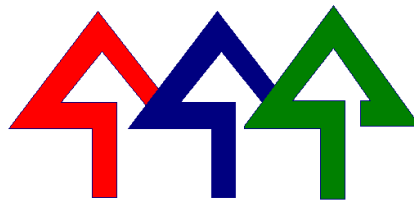


2010 HEARING EXAMINER ANNUAL REPORT

JANUARY 1, 2010 - DECEMBER 31, 2010



SNOHOMISH COUNTY

**Millie M. Judge
Hearing Examiner
December 31, 2010**

PREFACE

The Snohomish County Hearing Examiner is required by county ordinance to report in writing to, and to meet with, the Snohomish County Council and the Planning Commission at least annually for the purpose of reviewing the administration of the county's land use policy and regulatory ordinances. Such report shall include a summary of the Examiner's decisions since the last report. (Snohomish County Code (SCC) Section 2.02.200)

This Annual Report covers the period from January 1, 2010 through December 31, 2010. Statistical compilations are based on cases brought to hearing during the year and decided on or before the report date unless specifically noted otherwise.

MISSION OF THE HEARING EXAMINER'S OFFICE

The mission of the Hearing Examiner's office is to provide a quasi-judicial hearing system which ensures procedural due process and the appearance of fairness in regulatory hearings, to provide an efficient and effective hearing process for quasi-judicial matters, and to comply with state laws regarding quasi-judicial land use hearings. (SCC 2.02.010)

OFFICE OF THE HEARING EXAMINER

Millie M. Judge, Hearing Examiner

Mary Kurke, Administrative Services Assistant

Kris Davis, Clerk of the Hearing Examiner

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INTRODUCTION

This report covers hearing activity for the Office of the Snohomish County Hearing Examiner from January 1, 2010 to December 31, 2010. Support Staff consists of Mary Kurke, Administrative Services Assistant, and Kris Davis, Clerk to the Hearing Examiner. During this period of time, Barbara J. Dykes left the position of Hearing Examiner. Millie M. Judge was appointed by the County Council and serves as the current Hearing Examiner. In the 2010 budget, the Council eliminated the Deputy Hearing Examiner position. In cases where the Examiner is unavailable to hear a case due to a conflict or absence, the Examiner contracts with a *pro tem* hearing examiner who is appointed by the Council to act in such capacity.

The Annual Report was prepared with the assistance of Kris Davis and Mary Kurke from the Hearing Examiner's staff, and Rob Simmonds, Principal GIS Analyst of the Department of Information Services. The Hearing Examiner thanks them for their terrific work and continuing support.

THE YEAR IN REVIEW

2010 was a year of transition for the Office of the Hearing Examiner. After her appointment in August, Ms. Judge and her staff added additional dates to the calendar for hearings, and worked hard to eliminate the pending backlog of cases and decisions. Decisions are now current and the Office is regularly issuing decisions within the required timelines of the County Code. Upon her appointment, the Hearing Examiner engaged in outreach to frequent users of the quasi-judicial system, both within the County and in the community, to discuss expectations, identify issues of concern, and to discuss where procedures and efficiencies can be gained in the quasi-judicial process.

Specifically, the Examiner met with the Executive's Office, Council staff, Prosecuting Attorney's Office, Animal Control Division, Planning and Development Services (PDS), Public Works and representatives of the development community, including the local professional engineers association, and Master Builders Association. The Examiner anticipates performing more outreach in 2011, specifically focusing on meeting with community groups and environmental organizations to the discussions started in 2010. The Examiner will continue to meet with PDS supervisors to ensure the quasi-judicial process is effective and efficient.

In terms of the nature of the work, land use activity within the community remains slower than in 2008, and this continues to be reflected in the lower number of land use permit cases heard by the Hearing Examiner's Office in 2010. Enforcement appeals for land use violations were largely unchanged from the amount of cases heard in 2009. Finally, the number of appeals of Auditor animal control enforcement activities was significantly lower than in prior years.

THE YEAR AT A GLANCE – 2010

TOTAL NUMBER OF HEARINGS HELD	77 Total
Land Use Permits: Type 2 Permits Ch. 30.72 SCC	39
Land Use Appeals: Type 1 Appeals Ch. 30.71 SCC	2
Code Enforcement: Ch. 30.85 SCC	32
Auditor Appeals: Title 9.0 SCC	4
TOTAL NUMBER OF DECISIONS ISSUED	61 Total
Land Use Permit Decisions and Appeals:	38
Code Enforcement Appeals:	19
Auditor Appeals:	4
APPEALS OF HEARING EXAMINER DECISIONS	Outcome on Appeal:
COUNTY COUNCIL:	5 Total
06 125856 Lake Goodwin RCS II	Affirmed Decision w/ modifications
07 113123 Mustach #2	Affirmed Decision w/ modifications
09 101888 Regency on Manor Way	Affirmed Decision
09 100760 Hooper Tow Yard	Affirmed Decision w/ modifications
05 122348 Highbridge Estates RCS	(Pending)
SUPERIOR COURT:	1 Total
09 108076 David Holter	Appeal Settled

I. QUASI-JUDICIAL HEARING ACTIVITY

1. Land Use Permits and Appeals

Land use permitting activity before the Hearing Examiner consists of quasi-judicial hearings to consider permits or approvals for all permits that fall under “Type 2 permits and decisions” identified in SCC 30.72.020. These include: conditional use permits (CUPs) and major revisions to existing CUPs, official site plans for commercial developments in certain zones, flood hazard area variances, preliminary subdivision approvals and revisions (including rural cluster subdivisions (RCSs)), planned residential developments (PRDs), short subdivisions that include a public road dedication, boundary line adjustments, urban center developments and where requested by PDS, shoreline substantial developments, shoreline conditional uses and shoreline variances.

The Hearing Examiner also has jurisdiction over appeals of decisions issued by the PDS Director identified as “Type 1 permits and decisions” under SCC 30.71.020. (SCC 30.71.070) The most common types of Type 1 hearings heard by the Examiner are appeals of threshold determinations made pursuant to the State Environmental Policy Act (SEPA). These decisions determine whether a project has a significant adverse environmental impact, whether identified impacts can be mitigated and whether an Environmental Impact Statement (EIS) should be issued. These appeals are typically coupled with Type 2 land use permit matters that are pending before the Examiner, and the two cases are heard together.

In terms of the 2010 caseload, the Hearing Examiner held 41 hearings on land use permits and appeals and issued 38 final decisions. The overall caseload remains sharply lower than in 2008, but similar to that of 2009. We anticipate that 2011 will show an increase in land use permitting activity as PDS takes steps to remove part of its backlog of applications. Land use applications were evenly split between RCSs, rezones and CUPs. RCSs remain a popular land use tool. In 2010, an additional 616 acres of land was subdivided using the RCS regulations set forth in Ch. 30.41C SCC, adding 201 new lots to the rural area.

LAND USE DECISIONS ISSUED BY PERMIT TYPE¹	<u>2008</u>	<u>2009</u>	<u>2010</u>
Subdivisions (Plats)	22	5	0
Rural Cluster Subdivisions	29	8	12
Short Subdivisions Appeals	2	1	1
Rezones	52	10	11
Conditional Use Permits	10	9	10
Variances	0	1	2
Planned Residential Developments	2	1	1
SEPA Appeals	1	0	1
TOTALS	118	35	38

¹ These decisions do not reflect cases that were resolved or dismissed prior to the issuance of a final decision by the hearing examiner.

2010 APPROVED LAND USE APPLICATIONS²

File Number	Project Name	Roll Number (Tax ID)	Case Type	Acres	Lots
05 122348	Highbridge Estates	15905 High Bridge Rd, Monroe	RCS	84.7	35
06 125855	Lake Goodwin RCS 1 - LGAJV, LLC	196th St SW, Stanwood	RCS	165.85	49
06 126859	Warm Beach - LGAJV, LLC	Frank Waters Rd, Stanwood	RCS	138.6	41
06 127556	The Hideaway	3520 Stanwood-Bryant Rd, Arlington	RCS	34.84	11
06 133750	Carpenter Heights	Carpenter Rd & 195th Ave SE, Snoh	RCS	40	12
07 103723	Hanson RCS - LGAJV, LLC	20115 Frank Waters Rd, Stanwood	RCS	60.69	18
07 106671	Arlington SD / Trafton	12616 Jim Creek Rd, Arlington	CU & L/M	6.3	
07 107961	Richard Becker	11609 Marino Ave, Everett	R		
07 111205	Stillaguamish View Estates	9813 Moran Rd, Arlington	RCS	17.92	8
07 113123	John & Julie Mustach	10119 33rd Ave SE, Everett	R	0.61	
08 101617	Schaefferkoetter Rezone	26 E Jonathan Rd, Bothell	R	0.58	
08 101650	Melton Parker Short Plat	2115 204th St SW, Lynnwood	R & SP	1.57	8
08 103337	The Arbor at Echo Falls	11804 202nd St SE, Snohomish	RCS	31.18	14
08 103888	Eddy Estates	2933 120th Pl SW, Everett	R	0.57	
08 105665	Dave Foreman	30 Marine Dr NE, Tulalip	CU & L/M	6.8	
08 106641	Silver Creek Estates	18915 Bothell-Everett Hwy, Bothell	L/M & PRD	1.88	20
08 107302	Three Lakes Water District	58th St SE & 176th Ave SE, Snohomish	CU/R	1.8	
08 109140	Rodney Cook	23005 Locust Way, Bothell	R	0.79	
09 100175	Village Ranch	27212 28th Ave NW, Stanwood	RCS	30.74	8
09 101446	McCaulay Rezone	504 146th St SW, Lynnwood	R	0.43	
09 101584	Rustling Firs	12520 240th St NE, Arlington	RCS	11.7	5
09 101888	The Regency at Manor Way	15130 Manor Way, Lynnwood	CU & V	0.6	
09 102699	The Attic Learning Center	24023 51st Ave SE, Woodinville	CU	4.83	
09 107806	Dallas Lewis	24210 23rd Ave W, Bothell	R	1.5	
09 107905	Horse Ranch Switching Station	8701 S. Lk Stevens Rd, Everett	CU & R	2.2	
09 108886	Ozegovic Rezone	703 Bing Rd, Lynnwood	R	0.31	
10 100653	Ross Rezone	11901 Freeway Pl, Everett	R	0.34	
10 102000	Arlington Heights / Stanyer	20213 Old Burn Rd, Arlington	CU & R	2.28	
10 104386	Kazen Rezone	30 119th St SE, Everett	R		

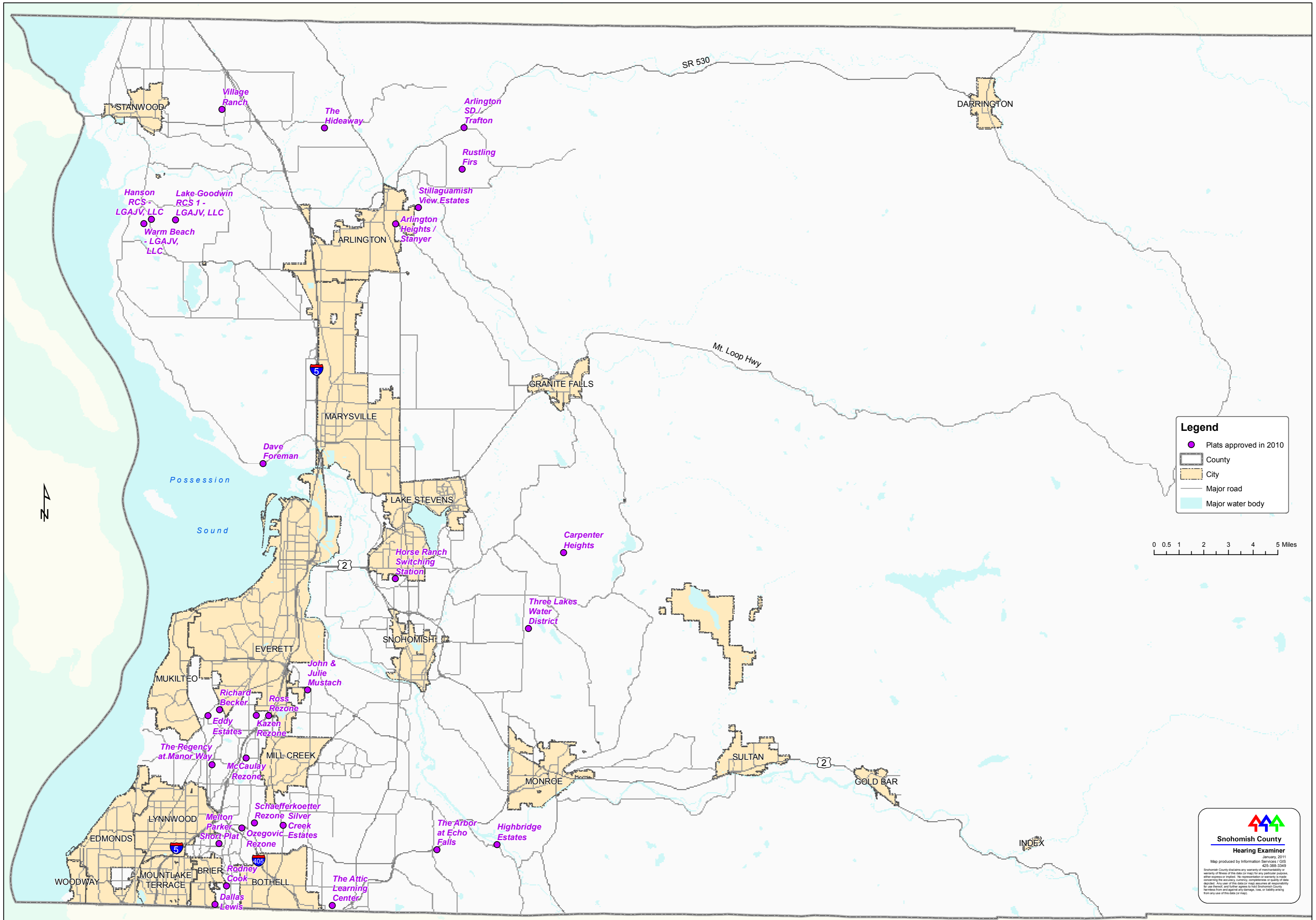
Legend

P = Plat	REV/P = Revised Plat
SP = Short Plat	PRD = Planned Residential Development
R = Rezone	CU = Conditional Use
V = Variance	CU/R = Conditional Use Revised
OSP = Official Site Plan	L/M = Landscape Modification
RCS = Rural Cluster Subdivision	PCB = Planned Community Business

² This list does not reflect applications that were denied or remanded to PDS for further work.
2010 Annual Report

Plats Approved in 2010


Snohomish County



Legend

- Plats approved in 2010
- County
- City
- Major road
- Major water body

0 0.5 1 2 3 4 5 Miles


Snohomish County
 Hearing Examiner

Map produced by Information Services / GIS
 January, 2011
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II. ENFORCEMENT ACTIVITIES

1. Land Use Code Enforcement Appeals

The Hearing Examiner has jurisdiction to hear appeals of certain code enforcement cases under Chapter 30.85 SCC. These include Notice of Violation appeals and Contested Citation appeals. In addition, the Examiner may still hear older cases brought prior to November 1, 2008 for the imposition of monetary penalties.

New filings of code enforcement cases by PDS were slightly lower for 2010 than in 2009. The Code Enforcement Division of PDS currently has five officers working to enforce land use regulations throughout the County. The current number of land use enforcement cases heard by the Hearing Examiner is sharply down over prior years, mainly resulting from changes made to the County's regulations and procedures in 2008. As expected, Contested Citations comprise the fewest number of enforcement appeals brought before the Hearing Examiner. PDS reports that the new process is working and that they are seeing compliance achieved more quickly after citations are issued and that fines are being paid. The Examiner is meeting quarterly with the Division's managers to ensure that cases are being handled in the most efficient manner, reducing paperwork and costs where possible.

LAND USE ENFORCEMENT MATTERS

New Case Filings	2006	2007	2008	2009	2010
Notice of Violation Appeals	20	46	31	15	24
Contested Citation Appeals	n/a	n/a	n/a	7	6
Monetary Penalty Cases	61	100	100	17	4
Total New Filings	81	146	131	39	34
Number of Hearings	83	146	128	32	32
Number of Decisions Issued	25	96	86	34	19

2. Auditor's Office Enforcement Activity

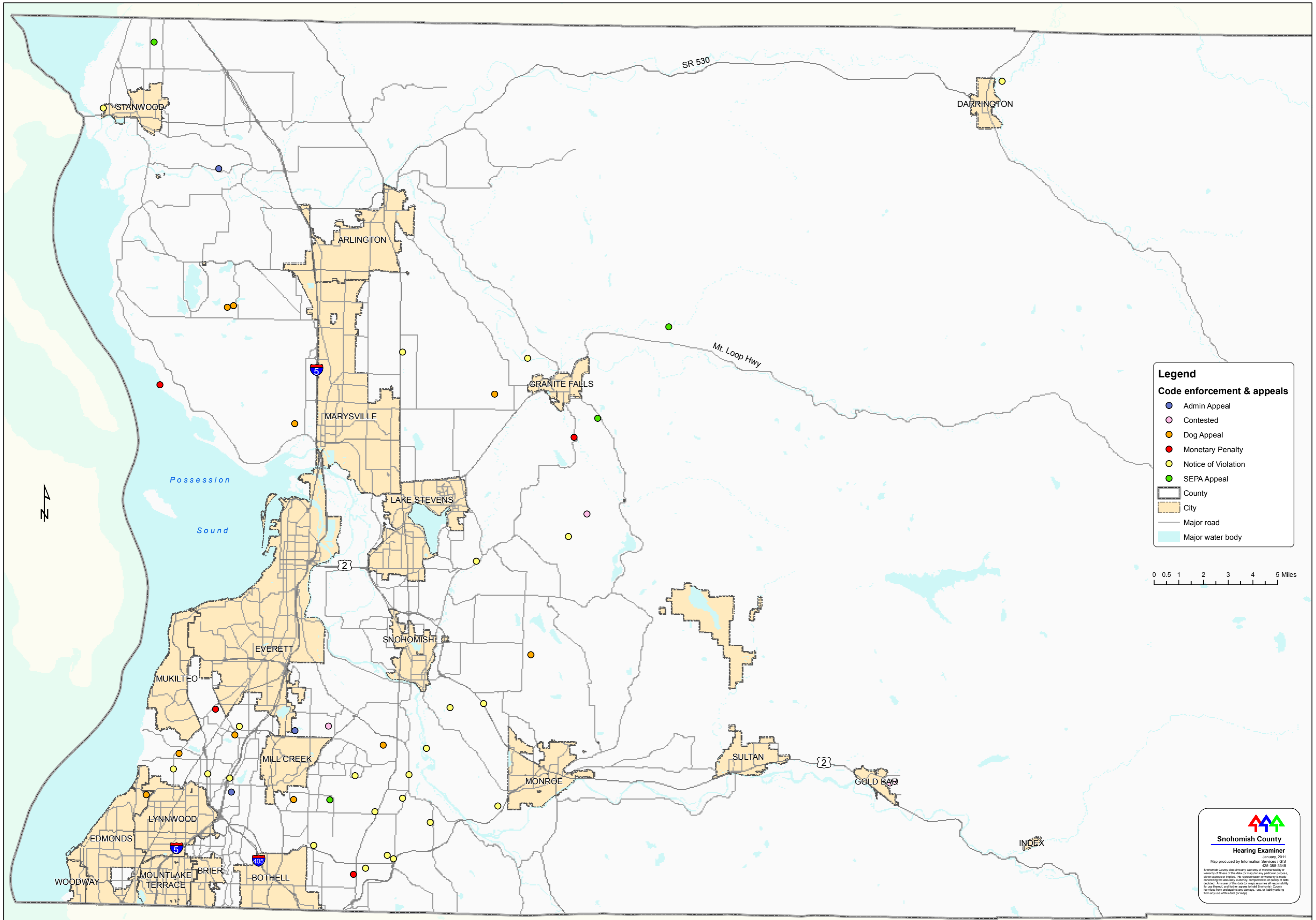
The Hearing Examiner receives several different types of appeals from the Licensing Division of the Auditor's Office, including animal control matters, license revocations and appeals of false alarm fees. The 2010 caseload included only Animal Control matters filed pursuant to Title 9 SCC. Most animal control cases involve dogs without licenses, dog bites or attacks, and kennel violations, where the owner files an appeal challenging a Notice of Violation, Notice of Declaration of Potentially Dangerous Dog, Notice of Declaration of a Dangerous Dog, or a kennel license suspension. Many of these cases are resolved prior to the public hearing.

AUDITOR ENFORCEMENT MATTERS

Auditor Appeal New Filings	2006	2007	2008	2009	2010
Animal Control Appeals	2	7	17	18	11
False Alarm Appeals	8	4	2	0	0
Total New Filings	10	12	19	18	11
Number of Hearings	0	1	6	5	6
Number of Decisions	0	1	5	8	2

2010 Code Enforcement & Appeal Cases

Snohomish County



Legend

Code enforcement & appeals

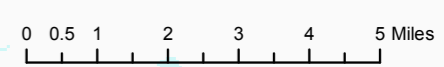
- Admin Appeal
- Contested
- Dog Appeal
- Monetary Penalty
- Notice of Violation
- SEPA Appeal

County

City

Major road

Major water body



Snohomish County
 Hearing Examiner
 January, 2011
 Map produced by Information Services & GIS
 425-388-3349

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III. QUASI-JUDICIAL HEARINGS

In considering the volume of quasi-judicial hearings heard over the past decade by the Office of the Hearing Examiner, the data shows that land uses cases are the largest driver of hearings, with code enforcement having the next highest impact in terms of hearing volume. In peak years, the Office has employed two full-time examiners and has often used examiners on a contract basis to meet the demand for hearings. In 2009, the Office consisted of only one full-time examiner, and three on-call *pro tem* examiners. In 2010, the Office was further reduced to one full-time examiner and one on-call *pro tem* examiner. These staffing fluctuations have been directly related to the volume of hearings before the Hearing Examiner.

As demand has dropped, largely driven by the downturn in the economy and housing sector, land use permit activity has slowed significantly. However, code enforcement hearings have sharply reduced for a different reason, largely resulting from changes to the enforcement regulations and procedures adopted in 2008. Fewer cases now require a Hearing Examiner decision. Finally, appeals from Animal Control enforcement activities were significantly lower in 2010 than in prior years, with only four appeal hearings.

QUASI-JUDICIAL HEARING VOLUME (2000-2010)

2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	10-Year Totals	Hearing Type
134	127	200	128	157	196	221	198	105	35	39	1540	Land Use Permits
14	38	46	8	11	93	20	28	8	3	2	271	Land Use Appeal
29	29	11	50	85	65	83	146	128	32	32	690	Code Enforcement
5	11	7	7	22	11	10	11	19	18	4	125	Auditor-All Appeals
182	205	264	193	275	365	334	383	260	88	77	2,626	TOTALS

IV. COMMENTS ON LAND USE REGULATION AND THE QUASI-JUDICIAL PROCESS

The Council has invited the Hearing Examiner to inform it of any issues that arise in the regular administration of the County's development regulations or quasi-judicial hearing process. To that end, the Examiner submits the following list of issues for discussion and consideration:

LAND USE REGULATIONS

1. Rural Cluster Subdivisions (Ch. 30.41C SCC)

Rural Density. As noted above, RCSs remain a popular tool in the rural areas. However, these subdivisions elicit frequent citizen protests relating to the density bonus granted to developers. Citizens do not understand how subdivisions with significant density can be approved in an R-5 zone. Every citizen raising these complaints states that they moved to the rural area for its rural landscape, lifestyle, lack of urban amenities and especially lower densities, and they believe that the zoning is being thwarted by the bonuses awarded for using the RCS regulations. Most rural citizens testifying in land

use hearings remain unconvinced that the open space and clustering requirements protect rural character. The Hearing Examiner notes that there are no restrictions in the County Code that would prevent multiple RCSs from being placed adjacent to each other to form a pattern of residential development that could begin to look like urban development, which is prohibited under the Growth Management Act.

Open space requirements. In SCC 30.41C, “subject property” is defined to mean the entire lot or parcel or contiguous combination thereof, on which a development activity is proposed. SCC 30.91S.740. The word “contiguous” is not defined in Code, but generally has been accepted to mean that where only a single corner of a lot touches another lot, the property is considered as a whole for purposes of subdivision requirements. Some citizens have complained that this allows an applicant to essentially leapfrog lots and place required open space tracts “off-site” or at a significant distance away from the main development, where the bulk of the residential lots are placed in a RCS.

Pending Code Violations. The RCS code is the only regulation that prohibits the submittal of an application where an open code violation exists on a property. No such similar prohibition is found in other subdivision codes or land development regulations. (SCC 30.41C.030(5)) Additionally, the submittal of an application is typically a cure for a code violation. Although this issue does not present itself often, the Council may want to consider amending this provision to address the appropriate remedy. In addition, the Council may want to consider whether the restriction here should apply to other land development applications.

2. Vested Rights Upon Submittal of a Complete Application (or failure to respond) (SCC 30.70.030)

The County Code expressly delegates the authority to make a completeness determination by the PDS Director. If the Director does not act within the time prescribed in the Code, then completeness is deemed to occur *automatically*. (See, SCC 30.70.030 and 30.70.040) There is no administrative appeal mechanism for a completeness determination and the issue is not subject to review by the Hearing Examiner.³ Citizens have argued that this provision allows developers to take advantage of backlogs at PDS to vest projects that are not actually complete, and that an actual determination should be made by the Department rather than through an automatic approval process.

Additionally, this section appears to conflict with the vesting provisions found in the County’s transportation regulations. Completeness for purposes of complying with Chapter 30.66B SCC is defined in SCC 30.66B.025. That Section provides that “a development application shall *not* be considered complete until all traffic studies or data required in accordance with SCC 30.66B.035 or required as a result of the pre-submittal conference of SCC 30.66B.020 are received.” This section does not contemplate automatic vesting.

³ A department ministerial decision becomes final 21 days after it was made based on the requirements of the Land Use Petition Act (Ch. 36.70C RCW). *Chelan County v. Nykreim*, 146 Wn.2d 904, 52 P.3d 1 (2002). The only way to challenge such acts is to appeal under LUPA within 21 days.

3. Land Disturbing Activity Exemptions

There are exemptions in the clearing and grading regulations for site investigation work (typically septic or other infrastructure design issues). There are no numeric limits in SCC 30.63B.070(2)(c) or (d) that would limit the amount of disturbance allowed under these exemptions. Although infrequent, the Examiner has heard complaints that these exemptions should include numeric limits to prevent abuse.

4. SEPA Policies to Protect Specific Species (e.g., Bald Eagles and their roosts)

The Hearing Examiner frequently hears complaints from citizens about the inadequacy of protection for Bald Eagles and other species that are not on the Endangered Species List. The County lacks any policies in the Comprehensive Plan or elsewhere that would allow the Examiner to use SEPA substantive authority in appropriate cases to afford such protections.

5. Administrative Review of Forest Practices Moratorium

The County does not yet have an administrative appeal process for cases where a person is cited for a forest practices violation and the State Department of Natural Resources notifies the County that it must impose a six-year moratorium on the property. The County previously litigated this issue in *Berst v. Snohomish County*. In that case, the Superior Court (which was upheld by the Court of Appeals), held that the County must have such a process to afford due process to a landowner prior to depriving them of the use of their land for six years.

6. Water Supply

This issue has been raised in prior Annual Reports. We flag it again here as the issue remains problematic for land development for residential purposes, especially in rural areas.

QUASI-JUDICIAL HEARING PROCESS

7. Update of the Hearing Examiner's Enabling Ordinance (Chapter 2.02 SCC)

Chapter 2.02 SCC, the Hearing Examiner's enabling ordinance, is out of date and needs revision. Several matters need to be addressed including:

- The Code now states that the procedures specified in Ch. 2.02 SCC do not apply to quasi-judicial matters brought under Title 30 SCC (the UDC). However, there are important procedures in Title 2.02 SCC relating to appeals that are not found in Title 30 SCC.
- The Code does not authorize the Examiner to issue subpoenas. At a minimum, this authority is now required for animal control cases (and perhaps others), pursuant to the *Mansour v. King County* decision from the Court of Appeals. As such, the Hearing Examiner requires some discretion to issue such subpoenas and administer the process relating to them.

- The Hearing Examiner is required to issue decisions within 15 calendar days of the conclusion of the public hearing. (See, SCC 2.02.150) This means that weekends and holidays are included within the 15 day period, which lessens the amount of time available to the Examiner to 11 days, and less when a holiday occurs. This amount of time is very difficult to meet when multiple land use decisions are due at the same time (having been heard on the same day). Deadlines also do not consider the effect of pending reconsideration petitions, which can take a significant amount of time to respond to when numerous issues are raised. The same language is found in the decision period for reconsideration. The Examiner requests that this Code language be changed to 15 working days.
- The Code does not provide for notice by electronic mail, which is now favored by litigants and citizens, and which can reduce mailing and copying costs.

The Examiner is working with the Prosecuting Attorney Office and Council staff on these issues and intends to complete that work and forward an ordinance to PDS, the Auditor, and eventually Council for consideration in 2011.

8. New Hearing Examiner Rules of Procedure

As noted in the 2009 Annual Report, new Rules of Procedure were drafted by the Examiner prior to her appointment. We expect to release the Proposed Rules in 2011 for public comment, although some of the Rules were changed to reflect proposed ordinance changes to Ch. 2.02 SCC discussed in No. 7, above. As such, the timing of the release will be contingent on that update process.

Under SCC 2.02.090, once the Examiner has adopted the Rules, they must be transmitted to the Clerk of the Council for Council review within five days. The rules shall remain in effect unless rejected or modified by the Council. If the Council does modify or reject a rule, the Examiner shall incorporate the action within ten days of adoption of the motion. The Hearing Examiner looks forward to working with the Council staff to provide all necessary briefings and information in support of that process.