



## JEFFERSON COUNTY

### DEPARTMENT OF COMMUNITY DEVELOPMENT

621 Sheridan Street

Port Townsend, WA 98368

*Al Scalf, Director*

### Unified Development Code Interpretation

This interpretation is made according to Article VI of Chapter 18.40 of the Unified Development Code, Jefferson County Code (JCC 18.40.350). An interpretation of the provision of the UDC is intended to clarify conflicting or ambiguous wording, interpret proper classification of a use, or interpret scope or intent. The "Factors for Consideration" listed in JCC 18.40.360(4) were considered in making this UDC interpretation, including applicable policies of the Jefferson County Comprehensive Plan.

Date: November 6, 2008  
Case: ZON08-00084  
MLA08-00435

Applicant: Gendler & Mann, LLP, Attorneys at Law  
Attn: David S. Mann  
1424 Fourth Ave Suite 1015  
Seattle, WA 98101

Property Owner: John & Marilyn Pedersen et al  
Celia Pedersen  
Kirie Pedersen  
PO Box 547  
Brinnon, WA 98320

Subject: Applicant seeks clarification and interpretation of Jefferson County Code (JCC) 18.30.050(4)(b).

Request: Where a single parcel of property contains three separate residences each with its own approved septic system, can the property be subdivided into three lots under the density exemption in JCC 18.30.050(4) without needing to construct a fourth, unnecessary septic system?

Relevant Law, Code, Plans, Ordinances or Policies:

This interpretation is made according to Article VI, Chapter 18.40 JCC. An interpretation of the provision of the Unified Development Code (UDC) is intended to clarify conflicting or ambiguous wording, interpret proper classifications of a use, or interpret scope or intent. The "Factors for Consideration" listed in JCC 18.40.360(4) (identified below) were considered in making this UDC interpretation, including applicable goals and policies of the Jefferson County Comprehensive Plan.

- (a) The applicable provisions of this code, including its purpose and context;
- (b) The implications of the interpretation for development within the county as a whole, including the precedent the interpretation will set for other applicants; and
- (c) Consistency with the Jefferson County Comprehensive Plan and other relevant ordinances and policies.

JCC 18.30.050 Density, dimension, and open space standards.

(4) Density Exemptions.

In land use districts with minimum density requirements, additional substandard or nonconforming lots can be segregated on a legal lot of record containing more than one primary dwelling unit and septic system consistent with the requirements for a short subdivision under Article III of Chapter 18.35 JCC; provided, that all conditions set forth in this subsection are satisfied:

- (b) *If on or before January 20, 1998, the parcel to be divided contained one or more existing legally permitted residential structures, of which each structure had an installed, individual and legally permitted septic system approved by the Jefferson County environmental health department, and the property contained at least one additional legally permitted and installed septic system not yet dedicated or connected to an existing residential structure. (emphasis added)*

JCC 18.30.040 Sewage Disposal.

- (1) All development shall be provided with an individual, on-site septic system and drainfield approved by the Jefferson County health department in compliance with Chapter 8.15 JCC, unless the Jefferson County health department determines that public sewer is available which would then require connection to the approved public sewer.
- (2) Design and construction standards for on-site sewage disposal shall conform to the requirements of the Jefferson County department of health or the agency having regulatory responsibility for the system

Comprehensive Plan Goal & Policy:

GOAL:

LNG 3.0 Ensure that rural residential development preserves rural character, protects rural community identity, is compatible with surrounding land uses, and minimizes infrastructure needs.

POLICIES:

LNP 3.7 Provide a density exemption to allow the segregation of lots on a parcel containing more than one dwelling unit and one septic system, provided that the dwelling unit and septic system were constructed prior to the adoption of the Comprehensive Plan on August 28, 1998.

Ordinance No. 09-0819-96

On August 19, 1996 The Board of County Commissioners approved Ordinance No. 09-0819-96 (attached Exhibit A) to allow some properties an exemption from the density requirements in order to subdivide those properties and states in part:

“3.10.4 Exemption to Density Requirement: An undivided parcel of land on which two or more single family or multiple family dwellings are located, *or which have two or more approved, valid, and unexpired sewage disposal permits issued prior to the effective date of the emergency Moratorium Ordinance No. 19-1121-95, November 21, 1995,* may apply to the Department of Community Development at the Permit Center for an exemption to the density requirement of this ordinance and may, upon approval, apply to subdivide the property to create separate lots for each of the structures *or issued septic permits* if the following conditions are met:...” (emphasis added)

Resolution No. 10-98

On January 20, 1998, Resolution No. 10-98 (attached Exhibit B) was adopted by the Board of County Commissioners to allow certain properties to be subdivided below the mapped base density contained in the Interim Growth Strategies Ordinance and states in part:

“WHEREAS, the Director of Community Development has sought Board guidance in administering a substantive content of Emergency Ordinance No. 09-0819-96, particularly in relations to a variety of scenarios where property owners have more than one single family residential dwelling unit on a single, undivided parcel of land *and/or multiple installed septic systems and/or multiple permits for uninstalled septic systems granted for a single undivided parcel of land;* and, (emphasis added)

WHEREAS, the Jefferson County Board of Commissioners desire to provide relief to these property owners where possible and allow them to legally subdivide their “non-conforming” property and bring the property into conformance; and,...

Attached to Resolution No. 10-98 as page 5 are graphic representations of the “variety of scenarios” stated above. Particular attention should be given to scenario #2 as it represents the approval criteria described under JCC 18.30.050(4)(b).

JCC 18.30.050(4)(c)(iii)

Jefferson County Unified Development Code (UDC), adopted under Ordinance No. 11-1218-00, December 18, 2000, and effective January 16, 2001, as amended

JCC 18.30.050(4)(c) states in part: “The following conditions shall apply to all density exemptions authorized under this subsection:...

(iii) The property may be divided into a number of lots equal to the number of legally permitted and installed septic systems.”

(v) The responsibility to demonstrate that each residential structure was constructed or sited under a valid building permit and/or the regulations in effect at the time of construction,...and that each septic system was approved and inspected by the Jefferson County environmental health department shall be that of the proponent.

Pre-Application Conference PRE08-00032:

On August 1, 2008 the Jefferson County Director of Community Development conducted a Pre-application conference with the property owners to determine whether they could subdivide parcel 601 184 002 into three (3) separate legal parcels using JCC 18.30.050(4), the density exemption section of the UDC. Based upon County records and those provided by the applicant, it was determined by County Staff that the three (3) residential structures on-site were either legal non-conforming (grandfathered) or legally permitted prior to January 20, 1998, as specified in JCC 18.30.050(4)(b). However, it was also determined that there were only two (2) septic systems (SEP89-00196 & SEP78-00045) legally permitted and approved by the Jefferson County Environmental Health Department prior to January 20, 1998. As a result, the attached letter marked Exhibit C from DCD Director Scalf informed the applicant of these findings and that they could subdivide the parcel into two (2) parcels, but not three (3) parcels as desired.

Findings of Fact:

- (1) Ordinance No. 09-0819-96 established a “density exemption” or way for property owners who had multiple legally permitted dwelling structures and/or septic

systems on one parcel to subdivide that parcel based upon the number structures and/or septic systems, once new zoning was enacted that would have made those properties and structures non-conforming.

- (2) Resolution No. 10-98 further establishes and defines criteria for a density exemption with graphics representing possible scenarios described under JCC 18.30.040(4)(a) & (b). Under scenario #2, a parcel with a structure which has an installed and approved septic system may be subdivided if there is another approved and installed septic system on the parcel. Resolution No. 10-98 also establishes the date of January 20, 1998 before which these legally permitted structures and septic systems must have been approved and installed in order to be granted a density exemption.
- (3) JCC 18.30.050(4)(c)(iii) establishes the approval criteria by which legally permitted and installed septic systems govern the number of lots that may be created by the density exemption.
- (4) JCC 18.30.050(4)(b) requires that in order to satisfy the requirements for a density exemption, the residential structures and septic systems must have been approved and installed prior to January 20, 1998, the date Resolution 10-98 was adopted.
- (5) JCC 18.30.050(4)(v) places the burden of proof for compliance with the conditions under 18.30.050(4) on the applicant/proponent.
- (6) Neither the proponent nor County Staff could establish or prove the existence of more than two (2) approved (by the Environmental Health Department) and installed septic systems prior to January 20, 1998.
- (7) JCC 18.30.050(4)(b) begins with the word if. If is defined as "in the event that," and is used in this case to preface a possible scenario (#2) where a parcel contains a residential structure with a connected septic system and an additional unconnected septic system, both of which were approved and installed prior to January 20, 1998. JCC 18.30.050(4)(b) does not require an additional septic system, but allows a parcel to be subdivided based upon the number of approved and installed septic systems should any additional unconnected septic systems exist prior to January 20, 1998.

#### Conclusion:

Based upon the Pre-application conference notes and the letter requesting the subject code interpretation, Staff believes there was a fundamental misunderstanding with regard to the requirements to subdivide parcel 601 184 002. The applicant has stated an issue for which they request an answer. The presented issue is: "Where a single parcel of property contains three separate residences each with its own approved septic system, can the property be subdivided into three lots under the density exemption in JCC

18.30.050(4) without needing to construct a fourth, unnecessary septic system?" The answer to this request is yes, if all structures and septic systems were approved and installed prior to January 20, 1998. However, the reason the County cannot permit subdivision of parcel 601 184 002 into three (3) parcels is not because the property lacks "a fourth, unnecessary septic system"<sup>1</sup> but because it lacks three (3) County approved septic systems installed prior to January 20, 1998.

Decision:

As described in DCD Director letter dated August 15, 2008 (Exhibit C), parcel 601 184 002 may be subdivided into two (2) parcels.

Appeal:

As outlined in JCC 18.40.390, the applicant requesting a code interpretation may appeal the decision to the Hearing Examiner within fourteen (14) calendar days of the decision using the process for appeals of Type II permit decisions as set forth in JCC 18.40.330.

Dated this 6th of November, 2008

  
Stacie Hoskins, UDC Administrator 11/6/2008

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<sup>1</sup> From page 1, paragraph 1 of applicant's Request for Administrative Interpretation.  
Pedersen JCC 18.30.050(4) Code Interpretation  
MLA08-00435  
11/6/2008  
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# EXHIBIT A

## STATE OF WASHINGTON County of Jefferson

An Emergency Ordinance Amending  
Sections 3.00 and 6.00 of Ordinance  
No. 05-0214-96, an Emergency Ordinance  
Establishing Interim Land Use Controls,  
Pursuant to Chapter 36.70.790 and  
Chapter 36.70A.390 RCW

ORDINANCE NO. 09-0819-96

### Amend Section 3.00 to ADD Section 3.10.4 that will read:

**3.10.4 Exemption to Density Requirement:** An undivided parcel of land on which two or more single family or multiple family dwellings are located, or which have two or more approved, valid, and unexpired sewage disposal permits issued prior to the effective date of the emergency Moratorium Ordinance No. 19-1121-95, November 21, 1995, may apply to the Department of community Development at the Permit Center for an exemption to the density requirement of this ordinance and may, upon approval, apply to subdivide the property to create separate lots for each of the structures or issued septic permits if the following conditions are met:

- A. Each of the single family or multiple family dwellings was constructed in compliance with all applicable building codes and County, State, and Federal law.
- B. Each of the issued sewage disposal permits or installed sewage disposal systems are functioning properly as determined by the Jefferson County Environmental Health Department and in compliance with the applicable environmental health regulations as reviewed and approved by the Jefferson County Environmental Health Department.
- C. None of the lots are large enough to allow them to be further subdivided under zoning regulations in effect at the time of divisions under this section.
- D. Lots created under the authority of this section are exempt only from the density and minimum lot size requirements as provided by this Growth Strategy Ordinance. Such lots and all land carried out on such lots are subject to all other standards and requirements of County, State, and Federal law.
- E. Lots created under this exemption will not create an unbuildable lot or lots.

The creation of lots that cannot meet the density requirements of the Growth Strategy Ordinance for the siting of essential public facilities such as school facilities, fire protection district facilities, public transportation facilities or other public facilities shall be reviewed by the Director of Community Development on a case by case basis. The Director shall review the application and assure that all options and alternatives are exhausted before granting an exemption.

The burden of proof is on the applicant. The applicant shall submit in writing the nature of the request, a site plan, copies of permits, and a statement describing the basis for the exemption.

Any approved exemption shall require a per-application conference and a complete subdivision application and fees as per Jefferson County ordinances in effect at the time of application.

An applicant may appeal the administrative decision made by the Director of Community Development to the Jefferson County Hearing Examiner, as defined in the Jefferson County Zoning Code, Section 20, Appeals of Administrative Determinations.

**STATE OF WASHINGTON  
County of Jefferson**

IN THE MATTER OF A RESOLUTION	}	
being adopted by the Jefferson County	}	Resolution No. <u>10-98</u>
BOCC allowing for certain properties	}	
to be subdivided below the mapped base	}	
density contained in the IGSO	}	

WHEREAS, the Jefferson County Board of County Commissioners adopted Emergency ordinance No. 05-0214-96 establishing interim land use controls on February 14, 1996, pursuant to Chapter 36.70.790 and Chapter 36.70A.390 RCW; and,

WHEREAS, the Jefferson County Board of County Commissioners, after receiving written public comment regarding the above cited Emergency Ordinance, held public workshops on March 19, June 4, July 23, and August 13, a public hearing on March 25, and fourteen (14) "On The Road" public meetings between March 21 and May 23, 1996; and,

WHEREAS, after hearing public testimony, the Jefferson County Board of Commissioners amended Emergency Ordinance No. 05-0214-96 by adopting Emergency Ordinance No. 09-0819-96 on August 19, 1996; and,

WHEREAS, the Emergency Ordinances cited above are interim measures prior to Jefferson County adopting a Comprehensive Land Use Plan in accordance with the Growth Management Act (GMA); and,

WHEREAS, the Jefferson County Board of Commissioners repealed Emergency Ordinance No. 09-0819-96 on September 16, 1996 because the Jefferson County Prosecuting Attorney's Office had not reviewed and approved "as to form" Emergency Ordinance No. 09-0819-96; and,

WHEREAS, on September 16, 1996 the Jefferson County Board of Commissioners authorized the Director of Community Development to implement the substantive content of Emergency Ordinance No. 09-0819-96 administratively; and,

WHEREAS, the Director of Community Development has sought Board guidance in administering the substantive content of Emergency Ordinance No. 09-0819-96, particularly in relations to a variety of scenarios where property owners have more than one single family residential dwelling unit on a single, undivided parcel of land and/or multiple installed septic systems and/or multiple permits for uninstalled septic systems granted for a single undivided parcel of land; and,

WHEREAS, the Jefferson County Board of Commissioners desire to provide relief to these property owners where possible and allow them to legally subdivide their "non-conforming" property and bring the property into conformance; and,



legally permitted installed, but undedicated septic system, regardless of the total number of legally permitted and installed, but undedicated septic systems on the property.

1.3 Each of the existing residential units was constructed in compliance with all applicable building codes, zoning codes and County, State and Federal law in effect at the time of construction and/or placement in the case of a manufactured or mobile home, and none of the residential structures were permitted as an ADU and neither structure consists of a Recreational Vehicle or travel trailer.

1.4. Each of the installed sewage disposal systems were legally permitted at the time of installation and are currently functioning properly as determined by the Jefferson County Environmental Health Department and in compliance with the applicable environmental health regulations as reviewed and approved by the Jefferson County Environmental Health Department.

1.5. The property shall be divided in a manner that creates lots of a size which are as equal as possible and as close to conforming with the minimum lot size or mapped density requirements contained in Ordinance No.05-0214-96 (IGSO) whichever is the more restrictive.

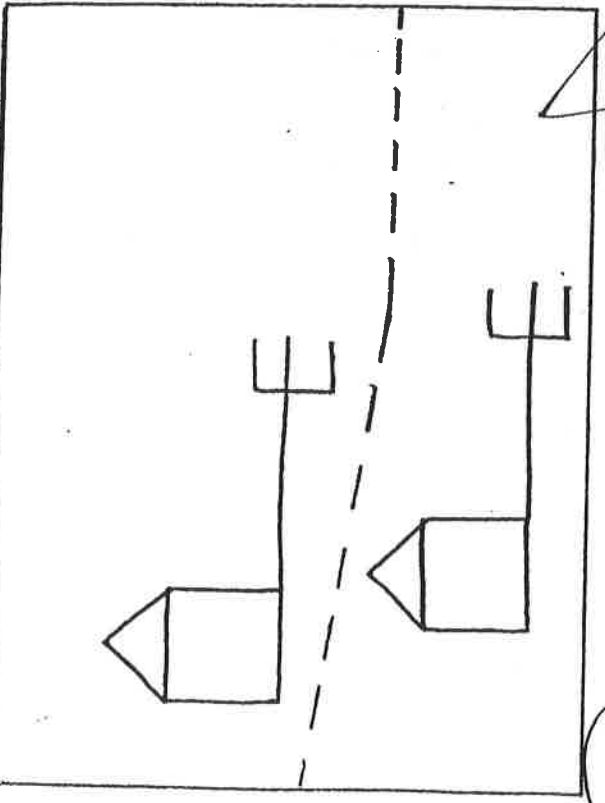
1.6. Lots created under the authority of this Resolution are exempt only from the density and/or minimum lot size requirements as provided by the IGSO. Each new lot created under the provision contained in this Resolution are subject to all other standards and requirements of County, State and Federal law.

1.7. Each new lot will be provided its own access or agreed upon legally created shared access (shared easement) as in compliance with all County and State laws and regulations.

1.8. The responsibility is on the proponent to demonstrate that each residential structure was constructed or sited under a valid building permit and/or the regulations in effect at the time of construction or placement in the case of a mobile or manufactured home and each septic system was approved and inspected by the Jefferson County Health Department.

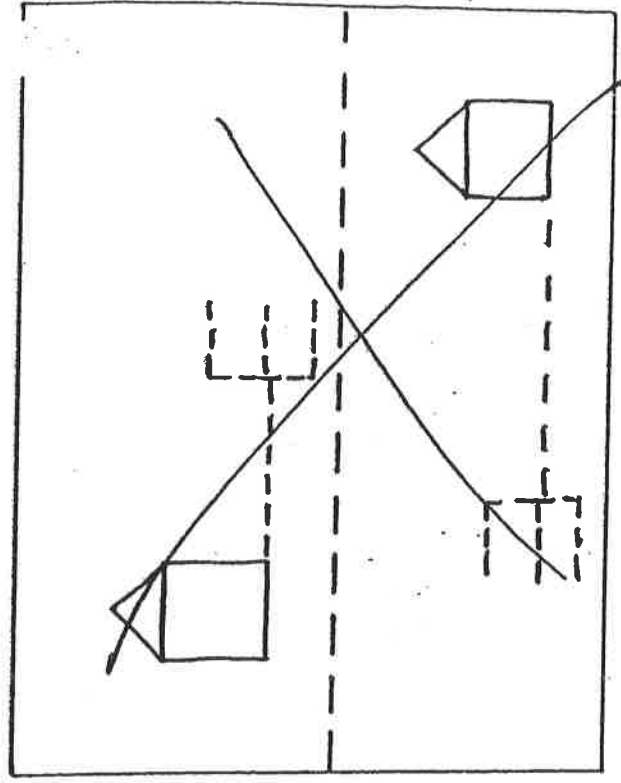
1.9. In addition to the Notification requirements contained in Appendix B, Final Short Plat Checklist (Ordinance No. 04-0526-92, 3rd. Ed.), property divided under the provisions of this Resolution shall include a notice affixed to the face of the recorded plat stating that the lot(s) created shall not be further subdivided unless the new lots can meet base density and/or the minimum lot size required by the regulations in effect at the time.

**Section 2.0 Restrictions:** The provisions contained in this Resolution shall not apply to Recreational Vehicle Parks, Mobile Home Parks, Seasonal Campgrounds, Camper Clubs, Seasonal (vacation) homes, or property developed under the Binding Site Plan provisions contained in Jefferson Count Code, Title 17.

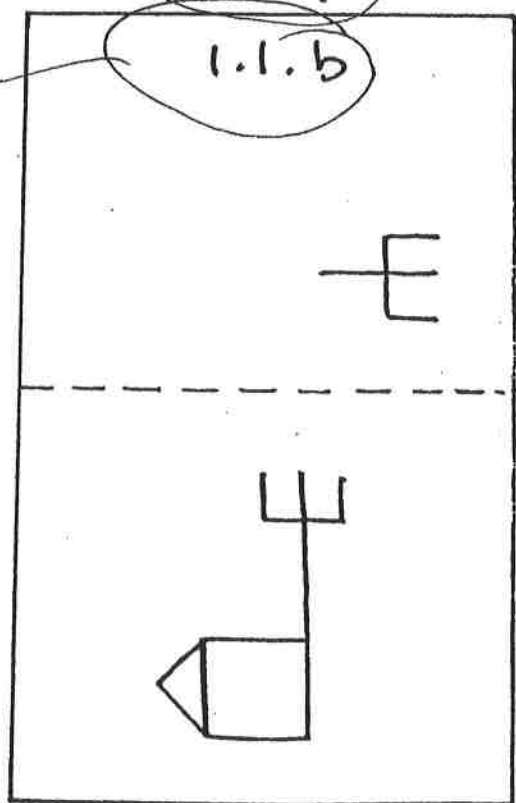


#1

Two (2) or more residential dwelling units each with approved and installed septic systems.

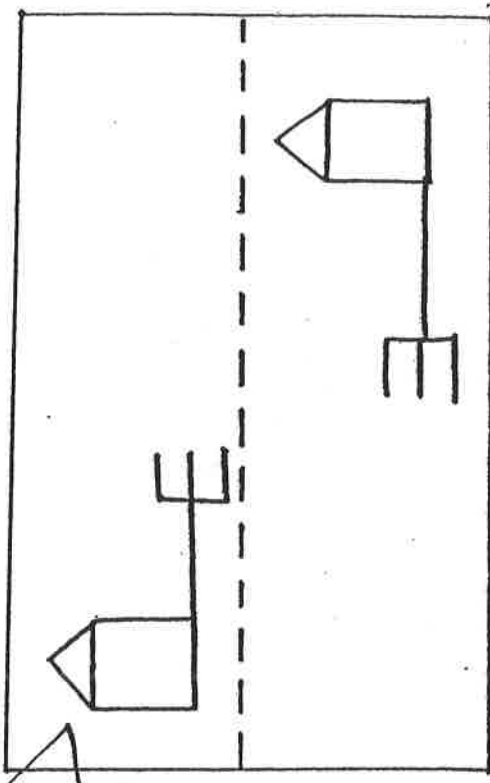


Two (2) or more residential units each with approved septic system permits (systems uninstalled).



#2

One (1) or more residential structures each with installed and approved septic systems and one or more additional uncommitted installed and approved septic systems.



#3

Main residential dwelling unit with caretakers house. Both have approved installed septic system

1.1.a  
1.1.b

COPY



**JEFFERSON COUNTY  
DEPARTMENT OF COMMUNITY DEVELOPMENT**

621 Sheridan Street  
Port Townsend, WA 98368  
Al Scalf, Director

COPY

August 15, 2008

Kirie Pedersen  
Celia Pedersen  
PO Box 547  
Brinnon, WA 98320

Dear Kirie and Celia:

As a follow up to the pre app of August 1, 2008, the development review staff has reviewed your site plan.

DCD staff has concluded parcel 601-184-002 has three (3) existing homes with two (2) existing septic systems. As such, staff can recommend that you apply for a two lot short plat.

If you should have any questions, please feel free to contact our office.

Sincerely,

A handwritten signature in black ink, appearing to be "Al Scalf", written over a horizontal line.

Al Scalf  
DCD Director

