



**THOMPSON ♦ GUILDNER  
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**MEMORANDUM**

TO: Hearing Examiner Reeves  
FROM: Nikki Thompson, Attorney for Snohomish Health District  
DATE: December 9, 2022  
RE: Appeal of OSS Denial by Brad Whitsell

Hearing Examiner Reeves has asked the parties to draft statements regarding their positions, should they not fully prevail. The District takes this opportunity to continue to work towards compromise on this matter. There is no resistance to the concept of a setback reduction. However, the District is firm on its position that the Appellant must meet WAC 246-272A-0210(4)(c) (both subsections (a) and (b)) in order to be granted a reduction in setback to 75 feet between the well and the drain field. It is within the District's authority to require both—and it is entirely appropriate to do so.

Prior to the Step 2 hearing, the District had not considered the idea that a formation seal may be present in the existing well that may meet WAC 246-272A-0210(4)(a), as that argument had not been presented by Appellant. During the hearing, Bruce Straughn testified convincingly that such a seal is present and that the conditions of the existing well are such that WAC 246-272A-0210(4)(a) relating to protection of the well is met. Because of this testimony, the District is willing to consider subsection (a) met and shift its analysis solely to subsection (b).

There is no question that WAC 246-272A-0210(4)(b) remains unmet. While testimony from Mr. Straughn indicates that he can meet the District's requirements (identified in the Step 1 denial letter) as to the reserve, he also testified that the current system does not meet the requirements of WAC 246-272A-0210(4)(b). Subsection (b) requires a currently functioning system that incorporates the enhanced treatment components. In order to meet subsection (b), the existing system must be upgraded to incorporate enhanced treatment components. The reserve must also meet the enhanced treatment requirements.

The District requires the Appellant to meet WAC 246-272A-0210(4)(c). Both subsection (a) and (b) must be met. The District is willing to consider (a) met, based on the testimony of Mr. Straughn. Subsection (b) can be met by improving the



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current system to incorporate enhanced treatment components and demonstrating compliance with the same requirements for the reserve area.

This compromise does not relieve Mr. Whitsell of the obligation to file an application for well site approval, as will be required for Snohomish County to sign off on after the fact permits. Said application will be reviewed under WAC 173-160 and Chapters 4.25 through 4.40 Snohomish Health District Code, which contains requirements that differ from the above referenced WACs relating to onsite septic systems.

Very truly yours,

Nikki Thompson  
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