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February 7, 2023

Administration Office of Snohomish Health District / Department of Health
Attn: Health Officer
3020 Rucker Avenue
Everett, WA 98201

VIA HAND DELIVERY ONLY:

Re: Whitsell Appeal to Board of Health of Snohomish County Health District Hearing Examiner Decision Denying SHD Step Two Appeal (Permit No. 1170-81)

I. INTRODUCTION & RELIEF REQUESTED

Pursuant to Snohomish Health District Code (“SHDC”) 1.20.080 and the written terms of that certain decision of the Snohomish County Health District Hearing Examiner dated January 23, 2023 (the “Decision”), a true and correct copy of which is attached hereto as **Attachment 1**, Appellant/Applicant Brad Whitsell, by and through the undersigned, hereby appeals the Decision to the Board of Health (the “Board”).

A. Attachments to Appeal

In support of and to assist the Board in deciding this Appeal, Mr. Whitsell submits herewith the following documents:

Attachment 1: January 23, 2023 Decision of the Hearing Examiner;

Attachment 2: Brad Whitsell’s March 21, 2022 OSS as built application & initial denial letter;

Attachment 3: Resume of Bruce Straughn, licensed septic designer;

Attachment 4: Bruce Straughn’s December 8, 2022 supplemental application narrative;

Attachment 5: Brad Whitsell’s revised December 2, 2022 OSS as built design plans;

Attachment 6: Proposed Decision for consideration of the Board, and the exhibits referenced therein.

B. Background Facts

This appeal arises out of Mr. Whitsell's good faith effort to obtain the Health District's approval of his existing OSS, as built, and a new reserve design, but for his single family residential dwelling on the Property. Mr. Whitsell's property is uniquely situated at 9905 353rd Dr. NE, Granite Falls, WA, adjacent to the South Fork Stillaguamish River (the "Property"). The Property and the surrounding area is unique in that there is no location on Mr. Whitsell's Property to place his OSS system where it would be 100ft away from a private drinking well, which, under WAC Ch. 246-272A, 100 feet is the "general" separation distance requirement between an OSS dispersal component and an individual water well.¹

However, to provide adaptability and still protect health for challenging property like Mr. Whitsells, WAC 246-272A-0210(4) provides a specific "alternative" minimum² required distance of 75ft, which can be approved by the local health officer "... if the applicant demonstrates:

- (a) Adequate protective site-specific conditions, **such as** physical settings with low hydro-geologic susceptibility from contaminant infiltration. Examples of such conditions include evidence of confining layers and/or aquatards separating potable water from the OSS treatment zone, excessive depth to groundwater, down-gradient contaminant source, or outside the zone of influence; **or**
- (b) Design and proper operation of an OSS system assuring enhanced treatment performance beyond that accomplished by meeting the vertical separation and effluent distribution requirements described in WAC 246-272A-0230 Table VI; **or**
- (c) Evidence of protective conditions **involving** both (a) and (b) of this subsection."

WAC 246-272A-0210(4).

In support of his OSS as built application to the District, Mr. Whitsell retained licensed septic designer and owner of Pilchuck Septic Designs, LLC, Bruce Straughn to design his system. Mr. Straughn is a former supervisor with the Snohomish Health District, and has over 30 years of experience in sanitation and septic design.³ Mr.

¹ See WAC 246-272A-0210 Table IV

² This is technically not a "waiver."

³ Attached hereto as **Attachment 3** is Mr. Straughn's resume.

Straughn designed Mr. Whitsell's OSS system *reserve* to include "enhanced treatment performance" through the "B – pressure with timed dosing" treatment system, meeting the criteria of WAC 246-272A-0210(4)(b) above, thus qualifying Mr. Whitsell for a reduction from the general 100ft setback to 75ft under WAC 246-272A-0210(4). Mr. Whitsell submitted his OSS as built application with to the Health District on March 21, 2022, a copy of which is attached hereto as **Attachment 2**.

C. Denial, Step 1 Appeal, Step 2 Appeal.

The District subsequently denied Mr. Whitsell's application on June 10, 2022, finding in part that: "...the Health District "does not support a reduction to [a 75ft] setback." Per District code, Mr. Whitsell timely filed a Step 1 Appeal of the District's denial, which was denied on August 19, 2022. A Step 2 Appeal followed, which lead to the Decision attached hereto as **Attachment 1**, issued on January 23, 2023.⁴

The Step Two Appeal hearing went over 5.5 hours (over two days, due to weather) on November 29, and December 2, 2022. At hearing, Mr. Whitsell primarily relied on the testimony and expert opinion of his septic designer Bruce Straughn. Mr. Straughn's testimony was uncontested where he opined that the site-specific conditions show compliance with WAC 246-272A-0210(4) such that the 75ft setback reduction can and should be approved.⁵ Mr. Straughn testified at the Hearing that the existing well logs showed site-specific low hydro-geologic susceptibility from contaminant infiltration conditions, in addition to bentonite well seal configurations, both resulting in acceptably low risk of contamination. Accordingly, the existing system OSS with 75 feet horizontal separation was acceptable under WAC 246-272A-210(4)(a). And the proposed *reserve* was acceptable under WAC 246-272A-210(4)(a) in addition to (4)(b).

In addition, after the conclusion of the Hearing, consistent with his testimony at the Step 2 Appeal, Mr. Straughn submitted a supplemental application narrative and revised design plans for Mr. Whitsell reiterating the reasons why Mr. Whitsell's OSS as built meets the criteria for the alternative 75'ft setback between Mr. Whitsell's OSS system and the private well, while also addressing the District's other minor concerns for Mr. Whitsell's initial denial.⁶ A true and correct copy of Mr. Straughn's supplemental narrative and revised as built plans are attached hereto as **Attachments 4** and **5**, respectively.⁷ The narrative and revised plans further demonstrate Mr. Whitsell's OSS as built can and should be approved as they not only demonstrates he meets the

⁴ The Decision of the Hearing Examiner was not issued within 15 days, but rather was issued on January 23, 2023.

⁵ See <https://spaces.hightail.com/space/gchygdclZb/files> for videos of the entire hearing proceedings. Mr. Whitsell intends to produce a transcription of the video proceedings, if helpful to the Board in reviewing the record.

⁶ See **Attachment 2** (depiction of proposed driplines, neighboring wells and drain fields depicted, waterline depicted)

⁷ SHDC 1.20.080(E)(1) provides: "Both parties may submit additional information, if desired, for review by Board members."

criteria of WAC 246-272A-0210(4)(b), but also (4)(a), and consequentially, (4)(c). This was the expert testimony before the Hearing Examiner as well. However, the Hearing Examiner erred in interpreting the plain language of WAC 246-272A-0210(4), and ruled that both (a) and (b) must be met for both the existing and reserve design, and that Whitsell must basically upgrade the existing OSS now, even though there is no evidence of any unacceptable risk, and criteria -210(4)(a) is met for the existing OSS, and -210(4)(a) *and* (b) is met for the reserve.

II. ASSIGNMENTS OF ERROR

Pursuant to SHDC 1.20.080, Mr. Whitsell asserts the Hearing Examiner made the following clearly erroneous errors when he issued the Step 2 Decision:

1. The Hearing Examiner clearly erred in applying a “clearly erroneous” standard of review to the previous department/district decision(s). This is deference on top of deference.⁸
2. The Hearing Examiner clearly erred in according “substantial deference” to the department/district staff interpretation of WAC 246-272A-0210(4) where the code was and is unambiguous and is capable of only one logical interpretation.⁹ The Hearing Examiner and staff both ignore the word “involving” in -0210(4)(c), and renders other provisions meaningless/superfluous in violation of canons of construction/interpretation.
3. The Hearing Examiner clearly erred in finding that the department/district staff’s authority to approve a setback reduction is “wholly discretionary”, and that the SHD may deny a setback reduction even if all criteria under WAC 246-272A-0120(4) are met.¹⁰
4. The Hearing Examiner clearly erred in interpreting the plain meaning of and applying WAC 246-272A-120(4) to the entire record. The Hearing Examiner erred in holding that the SHD can require an applicant to meet all criteria of both WAC 246-272A-120(4) subsection (a) and subsection (b) to grant a setback reduction, where the SHD and testimony at the hearing and post hearing filings by SHD established that subsection (a) was clearly met for the existing OSS, and subsection (a) and (b) was met for the reserve design, and there was otherwise no unacceptable health risk.¹¹

⁸ See Decision at pg. 18

⁹ See Decision at pg. 17

¹⁰ See Decision at pg. 20

¹¹ See Decision at pgs. 20 & 21

5. The Hearing Examiner clearly erred because the only expert opinion testimony before the Hearing Examiner found the criteria of WAC 246-272A-0120(4) were met and that there was no unacceptable health risk for the present conditions, which have in fact been in operation and regularly tested for years already without a health incident.

III. BOARD HEARING

Under SHDC 1.20.080(E)¹², the Board is to review this appeal at a regularly scheduled meeting within 45 days of receipt of the appeal. Both parties may submit additional written information for review by the Board, which must be received by the Health Officer not fewer than 10 days prior to the meeting to permit copying and mailing to the Board members. *Id.* At said meeting, the Board must then take one of the following actions:

- “a. Concur with the findings and conclusions of the Examiner and decline to hear the appeal;
- b. Determine to hear the appeal at a public hearing to be established at a later date; or
- c. Remand the Decision to the Hearing Examiner for further hearing and specifically identify for the Examiner the grounds for remand.”

SHDC 1.20.080E2

In those instances in which the Board determines to hear the appeal at a public meeting, the issue before the Board will be limited to a determination of whether the Hearing Examiner erred under the clearly erroneous standard. See SHDC 1.20.080E3. Under this standard, the Board may only overturn the Decision if, after reviewing the entire record, the Board is left with a definite and firm conviction that an error is made. *Id.* If the Board determines an error did occur, the Board may issue a new decision or modify the decision rendered by the Hearing Examiner. *Id.*

Mr. Whitsell respectfully requests the Board determine to hear his appeal at a public hearing, and/or immediately overturn or remand the Decision of the Hearing Examiner because of the errors identified above. Mr. Whitsell intends to submit additional briefing and information for the Board’s consideration prior to the meeting of the Board as allowed for under SHDC 1.20.080(E)(1). Mr. Whitsell provides a

¹² SHDC 1.20.080B provides, “the appeal shall be accompanied by a fee as established by the Board of Health in the fee schedule.” Per the most recent fee schedule established by the Board, there is no fee for this appeal (see <http://snohd.org/DocumentCenter/View/485/Land-Use-Fees-PDF>, last accessed 02/07/2022)

Proposed Order herewith granting the appeal that is consistent with the entire record and plain language of WAC 246-272A-0120(4).

IV. CONCLUSION

Appellant/Applicant Brad Whitsell respectfully requests the Board hear this appeal and overturn the Decision of the SHD Hearing Examiner, and issue a new decision allowing the minor setback reduction to Mr. Whitsell's OSS system as allowed for under the plain language of WAC 246-272A-0210(4). Submitted concurrently and attached hereto as **Attachment 5** with this Appeal is a proposed Decision for the Board's consideration.

Mr. Whitsell intends to submit additional briefing on this matter to assist the Board in reaching its decision. If the Board has any questions and/or comments regarding this appeal, please reach out to the undersigned using the contact information below.

Sincerely,



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ATTACHMENT 1

ATTACHMENT 1

**BEFORE THE HEARING EXAMINER
FOR THE SNOHOMISH HEALTH DISTRICT**

In the Matter of the Appeal of)	Permit No. 1170-81
)	
Brad Whitsell)	Whitsell Appeal
)	
)	
)	
Of a Denial of an On-Site Sewage)	FINDINGS, CONCLUSIONS,
<u>Disposal System Permit</u>)	AND DECISION

SUMMARY OF DECISION

This appeal addresses whether the Snohomish Health District (SHD) erred in denying an application submitted by Brad Whitsell (Appellant) to retroactively approve the connection of a single-family residence to an existing septic system located on his property at 9905 353rd Drive NE, Granite Falls, WA. Specifically, this appeal addresses whether SHD erred in determining that the Appellant could not satisfy the criteria for a setback reduction under Washington Administrative Code (WAC) 246-272A-0210(4) that would allow for the minimum required 100-foot setback from the on-site septic system and an existing well to be reduced to a minimum of 75 feet.

Because the Appellant has not met his burden of demonstrating that SHD clearly erred by determining that the existing on-site septic system would be required to be upgraded to incorporate enhanced treatment components in order to qualify for a setback reduction under WAC 246-272A-0210(4), the appeal is **DENIED**.

SUMMARY OF PROCEEDINGS

Hearing:

The Snohomish Health District Hearing Examiner held an open record appeal hearing on this matter on November 29 and December 2, 2022, using remote access technology. The record was left open until December 9, 2022, to allow the parties to submit closing briefs.

Testimony:

The following individuals presented testimony under oath at the open record appeal hearing:

Appellant Witnesses:

Bruce Straughn
Brad Whitsell, Appellant

Snohomish Health District Witnesses:

Ragina Gray, Snohomish Health District – Environmental Health Director

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Lucas Larson, Snohomish Health District – Land Use Permitting Section Supervisor

Attorney Peter C. Ojala represented the Appellant at the open record hearing.

Attorney Nikki Thompson represented the Snohomish Health District at the open record hearing.

Exhibits:

The following exhibits were admitted into the record at the open record hearing:

*Appellant's Exhibits:*¹

- A-1. Davis On-Site Sewage Disposal System Permit Application (Permit No. 1170-81), issued October 29, 1981
- A-2. As-Built Drawing (Permit No. 565-82), dated July 23, 1982
- A-3. Sewage Disposal Design Drawing, dated June 25, 1982
- A-4. Washington State Department of Health Guide for Granting Waivers from State On-Site Sewage System Regulations, dated April 2017
- A-5. Whitsell On-Site Sewage Permit Application (Permit No. 1170-81), denied June 10, 2022
- A-6. Memorandum from Attorney Peter C. Ojala re: Application of WAC 246-272A-0210, dated August 11, 2022, with attachments
- A-7. RCW 18.104.065
- A-8. RCW 18.210.005; RCW 18.210.010; RCW 18.210.190; WAC 196-32-040
- A-9. WAC 173-160-111
- A-10. Screenshot from Washington State Department of Licensing Website – (Ragina Gray)
- A-11. Screenshot from Washington State Department of Licensing Website – (Corrina Ong)
- A-12. WAC 173-160-990 – Well Construction Illustrations
- A-13. Resume of Bruce Straughn
- A-14. WAC 246-272A-0210; WAC 246-272A-0230

SHD Exhibits:

- D-1. Pilchuck “Y” Tracts Plat, recorded July 27, 1953
- D-2. Statutory Warranty Deed, dated January 2, 2007
- D-3. Water Well Report, dated June 7, 2007
- D-4. On-Site Sewage Disposal System Easement (201009130329), dated September 13, 2010
- D-5. On-Site Sewage Disposal System Easement (201009140551), dated September 13, 2010
- D-6. Historical Building Clearance Approval Materials (Assessor's Tax Account No. 005441-000-006-00)
- D-7. Historical Building Clearance Approval Materials (Assessor's Tax Account No. 005441-000-007-00)
- D-8. Critical Areas Site Plan, approved January 21, 2015
- D-9. Shared Well Water Agreement, dated November 20, 2018
- D-10. Covenants, dated November 28, 2018

¹ For consistency, this decision redesignates the Appellant's submitted exhibits as Exhibits A-1 through A-14 and the Snohomish Health District's submitted exhibits as D-1 through D-24.

- D-11. Building Clearance Review Denial Report, dated June 28, 2021
- D-12. Construction Clearance Application, denied June 28, 2021
- D-13. Email from Snohomish Health District Environmental Health Specialist Steve Rice to Washington State Department of Ecology Well Construction Coordinator Noel Philip, dated July 28, 2021, with email string
- D-14. Water Supply Information Report, dated June 28, 2021
- D-15. Request for Step One Appeal, dated July 14, 2021
- D-16. Letter Denying Step One Appeal, dated August 27, 2021
- D-17. Water Bacteriological Analysis, dated April 15, 2022
- D-18. As-Built Drawing Denial Report, dated June 10, 2022
- D-19. Whitsell On-Site Sewage Permit Application (Permit No. 1170-81), denied June 10, 2022
- D-20. Request for Step One Appeal, dated June 18, 2022
- D-21. Email from Noel Philip to Corinna Ong, dated August 5, 2022
- D-22. Letter Denying Step One Appeal, dated August 19, 2021
- D-23. Request for a Step Two Appeal, dated September 7, 2022
- D-24. Email from Lucas Larson to Regina Gray, dated October 20, 2022, with email string

Briefs and Memoranda:

- Snohomish Health District Hearing Brief, received November 17, 2022
- Appellant Hearing Brief, received November 28, 2022
- Snohomish Health District Post Hearing Memorandum, dated December 9, 2022
- Appellant Post Hearing Memorandum, dated December 9, 2022

The Hearing Examiner enters the following findings and conclusions based upon the testimony and exhibits admitted at the open record hearing:

FINDINGS

Background

1. Brad Whitsell is the owner of a 0.3-acre property located at 9905 353rd Drive NE, in Granite Falls. The property is located along, and within the floodplain of, the Pilchuck River. The property contains an existing on-site septic system that was approved in 1981, which was designed to serve a one-bedroom cabin. At the time that the original septic system was approved in 1981, a reserve septic drain field was not required. The one-bedroom cabin on the property was later removed, after which the use of the existing on-site septic system ceased for a period of time. *Exhibits A-1 through A-3; Exhibits D-1 through D-10; Exhibit D-13; Exhibit D-21.*
2. After acquiring the property in 2007, the Mr. Whitsell constructed an open-sided storage structure, which he later converted to a one-bedroom residence and connected to the existing on-site septic system, without required permits. Mr. Whitsell also had an on-site well drilled approximately 82 feet from the existing on-site septic system, without first applying to the Snohomish Health District (SHD) for an individual water supply site

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inspection. In 2010, Mr. Whitsell granted an easement to an adjacent property for a reserve drain field on his property. In 2018, Mr. Whitsell granted a water easement to the same adjacent property and connected the adjacent property to his well, again without first receiving approval from SHD.² *Exhibits A-1 through A-3; Exhibits D-1 through D-10; Exhibit D-13; Exhibit D-21.*

Clearance Application and Denial

3. Mr. Whitsell sought after-the-fact permit approval from Snohomish County for the former storage structure that was converted to a residence on the property. In conjunction with the permit request, Mr. Whitsell submitted a clearance application to SHD for approval of the on-site septic system and water supply, which SHD received on April 10, 2021. SHD Environmental Health Specialist Corinna Ong reviewed the clearance application and disapproved the on-site septic system and well. *Exhibit D-11; Exhibit D-12; Exhibit D-14.*
4. Ms. Ong's clearance denial report, dated June 28, 2021, stated that the application was disapproved for the following reasons:

The Health District has determined that your proposed project does not under present conditions meet the minimum requirements of Snohomish Health District Code, Title 5, Chapter 5.05 (WAC 246-272A) and Snohomish Health District Sanitary Code, Title 5, Chapter 5.15 for a building clearance for the following reason(s):

1. A reserve area was never designated. In addition, there is an easement granting reserve area for the benefit of parcel 00544100000600. However, it appears that a septic designer was not involved as there are no site plans depicting the location of the easement. As such, a reserve area must be designated for both lots prior to clearance approval...
2. Your proposed source of water is not consistent with recommendations contained in the "Department of Ecology Availability and Adequacy Guidelines for Individual Water Supplies". Please refer to the attached report for deficiencies.
3. Due to FEMA's reclassification of flood hazard zones, it appears that the well is within a floodway zone, which is an unacceptable

² SHD's hearing brief notes that, in August 2022, the Appellant executed a second water easement to a different property owner that would result in a third connection to the on-site well. A third connection would classify the water source as a public water system. This water easement, however, was terminated on October 31, 2022. *Snohomish Health District Hearing Brief, received November 17, 2022.* Accordingly, issues regarding the well's potential classification as a public water system are not before the Hearing Examiner in this appeal.

location. Please submit a well site application and a statement from Department of Ecology regarding the location of the well.

Exhibit E-11.

5. On July 14, 2021, Mr. Whitsell requested a “Step One” appeal from SHD’s denial of the clearance application, entailing an appeal to SHD’s Director under the Snohomish Health District Code (SHDC). Mr. Whitsell submitted an appeal letter, which provided a description of development that had occurred on the property, and which primarily took issue with the clearance application being denied based on the lack of a proposed septic reserve area, stressing that locating a reserve area on the property would be difficult due to the small size of the property and other site conditions. On July 27, 2021, Washington State Department of Ecology (DOE) Well Construction Coordinator Noel Philip informed SHD that DOE would consider the location of the on-site well as compliant with floodway regulations because it was constructed at its location prior to FEMA’s reclassification of the area as within a floodway zone. Mr. Philip noted, however, that DOE would not interject should SHD determine that the well site is noncompliant.

Exhibit D-13; Exhibit D-15.

6. On August 27, 2021, SHD Environmental Health Division Director Ragina Gray issued a letter denying the Step One appeal, which noted in pertinent part:

There remains no legal path toward approving your building clearance without a designated reserve area. Extensive research into the historical files for both lot 6 and lot 7 [the subject property] show that you were aware as far back as 1982 of the need for a designated reserve area. You granted lot 6 the right to a reserve area on lot 7 through an easement recorded in 2010. That easement is problematic for you now as you need a reserve area on lot 7 in order for your application to be approved, thus legitimizing your septic system and your drinking water source.

We received acknowledgement from the Department of Ecology that the existing well site location is acceptable, even though FEMA has determined it is now in a floodway. However, we still cannot approve it as a viable drinking water source until we can verify that it does not interfere with any existing on-site sewage system or reserve area.

In order for SHD to approve your application, you need to hire a licensed septic designer to designate on a site plan the following information:

1. The entire area included in the granted easement for the benefit of lot 6.
2. A reserve area adequate for lot 7 that does not encroach upon the easement area for lot 6.

3. The well site for lot 7.
4. The 100' setback requirements for any drinking water source that may be impacted by the existing on-site sewage system location or the reserve areas for lot 6 and lot 7. This includes the well sites for any wells on neighboring lots that would have a setback that includes any portion of lot 7.

Exhibit D-16.

As-Built Plan Submittal and Denial

7. Mr. Whitsell did not further appeal Director Gray's Step One appeal decision to the Snohomish Health District Hearing Examiner (i.e., a "Step Two" appeal) but, instead, retained Bruce Straughn, of Pilchuck Septic Designs, LLC, to prepare as-built plans for the on-site septic system for SHD's review. Mr. Straughn's project narrative, dated May 6, 2022, submitted with the as-built plans notes that the existing septic system is located less than 100 feet from the on-site well and, therefore, a setback reduction to a minimum of 75 feet would be required, as allowed under WAC 246-272A-0210(4)³ if certain conditions are met. WAC 246-272A-0210(4) specifically provides:

The horizontal separation between an [on-site sewage system (OSS)] dispersal component and an individual water well, individual spring, or surface water that is not a public water source can be reduced to a minimum of seventy-five feet, by the local health officer, and be described as a conforming system upon signed approval by the health officer if the applicant demonstrates:

- (a) Adequate protective site-specific conditions, such as physical settings with low hydro-geologic susceptibility from contaminant infiltration. Examples of such conditions include evidence of confining layers and/or aquatards separating potable water from the OSS treatment zone, excessive depth to groundwater, down-gradient contaminant source, or outside the zone of influence; or
- (b) Design and proper operation of an OSS system assuring enhanced treatment performance beyond that accomplished by meeting the vertical separation and effluent distribution requirements described in WAC 246-272A-0239 Table VI; or
- (c) Evidence of protective conditions involving both (a) and (b) of this subsection.

³ Snohomish Health District Code (SHDC) 5.05.010 adopts Chapter 246-272A WAC by reference. For clarity, this decision refers to applicable provisions of Chapter 246-272A WAC without further reference to the adopting provision under SHDC 5.05.010.

Mr. Straughn's project narrative asserted that the requirements of WAC 246-272A-0210(4)(b) could be met by implementing the following measures:

- [U]tilizing sand lined trenches with a minimum of 24" of imported [American Society for Testing and Materials (ASTM)] C-33 sand in the area of the existing septic system drainfield. A diagram of this layout is shown on the attached as-built drawing. The area shown represents 400 [square feet] of trench area for 240 [gallons per day] at 0.6 g/sq ft/day. Contaminated soil and/or drain-rock removed during excavation for the sand-lined trenches would be disposed of in accordance with local solid waste regulations.
- An alternative would be to install a sub-surface drip system (450 sq ft) with pre-treatment meeting Treatment Level B. There is adequate area to accomplish that using the space between the existing trenches together with the area between the existing system and the easement area.

Exhibit A-5.

8. Ms. Ong thereafter reviewed and denied Mr. Whitsell's as-built plans for the on-site sewage system. Ms. Ong's as-built denial report, dated June 10, 2022, states:

Your sewage disposal system As-Built drawing was not accepted for the following reason(s):

1. Proposal to excavate the existing drainfield and install sand lined trenches is not acceptable. The reserve area must be a separate area of land that is protected and maintained for future replacement of the failed OSS. Please depict the proposed driplines and demonstrate the appropriate setback to the easement and to the existing drainfield trenches.
2. The well is less than 100 ft from the existing drainfield and proposed reserve area. WAC 246-272A-0210(4) states that the Health Officer can reduce the setback to 75 ft. However, the Health District does not support a reduction to this setback. Per item #4 on the Step One Appeal Letter dated 8/27/2021, the 100 ft setback must be maintained. Refer to the attached letter.
3. Neighboring wells and drainfields not depicted/addressed in the application. Please verify all appropriate setbacks are met to the existing well, drainfield, and proposed reserve area.
4. Waterline not depicted on the drawing.

Exhibit D-18.

9. On July 8, 2022, Attorney Tanner J. Hoidal, on behalf of Mr. Whitsell, requested a Step One appeal from SHD's decision not to accept the submitted as-built plan for the on-site septic system. Attorney Hoidal submitted a memorandum with the Step One appeal request, which asserted:

- Mr. Whitsell will submit depictions of the proposed driplines.
- The Step One Appeal denial letter, dated August 27, 2021, and referenced in the as-built denial report, was issued prior to Mr. Whitsell retaining a licensed septic designer. The as-built denial report merely recites the setback requirements of WAC 246-272A-0210, which may be reduced upon demonstrating compliance with WAC 246-272A-0210(4)(a) or (b). The design options submitted by Mr. Whitsell's septic designer satisfy the requirements under WAC 246-272A-0210(4)(b), and, therefore, a setback reduction would be appropriate.
- Mr. Whitsell will depict and address neighboring wells in the application and will verify that appropriate setbacks would be met.
- Mr. Whitsell will submit a revised drawing depicting the waterline.

Exhibit D-20.

10. On August 19, 2022, Director Gray issued a letter denying the Step One appeal, which noted in pertinent part:

- [A] reserve area was never designated for your existing on-site sewage system. The regulations at the time allowed for that, but for any new construction, current regulations must be met. In addition, there is an easement granting reserve area for the benefit of parcel 00544100000600. Your licensed on-site sewage system designer has provided a proposed as-built drawing showing a reserve area with enhanced treatment components and has requested acceptance of the system, even though a private well does not maintain the 100-foot minimum required horizontal setback from the existing on-site sewage system trench or proposed reserve area.
- [T]he distance between your well and the existing on-site sewage system trench and proposed reserve area is the main sticking point in this case. Because the setback is less than 100 feet, your proposed source of water is not consistent with the Department of Ecology's recommendations.
- [SHD] cannot consider a waiver or alternative setback based solely on a design concept for a proposed future reserve area. The existing on-site sewage system must also meet the enhanced treatment requirements. In short, both the primary system and proposed reserve area must incorporate enhanced treatment components within the space available that is unencumbered by the easement.
- In order for [SHD] to consider a reduced setback, you must also take steps to ensure that the well itself has enhanced protection.

- [T]he path forward involves a primary on-site sewage system that incorporates enhanced treatment components, providing for a reserve area within the available unencumbered space that also includes enhanced treatment components, and either retrofitting the existing well to include an extended surface seal or constructing a new well with DOE approval. Either of the latter will require a variance from Ecology. Additionally, the second connection to your well must be legitimized with [SHD].

Exhibit D-22.

Step Two Appeal

11. On September 7, 2022, Attorney Hoidal, on behalf of Mr. Whitsell (hereafter “Appellant”), requested a “Step Two” appeal—entailing review of the Step One appeal denial by the Snohomish Health District Hearing Examiner under the SHDC—from SHD’s decision not to accept the submitted as-built plan for the on-site septic system. The Step Two appeal request asserts that the following reasons justify granting the appeal:

- The application and on-site sewage system are compliant with the requirements of Chapter 246-272A WAC and Title 5 Snohomish Health District Code (SHDC).
- The Appellant’s proposal would comply with all code requirements.
- SHD’s decision to deny the request for a setback reduction is contrary to law.
- SHD’s request to depict the waterline and the location of neighboring wells and drainfields do not justify denial of the submitted as-built plans. Alternatively, the Appellant can easily meet these requirements.
- SHD’s decision is not consistent with the requirements of Chapter 246-272A WAC and the SHDC. The existing well is located in an approved and/or approvable well site location, and the project qualifies for a setback reduction under the facts and circumstances.

Exhibit D-23.

Prehearing Briefs

12. On November 17, 2022, the Hearing Examiner received a hearing brief from SHD, which asserts:

- SHD regulations require that a proposed on-site sewage disposal system be designed in compliance with Title 5 SHDC and Chapter 246-272A WAC. As detailed in SHD’s Step One appeal denial letter, the main issue in this case involves the request to reduce the minimum required 100-foot setback from the on-site well and the existing drainfield and proposed reserve area.
- WAC 246-272A-0214(4) provides that a health officer “can” reduce the 100-foot setback to a minimum of 75 feet if:
 - (a) Adequate protective site-specific conditions, such as physical settings with low hydrogeologic susceptibility from contaminant infiltration. Examples of such

- conditions include evidence of confining layers and/or aquatards separating potable water from the OSS treatment zone, excessive depth to ground water, down-gradient contamination source, or outside the zone of influence; or
- (b) Design and proper operation of an OSS system assuring enhanced treatment performance beyond that accomplished by meeting the vertical separation and effluent distribution requirements described in WAC 246-272A-0230 Table VI; or
 - (c) Evidence of protective conditions involving both (a) and (b) of this subsection.
- The above provisions allow for an evaluation of site-specific conditions to determine whether the requirements of subsections (a), (b), or (c) can be met to apply a setback reduction. The health officer, however, is under no obligation to grant a setback reduction regardless of the evidence provided in support of any of the subsections. SHD has offered to approve a setback reduction if the Appellant satisfies subsection (c).
 - The Appellant has provided SHD with seven examples where health jurisdictions have approved a setback reduction under WAC 246-272A-0210(4). These examples, however, are inapplicable to the present case because they either involved a setback reduction from an on-site sewage disposal system and surface water (as opposed to an individual water well) or were consistent with SHD's position that a setback reduction must be justified by satisfying the requirements of subsection (c).
 - The well log submitted by the Appellant contains distinct differences from the setback approval examples discussed above. Although a well seal of 18 inches exists, a confining layer in the soil is not documented by the log until 24 to 30 inches of depth. The log describes the area above 24 inches in depth as consisting of gravel, sand, and boulders. Thus, the well surface seal does not extend into a confining layer so as to meet the requirements of WAC 246-272A-0210(4)(a). Accordingly, the Appellant has not demonstrated that the proposal satisfies subsection (c), which requires evidence of protective conditions involving both subsections (a) and (b).
 - The well located on the subject property is a shared well, which increases the concern of protecting the water supply for individuals residing on the neighboring parcel served by the shared well.
 - SHD properly denied the as-built plans submitted by the Appellant. SHD will not approve a reduced drainfield setback based solely on a design concept for a proposed future reserve area. Both the primary system and the proposed reserve area must incorporate enhanced treatment components within the available space that is unencumbered by a drainfield easement. The Appellant has not provided a

design demonstrating that this would be accomplished. In addition, SHD has not received a water supply application, and it is not possible to evaluate the on-site septic system without also analyzing the well and its location.

Snohomish Health District Hearing Brief, received November 17, 2022.

13. On November 28, 2022, the Hearing Examiner received a hearing brief from the Appellant, which asserts:
- The language of WAC 246-272A-0210(4) plainly provides that an applicant need only meet one of the criteria of WAC 246-272A-0210(4) to qualify for a setback reduction. The Appellant's as-built design meets the criteria set forth in WAC 246-272A-0210(4)(b) and therefore qualifies for a setback reduction.
 - The use of the word "can" in WAC 246-272A-0210 does not provide SHD with unfettered discretion to deny any and all setback reduction requests when an applicant shows that one of the conditions of WAC 246-272A-0210(4) is met.
 - The existing well on the property was installed in 2007, and SHD's ability to challenge the well location or construction has long passed under the three-year statute of limitation of Revised Code of Washington (RCW) 18.104.065. DOE has indicated that it has no issues with the well location, and SHD code provisions regarding alternative setbacks refer to matters pertaining to the on-site sewage system and not the well. Moreover, the existing well meets the minimum requirements for formation sealing.

Appellant Hearing Brief, received November 28, 2022.

Appeal Hearing

Appellant's Case

14. Attorney Peter C. Ojala represented the Appellant at the hearing and provided an opening statement in which he described the permitting history associated with the existing on-site septic system and the circumstances leading to the Step Two appeal. He stated that the primary issue between the Appellant and SHD relates to requirements for a setback reduction between the on-site septic system and the existing well on the property. Attorney Ojala asserted that the Appellant has met the criteria for a setback reduction under WAC 246-272A-0210(4)(b) and that the Appellant's expert witness, Bruce Straughn, would provide testimony demonstrating that the Appellant has also met the setback reduction criteria under WAC 246-272A-0210(4)(a) due to the site's unique geological conditions. He noted that, although SHD has requested the Appellant to submit a water well application, this appeal concerns only the on-site septic system. Attorney Ojala stressed that the Appellant has not requested a variance or waiver from setback requirements but, rather, requests only to apply the alternative, reduced setback requirements allowed by code. *Statements of Attorney Ojala.*
15. On-site wastewater treatment systems designer Bruce Straughn testified about the as-built plan that he had submitted to SHD on behalf of the Appellant. He stated that the as-built

plan depicts the existing on-site septic system and primary drainfield, as well as the proposed septic reserve area. Mr. Straughn explained that there would be sufficient area on the property to locate the proposed reserve area entirely on-site and no more than 75 feet from the existing on-site well, without encroaching on an easement associated with a neighboring parcel. He stated that the submitted as-built plans and associated narrative proposed two methods for meeting reserve area requirements. Mr. Straughn explained that the first method, as depicted in the as-built plans, would involve excavating out the existing drainfield trenches, filling the trenches with sand, and locating a new drainfield on top of the sand-filled trenches. He further explained that the narrative provided with the as-built plans proposed an alternative design that would involve a subsurface drip system with pretreatment meeting treatment level B standards. Mr. Straughn stated that there would be adequate space on the property to incorporate either alternative and that a third alternative involving a sunlight trench system could also be feasible.

Addressing the requirements for a setback reduction under WAC 246-272A-0210(4)(a), Mr. Straughn testified that this subsection addresses protective site conditions to prevent containment infiltrations, such as confining layers and/or aquatards separating potable water from the on-site septic system treatment zone. He explained that an *aquatard* is a land formation that slows or stops the movement of water in a vertical direction, such as a clay layer or hard pan. Mr. Straughn stated that the water well report (admitted as Exhibit D-3), which was generated in 2007 when the well was drilled, shows that the site conditions include confining layers or aquatards sufficient to meet the requirements of WAC 246-272A-0210(4)(a), and he noted that the provision does not address any standards for well construction. Specifically, Mr. Straughn noted that the water well report provides a description of soil layers that were encountered during the well drilling process and indicates that a silty clay layer was encountered at a depth of 24 to 30 feet, which he stated acts as a confining layer preventing the vertical movement of water. He also explained how the existing well was constructed in accordance with applicable construction standards, which include protective measures ensuring that aquifers located below the required minimum 18-foot surface seal of the well would not be impacted in the event that aquifers located closer to the surface are contaminated by a septic system failure. Mr. Straughn stated that, contrary to SHD's position, a surface seal extending to the confining layer would not be required because construction standards require only a formation seal below the 18-foot minimum, which adequately protects the drinking supply.

Addressing the requirements for a setback reduction under WAC 246-272A-0210(4)(b), Mr. Straughn testified that this subsection addresses on-site septic system design measures that provide enhanced treatment performance beyond that accomplished by meeting standard vertical separation and effluent distribution requirements. He explained that the reserve drainfield could include enhanced treatment meeting the requirements of

WAC 246-272A-0210(4)(b) but conceded that the existing on-site septic systems would not because it is an old gravity system that does not have pretreatment components. Although Mr. Straughn admitted that the existing septic system does not meet the requirements of WAC 246-272A-0210(4)(b), he asserted that the Appellant would nonetheless qualify for a setback reduction because the requirements of subsection (a) have been satisfied. In support of his assertion that an applicant may qualify for a setback reduction by satisfying only subsection (a), Mr. Straughn noted that the Washington State Department of Health (DOH) has adopted criteria for a setback waiver (i.e., a reduction of the 100-foot standard setback to less than 75 feet) that may be implemented by local health departments without further DOH oversight, which essentially require a showing of both WAC 246-272A-0210(4)(a) and (b). Mr. Straughn noted that DOE had indicated that it had no issues with the location of the existing well within a floodway.

In response to questioning from Attorney Nikki Thompson on cross-examination, Mr. Straughn testified that he attended the Step One appeal conference and recalled discussing the requirements that the as-built plans include a depiction of the waterline and identify neighboring wells and drainfields to verify that appropriate setbacks would be met.⁴ He noted that revised plans incorporating these requirements have not yet been submitted to SHD but stated that he could make these requested revisions. Mr. Straughn conceded that, if the requirements of WAC 246-272A-0210(4)(b) would be required to be met in order to qualify for a setback reduction, enhanced treatment methods would be required for both the septic reserve area and the on-site septic system. He also clarified that DOE's indication that it had no issue with the location of the existing well within the designated floodway was unrelated to any issues with the location of the existing well in relation to the existing on-site septic system and proposed reserve area. *Testimony of Mr. Straughn.*

16. Appellant Brad Whitsell testified that he purchased the property in 2007 and has been using the existing on-site septic system since that time without any issues. He noted that there have been no complaints regarding odors or operation of the system. Mr. Whitsell further noted that he has had the on-site well tested approximately four or five times over the past 15 years and that no water quality issues have been identified. *Testimony of Mr. Whitsell.*

⁴ When referring to the Step One appeal process at the hearing, the attorneys and witnesses interchangeably used the terms "meeting," "hearing," and "conference." The attorneys clarified that, unlike in a Step Two appeal, the Step One appeal process does not include a formal hearing but, instead, uses a collaborative process in which the parties meet and attempt to resolve issues underlying an SHD decision to deny a permit request. *Statements of Attorney Thompson; Statements of Attorney Ojala.* For clarity, the decision refers to this process as a Step One appeal "conference."

SHD's Case

17. Attorney Nikki Thompson provided an opening statement in which she asserted that SHD does not have blanket policy to deny requests for a setback reduction and that SHD staff has tried to work with the Appellant to find an acceptable solution, which would ultimately require that the existing on-site septic system be upgraded to include enhanced treatment components satisfying the requirements of WAC 246-272A-0210(4)(b). She argued that SHD's authority to approve a setback reduction under WAC 246-272A-0210 is discretionary and does not require such approval even if the approval criteria are satisfied. Attorney Thompson contended that subsection (c) of WAC 246-272A-0210(4)—which allows for a setback reduction when evidence of protective measures involving both subsections (a) and (b) are incorporated—would be redundant under the Appellant's interpretation that SHD lacks authority to require satisfaction of both subsections (a) and (b) before approving a setback reduction request. She stressed that SHD is willing to continue working with the Appellant to revise the septic system and reserve drainfield design to incorporate measures necessary to qualify for a setback reduction. Attorney Thompson stated that SHD could consider the new evidence presented at the hearing regarding protective measures provided by the well's existing formation seal. She noted that, even if the on-site septic system were to be approved, SHD would still have to approve the well site before Snohomish County approves of after-the-fact permits associated with the prior development of the site. Attorney Thompson argued that SHD's requirement in this case that the Appellant satisfy subsection (c) of WAC 246-272A-0210(4) (i.e., satisfy both subsections (a) and (b)) is particularly justified here in light of the existing well's location in an environmentally sensitive area and connection to a second property. *Statements of Attorney Thompson.*
18. SHD Environmental Health Director Ragina Gray testified that she was involved in several conversations with SHD staff regarding the Appellant's application and how to move forward with the request. She noted that SHD does not have a blanket policy opposing setback reductions and is willing to continue working with the Appellant to ensure that the requirements for such a reduction can be met. *Testimony of Ms. Gray.*
19. SHD Land Use Permitting Section Supervisor Lucas Larson testified that it is SHD's position that it has discretion to require an applicant to meet the requirements of WAC 246-272A-0210(4)(a), (b), or both (i.e., subsection (c)) before approving a request for a setback reduction or, alternatively, to determine that a setback reduction would not be appropriate at all under certain circumstances. He stated that SHD is willing to approve a setback reduction in this case provided that an appropriate solution can be achieved. Mr. Larson noted that the Appellant provided seven examples of decisions approving setback reductions, one of which was issued by SHD and the others of which were issued by other local health jurisdictions. He stated that the examples provided by the Appellant are distinct from the current matter and/or do not contradict SHD's position that the Appellant would have to satisfy the requirements of both subsections (a) and (b) to

qualify for a setback reduction. In this regard, Mr. Larson pointed out that some of the decisions involved a setback from surface water, as opposed to an individual water supply, and that the other decisions involved projects that met the requirements of both subsections (a) and (b). He noted that the projects analyzed in these later examples involved wells with surface seals extending to the confining layer. Mr. Larson explained that, unlike these later examples, the Appellant's well log indicates that the surface seal for the existing on-site well does not extend to the confining layer. He stressed, however, that SHD has not yet had the opportunity to evaluate whether the formation seal on the existing well, as described by Mr. Straughn in his testimony, would be sufficient to meet the requirements of WAC 246-272A-0210(4)(a). Mr. Larson stated that requiring the Appellant to meet the requirements of both subsections (a) and (b), as opposed to only one of the subsections, is appropriate due to site conditions and because it would ensure adequate protection for current and future residents of the subject property and for the second property connected to the water supply. He stated that, although the current matter relates to the existing on-site septic system and proposed reserve drainfield area, the Appellant will ultimately need to obtain well site approval before Snohomish County approves of after-the-fact permits, for which no application has yet been submitted.

In response to questioning from Attorney Ojala on cross examination, Mr. Larson explained that the example approval decisions discussed above did not explicitly state that the wells' inclusion of a surface seal extending to the confining layer was required to meet the requirements of subsection (a), and he reiterated that SHD has not had the opportunity to evaluate the new information provided by Mr. Straughn regarding protections provided by the well's formation seal. He also conceded that, although the facts underlying those decisions indicate that both subsections (a) and (b) were met, the decisions do not indicate that both subsections were required to be met to qualify for a setback reduction. Mr. Larson stated that he agreed with Mr. Straughn's testimony that standard well construction practices would result in a well with a bentonite seal extending to the confining layer, and he noted that SHD does not have any evidence that standard well construction practices were not employed here. He explained that, to meet the requirements for a setback reduction, the Appellant would have to increase the treatment level of the existing primary drainfield to meet subsection (b) and potentially provide increased protections for the on-site well to meet subsection (a), depending on further analysis of the new information provided by Mr. Straughn at the hearing. Mr. Larson reiterated that SHD's position remains that both subsections (a) and (b) must be met by the Appellant to qualify for a setback reduction and, therefore, even if SHD determines through further analysis that the Appellant's existing on-site well includes protections meeting the requirements of subsection (a), the existing primary drainfield must be upgraded in accordance with the requirements of subsection (b). *Testimony of Mr. Larson.*

Appellant Rebuttal Witnesses

20. On rebuttal, Mr. Straughn reiterated his earlier testimony regarding standard well construction practices that result in a formation seal extending to a confining layer. He also noted that the only way to definitively determine whether a formation seal extending to the confining layer was included in the well construction in accordance with standard practices would be to destroy the well and rebuild it. *Testimony of Mr. Straughn.*

Closing Arguments

21. In closing, Attorney Thompson argued that the language of WAC 246-272A-0210 is permissive and that interpreting the code provisions to mandate approval of a setback reduction if certain conditions are met would be problematic and would set a bad precedent. *Argument of Attorney Thompson.*
22. Attorney Ojala argued in closing that the requested setback reduction to a minimum of 75 feet constitutes a setback alternative rather than a waiver of setback requirements and that the code mandates that the request for a setback reduction to 75 feet must be approved when either subsection (a) or (b) has been satisfied. *Argument of Attorney Ojala.*

Post-Hearing Briefs

23. At the close of the hearing, the Hearing Examiner ruled that the record would be left open until December 9, 2022, to allow the parties to submit closing briefs specifically addressing their positions on what should occur should the Hearing Examiner ultimately decide that neither party fully prevails. Attorney Thompson, on behalf of SHD, submitted a closing brief in which she stated that SHD is willing to consider subsection (a) met, based on Mr. Straughn's hearing testimony regarding the existing well containing a formation seal extending to the confining layer. She noted, however, that SHD maintains its position that both subsections (a) and (b) must be satisfied in order to qualify for a setback reduction and that the evidence shows that the existing on-site septic system does not include enhanced treatment components as required under subsection (b). Accordingly, Attorney Thompson asserts that the Appellant must improve the current system by incorporating enhanced treatment components and must demonstrate that the proposed reserve area would also include enhanced treatment components to qualify for a setback reduction. *Snohomish Health District Post Hearing Memorandum, dated December 9, 2022.*
24. Attorney Ojala, on behalf of the Appellant, submitted a closing brief, in which he maintained the argument that the Appellant need only satisfy subsection (a), but proposed reasonable conditions that could be included in the grant of the appeal, such as conditions requiring Mr. Straughn to submit a written opinion consistent with his expert testimony at the hearing, test-monitoring the well water quality and requiring enhancement of the existing on-site septic system in the event that such testing reveals water quality issues, and requiring the Appellant to submit revised as-built plans in accordance with both the

SHD's request in the Step One appeal denial letter and Mr. Straughn's testimony.
Appellant Post Hearing Memorandum, dated December 9, 2022.

CONCLUSIONS

Jurisdiction⁵

The Hearing Examiner has jurisdiction to hear and decide Step Two appeals from any decision or order of SHD with respect to applications made to SHD. *SHDC 1.20.020; SHDC 1.20.030; SHDC 1.20.050; SHDC 1.20.070.*

Criteria for Review

An aggrieved party appealing an SHD decision or order related to an application made to SHD bears the burden of proving that SHD erred in issuing its decision or order. *SHDC 1.20.070.E.5.*

The Hearing Examiner's decision on a Step Two appeal shall include the following:

- a. 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 conform to the applicable regulations.
- b. A decision on the appeal which may be to grant, grant in part, return to the appellant for modification, deny or grant with such conditions, modifications, restrictions as the Examiner finds necessary to comply with the applicable regulations.
- c. A statement which indicates the procedure for appealing the Examiner's decision. The Examiner's decision shall be mailed to the appellant, the Health Officer, and any other person who specifically requested notice of the decision by signing a register provided for such purpose at the hearing.

SHDC 1.20.070.E.7.

Role of the Hearing Examiner on Appeal

The responsibility of the Hearing Examiner is to review SHD's decision or order related to the application and to determine, based on facts and law, if an error was made. To properly review SHD's determination, the Hearing Examiner must decide what facts are important to make a decision, determine those facts with reference to specific exhibits or testimony, draw conclusions from those facts, and make a decision based on those conclusions. *See Weyerhaeuser v. Pierce County*, 124 Wn.2d 26, 873 P.2d 498 (1994). The Hearing Examiner must accord substantial deference to SHD's interpretation of its own code provisions. *Cockle v. Department of Labor and Industries*, 142 Wn.2d 801, 829, 16 P.3d 583 (2001); *Doe v. Boeing Co.*, 121 Wn.2d 8, 15,

⁵ The Hearing Examiner notes that, in January 2023, the Snohomish Health District was incorporated into the governmental functions of Snohomish County itself and, accordingly, the Snohomish County Hearing Examiner would have jurisdiction over similar matters in the future. That said, the parties concurred that the undersigned Hearing Examiner should conclude the review of the current appeal.

846 P.2d 531 (1993); *Superior Asphalt & Concrete v. Dep't of Labor & Indus.*, 84 Wn. App. 401, 405, 929 P.2d 1120 (1996); *McTavish v. City of Bellevue*, 89 Wn. App 561, 564, 949 P.2d 837 (1988).

The Hearing Examiner reviews SHD's decision to determine if it is clearly erroneous, after allowing for such deference as is due the construction of a law by the agency with expertise. Under the "clearly erroneous" standard of review, the Hearing Examiner examines the entire record in light of the policy set forth in the ordinance and reverses the decision only if he has a definite and firm conviction that SHD made a mistake. *Isla Verde International Holdings, Inc. v. City of Camas*, 146 Wn.2d 740, 751, 49 P.3d 867 (2002); see *Buttnick v. Seattle*, 105 Wn.2d 857, 860, 719 P.2d 93 (1986). When applying the clearly erroneous standard, the Hearing Examiner must not substitute his own judgment for the judgment of SHD. See *Buechel v. Department of Ecology*, 125 Wn.2d 196, 202, 884 P.2d 910 (1994).

Appeal of Hearing Examiner's Decision

SHDC 1.20.080 provides the procedures for appealing the decision of the Hearing Examiner and states in relevant part:

- A. *General.* The decision of the Examiner shall be final and conclusive unless appealed by the appellant or Health Officer to the Board of Health.
- B. *Initiation of Appeal to Board of Health – Appellant.* Any appellant wishing to appeal the decision of the Hearing Examiner to the Board of Health must file in writing a statement with the Health Officer within 15 days of the date of the decision of the Hearing Examiner. Such notice may be delivered personally to the Administration Office of Snohomish Health District (Attention: Health Officer) or sent by certified mail. The appellant shall submit specific statements in writing of the reason why error is assigned to the decision of the Examiner, and a copy of the Hearing Examiner decision which shall be accompanied by a fee as established by the Board of Health in the fee schedule.
- C. *Initiation of Appeal to Board of Health – Health Officer.* The Health Officer may appeal the decision of the Hearing Examiner to the Board of Health if the Health Officer believes that the Examiner's decision may jeopardize the public health or is contrary to the applicable regulations. The notice of appeal by the Health Officer shall be filed with the Chair (or Vice-Chair in absence of the Chair) of the Board of Health in writing within 15 days of the date of the decision of the Hearing Examiner. Such notice shall contain a statement of the reason why the Health Officer believes that the Examiner made an error in issuing the decision and provide a copy of the Hearing Examiner decision. The Health Officer shall send a copy of the notice of appeal to the appellant by certified mail.

- D. *Stay of Examiner's Decision.* When an appeal of the Examiner's decision is made to the Board of Health, the filing of such appeal shall stay the effective date of the Examiner's decision until such time as the appeal is adjudicated or withdrawn.

Conclusions Based on Findings

The Appellant has not met his burden of showing that SHD erred in its decision not to accept as-built plans submitted for approval of the existing on-site septic system and proposed septic reserve area. As a threshold issue underlying this appeal, the parties disagree about SHD's authority to deny a requested setback reduction from the minimum required 100-foot horizontal separation between an on-site well and the existing on-site septic system and proposed reserve area on the property. As noted in Footnote 3 of the above findings, SHDC 5.05.010 adopts Chapter 246-272A WAC by reference. As pertinent to this appeal, WAC 246-272A.0210(1) Table IV provides that on-site sewage systems shall be designed and installed to meet a minimum horizontal separation of 100 feet from wells. WAC 246-272A.0210(4), however, allows for this minimum required horizontal separation to be reduced to a minimum of 75 feet if certain conditions are met, stating:

The horizontal separation between an OSS dispersal component and an individual water well, individual spring, or surface water that is not a public water source can be reduced to a minimum of seventy-five feet, by the local health officer, and be described as a conforming system upon signed approval by the health officer if the applicant demonstrates:

- (a) Adequate protective site-specific conditions, such as physical settings with low hydro-geologic susceptibility from contaminant infiltration. Examples of such conditions include evidence of confining layers and/or aquatards separating potable water from the OSS treatment zone, excessive depth to groundwater, down-gradient contaminant source, or outside the zone of influence; or
- (b) Design and proper operation of an OSS system assuring enhanced treatment performance beyond that accomplished by meeting the vertical separation and effluent distribution requirements described in WAC 246-272A-0230 Table VI; or
- (c) Evidence of protective conditions involving both (a) and (b) of this subsection.

The Appellant contends that the code provision's use of the term "or" between each of the above subsections conclusively establishes that an applicant need only meet one of the criteria listed above to qualify for a setback reduction and, therefore, upon such a showing, divests SHD of authority to deny a requested setback reduction. The Appellant thus argues that SHD erred by not accepting the as-built plans submitted in support of on-site septic system approval because, although the existing on-site septic system does not meet the enhanced treatment performance

standards of subsection (b), SHD conceded after the hearing that site conditions and the formation seal associated the existing well demonstrate that subsection (a) has been met and, further, that the proposed septic reserve area could include enhanced treatment components sufficient to meet subsection (b). In contrast, SHD argues that the provision's use of the word "can" demonstrates that SHD's authority to approve a setback reduction is wholly discretionary and, thus, allows SHD to deny a setback reduction even if all criteria under WAC 246-272A.0210(4) are met. SHD also asserts that the language of subsection (c) would be rendered meaningless if the code provision does not allow it to require a showing of both subsections (a) and (b) to allow a setback reduction. The Hearing Examiner agrees with SHD.

Administrative regulations are to be construed according to the rules of statutory interpretation. *Overlake Hosp. Ass'n v. Dep't of Health*, 170 Wn.2d 43, 52, 239 P.3d 1095 (2010). When interpreting an administrative regulation, the Hearing Examiner's "objective is to ascertain and give effect" to the intent of the legislative body promulgating the regulation. *City of Seattle v. Swanson*, 193 Wn. App. 795, 810, 373 P.3d 342 (2016). This inquiry begins with the plain language of the regulation, and when the meaning of the regulation is plain on its face, the Hearing Examiner must give effect to that plain meaning as an expression of legislative intent. *Swanson*, 193 Wn. App. at 810. "If the plain language is subject to only one interpretation," this inquiry is at an end. *Swanson*, 193 Wn. App. at 810. In ascertaining the plain meaning of a code provision, the Hearing Examiner considers the provision "within the context of the regulatory and statutory scheme as a whole." *Swanson*, 193 Wn. App. at 811 (quoting *Rayonier, Inc. v. Dalman*, 122 Wn.2d 801, 807, 863 P.2d 64 (1993)). And the Hearing Examiner must not interpret a code provision in a manner that would render meaningless portions of the language contained therein. *G-P Gypsum Corp. v. Dep't of Revenue*, 169 Wn.2d 304, 309, 237 P.3d 256 (2010).

Here, SHD indicates that it would approve the requested setback reduction if the Appellant demonstrates that the on-site septic system and proposed reserve area would meet the requirements of WAC 246-272A.0210(4)(c) (i.e., if the requirements of both subsections (a) and (b) would be met). Accordingly, the issue of whether SHD has discretion to deny a setback reduction even if all the criteria under WAC 246-272A.0210(4) are satisfied is not squarely before the Hearing Examiner in this appeal. The Hearing Examiner notes, however, that WAC 246-272A.0210(4)'s use of the word "can," rather than to "shall" or "must," appears to indicate that local health jurisdictions are provided with discretion to authorize a setback reduction, but are not mandated to do so, if certain conditions are met.

Turning to the issue of whether SHD has authority to require that an applicant meet both subsections (a) and (b) before approving a setback reduction, the Hearing Examiner agrees with SHD that subsection (c) would be rendered meaningless under the Appellant's interpretation. Subsection (c) plainly provides that a local health jurisdiction may require "[e]vidence of protective conditions involving both [subsections] (a) and (b)" before approving a setback reduction request. Therefore, the provision's use of the term "or" merely indicates that SHD had

three options when reviewing the requested setback reductions: (1) to require that subsection (a) be met; (2) to require that subsection (b) be met; or (3) to require that both subsections (a) and (b) be met. Here, SHD exercised its discretionary authority to require that both subsections (a) and (b) be met, and the Appellant's expert witness conceded at the hearing that the existing on-site septic system does not contain enhanced treatment components sufficient to satisfy subsection (b). Accordingly, the Appellant cannot meet his burden to demonstrate that SHD erred by not approving the as-built plans submitted in support of on-site septic system approval.

Although the Hearing Examiner ultimately determines that the Appellant cannot prevail in this Step Two appeal, it should be noted that several issues underlying SHD's decision have been resolved through this appeal process. Following the expert testimony of Mr. Straughn regarding site conditions and protections provided by the formation seal associated with the existing on-site well, SHD accepted that the requirements of WAC 246-272A.0210(4)(a) have been met. Mr. Straughn also provided testimony establishing that the proposed reserve area could be designed to incorporate enhanced treatment components that would satisfy the requirements of WAC 246-272A.0210(4)(b). Accordingly, putting aside potential issues that may be associated with a required well site application that has not yet been submitted and is not before the Hearing Examiner in this appeal, the only remaining issue to be resolved regarding on-site septic system approval relates to upgrading the existing on-site septic system with enhanced treatment components to meet the requirements of WAC 246-272A.0210(4)(b) and demonstrating that the proposed reserve area would also contain required enhanced treatment components. The Hearing Examiner encourages the Appellant and City to continue working together to resolve that issue. *Findings 1 – 24.*

DECISION

Based on the above findings and conclusions, the appeal of SHD's decision is **DENIED**.

DECIDED this 23rd day of January 2023.



ANDREW M. REEVES
Hearing Examiner
Sound Law Center

ATTACHMENT 2

ATTACHMENT 2

On-Site Sewage System (2009) Permit

Pretreatment Type: SF ATU _____ Other _____
Product Name

Dispersal Type: Gravity LPD SSD Mound SLB Other _____

Property Tax Account #: 00544100000700		Lot #: 7	Sec: 15 Twp: 30 Rg: 8	
Permit #: 1170-81	# of Bedrooms: 1	Operating Capacity: 90 gal/day	Design Flow: 120 gal/day	
Address of Property: 9905 353rd Dr NE		City: Granite Falls		
Legal Description/Plat Name: Pilchuck Y Tracts		Check box if this is: <input type="checkbox"/> Repair <input checked="" type="checkbox"/> Revised As-Built for Construction Clearance		
Owner Name: Brad Whitsell		Email: bradawhitsell@gmail.com		
Address: 9905 353rd Dr NE		City: Granite Falls	State: WA	Zip: 98252
Designer Name: Bruce Straughn		Phone: 425-446-2678		
Address: PO Box 2044		City: Granite Falls	State: WA	Zip: 98252
Email: bruce@pilchucksd.com				
Installer Name:		Phone:		
Address:	City:	State:	Zip:	
Email:				

I hereby certify the accompanying documentation is an accurate representation of the system installed at the above referenced property. I also certify all requirements listed on the approved *Application For An On-Site Sewage System Permit* dated N/A have been complied with.

Bruce Straughn
Signature of Designer or PE

5100337
License #

3/21/2022
Date

FOR HEALTH DISTRICT USE ONLY

ACCEPTED

NOT ACCEPTED

DATE **06/10/2022**

Signature of Sanitarian Corinna Ong

Comments _____

ATTENTION HOME OWNER

It is the homeowner's responsibility to insure the on-site sewage system is properly operated and maintained, per the Rules and Regulations of the State Board of Health governing On-site Sewage Systems (WAC 246-272A).

Visit our website for more information: <https://www.snohd.org/157/Septic>



PILCHUCK SEPTIC DESIGNS LLC

May 6, 2022

Owner: Brad Whitsell

Site Address: 9905 353rd Dr NE, Granite Falls

Parcel ID 00544100000700

NARRATIVE (Revised)

An as-built drawing of the existing septic system is submitted to demonstrate a septic system reserve area. Soils were found to be as follows:

SL1	0-16"	Structureless/Disturbed
	16-35+	Loamy Fine Sand
SL2	0-48+	Loamy Fine Sand
SL3	0-33+	Loamy Fine Sand

There is a well less than 100' from the existing permitted septic system. Due to limited area repairing the existing septic system less than 100' from a well would require meeting treatment level B (WAC 246-272A Table IX). This could be accomplished by utilizing sand lined trenches with a minimum of 24" of imported ASTM C-33 sand in the area of the existing septic system drainfield. A diagram of this layout is shown on the attached as-built drawing. The area shown represents 400 sq ft of trench area for 240 gpd at 0.6 g/sq ft/day. Contaminated soil and/or drain-rock removed during excavation for the sand-lined trenches would be disposed of in accordance with local solid waste regulations.

An alternative would be to install a sub-surface drip system (450 sq ft) with pre-treatment meeting Treatment Level B. There is adequate area to accomplish that using the space between the existing trenches together with the area between the existing system and the easement area.

WAC 246-272A-0210(4) allows the health officer to reduce the setback to 75' if one of three conditions are met. The design also meets those conditions, specifically WAC 246-272A-0210(4)(b)

The property is gated/locked so please call for an appointment prior to review. He can be reached at 360-691-4385 and 425-754-5111.

Please feel free to contact me with any questions or to discuss in further detail.

Bruce Straughn, Owner

On-site Wastewater Treatment Systems Designer

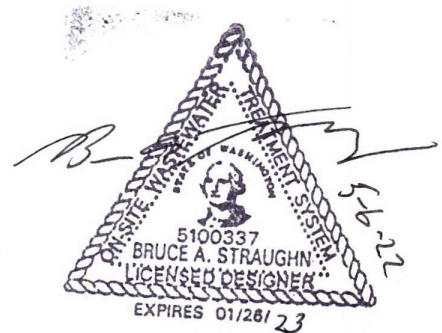
License #5100337

PO Box 2044, Granite Falls WA 98252

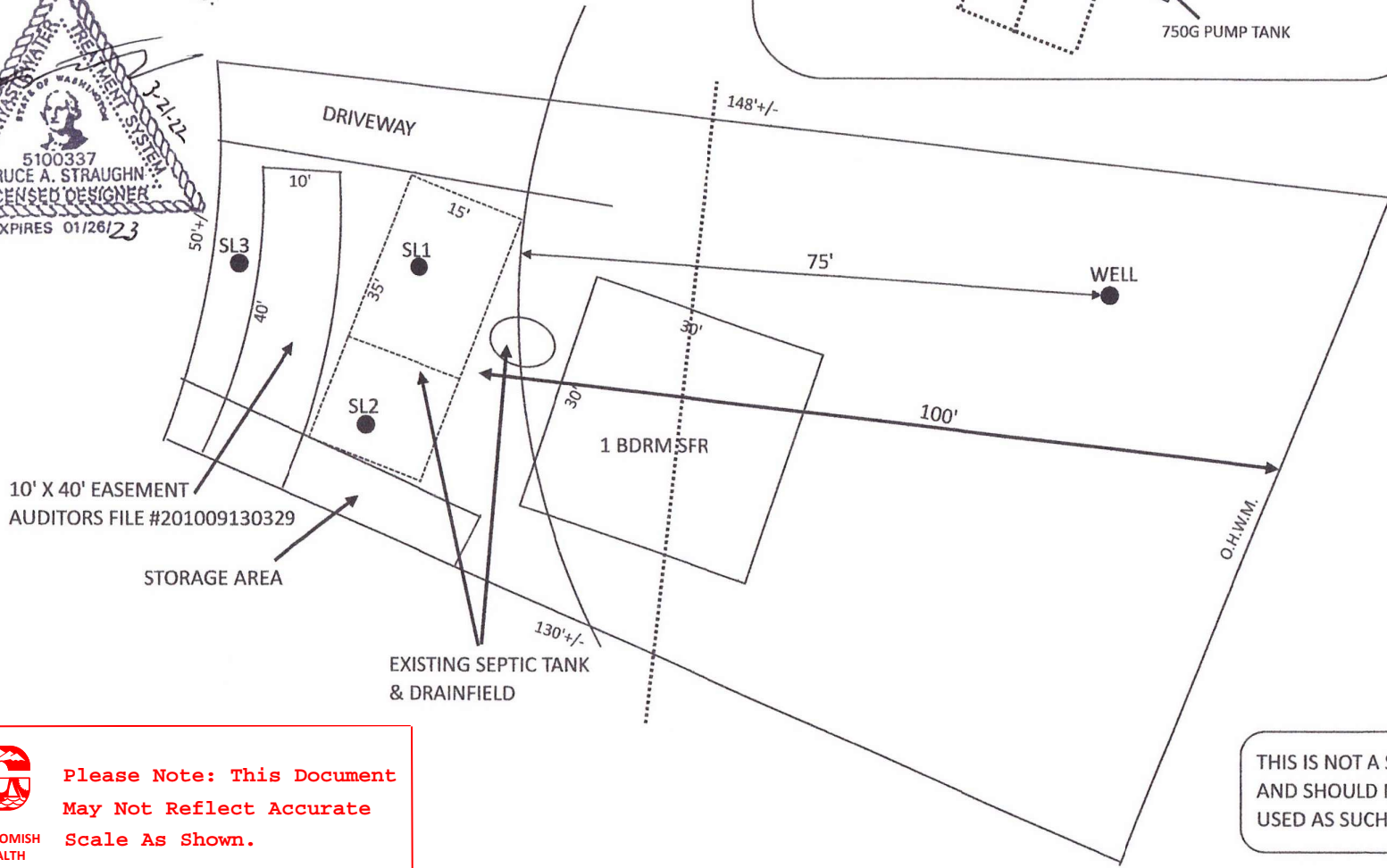
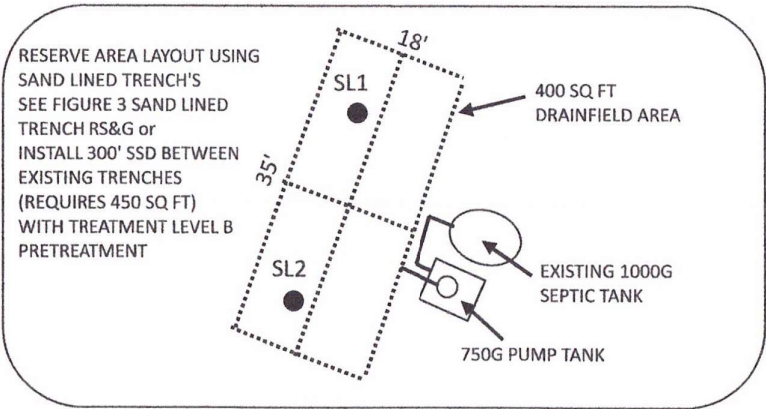
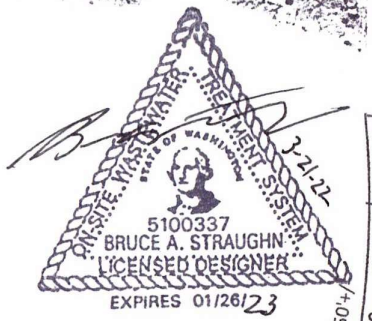
425-446-2678


bruce@pilchucksd.com

www.pilchucksd.com



REVISED AS-BUILT TO DEMONSTRATE RESERVE AREA
 9905 353RD DR NE, GRANITE FALLS
 PARCEL 00544100000700

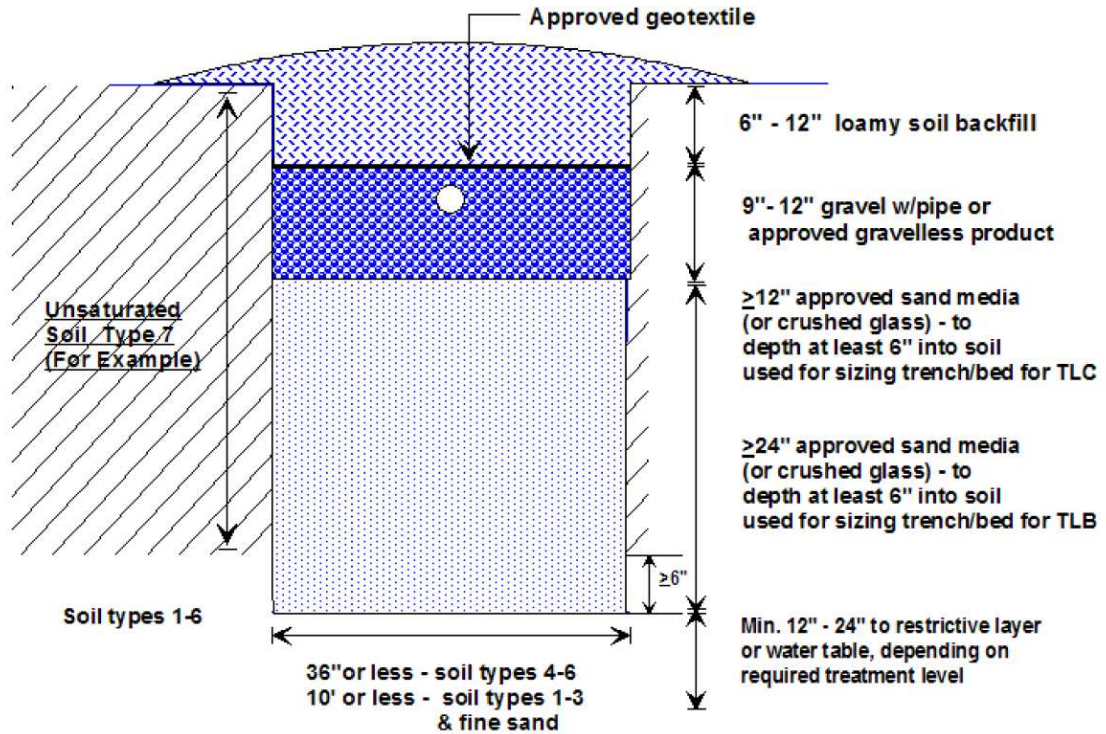


 **Please Note: This Document
 May Not Reflect Accurate
 Scale As Shown.**

SNOHOMISH
 HEALTH
 DISTRICT

THIS IS NOT A SURVEY
 AND SHOULD NOT BE
 USED AS SUCH

FIGURE 3



Land Use Inspection Report



Applicant Information

BRAD WHITSELL
9905 353RD DR NE
GRANITE FALLS, WA 98252

Property Information

Tax Account #: 00544100000700 Lot #: 7
Site Address: 9905 353RD DR NE
GRANITE FALLS

Review Information

Review Type:

5462 - OSDS RESERVE AREA W/CLEARANCE REVIEW

Inspection Date:

June 10, 2022

Septic Designer or

PDS Contact (When Applicable):

BRUCE STRAUGHN

Purpose of Inspection:

FINAL INSPECTION

Program ID:

SR0038509

Result:

NOT IN COMPLIANCE

Inspection ID:

DAF1PZE9N

PDS File # (If Applicable):

Observations and Corrective Actions

As-Built Denial

Bruce Straughn
PO Box 2044, Granite Falls, WA 98252

Subject: As-Built Not Accepted
Permit Number: 1170-81

Dear Sir/Madam:

Your sewage disposal system As-Built drawing was not accepted for the following reason(s):

1. Proposal to excavate the existing drainfield and install sand lined trenches is not acceptable. The reserve area must be a separate area of land that is protected and maintained for future replacement of the failed OSS. Please depict the proposed driplines and demonstrate the appropriate setback to the easement and to the existing drainfield trenches.
2. The well is less than 100 ft from the existing drainfield and proposed reserve area. WAC 246-272A-210(4) states that the Health Officer can reduce the setback to 75 ft. However, the Health District does not support a reduction to this setback. Per item #4 on the Step One Appeal Letter dated 8/27/2021, the 100 ft setback must be maintained. Refer to the attached letter.
3. Neighboring wells and drainfields not depicted/addressed in the application. Please verify all appropriate setbacks are met to the existing well, drainfield, and proposed reserve area.
4. Waterline not depicted on the drawing.

Please resubmit as-built drawings in accordance with Snohomish Health District Code Title 5, Chapter 5.65, System Permit Application Design and Record Drawings (As-Built) Standards, to the Health District when corrections to the above have been completed. New as-built cover sheets are required on all resubmittals. This must be done within 30 days. It shall be unlawful to use such system until this office has given final acceptance.

CORINNA ONG, (425) 339-5229
cong@snohd.org

Land Use Inspection Report



Applicant Information
BRAD WHITSELL
9905 353RD DR NE
GRANITE FALLS, WA 98252

Property Information
Tax Account #: 00544100000700 **Lot #:** 7
Site Address: 9905 353RD DR NE
GRANITE FALLS

Review Information

Review Type: 5462 - OSDS RESERVE AREA W/CLEARANCE REVIEW	Inspection Date: June 10, 2022	Septic Designer or PDS Contact (When Applicable): BRUCE STRAUGHN
Purpose of Inspection: FINAL INSPECTION	Program ID: SR0038509	PDS File # (If Applicable):
Result: NOT IN COMPLIANCE	Inspection ID: DAF1PZE9N	

A copy of Health District appeals procedure is available upon request. An administrative appeal must be initiated within 21 days from the date of this letter.

For further information, please call this office at 425.339.5250.

CORINNA ONG, (425) 339-5229
cong@snohd.org

ATTACHMENT 3

ATTACHMENT 3

From: Bruce Straughn
To: [Tanner Hoidal](#); [Peter Ojala](#)
Subject: RE: Whitsell Appeal
Date: Tuesday, November 29, 2022 8:50:36 AM
Attachments: [image001.png](#)

That made me laugh, I left all that on my work computer when I “retired”. Here are some notes:

BS Microbiology 1987 WSU
Grays Harbor Health Dept 1988-1989
Snohomish Health District 1989-2021
Registered Sanitarian thru WSBRS 1989 to present
WA DOL onsite inspectors certificate of competency- approx. 2001
WA DOL Onsite Wastewater Treatment Systems Licensed Designer approx. 2006 to present

At SHD:

Land Use Environmental Health Specialist 1989-2002 (field work)
Senior Sanitarian (Technical lead) 2002 to 2015
Land Use supervisor 2015-2017
Environmental Health Assistant Director 2017-2021, was “acting Director for about 10 months 2020-2021

Other: Granite Falls City Council 2017-2021
Granite Falls Planning Commission 2022-present

Bruce

Bruce Straughn, Owner/Licensed Designer
Pilchuck Septic Designs LLC
425-446-2678
www.pilchucksd.com

From: [Tanner Hoidal](#)
Sent: Monday, November 28, 2022 6:45 PM
To: [Bruce Straughn \(Other\)](#); [Peter Ojala](#)
Subject: Whitsell Appeal

Bruce,

When you get a moment can you send me your curriculum vitae and/or your resume?

Thanks!

Sincerely,
Tanner Hoidal

Tanner Jamieson Hoidal
Associate Attorney, Ojala Law
(425)-367-1691



ATTACHMENT 4

ATTACHMENT 4

PILCHUCK SEPTIC DESIGNS LLC

RATIONAL FOR APPROVAL OF ALTERNATIVE 75' SETBACK BETWEEN AN EXISTING WATER WELL AND SEPTIC SYSTEM DRAINFIELD/RESERVE AREAS

December 8, 2022

Owner: Brad Whitsell

Site Address: 9905 353rd Dr NE, Granite Falls

Parcel ID 00544100000700

WAC 246-272A-0210(4)(a) states that the setback between an OSS drainfield and an individual water well can be reduced to 75' if the applicant demonstrates "adequate protective site-specific conditions, such as physical settings with low hydro-geologic susceptibility from contaminant infiltration. Examples of such conditions include evidence of confining layers and/or aquatards separating potable water from the OSS treatment zone..."

The water well report for the well on this property (attached) demonstrates the presence of a confining layer/aquatard (blue silty clay) from a depth of 24 to 30 feet below the ground surface, separating the potable water from the adjacent lots' OSS treatment zones because of the low hydro-geologic susceptibility. Thus, the requirements of WAC 246-272A-0210(4)(a) are met.

There are additional physical settings that serve to enhance this reasoning. Standard water well construction practice is to maintain an oversized bore hole in the top eighteen feet below the ground surface that is kept at least half full of bentonite clay during the drilling processes. This bentonite serves as a reservoir of sealing material that is pulled down into the formations as the well casing is driven into the ground. This process is by design, and creates what is known as a formation seal that ensures there is no comingling of aquifers on either side of an aquitard/confining layer. This concept is shown in WAC 173-160-990 Figure 2B (attached). This clay formation seal is an additional physical factor under WAC 246-272A-0210(4)(a). An additional physical factor showing the potable water from the well on this property is the negative test results for coliform bacteria. (Test results attached).

Based upon my experience, which includes 30 years at the Snohomish Health District, I believe that it is more probable than not that a formation seal as shown in Figure 2B was created during the construction of the water well on this parcel, given the date of drilling, the start card, the practices in the County at this time, and my knowledge of the particular well driller.

For all of the above reasons, it is my opinion that there are adequate site-specific conditions that demonstrate there is an acceptable level of health risk at a 75' setback between the OSS and the well, and the alternative minimum horizontal distance requirements are met. Please feel free to contact me with any questions or to discuss in further detail.

Bruce Straughn R. S.

On-site Wastewater Treatment Systems Designer

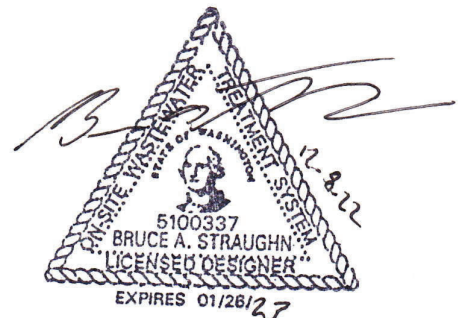
License #5100337

PO Box 2044, Granite Falls WA 98252

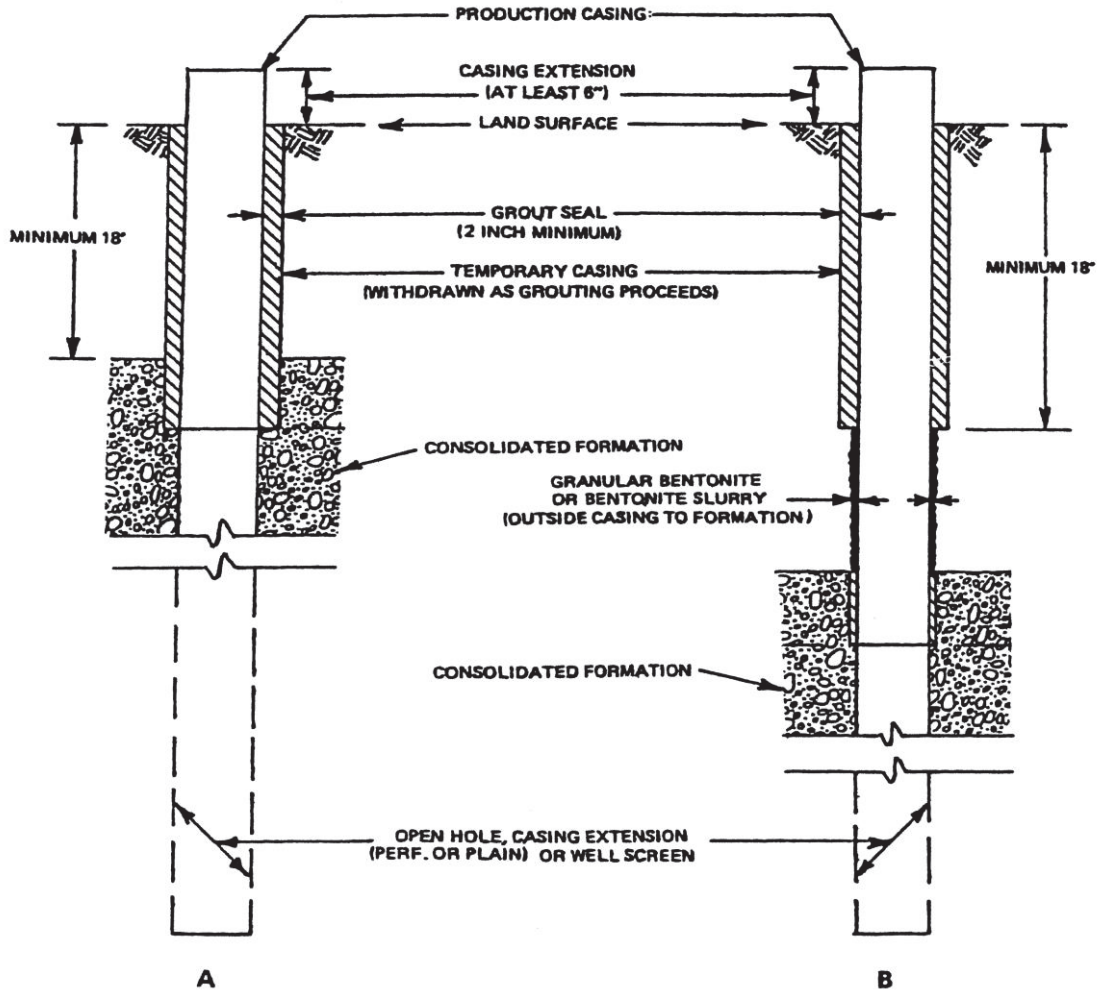
425-446-2678

bruce@pilchucksd.com

www.pilchucksd.com

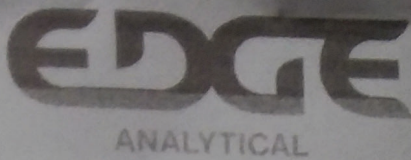


WAC 173-160-990 WELL CONSTRUCTION ILLUSTRATIONS



NOT TO SCALE

Figure 2. SEALING OF CONSOLIDATED FORMATIONS



Burlington, WA Corporate Laboratory (a)
 1420 S. Grand St. Bellingham, WA 98225 - 888 756-5726 - 360 737 1465
 Bellingham, WA Microbiology (b)
 1700 University Ave. Bellingham, WA 98225 - 360 737 1465

Portland, OR Microbiology/Chemistry (c)
 822 SW Columbia St. 42 - Microbiology - 503 462 7802
 Corvallis, OR Microbiology/Chemistry (d)
 1000 NE Oregon St. Corvallis, OR 97331 - 541 338 4387
 Bend, OR Microbiology (e)
 1000 NE Oregon St. Corvallis, OR 97331 - 541 338 4387



Washington State Department of Health
 WATER BACTERIOLOGICAL ANALYSIS

Client Name: Brad Whitsell
 9905 353rd Dr NE
 Granite Falls, WA 98252

Reference Number: 22-12738
 Project: Bacteria

System Name:
 System ID Number:
 DOH Source Number:
 Sample Type: D - Drinking Water
 Sample Purpose: Investigative or Other
 Sample Location: Kitchen
 County:
 Sampled By: Brad Whitsell
 Sampler Phone:

Repeat Sample Number:
 Lab Number: 164-24655
 Field ID: Bacteria
 Date Collected: 4/13/22 09:00
 Date Received: 4/14/22
 Date Set: 4/13/22 12:59
 Date Analyzed: 4/14/22 10:18
 Report Date: 4/15/22
 Comment:
 Approved By: ckk,jln

Authorized by:

Ceann K Knox
 Lab Manager, Bellingham

DOH#	PARAMETER	RESULT	Qualifier	UNITS	Analyst	METHOD	Batch	COMMENT
1	TOTAL COLIFORM	Satisfactory, Coliforms Absent		per 100mL	rml	SM9223 B	m_220413a	
3	E. COLI	Absent		per 100mL		SM9223 B	m_220413a	

the sample is unsatisfactory you can get information at the following health department websites or phone numbers:

- Island Co: <http://www.islandcounty.net/health/Envh/DrinkingWater/index.htm>
- San Juan Co: <http://www.sanjuanco.com/health/ehswater.aspx>
- Skagit Co: <http://www.skagitcounty.net/drinkingwater> or 360-336-9380
- Snohomish Co: 425-339-5250
- Whatcom Co: http://www.co.whatcom.wa.us/health/environmental/drinking_water/index.jsp
- WSDOH: <http://www.doh.wa.gov/ehp/dw/Programs/coliform.htm>

ZIER

A result is Unsatisfactory. Three (3) repeat samples and groundwater source samples are required for Group A Public Water Systems. Private individuals should investigate the cause of the unsatisfactory result and resample.
 If a result is unsatisfactory, the project is normally closed unless the water utility or property owner
 no qualifiers are present, see accompanying Qualifier Definition report.

ATTACHMENT 5

ATTACHMENT 5



On-Site Sewage System (OSS) As-Built

Pretreatment Type: SF ATU Other _____
Product Name

Dispersal Type: Gravity LPD SSD Mound SLB Other _____

Property Tax Account #: 00554100000700		Lot #: 7	Sec: 15 Twp: 30 Rg: 8	
Permit #: 1170-81	# of Bedrooms: 1	Operating Capacity: 90 gal/day	Design Flow: 120 gal/day	
Address of Property: 9905 353rd Dr NE			City: Granite Falls	
Legal Description/Plat Name: Pilchuck Y Tracts		Check box if this is: <input type="checkbox"/> Repair <input checked="" type="checkbox"/> Revised As-Built for Construction Clearance		
Owner Name: Brad Whitsell		Email: bradawhitsell@gmail.com		
Address: 9905 353rd Dr NE		City: Granite Falls	State: WA	Zip: 98252
Designer Name: Bruce Straughn		Phone: 425-446-2678		
Address: PO Box 2044		City: Granite Falls	State: WA	Zip: 98252
Email: bruce@pilchucksd.com				
Installer Name:		Phone:		
Address:		City:	State:	Zip:
Email:				

I hereby certify the accompanying documentation is an accurate representation of the system installed at the above referenced property. I also certify all requirements listed on the approved *Application For An On-Site Sewage System Permit* dated N/A have been complied with.

Bruce Straughn
Signature of Designer or PE

5100337
License #

12/12/2022
Date

FOR HEALTH DISTRICT USE ONLY

ACCEPTED NOT ACCEPTED DATE _____

Signature of Sanitarian _____

Comments _____

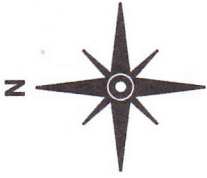
ATTENTION HOME OWNER

It is the homeowner's responsibility to insure the on-site sewage system is properly operated and maintained, per the Rules and Regulations of the State Board of Health governing On-site Sewage Systems (WAC 246-272A).

Visit our website for more information: <https://www.snohd.org/157/Septic>

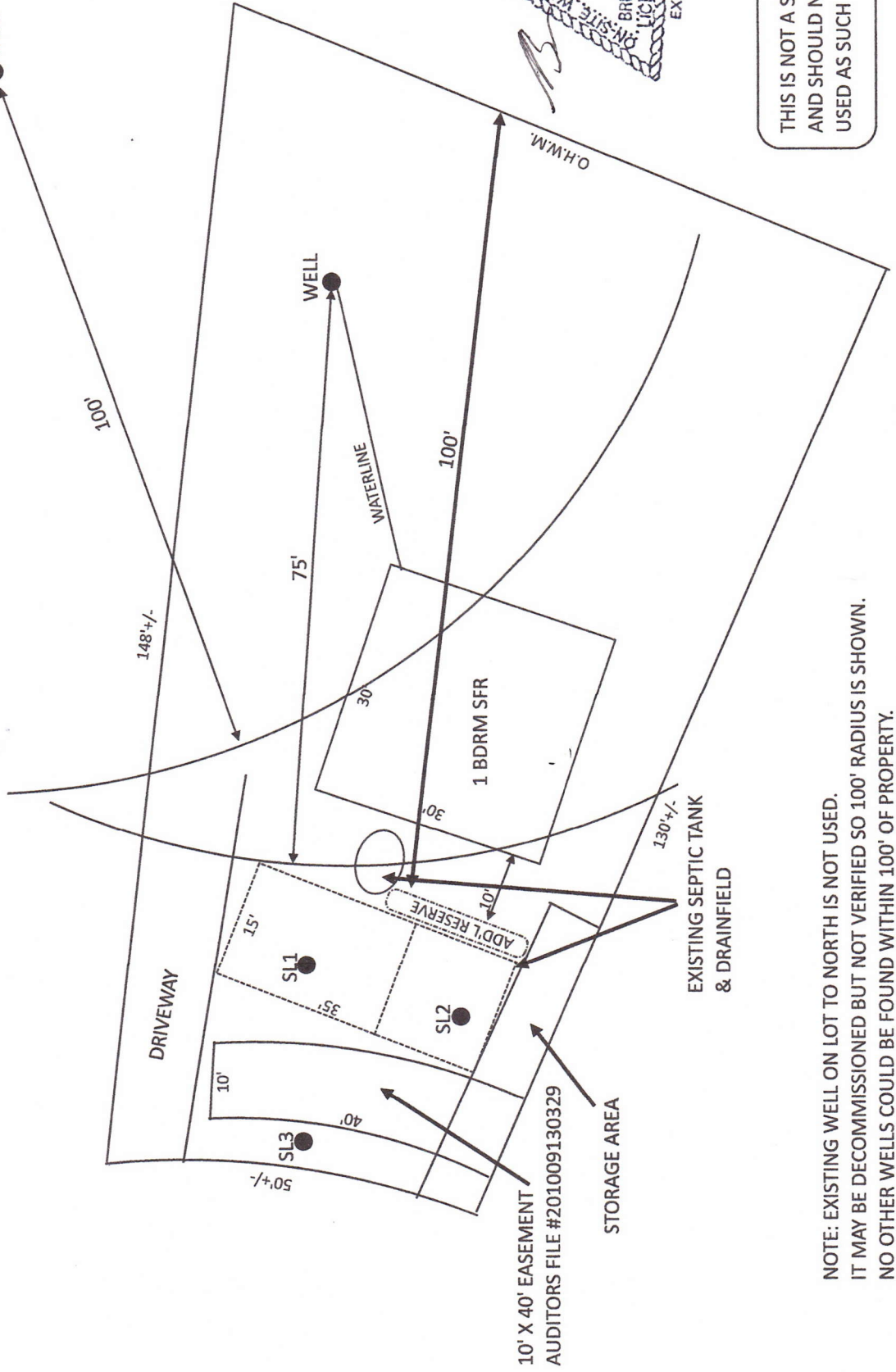


REVISED AS-BUILT TO DEMONSTRATE RESERVE AREA
 9905 353RD DR NE, GRANITE FALLS
 PARCEL 00544100000700



1"=20'

DUG WELL



THIS IS NOT A SURVEY
 AND SHOULD NOT BE
 USED AS SUCH

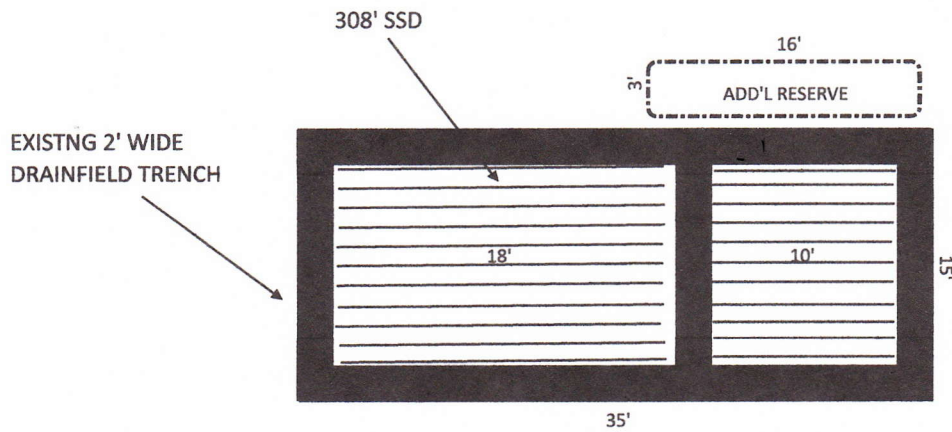
NOTE: EXISTING WELL ON LOT TO NORTH IS NOT USED.
 IT MAY BE DECOMMISSIONED BUT NOT VERIFIED SO 100' RADIUS IS SHOWN.
 NO OTHER WELLS COULD BE FOUND WITHIN 100' OF PROPERTY.
 SEE NEXT PAGE FOR RESERVE AREA DETAILS

BELOW IS A GRAPHIC DEPICTION OF THE EXISTING SEPTIC SYSTEM DRAINFIELD ON PARCEL 00544100000700

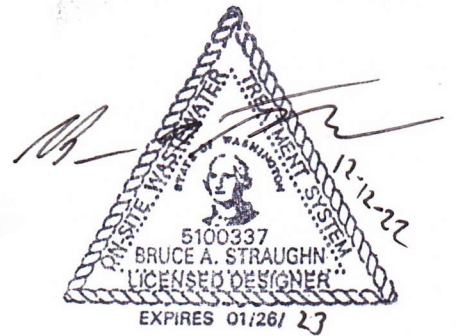
EXISTING SEPTIC SYSTEM WAS PERMITTED AS A 1 BEDROOM. AS SUCH A 1 BEDROOM RESERVE AREA SHOULD SUFFICE. THIS HAS NOT BEEN PREVIOUSLY DISCUSSED. ALL CALCULATIONS BELOW ARE FOR A 2 BDRM SFR PER WAC 246-272A-0230(2)(d)(i)(E). THE RESULT IS THAT THE AREA AVAILABLE AND SSD LINES SHOWN BELOW EXCEED MINIMUM REQUIREMENTS FOR A 1 BDRM SFR BY A FACTOR OF TWO.

2 BEDROOM SSD RESERVE AREA REQUIRES 450 SQ FT OF AREA.
403 SQ FT EXISTS BETWEEN THE EXISTING TRENCHES. ADDITIONAL
48+ SQ FT LIES BETWEEN SFR & EXISTING DRAINFIELD
(SHOWN AS "ADD'L RESERVE" ON BOTH PAGES)

>300 LINEAL FEET OF SSD CAN BE INSTALLED BETWEEN
THE EXISTING TRENCHES (SHOWN AS 18' & 10' SSD LINES)



1"=10'



ATTACHMENT 6

ATTACHMENT 6

MEMORANDUM

To: The Snohomish County Board of Health c/o Health Officer
From: Peter Ojala, Attorney for Bradley Whitsell
Date: February 7, 2023
RE: Proposed Order on Whitsell Appeal to Board of Health

In support of his Appeal to the Board, Mr. Whitsell hereby submits the following proposed decision for the Board's consideration.

[PROPOSED] DECISION

1. The Board of Health (the "Board") has jurisdiction and authority under SHDC 1.20.080 to hear this Appeal. "The issue before the Board shall be limited to a determination of whether the Hearing Examiner erred under the clearly erroneous standard in making his/her decision. Under the clearly erroneous standard, the Board may only overturn the decision of the Examiner if, after reviewing the entire record, the Board is left with the definite and firm conviction that an error has been made. If the Board determines that an error did occur, it may issue a new decision or modify the decision rendered by the Examiner." SHDC 1.20.080E3.
2. For the reasons set forth herein, the Board finds that the Examiner erred under the clearly erroneous standard, the Board is left with a definite and firm conviction that error has been made, and the Board therefore issues this decision.
3. The primary issue on appeal to the Hearing Examiner relates to the requirements for an alternative setback reduction between Mr. Whitesell's OSS and reserve, and an existing private water well serving the Property and the neighboring property (see generally Hearing Examiner Decision).
4. The general separation between an OSS and an individual water well is 100ft, as provided in Table IV in WAC 246-272A-0210. However, WAC 246-272A-0210(4) provides for a specific alternative minimum required setback of 75ft, which can be allowed by the local health officer if certain site specific criteria are met showing low susceptibility to contaminant infiltration to well water source. The text of WAC 246-272A-0210(4) is as follows:

“(4) The horizontal separation between an OSS dispersal component and an individual water well, individual spring, or surface water that is not a public water source can be reduced to a minimum of seventy-five feet, by the local health officer, and be described as a conforming system upon signed approval by the health officer if the applicant demonstrates:

 - (a) Adequate protective site-specific conditions, such as physical settings with low hydro-geologic susceptibility from contaminant infiltration. Examples of such conditions include evidence of confining layers and/or aquitards separating potable water from the OSS treatment zone, excessive depth to groundwater, down-gradient contaminant source, or outside the zone of influence; **or**
 - (b) Design and proper operation of an OSS system assuring enhanced treatment performance beyond that accomplished by meeting the vertical separation and effluent distribution requirements described in WAC 246-272A-0230 Table VI; or
 - (c) Evidence of protective conditions involving both (a) and (b) of this subsection.”

WAC 246-272A-0210(4)

5. The Health District interpreted, and the Hearing Examiner agreed, that the code’s use of the word “can” demonstrates that the District’s authority to approved a setback reduction is wholly discretionary, and, thus, allows the District to deny a setback reduction even if all criteria under WAC 246-272A-0210(4) are met (Hearing Examiner Decision at pg. 20). Going further, the Hearing Examiner found that, under the code, the District had three options when reviewing the requested setback reduction: (1) to require that subsection (a) be met; (2) to require that subsection (b) be met; or (3) to require that both subsections (a) and (b) be met (Hearing Examiner Decision at pg. 21). This finding is a clearly erroneous interpretation of code based on the plain language of the WAC, which is not ambiguous. The Health District staff’s and Hearing Examiner’s interpretation renders superfluous the word “involving” in subsection (c), and renders the structure of (a) and (b) provisions superfluous.
6. WAC 246-272A-0210(4) is not ambiguous, and as such, a Court will not give deference to the District’s construction of it. *Peter Schroeder Architects, AIA v. City of Bellevue*, 83 Wn. App. 188, 191, 920 P.2d 1216 (1996) (““We give considerable deference to the construction of an ordinance by the agency charged with its enforcement, but do so only when the ordinance is ambiguous.”); see also *Pub. Util. Dist. No. 1 of Clark Cnty. v. Pollution Control Hearings Bd.*, 137 Wn. App. 150, 157, 151 P.3d 1067, 1070 (2007).
7. The plain language of WAC 246-272A-0210(4) is clear in that an applicant need only meet one of the criteria set forth in WAC 246-272A-0210(4) for the Health Officer to approve an alternative minimum setback of less than 100 feet, but no less than 75 feet. Specifically, an Applicant need only meet subsection (a), subsection (b), or subsection (c) “[e]vidence of protective conditions **involving** both (a) and (b)...”¹. An Applicant need not meet all of (a) and (b) criteria to qualify for a reduction of the general 100ft setback requirement. However, if an Applicant has evidence “involving” (a) and (b) i.e. some of (a) evidence, but not perfect, and some of (b) evidence, but not perfect, then a Health officer may still approve when an applicant shows evidence of protective conditions *involving* both (a) and (b). For example, a thinner aquitard (say 4 foot) may warrant *more* pre-treatment. The Department of Health waiver manual supports this interpretation allowing waivers *under* 75 feet if all criteria in (a) and (b) are met.
8. This error in interpreting the code is not harmless. Based upon the materially undisputed testimonial evidence at the Hearing by Mr. Bruce Straughn R.S., an expert in the fields of septic design, and well installation techniques with respect to on-site septic systems (OSS), with 30 years of experience in OSS at the Snohomish Health District, the Board finds the applicant has met its burden of proof that the Health Officer and Hearing Examiner erred under the clearly erroneous standard in requiring additional conditions which are not required by the health code, and in interpreting the 75 foot alternative minimum setback requirements under the unambiguous language in WAC 246-272A-0210(4). Accordingly, the appeal is GRANTED and returned to the Hearing Examiner for modifications consistent with this opinion.
9. **Existing primary system.** The appeal is granted with respect to the Hearing Examiner’s interpretation of WAC 246-272A-0210(4), and as applied to the facts with respect to the existing **primary system**. Evidence of adequate protective site-specific conditions, such as physical settings with low hydro-geologic susceptibility from contaminant infiltration, alone, is a *sufficient* basis to meet the specifically articulated alternative horizontal separation (setback) of 75 feet from the OSS dispersal component to an individual well. WAC 246-272A-0210(4)(a). Ex. 101 is the water well report, and as testified to by Mr. Straughn and Mr. Larson, there is a presence of a

¹ The Hearing Examiner also apparently interpreted subsection (c) to mean an applicant must demonstrate all criteria of both subsections (a) and (b) are, as opposed to demonstrating “[e]vidence of protective conditions **involving** both (a) and (b)...” WAC 246-272A-0210(4)(c) [emphasis added] (see Hearing Examiner Decision at pg. 21 “).

confining layer/aquitard (blue silty clay) from a depth of 24 to 30 feet, separating the potable water from the adjacent lots' OSS treatment zones because of the low hydro-geologic susceptibility. Further, the undisputed facts show an approval of a previously permitted as-built existing primary septic system (1980s) 75 feet from an existing Ecology approved well (2007) that has a surface seal to 18' and a formation seal in the form of bentonite clay into a sufficiently thick confining layer at a depth of 24 to 30 feet, under normal modern (2007 era) drilling practices. (Ex. 101). Mr. Straughn persuasively testified that the existing primary system meets WAC 246-272A-0210(4)(a), and the Health District conceded this fact in their post hearing letter to the Hearing Examiner. In addition, and highly relevant to the Board which may distinguish this case from a case in the future where there is a new application, is the fact that the OSS has been used since at least 2007 and the well has been tested multiple times with no bacteria indications. However, the Health District initially did not have Mr. Straughn's expert opinion in any written form in front of it when processing the as-built application or "construction clearance" (nor did the Health District specifically ask for or indicate they would be open to considering such an opinion either until *perhaps* after the Step One Denial and at the Step Two Appeal Hearing). This is understandable because the Health District personnel testified that they were not aware of any SHD approval of a 75 foot alternative horizontal separation to an individual well before, and the Health District staff testified they were uncertain what information they would require to meet only WAC 246-272A-0210(4)(a).

10. This appeal is granted with respect to the existing primary system meeting the WAC 246-272A-0210(4)(a) and hence the alternative horizontal separation of 75 feet is approved, with the condition that Mr. Straughn provide a written and stamped opinion consistent with his testimony at the hearing to the Health Department for the file regarding the site-specific conditions.

Attachment 4.

11. A further reasonable condition of approval of the existing primary system shall be that the well water quality is monitored and reported twice per year for bacteria, similar to the test results shown in Ex. 103. If there are water quality test results that show a problem or concern, upon sufficient evidence of cause from the existing on-site system on Lot 7 (the Property), the Health District may require the landowner of existing system on Lot 7 to be enhanced in accordance with Mr. Straughn's reserve enhanced treatment design in Ex. 102 (or other similar equally protective or greater design).
12. **Reserve.** The appeal is also granted with respect to the Health District's interpretation of WAC 246-272A-0210(4)(a) with respect to the **reserve** design in Ex. 102, for the same site specific reasons the appeal was granted for the **existing primary system**. In addition, Mr. Straughn persuasively testified his enhanced treatment design in Ex. 102 also meets the requirements of WAC 246-272A-0210(4)(b) alone (even ignoring the favorable physical settings of low hydro-geologic susceptibility from contaminant infiltration), given the soil types on the property. (Ex. 102). However, because the enhanced reserve design also meets the criteria solely in WAC 246-272A-0210(4)(b), as well as the site specific conditions meeting WAC 246-272A-0210(4)(a), the reserve design necessarily also meets WAC 246-272A-0210(4)(c). Accordingly, the appeal is granted with respect to the 75' alternative horizontal setback to the **reserve area design** by Mr. Straughn shown in the area in Exhibit 102, and as clarified in **Attachment 5**.
13. Several other items were listed in the Step One Denial letter as being outstanding, but that both parties indicated at the Step 2 Hearing these items were not of a dispositive concern, and are now addressed in the submittals. In the interest of finality, under SHD 1.20.080.E.3, the Board finds the following conditions and modifications are necessary to comply with the applicable regulations:

- a. The Applicant shall modify the Ex. 102 site depiction plan to show the reserve area modification shown consistent with Mr. Straughn’s testimony at the hearing that there is adequate space for the reserve trenches and driplines outside the appropriate setback to the easement and to the existing drainfield trenches, by either slightly rotating the diagram or showing the reserve trenches more clearly. This condition is met as shown in **Attachment 5**.
- b. The Applicant shall modify the Ex. 102 site depiction plan to show condition that the neighboring wells and drainfields are at appropriate horizontal distances/setbacks to the existing well, drainfield, and proposed reserve area. Mr. Straughn testified that he reviewed these items and the site can meet these constraints. This condition is met as shown in **Attachment 5**.
- c. The Applicant shall modify the Ex. 102 site depiction site plan to show the waterline from the well to the house on Lot 7 be depicted. This condition is met as shown in **Attachment 5**.

14. This Decision does not excuse the Applicant from applying for a well site application should one be required, but those are separate regulations and procedures than the present appeal.

SNOHOMISH HEALTH DISTRICT BOARD

By: _____
Its: _____

Presented by:
OJALA LAW INC., P.S.



PETER C. OJALA, WSBA#42163
TANNER HOIDAL, WSBA#56660

Exhibit 101

The Department of Ecology does NOT warranty the Data and/or the Information on this Well Report.



WATER WELL REPORT

Original & 1st copy - Ecology, 2nd copy - owner, 3rd copy - driller

Construction/Decommission ("x" in circle) 26700
 Construction
 Decommission ORIGINAL INSTALLATION Notice of Intent Number _____

PROPOSED USE: Domestic Industrial Municipal
 DeWater Irrigation Test Well Other _____

TYPE OF WORK: Owner's number of well (if more than one) _____
 New well Reconditioned Method: Dug Bored Driven
 Deepened Cable Rotary Jetted

DIMENSIONS: Diameter of well 6 inches, drilled 60 ft.
Depth of completed well 60 ft.

CONSTRUCTION DETAILS
Casing Welded 6" Diam. from 0 ft. to 55 ft.
Installed: Liner installed _____" Diam. from _____ ft. to _____ ft.
 Threaded _____" Diam. from _____ ft. to _____ ft.

Perforations: Yes No
Type of perforator used _____
SIZE of perfs _____ in. by _____ in. and no. of perfs _____ from _____ ft. to _____ ft.

Screens: Yes No K-Pac Location 55
Manufacturer's Name Johnson
Type cont slot slot 55 Model No. _____
Diam. 5 1/2" Slot size 30 from 55 ft. to 60 ft.
Diam. _____ Slot size _____ from _____ ft. to _____ ft.

Gravel/Filter packed: Yes No Size of gravel/sand _____ ft.
Materials placed from _____ ft. to _____ ft.

Surface Seal: Yes No To what depth? 18 ft.
Material used in seal Bestcrete
Did any strata contain unusable water? Yes No
Type of water? _____ Depth of strata _____
Method of sealing strata off _____

PUMP: Manufacturer's Name Grundfos
Type: sub 10 rpm H.P. 1/2

WATER LEVELS: Land-surface elevation above mean sea level _____ ft.
Static level 14'6" ft. below top of well Date 6-7-07
Artesian pressure _____ lbs. per square inch Date _____
Artesian water is controlled by _____ (cap, valve, etc.)

WELL TESTS: Drawdown is amount water level is lowered below static level
Was a pump test made? Yes No If yes, by whom? _____
Yield: _____ gal./min. with _____ ft. drawdown after _____ hrs.
Yield: _____ gal./min. with _____ ft. drawdown after _____ hrs.
Yield: _____ gal./min. with _____ ft. drawdown after _____ hrs.

Recovery data (time taken as zero when pump turned off) (water level measured from well top to water level)

Time	Water Level	Time	Water Level	Time	Water Level
_____	_____	_____	_____	_____	_____
_____	_____	_____	_____	_____	_____

Date of test _____

Bailer test _____ gal./min. with _____ ft. drawdown after _____ hrs.

Airtest 60 gal./min. with stem set at _____ ft. for _____ hrs.

Artesian flow _____ g.p.m. Date _____

Temperature of water _____ Was a chemical analysis made? Yes No

WELL CONSTRUCTION CERTIFICATION: I constructed and/or accept responsibility for construction of this well, and its compliance with all Washington well construction standards. Materials used and the information reported above are true to my best knowledge and belief.

Driller Engineer Trainee Name (Print) P. J. Anderson
Driller/Engineer/Trainee Signature [Signature]
Driller or trainee License No. 1367

Drilling Company Anderson Drilling LLC
Address 6310-145th DR NE
City, State, Zip UK STEWART WA 98258
Contractor's Anderson
Registration No. 951BK Date 6-7-07

If TRAINEE,
Driller's Licensed No. _____
Driller's Signature _____

District Exhibit

Ex. 03

CURRENT

Notice of Intent No. W2

Unique Ecology Well ID Tag No. _____

Water Right Permit No. _____

Property Owner Name Brad Whiffell

Well Street Address 9905-353rd DR NE

City Frank Falls County Snohomish

Location N1/4-1/4 16/4 Sec 15 Twn 30R 8 EWM circle WWM one

Lat/Long (s, t, r) Lat Deg _____ Lat Min/Sec _____

Still REQUIRED) Long Deg _____ Long Min/Sec _____

Tax Parcel No. 00544100000700

CONSTRUCTION OR DECOMMISSION PROCEDURE

Formation: Describe by color, character, size of material and structure, and the kind and nature of the material in each stratum penetrated, with at least one entry for each change of information. (USE ADDITIONAL SHEETS IF NECESSARY.)

MATERIAL	FROM	TO
Top soil	0	5
Gravel sand & boulders	5	20
Sand & gravel Brown	20	24
Blue silty clay	24	30
Blue silty sand & gravel	30	34
Brown gravel & sand	34	60
clay & gravel Blue	60	-

RECEIVED

JUL 16 2007

DEPT. OF ECOLOGY

Start Date 6-7-07 Completed Date 6-7-07

Exhibit 102

On-Site Sewage System (2007, 2010, 2012)

Pretreatment Type: SF ATU _____ Other _____
Product Name

Dispersal Type: Gravity LPD SSD Mound SLB Other _____

Property Tax Account #: 00544100000700		Lot #: 7	Sec: 15 Twp: 30 Rg: 8	
Permit #: 1170-81	# of Bedrooms: 1	Operating Capacity: 90 gal/day	Design Flow: 120 gal/day	
Address of Property: 9905 353rd Dr NE			City: Granite Falls	
Legal Description/Plat Name: Pilchuck Y Tracts		Check box if this is: <input type="checkbox"/> Repair <input checked="" type="checkbox"/> Revised As-Built for Construction Clearance		
Owner Name: Brad Whitsell		Email: bradawhitsell@gmail.com		
Address: 9905 353rd Dr NE		City: Granite Falls	State: WA	Zip: 98252
Designer Name: Bruce Straughn		Phone: 425-446-2678		
Address: PO Box 2044		City: Granite Falls	State: WA	Zip: 98252
Email: bruce@pilchucksd.com				
Installer Name:		Phone:		
Address:	City:	State:	Zip:	
Email:				

I hereby certify the accompanying documentation is an accurate representation of the system installed at the above referenced property. I also certify all requirements listed on the approved *Application For An On-Site Sewage System Permit* dated N/A have been complied with.

Bruce Straughn
Signature of Designer or PE

5100337
License #

3/21/2022
Date

FOR HEALTH DISTRICT USE ONLY

ACCEPTED

NOT ACCEPTED

DATE **06/10/2022**

Signature of Sanitarian Corinna Ong

Comments _____

ATTENTION HOME OWNER

It is the homeowner's responsibility to insure the on-site sewage system is properly operated and maintained, per the Rules and Regulations of the State Board of Health governing On-site Sewage Systems (WAC 246-272A).

Visit our website for more information: <https://www.snohd.org/157/Septic>



PILCHUCK SEPTIC DESIGNS LLC

May 6, 2022

Owner: Brad Whitsell

Site Address: 9905 353rd Dr NE, Granite Falls

Parcel ID 00544100000700

NARRATIVE (Revised)

An as-built drawing of the existing septic system is submitted to demonstrate a septic system reserve area. Soils were found to be as follows:

SL1	0-16"	Structureless/Disturbed
	16-35+	Loamy Fine Sand
SL2	0-48+	Loamy Fine Sand
SL3	0-33+	Loamy Fine Sand

There is a well less than 100' from the existing permitted septic system. Due to limited area repairing the existing septic system less than 100' from a well would require meeting treatment level B (WAC 246-272A Table IX). This could be accomplished by utilizing sand lined trenches with a minimum of 24" of imported ASTM C-33 sand in the area of the existing septic system drainfield. A diagram of this layout is shown on the attached as-built drawing. The area shown represents 400 sq ft of trench area for 240 gpd at 0.6 g/sq ft/day. Contaminated soil and/or drain-rock removed during excavation for the sand-lined trenches would be disposed of in accordance with local solid waste regulations.

An alternative would be to install a sub-surface drip system (450 sq ft) with pre-treatment meeting Treatment Level B. There is adequate area to accomplish that using the space between the existing trenches together with the area between the existing system and the easement area.

WAC 246-272A-0210(4) allows the health officer to reduce the setback to 75' if one of three conditions are met. The design also meets those conditions, specifically WAC 246-272A-0210(4)(b)

The property is gated/locked so please call for an appointment prior to review. He can be reached at 360-691-4385 and 425-754-5111.

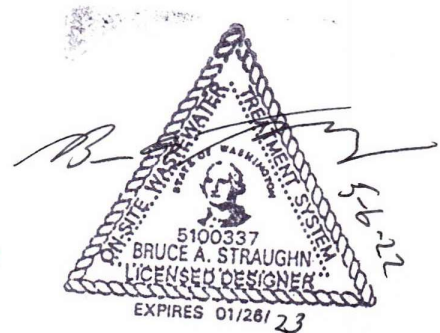
Please feel free to contact me with any questions or to discuss in further detail.

Bruce Straughn, Owner

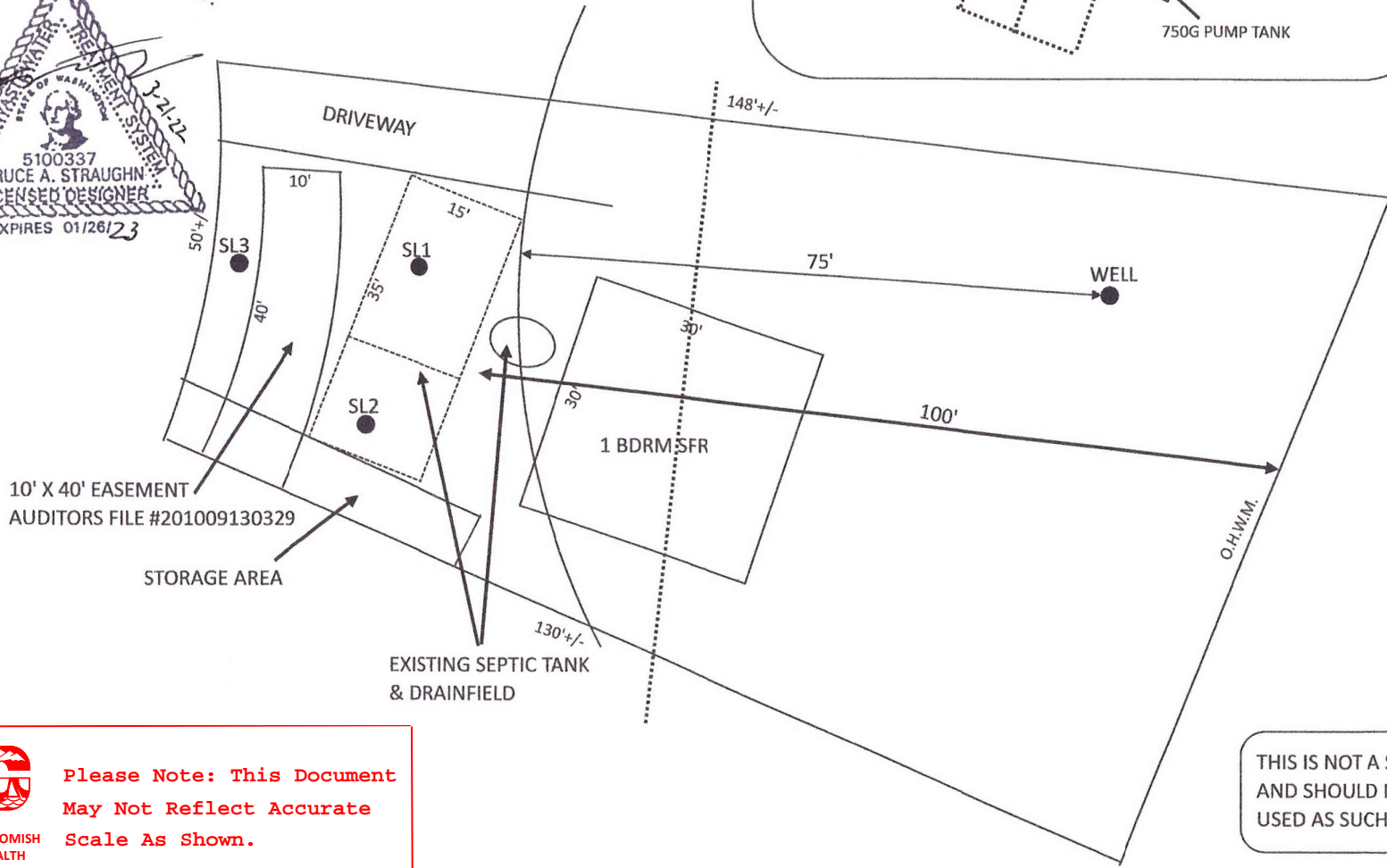
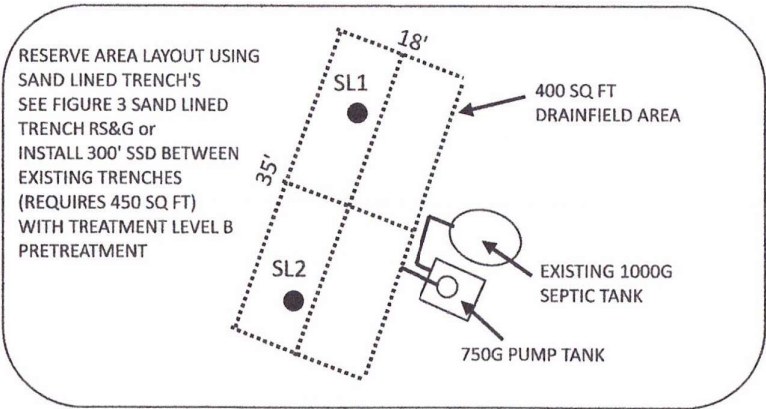
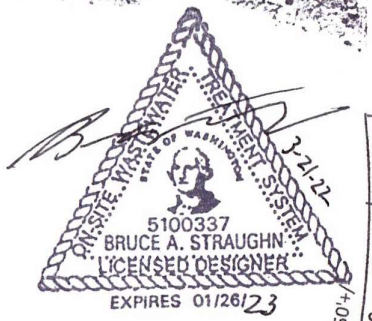
On-site Wastewater Treatment Systems Designer


License #5100337

PO Box 2044, Granite Falls WA 98252
425-446-2678
bruce@pilchucksd.com
www.pilchucksd.com



REVISED AS-BUILT TO DEMONSTRATE RESERVE AREA
 9905 353RD DR NE, GRANITE FALLS
 PARCEL 00544100000700



 **Please Note: This Document
 May Not Reflect Accurate
 Scale As Shown.**

SNOHOMISH
 HEALTH
 DISTRICT

THIS IS NOT A SURVEY
 AND SHOULD NOT BE
 USED AS SUCH

FIGURE 3

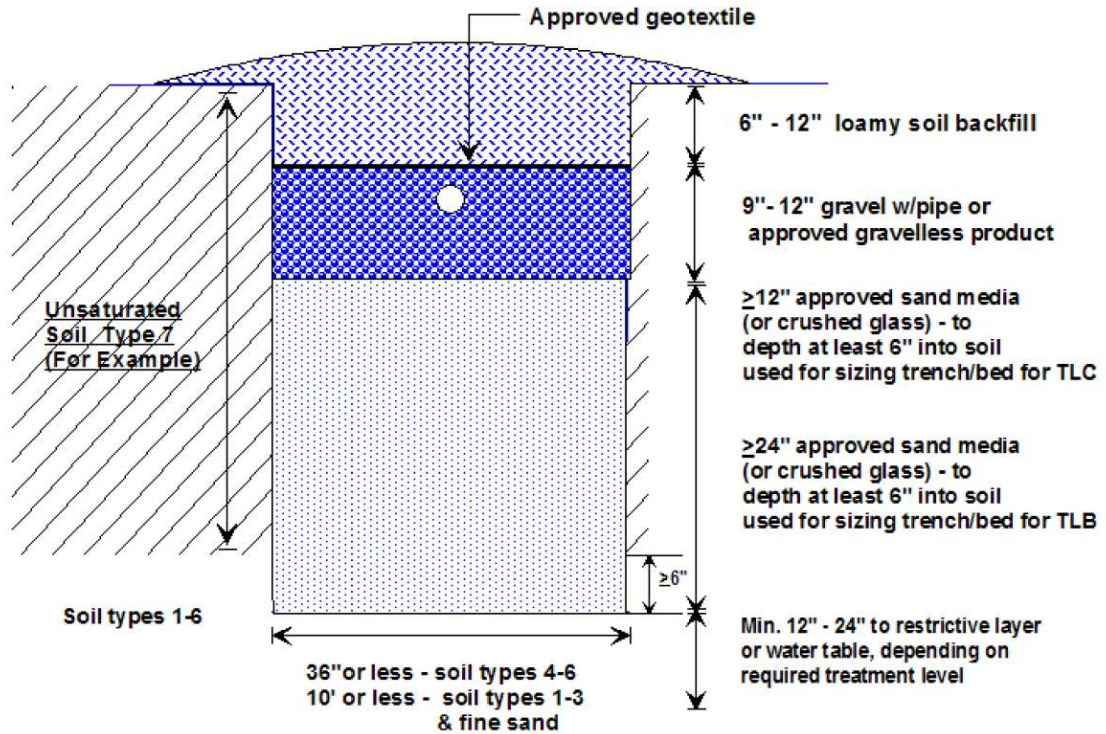
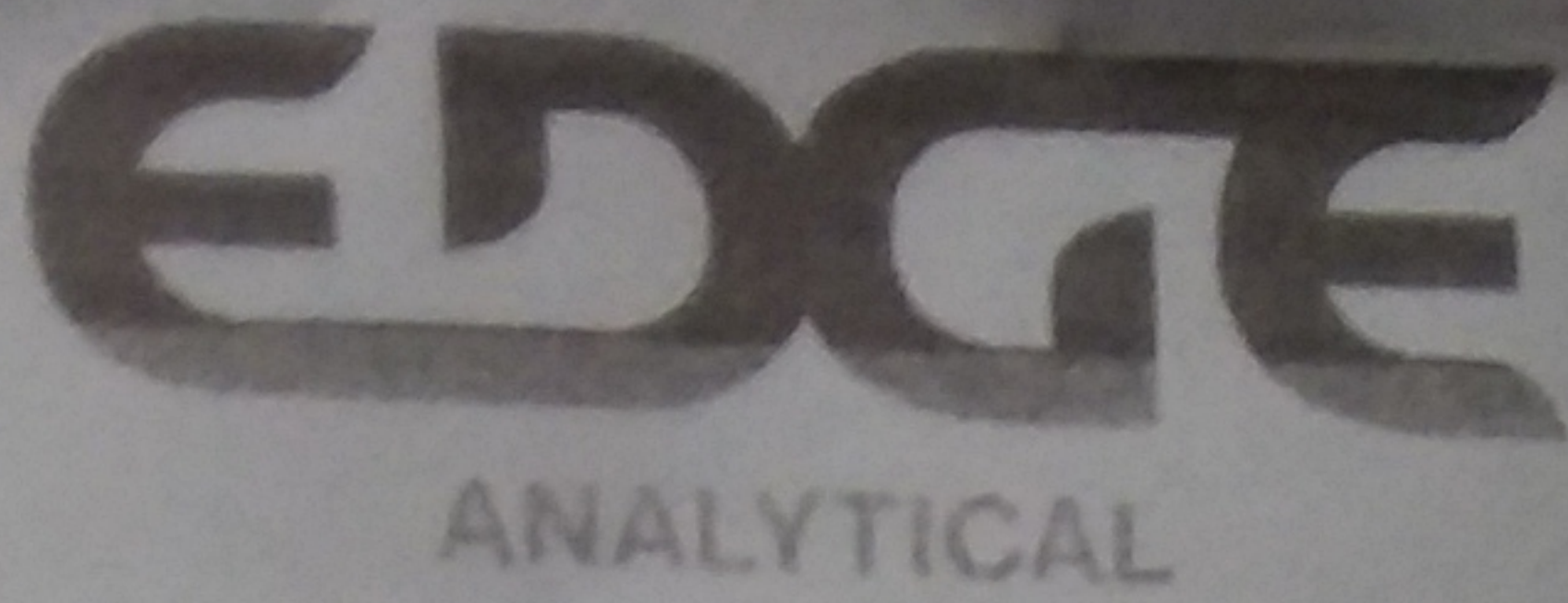
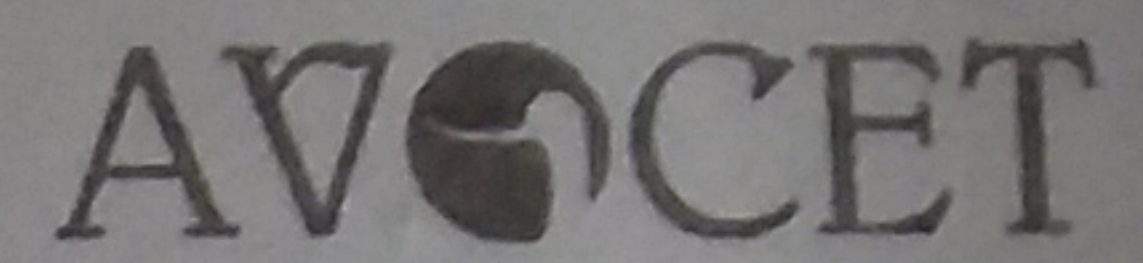


Exhibit 103



Burlington, WA Corporate Laboratory (a)
Bellingham, WA Microbiology (b)

Portland, OR Microbiology/Chemistry (c)
Corvallis, OR Microbiology/Chemistry (d)
Bend, OR Microbiology (e)



Washington State Department of Health WATER BACTERIOLOGICAL ANALYSIS

Client Name: Brad Whitsell
9905 353rd Dr NE
Granite Falls, WA 98252

Reference Number: 22-12738
Project: Bacteria

System Name:
System ID Number:
DOH Source Number:
Sample Type: D - Drinking Water
Sample Purpose: Investigative or Other
Sample Location: Kitchen
County:
Sampled By: Brad Whitsell
Sampler Phone:

Repeat Sample Number:
Lab Number: 164-24655
Field ID: Bacteria
Date Collected: 4/13/22 09:00
Date Received: 4/14/22
Date Set: 4/13/22 12:59
Date Analyzed: 4/14/22 10:18
Report Date: 4/15/22
Comment:
Approved By: ckk,jln

Authorized by:

Ceann K Knox
Lab Manager, Bellingham

DOH#	PARAMETER	RESULT	Qualifier	UNITS	Analyst	METHOD	Batch	COMMENT
1	TOTAL COLIFORM	Satisfactory, Coliforms Absent		per 100mL	rml	SM9223 B	m_220413a	
3	E. COLI	Absent		per 100mL		SM9223 B	m_220413a	

the sample is unsatisfactory you can get information at the following health department websites or phone numbers:

- Island Co: <http://www.islandcounty.net/health/Envh/DrinkingWater/index.htm>
- San Juan Co: <http://www.sanjuanco.com/health/ehswater.aspx>
- Skagit Co: <http://www.skagitcounty.net/drinkingwater> or 360-336-9380
- Snohomish Co: 425-339-5250
- Whatcom Co: http://www.co.whatcom.wa.us/health/environmental/drinking_water/index.jsp
- WSDOH: <http://www.doh.wa.gov/ehp/dw/Programs/coliform.htm>

YES
If result is Unsatisfactory, three (3) repeat samples and groundwater source samples are required for Group A Public Water Systems. Private individuals should investigate the cause of the unsatisfactory result and resample.
If you have concerns, the process is hereby described in the water utility's publicly posted
If qualifiers are present, see accompanying Qualifier Definition report.