

BEFORE THE HEARING EXAMINER
IN AND FOR THE COUNTY OF SNOHOMISH

John and Marijke Postema,

Appellants

No. 23-107482 CT

vs.

Snohomish County Planning and
Development Services Department
Code Enforcement Division,

Amended Order Affirming
Appeal in Part and Denying
Appeal in Part

Respondent

SUMMARY

John and Marijke Postema appealed five notices of violation issued by Snohomish County Planning and Development Services department Code Enforcement division on October 28, 2024.¹ One notice of violation was stayed pending disposition of a Superior Court Action.² The appeal of the remaining four notices of violation were heard in an open record hearing on March 11, 2025. The Postemas appeared by Richard Stephens, Esq., Stephens & Klinge, LLP, Bellevue, Washington. Code Enforcement appeared by Brian Dorsey, Esq., Snohomish County Deputy Prosecuting Attorney. The Hearing Examiner considered the argument of counsel and the testimony of Code Enforcement Officer Jody Latimer, PDS Environmental Supervisor Sean Curran, Snohomish County Building Official Andy Booth, Public Works Traffic Operations Supervisor Dale Valliant, and appellant John Postema. He also considered exhibits A.1 through A.2, Q.1 (except the last page), Q.3 through Q.26, Q.27 (except pages 1-4), Q.28 through Q.30, and R.6 through R.15.

¹ Ex. A.1.

² Ex. S.5.

1 **FINDINGS OF FACT**

2 **A. BACKGROUND**

3 F.1 John and Marijke Postema own two parcels³ that adjoin the south end of a
4 commercial and retail nursery they operate called Flower World. (Hereinafter
5 referred to as the Property.)

6 F.2 The Property is bordered to the north by the existing Flower World retail nursery, to
7 the west by Broadway Avenue, and to the south by 200th Street SE. Prior to 2023,
8 improvements on the Property consisted of a single-family residence located upon
9 parcel no. 270524-001-001-00 and adjacent outbuildings located upon parcel no.
10 270524-001-016-00.⁴ A driveway access ran east-west out onto Broadway Avenue
11 and two smaller circular driveways at the rear (easterly) end of the property accessed
12 200th Street SE and served the single-family residence.⁵

13 F.3 The Postemas cleared the existing single-family residence and outbuildings from the
14 Property in 2023. They constructed two 4,500 square foot pole building type
15 structures near the easterly end of parcel 270524-001-016-00 identified as the North
16 Building and the South Building.⁶ They placed new impervious surfaces consisting of
17 gravel and asphalt pavement in the westerly front portion of parcel 270524-001-016-
18 00 encompassing an area measuring approximately 280 feet long and 164 feet wide
19 with four asphalt paved drive aisles accessing four rows of graveled areas. The
20 graveled areas were used interchangeably for temporarily holding container plants
21 and as a parking lot for commercial/retail customers of Flower World.⁷ They
22 relocated the driveway entrance by removing the existing entrance and constructing
23 a new entrance onto 200th Street SE.⁸ The Postemas also graveled an area in the front
24 (westerly portion) of parcel 270524-001-001-00 which is used as a temporary holding
25 area for larger container plants being grown on the property.⁹ This area was graveled
26 instead of paved with asphalt because they ran out of money.¹⁰

³ 19917 Broadway, Avenue, Snohomish, Washington (parcel no. 270524-001-016-00) and 19923 Broadway, Avenue, Snohomish, Washington (parcel no. 270524-001-001-00). Ex. Q.3.

⁴ Ex. Q.3.

⁵ Exhibits Q.3 and Q.14.

⁶ Exhibits 11(a)-(m).

⁷ Ex. Q.10(aa).

⁸ Ex. Q.13.

⁹ Exhibits Q.3 and Q.10(y).

¹⁰ Testimony of Postema.

1 F.4 Code Enforcement received a complaint and investigated. On October 11, 2023,
2 Code Enforcement issued a warning letter for five violations:¹¹

- 3 1. Building without permits-commercial: construction of the North Building
4 without required permits.
- 5 2. Building without permits-commercial: construction of the South Building
6 without obtaining required permits.
- 7 3. Land disturbing activity: Land disturbing activity (clearing, grading or the
8 creation of new, replaced, or new plus replaced impervious surface) without
9 required permits involving the following:
 - 10 (a) The addition of more than 40,000 square feet of new impervious
11 surface, in the form of gravel to the northwest corner of parcel 270524-
12 001-016-00
 - 13 (b) The addition of 4,500 square feet of new impervious surface by the
14 construction of the North Building.
 - 15 (c) The addition of 4,500 square feet of new impervious surface by the
16 construction of the South Building.
 - 17 (d) The addition of 3,500 square feet of new impervious surface (asphalt)
18 by the paving of the new access off 200th Street SE and roadway
19 extending north onto parcel 270524-001-001-00.
 - 20 (e) Construction of a pond area on the eastern portion of tax parcel
21 270524-001-001-00.
- 22 4. Access: changing the access from the property onto 200th Street SE without
23 first obtaining required permits.
- 24 5. Right of way occupation: allowing structures, objects or features to be placed
25 or maintained within the right of way of 200th Street SE in violation of SCC
26 13.01.040(1), consisting of a wood fence and trees.

27 F.5 Postema responded that the buildings were exempt from building permit
28 requirements as temporary growing structures under WAC 51-50-007; that the
29 grading activities were agricultural activities exempt from land disturbing activity
30 permit requirements under SCC 30.63B.070(4) and (5); that there were no
31 obstructions within the right of way; and that the access driveway onto 200th Street

¹¹ Ex. Q.16.

1 SE was preexisting and had been established as part of a previous short subdivision
2 of the property.¹²

3 F.6 Code Enforcement continued to monitor the development activities and researched
4 the claimed exemptions and defenses.¹³

5 F.7 The North Building was a wooden frame post and beam structure with rigid wood
6 siding and metal roofing.¹⁴

7 F.8 Code Enforcement initially believed that the South Building also had rigid siding, but
8 Mr. Postema provided photographs the south building had only a clear membrane-
9 type covering on the roof areas with open side walls.¹⁵

10 F.9 Code Enforcement advised the Postemas it disagreed with the claimed
11 exemptions.¹⁶ It issued a notice of violation on October 11, 2024, for the same issues
12 identified in warning letter it sent a year earlier.¹⁷

13 F.10 On October 28, 2024, the Postemas appealed the notice of violation.¹⁸ They assigned
14 the following errors:

- 15 1. The North and South Buildings are exempt from building permit requirements
16 because they are temporary growing structures or agricultural buildings covered
17 only by a flexible plastic membrane.¹⁹
- 18 2. All grading activities were agricultural activities exempt from land disturbing
19 activity permit requirements under SCC 30.63B.070(5).²⁰
- 20 3. The changed driveway access onto 200th Street SE was exempt from permitting
21 requirements because a 1975 short subdivision of the property reserved the right
22 of ingress and egress as well as maintenance of the interior roads to the
23 Postemas' predecessor in interest.²¹

¹² Ex. Q.4, 5-9.

¹³ Testimony of Latimer.

¹⁴ Ex. Q.11(a)-(k).

¹⁵ Ex. R.11.

¹⁶ Ex. Q.4, 12-16.

¹⁷ Ex. Q.18.

¹⁸ Ex. A.1.

¹⁹ Ex. A.1, 1-2.

²⁰ Ex. A.1, 2-3.

²¹ Ex. A.1., 3.

1 4. Regarding right of way occupation, the Postemas contend that the county only
2 has an easement on the north half of the right of way on 200th St. SE and they may
3 therefore use the easement area without a permit in any manner that does not
4 interfere with the county’s use under the easement.²²

5 **B. WITHDRAWAL AND SEVERANCE OF VIOLATIONS**

6 F.11 Prior to commencement of hearing, the parties stipulated to entry of an order
7 separating the appeal of the notice of violation relating to the alleged right of way
8 obstruction from the other appeal issues and staying further proceedings of the right
9 of way obstruction appeal pending resolution of an action for writ of prohibition filed
10 by the Postemas in the Snohomish County Superior Court.²³ The Hearing Examiner
11 entered the stipulated order separating the right of way obstruction appeal and
12 stayed proceedings relating to it.²⁴ Accordingly, this decision does not decide the
13 appeal of the alleged violation for right of way obstruction.

14 F.12 At the commencement of hearing on March 11, 2025, Code Enforcement withdrew
15 the violation for constructing the South Building without a permit because the
16 Postemas’ photographic evidence²⁵ showed only a plastic membrane covering the
17 structure and the Postemas represented the structure is used solely as a “temporary
18 growing structure” exempt from building permit requirements under SCC
19 30.50.103(1)(q)(ii).

20 F.13 In addition, Code Enforcement withdrew the violation for construction of the South
21 Building without a land disturbing activity permit. To the extent no building permit is
22 required for the South Building, the building qualifies as an agricultural activity as a
23 temporary growing structure under SCC 30.91A.090. It is therefore exempt from the
24 requirement for a land disturbing activity permit under the exemption in SCC
25 30.63B.070(5).

²² *Id.*

²³ Snohomish County Superior Court cause no. 25-2-01745-31. (Stipulation and Order dated February 27, 2025).

²⁴ Ex. S.5. *N.B.* The stipulation and order stayed the right of way occupation violation appeal while the court proceedings are pending, but did not stay the remaining issues. Despite its denomination as a bifurcation, the stipulation and order effectively severed the right of way occupation appeal from the other issues on appeal. *Cf.* Severance under CR 21 (“Any claim against a party may be severed and proceeded with separately.”) and bifurcation under CR 42(b) (“The court . . . may order a separate trial of any claim . . .”)

²⁵ Ex. R.11.

1 **C. BUILDING WITHOUT PERMITS-COMMERCIAL (NORTH BUILDING):**

2 F.14 The North Building is a wooden post and beam type structure with a footprint of
3 approximately 4,500-5,000 square feet.²⁶

4 F.15 County code exempts temporary growing structures and agricultural buildings from
5 the requirement of a permit. To qualify for the exemption, the structure must be
6 covered on its roof and sides by a flexible membrane:

7 (ii) Such structures as are defined in WAC 51-50-007 which are used
8 solely for the commercial production of horticultural plants including
9 ornamental plants, flowers, vegetables, and fruits. **"Temporary growing
10 structure" means a structure that has the sides and roof covered with
11 polyethylene, polyvinyl, or similar flexible synthetic material** and is
12 used to provide plants with either frost protection or increased
13 heat retention. Such structures shall not be used for other non-
14 agricultural uses including, but not limited to, office space,
15 mercantile, manufacturing, or habitable space.

16 (iii) Such structures as are defined as agricultural buildings in the IBC
17 which have **the sides and roof covered with polyethylene, polyvinyl, or
18 similar flexible synthetic material . . .**

19 SCC 30.50.103(1)(q)(ii) and (iii) (emphasis added).

20 F.16 The North Building has rigid wood siding (identified as T-111 siding), and metal sheet
21 roofing.²⁷

22 F.17 The North Building therefore does not qualify as a temporary growing structure or
23 agricultural building pursuant to SCC 30.50.103(1)(q)(ii) and (iii).

24 F.18 Mr. Postema attempted to apply for a building permit for the North Building, but PDS
25 declined to accept the application as incomplete because a land disturbing activity
26 application for the structure was also required.²⁸

²⁶ Testimony of Latimer; Ex. Q.10(s)-(v); Ex. Q.11(a)-(f).

²⁷ Ex. Q.11(f)-(k); testimony of Postema.

²⁸ Testimony of Postema.

1 **D. LAND DISTURBING ACTIVITY WITHOUT NECESSARY PERMITS**

2 F.19 Code Enforcement issued a notice of violation for five separate grading activities
3 without land disturbing activity permits:²⁹

- 4 1. The addition of more than 40,000 square feet of new impervious surfaces, in
5 the form of gravel and asphalt pavement, to the northwest corner of parcel
6 270524-001-016-00.
- 7 2. The addition of 4,500 square feet of new impervious surface by the
8 construction of the North Building on parcel 270524-001-016-00.
- 9 3. The addition of 4,500 square feet of new impervious surface by the
10 construction of the South Building on parcel 270524-001-016-00.³⁰
- 11 4. The addition of 3,500 square feet of new impervious surface, in the form of
12 asphalt, by the paving of the newly created or modified access off 200th Street
13 SE and roadway extending north onto parcel 270524-001-001-00.
- 14 5. Construction of a pond area on tax parcel 270524-001-001-00 on the eastern
15 portion of the site.

16 F.20 The Postemas do not deny these activities occurred. Their defense is a legal one—
17 that the activities were exempt from the requirement of a land disturbing activity
18 permit.

19 F.21 It is undisputed that agriculture is a permitted use on the Property.

20 F.22 There is no allegation that grading activity occurred within a wetland.

21 **1. Parking/Plant Container Area**

22 F.23 The first land disturbing activity violation alleged pertains to an area in the front
23 (westerly) portion of parcel 270524-001-016-00 located between Broadway Avenue
24 to the west and the North Building to the east.³¹ The area measures approximately
25 280 feet long and 164 feet wide for an approximate surface area of 46,000 square
26 feet.

27 F.24 As developed, this area comprises a grid network of two drive isles running east-west
28 with four intersecting drive isles running north-south which have been paved with

²⁹ Ex. Q.18, 2.

³⁰ Code Enforcement withdrew the claimed violation for construction of the South Building without a land disturbing activity permit. See finding of fact F.13.

³¹ Ex. Q.10(aa).

1 asphalt, creating four (4) rows of graveled areas used for parking and storage of trees
2 and shrubs in containers.³²

3 F.25 Flower World is one of the largest retail nurseries on the West Coast covering 15
4 acres. In addition to nursery products, it sells hardscape products (pavers, retaining
5 walls, steppingstones), statuary and fountains, and outdoor furniture products.³³ No
6 evidence was introduced that Flower World is owned or operated by a farmer's
7 cooperative or similar agreement.

8 F.26 From September-October through March-April of each year, Flower World uses the
9 area for temporarily holding larger container plants grown off the graveled areas as
10 part of the commercial horticultural production activities. From March-April to
11 September-October of each year, Flower World uses the area as a public parking lot
12 for its retail and wholesale customers.³⁴

13 F.27 The size of the retail nursery facilities comprising Flower World open to the
14 public/retail customers encompasses 15 acres, and is recognized as one of the
15 largest retail nurseries on the West Coast.³⁵

16 F.28 The website for Flower World (www.flowerworldusa.com) contained a link to a
17 "Greenhouse Map" for the public to use to plan their visit to the retail store. The
18 Greenhouse Map shows that areas open to retail customers substantially exceeds
19 5,000 sq. ft.³⁶

20 F.29 The Greenhouse Map has an arrow pointing to the south stating: "To South Parking
21 Lot/South Entrance."³⁷ It refers to the large paved and graveled area in the front
22 (westerly) portion of parcel 270524-001-016-00 and directs traffic to the driveway
23 access out onto 200th Street SE which is the subject of the violation for driveway
24 access discussed below.³⁸

³² Exhibits Q.8(k), Q.10(s)-(t), and Q.10(w)-(z).

³³ Testimony of Postema. Ex. Q.30.

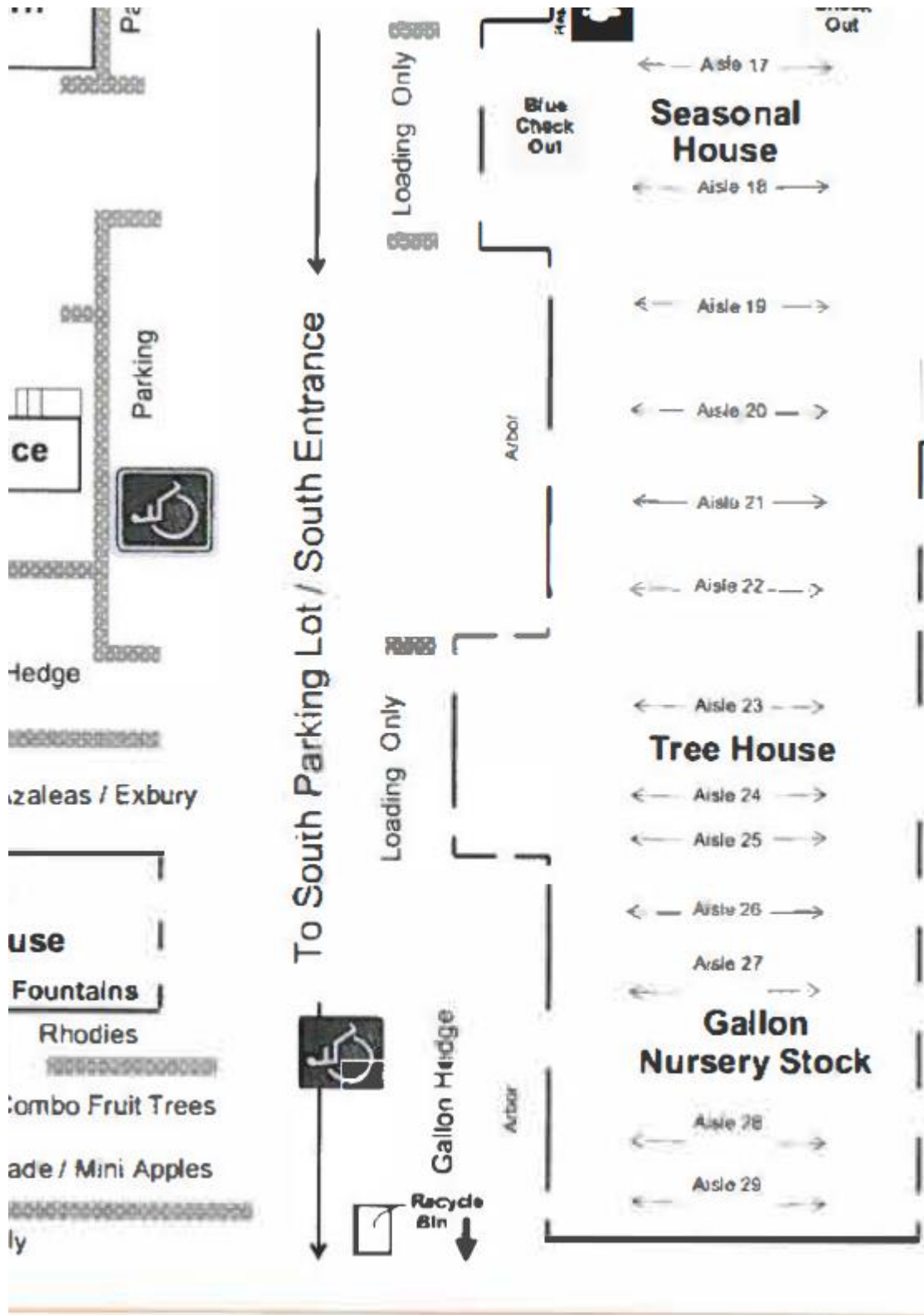
³⁴ Testimony of Postema; exhibits R.11, 12, 13, and 14; exhibits Q.8(k) and Q.10(w)-(z).

³⁵ Testimony of Postema, ex. Q.30.

³⁶ Ex. Q.30.

³⁷ Ex. Q.30.

³⁸ Testimony of Postema. Exhibits Q.8f, Q.8h, Q.8i, Q.8j



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Ex. Q.30

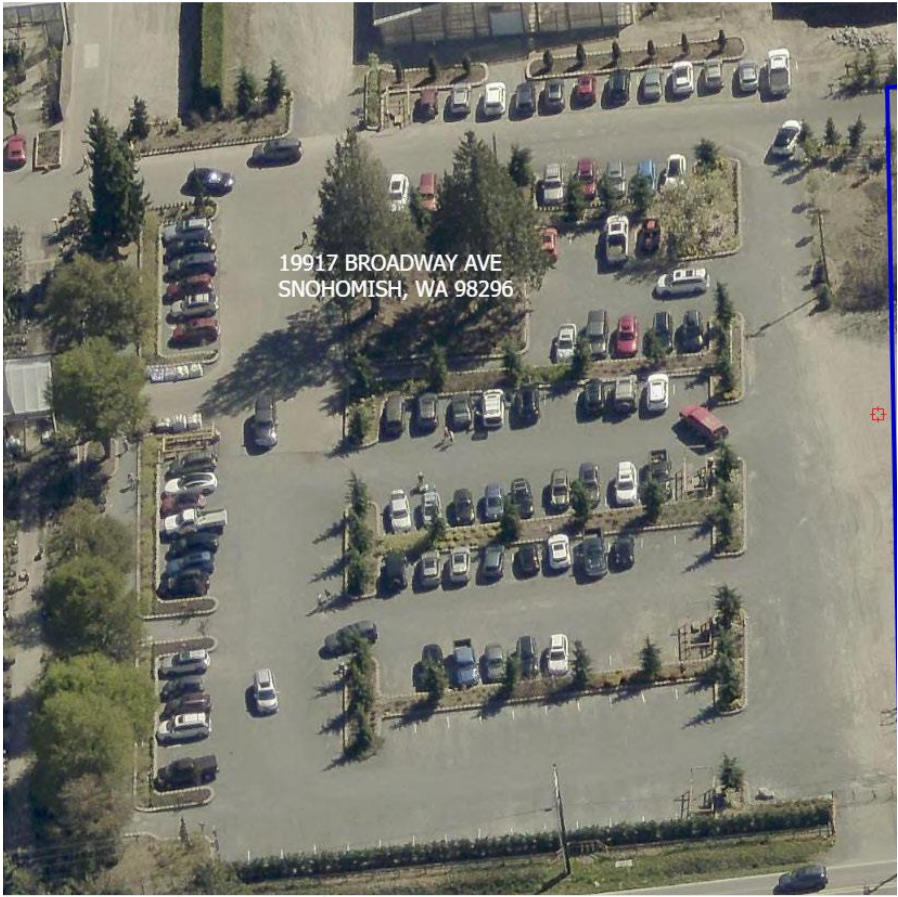
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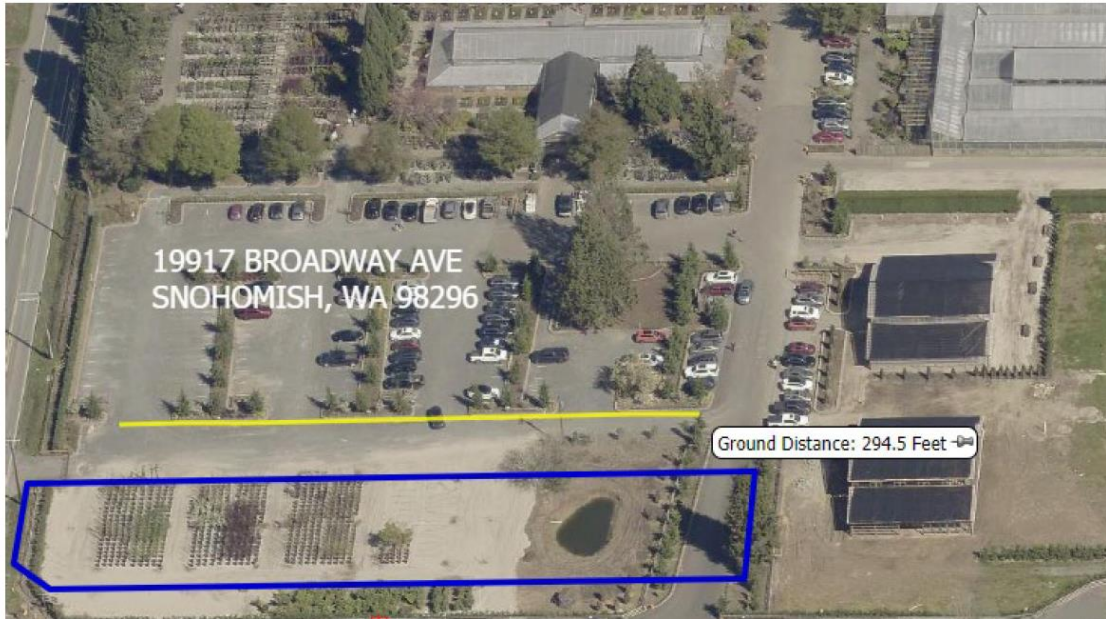
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1 F.30 Exhibit Q.10(z) shows a total of 110 parking spaces striped or marked within the rows
2 and drive isles, with a total of 78 vehicles parked within the available parking spaces
3 on the date of the photo.



4
5 Ex. Q.10(z).

6 F.31 Comparing this area on parcel 270524-001-016-00 to the adjacent parcel to the
7 south (parcel 270524-001-001-00) that is separated by a driveway running east-west
8 across the Property, the Property has similarly been cleared and graveled, but no
9 asphalt paving or drive aisles installed, and its use has been limited to temporarily
10 holding container plants as shown in Exhibit Q.10(y). The notice of violation in this
11 matter does not cite the clearing and grading of the front (westerly) portion of Parcel
12 270524-001-001-00 as a violation. The comparison demonstrates the use of parcel
13 270524-001-016-00 to be substantially parking, rather than agricultural.



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Ex. Q.10y.

F.32 Mr. Postema testified that the volume of traffic entering and exiting Flower World from the Broadway Avenue entrance located upon the Property caused traffic backups at this entrance, posing a hazard for traffic on Broadway Avenue. He therefore closed the entrance on Broadway and redirected traffic down 200th Street SE to a new entrance at the easterly end of the Property which is the subject of the access violation discussed below.³⁹

F.33 The front (westerly) portion of parcel 270524-001-016-00 is exclusively used for parking during certain periods of the year.⁴⁰

F.34 Based on a preponderance of the evidence, the Hearing Examiner finds that the clearing and grading of the front (westerly) portion of parcel 270524-001-016-00 was intended and is used in the spring and summer months (approximately April-September) and for commercial parking for Flower World’s customers and used in the fall and winter months (October-March) as a temporary holding area for growing large container plants.

F.35 The need for commercial parking for customers of Flower World is unrelated to the exempt use of the site for agricultural activities (i.e. the need for public parking does not result from, or in connection with, the exempt use of the area for the growing of plants in containers). Furthermore, such use of the area for public parking in this

³⁹ Testimony of Postema. Access violation is discussed at page ___ et seq.

⁴⁰ Exhibits Q.8(k), Q.10(w)-(z), and Q.10(ab).

1 matter is not minor in nature and appears to be co-equal in terms of geographic and
2 temporal scope to the use of the area for temporarily holding container plants.

3 2. North Building Footprint

4 F.36 The second land disturbing activity violation pertains to the footprint of the North
5 Building constructed on parcel 270524-001-016-00.

6 F.37 The North Building does not qualify as a membrane covered structure for purposes of
7 the exemption from building permit requirements for temporary growing structures or
8 agricultural buildings set forth in SCC 30.50.103(1)(q)(ii) or (iii).⁴¹

9 F.38 Mr. Postema testified that the ground where the building was placed did not require
10 any additional clearing or grading activity and, thus, denies engaging in any grading
11 activity requiring a land disturbing activity permit for purposes of the construction of
12 the North Building.

13 F.39 The North Building footprint is 4,909 square feet⁴² and is covered by a roof.⁴³
14 Construction of the North Building created more than 4,500 square feet of new
15 impervious surface.

16 3. Driveway Entrance

17 F.40 The fourth land disturbing activity violation pertains to the construction of the
18 driveway entrance exiting out onto 200th Street SE. The Postemas placed
19 approximately 3,500 square feet of asphalt, a new impervious surface, in the creation
20 of the driveway access and internal roadway extending north onto parcel 270524-
21 001-001-00⁴⁴ connecting to the main North/South entry and exit road for Flower
22 World as shown on Exhibit Q.30.

23 F.41 The Postemas placed signs at the intersection of Broadway Ave and 200th Street SE
24 directing commercial retail traffic to use the new entrance on 200th Street SE for
25 access to Flower World.⁴⁵ The “Greenhouse Map” on the Flower World website
26 identifies the new entrance onto 200th Street SE as the “South Entrance” to the
27 commercial retail nursery facilities comprising Flower World.⁴⁶

⁴¹ Finding of fact F.17.

⁴² Ex. Q.11(p).

⁴³ Exhibits Q.10(s)-(v), Q.11(i)-(k), and Q.11(p).

⁴⁴ E.g., exhibits Q.8(b) (e), and (f).

⁴⁵ Exhibits Q.6 and Q.8.

⁴⁶ Ex. Q.30.

1 F.42 Mr. Postema testified that a pre-existing driveway access existed from the Property
2 onto 200th Street SE as shown in Exhibit R.08, and that a Declaration of Short
3 Subdivision and Covenants⁴⁷ pertaining to a 1975 short subdivision of the property
4 reserved to the grantor, the Postemas' predecessor in interest, the right of ingress
5 and egress to the property along with the right to maintain all private roadways.⁴⁸

6 F.43 The work did not occur in a wetland.

7 F.44 The new driveway access was constructed in conjunction with a roadway extension
8 connecting the primary north/south entrance of Flower World to the new driveway
9 access onto 200th Street SE for the specific purpose of redirecting commercial retail
10 customers of Flower World to the new entrance/exit on 200th Street SE. The clearing
11 and grading of the new driveway access/entrance and associated roadway furthered
12 the commercial retail activities conducted on the abutting property comprising
13 Flower World and were not primarily related to any exempt "agricultural activities" for
14 purposes of the exemption from land disturbing activity permitting requirements in
15 SCC 30.63B.070(5).

16 4. Pond

17 F.45 The fifth land disturbing activity violation pertains to the construction of a pond area
18 at the rear (easterly) end of tax parcel 270524-001-001-00 as shown in Exhibit
19 Q.10(y).

20 F.46 Mr. Postema testified that this pond receives stormwater runoff from the area which
21 was graded and graveled in the front (westerly) portion of parcel 270524-001-001-00,
22 and that the water collected in the pond is then used to irrigate the plants grown on
23 the property.⁴⁹

24 F.47 Code Enforcement did not controvert Mr. Postema's testimony regarding the purpose
25 or use of the pond. For the purposes of this appeal, the pond is used for the purposes
26 described by Mr. Postema.

27 **C. DRIVEWAY ACCESS TO 200TH**

28 F.48 The Postemas moved the Property's driveway access to 200th Street SE
29 approximately 31 feet west from where it had been located when they purchased the

⁴⁷ Ex. Q.1.

⁴⁸ Testimony of Postema.

⁴⁹ Testimony of Postema.

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property. They also widened the access point of intersection of the driveway with the paved county road to 47' feet.⁵⁰



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Ex. Q.13.

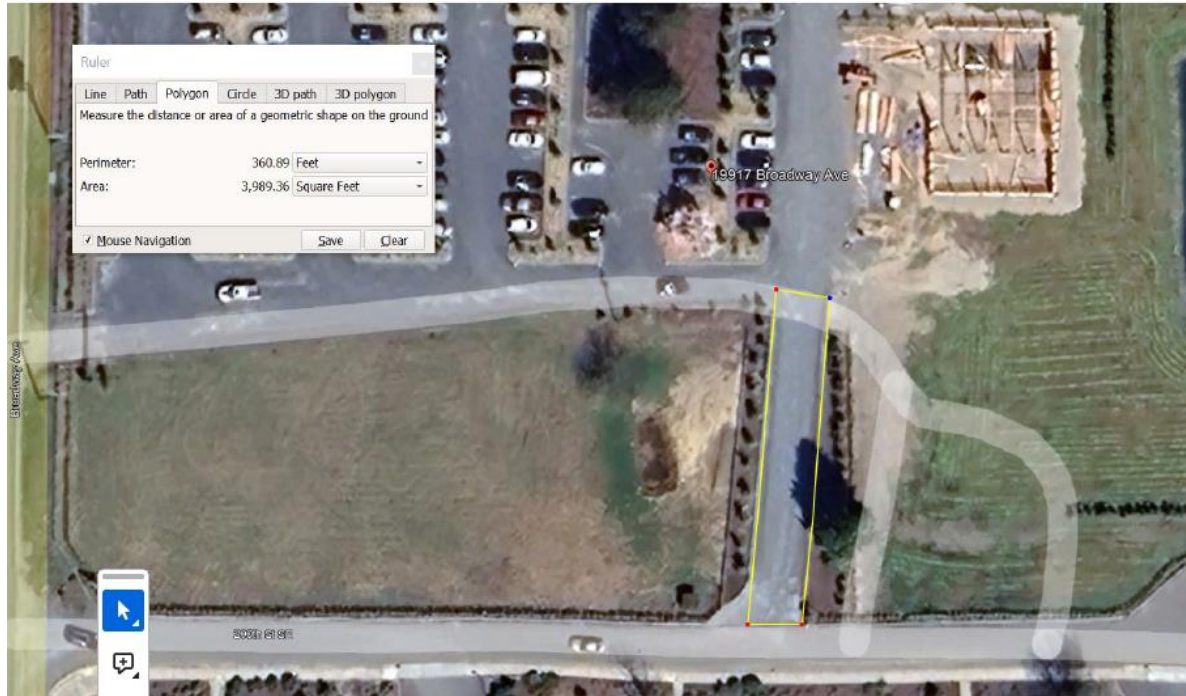
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F.49 The Postemas constructed a new asphalt paved roadway from the new access driveway at 200th Street SE north to connect with the main north/south driveway entrance into Flower World, north of the Property.⁵¹ The paving of the new entrance and associated roadway cover a total of 3,969 square feet.⁵²

⁵⁰ Exhibits Q.27, pp. 9-15, Q.28, pp. 4-12, and Q.13. Testimony of Valliant.

⁵¹ Exhibits Q.7 and Q.8(k).

⁵² Ex. Q.10(ab).



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2 Ex. Q.10ab.

3 F.50 Mr. Postema testified that the new access onto 200th Street SE was created to
4 alleviate traffic problems at the previously existing driveway entrance on Broadway
5 Avenue where he stated traffic backups were occurring.⁵³ Mr. Postema further
6 acknowledged placing signs for Flower World at the intersection of Broadway Avenue
7 and 200th Street SE directing commercial retail customers to access Flower World via
8 the new entrance on 200th Street SE and subsequently closing the access on
9 Broadway Avenue.⁵⁴

10 F.51 The Postemas did not obtain any permits for moving or widening the driveway access.
11 Mr. Postema testified he did not believe he needed permits because a 1975 short
12 subdivision of the property granted the property owner rights of ingress, egress, and
13 maintenance of internal private roads.⁵⁵

14 F.52 The new driveway access was constructed as part of a new roadway extension
15 connecting the new driveway access to the main north/south entrance to the
16 commercial retail nursery (Flower World) located on the abutting property to the
17 north as shown in Exhibit Q.10ab.

⁵³ Testimony of Postema.

⁵⁴ Testimony of Postema, Ex. Q.6.

⁵⁵ Testimony of Postema; ex. Q.1.

1 F.53 Combined with the new signage directing retail customers of Flower World to utilize
2 the 200th Street SE access for access to Flower World as set forth above, the Hearing
3 Examiner finds that the new driveway access onto 200th Street SE was created to
4 provide access to the abutting commercial business comprising that retail nursery
5 known as Flower World.

6 **CONCLUSIONS OF LAW**

7 **A. BUILDING WITHOUT PERMITS—COMMERCIAL (NORTH BUILDING):**

8 C.1 The undisputed evidence establishes that the North Building was constructed with
9 rigid wood siding with roofing comprised of metal sheeting. It therefore is not a
10 membrane covered temporary growing or agricultural structure exempt from building
11 permit requirements. SCC 30.50.103(1)(q)(ii), (iii). Code Enforcement’s issuance of a
12 notice of violation for constructing the North Building without building permits is
13 affirmed.

14 **B. LAND DISTURBING ACTIVITY WITHOUT NECESSARY PERMITS**

15 1. Parking/Plant Container Area

16 C.2 The Postemas argued that the parking/plant container area is an agricultural activity
17 exempt from the requirement of a land disturbing activity permit.

18 C.3 “Agricultural activities” includes activities that occur “on a farm in connection with
19 the commercial production of farm products and includes, but is not limited,
20 marketed produce at roadside stands or farm markets” SCC 30.91A.090 (2003).

21 C.4 A farmers’ market is “a site or facility owned or operated by a farmers cooperative or
22 similar agreement for the growers and producers of agricultural products to display
23 or sell agricultural products.” SCC 30.91F.184 (2004). Flower World is not a farmers’
24 cooperative, nor is there a similar agreement for growers and producers to display or
25 sell their products.

26 C.5 Flower World is not a roadside stand. County code does not define roadside stand.⁵⁶
27 The Hearing Examiner therefore resorts to the dictionary.⁵⁷ “Roadside” means the

⁵⁶ The poet Robert Frost described a roadside stand. “The little old house was out with a little new shed/in
Front at the edge of the road where the traffic sped,/A roadside stand that too pathetically pled,/It would not
be fair to say for a dole of bread,/But for some of the money, the cash, whose flow supports/The flower of
cities from sinking and withering faint.” Robert Frost, Roadside Stand (1936). County code has not adopted
this description, however.

⁵⁷ “Courts may use dictionary definitions to discern the plain meaning of terms undefined by statute.”

1 strip of land along a road or the side of a road.⁵⁸ Flower World is 15 acres, not a strip
2 along a road. A stand is, “a small often open-air structure for a small retail
3 business.”⁵⁹ Flower World is neither a small structure nor a small business. Flower
4 World is not a roadside stand as that term is commonly understood.

5 C.6 While Flower World fits within the definition of a farm stand, it is too big to be a legal
6 farm stand. A farm stand is “a temporary or permanent structure used for the display
7 and sale of agricultural products,” including floriculture and nursery products. SCC
8 30.91F.170(2020) (farm stand); SCC 30.91A.105 (2004) (agricultural products). But a
9 farm stand cannot be larger than 5,000 sq. ft. SCC 30.28.039(1) (2004). At 15 acres,
10 Flower World exceeds this limit by a factor of 130.

11 C.7 Flower World might be considered a farm support business, but is too big to be a
12 legal farm support business. A farm support business is “a business operated on a
13 farm site and related to or supportive of agricultural activities . . .” SCC 30.91F.175
14 (2012). County code included blacksmithing, farriers, farm implement sales and
15 repair, and feed and fertilizer sales as examples of a farm support business. Flower
16 World could not legally be a farm support business, however, because farm support
17 businesses are limited to no more than two acres (including parking) for farm parcels
18 larger than five acres. SCC 30.28.038(2) (2004). Flower World is 15 acres. The
19 graveled area alone is slightly larger than an acre.

20 C.8 The Postemas’ argument that any activity remotely connected with agriculture would
21 necessarily vitiate provisions of county code that limit the size, scope, and use of
22 farm stands, farmers’ markets, and farm support businesses.

23 The principle of reading statutes *in pari materia* applies where statutes
24 relate to the same subject matter. Such statutes “ ‘must be construed
25 together.’ ” “In ascertaining legislative purpose, statutes which stand *in*
26 *pari materia* are to be read together as constituting a unified whole, to the
27 end that a harmonious, total statutory scheme evolves which maintains
28 the integrity of the respective statutes.” If the statutes irreconcilably
29 conflict, the more specific statute will prevail, unless there is legislative
30 intent that the more general statute controls. Courts also consider the
31 sequence of all statutes relating to the same subject matter.

Greenfield v. Department of Labor & Industries, 27 Wn. App. 2d 28, 45, 531 P.3d 290, 300 (2023), *review denied*, 2 Wn.3d 1013, 540 P.3d 774 (2024), citing *AllianceOne Receivables Management., Inc. v. Lewis*, 180 Wn.2d 389, 395, 325 P.3d 904 (2014).

⁵⁸ “Roadside.” Merriam-Webster.com Dictionary, Merriam-Webster, <https://www.merriam-webster.com/dictionary/roadside>. Accessed 23 Jun. 2025.

⁵⁹ “Stand.” Merriam-Webster.com Dictionary definition 5(a), Merriam-Webster, <https://www.merriam-webster.com/dictionary/stand>. Accessed 23 Jun. 2025.

1 *Hallauer v. Spectrum Properties, Inc.*, 143 Wn.2d 126, 146, 18 P.3d 540,
2 550 (2001) (citations omitted).

3 C.9 The Postemas effectively argue that a vertically integrated agricultural business is
4 exempt from many county land use and environmental regulations regardless of size.
5 County code provisions relating to agriculture construed together to maintain their
6 integrity do not support this conclusion. The overarching goal of county code with
7 respect to agriculture is to keep agricultural land in commercial production as much
8 as feasible. County code does not exempt from regulation all activities related to
9 agriculture nor does it exempt all activities relating to agriculture irrespective of size
10 or because of vertical integration of the business. For example, county code limits
11 the size of retail sales on agricultural land, e.g., size limits for farm stands and farm
12 support businesses. A one-acre graveled and paved parking area to support a 15-
13 acre commercial retail and wholesale use is not an agricultural activity exempt from
14 permitting requirements.

15 C.10 Flower World is a retail and wholesale commercial use, not a roadside stand, farm
16 stand, or farm support business. It is a retail business, i.e., “the sale of commodities
17 to the ultimate consumer, usually in small quantities, as opposed to wholesale . . .”
18 SCC 30.91R.140 (2003). It is also a wholesale business, i.e., “the sale of goods in
19 relatively large quantities at a reduced price to retailers.” SCC 30.91W.080 (2003).
20 These are a commercial use, “a use providing goods, merchandise or services for
21 compensation.” SCC 30.91C.170 (2003).⁶⁰

22 C.11 The commercial retail activities of Flower World are not “agricultural activities” as
23 defined by county code.⁶¹ SCC 30.91A.090. If Flower World is not an agricultural
24 activity, then parking for Flower World is not an agricultural activity. Customer parking
25 for a 15-acre retail and wholesale commercial use exceeds the scope of the
26 definition of agricultural activity as exemplified by the inclusion of roadside stand or
27 farmers’ market and by provisions for farm stands, farmers’ markets, and farm
28 support businesses. Accordingly, to the extent the area in the front (westerly) portion
29 of parcel 270524-001-016-00 is used as a parking lot for commercial retail customers
30 of Flower World, such use is not an agricultural activity and not exempt from land
31 disturbing activity permitting requirements under SCC 30.63B.070(5).

⁶⁰ “‘Retail store’ means a retail commercial establishment engaged in selling merchandise to the general public for personal or household consumption and rendering services incidental to the sale of such merchandise.” SCC 30.91R.143 (2003). “‘Wholesale establishment’ means places of business primarily engaged in selling merchandise to retailers; industrial, commercial, institutional, or professional business users, or to other wholesalers; or acting as agents or brokers and buying merchandise for, or selling merchandise to, individuals or companies for retail purposes.” SCC 30.91W.082 (2015).

⁶¹ An agricultural activity must occur on a farm. Whether the 15-acre commercial retail and wholesale use is a farm was not litigated in the appeal.

1 C.12 Parking for Flower World customers is not an incidental use⁶² to an agricultural
2 activity—most parking is not for customers or employees of the agricultural activity of
3 the wholesale nursery operation, but for customers of the commercial retail
4 operation that is not an agricultural activity.

5 C.13 The parking area is not an agricultural activity and therefore not exempt from the
6 requirement of a land disturbing activity permit. The fact that it is also used part of
7 the year for growing and storing plants in containers does not change its substantial
8 use as a parking lot for a commercial retail operation.

9 2. North Building

10 C.14 Land disturbing activities require a land disturbing activity permit, unless exempted
11 by county code. SCC 30.63B.030(1) (2021). Land disturbing activities include,

12 any activity that will result in movement of earth or a change in the existing
13 soil cover or existing soil topography (both vegetative and non-vegetative),
14 including the creation and/or replacement of impervious surfaces. Land
15 disturbing activities include, but are not limited to, clearing, filling,
16 excavation and grading.

17 SCC 30.91L.025 (2021).

18 C.15 A roof covers the North Building, creating more than 4,500 square feet of impervious
19 surface.⁶³ Grading and excavating for the foundation of the North Building and
20 covering it with a roof that changed the existing soil cover. Construction of the North
21 Building therefore required a land disturbing activity permit, unless the work was
22 exempt.

23 C.16 The Postemas argue that construction of the North Building was exempt from the
24 requirement of a land disturbing activity permit because it was an agricultural
25 activity. SCC 30.63B.070(5).

26 C.17 Agricultural activity exemption applies if the work (a) is an agricultural activity as
27 defined by county code, (b) occurs on property on which agriculture is a legal use of
28 the property, (c) requires no other permit or project approval by the county except for
29 a flood hazard permit, and (d) does not occur in a wetland as defined by state law. *Id.*

⁶² An incidental use is a secondary or minor use that is associated with and “occurs as a result of or in connection with a permitted use” SCC 30.91L.030 (2003).

⁶³ Finding of fact no. F.39 *supra*. The size of the roof also exceeds the 2,000 sq. ft. exemption for new or replaced impervious surfaces. SCC 30.6 3B.070(1)(e). A roof is an impervious surface. SCC 30.91L.010. The 2,000 sq. ft. exemption therefore does not apply.

1 C.18 Agricultural activities include “construction and maintenance of . . . buildings”
2 SCC 30.91A.090. The Postemas contend the North Building served the agricultural
3 work of their nursery business. It is unnecessary to decide whether construction of
4 the North Building was an agricultural activity because the work failed another
5 essential element of the exemption.

6 C.19 Agriculture is a legal use of the Property.

7 C.20 Assuming, *arguendo*, construction of the North Building was an agricultural activity, it
8 nevertheless required one or more permits from the county other than a land
9 disturbing activity permit, i.e., building permits.⁶⁴

10 C.21 Construction of the North Building was not exempt from the requirement of a land
11 disturbing activity permit because other permits from the county were required.

12 3. Driveway Entrance

13 C.22 Creation of a new or modified driveway access onto 200th Street SE and related
14 driveway extension connecting that access to the commercial use on the abutting
15 property to the north required a land disturbing activity permit unless exempted by
16 county code. The new driveway access and extension created impervious surfaces
17 that changed existing soil cover and topography and are therefore land disturbing
18 activities. SCC 30.91L.025 (2021).

19 C.23 Land disturbing activities require a land disturbing activity permit, unless exempted
20 by county code. SCC 30.63B.030(1) (2021). The new driveway access and extension
21 required a land disturbing activity permit, absent an exemption.

22 C.24 The Postemas argue the work was exempt because agricultural activities are exempt
23 from the requirement of a land disturbing activity permit. SCC 30.63B.070(5). The
24 exemption applies if the work (a) is an agricultural activity as defined by county code,
25 (b) occurs on property on which agriculture is a legal use of the property, (c) requires
26 no other permit or project approval by the county except for a flood hazard permit,
27 and (d) does not occur in a wetland as defined by state law. *Id.*

28 C.25 Agricultural activities include “construction and maintenance of . . . roads” SCC
29 30.91A.090. The Postemas contend the driveway access and extension furthered the
30 agricultural work of their nursery business. As demonstrated by the signs and the on-
31 line map, the new access and extension primarily serve Flower World, a commercial
32 retail operation that is not an agricultural activity.⁶⁵ The driveway access and

⁶⁴ Conclusion of law C.1 *supra*.

⁶⁵ Finding of fact no. F.44 *supra*.

1 extension are therefore not exempt from the requirement of a land disturbing activity
2 permit.

3 C.26 Agriculture is a legal use of the Property.

4 C.27 Even if the work were an agricultural activity, it nevertheless required one or more
5 permits from the county other than a land disturbing activity permit. The new
6 driveway access onto 200th Street SE required a permit pursuant to SCC 13.60.020.⁶⁶

7 C.28 The new driveway access and extension were not exempt from the requirement of a
8 land disturbing activity permit because the work was not an agricultural activity and
9 because additional permits were needed from the county.

10 4. Pond

11 C.29 Construction and maintenance of a pond in connection with commercial production
12 of farm products, like a nursery, is an agricultural activity defined by SCC 30.91A.090.

13 "Agricultural activities" means a condition or activity which occurs on
14 a farm in connection with the commercial production of farm products
15 and includes . . . construction and maintenance of . . . ponds

16 SCC 30.91A.090 (2003).

17 C.30 Agricultural activities are exempt from land disturbing activity permitting
18 requirements. "Agricultural activities defined in . . . SCC 30.91A.090 are exempt from
19 obtaining a land disturbing activity permit . . ." SCC 30.63B.070(5) (2021).

20 C.31 The Postemas' creation of a pond at the rear (easterly) portion of parcel 270524-001-
21 001-00 is an agricultural activity. The Postemas therefore did not need a land
22 disturbing activity permit to construct it.

23 **C. DRIVEWAY ACCESS TO 200TH**

24 C.32 SCC 13.10.010 makes it "unlawful for anyone to make any use of any right-of-way for
25 other than transportation and uses incidental thereto or as otherwise provided by this
26 chapter without a right-of-way use permit as provided in this title [13 SCC] . . ."
27 Modification of repair of an existing driveway requires a type D1 permit. SCC
28 13.60.020(1) (2012). Access for development of abutting commercial property and
29 major private road/county road intersections requires a type D5 permit. SCC
30 13.60.020(5) (2012).

⁶⁶ Conclusion of law C.32 *et seq.*

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1 C.33 Both the construction of the new driveway access onto 200th Street SE and the
2 connection of the driveway access to the entrance/exit to the commercial business
3 activities conducted on the abutting Flower World property to the north required
4 permits under title 13 SCC.

5 C.34 Even if the driveway access had not been moved, its modification, repair, or widening
6 would require a D1 permit.

7 C.35 The reservation of rights for ingress, egress, and maintenance in the 1975 short plat
8 does not obviate the need for permits under title 13 SCC.

9 C.36 The Postemas' failure to obtain needed permits for this work violated county code.

10 **DECISION**

11 Based on the foregoing findings of fact and conclusions of law, it is ORDERED:

- 12 1. The notice of violation for construction of the North Building without building
13 permits is affirmed and the appeal denied.
- 14 2. The appeal of the notice of violation for construction of the South Building without
15 building permits is dismissed as moot because PDS withdrew the notice of
16 violation.
- 17 3. The notices of violation for conducting land disturbing activities without permits are:
 - 18 a. Affirmed regarding the parking/plant container area and the appeal denied.
 - 19 b. Affirmed regarding the North Building footprint and the appeal denied.
 - 20 c. Dismissed as moot regarding the South Building footprint because PDS
21 withdrew the notice of violation.
 - 22 d. Reversed regarding the pond and the appeal upheld because PDS conceded
23 its use exempted it from a land disturbing activity permit.
 - 24 e. Affirmed regarding the driveway and the appeal denied.
- 25 4. The notice of violation for failure to obtain access and any other permit for the new
26 access to 200th is affirmed and the appeal denied.
- 27 5. The compliance date for the affirmed violations is December 31, 2025. SCC
28 30.85.220 (2008). In establishing this date, the Hearing Examiner recognizes the
29 amount of work that must be done by the appellants and by PDS. If correction was

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1 commenced properly, substantial progress has been made, but full compliance has
2 been prevented by a condition or circumstance beyond appellants' control, the
3 Hearing Examiner may grant a request for extension.

- 4 5. This order does not affect the Postemas' appeal of the notice of violation for
5 occupation of the right of way on 200th because that appeal was severed from this
6 proceeding and further proceedings on the severed matter stayed pending
7 disposition of the Superior Court action.

8 Original order date April 8, 2025.

9 Amended order dated this 27th day of June, 2025.

10
11 _____
12 Peter B. Camp
13 Snohomish County Hearing Examiner

14 **RECONSIDERATION AND APPEAL**

15 The following paragraphs summarize the reconsideration and appeal processes. For more
16 information about reconsideration and appeal procedures, please see chapter 30.71 SCC,
17 chapter 36.70C RCW, and applicable court rules.

18 **RECONSIDERATION**

19 Further motions for reconsideration will not be considered because county code allows
20 only one motion for reconsideration. SCC 30.71.120(5) (2013).

21 **APPEAL**

22 The order may be appealed by filing a land use petition in Washington State Superior Court.
23 The petition to the Superior Court **must** be filed with the Superior Court Clerk **no later than**
24 **21 days after this order is issued**. The date of issuance is calculated by RCW
25 36.70C.040(4). For more information about appeals to Superior Court including steps
26 required to appeal this order, please see the Revised Code of Washington, Snohomish
27 County Code, and applicable court rules.

28 The cost of transcribing the record of proceedings, of copying photographs, video tapes,
29 and oversized documents, and of staff time spent in copying and assembling the record
30 and preparing the return for filing with the court shall be borne by the petitioner. SCC
31 30.71.130(2) (2003). Please include the PDS file number in any correspondence regarding
32 this case.

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1 The following statement is provided pursuant to RCW 36.70B.130: “Affected property
2 owners may request a change in valuation for property tax purposes notwithstanding any
3 program of revaluation.” A copy of this order is being provided to the Snohomish County
4 Assessor as required by RCW 36.70B.130.