation operations, shall protect streams and grounds from acid forming or toxic materials exposed or produced by excavation operations, shall seal off to the extent directed by the board of adjustment andy breakthrough of acid water creating a hazard, shall not allow water to collect nor permit stagnant water to remain in excavations. Wherever possible, the operator shall refrain from disturbing natural drain course, streams, rivers and lakes;

. . . .

L. Energy ratio: Where ground frequency and displacement characteristics in relation to known quantities of detonated explosives have been determined by instrumentation, using either an accelograph or a seismograph, the allowable quantity of explosives used in relation to distance may be established by the formula:

$(50/D)^2 C^2 K = 1$ where D = Distance from the blast in feet

C = Quantity of explosive detonated
instantaneously in pounds
K = Ground transmission constant

The energy ratio thus determined shall not exceed one to one (1/1) and all measurements shall be taken at the most critical location.

In the absence of approved methods of instrumentation to restrict vibration, the board of adjustment shall not be precluded from hearing evidence and establishing appropriate restrictions safeguarding the public health, safety, comfort and welfare;

M. Explosive quantity limits: When ground characteristics for any specific blasting location have been determined by instrumentation, special explosive quantity limits for that location may be approved by the board of adjustment if said limits are computed and certified by a licensed vibration measurements specialist;

In the absence of approved methods of instrumentation to restrict vibrations to the levels specified, the board of adjustment shall not be precluded from hearing evidence and establishing appropriate restrictions safeguarding the public health, safety, comfort and welfare. The board may apply the following values or any other limits determined to be necessary and reasonable by a consulting specialist:

. . . .

O. The amount of land actually being excavated at any time without simultaneous reclamation being undertaken may be set by the board of adjustment, but in no case shall more than ten (10) acres lie disturbed and unreclaimed;

. . . .

(2) Additional conditions may be established to further the objects of Section 18.88.040 and may include, but are not limited to, the following specific objects:

A. The board of adjustment may regulate the height and location of all equipment installed on the site, above and beyond the setback restrictions of this chapter, if unusual circumstances bearing on public safety or other vital concerns are deemed to exist;

B. The number and locations of points of ingress and egress to and from any mining operation are subject to regulation by the board of adjustment;

. . . .

D. Lighting may be regulated by the board of adjustment to minimize visibility from adjacent property and preclude it from shining directly onto adjoining property;

E. Stockpiles and tailings shall not exceed the height, slope and moisture content limits determined by the board of adjustment, nor shall such stockpiles or tailings be so located as to threaten adjacent slopes or properties. In making this determination, the board of adjustment may consult with the Washington State Highway Department, the Department of Natural Resources, the County Engineer, or other authoritative sources;

F. Other considerations of the board of adjustment may include but are not limited to the following: selective cutting of timber in power line corridors, control of signs, the selection of building materials in scenic areas, the preservation of animal trails by use of trestle and culverts, public access to unexcavated areas within MC zoned lands, especially if the areas include waterfront property, closed aggregate washing systems, the location of mining towns, mills, tailing dump sites, settling ponds, and the removal of access roads in Wilderness Areas after the completion of mining, as well as their restriction from public use during such operations.

are amended to read as follows:

18.70.060 Performance standards. (1) In granting conditional use permits and setting performance standards for excavations in land zoned MC or land regulated solely by conditional use permit the following conditions shall apply in all cases except when specifically modified by the hearing examiner:

A. The operator shall bury or remove all metal, lumber or other refuse on the site in a method approved by the hearing examiner;

B. After completion of excavation operations, the operator shall dismantle and remove within three (3) months all equipment introduced to the site in support of the operations, with the exception of equipment necessary for reclamation, which equipment shall not be removed until such reclamation is completed to the satisfaction of the state or local authorities. This three month period shall not be assumed to include time between projects or times when the plan is temporarily inoperative due to economic, weather or other similar conditions recognized as reasonable by the hearing examiner. Such temporary discontinuance of operations shall not be the cause for removal of equipment;

C. All excavation operations and trucking directly related to such operations may be permitted only between the hours of 7:00 a.m. and 5:30 p.m., Monday through Saturday, unless the hearing examiner determines at a public hearing that no nuisance exists, or that unusual and justifying circumstances are present, in which case the relaxation of this regulation shall terminate when such conditions and circumstances are deemed by the hearing examiner to no longer exist;

D. If property to be developed for excavation has an exterior boundary line which shares a common property line with developed property, or if in the judgment of the hearing examiner, the nature and location of the operation is such as to constitute a hazard to public safety, then a solid wall or fence not less than five feet in height shall be installed and maintained no closer than fifty (50) feet from the excavated area. All openings in the fence shall be barred by locked gates when the permittee or his agent are not on the premises;

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F. Whenever property developed for excavation is adjacent to developed residential property, public roads, streets or highways, streams, lakes or other public installations, there shall be installed and maintained or cultivated in addition to any required fence, a view-obscuring planting screen not less than fifteen (15) feet in width, and in such planting strip shall be shrubs, bushes or trees which shall be selected to be evergreen, indigenous, fast-growing, compatible with the soil,

and on the basis of size, form and minimum maintenance requirements. Said planting screen shall be planted according to acceptable practice in good soil, irrigated as necessary and maintained in good condition at all times at the expense of the operator. Such view-obscuring planting screen herein required shall be installed as a yard improvement at or before the time excavation operations commence or within a reasonable time thereafter, in the judgment of the hearing examiner, giving due consideration of local planting conditions. Where natural flora does not exist, a view-obscuring fence may be installed, subject to the conditions given above, which fence shall maintain a fifteen (15) foot setback from the property line and may also satisfy the requirement of Section 18.70.060(1)D if satisfying the provisions contained therein;

. . . .

H. Operators shall observe and comply with all state water pollution control laws, shall divert or protect all natural drain courses to prevent pollution or reduction of natural flow, shall impound runoff as necessary to hold run-off to levels existing prior to the introduction of excavation operations, shall protect streams and grounds from acid forming or toxic materials exposed or produced by excavation operations, shall seal off to the extent directed by the hearing examiner any breakthrough of acid water creating a hazard, shall not allow water to collect nor permit stagnant water to remain in excavations. Wherever possible, the operator shall refrain from disturbing natural drain course, streams, rivers and lakes;

. . . .

L. Energy ratio: Where ground frequency and displacement characteristics in relation to known quantities of detonated explosives have been determined by instrumentation, using either an accelograph or a seismograph, the allowable quantity of explosives used in relation to distance may be established by the formula:

$$(50/D)^2 C^2 K = 1 \text{ where } \begin{array}{l} D = \text{Distance from the blast in feet} \\ C = \text{Quantity of explosive detonated} \\ \quad \text{instantaneously in pounds} \\ K = \text{Ground transmission constant} \end{array}$$

The energy ratio thus determined shall not exceed one to one (1/1) and all measurements shall be taken at the most critical location.

In the absence of approved methods of instrumentation to restrict vibration, the hearing examiner shall not be precluded from hearing evidence and establishing appropriate restrictions safeguarding the public health, safety, comfort and welfare;

M. Explosive quantity limits: When ground characteristics for any specific blasting location have been determined by instrumentation, special explosive quantity limits for that location may be approved by the hearing examiner if said limits are computed and certified by a licensed vibration measurements specialist;

In the absence of approved methods of instrumentation to restrict vibrations to the levels specified, the hearing examiner shall not be precluded from hearing evidence and establishing appropriate restrictions safeguarding the public health, safety, comfort and welfare. The hearing examiner may apply the following values or any other limits determined to be necessary and reasonable by a consulting specialist:

.
O. The amount of land actually being excavated at any time without simultaneous reclamation being undertaken may be set by the hearing examiner, but in no case shall more than ten (10) acres lie disturbed and unreclaimed;

.
(2) Additional conditions may be established to further the objectives of Section 18.88.060 and may include, but are not limited to, the following specific objectives:

A. The hearing examiner may regulate the height and location of all equipment installed on the site, above and beyond the setback restrictions of this chapter, if unusual circumstances bearing on public safety or other vital concerns are deemed to exist;

B. The number and locations of points of ingress and egress to and from any mining operation are subject to regulation by the hearing examiner;

.
D. Lighting may be regulated by the hearing examiner to minimize visibility from adjacent property and preclude it from shining directly onto adjoining property;

E. Stockpiles and tailings shall not exceed the height, slope and moisture content limits determined by the hearing examiner, nor shall such stockpiles or tailings be so located as to threaten adjacent slopes or properties. In making this determination, the hearing examiner may consult with the Washington State Highway Department, the Department of Natural Resources, the County Engineer, or other authoritative sources;

F. Other considerations of the hearing examiner may include but are not limited to the following: selective cutting of timber in power line corridors, control of signs, the selection of building materials in scenic areas, the preservation of animal trails by use of trestle and culverts, public access to unexcavated areas within MC zoned lands, especially if the areas include waterfront property, closed aggregate washing systems, the location of mining towns, mills, tailing dump sites, settling ponds, and the removal of access roads in Wilderness Areas after the completion of mining, as well as their restriction from public use during such operations.

Section 13. Section 18.70.080 Procedure for revoking excavation permit, Snohomish County Code which now reads as follows:

18.70.080 Procedure for revoking excavation permit. The enforcement provisions of Chapter 18.96 shall apply and in addition the excavation permit may be revoked or suspended for violations which jeopardize the health, safety or welfare of the public. The county may suspend or revoke said permit, such suspension or revocation to be effective immediately upon notification of the operator in writing by the county. A public hearing shall be held by the board of adjustment before a suspension or revocation may be made permanent. Written notice of such hearing shall be published and shall also be served upon the permittee either personally or by registered mail and shall state:

(1) The grounds for complaint or reasons for the revocation or suspension;

(2) The time and location of the hearing. Such notice shall be served by registered mail or personally served on the permittee at least fifteen (15) days prior to the date set for said hearing. The permittee shall be given the opportunity to be heard and defend himself, and he may call witnesses and present evidence in his behalf. The public shall also be afforded an opportunity to be heard and present evidence. Upon conclusion of such hearing, the board of adjustment shall determine whether or not the permit shall be permanently suspended or revoked. In the event the determination is to suspend or revoke said permit, the permittee may appeal said decision as provided in the Snohomish County Zoning Code, Chapter 18.88. Once a permit has been revoked the burden of proof that the deficiencies for which it was revoked have been corrected rests with the permittee.

is amended to read as follows:

18.70.080 Procedure for revoking excavation permit. The enforcement provisions of Chapter 18.96 shall apply and in addition the excavation permit may be revoked or suspended for violations which jeopardize the health, safety or welfare of the public. The county may suspend or revoke said permit, such suspension or revocation to be effective immediately upon notification of the operator in writing by the county. A public hearing shall be held by the hearing examiner before a suspension or revocation may be made permanent. Written notice of such hearing shall be published and shall also be served upon the permittee either personally or by registered mail and shall state:

(1) The grounds for complaint or reasons for the revocation or suspension;

(2) The time and location of the hearing. Such notice shall be served by registered mail or personally served on the permittee at least fifteen (15) days prior to the date set for said hearing. The permittee shall be given the opportunity to be heard and defend himself, and he may call witnesses and present evidence in his behalf. The public shall also be afforded an opportunity to be heard and present evidence. Upon conclusion of such hearing, the hearing examiner shall determine whether or not the permit shall be permanently suspended or revoked. In the event the determination is to suspend or revoke said permit, the permittee may appeal said decision as provided in Section 18.88.070. Once a permit has been revoked the burden of proof that the deficiencies for which it was revoked have been corrected rests with the permittee.

Section 14. Section 18.70.090 Transfer of operations, Snohomish

County Code which now reads as follows:

18.70.090 Transfer of operations. When one operator succeeds to the interest of another in any uncompleted excavation operation by sale, assignment, lease or otherwise, the board of adjustment may release the first operator from the duties imposed upon him by this chapter as to such operation as provided by Snohomish County Code, Chapter 18.88.030, provided that both operators have complied with the requirements of this ordinance and the successor operator assumes the duty of the former operator to complete reclamation of the land in which case the county shall transfer the permit and bond the successor operator's bond. The board of adjustment may also permit the operation to

change hands while holding the first operator liable to any or all conditions of the bond.

is deleted.

Section 15. Section 18.70.110 Bonds, Snohomish County which now reads as follows:

18.70.110 Bonds. (1) A conditional use permit for an excavation may not be issued until the applicant posts with the board of adjustment an acceptable performance bond, which bond shall be a corporate surety bond executed in favor of the county by a corporation authorized to do business in the State of Washington under the provisions of Chapter 48.28 RCW and approved by the board of adjustment.

(2) The bond shall include penalty provisions, on a form approved by counsel for the governing agency, for the failure to comply with the conditions on the permit. The board of adjustment shall have the authority to determine the amount of bond required, and for any reason may refuse any bond deemed inadequate. A separate performance bond may be required for each separate operation. The performance bond may include an additional amount covering reclamation provisions in those cases where state reclamation laws are not applicable and local reclamation provisions are included as conditions of granting the conditional use permit.

(3) The surety executing the bond shall continue to be firmly bound up to the limits of the bond, under a continuing obligation, the payment of all necessary costs and expenses that may be incurred or expended by the county in covering any and all such required work to be done. However, in no event shall the liability of the surety exceed the amount stated in its bond regardless of the number of years the bond shall remain in force. Liability under the bond may be released only upon written notification from the board of adjustment which notification shall be given upon completion of compliance or acceptance by the board of adjustment or a substitute bond. The portion of a bond covering reclamation which includes plantings shall not be released until after the final site inspection which shall take place after at least one complete growing season has elapsed since the completion of reclamation.

is amended to read as follows:

18.70.110 Bonds. (1) A conditional use permit for an excavation may not be issued until the applicant posts with the county an acceptable performance bond, which bond shall be a corporate surety bond executed in favor of the county by a corporation authorized to do business in the State of Washington under the provisions of Chapter 48.28 RCW and approved by the hearing examiner.

(2) The bond shall include penalty provisions, on a form approved by counsel for the governing agency, for the failure to comply with the conditions on the permit. The hearing examiner shall have the authority to determine the amount of bond required, and for any reason may refuse any bond deemed inadequate. A separate performance bond may be required for each separate operation. The performance bond may include an additional amount covering reclamation provisions in those cases where state reclamation laws are not applicable and local reclamation provisions are included as conditions of granting the conditional use permit.

(3) The surety executing the bond shall continue to be firmly bound up to the limits of the bond, under a continuing obligation, the payment of all necessary costs and expenses that may be incurred or expended by the county in covering any and all such required work to be done. However, in no event shall the liability of the surety exceed the amount stated in its bond regardless of the number of years the bond shall remain in force. Liability under the bond may be released only upon written notification from the hearing examiner which notification shall be given upon completion of compliance or acceptance by the hearing examiner of a substitute bond. The portion of a bond covering reclamation which includes plantings shall not be released until after the final site inspection which shall take place after at least one complete growing season has elapsed since the completion of reclamation.

Section 16. A Subsection 18.72.070 Joint uses, Snohomish County Code, which now reads as follows:

18.72.070 Joint uses. The Zoning Adjustor may, upon application by the owner or lessee of any property, authorize the joint use of parking facilities by the following uses or activities under the conditions specified herein.

. . . .

is amended to read as follows:

18.72.070 Joint uses. The hearing examiner may, upon application by the owner or lessee of any property, authorize the joint use of parking facilities by the following uses or activities under the conditions specified herein.

. . . .

Section 17. Subsections of 18.80.020 Mobile home parks--Establishment, Snohomish County Code, which now read as follows:

18.80.020 Mobile home parks--Establishment. Where permitted, mobile home parks shall meet the following minimum requirements:

A. Mobile home parks shall be permitted only upon the issuance of a conditional use permit pursuant to the procedures of Chapter 18.88 of this title. Plans and documents submitted as a part of the conditional use application, pursuant to Section 18.80.020D, shall show compliance with the minimum performance regulations established by this chapter. The zoning adjustor may impose such other specific performance standards as deemed necessary, on a case-by-case basis, to assure the compatibility of the proposed mobile home park with adjacent existing and planned uses; provided that the zoning adjustor, in connection with action on a conditional use permit, may not reduce the minimum standards specified by this chapter in matters for which a variance is the remedy provided.

. . . .

E. The site plan, as approved by the zoning adjustor, shall become the official site plan of the mobile home park, and any changes thereto, or deviations therefrom, shall require resubmission and approval as set forth in Section 18.80.020F. In order to insure development as per the approved plan, one or more of the following may be required by the zoning adjustor:

1. A performance bond or other security acceptable to the zoning adjustor, sufficient to cover the estimated cost of required improvements;

2. Construction or development of all, or a portion of, the improvements shown on the official site plan prior to occupancy; provided, that any improvements for which a bond is established, as provided for in subsection 1 above, shall not also be subject to this subsection.

Failure to comply with the requirements of the zoning adjustor and/or the official site plan shall be sufficient grounds to revoke the conditional use permit.

A maintenance bond or other security acceptable to the zoning adjustor and securing to the county the successful operation of required improvements for an appropriate period of time up to two years from construction and installation shall be required upon completion of said improvements to the satisfaction of the zoning adjustor.

F. Plans which are approved by the zoning adjustor may, upon request of the property owner, be amended by the planning director as an administrative act. This authority shall be limited to amendments of a minor nature which cause no increase in intensity of use and which do not reduce performance standards below those set forth when approved and which do not increase the detrimental impact of the park on adjoining properties, and which do not substantially alter the design of the official site plan. The planning director shall make a record of any such requested amendment, his action thereupon, and the findings he determines to be controlling on his action; all such records and findings shall become a part of the permanent file of the subject mobile home park. No changes in points of vehicular access to the property shall be approved without written concurrence from the county engineer. Disagreements over amendments may be appealed by an aggrieved party to the zoning adjustor. Requested amendments, which are deemed by the planning director to exceed the authority granted by this paragraph, shall be submitted to the zoning adjustor for consideration in the manner provided in Chapter 18.88 of this title for the issuance of a conditional use permit.

G. In the event construction has not commenced within eighteen (18) months after the date of approval by the zoning adjustor, the zoning adjustor shall hold a public hearing to determine whether the mobile home park permit shall be revoked or whether the site plan should be modified or continued as approved. For the purpose of this section, construction shall mean actual construction begun on some permanent structure, utility, or facility on the site.

are amended to read as follows:

18.80.020 Mobile home parks--Establishment. Where permitted, mobile home parks shall meet the following minimum requirements:

A. Mobile home parks shall be permitted only upon the issuance of a conditional use permit pursuant to the procedures of Chapter 18.88 of this title. Plans and documents submitted as part of the conditional use application, pursuant to Section 18.80.020D, shall show compliance with the minimum performance regulations established by this chapter. The hearing examiner may impose such other specific performance standards as deemed necessary, on a case-by-case basis, to assure the compatibility

of the proposed mobile home park with adjacent existing and planned uses.

. . . .

E. The site plan, as approved by the hearing examiner, shall become the official site plan of the mobile home park, and any changes thereto, or deviations therefrom, shall require resubmission and approval as set forth in Section 18.80.020F. In order to insure development as per the approved plan, one or more of the following may be required by the hearing examiner:

1. A performance bond or other security acceptable to the hearing examiner, sufficient to cover the estimated cost of required improvements;

2. Construction or development of all, or a portion of, the improvements shown on the official site plan prior to occupancy; provided, that any improvements for which a bond is established, as provided for in subsection 1 above, shall not also be subject to this subsection.

Failure to comply with the requirements of the hearing examiner and/or the official site plan shall be sufficient grounds to revoke the conditional use permit.

A maintenance bond or other security acceptable to the hearing examiner and securing to the county the successful operation of required improvements for an appropriate period of time up to two years from construction and installation shall be required upon completion of said improvements to the satisfaction of the hearing examiner.

F. Plans which are approved by the hearing examiner may, upon request of the property owner, be amended by the department of community affairs as an administrative act. This authority shall be limited to amendments of a minor nature which cause no increase in intensity of use and which do not reduce performance standards below those set forth when approved and which do not increase the detrimental impact of the park on adjoining properties, and which do not substantially alter the design of the official site plan. The department of community affairs shall make a record of any such requested amendment, its action thereupon, and the findings it determines to be controlling on its action; all such records and findings shall become a part of the permanent file of the subject mobile home park. No changes in points of vehicular access to the property shall be approved without written concurrence from the county engineer. Disagreements over amendments may be appealed by an aggrieved party to the hearing examiner. Requested amendments, which are deemed by the department of community affairs to exceed the authority granted by this paragraph, shall be submitted to the hearing examiner for consideration in the manner provided in Chapter 18.88 of this title for the issuance of a conditional use permit.

G. In the event construction has not commenced within eighteen (18) months after the date of approval by the hearing examiner, the hearing examiner shall hold a public hearing to determine whether the mobile home park permit shall be revoked or whether the site plan should be modified or continued as approved. For the purpose of this section, construction shall mean actual construction begun on some permanent structure, utility, or facility on the site.

Section 18. Subsections of 18.80.030 Mobile home parks--

Performance regulations, Snohomish County Code, which now read as follows:

18.80.030 Mobile home parks--Performance regulations. In granting conditional use permits for mobile home parks, the following regulations shall apply, except as specifically modified by the zoning adjustor pursuant to Section 18.80.020A:

.

F. Storage Facilities.

.

2. A bulk storage and parking area for boats, campers, travel trailers, etc., shall be provided within the mobile home park. A minimum of three hundred (300) square feet of space, exclusive of driveways, shall be provided for every ten (10) mobile home pads. Bulk storage and parking areas shall be separated from all other parking facilities and shall be provided with some means of security. The requirements of this subsection may be waived by the zoning adjustor when the mobile home park developer/owner agrees to prohibit the storage of such items within the park;

.

G. Landscaping and Buffering. Landscaping and buffering shall conform to the following requirements:

.

3. The zoning adjustor may require landscaping in combination with berms for noise screening;

.

4. Detailed landscape plans shall show the following:

.

b. Where abutting a major county arterial, the planting strip shall be a minimum of twenty (20) feet wide; provided that a minimum ten (10) foot strip may be considered sufficient when it can be demonstrated to the zoning adjustor that, with earth sculpturing and recontouring, the development is buffered sufficiently;

.

are amended to read as follows:

18.80.030 Mobile home parks--Performance regulations. In granting conditional use permits for mobile home parks, the following regulations shall apply, except as specifically modified by the hearing examiner pursuant to Section 18.80.020A:

.

F. Storage Facilities.

.

2. A bulk storage and parking area for boats, campers, travel trailers, etc., shall be provided within the mobile home park. A minimum of three hundred (300) square feet of space, exclusive of driveways, shall be provided for every ten (10) mobile home pads. Bulk storage and parking areas shall be separated from all other parking facilities and shall be provided with some means of security. The requirements of this subsection may be waived by the hearing examiner when the mobile home park developer/owner agrees to prohibit the storage of such items within the park;

.

G. Landscaping and Buffering. Landscaping and buffering shall conform to the following requirements:

.

3. The hearing examiner may require landscaping in combination with berms for noise screening;

.

4. Detailed landscape plans shall show the following:

.

b. Where abutting a major county arterial, the planting strip shall be a minimum of twenty (20) feet wide; provided that a minimum ten (10) foot strip may be considered sufficient when it can be demonstrated to the hearing examiner that, with earth sculpturing and recontouring, the development is buffered sufficiently;

.

Section 19. A Subsection of 18.82.030 Conditional uses, Snohomish County Code, which now reads as follows:

18.82.030 Conditional uses.

.

8. There shall be filed with the Snohomish County auditor, a declaration setting forth the temporary nature of the permitted dwelling in a form specified by the zoning adjustor;

.

is amended to read as follows:

18.82.030 Conditional uses.

.

8. There shall be filed with the Snohomish County auditor, a declaration setting forth the temporary nature of the permitted dwelling in a form specified by the hearing examiner;

.

Section 20. Section 18.84.040 Expansion of nonconforming use--
zoning adjustor approval required, Snohomish County Code, which now
reads as follows:

18.84.040 Expansion of nonconforming use--Zoning adjustor
approved required. A nonconforming use may be expanded
throughout land held under single ownership at the effective date
of the nonconformance upon the granting of approval by the zoning
adjustor subsequent to a public hearing; provided that such
expansion does not increase the land area devoted to the
nonconforming use by more than one hundred percent (100%) of that
in use at the effective date of the nonconformance, nor the
ground area covered by the structural portion of the
nonconforming use by more than one hundred percent (100%) of that
existing at the effective date of the nonconformance; and
provided further that said approval shall not be granted if the
granting is found to be detrimental to surrounding properties, or
to the implementation of the adopted comprehensive land use plan
for the area, or would result in a significant increase in the
intensity of the use of the nonconforming use. The zoning
adjustor may impose conditions precedent to expansion of the use
in the same manner as provided for in Snohomish County Code
Section 18.88.040.

is amended to read as follows:

18.84.040 Expansion of nonconforming use--hearing examiner
approved required. A nonconforming use may be expanded
throughout land held under single ownership at the effective date
of the nonconformance upon the granting of a special use permit
by the hearing examiner subsequent to a public hearing; provided
that such expansion does not increase the land area devoted to
the nonconforming use by more than one hundred percent (100%) of
that in use at the effective date of the nonconformance, nor the
ground area covered by the structural portion of the
nonconforming use by more than one hundred percent (100%) of that
existing at the effective date of the nonconformance; and
provided further that said approval shall not be granted if the
granting is found to be detrimental to surrounding properties, or
to the implementation of the adopted comprehensive land use plan
for the area, or would result in a significant increase in the
intensity of the use of the nonconforming use. The hearing
examiner may impose conditions precedent to expansion of the use
as provided for in Snohomish County Code Section 18.88.060.

Section 21. Section 18.84.050 Relocation necessitated by
condemnation--Zoning adjustor approval required, Snohomish County
Code, which now reads as follows:

18.84.050 Relocation necessitated by condemnation--Zoning
adjustor approval required. When a nonconforming use is required
to relocate due to condemnation or purchase for public use, the
zoning adjustor may grant approval for the relocation of such
nonconforming use on the same lot or on any contiguous lot which
was under single ownership at the effective date of the
nonconformance, subsequent to a public hearing; provided that
such relocation must be found not to be detrimental to the
surrounding properties.

is amended to read as follows:

18.84.050 Relocation necessitated by condemnation--hearing
examiner approval required. When a nonconforming use is required

to relocate due to condemnation or purchase for public use, the hearing examiner may grant a special use permit for the relocation of such nonconforming use on the same lot or on any contiguous lot which was under single ownership at the effective date of the nonconformance, subsequent to a public hearing; provided that such relocation must be found not to be detrimental to the surrounding properties.

Section 22. A new chapter is added to SCC Title 18 to be known as Snohomish County Code Chapter 18.88 Conditional Uses and Special Use Permits, Variances and Administrative Appeals to read as follows:

CHAPTER 18.88
CONDITIONAL USE AND SPECIAL USE
PERMITS, VARIANCES AND ADMINISTRATIVE APPEALS

Sections:

- 18.88.010 Granting variances.
- 18.88.020 Variances - Conditions for granting.
- 18.88.030 Variances - Effect of Hearing Examiner Decision.
- 18.88.040 Granting Conditional Use Permits.
- 18.88.050 Granting Special Use Permits.
- 18.88.060 Conditional and Special Use Permits -
Conditions for granting.
- 18.88.070 Conditional and Special Use Permits -
Effect of Hearing Examiner Decision.
- 18.88.080 Previous use--Occupancy.
- 18.88.090 Administrative appeals.
- 18.88.100 Administrative appeals--Time limit.
- 18.88.110 Administrative appeals--Authority.
- 18.88.120 Administrative appeals--Effect of Hearing
Examiner's Decision.
- 18.88.130 Application form.
- 18.88.140 Filing fees.
- 18.88.150 Processing procedures.
- 18.88.160 Notice of hearing-Variance, Conditional
or Special Use Permits.
- 18.88.170 Notice of hearing-Administrative appeals.
- 18.88.180 Reapplication.
- 18.88.190 Continuing jurisdiction.
- 18.88.200 Transfer of ownership.

18.88.010 Granting variances. Upon application therefor, the hearing examiner shall have the authority to grant a variance from the provisions of this title when in the opinion of the examiner the conditions as set forth in Section 18.88.020 have been found to exist. In such cases, a variance may be granted and conditions imposed, including the posting of bonds or other security, which are in harmony with the general purpose and intent of this title so that the spirit of this title shall be observed, public safety and welfare secured and substantial justice done.

18.88.020 Variances - Conditions for granting. Before any variance may be granted, it shall be shown that:

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

(2) Such variance is necessary for the preservation and enjoyment of a substantial property right or use possessed by

other property in the same vicinity and zone but which because of special circumstances is denied to the property in question;

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

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

18.88.030 Variances - Effect of Examiner's Decision. The decision of the examiner on a variance shall be final and conclusive unless within ten (10) days from the date of the examiner's decision, the applicant or an adverse party makes application to a court of competent jurisdiction for a writ of certiorari, a writ of prohibition or a writ of mandamus.

18.88.040 Granting conditional use permits. Upon application therefor, the examiner may grant conditional use permits for such use and under such circumstances as set forth in this title.

18.88.050 Granting Special Use Permits. Upon application therefor, the examiner may grant special use permits under such circumstances as set forth in this title.

18.88.060 Conditional and Special Use Permits - Conditions for granting. When considering an application for a conditional use permit, the examiner shall consider the applicable standards, criteria and policies established by this title as they pertain to the proposed use and may impose specific conditions precedent to establishing the use. The conditions may:

(1) Increase requirements in the standards, criteria or policies established by this title;

(2) Stipulate the exact location as a means of minimizing hazards to life, limb, property damage, erosion, landslides or traffic;

(3) Require structural features or equipment essential to serve the same purpose set forth in (2) above;

(4) Impose conditions similar to those set forth in items (2) and (3) above as deemed necessary to establish parity with uses permitted in the same zone in their freedom from nuisance generating features in matters of noise, odors, air pollution, wastes, vibration, traffic, physical hazards, and similar matters; provided, the hearing examiner may not, in connection with action on a conditional use permit, reduce the requirements specified by this title as pertaining to any use nor otherwise reduce the requirements of this title in matters for which a variance is the remedy provided;

(5) Assure that the degree of compatibility with the purpose of this title shall be maintained with respect to the particular use on the particular site and in consideration of other existing and potential uses, within the general area in which the use is proposed to be located.

(6) Recognize and compensate for variations and degree of technological processes and equipment as related to the factors of noise, smoke, dust, fumes, vibration, odors, and hazard or public need;

(7) Require the posting of construction and maintenance bonds or other security sufficient to secure to the county the estimated cost of construction and/or installation and maintenance of required improvements.

18.88.070 Conditional and Special Use Permits - Effect of Examiner Decision. The decision of the examiner on a conditional use or special use permit shall be final and conclusive unless appealed to the council pursuant to Chapter 2.02 SCC.

18.88.080 Previous use--Occupancy. Where prior to July 1, 1962, special authority was granted for the establishment of conducting of a particular use on a particular site and for a special period of time or as set forth in an action then titled "Use and Occupancy," such previous permits are by this section declared to be continued as a conditional use permit without specific time limit; provided, that if the particular use is such as is not otherwise permitted in the zone in which it is located, such established use and improvements incidental thereto shall be considered under the terms of this title as a nonconforming use.

18.88.090 Administrative appeals. The examiner shall have the authority to hear and decide appeals from any order, requirement, permit, decision or determination made by the director of the department of community affairs or his designee in the administration and enforcement of provisions of this title.

18.88.100 Administrative appeals--Time limit. Appeals may be taken to the examiner by any person aggrieved, or by any officer, department, board or bureau of the county affected by any decision of the director of the department of community affairs or his designee. The appeals shall be filed in writing, in duplicate, with the department of community affairs within fifteen (15) days of the date of the action being appealed. Upon filing an appeal, a place and time for the hearing not more than thirty (30) days from such notice of appeal shall be set by the department of community affairs.

18.88.110 Administrative appeals--Authority. The examiner may, in conformity with this title or other applicable ordinances, reverse or affirm, wholly or in part, or modify the order, requirement, decision or determination appealed from, and may rule on the order, requirement, decision or determination as necessary. To that end, the examiner shall have all the power of the officer from whom the appeal is taken, insofar as the decision on the particular issue is concerned.

18.88.120 Administrative appeals - effect of examiner's decision. The decision of the examiner on an administrative appeal shall be final and conclusive unless appealed to the council pursuant to Chapter 2.02 SCC.

18.88.130 Application form. The department of community affairs may prescribe the form in which applications are made for a variance, conditional use permit, special use permit or administrative appeal. It may prepare and provide printed forms for such purpose and may prescribe the type of information to be provided in the application by the applicant. No application shall be accepted unless it complies with such requirements.

18.88.140 Filing fees. A filing fee of seventy-five dollars (\$75.00) shall be paid upon the filing of an application for a variance or special use permit. A fee of one hundred dollars (\$100.00) shall be paid upon the filing of an application for a conditional use permit, except that the fee for conditional use permit applications for excavation and processing of minerals,

sanitary landfills and landfill operations shall be two hundred dollars (\$200.00). A filing fee of twenty-five dollars (\$25.00) shall be paid upon the filing of an administrative appeal. No fees shall be charged to any department of the county.

18.88.150 Processing procedures. Variances, conditional use or special use permits and administrative appeals shall be processed in accordance with the provisions of chapter 2.02, Snohomish County Code.

18.88.160 Notice of hearing - Variance - Conditional or Special Use Permits. Upon the filing of an application for a variance, conditional use or special use permit by a property owner, the department of community affairs shall set the time and place for a public hearing to consider the application, as provided for in the examiner's rules of procedure. A written notice thereof shall be mailed to all property owners of record within a three hundred foot radius of the external boundaries of subject property not less than fifteen (15) days prior to the hearing.

18.88.170 Notice of hearing - Administrative appeals. Upon the filing of an appeal from an administrative determination, the department of community affairs shall set the time and place for a public hearing as provided for in the examiner's rules of procedure. At least fifteen (15) days notice of such time and place together with one copy of the written appeal shall be given to the official whose decision is being appealed, to the appellant and to other known interested parties in the case. The official from whom the appeal is being taken shall forthwith transmit to the examiner all of the records pertaining to the decision being appealed from, or copies thereof, together with such additional written report as he deems pertinent.

18.88.180 Reapplication. Upon final action as set forth in this chapter in denying an application for variance, conditional use or special use permit or administrative appeal, the department of community affairs shall not accept further filing of an application for substantially the same matter within one year from the date of any final denial of an application.

18.88.190 Continuing jurisdiction. The office of the examiner shall retain continuing jurisdiction over all variances and conditional use and special use permits. Upon a petition being filed by any person with a substantial interest in a variance, conditional use or special use permit, or by any public official, the examiner may, in his discretion, call a public hearing for the purpose of reviewing that variance, conditional use or special use permit. Notice of the public hearing shall be as provided in Section 18.88.160. Any such hearing shall be processed in accordance with the provisions of chapter 2.02, Snohomish County Code; provided that, immediately upon a petition for review being accepted by the examiner, the examiner may for good cause shown direct that the department of community affairs issue a stop work order to temporarily stay the force and effect of all or any part of the variance, conditional use or special use permit in question until such time as such review is finally adjudicated. The examiner's decision, after hearing, shall be final subject to appeal as provided for in Section 18.88.030 and 18.88.070 of this chapter and it may reaffirm, modify or rescind all or any part of the variance, conditional use or special use permit being reviewed.

18.88.200 Transfer of ownership. A conditional use or special use permit or variance runs with the land; compliance with the conditions of any such permit or variance is the responsibility of the current owner of the property, whether that

be the applicant or a successor. No permit for which a bond or other surety is required shall be considered valid during any time in which the required bond or surety is not posted.

Section 23. Section 18.92.060 Public Hearings, Snohomish County Code which now reads as follows:

18.92.060 Public Hearings. The planning commission or hearing examiner shall hold at least one public hearing on proposed amendments of the zoning maps or ordinance except when such amendments do not impose, remove or modify any regulation affecting the zoning status of land.

is amended to read as follows:

18.92.060 Public Hearings.

(1) The planning commission shall hold at least one public hearing in area wide rezones to implement comprehensive plans and any amendments to this ordinance or other land use ordinances except when such amendments do not impose, remove or modify any regulation affecting the zoning status of land;

(2) The hearing examiner shall hold at least one public hearing on all proposed amendments of the zoning maps, except for area wide rezones to implement comprehensive plans heard by the planning commission.

Section 24. Section 18.92.065 Recommendation by hearing examiner, Snohomish County Code, which now reads as follows:

18.92.065 Recommendation by hearing examiner. If a rezone application is heard by the hearing examiner, it shall be processed and a decision made thereon in accordance with the provisions of Chapter 2.02 SCC.

is amended to read as follows:

18.92.065 Decision by hearing examiner. When a rezone application is heard by the examiner, it shall be processed and a decision made thereon in accordance with the provisions of Chapter 2.02 SCC. The decision of the examiner shall be final and conclusive unless appealed to the council pursuant to Chapter 2.02, SCC.

Section 25. A Subsection 18.92.120 Continuing classification, Snohomish County Code, which now reads as follows:

18.92.120 Continuing classification.

. . . .

(b) After the board's action regarding a rezone of property, no further action involving substantially the same property shall be requested to be considered prior to six (6) months after the action has been taken; provided that, at the time it considers the matter, should the board find that extraordinary circumstances exist, it may on its own initiative waive the six (6) month provision. The application fee shall thereupon be waived when rezone application is made pursuant to the extraordinary circumstances found, and within (6) months of the board's action.

is amended to read as follows:

18.92.120 Continuing classification.

.....

(b) After the hearing examiner's or council's final action denying a rezone of property, no further action involving substantially the same property shall be requested to be considered prior to six (6) months after the action has been taken; provided that, if at the time it considers the matter, the examiner or council find that extraordinary circumstances exist, he or it may on its own initiative waive the six (6) month provision. The application fee shall thereupon be waived when rezone application is made within six (6) months of the date of such final action pursuant to the extraordinary circumstances found.

Section 26. Section 18.92.150 Timing of Appeals. Snohomish

County Code, which now reads as follows:

18.92.150 Timing of apeals. Any rezone action approved by the county legislative authority shall be final and conclusive unless within thirty (30) days from the date of such action, an aggrieved party obtains a writ of certiorari from the Snohomish County Superior Court for the purpose of reviewing the action taken.

is amended to read as follows:

18.92.150 Appeal from Council. Action by the council on a rezone shall be final and conclusive unless within thirty (30) days from the date of such action, an aggrieved party obtains a writ of certiorari, writ of prohibition or writ of mandamus from a court of competent jurisdiction.

Section 27. Subsections of 18.96.050 Notice of violation--

Assessment of penalty, Snohomish County Code, which now read as follows:

18.96.050 Notice of violation--Assessment of penalty.

.....

(1) The notice of violation shall contain:

.....

(f) A statement that the director's determination of violation may be appealed to the zoning adjustor by filing written notice of appeal, in duplicate, with the zoning adjustor within twenty days of service of the notice of violation and that the per diem civil penalty shall not accrue during the pendency of such administrative appeal.

are amended to read as follows:

18.96.050 Notice of violation--Assessment of penalty.

.....

(1) The notice of violation shall contain:

.....

(f) A statement that the director's determination of violation may be appealed to the examiner by filing written notice of appeal, together with a \$25.00 filing fee, in accordance with Chapter 18.88, with the department of community affairs within fifteen (15) days of service of the notice of violation, and that the per diem civil penalty shall not accrue during the pendency of such administrative appeal.

Section 28. A subsection 20.20.080 Department action, Snohomish County Code, which now reads as follows:

20.20.080 Department Action.

. . . .

(2) D. Submit the proposed short plat to the hearing examiner for its consideration together with the planning department's recommendation.

is amended to read as follows:

20.20.080 Department Action.

. . . .

(2) D. Submit the proposed short plat to the hearing examiner for his consideration together with the department of community affair's recommendation. The examiner shall hear the application in accordance with the procedures of Chapter 2.02 Snohomish County Code and with such notice as is required for hearings on preliminary plat applications; the examiner's decision shall be final unless appealed to the council pursuant to Chapter 2.02 SCC.

Section 29. Section 20.20.090 Hearing examiner, review, if aggrieved, Snohomish County Code which now reads as follows:

20.20.090 Hearing examiner review, if aggrieved. Any person aggrieved by the decision of the planning department may request a review of that decision by the hearing examiner. Such request must be made in writing within ten (10) working days from the date the planning department's written decision was made. Such appeals shall be heard by the hearing examiner under the procedures established by Chapter 2.02 and with such notice as is required on preliminary plat applications. The decision of the hearing examiner may be appealed to the board in accordance with the procedures established in Chapter 2.02
is amended to read as follows:

20.20.090 Hearing examiner review, if aggrieved. Any person aggrieved by the decision of the department of community affairs may request a review of that decision by the hearing examiner. Such request must be made in writing within fifteen (15) calendar days from the date the department of community affairs' written decision was made. Appeals shall be filed with the department of community affairs in writing and shall contain a brief description of why error is assigned to the department's determination and shall be accompanied by a fee of twenty-five dollars (\$25.00). Provided that such appeal fee shall not be charged to a department of the county or other than the first appellant. The appeal shall be heard pursuant to Chapter 2.02 SCC and notice shall be required as is provided for hearings on

preliminary plat applications. The decision of the hearing examiner is final and conclusive unless appealed to the council pursuant to Chapter 2.02 SCC.

Section 30. Section 20.32.020 Public hearing required Snohomish County Code, which reads as follows:

20.32.020 Public hearing required. All modifications shall be processed in accordance with the procedures established in Chapter 2.02.

is amended to read as follows:

20.32.020 Procedures. Requests for modification shall be heard by the hearing examiner and processed in accordance with the procedures established in Chapter 2.02 with such notice as is required for hearings on preliminary plat applications. The hearing examiner's decision shall be final and conclusive unless appealed to the council pursuant to Chapter 2.02 SCC.

Section 31. Section 20A.20.080 Preliminary Application Approval-Term, Snohomish County Code which now reads as follows:

20A.20.080 Preliminary Application Approval-Term. Approval of the preliminary large tract segregation shall be effective for two (2) years from the date of planning department approval unless extended as provided herein. Upon written application by the applicant or his successor, filed prior to the expiration of approval, the director of the planning department shall extend the approval for an additional two (2) year period; PROVIDED, that if in the opinion of the director the preliminary large tract segregation may not continue to serve the public use and interest or comply with existing zoning or other applicable laws, the director shall set the application for public hearing before the hearing examiner upon such notice and in accordance with such procedures as are applicable to hearing short plat appeals; and PROVIDED FURTHER, that in no event shall preliminary large tract segregation approval be extended for a total approval period in excess of four (4) years from the date of original approval.

is amended to read as follows:

20A.20.080 Preliminary Application Approval-Term. Approval of the preliminary large tract segregation shall be effective for two (2) years from the date of approval by the department of community affairs unless extended as provided herein. Upon written application by the applicant or his successor, filed prior to the expiration of approval, the director of the department of community affairs shall extend the approval for an additional two (2) year period; PROVIDED, that if in the opinion of the director the preliminary large tract segregation may not continue to serve the public use and interest or comply with existing zoning or other applicable laws, the director shall set the application for public hearing before the hearing examiner upon such notice and in accordance with such procedures as are applicable to hearing short plat appeals; and PROVIDED FURTHER, that in no event shall preliminary large tract segregation approval be extended for a total approval period in excess of four (4) years from the date of original approval.

The decision of the examiner shall be final and conclusive unless appealed to the council pursuant to Chapter 2.02 SCC.

Section 32. Section 20A.20.170 Review, Snohomish County Code, which now reads as follows:

20A.20.170 Review. Any party aggrieved by the decision of the Planning Department on a preliminary or final large tract segregation application may request a review of the decision by the hearing examiner. Such request must be made in writing within ten (10) working days from the date of the department of community affair's written decision. Such appeals shall be heard by the hearing examiner upon such notice and under the procedures established for considering short plat appeals.

is amended to read:

20A.20.170 Review. Any party aggrieved by the decision of the department of community affairs on a preliminary or final large tract segregation application may request a review of the decision by the hearing examiner. Such request must be made in writing within fifteen (15) calendar days from the date of the department of community affair's written decision. Appeals shall be filed in writing with the department of community affairs and shall contain a brief statement of the reason why error is assigned to the department's decision, and shall be accompanied by a fee of twenty-five dollars (\$25.00). Provided, that such appeal fee shall not be charged to a department of the county or to other than the first appellant. Such appeals shall be heard by the hearing examiner upon such notice and under the procedures established for considering short plat appeals. The decision of the examiner shall be final and conclusive unless appealed to the council pursuant to Chapter 2.02 SCC.

Section 33. Section 20A.28.020 Public hearing required, Snohomish County Code, which now reads as follows:

20A.28.020 Public hearing required. All modifications shall be processed in accordance with the procedures established in Chapter 2.02 SCC.

is amended to read as follows:

20A.28.020 Procedures. Requests for modification shall be heard by the hearing examiner and processed in accordance with the procedures established in Chapter 2.02 with such notice as is required for hearings on preliminary plat applications. The examiner's decision shall be final and conclusive unless appealed to the council pursuant to Chapter 2.02 SCC.

Section 34. Section 23.32.140 Public hearing, Snohomish County Code, which now reads as follows:

23.32.140 Public hearing. Whenever a public hearing on the environmental impact of a proposal is required pursuant to WAC 197-10-480(2), and Snohomish County is the lead agency for such proposal, the hearing shall be presided over by the Snohomish County zoning adjustor, and departments with jurisdiction shall have representatives in attendance thereat. In addition to the notice requirements of WAC 197-10-485, notice of said hearing shall be sent to other agencies with jurisdiction and, except for nonproject actions, to all property owners of record within a three hundred-foot radius of the external boundaries of the subject property not less than ten days prior to the hearing.

is amended to read:

23.32.140 Public hearing. Whenever a public hearing on the environmental impact of a proposal is required pursuant to WAC 197-10-480(2), and Snohomish County is the lead agency

for such proposal, the hearing shall be presided over by the hearing examiner, and departments with jurisdiction shall have representatives in attendance thereat. In addition to the notice requirements of WAC 197-10-485, notice of said hearing shall be sent to other agencies with jurisdiction and, except for nonproject actions, to all property owners of record within a three hundred-foot radius of the external boundaries of the subject property not less than ten days prior to the hearing.

Section 35. Section 26A.08.010, Appeals to be Conducted As Appeals of Any Other County Land Use Decision, Snohomish County Code which now reads as follows:

26A.08.010 Appeals to be Conducted As Appeals of Any Other County Land Use Decision. Any developer or other person who wishes to appeal any decision made in the implementation of this ordinance, may seek review of such decision in the manner otherwise provided for review of the applicable land use decision, PROVIDED, That, decisions of the Director of the Building Department shall be appealable to the Snohomish County Land Use Hearing Examiner as set forth in Chapter 2.02.100(1)(f) of the Snohomish County Code.

is amended to read:

26A.08.010 Appeals to be Conducted As Appeals of Any Other County Land Use Decision. Any developer or other person who wishes to appeal any decision made in the implementation of this ordinance, may seek review of such decision in the manner otherwise provided for review of the applicable land use decision, PROVIDED, that, decisions of the department of community affairs regarding the application of this title to building permits shall be appealable to the hearing examiner. Appeals shall be filed with the department of community affairs and shall be in writing and contain a brief statement of the reason why error is assigned to the director's decision, and shall be accompanied by a fee of twenty-five dollars (\$25.00); Provided that such appeal fee shall not be charged to a department of the county or to other than the first appellant. The appeal shall be processed in the manner prescribed for hearing administrative appeals under chapters 2.02 and 18.88 of the Snohomish County Code.

Section 36. Section 26B.08.010 Appeals to be Conducted As Appeals of Any Other County Land-Use Decision, Snohomish County Code which now reads as follows:

26B.08.010 Appeals to be Conducted As Appeals of Any Other County Land-Use Decision. Any developer or other person who wishes to appeal any decision taken under this ordinance may seek review of such county land-use decision, PROVIDED, HOWEVER; that appeals of decisions by the Building Director shall be made to the Hearing Examiner in the manner provided in Section 2.02.100(1)(f) of the Snohomish County Code, and shall be subject to the procedures specified in Chapter 2.02, Snohomish County Code.

is amended to read as follows:

26B.08.010 Appeals to be Conducted As Appeals of Any Other County Land-Use Decision. Any developer or other person who wishes to appeal any decision taken under this ordinance may seek review of such county land-use decision, PROVIDED, HOWEVER; that appeals of decisions by the department of community affairs regarding the application of this title to building permits shall be made to the hearing examiner. Appeals shall be filed with the department of community affairs and shall be in writing and contain a brief statement of the reason why error is assigned to the director's decision, and shall be accompanied by a fee of twenty-five dollars (\$25.00); Provided, that such appeal fee shall not be charged to a department of the county or to other than the first appellant. The appeal shall be processed in the manner prescribed for hearing administrative appeals under chapters 2.02 and 18.88, Snohomish County Code.

Section 37. Repealer. Upon the effective date of this ordinance the following resolutions and ordinances are repealed; Resolution adopted May 22, 1978 and last amended September 5, 1978, known as SCC 2.02 Hearing Examiner; Resolution adopted December 13, 1971 and last amended January 15, 1979, known as SCC 2.03 Zoning Adjustor; Resolution adopted December 13, 1971 and last amended January 15, 1979, known as SCC 2.04 Board of Adjustment; and Resolution adopted December 13, 1971 last amended on October 16, 1978 known as SCC 18.88 Variances, Conditional Use Permits, Special Use Permits and Appeals.

Section 38. Severability. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provisions to other persons or circumstances is not affected.

Section 39. Effective Date. The effective date of this ordinance shall be January 15, 1981 provided that if any appeals of Zoning Adjustor actions are pending before the Board of Adjustment on the effective date of this ordinance, the ordinance shall not be effective as to such appeals which shall be heard under the rules and procedures in existence as of the date of filing of any such appeal.

Dated December 29, 1980

Donald J. Butler
Chairman

ATTEST:

Lillian H. Mackey, Deputy
Clerk of the Council

ATTEST:

Debra Leifer Johnson

Willis D. Tucker
County Executive

APPROVED VETOED

EMERGENCY Date 12-30-80

PUBLISHED December 19, 1980 and January 10, 1981