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April 26, 2018

Barb Mock, Director
Snohomish County
Planning & Development Services, M/S 604
3000 Rockefeller Avenue
Everett, WA 98201

RE: Request for Interpretation

Dear Director Mock,

The current version of SCC 30.70.140, a copy of which is attached hereto as Exhibit A, provides that Urban Center Development applications expire after 36 months. The current version of this code provision became effective on April 1, 2016 (the "Effective Date"). However, the code provision does not state from when this new time limitation should be measured for applications which were submitted prior to the Effective Date ("Pre-Effective Date Applications"). An interpretation is necessary to determine the applicable expiration date for Pre-Effective Date Applications.

Under Washington's vested rights doctrine, "developers who file a timely and complete . . . application obtain a vested right to have their application processed according to the zoning and building ordinances in effect at the time of the application." *W. Main Assocs. V. Bellevue*, 106 Wn.2d 47, 50-51 (1986). Once a developer submits a permit application that is sufficiently complete, complies with the existing zoning ordinances, and is filed during the effective period of the zoning ordinances under which the developer seeks to develop, "a city cannot frustrate the development by enacting new zoning regulations." *Id.*

The retroactive application of newly adopted regulations is generally disfavored. *State v. T.K.*, 139 Wn.2d 320, 329 (1999) ("A statute is presumed to operate prospectively unless the Legislature indicates that it is to operate retroactively. Courts disfavor retroactivity." (internal citations omitted)). "A statute operates prospectively when the precipitating event for its application occurs after the effective date of the statute."

Given Washington's vested rights doctrine, the current version of SCC 30.70.140 should not be applicable to Pre-Effective Date Applications. However, if the current version of SCC 30.70.140 does apply to Pre-Effective Date Applications, then the only logical interpretation is that a Pre-Effective Date Application would be given a new 36-month term *as measured from the Effective Date*. Any attempt to apply the 36-month time frame retroactively fails in part because the prior versions of this ordinance explicitly exempted applications where: (1) an EIS is being

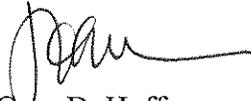
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proposed; or (2) where the applicant has agreed in writing to a waiver of the then-applicable time limit.

An interpretation of the date from which the 36-month time frame should be measured for Pre-Effective Date Applications is necessary for applicants with Pre-Effective Date Applications to know the expiration date of those applications. Therefore, we hereby submit this request for a code interpretation pursuant to SCC 30.83.020.

Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "G. Huff", with a long horizontal flourish extending to the right.

Gary D. Huff
Jacque E. St. Romain

EXHIBIT A
SCC 30.70.140

- (1) This section shall apply to:
- (a) New applications, approvals, and permits set forth in SCC Table 30.70.140(1); and
 - (b) Existing applications set forth in SCC Table 30.70.140(1) that were deemed complete but that were not approved or denied prior to April 1, 2016, provided that the department shall provide notice to the applicant one year prior to the expiration date of the application.
- (2) SCC Table 30.70.140(1) establishes the expiration period for applications, approvals, and permits, except that:
- (a) When an EIS is required, the expiration period of an application will be suspended until the FEIS is issued. The suspension of the expiration period for an application shall not exceed 18 months unless approved by the director; and
 - (b) When otherwise modified by the hearing examiner.
- (3) The applicant is responsible for monitoring the expiration periods for an application, approval, or permit. The county is not required to inform an applicant when an application, approval, or permit will expire or has expired.
- (4) For minor revisions under SCC 30.70.210 and major revisions under SCC 30.70.220, the term of expiration for an application shall be 12 months and shall not extend the term of the corresponding development application approval or concurrency determination.

Table 30.70.140(1).

Approval Type	Expiration of application	Expiration of approval or permit
Administrative Conditional Use Permit	36 months	5 years to commence construction or use

Approval Type	Expiration of application	Expiration of approval or permit
Administrative Conditional Use Permit – Temporary Dwelling During Construction	12 months	As determined in decision
Administrative Conditional Use Permit - Temporary Dwelling For Relative	12 months	Shall be subject to annual renewal
Administrative Conditional Use Permit - Other Temporary Uses	12 months	As determined in decision
Administrative Site Plan (pursuant to chapter 30.23A SCC)	36 months	5 years to commence construction or use
Binding Site Plan	36 months	6 months to record
Boundary Line Adjustment	12 months	12 months to record. The department may grant up to one 12-month extension.
Building Permit	Per subtitle 30.5 SCC	Per subtitle 30.5 SCC
Conditional Use Permit	36 months	5 years to commence construction or use
Cottage Housing (pursuant to chapter 30.41G SCC)	36 months	5 years to commence construction or use
Flood Hazard Permit & Flood Hazard Variance	18 months	18 months from the date of issuance. Start of construction, as defined in SCC 30.91S.570 , must commence within 180 days.
Forest Practices (Class IV- General)	18 months	36 months
Land Disturbing Activity	18 months	36 months

Approval Type	Expiration of application	Expiration of approval or permit
Official Site Plan and Site Plans (pursuant to chapters 30.31A and 30.31B SCC)	36 months	5 years to commence construction or use
Planned Residential Development	36 months	5 years to commence construction or use
Pre-application Determination	Concurrency 6 months	Per SCC 30.66B.155
Rezoning	36 months	Not applicable
Shoreline Conditional Use Permit	36 months	Per chapter 30.44 SCC
Shoreline Substantial Development Permit	36 months	Per chapter 30.44 SCC
Single Family Detached Units	36 months	5 years to commence construction or use
Special Use Permit (pursuant to chapter 30.42F SCC)	36 months	5 years to commence construction or use
Subdivisions	48 months	<p data-bbox="846 1354 1182 1375">Per RCW 58.17.140, except that:</p> <ul data-bbox="846 1423 1419 1885" style="list-style-type: none"> <li data-bbox="846 1423 1419 1766">• For preliminary subdivisions that were approved on or after January 1, 2008, one or more extensions not to exceed a total extension time of two years may be granted by the department. Such request must be received by the director at least 30 days prior to the expiration of the preliminary subdivision approval or prior extension. The applicant shall pay a fee for each extension pursuant to SCC 30.86.100. <li data-bbox="846 1814 1419 1885">• For preliminary subdivisions that were approved on or before December 31, 2007, one or more

Approval Type	Expiration of application	Expiration of approval or permit
Short Subdivisions	48 months	<p>extensions up to a total term of 12 years may be granted by the department. Such request must be received by the director at least 30 days prior to the expiration of the preliminary subdivision approval or prior extension. The applicant shall pay a fee for each extension pursuant to SCC <u>30.86.100</u>.</p> <p>60 months, except that:</p> <ul style="list-style-type: none"> • For preliminary short subdivisions that were approved on or after January 1, 2008, one or more extensions not to exceed a total extension time of two years may be granted by the department. Such request must be received by the director at least 30 days prior to the expiration of the preliminary short subdivision approval or prior extension. The applicant shall pay a fee for each extension pursuant to SCC <u>30.86.110</u>. • For preliminary short subdivisions that were approved on or before December 31, 2007, one or more extensions up to a total term of 12 years may be granted by the department. Such request must be received by the director at least 30 days prior to the expiration of the preliminary short subdivision approval or prior extension. The applicant shall pay a fee for each extension pursuant to SCC <u>30.86.110</u>.
Urban Center Development	36 months	5 years to commence construction or use
Variance	36 months	Not applicable

(Added by Amended Ord. 02-064, Dec. 9, 2002, Eff date Feb. 1, 2003; Amended by Amended Ord. 16-004, Mar. 16, 2016, Eff date Apr. 1, 2016; Amended by Amended Ord. 16-073, Dec. 21, 2016, Eff date Feb. 19, 2017).