

- H. Procedures for Variance Approval: Per SMC 16.120.020 as Amended by SMC Chapter 2.26. The Hearing Examiner will review applications for variance and the recommendations will be passed to the City Council for final action. The Hearing Examiner may recommend to the City Council denial, approval, or approval with conditions. Variance applicants must adhere to all applicable public notification requirements. Per SMC 2.20.060 design review is not required for single-family developments.
- I. Location: The subject property is located on .54 acres on lot 2 of the Replat of Dyer Addition near the west end and on the south side of Dyer Road.
- J. Existing Site and Surrounding Land Uses: This parcel was originally recorded May 9th 1958 as lot 2 of the plat of dyer addition recording # 1282276. (Exhibit C) October 18th 1960 the Replat of Dyer Addition was recorded (#1425259) (Exhibit D) showing lot 2 as it is today. Lot 2 is +- 23,548 square feet and is relatively flat to the top of the Skykomish River bank that then slopes to the ordinary high mark. Disregarding the sloping riverbank the average ground elevation is 112.2 feet (NGVD 1929). This property is undeveloped, and is overgrown with alder trees and blackberry vines. The adjoining properties have single-family detached homes built in the 1960's and 1970's are typical of the homes built throughout this plat. Dyer road provides access to all of the Replat of Dyer Addition. Lot's 1 & 2 are on the far west end of Dyer road where it dead-ends at tax parcel # 27080500201400, and are the only parcels taking access on to this dead-end road.
- K. Utilities, Fire and School Districts:
Water Source: - City of Sultan
Sewer Service: - Snohomish Health, Septic
Fire District: - Snohomish County Fire Protection District No. 5
School District: - Sultan School District #311
- L. Related Permits and Reviews: No additional permits or reviews are required for the approval of a variance.

II. VARIANCE CRITERIA

2.26.120 Examiner's Decision (for approval of a variance)

No application for a variance shall be granted unless the examiner finds:

1. The variance shall not constitute a grant of special privilege inconsistent with the limitation upon uses of other properties in the vicinity and zone in which the property on behalf of which their application was filed is located; and
2. That 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 situated; and
3. That such variance is necessary:
 - a. Because of special circumstances set forth in the findings relating to size, shape, topography, location or surroundings of the subject property, to provide it with use rights and privileges permitted to other properties in the vicinity and in the zone in which the subject property is located; and

- b. Because for reasons set forth in the findings, the variance as approved would contribute significantly to the improvement of environmental conditions, either existing or potentially arising from the proposed improvement

16.18.030 Nonconforming Lots - Setbacks (for approval of a variance)

- A. The property cannot reasonably be developed for the use proposed without such deviations;
- B. These deviations are necessitated by the size or shape of the nonconforming lot;
- C. The property can be developed as proposed without any significantly adverse impact on surrounding properties or the public health or safety; and
- D. Compliance with applicable building setback requirements is not reasonably possible if a building that serves the minimal needs of the use proposed for the nonconforming lot cannot practicably be constructed and located on the lot in conformity with such setback requirements. However, financial hardship does not constitute grounds for finding that compliance is not reasonably possible.

Applicant's response to the required criteria:

- A. The applicant has responded to all criteria. See **Exhibit B & C**

STAFF COMMENTS

SULTAN MUNICIPAL CODE SECTION 2.26.120(C)(1) – (3)

1. Because of the parcels location and proximity to the floodway and the strict application of WAC 173-158-120 this variance is required to provide Mr. Jones with use rights and privileges permitted to other properties in the nearby vicinity. Staff determines that the criteria response is satisfactorily met.
2. The applicant has provided sufficient evidence that the approval of this variance will not constitute a grant of a special privilege inconsistent with the limitations upon uses of other properties in the vicinity and zone in which the property is located. The approval of this variance will allow Mr. Jones to build one residence on his land allowing him a use consistent with the surrounding properties. Staff determines that the criteria response is satisfactorily met.
3. a. The applicant has demonstrated the approval of the 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 situated. The approval of the variance will keep any structures outside of the floodway, in addition the possibility of Dyer Road being widened to accommodate future development is small if not non-existent. Staff determines that the criteria response is satisfactorily met.

b. The variance would contribute significantly to the improvement of environmental conditions by allowing an undeveloped lot to be utilized as a residence discouraging illegal dumping and squatters. Staff determines that the criteria response is satisfactorily met.

SULTAN MUNICIPAL CODE SECTION 16.120.020(B)(1) – (3)

1. The approval of this variance will allow the development of a residence on a previously approved plat. The development will be in character with the surrounding land uses and zones. A 13' separation from the pavement edge will be maintained. Staff determines that the criteria response is satisfactorily met.
2. The applicant has shown the approval of the variance will permit a use of land authorized within the zoning district. A single family residence is permitted in this zone and approval of this variance will allow for this while not increasing the density of development beyond that permitted in the zoning district. Staff determines that the criteria response is satisfactorily met.
3. The respondent has shown, in writing, that the application supports the required findings needed by the Commission pursuant to SMC Section 16.120.020(B)(3). The applicant has shown, that, if the variance is not approved they will not be able to place a residence on their land. The applicant is asking for nothing more, than the ability to construct a residence, in compliance with surrounding zoning and land uses, on their land. The hardship of the floodway was not legally present when the land was Replated. The applicant is seeking the same use of their land as the other residences of the Plat have enjoyed.

SULTAN MUNICIPAL CODE SECTION 16.18.030(A) – (D)

- A. The applicant has demonstrated that, if held to the current required front setback, development of a residence on this property is no possible. The land can not be reasonably developed for the use proposed without the deviation. Staff determines that the criteria response is satisfactorily met.
- B. The applicant has shown the deviation is necessitated by the shape of the lot and its relationship to the floodway boundary. With the 20' front set back no significant portion of the land is developable. Staff determines that the criteria response is satisfactorily met.
- C. The property can be developed in a similar way as the surrounding properties have been developed, creating no adverse impact on surrounding properties. With the reduced front setback there remains 13' to the edge of pavement with little or no possibility of Dyer Rd. needing to be widened. Staff determines that the criteria response is satisfactorily met.
- D. Compliance with the building setback along with the floodway restrictions will not allow a building that serves the minimal needs of the use proposed for the lot. A residence cannot practicably be constructed on the site as proven by the applicant. Staff determines that the criteria response is satisfactorily met.

III. LAND USE & ZONING

- A. Zoning: The site is zoned Moderate Density.
- B. Comprehensive Plan Designation: Moderate Density.
- C. Dimensional Requirements: The proposed variance will maintain all other required minimal yard setbacks found in **16.12.020 Moderate Density (MD) Zone Table of Dimensional and Density Requirements** (see Exhibit D). Typical BSBL requirements for this zone are:
 - Side yard, minimal 5' total of 15'

- Rear yard minimal of 20'

IV. CRITICAL AREAS

Adopted Flood Insurance Rate Map (FIRM) and Land Use:

In 1983 the City of Sultan entered the National Flood Insurance Program, adopting the FIRM and the floodway map community-panel number 530173 0001 effective date September 30, 1983. The floodway map shows the boundary of the floodway in relation to Dyer rd. and lot 2 (see **Exhibit C**). In 1987 Washington State adopted flood plain management ordinances 86.16.041 (2)(a) RCW and WAC 173-158-075 that prohibit construction of residential structures in the floodway. The floodway boundary is 22.8 feet south of the northern property line on the west side of this parcel and 29 feet on the east side, the existing setback is 20 feet (see **Exhibit E**). The paved edge of Dyer rd. is located + - 13 feet north of the northern property line as indicated on.

V. OTHER ISSUES

VI. PUBLIC NOTICE

- A. As required by SMC 21.04.030, the applicant has fulfilled all applicable public notification requirements to date. Notice of Public Hearing was mailed on May 31, 2007 per SMC requirements.

Posted Notice: An *Affidavit of Installation of Markers & Posting of Public Information Sign(s)* was submitted by the applicant, stating that two "Proposed Land Use Action" signs and two "Notice of Public Hearing" signs were posted as required by SMC 21.04.030 (see **Exhibit G**).

VII. CONCLUSION

Staff concludes that this variance meets the criteria for approval with conditions (see section VIII below) in accordance with SMC 21.04.50.

Front Yard Setback variance request justification:

Dyer Addition was originally platted on May 5th 1958 with the purpose and intent of creating residential building lots (see **Exhibit F**). All 78 lots in this plat have been bought and sold for just this purpose, with most of the lots being built out by 1983 the year the City adopted the National Flood Insurance Program (NFIP).

The two adjacent lots 800 Dyer and 804 Dyer have homes built in the floodway in 1967 and 1977 respectively. In 1988 Washington State adopted flood plain management regulations (WAC 173-158-070) (86.16.041 RCW) that prohibit residential construction in the floodway, further WAC 173-158-120 prohibits any variance from this regulation. The applicant is seeking a front yard setback variance reducing the front yard to zero. Although the building would be set at the front/northern property line there is 13 feet remaining between the property line and the pavement edge. All of tax parcel 27080500201400 is located in the floodway and cannot be built upon. Lot 1 is the only house located to the west and as the only egress is to the east would be the only parcel affected by this variance, Mr. Mark Wellitt owner/resident of lot 1 has expressed support of this variance. Granting this request will not be materially detrimental to the neighborhood or the City. This variance request is necessitated by the

topography and the location of the floodway. The majority of the existing homes in Dyer were built prior to the adoption of the flood plain management regulations and are located in the floodway. This variance request is only asking for the common right enjoyed by all the residents of Dyer, which is the right to build a home.

VIII. STAFF RECOMMENDATION

Staff recommends that the Hearing Examiner recommend to the City Council **APPROVAL WITH CONDITIONS** this Front Yard Setback Variance with conditions listed below:

This Variance is subject to compliance with all applicable provisions, requirements, and standards of the Sultan Municipal Code, standards adopted pursuant thereto, and the following special conditions:

1. The Applicant/Developer shall adhere to all applicable codes, standards, and regulations in effect at the time of development, including but not limited to, the Sultan Municipal Code, the Stormwater Management Manual, the Uniform Building Code, and the Uniform Fire Code, as adopted by the City. The applicant is responsible for obtaining any necessary State and Federal permits/approvals required for completion of the project.
2. Prior to Building Permit Issuance and commencement of construction:
 - a. The applicant shall demonstrate that the proposed use for that lot conforms to all requirements of the Sultan Municipal Code and other standards and specifications that apply.
 - b. Construction Plans must be approved by the City of Sultan. The plans shall include, but not be limited to storm drainage, potable water, Snohomish Health District for septic, roads and other utilities to comply with the requirements of the Unified Development Code.
 - c. All surface water runoff from impervious surfaces shall be infiltrated, conveyed to an approved detention facility, or otherwise treated to protect water quality.
3. Construction of a single-family residence on the subject property shall conform to Exhibit D.
4. No parking shall be allowed between the paved edge of Dyer Road and the front of the property line.

May 31, 2007

JR Myers, Contract Planner
City of Sultan

IX. LIST OF EXHIBITS

- A. *Master Land Use Application.*, April 20, 2007
- B. *Criteria Responses.* Prepared by Groen Stephens & Kline LLP, April 30, 2007
- C. *Flood Insurance Rate Map (FIRM).* Prepared by City of Sultan, May 9, 2007
- D. *Proposed BSBL Line.* Prepared by City of Sultan, May 9, 2007
- E. *Site Layout in Relationship to Floodway Line and Dyer Rd.* Prepared by City of Sultan, May 9, 2007
- F. *Plat and Replat of Dyer Addition.* Prepared by City of Sultan, May 9, 2007
- G. *Notice of Posting for Public Meeting.* May 30, 2007
- H. *Affidavit of Mailing,* May 31, 2007

EXHIBIT B

VARIANCE APPLICATION FOR HERB AND PEGGY JONES

Development Proposal and Purpose of Request.

Herb and Peggy Jones request approval of a variance from SMC 16.12.020 (Minimal Front Yard Setback) reducing the front yard setback from twenty feet to zero for the building of a single-family detached dwelling on Lot 2 of the Replat of Dyer Addition.

Response to Variance Criteria

SULTAN MUNICIPAL CODE SECTION 2.26.120(C)(1) – (3)

- 1. Because of special circumstances relating to size, shape, topography, location or surroundings of the subject property, a variance is required to provide the property with use rights and privileges permitted to other properties in the vicinity and in the zone in which the subject property is located.**

The variance from the front yard setbacks is necessary because of special circumstances involving this property relating to topography and the location of the floodway. Specifically, according to the Floodway Map, the floodway encompasses virtually the entire property. Enclosed as Exhibit C is a map showing the lot's relationship to the floodway. As can be seen, the edge of the floodway boundary is 22.8 feet south of the northern property line on the west side of this parcel and 29 feet on the east side. Factoring in twenty foot setbacks, the Jones would be left with no land to build a home on their property.

The State and the City have adopted regulations that prohibit the construction of residential structures in a floodway. WAC 173-1580-070 and RCW 86.14.041. On the basis of those regulations, the Jones are precluded from building a home on the property without a variance from the front setbacks because the floodway and setbacks encompass the entire property. Furthermore, the City has informed the Jones that they are unable to get a variance from the floodway requirements pursuant to WAC 173-158-120. The strict application of the code would deprive the subject property of similar rights and privileges, resulting in a taking of their property under the Fifth Amendment, requiring compensation.

- 2. The variance shall not constitute a grant of special privilege inconsistent with the limitations upon uses of other properties in the vicinity and zone in which the property is located.**

The variance will not constitute a special privilege since the majority of the homes in this development were built prior to the adoption of the floodplain regulations and are located within the floodway. Indeed, two adjoining lots (800 Dyer and 804 Dyer) have homes that were built in the floodway in 1967 and 1977. The reasonable use of this property is

to construct a single-family house like the surrounding lots have done, with most of the lots having done so before the floodway regulations were adopted. If the variance is granted, the Jones will be able to construct a home on the property and not be denied all economically viable use of their property.

- 3. The 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 situated.**

The granting of the variance will not be materially detrimental to the public welfare or injurious to the property or improvements in the zone or vicinity. The variance will allow the development of a single family house in an already developed area, thus maintaining the use, character and streetscape of the area. It enhances the residential use by providing an additional housing opportunity in an already developed neighborhood. There are no adverse effects anticipated for adjacent properties in the area and the public interest will not suffer. Although the building would be set at the front/northern property line there is 13 feet remaining between the property line and the pavement edge.

- 4. The variance as approved would contribute significantly to the improvement of environmental conditions, either existing or potentially arising from the proposed improvement.**

The granting of the variance will result in the property not being left vacant and in danger of being used by trespassers as a possible dumping site for garbage and/or harmful materials.

SULTAN MUNICIPAL CODE SECTION 16.120.020(B)(1) – (3)

- 1. The variance can be granted without substantial impairment of the intent, purpose, and integrity of this title and of the comprehensive plan of Sultan.**

The variance will allow the development of a single family house in an already developed area, thus maintaining the use, character and streetscape of the area. It enhances the residential use by providing an additional housing opportunity in an already developed neighborhood. Although the building would be set at the front/northern property line there is 13 feet remaining between the property line and the pavement edge.

- 2. The variance will not permit a use of land not authorized within the zoning district, as established by the unified development code, in which the increase in the volume of a building or structure, or an increase in the density of development beyond that permitted in the zoning district.**

As mentioned above, the variance will simply allow the development of a single family home in an already developed area which is permitted under the current zoning code. The variance will not permit a use of land not authorized within the zoning district nor an

increase in the volume of building or an increase in density beyond that permitted in the zoning district.

3. The application supports the required findings needed by the Commission pursuant to SMC Section 16.120.020(B)(3).

The application supports the required findings needed by the Commission as set forth in SMC Section 16.120.020(B)(3). First, if the applicants complied with the provisions of the front yard setback requirements, they would not be able to make any reasonable use of their property because the floodway and setbacks encompasses the entire property precluding construction of a home on the property. Second, the difficulties or hardship are peculiar to the property in question in contrast with other properties in the same district because the majority of the homes in this development were built prior to the adoption of the floodway regulations and are located within the floodway. Third, the hardship faced by the Jones was not the result of any action on their part. Finally, the hardship is not merely financial or pecuniary because without the variance, the Jones are left without the ability to enjoy their property for its intended purpose, construction and use of a residence.

SULTAN MUNICIPAL CODE SECTION 16.18.030(A) – (D)

A. The property cannot be reasonably be developed for the use proposed without such deviations.

As mentioned above, the Jones are precluded from building a home on the property without a variance from the front setbacks because the floodway and setbacks encompass the entire property. Furthermore, the City has informed the Jones that they are unable to get a variance from the floodway requirements pursuant to WAC 173-158-120.

B. These deviations are necessitated by the size or shape of the nonconforming lot.

As mentioned previously, the variance from the front yard setbacks is necessary because of special circumstances involving this property relating to topography and the location of the floodway. Specifically, according to the Floodway Map, the floodway encompasses virtually the entire property. Enclosed as Exhibit C is a map showing the lot's relationship to the floodway. As can be seen, the edge of the floodway boundary is 22.8 feet south of the northern property line on the west side of this parcel and 29 feet on the east side. Factoring in twenty foot setbacks, the Jones would be left with no land to build a home on their property.

C. The property can be developed as proposed without any significant adverse impact on surrounding properties or the public health or safety.

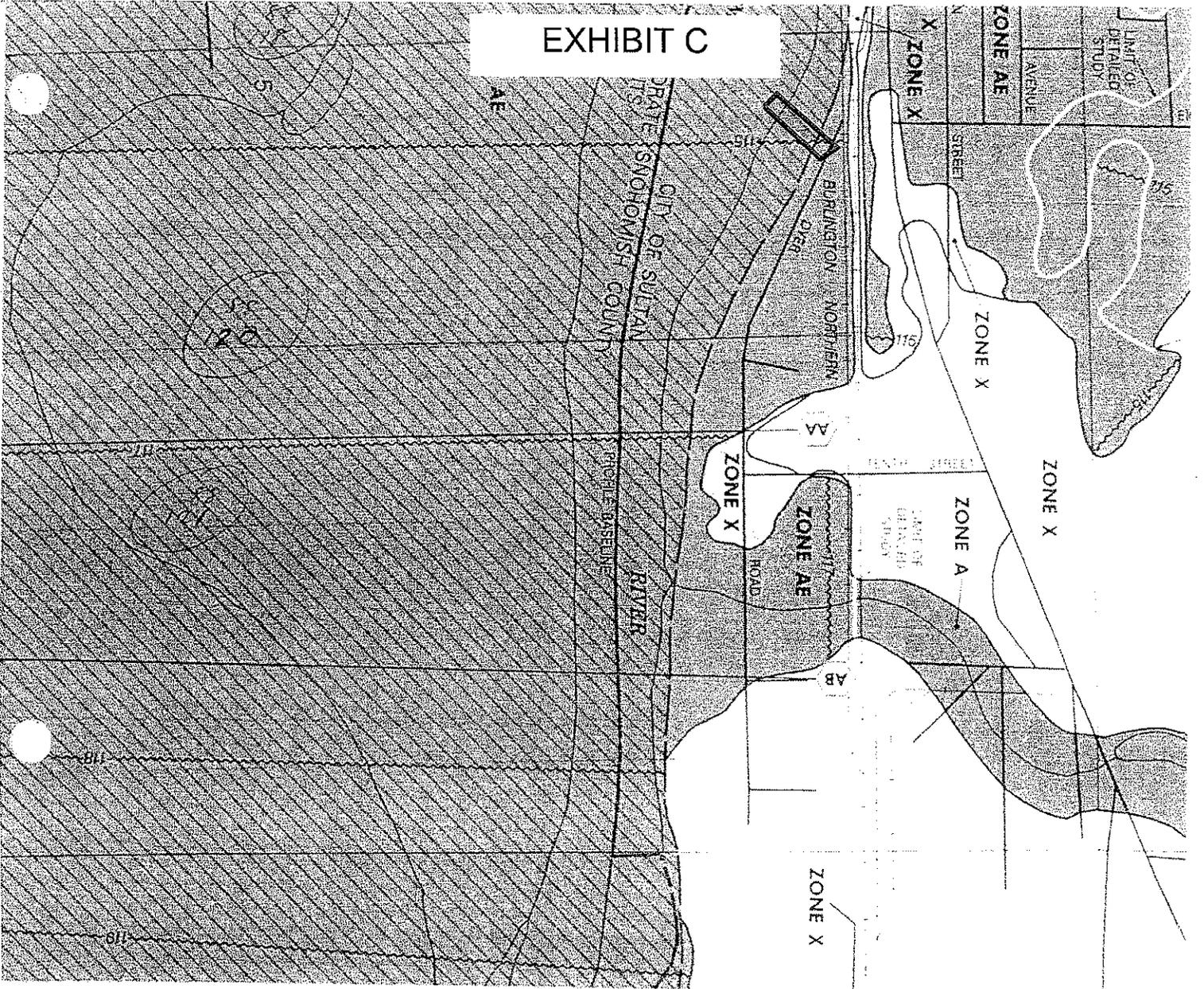
The property can be developed without any significant adverse impact on surrounding properties or the public health or safety. The variance will allow the development of a

single family house in an already developed area, thus maintaining the use, character and streetscape of the area. It enhances the residential use by providing an additional housing opportunity in an already developed neighborhood. There are no adverse effects anticipated for adjacent properties in the area and the public interest will not suffer. Although the building would be set at the front/northern property line there is 13 feet remaining between the property line and the pavement edge.

D. Compliance with the applicable building setback requirements is not reasonably possible if a building that serves the minimal needs of the use proposed for the nonconforming lot cannot practicably be constructed and located on the lot in conformity with such setback requirements.

As mentioned above, the applicant cannot comply with the front yard setbacks and still build a home on the property due to the floodway regulations on the property.

EXHIBIT C



NATIONAL FLOOD INSURANCE PROGRAM

FIRM

FLOOD INSURANCE RATE MAP

SNOHOMISH COUNTY,
WASHINGTON AND
INCORPORATED AREAS

PANEL 1406 OF 1575

(SEE MAP INDEX FOR PANELS NOT PRINTED)

CONTAINS:
COMMUNITY NUMBER PANEL SEFFN

SULTAN CITY OF SNOHOMISH COUNTY
UNINCORPORATED AREAS

SNOWY 1406 E
SNOHOMISH 1406 F

MAP NUMBER
53061C1406 E

EFFECTIVE DATE:
NOVEMBER 8, 1999



Federal Emergency Management Agency

2.12

(1) All other utilities and connections to public utilities are designed, constructed, and located to eliminate or minimize flood damage.

(4) For all substantially damaged residential structures other than farmhouses that are located in a designated floodway, the department, at the request of the town, city, or county with land use authority over the structure, is authorized to assess the risk of harm to life and property posed by the specific conditions of the floodway, and, based upon scientific analysis of depth, velocity, and flood-related erosion, may exercise best professional judgment in recommending to the permitting authority, repair, replacement, or relocation of such damaged structures. The effect of the department's recommendation, with the town, city, or county's concurrence, to allow repair or replacement of a substantially damaged residential structure within the designated floodway is a waiver of the floodway prohibition.

(5) The department shall develop a rule or rule amendment guiding the assessment procedures and criteria described in subsections (3) and (4) of this section no later than December 31, 2000.

(6) For the purposes of this section, "farmhouse" means a single-family dwelling located on a farm site where resulting agricultural products are not produced for the primary consumption or use by the occupants and the farm owner. [2000 c 222 § 1; 1999 c 9 § 1; 1989 c 64 § 4; 1987 c 523 § 4.]

Effective date—1999 c 9: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 15, 1999]." [1999 c 9 § 2.]

86.16.045 Adoption of ordinances or requirements that exceed minimum federal requirements. A county, city, or town may adopt flood plain management ordinances or requirements that exceed the minimum federal requirements of the national flood insurance program without following the procedures provided in RCW 86.16.031(8). [1989 c 64 § 6.]

86.16.051 Basis for state and local flood plain management. The basis for state and local flood plain management regulation shall be the areas designated as special flood hazard areas on the most recent maps provided by the federal emergency management agency for the national flood insurance program. Best available information shall be used if these maps are not available or sufficient. [1987 c 523 § 5.]

86.16.061 Adoption of rules. The department of ecology after consultation with the public shall adopt such rules as are necessary to implement this chapter. [1989 c 64 § 5; 1987 c 523 § 6.]

86.16.071 Chapter not to create liability for damages against the state. The exercise by the state of the authority, duties, and responsibilities as provided in this chapter shall not imply or create any liability for any damages against the state. [1987 c 523 § 7.]

86.16.081 Enforcement of chapter—Civil penalty—Review by pollution control hearings board or local legislative authority. (1) Except as provided in RCW 43.05.060

through 43.05.080 and 43.05.150, the attorney general or the attorney for the local government shall bring such injunctive, declaratory, or other actions as are necessary to ensure compliance with this chapter.

(2) Any person who fails to comply with this chapter shall also be subject to a civil penalty not to exceed one thousand dollars for each violation. Each violation or each day of noncompliance shall constitute a separate violation.

(3) The penalty provided for in this section shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the department or local government, describing the violation with reasonable particularity and ordering the act or acts constituting the violation or violations to cease and desist or, in appropriate cases, requiring necessary corrective action to be taken within a specific and reasonable time.

(4) Any penalty imposed pursuant to this section by the department shall be subject to review by the pollution control hearings board. Any penalty imposed pursuant to this section by local government shall be subject to review by the local government legislative authority. Any penalty jointly imposed by the department and local government shall be appealed to the pollution control hearings board. [1995 c 403 § 634; 1987 c 523 § 8.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

86.16.110 Appeals. Any person, association, or corporation, public, municipal, or private, feeling aggrieved at any order, decision, or determination of the department or director pursuant to this chapter, affecting his or her interest, may have the same reviewed pursuant to RCW 43.21B.310. [1991 c 322 § 11. Prior: (Repealed by 1987 c 523 § 12); 1987 c 109 § 23; 1935 c 159 § 17; RRS § 9663A-17.]

Reviser's note: This section was repealed by 1987 c 523 § 12 without cognizance of its amendment by 1987 c 109 § 23, and was subsequently reenacted by 1991 c 322 § 11.

Findings—Intent—Purpose—1991 c 322: See notes following RCW 86.12.200.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

86.16.120 Flood damages defined. Damages within the meaning of this chapter shall include harmful inundation, water erosion of soil, stream banks and beds, stream channel shifting and changes, harmful deposition by water of eroded and shifting soils and debris upon property or in the beds of streams or other bodies of water, damages by high water to public roads, highways, bridges, utilities and to works built for protection against floods or inundation, the interruption by floods of travel, communication and commerce, and all other high water influences and results which injuriously affect the public health and the safety of property. [1935 c 159 § 2; RRS § 9663A 2.]

86.16.130 Supervisor's other powers and duties unaffected by chapter.

WAC 173-158-040 Regulatory area. The minimum regulatory area for state and local flood plain management regulations shall be those areas subject to a base (one hundred year) flood and designated as special flood hazard areas on the most recent maps provided by the Federal Emergency Management Agency (FEMA) for the National Flood Insurance Program (NFIP). Best available information shall be used if these maps are not available or sufficient as determined by the Federal Emergency Management Agency.

Statutory Authority: RCW 86.16.061, 90-21-089, § 173-158-040, filed 10/19/90; effective 11/19/90. Statutory Authority: Chapter 86.16 RCW, 88-10-058 (Order 88-6), § 173-158-040, filed 5/2/88.

WAC 173-158-045 Technical assistance. The department of ecology shall provide technical assistance to local governments in the administration of their flood plain management ordinances. The department shall also assist counties, cities, and towns in identifying the location of the one hundred year flood plain, and petitioning the federal government to alter its designations of where the one hundred year flood plain is located if the federally recognized location of the one hundred year flood plain is found to be inaccurate.

Statutory Authority: RCW 86.16.061, 90-21-089, § 173-158-045, filed 10/19/90; effective 11/19/90.

WAC 173-158-050 Criteria for land management and use. The standards and definitions contained in 44 CFR, Parts 59 and 60 for the National Flood Insurance Program are adopted as the minimum state standards by reference.

Statutory Authority: Chapter 86.16 RCW, 88-10-058 (Order 88-6), § 173-158-050, filed 5/2/88.

WAC 173-158-064 Additional state requirements. State requirements may be established for specific flood plains that exceed the minimum federal requirements of the NFIP, in accordance with RCW 86.16.031(8) and the following:

(1) A written request must be submitted to the department of ecology by the affected county, city, or town to initiate the process.

(2) The location of the one hundred year flood plain must be reexamined by the affected community and the department of ecology, and has been certified by the department as being accurate for the affected areas.

(3) The department of ecology shall negotiate with the affected community to determine the content of proposed additional requirements.

(4) The department of ecology shall notify the public of related public meetings and public hearings.

(5) The department of ecology must find that the proposed increased requirements are necessary due to local circumstances and general public safety.

(6) The area where the additional requirements apply is to be clearly identified.

(7) Additional state requirements shall be established as needed in accordance with the required state rule-making procedures.

Statutory Authority: RCW 86.16.061, 90-21-089, § 173-158-064, filed 10/19/90; effective 11/19/90.

2005 Ed.

WAC 173-158-070 Additional floodway requirements. The following additional state requirements are established in accordance with RCW 86.16.041:

(1) Special flood hazard areas with designated floodways. In addition to those NFIP requirements for designated floodways, communities with designated floodways shall restrict land uses within such areas to include the prohibition of construction or reconstruction of residential structures except for: (a) Repairs, reconstruction, or improvements to a structure which do not increase the ground floor area; and (b) repairs, reconstruction, or improvements to a structure the cost of which does not exceed fifty percent of the market value of the structure either (i) before the repair, reconstruction, or improvement is started, or (ii) if the structure has been damaged, and is being restored, before the damage occurred. Work done on structures to comply with existing health, sanitary, or safety codes which have been identified by the local code enforcement or building official and are the minimum necessary to assure safe living conditions shall not be included in the fifty percent determination in (b) of this subsection. A residential dwelling located partially within a designated floodway will be considered as totally within a designated floodway and must comply with this chapter. However, the floodway prohibition in this subsection does not apply to existing farmhouses in designated floodways that meet the provisions of WAC 173-158-075, or to residential dwellings other than farmhouses that meet the depth and velocity and erosion analysis provisions of WAC 173-158-076, or to structures identified as historical places.

(2) Special flood hazard areas without designated floodways. When a regulatory floodway for a stream has not been designated, the community may require that applicants for new construction and substantial improvements reasonably utilize the best available information from a federal, state, or other source to consider the cumulative effect of existing, proposed, and anticipated future development and determine that the increase in the water surface elevation of the base flood will not be more than one foot at any point in the community. Building and development near streams without a designated floodway shall comply with the requirements of 44 CFR 60.3 (b)(3) and (4), and (c)(10) of the NFIP regulations.

[Statutory Authority: Chapter 86.16 RCW, 02-15-093 (Order 00-26), § 173-158-070, filed 7/16/02, effective 8/16/02. Statutory Authority: RCW 86.16.061, 90-21-089, § 173-158-070, filed 10/19/90; effective 11/19/90. Statutory Authority: Chapter 86.16 RCW, 88-10-058 (Order 88-6), § 173-158-070, filed 5/2/88.]

WAC 173-158-075 Existing farmhouse standards. Repairs, reconstruction, replacement, or improvements to existing farmhouse structures located in designated floodways and which are located on lands designated as agricultural lands of long-term commercial significance under RCW 36.70A.170 shall be permitted subject to the following:

(1) The new farmhouse is a replacement for an existing farmhouse on the same farm site;

(2) There is no potential safe building site for a replacement farmhouse on the same farm site outside the designated floodway or the location requires close proximity to other structures in the farm operation in order to maintain the integrity and operational viability of the farm; in no case shall a

(1) Review and approve county, city, or town flood plain management ordinances pursuant to RCW 86.16.041;

(2) When requested, provide guidance and assistance to local governments in development and amendment of their flood plain management ordinances;

(3) Provide technical assistance to local governments in the administration of their flood plain management ordinances;

(4) Provide local governments and the general public with information related to the national flood insurance program;

(5) When requested, provide assistance to local governments in enforcement actions against any individual or individuals performing activities within the flood plain that are not in compliance with local, state, or federal flood plain management requirements;

(6) Establish minimum state requirements that equal minimum federal requirements for the national flood insurance program;

(7) Assist counties, cities, and towns in identifying the location of the one hundred year flood plain, and petitioning the federal government to alter its designations of where the one hundred year flood plain is located if the federally recognized location of the one hundred year flood plain is found to be inaccurate; and

(8) Establish minimum state requirements for specific flood plains that exceed the minimum federal requirements for the national flood insurance program, but only if: (a) The location of the one hundred year flood plain has been reexamined and is certified by the department as being accurate; (b) negotiations have been held with the affected county, city, or town over these regulations; (c) public input from the affected community has been obtained; and (d) the department makes a finding that these increased requirements are necessary due to local circumstances and general public safety. [1989 c 64 § 3; 1987 c 523 § 3.]

86.16.035 Department of ecology—Control of dams and obstructions. Subject to RCW 43.21A.068, the department of ecology shall have supervision and control over all dams and obstructions in streams, and may make reasonable regulations with respect thereto concerning the flow of water which he deems necessary for the protection to life and property below such works from flood waters. [1995 c 8 § 5. Prior: 1987 c 523 § 9; 1987 c 109 § 53; 1935 c 159 § 8; RRS § 9663A-8. Formerly RCW 86.16.030, part.]

Findings—1995 c 8: See note following RCW 43.21A.064

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001

86.16.041 Flood plain management ordinances and amendments—Filing with the department of ecology—Disapproval by the department—Adoption of rules for repair or replacement of existing residential structures.

(1) Beginning July 26, 1987, every county and incorporated city and town shall submit to the department of ecology any new flood plain management ordinance or amendment to any existing flood plain management ordinance. Such ordinance or amendment shall take effect thirty days from filing with the department unless the department disapproves such ordinance or amendment within that time period.

[Title 86 RCW—page 32]

(2) The department may disapprove any ordinance or amendment submitted to it under subsection (1) of this section if it finds that an ordinance or amendment does not comply with any of the following:

(a) Restriction of land uses within designated floodways, including the prohibition of construction or reconstruction, repair, or replacement of residential structures, except for: (i) repairs, reconstruction, or improvements to a structure which do not increase the ground floor area; and (ii) repairs, reconstruction, or improvements to a structure the cost of which does not exceed fifty percent of the market value of the structure either, (A) before the repair, reconstruction, or repair is started, or (B) if the structure has been damaged, and is being restored, before the damage occurred. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications that have been identified by the local code or building enforcement official and which are the minimum necessary to ensure safe living conditions shall not be included in the fifty percent determination. However, the floodway prohibition in this subsection does not apply to existing farmhouses in designated floodways that meet the provisions of subsection (3) of this section, or to substantially damaged residential structures other than farmhouses that meet the depth and velocity and erosion analysis in subsection (4) of this section, or to structures identified as historic places;

(b) The minimum requirements of the national flood insurance program; and

(c) The minimum state requirements adopted pursuant to RCW 86.16.031(8) that are applicable to the particular county, city, or town.

(3) Repairs, reconstruction, replacement, or improvements to existing farmhouse structures located in designated floodways and which are located on lands designated as agricultural lands of long-term commercial significance under RCW 36.70A.170 shall be permitted subject to the following:

(a) The new farmhouse is a replacement for an existing farmhouse on the same farm site;

(b) There is no potential building site for a replacement farmhouse on the same farm outside the designated floodway;

(c) Repairs, reconstruction, or improvements to a farmhouse shall not increase the total square footage of encroachment of the existing farmhouse;

(d) A replacement farmhouse shall not exceed the total square footage of encroachment of the farmhouse it is replacing;

(e) A farmhouse being replaced shall be removed, in its entirety, including foundation, from the floodway within ninety days after occupancy of a new farmhouse;

(f) For substantial improvements, and replacement farmhouses, the elevation of the lowest floor of the improvement and farmhouse respectively, including basement, is a minimum of one foot higher than the base flood elevation;

(g) New and replacement water supply systems are designed to eliminate or minimize infiltration of flood waters into the system;

(h) New and replacement sanitary sewerage systems are designed and located to eliminate or minimize infiltration of flood water into the system and discharge from the system into the flood waters; and

WAC 173-158-040 Regulatory area. The minimum regulatory area for state and local flood plain management regulations shall be those areas subject to a base (one hundred year) flood and designated as special flood hazard areas on the most recent maps provided by the Federal Emergency Management Agency (FEMA) for the National Flood Insurance Program (NFIP). Best available information shall be used if these maps are not available or sufficient as determined by the Federal Emergency Management Agency.

Statutory Authority: RCW 86.16.061, 90-21-089, § 173-158-040, filed 10/19/90, effective 11/19/90; Statutory Authority: Chapter 86.16 RCW, §§ 88-058 (Order 88-6), § 173-158-040, filed 5/4/88.

WAC 173-158-045 Technical assistance. The department of ecology shall provide technical assistance to local governments in the administration of their flood plain management ordinances. The department shall also assist counties, cities, and towns in identifying the location of the one hundred year flood plain, and petitioning the federal government to alter its designations of where the one hundred year flood plain is located if the federally recognized location of the one hundred year flood plain is found to be inaccurate.

Statutory Authority: RCW 86.16.061, 90-21-089, § 173-158-045, filed 10/19/90, effective 11/19/90.

WAC 173-158-050 Criteria for land management and use. The standards and definitions contained in 44 CFR, Parts 59 and 60 for the National Flood Insurance Program are adopted as the minimum state standards by reference.

Statutory Authority: Chapter 86.16 RCW, 88-10-058 (Order 88-6), § 173-158-050, filed 5/4/88.

WAC 173-158-064 Additional state requirements. State requirements may be established for specific flood plans that exceed the minimum federal requirements of the NFIP, in accordance with RCW 86.16.031(8) and the following:

(1) A written request must be submitted to the department of ecology by the affected county, city, or town to initiate the process.

(2) The location of the one hundred year flood plain must be reexamined by the affected community and the department of ecology, and has been certified by the department as being accurate for the affected areas.

(3) The department of ecology shall negotiate with the affected community to determine the content of proposed additional requirements.

(4) The department of ecology shall notify the public of related public meetings and public hearings.

(5) The department of ecology must find that the proposed increased requirements are necessary due to local circumstances and general public safety.

(6) The area where the additional requirements apply is to be clearly identified.

(7) Additional state requirements shall be established as needed in accordance with the required state rule-making procedures.

Statutory Authority: RCW 86.16.061, 90-21-089, § 173-158-064, filed 10/19/90, effective 11/19/90.

2068-22

WAC 173-158-070 Additional floodway requirements. The following additional state requirements are established in accordance with RCW 86.16.041.

(1) Special flood hazard areas with designated floodways. In addition to those NFIP requirements for designated floodways, communities with designated floodways shall restrict land uses within such areas to include the prohibition of construction or reconstruction of residential structures except for: (a) Repairs, reconstruction, or improvements to a structure which do not increase the ground floor area; and (b) repairs, reconstruction, or improvements to a structure the cost of which does not exceed fifty percent of the market value of the structure either (i) before the repair, reconstruction, or improvement is started, or (ii) if the structure has been damaged, and is being restored, before the damage occurred. Work done on structures to comply with existing health, sanitary, or safety codes which have been identified by the local code enforcement or building official and are the minimum necessary to assure safe living conditions shall not be included in the fifty percent determination in (b) of this subsection. A residential dwelling located partially within a designated floodway will be considered as totally within a designated floodway and must comply with this chapter. However, the floodway prohibition in this subsection does not apply to existing farmhouses in designated floodways that meet the provisions of WAC 173-158-075, or to residential dwellings other than farmhouses that meet the depth and velocity and erosion analysis provisions of WAC 173-158-076, or to structures identified as historical places.

(2) Special flood hazard areas without designated floodways. When a regulatory floodway for a stream has not been designated, the community may require that applicants for new construction and substantial improvements reasonably utilize the best available information from a federal, state, or other source to consider the cumulative effect of existing, proposed, and anticipated future development and determine that the increase in the water surface elevation of the base flood will not be more than one foot at any point in the community. Building and development near streams without a designated floodway shall comply with the requirements of 44 CFR 60.3 (b)(3) and (4), and (c)(10) of the NFIP regulations.

Statutory Authority: Chapter 86.16 RCW, 02-15-093 (Order 00-26), § 173-158-070, filed 7/16/02, effective 8/16/02; Statutory Authority: RCW 86.16.061, 90-21-089, § 173-158-070, filed 10/19/90, effective 11/19/90; Statutory Authority: Chapter 86.16 RCW, 88-10-058 (Order 88-6), § 173-158-070, filed 5/4/88.

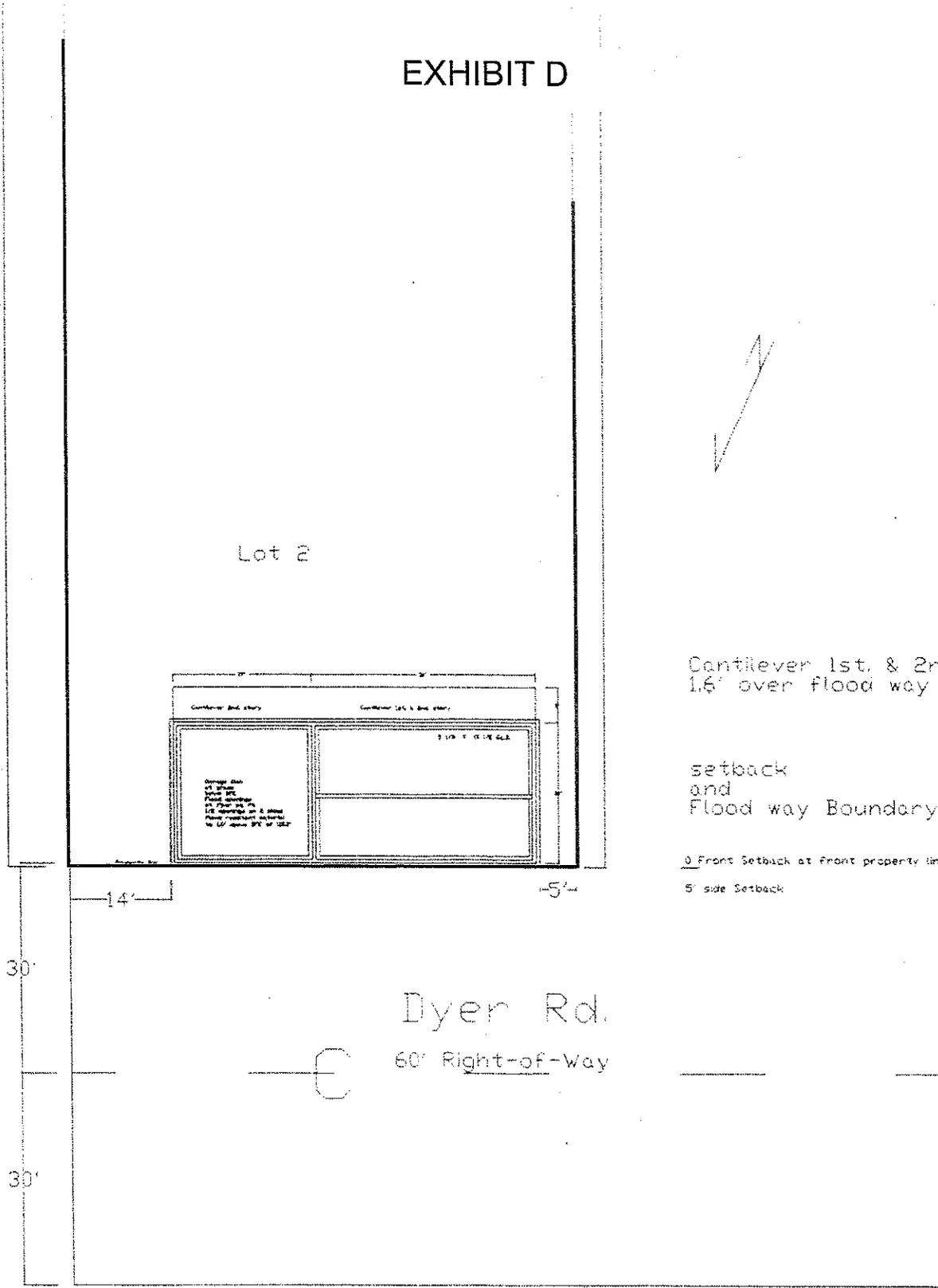
WAC 173-158-075 Existing farmhouse standards. Repairs, reconstruction, replacement, or improvements to existing farmhouse structures located in designated floodways and which are located on lands designated as agricultural lands of long-term commercial significance under RCW 36.70A.170 shall be permitted subject to the following:

(1) The new farmhouse is a replacement for an existing farmhouse on the same farm site;

(2) There is no potential safe building site for a replacement farmhouse on the same farm site outside the designated floodway or the location requires close proximity to other structures in the farm operation in order to maintain the integrity and operational viability of the farm; in no case shall a

2-110

EXHIBIT D



Lot 2

Cantilever 1st. & 2nd. stor
1.6' over flood way

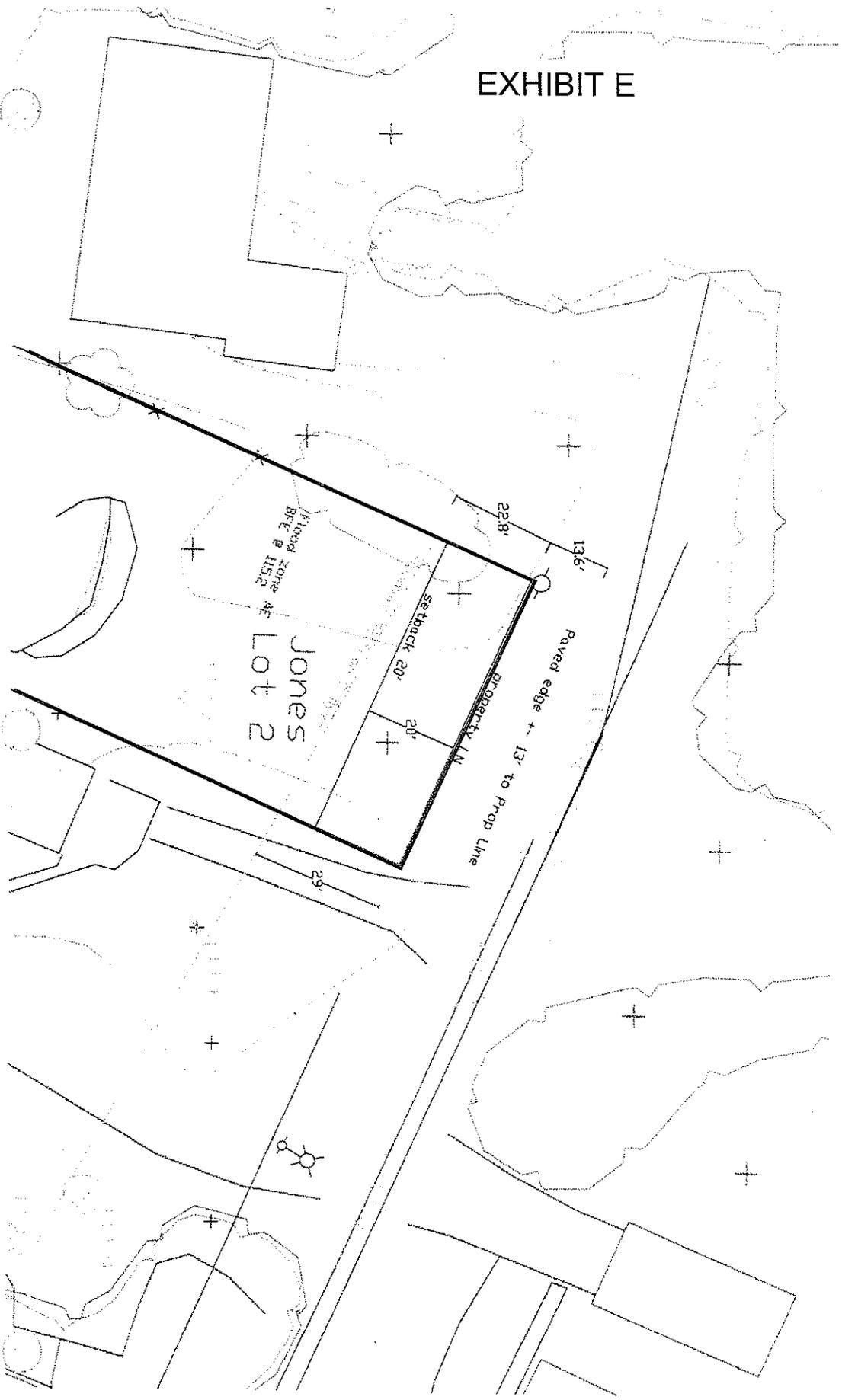
setback
and
Flood way Boundary

0 Front Setback at front property line
5' side Setback

Dyer Rd.
60' Right-of-Way

Maple Street

EXHIBIT E



THE PLAT OF
DYER ADDITION
PORTION OF SEC. 5, T. 27N, R. 8E, W.M.

Description

The plat of Dyer Addition embraces a portion of Gov't Lots 1, 2 and 5, Section 5, T. 27N, R. 8E, W.M. described as follows: Commencing at the North one-quarter corner of said Section 5; thence S 0 38'E along the west line of said Gov't Lot 2 for 82.81 feet to the southerly margin of the Great Northern Railroad right of way; thence true point of beginning; thence following said southerly margin, due East for 122.53 feet to the East line of said Gov't Lot 2; thence N 08 40' W along the East line of Gov't Lot 2 for 25.0 feet; thence due East for 125.20 feet to an existing fence line; thence S 34 05' E for 208 feet more or less to the north-erly bank of the Skykomish River; thence westerly along said River to the west line of said Gov't Lot 2; thence northerly along said west line of Gov't Lot 2 to the true point of beginning.

DEDICATION

KNOW ALL MEN BY THESE PRESENTS that Percy D. Dyer and Eula M. Dyer, husband and wife, owners in fee simple of the above described property as shown on the annexed Plat of Dyer Addition, do hereby declare said plat and dedicate to the public for use of the public forever all streets and roads shown thereon together with those strips designated as Utility and drainage easements. The Town of Sultan shall have the right to make all necessary slopes for cuts and fills in the original reasonable grading of the roads shown thereon in witness whereof we have hereunto set our hands, this 5 day of May 1958.

Percy D. Dyer
Percy D. Dyer

Eula M. Dyer
Eula M. Dyer

ACKNOWLEDGMENT

County of Washington, ss.
This is to certify that on this 5 day of May 1958, personally appeared before me, Percy D. Dyer and Eula M. Dyer, husband and wife, to me known to be the individuals who executed the within and foregoing instrument and who acknowledged to me that they signed and sealed the same as their free and voluntary act and deed for the uses and purposes therein mentioned. My witness whereof, I have hereunto set my hand and affixed my official seal, this day and year first above written.

Henry J. Johnson
HENRY J. JOHNSON
NOTARY PUBLIC RESIDING AT THE STATE

RESTRICTIONS RECORDING # 12 21 275

Restrictive and Protective Covenants covering all lots in this plat are in accordance with Declaration of Protective Covenants as filed for record in Vol. 541 of Deeds on Page 281, records of Snohomish County, Washington.

TREASURER'S CERTIFICATES

I, *Johnnie S. Sullivan*, Treasurer of the Town of Sultan, do hereby certify that all local improvement assessments on the above described property have been paid up to and including the year 1958.

Johnnie S. Sullivan
JOHNNIE S. SULLIVAN
TREASURER, TOWN OF SULTAN

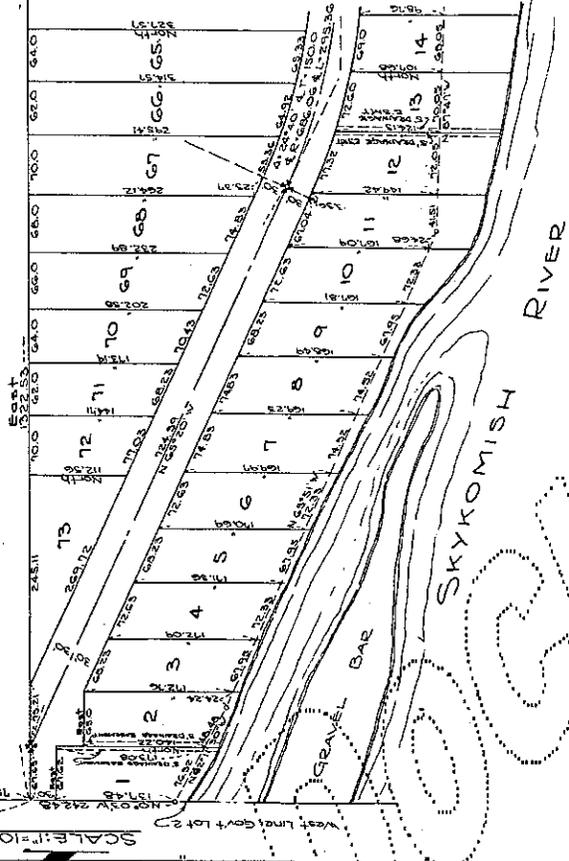
APPROVALS

Examined and approved by the Town of Sultan this 5 day of May 1958
Johnnie S. Sullivan
JOHNNIE S. SULLIVAN
TREASURER
Attest: *Walter C. Dyer*
WALTER C. DYER
CLERK

N 1/4 Cor. Section 5, T. 27N, R. 8E.

* Indicates Concrete Monuments
• Indicates Iron Pipe Monuments

G. N. RY.



ENGINEER'S CERTIFICATE

I, Walton E. Crane, Registered Land Surveyor, do hereby certify that the annexed Plat of Dyer Addition is based on an actual Survey and that all lots have been staked and monuments set as shown.

Walton E. Crane
WALTON E. CRANE
REGISTERED LAND SURVEYOR

RECORDING # 18 21 76

Filed for record at the request of Percy D. Dyer, at 22 minutes past 2 o'clock P.M. on this 9 day of MAY 1958 and recorded in Volume 17 of Plats on page 37, records of Snohomish County, Washington.

1958 D *Henry J. Johnson* by *Walter C. Dyer*
HENRY J. JOHNSON
WALTER C. DYER
COUNTY ATTORNEY

Lots 38 thru 73 inclusive, shall include an undivided 1/32nd interest in Community Lot A.

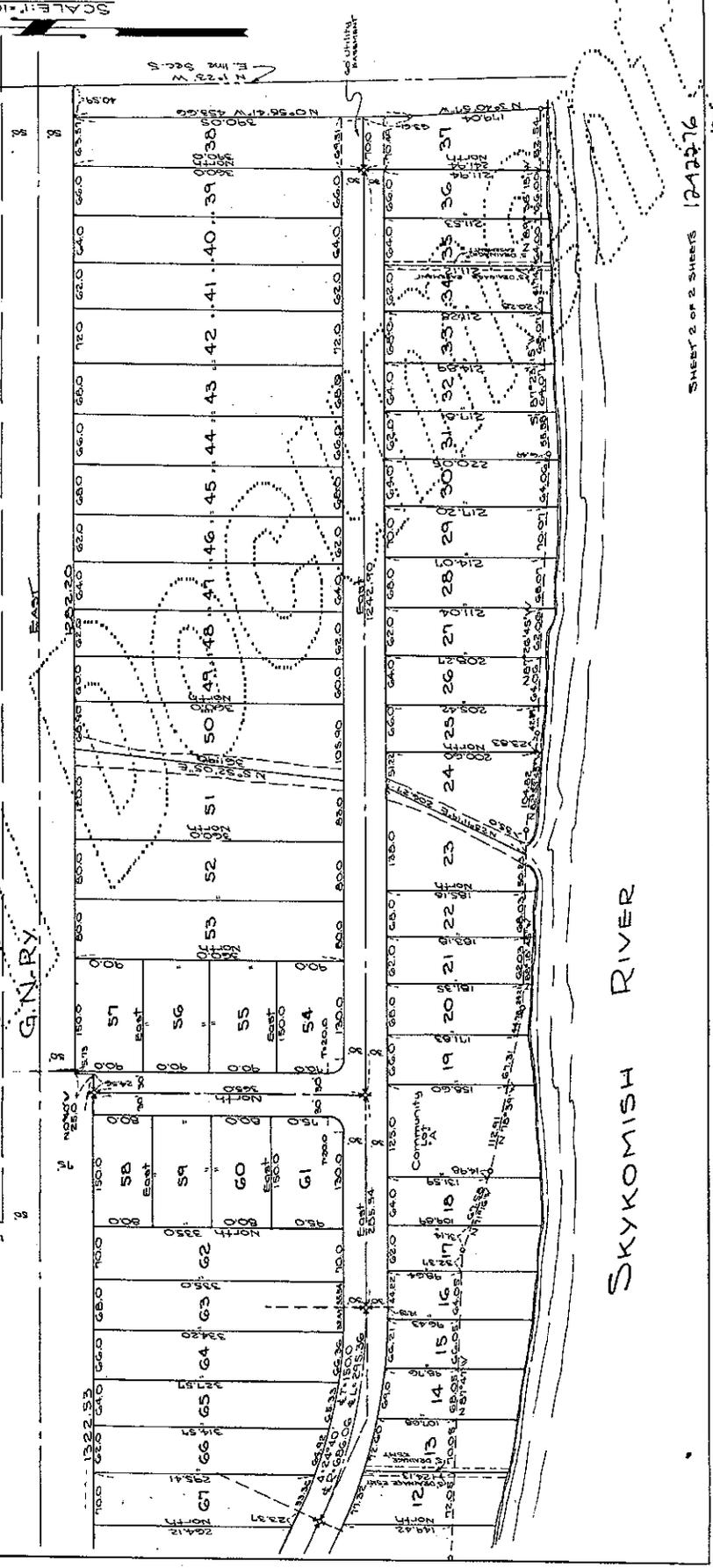
219

THE PLAT OF
DYER ADDITION
 PORTION OF SEC. 5, T. 27 N., R. 9 E., W. 4

SCALE: 1" = 100'

* Indicates Concrete Monuments
 † Indicates Iron Pipe Monuments

Unofficial Copy



220

REPLAT OF DYER ADDITION Portion of Sec. 5, T21N, R8E, WM.

N¹/₄ Corner Sec. 5, T21N, R8E, WM.

DESCRIPTION

This is a replat of the DYER ADDITION, according to the plat thereof recorded in Volume 11 of plats of page 37, records of Snohomish County, Washington.

DEDICATION

I, PERCY D. DYER, husband and wife, owners in fee simple of the above described property as shown on the annexed Replat of Dyer Addition, do hereby declare said plat and dedicate to the public for the use of the public forever all streets and roads shown thereon together with those strips designated as utility and drainage easements. The town of Sultan shall have the right to make all necessary slopes for cuts and fills in the original reasonable grading of the roads shown thereon.

Percy D. Dyer
PERCY D. DYER
Eula M. Dyer
EULA M. DYER

ACKNOWLEDGMENT

I, PERCY D. DYER, do hereby certify that on this 20th day of June 1960 personally appeared before me, Percy D. Dyer and Eula M. Dyer, husband and wife, to me known to be the individuals who executed the within and foregoing instrument and who acknowledged to me that they signed and sealed the same as their free and voluntary act and deed for the uses and purposes as their free and mentioned. In witness whereof, I have hereunto set my hand and affixed my official seal the day and year first above written.

Percy D. Dyer
PERCY D. DYER
Eula M. Dyer
EULA M. DYER

RESTRICTIONS

Restrictive and Protective Covenants covering all lots in this plat are in accordance with Declaration of Protective Covenants as filed for record in Volume 647 of Deeds on Page 281, under Auditor's file No. 1282275, records of Snohomish County, Washington.

TREASURER'S CERTIFICATES

I, Genevieve Boddington, Treasurer of the Town of Sultan, do hereby certify that all local improvement assessments on the above described property have been paid up to and including the year 1960.

Genevieve Boddington
GENEVIEWE BODDINGTON
TREASURER, TOWN OF SULTAN

I, Verne S. Myers, Treasurer of Snohomish County, Washington do hereby certify that all taxes on the above described property have been fully paid up to and including the year 1961.

Verne S. Myers
VERNE S. MYERS
COUNTY TREASURER

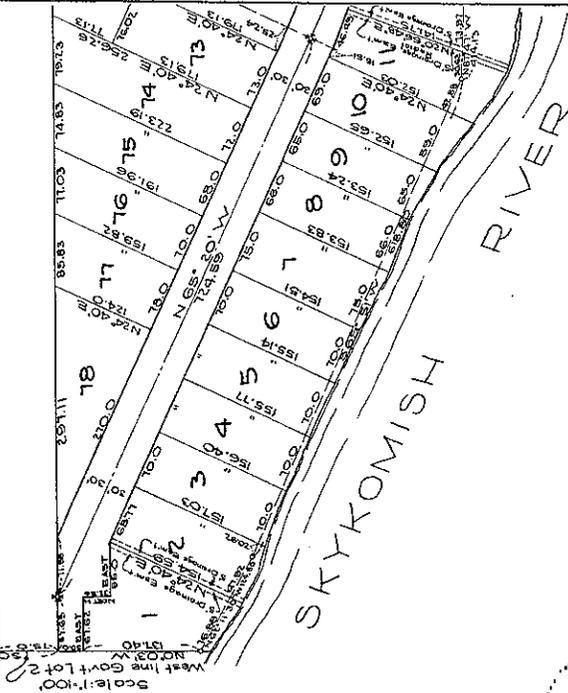
APPROVALS

Examined and approved by the Town of Sultan this 20th day of JUNE, 1960.

Ward R. ...
WARD R. ...
TOWN CLERK

- * - Indicates Concrete Monument
- o - Indicates Iron Pipe Monument

EAST G. N. R. Y.



ENGINEER'S CERTIFICATE

I, Walter E. Crane, Prof. Land Surveyor, do hereby certify that the annexed replat of Dyer Addition is based on an actual survey and that all lots have been staked and monuments set as shown.

Walter E. Crane
WALTER E. CRANE
PROF. LAND SURVEYOR

RECORDING # 1442139

Filed for record at the request of Percy D. Dyer at 4 1/2 minutes past 2 o'clock P. M. on this 18 day of JUNE 1960 and recorded in Volume 11 of plats on page 37 records of Snohomish County, Washington.

B.L. ...
B. L. ...
COUNTY AUDITOR

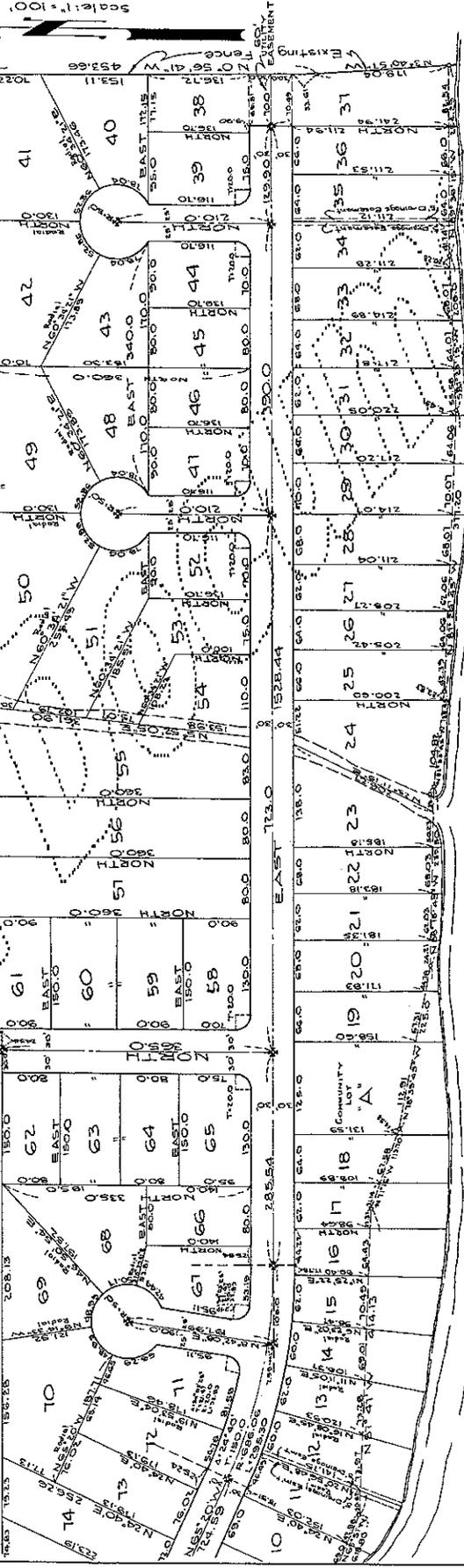
Lots 38 thru 78 inclusive, shall include an undivided 4 1/2 interest in Community Lot 'A'.

2.21

REPLAT OF
DYER ADDITION
 Portion of Sec. 5, T21N, R8E, WM.

* - Indicates Concrete Monument
 o - Indicates Iron-Pipe Monument

EAST GENTRY



SKYKOMISH RIVER

Scale: 1" = 100'

2.22

**CITY OF SULTAN
Sultan, Washington**

RESOLUTION NO. 07-15

**A RESOLUTION OF THE CITY OF SULTAN APPROVING THE FRANK H. JONES VARIANCE REQUEST FROM SULTAN MUNICIPAL CODE 16.12.020 TO REDUCE THE REQUIRED FRONT YARD SETBACK FROM 20 FEET TO ZERO FEET.
CITY OF SULTAN FILE NUMBER NO. VR07-001**

WHEREAS, Frank H. Jones submitted an Application to the City of Sultan on or about March 16, 2007 for Approval of a variance request from the requirement of Sultan Municipal Code 16.12.020 to reduce the required front yard setback from 20 feet to zero feet.

WHEREAS, City staff on May 31, 2007 prepared a staff report in support of the variance requested and concluded the request by Frank H. Jones met the criteria for approval with conditions in accordance with SMC 21.04.50; and

WHEREAS, the Hearing Examiner conducted an Open Record Public Hearing on June 13, 2007 to consider the variance request of Frank H. Jones; and

WHEREAS, the Hearing Examiner on June 21, 2007 based upon Findings of Fact and Conclusions, the testimony and evidence submitted at the open record hearing and the Examiner's site view, issued a recommendation to approve the variance request subject to 2 conditions; and

WHEREAS, the City Council on August 23, 2007 conducted a Closed Record Hearing to consider the request of Frank H. Jones and the June 21, 2007 recommendation of the Hearing Examiner; and

WHEREAS, the City Council at a regular meeting held on August 23, 2007 accepted the Hearings Examiner's report and recommendation, including the Findings of Fact and Conclusions, and Approved the Variance request Number VRO5-001 with 2-Conditions recommended by the Hearing Examiner;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SULTAN, WASHINGTON AS FOLLOWS

Section 1. The Hearing Examiner on May 31, 2007 recommended approval of the variance request of Frank H. Jones subject to 2 conditions.

Section 2. The Applicant, Frank H. Jones found the conditions of approval for his Variance request File Number VR05-001 acceptable and did not request reconsideration of the Hearings Examiner's recommendation.

Section 3. The recommendation of the Hearing Examiner is accepted and the Variance Request of Frank H. Jones, VR05-001 is Approved.

PASSED by the City Council and **APPROVED** by the Mayor this _____ day of _____,
2007.

CITY OF SULTAN

By _____
Ben Tolson, MAYOR

Attest:

By _____
LAURA KOENIG, CITY CLERK

Approved as to form:

By _____
THOM GRAAFSTRA, CITY ATTORNEY