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SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

JOHN POSTEMA and MARIJKE
POSTEMA, husband and wife,

Petitioners,

vs.

SNOHOMISH COUNTY

Respondent.

No. 25-2-06240-31

Notice of Appeal

Petitioners John Postema and Marijke Postema file this Notice of Appeal to Division I of the Washington Court of Appeals, the decision of the Superior Court dated January 8, 2026, attached hereto as Exhibit A.

RESPECTFULLY SUBMITTED this 28th day of January 2026.

By: STEPHENS & KLINGE LLP
/s/ Richard M. Stephens
Richard M. Stephens, WSBA #21776
Attorneys for Petitioners

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1 **Declaration of Service**

2 I, Richard M. Stephens, declare:

3 I am not a party to this action. I reside in the State of Washington and am
4 employed by Stephens & Klinge LLP in Bellevue, Washington. On January 28,
5 2026, I caused a true copy of the foregoing document and this Declaration of Service
6 to be served on the following persons via the following means:

7 Brian Dorsey First Class U.S. Mail
8 Snohomish County Prosecutor’s Office E-Mail:
9 Other: Delivery

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19 I declare under the penalty of perjury under the laws of the State of Washington
20 that the foregoing is true and correct. Executed this 28th day of January 2026, at
21 Woodinville, Washington. s/ Richard M. Stephens

22 Richard M. Stephens

23
STEPHENS & KLINGE LLP
10900 NE 8th Street, Suite 1325
Bellevue, WA 98004
(425) 453-6206

Exhibit A

1 The Court having heard oral argument of counsel and having considered the written
2 administrative record, transcript of hearing before the Hearing Examiner, and files herein
3 including the following:

- 4 1. Land Use Petition Under the Land Use Petition Act, dated July 11, 2025, and
5 attachments thereto;
- 6 2. Petitioners' Opening Brief Under the Land Use Petition Act, dated November 5,
7 2025; and
- 8 3. Snohomish County's Response Brief on the Merits, dated November 19, 2025,
9 and attachments thereto;

10 The Court being fully advised in the premises, the court enters the following Findings of
11 Fact and Conclusions of Law:

12 I. FINDINGS OF FACT

13 The Court finds that the Findings of Fact entered by the Hearing Examiner in that
14 decision titled "Amended Order Affirming Appeal in Part and Denying Appeal in Part"
15 dated June 27, 2025 (hereinafter "Decision"), are supported by substantial evidence and not
16 seriously disputed by the parties herein as more fully addressed below.¹ Therefore, the
17 Court incorporates by reference those Findings of Fact as set forth in said Decision. For
18 purposes of this appeal the salient facts may be summarized as follows:

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21 ¹ See *Cingular Wireless*, 131 Wn.App 756, 768, 129 P.3d 300 (2006), holding:

22 Substantial evidence is evidence that would persuade a fair-minded person of the truth of the
23 statement asserted. *Freeburg*, 71 Wn. App. at 371. Our deferential review requires us to consider all
24 of the evidence and reasonable inferences in the light most favorable to the party who prevailed in
25 the highest forum that exercised fact-finding authority. *Freeburg*, 71 Wn. App. at 371-72. [footnote
26 omitted]

27 See also *Phoenix Development*, 171 Wn.2d at 828 (stating: "When reviewing a challenge to the sufficiency of
28 the evidence under subsection (c), we view facts and inferences in a light most favorable to the party that
29 prevailed in the highest forum exercising fact-finding authority.")

1 1. Petitioners are the owners of record of two parcels identified as 19917 and 19923
2 Broadway Avenue, Snohomish, Washington (Assessor Parcel Numbers 270524-001-016-00
3 and 270524-001-001-00) (hereinafter “Subject Property”), which adjoins the south end of a
4 retail nursery also owned and operated by Petitioners known as Flower World. (Decision,
5 Finding F.1).

6 2. Prior to 2023, improvements located upon the Subject Property consisted of a
7 single-family residence and adjacent outbuildings as shown in the aerial photograph
8 admitted into evidence as Exhibit Q.3. (Decision, Finding F.2; Administrative Record (AR),
9 page 194). Prior to 2023, access to the Subject Property was taken from a driveway
10 running east-west out to Broadway Avenue abutting the West boundary of the Subject
11 Property, and a smaller circular driveway access at the easterly end of the property
12 connecting to 200th Street SE abutting the South boundary of the Subject Property as shown
13 in Exhibit Q.3. (Decision, Finding F.2).

14 3. In 2023, Petitioners cleared the Subject Property of the existing single-family
15 residence and outbuildings and engaged in the following development activity without
16 applying for or obtaining any land use permits from the County:

17 a. Constructed two 4,500 square foot pole type buildings at the easterly end of
18 parcel 270524-001-016-00 identified as the North and South buildings;

19 b. Placed new impervious surfaces consisting of gravel and asphalt pavement in the
20 westerly front portion of parcel 270524-001-016-00 encompassing an area of
21 approximately 45,920 square feet (equal to 1.05 acres) which area is used
22 interchangeably by Petitioners for temporarily holding container plants and as a
23 parking lot for commercial/retail customers of Flower World; and

24 c. Constructed a new driveway entrance onto 200th Street SE and connecting paved
25 asphalt roadway extending from said driveway entrance North connecting with an
26 internal road access on the Flower World property.

(Decision, Finding F.3; Exhibit Q.10y, AR pg. 288).

1 4. On October 11, 2024, PDS Code Enforcement issued a Notice of Violation
2 (NOV) to Petitioners alleging that the foregoing development activity had been undertaken
3 in violation of applicable Snohomish Count Code (SCC) for failing to obtain necessary land
4 use permits and requiring Petitioners to undertake corrective action consisting of applying
5 for and obtaining requisite permits. (Decision, Finding F.9; Exhibit Q.18, AR pg. 336).

6 5. Petitioners appealed the NOV alleging that the various development activities
7 were exempt from permitting requirements as “agricultural activities” and/or that the
8 alleged permitting requirements did not apply to the specific action in question. (Decision,
9 Finding F.10; Exhibit A.1, AR, pg. 1).

10 6. Specifically, as to the clearing and grading activities associated with the
11 development activity identified above, the Petitioners argued that such activities were
12 exempt from permitting requirements relating to Land Disturbing Activity (LDA) permits
13 under an exemption for “agricultural activities” set forth in SCC 30.64B.070(5) as follows:
14

15 (5) Agricultural activities defined in chapter 30.32B SCC or
16 SCC 30.91A.090 are exempt from obtaining a land disturbing activity permit,
17 provided that:

- 18 (a) The activity occurs on property on which agriculture is a legal use of the
19 property;
20 (b) The activity requires no other permit or project approval from
21 Snohomish County except for a flood hazard permit under
22 chapter 30.43C SCC; and
23 (c) The activity does not occur in a wetland as defined by state law

24 (Decision, Finding F.5; Exhibit A.1, AR pg. 1).

25 7. With regard to the North building, the structure was completed using rigid wood
26 siding and metal sheet roofing. (Decision, Finding F.16). As such, it was not exempt from
the requirement to obtain a building permit as a “temporary growing structure” (Decision,

1 Finding F.17). Petitioners do not challenge the determination that the North building
2 requires a building permit; Rather, Petitioners challenge the related determination that such
3 development activity requires a Land Disturbing Activities (LDA) permit. (Decision,
4 Finding F.18; Transcript of Hearing, pg. 86, lines 18-23).

5 8. With regard to the new impervious surfaces consisting of gravel and asphalt
6 pavement in the westerly front portion of parcel 270524-001-016-00, Petitioners
7 acknowledge using this area as a parking lot for retail and wholesale customers of Flower
8 World approximately half of the year (from March/April to September/October). (Decision,
9 Finding F.26; Transcript of Hearing, pg. 119-120; Exhibit Q.10z, AR pg. 289). The
10 remainder of the Fall and Winter months the area is used seasonally for placement of larger
11 container plants. (Id.)

13 9. Flower World is one of the largest retail nurseries on the West Coast covering 15
14 acres.² In addition to nursery products, Flower World sells hardscape products (pavers,
15 retaining walls, stepping stones), statuary and fountains, and outdoor furniture products.
16 (Decision, Finding F.25; Transcript of Hearing, pg. 118-119). The website for Flower
17 World contains a link to a document titled “Greenhouse Map” which specifically contains a
18 directional arrow pointing South towards the Subject Property with the notation: “To South
19 Parking Lot/South Entrance.” (Decision, Finding F.29; Exhibit Q.30, AR pg. 398).

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23 ² Petitioners challenge the sufficiency of the evidence to support the Hearing Examiner’s finding that
24 Flower World encompasses 15 acres. As reflected in Finding F.28 of the Decision, the Hearing
25 Examiner viewed the website for Flower World (www.flowerworldusa.com) portions of which were
26 read out loud in the hearing itself. (Transcript of Hearing, pg. 118-19). The page of the Flower
World website quoted at the hearing contains the following introductory sentence: “Our retail
nursery is situated on a picturesque fifteen acres in the small Snohomish County town of Maltby.”
(<https://www.flowerworldusa.com/about.aspx>). Accordingly, viewing the facts and inferences in the

1 10. Petitioners acknowledge that the reference to “South Parking Lot” on the
2 Greenhouse Map is referring to the area that was graveled and paved in the westerly front
3 portion of parcel 270524-001-016-00 which is the subject of the NOV; and that signage
4 directs customers of Flower World to the “South Entrance” which consists of the new
5 driveway entrance onto 200th Street SE located upon the Subject Property. (Decision,
6 Finding F.41; Transcript of Hearing, pg. 120-123; 122-23).

7 11. Based on the above, the Hearing Examiner entered the following Findings of
8 Fact:
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10 Based on the preponderance of the evidence, the Hearing examiner finds that the
11 clearing and grading of the front (westerly) portion of parcel 270524-001-016-00
12 was intended and is used in the spring and summer months (approximately April –
13 September) for commercial parking for Flower World’s customers and used in the
14 fall and winter months (October-March) as a temporary holding area for growing
15 large container plants.

16 The need for commercial parking for customers of Flower World is unrelated to the
17 exempt use of the site for agricultural activities (i.e. the need for public parking does
18 not result from, or in connection with, the exempt use of the area for the growing of
19 plants in containers). Furthermore, such use of the area for public parking in this
20 matter is not minor and appears to be co-equal in terms of geographic and temporal
21 scope to the use of the area for temporarily holding container plants.

22 (Decision, Findings F.34-35).

23 12. With regard to the new driveway entrance onto 200th Street SE, said entrance
24 was not previously existing in that location and represented a relocation and widening of
25 the previous circular driveway serving the single-family home. (Decision, Finding F.48-49;
26 Testimony of Mr. Dale Valiant, Snohomish County Department of Public Works,
Transcript of Hearing, pages 67-68). Said new driveway access was constructed in

light most favorable to PDS at the hearing, it is reasonable to infer that the Hearing Examiner

1 conjunction with a roadway extension connecting the primary North entrance into Flower
2 World to the new south entrance/exit on 200th Street SE. (Decision, Finding F.44; AR 288,
3 Exhibit Q.10y). The construction of the new driveway access onto 200th Street SE and
4 internal roadway extension resulted in the placement of approximately 3,500 square feet of
5 new impervious surface (asphalt). (Decision, Finding F.40; AR 291, Exhibit Q.10ab).

6 13. Petitioners acknowledge that the new driveway access onto 200th Street SE was
7 constructed to alleviate backups of customers seeking to enter Flower World from
8 Broadway Ave. (Decision, Finding F.50; Transcript of Hearing, pg. 93-94; pg. 120). Based
9 on the above the Hearing Examiner entered the following Finding of Fact:
10

11 The new driveway access was constructed in conjunction with a roadway extension
12 connecting the primary north/south entrance of Flower World to the new driveway
13 access onto 220th Street SE for the specific purpose of redirecting commercial retail
14 customers of Flower World to the new entrance/exit on 200th Street SE. the clearing
15 and grading of the new driveway access/entrance and associated roadway furthered
16 the commercial retail activities conducted on the abutting property comprising
17 Flower World and were not primarily related to any exempt "agricultural activities"
18 for purposes of the exemption from land disturbing activity permitting requirements
19 in SCC 30.63B.070(5).

20 (Decision, Finding F.44).³

21 II. ANALYSIS

22 As set forth above, the Hearing Examiner concluded that the clearing and grading
23 activities did not qualify as exempt "agricultural activities" for purposes of SCC

24 viewed this statement as it appears on Petitioners' own website.

25 ³ See also Finding F.53 stating:

26 Combined with the new signage directing retail customers of Flower World to utilize the 200th Street
SE access for access to Flower World as set forth above, the Hearing Examiner finds that the new
driveway access onto 200th Street SE was created to provide access to the abutting commercial
business comprising that retail nursery known as Flower World.

1 30.63B.070(5) and, thus, that an LDA permit was required for those activities. The basis
2 for the Hearing Examiner's decision is summed up in the following Conclusion of Law:

3 The commercial retail activities of Flower World are not "agricultural activities" as
4 defined by county code. SCC 30.91A.090. If Flower World is not an agricultural
activity, then parking for Flower World is not an agricultural activity.

5 (Decision, Conclusion of Law, C.11). By extension, the Hearing Examiner concluded that
6 the paving and grading of the new driveway access and roadway did not qualify as exempt
7 "agricultural activities" concluding as follows:

8 Agricultural activities include "construction and maintenance of . . . roads . . ." SCC
9 30.91A.090. The Postemas contend the driveway access and extension furthered the
10 agricultural work of their nursery business. As demonstrated by the signs and the
11 online map, the new access and extension primarily serve Flower World, a
commercial retail operation that is not an agricultural activity. [citing Finding of
12 Fact No. F.44] The driveway access and extension are therefore not exempt from
the requirements of a land disturbing activity permit.

13 (Decision, Conclusion of Law, C.25).

14 Petitioners disagree with the foregoing conclusion of the Hearing Examiner and
15 argue that the retail sales activities of Flower World are related to the commercial
16 production of an agricultural products on the property (i.e. nursey stock) and, thus, that such
17 activities should be construed as encompassed within the exemption for agricultural
18 activities set forth in SCC 30.63B.070, arguing as follows:

19 Because Flower World grows the plants it sells, Flower World contends that selling
20 those plants is, as the code requires, "in connection with" the agricultural enterprise
of growing them. Additionally, providing parking for customers is "in connection
21 with" or "incidental to" the agricultural use of growing and selling plants.

22 (Petitioners' Opening Brief, pg. 2, lines 14-19).

23 A. Standard of Review: The standard of review under LUPA is set forth in RCW
24 36.70C.130 which provides, in pertinent part, as follows:

25 (1) The superior court, acting without a jury, shall review the record and such
26 supplemental evidence as is permitted under RCW 36.70C.120. The court may grant

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relief only if the party seeking relief has carried the burden of establishing that one of the standards set forth in (a) through (f) of this subsection has been met. The standards are:

- (a) The body or officer that made the land use decision engaged in unlawful procedure or failed to follow a prescribed process, unless the error was harmless;
- (b) The land use decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise;
- (c) The land use decision is not supported by evidence that is substantial when viewed in light of the whole record before the court;
- (d) The land use decision is a clearly erroneous application of the law to the facts;
- (e) The land use decision is outside the authority or jurisdiction of the body or officer making the decision; or
- (f) The land use decision violates the constitutional rights of the party seeking relief.

The primary issue raised in this matter is one of interpretation of law and meaning relating to the term “agricultural activities” as used in SCC 30.63B.070(5). As such, review is governed by sub-section (b) and (d) above.

At the outset, the parties dispute what level of “deference” is due by this Court to the County’s interpretation of its own code in this matter. Historically, our courts have held that a reviewing court is required to give substantial deference to both legal and factual determinations of local jurisdictions with expertise in land use regulation. *See Timberlake Christian Fellowship v. King County*, 114 Wn. App. 174, 180, 61 P.3d 332 (2002) (stating: “This statute reflects a clear legislative intention that this court give substantial deference to both legal and factual determinations of local jurisdictions with expertise in land use regulation.”) At the same time, our State Supreme Court has limited that deference depending on whether the code or ordinance in question is ambiguous and whether the local jurisdiction’s interpretation can be shown to have been established as a matter of agency

1 policy or past pattern of enforcement. *See e.g. Sleasman v. City of Lacey*, 159 Wn.2d 639,
2 646, 151 P.3d 990 (2007).

3 Regardless of what level of deference is given the County's interpretation of its
4 code in this matter, the ultimate role of the courts when there is a disagreement over the
5 interpretation of a statute or code is to discern which interpretation is more plausible. *See*
6 *Ellensburg Cement v. Kittitas County*, 179 Wn.At. 737, 754, 317 P.3d 1037 (2014) (stating:
7 "In the absence of deference to local decisionmakers, the Court of Appeals' interpretation
8 of the zoning ordinance is significantly more plausible than Gibson's interpretation.")
9

10 In this regard, the holding of the court in *Ellensburg Cement* is instructive on the
11 analysis to be applied by this court in interpreting the term "agricultural activities" as set
12 forth in SCC 30.91A.090. The governing rules of statutory construction are set forth by the
13 court therein as follows:

14 Interpretation of a statute is a question of law that this court reviews de novo. *State*
15 *v. Wentz*, 149 Wn.2d 342, 346, 68 P.3d 282 (2003) (citing *City of Pasco v. Pub.*
16 *Emp't Relations Comm'n*, 119 Wn.2d 504, 507, 833 P.2d 381 (1992)). Our duty in
17 conducting statutory interpretation is to "discern and implement" the legislature's
18 intent. *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318 (2003) (citing *Nat'l Elec.*
19 *Contractors Ass'n v. Riveland*, 138 Wn.2d 9, 19, 978 P.2d 481 (1999)). Where the
20 plain language of a statute is unambiguous, and legislative intent is therefore
21 apparent, we will not construe the statute otherwise. *Id.* However, plain meaning
22 may be gleaned "from all that the Legislature has said in the statute and related
23 statutes which disclose legislative intent about the provision in question." *Dep't of*
24 *Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002). The same
25 principles apply to interpretation of municipal or county ordinances, like the Kittitas
26 ordinance at issue here. *City of Spokane v. Fischer*, 110 Wn.2d 541, 542, 754 P.2d
1241 (1988) (citing *City of Puyallup v. Pac. Nw. Bell Tel. Co.*, 98 Wn.2d 443, 448,
656 P.2d 1035 (1982)).

24 *Ellensburg Cement*, 179 Wn.2d at 743.

1 In engaging in the foregoing analysis, the Court interprets a statute's plain meaning
2 in light of “related statutes which disclose legislative intent about the provision in
3 question.” *Ellensburg Cement*, 179 Wn.2d at 748 (quoting *Campbell & Gwinn*, 146 Wn.2d
4 at 11). In furtherance of that goal, statutes are to be construed so as to not render related
5 portions meaningless or superfluous. *Id.*, at 755. In addition, where the legislative body
6 enacting a statute or ordinance specifically designates the things or classes of things upon
7 which it operates, an inference arises in law that all things or classes of things omitted from
8 it were intentionally omitted by the legislature under the maxim *expressio unius est*
9 *exclusio alterius*—specific inclusions exclude implication.” *Id.*, at 750, quoting *Landmark*
10 *Dev., Inc. v. City of Roy*, 138 Wn.2d 561, 571, 980 P.2d 1234 (1999)).

12 Interpretation of “Agricultural Activities”: The Hearing Examiner in this matter
13 applied the foregoing rules of statutory construction to the interpretation of the term
14 “agricultural activities” as reflected in the Hearing Examiner’s Reconsideration Decision
15 dated June 27, 202, pages 7-10, Conclusions of Law C.2 through C.13. (AR 644-654).
16 Specifically, the Hearing Examiner noted that the definition in SCC 30.91A.090 is specific
17 to those agricultural activities connected to commercial production of farm products but
18 includes reference to two limited forms of retail sales activities as follows:
19

20 "Agricultural activities" means a condition or activity which occurs on a farm in
21 connection with the **commercial production of farm products** and includes, but is
22 not limited to, marketed produce at roadside stands or farm markets, . . .

23 SCC 30.91A.090; AR 65-51, Conclusion of Law C.2).

24 The Hearing Examiner set forth a detailed analysis why the retail sales activities of
25 Flower World do not meet the definition of a “roadside stand” or “farm market” under
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1 county code. (AR, Conclusions of Law C.4-C.7). In particular, the Hearing Examiner
2 noted that county code limits a “farm stand” to not exceeding 5,000 square feet in size.
3 (AR, 651, Conclusion of Law C.6, SCC 30.28.039(1)). Other definitions of related
4 agricultural business uses allowed on farm sites such as “farm support business” are
5 similarly limited in size and therefore, Flower World does not qualify. (AR651, Conclusion
6 of Law C.7; SCC 30.28.038(2)).

7 Had the legislative body of Snohomish County intended the definition of
8 “agricultural activities” in SCC 30.91A.090 to encompass any and all commercial retail
9 sales activities associated with the sale of farm products grown upon a property regardless
10 of size there would have been no reason for the definition to single out two limited forms of
11 that activity consisting of “roadside stand” or “farm market.” While that definition is
12 prefaced as “includes, but is not limited to,” such language must still be construed as having
13 been intentionally included to limit the class of things the definition applies to. *See*
14 *Ellensburg Cement*, 179 Wn.2d at 750. Furthermore, as noted by the Hearing Examiner,
15 Petitioners proposed interpretation of “agricultural activities” as including any and all
16 commercial retail sales activities regardless of size would “necessarily vitiate provisions of
17 county code that limit the size, scope, and use of farm stands, farmer’s markets, and farm
18 support businesses.” (AR 652, Conclusion of Law C.8).

19 Because the scope and size of the commercial retail activities of Flower World far
20 exceed the limited scope and/or size permitted for farm stands or farmer’s markets, the
21 Hearing Examiner concluded that the commercial retail activities of Flower World did not
22 qualify as “agricultural activities” as defined in SCC 30.91A.090 and, thus, not exempt
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1 from LDA permitting requirements under SCC 30.63B.070(5). The Court concludes that
2 this interpretation is consistent with the applicable rules of statutory construction set forth
3 above and represents the more plausible interpretation as between the interpretations
4 advanced by the County and that advanced by Petitioners.

5 Consistent with the above, the Court agrees with the Hearing Examiner's conclusion
6 that if the commercial retail activities of Flower World do not qualify as an "agricultural
7 activity" exempt from LDA permitting requirements under SCC 30.63B.070(5), then by
8 extension the construction of a parking lot to accommodate the customers of Flower World
9 is not exempt from LDA permitting requirements as an "agricultural activity." (Decision,
10 Conclusions of Law C.10 through C.13). In this regard, the Hearing Examiner's decision
11 distinguishes between the use of this area for temporary holding of large container plants
12 (part of the commercial horticultural production activities exempt from LDA permitting
13 requirements), versus the use of this area for parking as follows:

14
15 The need for commercial parking for customers of Flower World is unrelated to the
16 exempt use of the site for agricultural activities (i.e. the need for public parking does
17 not result from, or in connection with, the exempt use of the area for the growing of
18 plants in containers). Furthermore, such use of the area for public parking in this
19 matter is not minor in nature and appears to be co-equal in terms of geographic and
20 temporal scope to the use of the area for temporarily holding container plants.

21 (Decision, Finding F.35).

22 As testified to by the County's Building Official (Mr. Andy Booth), when a
23 structure or facility is exempt from permitting requirements for a particular scope or class
24 of uses, such exemption does not extend to the use of that structure or facility for other non-
25 exempt uses. (Transcript of Hearing, pg. 60-61). Accordingly, while the clearing and
26 grading of land for the purpose of agricultural production is exempt from LDA permitting

1 requirements, the concurrent use of such area for a non-exempt use such as parking triggers
2 the requirement for compliance with applicable permitting requirements. (Transcript of
3 Hearing, page 60, lines 20-25; page 61, lines 1-4). Accordingly, the Court agrees with the
4 Hearing Examiner's conclusion that, to the extent Petitioners seek to use the front westerly
5 portion of parcel 270524-001-016-00 that was cleared and paved/graveled as a parking lot
6 for commercial retail customers of Flower World, such use is not exempt as an agricultural
7 activity from the LDA permitting requirements. (Decision, Conclusion of Law C.11).

8
9 New Driveway Entrance/Access to 200th Street: With regard to the construction of
10 the new driveway entrance onto 200th Street SE, the Hearing Examiner concluded that such
11 driveway did not qualify as an "agricultural activity" under the definition in SCC
12 30.91A.090 concluding that it was constructed primarily to serve the commercial retail
13 business of Flower World as follows:

14 The Postemas contend the driveway access and extension furthered the
15 agricultural work of their nursery business. As demonstrated by the signs and the
16 online map, the new access and extension primarily serve Flower World, a
17 commercial retail operation that is not an agricultural activity. [citing Finding F.44]
18 The driveway access and extension are therefore not exempt from the requirements
19 of a land disturbing activity permit.

20 (Decision, Conclusion of Law C.25).

21 The Hearing Examiner's finding that the new driveway access onto 200th Street SE
22 and roadway extension were constructed to serve as a commercial retail entrance for the
23 customers of Flower World is supported by Petitioners' own testimony at the hearing.
24 (Transcript of Hearing, pages 93-94; 120-123). For the reasons set forth above, the Court
25 agrees that such commercial retail activity is not exempt from LDA permitting
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1 requirements as “agricultural activity” and, thus, the construction of a driveway entrance
2 and road to serve such commercial retail activity is not exempt.

3 Furthermore, the Hearing Examiner concluded that the construction of the new
4 driveway access onto 200th Street SE required other permits in the form of a Type D1
5 and/or Type D5 permit under SCC 13.60.020(1) and (5). (Decision, Conclusion of Law
6 C.32-C.34). It is undisputed that SCC 30.60.020(1) requires a Type D1 permit for any
7 modification or repair of an existing driveway access onto a county road; and that SCC
8 13.60.020(5) requires a Type D5 permit for road improvements proposing to create access
9 onto a county road from an abutting industrial or commercial development. (Transcript of
10 Hearing, pages 68-70). To the extent other permits were required for construction of the
11 new driveway entrance onto 200th Street SE and/or road extension to provide access for
12 abutting commercial development to said county road, the plain language of SCC
13 30.63B.070(5) renders the exemption from LDA permitting requirements for “agricultural
14 activities” inapplicable.
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16
17 Petitioners argue that SCC 13.10.010 authorizes use of county roads for any and all
18 “transportation uses” and, thus, that the permit requirements in Ch. 13.60 SCC should be
19 construed as only applying to non-transportation uses. However, the full language of SCC
20 13.10.010 provides as follows:

21 It is unlawful for anyone to make any use of any right-of-way for other than
22 transportation and uses incidental thereto *or as otherwise provided by this chapter*
23 without a right-of-way use permit as provided in this title and a franchise, if
required by SCC 13.80.010.

24 As set forth above, SCC 13.10.010 does *not* make any and all “transportation uses” of
25 county roads exempt from regulatory requirements but instead specifically qualifies such
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1 uses as being subject to regulations “*as otherwise provided by this chapter.*” Ch. 13.60
2 SCC clearly regulates and requires a right of way permit for either of the activities
3 identified above (i.e. modification or repair of a driveway access onto a county road and
4 extension of such access to an abutting commercial development).

5 Accordingly, the Court concludes that SCC 13.10.010 does not exempt Petitioners’
6 actions from the requirements to obtain a right of way permit for the new driveway access
7 onto 200th Street SE and/or roadway extension providing access to said county road for the
8 abutting commercial development known as Flower World. To the extent such other
9 permits were required for the activities identified above, the exemption from LDA
10 permitting requirements for agricultural activities in SCC 30.63B.070(5) is inapplicable.

12 Roadway Extension and Driveway Entrance as Separate Projects: Petitioners argue
13 that even if the new driveway entrance onto 200th Street SE and roadway extension required
14 a right of way permit under SCC 13.60.020, that each individual component of such work
15 entailed less than 2,000 square feet of new or replaced impervious surface for purposes of
16 triggering the requirement for an LDA permit.

18 Separate from the agricultural exemption in SCC 30.63B.070(5), the code also
19 exempts land disturbing activity which creates or replaces less than 2,000 square feet of
20 new, replaced, or new plus replaced hard surfaces. SCC 30.63B.070(1)(e). As set forth
21 above, the combined total of the new impervious surfaces created by the new driveway
22 entrance and internal road extension totaled 3,500 square feet. The record does not reflect
23 any segregation of the square footage of the impervious surface attributable to the new
24 driveway entrance onto 200th Street SE versus the internal roadway extension. Regardless,
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1 SCC 30.63B.070(1)(g) evidences an intent that the exemptions set forth in sub-section (1)
2 are measured in terms of the cumulative total of all such land disturbing activity performed
3 within any consecutive 18-month period.⁴ The evidence in this matter established that the
4 development activity in question all occurred in 2023 culminating in the issuance of the
5 NOV. Accordingly, Petitioners attempt to segregate the land disturbing activity into
6 discrete subcomponents for purposes of the exemptions in SCC 30.63B.070(1) is of no
7 avail.
8

9 North Building: Petitioner acknowledges that the North building was constructed
10 with rigid siding and roofing material and, thus, is not exempt from building permit
11 requirements as a temporary growing structure. (Transcript of Hearing, page 86). As such,
12 the Hearing Examiner concluded that, even if such building was constructed for the purpose
13 of housing agricultural activities, the building was not exempt from the requirement to
14 obtain an LDA permit in SCC 30.63B.070(5) for such development is inapplicable as
15 “other permits” are in fact required for the construction of the building. (Decision,
16 Conclusion of Law C.20).

17 Petitioners argues that the term “permit” as used in SCC 30.63B.070(5)(b) is overly
18 broad and could in theory encompass something as minor as an electrical permit.

19 County code contains a definition of the term “permit” which provides:

20 “Permit” means any required certificate, approval, registration, license or other
21 written permission to engage in an activity authorized by this title.

22 SCC 30.91P.140. County code further provides a definition of the term “Building permit”
23 which states as follows:
24

25 ⁴ See e.g. SCC 30.63B.070(1)(a) which provides:

- 26 (g) The amount of land disturbing activity is consistent with one of the following thresholds:
(i) One hundred cubic yards or less of grading on a site in any 18 consecutive months

1 “agricultural activities” was intended to be limited to the type or class of activities
2 encompassed by the references used. Conversely, had the legislative intent been to include
3 any and all commercial business activity related to the sale of farm products produced or
4 grown on a farm site, there would have been no reason to call out the two limited classes of
5 business activities specified. Therefore, the Court concludes that the scope of commercial
6 retail business activities encompassed within the definition of “agricultural activities” in
7 SCC 30.91A.090 is limited to those business activities falling within the scope of farm
8 stands or farmer’s markets as those terms are defined under applicable county code.

9 2. Petitioners’ commercial retail business activity known as Flower World does not
10 qualify as a farm stand or farmer’s market. Therefore, those development activities
11 associated with such commercial retail business activity do not qualify as an “agricultural
12 activity” for purposes of the exemption from LDA permitting requirements set forth in SCC
13 30.63B.070(5).

14 3. Petitioners’ use of that area in the front westerly portion of parcel 270524-001-
15 016-00 which was graveled and paved for temporary placement of large container plants is
16 part of the commercial horticultural production activities on the property and, thus, qualify
17 as an agricultural activity exempt from LDA permitting requirements under SCC
18 30.63B.070(5). However, use of that area for a non-agricultural activity purpose (i.e.
19 customer parking) is not an exempt use and, thus, not exempt from the requirements to
20 obtain an LDA permit under Ch. 30.63B SCC before utilizing such area for a non-exempt
21 use or purpose. Therefore, Petitioners were required to obtain an LDA permit under Ch.
22 30.63B SCC before utilizing said area for customer parking for customers of Flower World.

23 4. Petitioners’ construction of a new driveway entrance with access onto 200th
24 Street SE and the extension said driveway to provide access to the abutting commercial
25 development comprising Flower World are subject to those right-of-way permit
26 requirements in SCC 13.60.020(1) and (5). Accordingly, even if such activity was

1 undertaken in part to further agricultural activities on the subject property, the fact that
2 other permits were required for the construction of the new driveway entrance and road
3 extension providing access to an abutting commercial development render the exemption
4 from LDA permitting requirements under SCC 30.63B.070(5) inapplicable.

5 5. The cumulative total of the impervious surface created by the new driveway
6 entrance onto 200th Street SE and roadway extension connecting said entrance to the
7 abutting commercial development known as Flower World exceeds 3,500 square feet and,
8 thus, required an LDA permit under Ch. 30.63B SCC.

9 6. Petitioners' construction of the North building required a building permit and
10 created 4,500 square feet of new or replaced impervious surface. Accordingly, even if such
11 building is intended to be used for an agricultural activity the fact that such building
12 requires other permits renders the exemption from LDA permitting requirements in SCC
13 30.63B.070(5) inapplicable.

14 **IV. ORDER**

15 NOW, THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED as
16 follows:

17 The decision of the Snohomish County Hearing Examiner set forth in that Amended
18 Order Affirming Appeal in Part and Denying Appeal in Part dated June 27, 2025, entered in
19 the above-entitled matter under Case No. 23-107482 CT is affirmed.

20 DATED this 8th day of January, 2026.

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25 HONORABLE JENNIFER R. LANGBEHN,
26 Superior Court Judge

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Submitted by:

JASON J. CUMMINGS
Snohomish County Prosecuting Attorney

By:

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