

**JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA REQUEST

TO: Board of County Commissioners
Mark McCauley, County Administrator

FROM: Brent A. Butler, AICP, Chief Strategy Officer

DATE: November 6, 2023

SUBJECT: Regulations governing rentals for less than 30 days

STATEMENT OF ISSUE:

Regulations governing rentals for less than 30 days cover a broad range of housing types commonly known among other terms as short-term rentals, transient accommodations, HIP Camp, Glamping, Airbnb, Vrbo, hospitality accommodations, and home sharing. In this agenda request, a significant distinction is made between transient rentals in structures for which a septic permit was designed and properly permitted and HIP Camp or glamping type accommodations, which may not include septic permit approvals unless permitted in accordance with the conditional use provisions of the Jefferson County Code (JCC). The Municipal Research and Service Center (MRSC) has broadly discussed the concerns associated with these types of uses and writes:

“[Airbnb](#) and other short-term transient rental websites, such as [HomeAway](#) and [FlipKey](#), seem to be in the news on a daily basis. Depending upon your perspective, these commercial enterprises can be many things: shining examples of the “sharing economy,” unwelcome intruders into established residential neighborhoods, ways for homeowners to help pay their monthly mortgages, businesses skirting their local financial and regulatory obligations, and the list goes on. Regardless of your feelings, it is probably time to consider whether your community needs to establish or update its short-term transient rental regulations.

Some local governments have focused their zoning regulations on more traditional travel accommodations, like hotels/motels, and tried to prohibit short-term rentals altogether, but such bans have met with limited success. So, if a community wants to adopt standards to regulate short-term transient rentals, where should it start? I would advise that local governments begin by identifying what issue(s) they want to address. Is it:

1. Lack of lodging and sales tax collection on these short-term rental stays;
2. Unregulated traffic, parking, and noise impacts on the surrounding neighborhood; and/or
3. Non-compliance with life/safety standards that are commonly applied to other types of lodging establishments (such as hotels, motels, and bed-and-breakfasts)?”

You can access more information on this topic by going to: mrsc.org/stay-informed/mrsc-insight/february-2016/local-government-catching-up-with-airbnb

Community issues surrounding short-term rentals of existing housing units is similar to but somewhat different than the issues surrounding the renting of properties in open space areas without structures that, as stated, are currently permitted through the conditional use permit process. Generally, such uses are considered for approval under the “small-scale recreation and tourist uses” section of the UDC (JCC 18.20.350), requiring a conditional use permit after public notice, a written public comment period and, at the discretion of the administrator, a public hearing procedure. While there has been significant concern raised by abutting neighbors in Marrowstone Island and the Tri-Area about unauthorized HIP camps or glampers in the past year, as discussed later in this agenda request, staff generally sees the existing conditional use permit process as working. Staff has, however, looked at ways to streamline this process and in the analysis, identifies the potential pitfalls.

BACKGROUND:

As stated, Jefferson County established a permitting process for short-term rentals such as HIP Camps, which involve a conditional use permit as set forth in JCC 18.15.040 *Categories of land use*. Significantly, this is similar to how Clallam County also known as a tourist destination permits these types of uses.

	Resource Lands		Rural Residential				Rural Commercial		
	Agricultural – Prime and Local	Forest – Commercial, 1 Rural and Inholding	1 DU/5 Acres	1 DU/10 Acres	1 DU/20 Village Center	Rural	Convenience Crossroad	Neighborhood/Visitor Crossroad	General Crossroad
Specific Land Use	AG	CF/RF/IF	RR 1:5	RR 1:10	RR 1:20	RVC	CC	NC	GC
Small-Scale Recreation and Tourist Uses									
Aerial recreational activities (e.g., balloon rides, gliders)	No	No	C(d)	C(d)	C(d)	C(d)	No	No	No
Animal preserves and game farms with dangerous wild animals	No	No	C(d)	C(d)	C(d)	No	No	No	No
Animal tourist farms with domestic and nondangerous wild animals	See JCC 18.20.030								
Agritourism	See JCC 18.20.030								
Campgrounds and camping facilities, new	See JCC 18.20.030	C(d)	C(d)	C(d)	C(d)	No	No	No	No
Campgrounds, camping facilities and small-scale resorts; expansion of existing facilities	See JCC 18.20.030	C(d)	C(d)	C(d)	C(d)	No	No	No	No
Cultural festival and historic sites, permanent	C(d)	C(d)	C(d)	C(d)	C(d)	C(d)	No	C(d)	C(d)
Equestrian centers	C(d)	C(d)	C(d)	C(d)	C(d)	No	No	No	No
Outdoor commercial amusement facilities	See JCC 18.20.030	No	C	C	C	Yes	No	No	Yes
Outdoor archery ranges	No	C(d)	C(d)	C(d)	C(d)	No	No	No	No
Recreational, cultural or religious purposes	See JCC 18.20.030	No	C	C	C	C(d)	No	No	C(d)

Short-term rentals, alternatively, are broadly permitted throughout the county in the zoning districts abbreviated as AG, CF, RF, IF, RR:1:5, RR1:10, RR1:20 & RVC, and also in the Port Ludlow Master Planned Resort's RC/CF Zone. Additionally, the county code requires that at least 65% of the accommodations in the Pleasant Harbor Master Planned Resort consist of short-term rentals, as it is envisioned as a tourist destination. (See JCC 17.60.070 *Resort cap and residential use restrictions* and JCC 18.15.123 Allowable uses, where subsection (2) clearly states that short term visitor accommodations, including, but not limited to, hotels, motels, lodges, and other residential uses...constitute no less than 65%.) It is also more broadly discussed in the definitions as permissible in Master Planned Resorts. (See 18.10.130 M definitions "Master Planned Resort", and JCC 18.15.126 *Requirements for master planned resorts*.)

ANALYSIS

Short-term rentals

Currently the county has identified 76 short-term rentals (exclusive of HIP Camp and Glamping). In a previous discussion with Granicus, a for-profit firm which tracks these and provides enforcement services, more than 400 short-term rentals were identified suggesting a gargantuan enforcement challenge. Currently, Jefferson County generally addresses two of the three core issues identified by MRSC, namely: (1) Spillover impacts, and (2) Life-safety. Regulations are established in JCC 17.60.070, 18.10.130M, and 18.10.201 T that permit this use, yet these may not adequately address associated enforcement challenges. Additionally, tourists are frequently unfamiliar with how to shut off water or electricity in the event of an issue, or where to walk their dogs, as there are communities that prohibit off-leash dogs.

Nonetheless, as part of this review, the county could borrow legislation that looks at additional regulations that touch upon geography (e.g., San Juan Island County, or occupancy, such as in Chelan County, which establishes a tiered system).

What is the difference between the tiers?

- Tier 1: The short-term rental is owner-occupied and has an occupancy limit of no more than eight people. Caps do not apply to Tier 1 operations.
- Tier 2: The short-term rental is nonowner-occupied and has an occupancy limit of no more than 12 people. Caps apply.
- Tier 3: The short-term rental can be owner- or nonowner-occupied and has a limit of no more than 16 people. Caps apply.

HIP Camp/Glamping

At this point, the county has not received any applications to establish a HIP Camp or its alternative, glorious camping sites. A pre-application did occur, and DCD has received some inquiries. As stated, Jefferson County could establish a new process, but staff is not yet aware of other models outside of the conditional use permitting process and would welcome ideas about how best to streamline permitting given that the most significant issues arise out of the septic and solid waste issues and the establishment of Hip Camps without a valid permit.

Zoning Challenges

Lot size - While staff may suggest that applicants obtain a conditional use permit, the minimum lot area for a campground of five acres may be a barrier. If the minimum lot size is reduced, additional problems may arise in areas outside of the sewer system as smaller lot sizes may be more difficult to permit, as septic systems require larger lots if the soils are well drained (see Table X below). However, the Port Hadlock Wastewater system may provide an opportunity to revisit the zoning regulations governing Hip Camp type short-term rentals in areas serviced by the phase 1 sewer.

TABLE X
Minimum Land Area Requirement
Single-Family Residence or Unit Volume of Sewage

Type of Water Supply	Soil Type (defined by WAC 246-272A-0220)					
	1	2	3	4	5	6
Public	0.5 acre	12,500 sq. ft.	15,000 sq. ft.	18,000 sq. ft.	20,000 sq. ft.	22,000 sq. ft.
	2.5 acre ¹					
Individual, on each lot	1.0 acre	1 acre	1 acre	1 acre	2 acres	2 acres
	2.5 acres ¹					

¹See WAC 246-272A-0234(6).

Buffers - Additionally, camping sites requires large buffers on the property boundaries. This will likely be a reoccurring issue on many lots in the rural area unless the Board eliminates the requirement for a conditional use permit (“CUP”) or decreases the lot size, after receiving the Planning Commission’s recommendations. However, if this occurs, code compliance is more likely to receive noise and traffic complaints as occurred recently in the Lomita Trust case on Marrowstone Island because distance reduces sound transference. Acoustic research suggests that ‘the intensity of sound decreases as the inverse square of the distance, as its power is spread over the surface of an ever increasingly large sphere (see, Acoustic Research Center, [How Distance Affects Sound Level \(acousticresearch.org\)](http://acousticresearch.org)). Neighbors said that the Hip Camp type of use was negatively impacting the neighborhood and thereby their quality of life.

Code Compliance

With the passing of the Building Code ordinance, Jefferson County Code Compliance has another tool to carry out commercial inspections on transient rentals. In the Lomita Trust case, which Jefferson County successfully litigated, the issue of whether one camp site constitutes a campground/camping facilities under our code was raised. The court determined that it does, upholding the county’s code interpretation (See attachment 1 – Code Interpretation). Additionally, the county interprets parking of one RV as camping, as set forth in this case.

FISCAL IMPACT/COST-BENEFIT ANALYSIS:

The CSO is currently funded until March 31, 2023, and could complete the required analysis and planning to enact an ordinance that borrows heavily from a tiered systems in the 1st half of 2024. Additional funding may be necessary to ensure completion of the septic regulations, specifically to support Environmental Public Health’s review and consideration of alternative approaches toward permitting Hip Camps.

RECOMMENDATION:

Recommend next steps so that Planning Commission review can start.

REVIEWED BY:



Mark McCauley, County Administrator

Date 11/3/23



**JEFFERSON COUNTY
DEPARTMENT OF COMMUNITY DEVELOPMENT**

621 Sheridan Street | Port Townsend, WA 98368
360-379-4450 | email: dcd@co.jefferson.wa.us
<http://www.co.jefferson.wa.us/260/Community-Development>

Date: January 7, 2022

Issued by: Brent Butler, Director,
Administrator of the Department of Community Development

Affected: All Properties Within Unincorporated Jefferson County, with particular findings for 2324 East Marrowstone Road, Nordland, WA, Jefferson County, Parcel No. 976200704.

Subject: Unified Development Code Interpretation: Applicability of JCC 18.10.005(1) (Interpretations) to JCC 18.10.030 (definition of campground and camping facilities) and JCC 18.20.350 (small-scale recreation and tourist facilities)

I. Background, Code Interpretation Request, and Summary of the Code Interpretation

A. Background of the Code Interpretation Request

The Jefferson County Department of Community Development (DCD) instituted a code compliance case, COM21-00074, regarding the construction of an unpermitted garage with an above-garage residence located at 2324 East Marrowstone Road, Nordland, WA (Parcel No. 976200704). During the course of the compliance case, complaints were submitted by the public concerning an unpermitted use of the property as a campground for both recreational vehicles (RVs) and tents. After investigation, the code compliance officer informed the property owner that current regulations of campgrounds and camping facilities prohibit the use of RR 1:5 zoned parcels for camping facilities without a conditional use permit, per Table 3-1 of JCC 18.15.040. The code compliance officer explained that the use of the property for commercial camping would require land use review and permitting, and refusing to voluntarily comply could result in enforcement action.

B. Code Interpretation Request

In response to the communication from the DCD code compliance officer, the owner of parcel 976200704, Lomita Trust, submitted a letter dated November 2, 2021 ("Lomita Trust Letter") contesting DCD's conclusion that the use on the property is properly classified as "campground and camping facilities." The Letter requests a code interpretation, and asserts the following arguments disputing the code compliance officer's conclusion that the use of the property as a "campground" violates the code:

1. **"A single RV site does not fall within the definition of 'campground or camping facility' because JCC 18.10.030 is phrased in the plural." (Letter at 1);**
2. **"DCD's contention that a single RV site is a 'campground or camping facility' conflicts with the controlling state definition of 'camping resort.'" (Letter at 1); and**
3. **"DCD should interpret 'campground or camping facilities' to mean plural sites, consistent with its recent interpretation of 'recreational vehicle park.'" (Letter at 2).**

Attached to the Lomita Trust Letter is a brief detailing its arguments, which will be discussed in the Section II, Analysis.

C. Summary of Code Interpretation Findings

The Administrator finds that the definition of “campground and camping facilities” at JCC 18.10.030 includes those facilities with a single campsite that is “offered for persons using tents or other personal, portable overnight shelters.” This finding is supported by the following:

1. **The meaning of JCC 18.10.030, read with JCC 18.10.005, is unambiguous: the definition of “campground and camping facilities” means either a site or sites offered for persons using a tent or other personal, portable, overnight shelter.**
2. **The definition of “camping resort” contained in RCW 19.105.300(1) does not preempt the definition of “campground and camping facilities” in JCC 18.10.030 and does not preclude the JCC definition from including a single site, for the reasons interpreted in Section II, C.1.**
3. **The Appeal Decision of COM2018-00156 supports the Administrator’s interpretation in Section II, C.1; the Appeal Decision did not interpret the definition of “RV park” or “Campground and camping facilities” in a manner inconsistent with the Administrator’s interpretation. Moreover, JCC 18.20.350, which groups a number of uses under the heading of “small-scale recreation and tourist uses,” must be read as a whole. “Campground and camping facilities” and “Recreational vehicle parks” are separate land uses and both uses must meet the standards of JCC 18.20.350.**

II. Analysis

A. Jefferson County Code Interpretation Process

An interpretation of the provisions of Jefferson County’s Unified Development Code is “intended to clarify conflicting or ambiguous wording, interpret proper classification of a use, or interpret the scope or intent of this code An interpretation of the provisions of this code may not be used to amend the code.” JCC 18.40.350. Under state law, an administrative agency such as the Department of Community Development (DCD) is without inherent or common-law powers and may exercise only those powers conferred either expressly or by necessary implication by the local legislative body. *Chaussee v. Snohomish County Council*, 38 Wn. App. 630, 639, 689 P.2d 1084 (1984). In other words, the Administrator has not been given authority to find the code invalid; he or she may only interpret the code using the language of the code itself. In this case, however, the question is not whether the code provision is invalid; it is a question of whether the definition of “campground and camping facilities” includes those facility offering only a single site for camping.

B. Rules of Statutory Construction Applicable to this Code Interpretation

This code interpretation requires a review of rules of statutory construction and of the rules of conflict preemption as applicable to local ordinances.

1. *Rules of Statutory Construction*

- a. The Fundamental Purpose of Interpreting the Code is to Give Effect to Legislative Intent.

The fundamental purpose in interpreting the code is to give effect to the intent of the Jefferson County Board of Commissioners (BOCC) in adopting the code. If the code provision's meaning is plain on its face, a code interpretation must give effect to that plain meaning as an expression of legislative intent. The code interpretation discerns the plain meaning from the ordinary meaning of the language at issue, the context of the chapter or title in which the provision is found, related provisions, and the statutory scheme as a whole. *Renton Sch. Dist. No. 403 v. Dolph*, 2 Wn.App.2d 35, 40, 415 P.3d 269 (2017).

- b. Read the Code Provisions as a Whole, Giving Effect to All Language Used.

A basic rule of statutory construction is that “[a] statute must be read as a whole giving effect to all the language used, and each provision must be harmonized with other provisions to insure proper construction of every provision.” *Carlton v. Black*, 153 Wn.2d 152, 162, 102 P.3d 796 (2004). Conversely, words in a statute cannot be read in isolation in disregard of the language of the statute as a whole. *Renton Sch. Dist. No. 403 v. Dolph*, 2 Wn.App.2d 35, 41, 415 P.3d 269 (2017). The interpretative rules of JCC 18.10.005(1), the definitions in JCC Chapter 18.10, and the entire Unified Development Code must be read as a whole.

2. *Rules of Conflict Preemption*

The Constitution of the State of Washington provides cities and counties the authority to enact police power regulations to protect the health, safety and welfare of its citizens. The Constitution's only limitation to a local jurisdiction's authority is that local regulations may not be in conflict with state laws. *See* Article XI, Section XI, Wash. St. Const. (County “may make and enforce within its limits such local police, sanitary or other regulations as are not in conflict with general laws.”). Over the course of the last century, Washington State courts have developed rules to determine when a local regulation is in conflict with general laws. It has developed two doctrines regarding preemption of local code by state law: field preemption and conflict preemption.

A state statute “preempts the field” if there is express legislative intent to preempt the field of regulation, or if such intent is necessarily implied. The judicially-instituted rule applicable to resolve a field preemption issue provides that a state statute preempts an ordinance on the same subject if the statute occupies the field, leaving no room for concurrent jurisdiction, or if a conflict exists such that the statute and the ordinance may not be harmonized. In the absence of express intent, a court may infer preemption from the purpose of the statute and the facts and circumstances under which it was intended to operate. *Lawson v. Pasco*, 168 Wn.2d 675, 678, 230 P.3d 1038 (2010).

If field preemption is not applicable, courts will look at a more nuanced question: whether there is conflict preemption. When state statutes and local codes exist on the same subject, a code interpretation may need to determine whether a conflict exists between state and local law. An irreconcilable conflict exists when an ordinance permits what state law forbids, or forbids what state law permits. An ordinance is invalid if it directly and irreconcilably conflicts with the statute. If the two may be harmonized, however, no conflict will be found. *Lawson*, 168 Wn.2d at 683.

While it is beyond the authority of the Administrator to declare that a section of code conflicts with state law, it is important for the Administrator to be aware of the application of these rules, especially in cases in which a code interpretation applicant provides legal analysis attempting to invalidate a code or an interpretation thereof. In this case, the applicant attempts to challenge the department's statutory construction of the code, and also asserts that the local code is preempted by state law.

C. Code Interpretation: Arguments of Applicant

1. *Does the plural definition found in JCC 18.10.030 for "campground and camping facilities" apply to a campground or camping facility which only has one site?*

The Lomita Trust Letter argues that construction of the JCC 18.10.030 definition of "Campground and camping facilities" should include more than one campsite or RV site on the following grounds: (i) the JCC 18.10.030 definition of "Campground and camping facilities" is phrased in the plural; and (ii) as a matter of statutory construction and under the rule of lenity, ambiguity created by conflicting terms must be resolved in favor of the aggrieved. Letter at 1.

The definition for campground and camping facilities at JCC 18.10.030 reads as follows:

"Campground and camping facilities" means a facility in which sites are offered for persons using tents or other personal, portable overnight shelters.

The other code provision which must be considered is JCC 18.10.005, entitled "Interpretations." It states:

(1) For the purpose of this code, all words shall have their normal and customary meanings, unless specifically defined otherwise in this chapter. ***In general, words used in the present tense shall include the future; the singular shall include the plural; and the plural the singular.*** The words "shall," "must," "will," "may not," and "no... may" are always mandatory. The word "should" indicates that which is recommended but not required. The word "may" indicates a use of discretion in making a decision. The word "used" includes "designed, intended, or arranged" to be used. The masculine gender includes the feminine and vice versa. References to "distance" means distance as measured horizontally unless otherwise specified.

(2) All definitions which reference the Revised Code of Washington (RCW), Washington Administrative Code (WAC), and International Building Code (ICODE) are intended to mirror the definitions in these codes at the effective date of the ordinance codified in the Unified Development Code (this code) or as amended. If the definition in this code conflicts with a definition under state law or regulation, the state definition shall control over this definition.

(3) These definitions are not intended to establish regulations.

(Emphasis added.) Under the plain language of JCC 18.10.005, the intent of the code is that words have their normal and customary meanings, except where specifically defined in the chapter (which is the case with campground and camping facilities). For interpretation of any specific definition, such as the definition of campground and camping facilities, the following rules apply: any **and that all definitions include singular, plural, past, present, masculine gender, and feminine gender interpretations of the definitions.** Therefore, under the plain language of JCC 18.10.030 and JCC 18.10.005, harmonized together, the JCC 18.10.030 definition of "Campground and camping facilities" includes a singular

interpretation of the definition, meaning “a facility in which [a] site(s) [is] offered for [a] person(s) using [a] tent(s) or other, personal, portable overnight shelter(s).”

This interpretation is consistent with the rule of statutory construction described above which requires the Administrator to read the code provisions as a whole, giving intent to every provision. Lomita Trust attempts to advance a reading of the code that would require the Administrator to read the definition in isolation from JCC 18.10.005, which is contrary to established rules of statutory construction.

In addition, Lomita Trust argues that under the rule of lenity, construction of ambiguous terms must be in favor of the aggrieved. However, JCC 18.10.030 is not ambiguous, when read in conjunction with JCC 18.10.005. It is clear the definition applies to a facility with a single site as well as multiple sites.

In interpreting statutes, as stated above, the plain meaning of a legislative provision is determined from the ordinary meaning of the language used in context of the entire chapter or title, and the field of regulation. It can only be determined to be ambiguous when statutory language is susceptible to more than one reasonable interpretation. *Bostain v. Food Express, Inc.*, 159 Wn.2d 700, 708, 153 P.3d 846 (2007). That is not the case here. Only when a provision is determined to be ambiguous may the reviewer look outside the plain meaning of the provision for other indicia of legislative intent, such as the rule of lenity. As such, the Administrator declines to apply the rule of lenity to this unambiguous code provision.

Conclusion: The Administrator finds that the meaning of JCC 18.10.030, read with JCC 18.10.005, is unambiguous: the definition of “campground and camping facilities” means either a site or sites offered for persons using a tent or other personal, portable, overnight shelter.

2. *Does RCW 19.105.300(1), the definition of “camping resort” in the state licensing code, preempt the Jefferson County Code definition of “campground and camping facilities” in its zoning code?*

The Lomita Trust Letter argues that the JCC 18.10.030 definition of “Campground and camping facilities” conflicts with the definition of camping resort contained in Chapter 19.105 RCW, which states:

‘Camping resort’ means any enterprise, other than one that is tax exempt under section 501(c)(3) of the Internal Revenue Code of 1986, as amended, that has as its primary purpose the ownership, operation, or promotion of campgrounds that includes or will include camping sites.

RCW 19.105.300(1). Because this RCW definition contains “camping sites” in the plural, Lomita Trust argues that it conflicts with JCC 18.10.030 and therefore preempts the local code definition. Lomita Trust relies on the JCC 18.10.005(2) in support of its argument:

All definitions *which reference the Revised Code of Washington (RCW)*, Washington Administrative Code (WAC), and International Building Code (IRC) are intended to mirror the definitions in these codes at the effective date of the ordinance codified in the Unified Development Code (this code) or as amended. If the definition in this code conflicts with a definition under state law or regulation, the state definition shall control over this definition. (Emphasis added).

Lomita Trust argues that because RCW 19.105.300(1) refers to “camping sites” in the plural, Jefferson County’s definition of “campground and camping facilities” cannot include a camping facility or campground with just one single site. The Lomita Trust Letter states that “[b]ecause DCD’s application of the definition of “campground or camping facilities” to a single RV site conflicts with the state definition

of “camping resort” which by its terms means more than a single RV site, the state definition controls.” Lomita Trust Letter Attachment at 5.

This argument is inapposite, for the following reasons: 1) JCC 18.10.005(2) only applies to “[a]ll definitions *which reference the Revised Code of Washington (RCW)....*”, and JCC 18.10.030 does not reference any RCW provisions; and 2) Under the rules of conflict preemption, as stated above, there is no conflict between JCC 18.10.030 and RCW 19.105.300(1), because the two definitions pertain to two entirely different fields of regulation, and there is no intent within Chapter 19.105 RCW to preempt the field of local zoning regulation. The local code and the RCW can be read in harmony.

The definition of “campground and camping facilities” at JCC 18.10.030 does not reference any provision in the RCW. Therefore, the Administrator finds that JCC 18.10.005(1) does not apply in this instance to present a conflict with a section of the RCW.

The Letter cites *Durland v. San Juan County*, 174 Wn. App. 1, 23, 298 P.3d 757 (2012), as support for its argument that JCC 18.10.030’s definition of “campground and camping facilities” is preempted by RCW 19.105.300(1)’s definition of “camping resort.” However, the Administrator finds the analysis in *Durland* actually supports the conclusion that the JCC 18.10.030 definition of “Campground and camping facilities” **does not conflict** with the definition of “camping resort” contained in Chapter 19.105 RCW. For ease of reference, *Durland* is appended as Attachment 1.

The court in *Durland* examined (in part) whether a provision of the International Residential Code (IRC) preempted a local San Juan County Code definition of “living area” for the purpose of calculating accessory dwelling unit (ADU) square footage. *Durland*, 174 Wn. App. at 23-24. San Juan County Code included a provision identical to JCC 18.10.005(2), stating that an RCW definition cited in a code definition would control over any local definition.

The court found that the San Juan County Code definition was unambiguous, and that the IRC definitions did not apply in interpreting the definition of “living area.” The court first noted that an unambiguous legislative definition is not subject to interpretation and cannot be supplemented by other definitions. *Durland*, 174 Wn. App. at 23. Furthermore, while San Juan County Code had a provision that stated that an RCW definition controls if cited in the definition, the court found that there was no controlling RCW definition, because the specific county code definition had not included one. Finally, the court found that the IRC provisions cited did not reference the same subject matter as the local San Juan County code, which specifically addressed measurement of the living area for an ADU. *Durland*, 174 Wn. App. at 23-24.

The Administrator has already determined that the definition of “campground and camping facilities,” is unambiguous, as determined in Section II.C.1, above. As the court stated in *Durland*, an unambiguous definition should not be supplemented with other definitions. Further, in an identical provision to the San Juan County Code, JCC 18.10.005(2) specifies that an RCW definition controls if the RCW is expressly cited in the definition. However, in this case, just as in *Durland*, the RCW that Lomita Trust argues is controlling is not cited within the definition. Therefore, JCC 18.10.005(2) does not apply.

Finally, parallel to *Durland*, RCW Chapter 19.105 and JCC 18.10.030 do not reference the same subject matter. Chapter 19.105 RCW is a licensing code, and regulates the sale of camping resort contracts, among other things, through the Washington State Department of Licensing. The chapter in the state licensing statutes relating to a “camping resort” regulates a different field of law from the Jefferson County Unified Development Code, which regulates zoning in Jefferson County. Therefore, any difference between RCW 19.105.300(1) and JCC 18.10.030 does not create a conflict within the meaning of Article XI, Section 11 of the Washington State Constitution. Chapter 19.105 RCW does not regulate zoning; state regulation of

zoning, to the extent it exists, is contained in the Planning Enabling Act (Chapter 36.70 RCW), the Growth Management Act (Chapter 36.70A RCW), the Shoreline Management Act (Chapter 90.58 RCW), and related acts. There is no express legislative intent in Chapter 19.105 RCW to preempt the field of local zoning for “campground or camping facilities,” nor is there an irreconcilable conflict between the language of RCW 19.105.300(1) defining “camping resort” and the JCC 18.10.005 definition of “campground and camping facilities.” Because the statute and county code can be read together and harmonized, no conflict exists.

Conclusion: The Administrator finds that the definition of “camping resort” contained in RCW 19.105.300(1) does not preempt the definition of “campground and camping facilities” in JCC 18.10.030 and does not preclude the JCC definition from including a single site, for the reasons interpreted in Section II, C.1.

3. *Is the interpretation of the JCC 18.10.030 definition of “campground and camping facilities” to include a single site contradictory or inconsistent with the Hearing Examiner’s decision in COM2018-00156?*

The Lomita Trust Letter argues that construction of the JCC 18.10.030 definition of “campground and camping facilities” to include a single camping and RV site is contradictory to a June 1, 2021 Appeal Decision for COM2018-00156. That decision stated that the JCC 18.10.180 definition of “recreational vehicle park” means “a commercially developed tract of land in which two or more recreational vehicle sites are established as the principal use of the land.” The Lomita Trust Letter also points to JCC 18.20.350(6), which relates to small-scale recreation and tourist activities and asserts that that provision equates the following land uses: recreational vehicle parks, travel trailer park, and commercial campground. The Lomita Trust Letter concludes: “DCD should interpret ‘campground or camping facilities’ to mean plural sites, consistent with its recent interpretation of ‘recreational vehicle park’.” (Letter at 2).

The Administrator does not read the Hearing Examiner’s Decision in COM2018-00156 as inconsistent with the Administrator’s finding in Section II, C.1 that the JCC definition of “campground and camping facilities” includes a single camping site. For ease of reference, COM2018-00156 is appended as Attachment 2.

Jefferson County Case Number COM2018-00156 was an appeal of a Notice of Violation (NOV) issued to an individual due to violations of the onsite sewage code and the land use code. *Att.2* at 5. The Lomita Trust letter references one of the land use code violations, specifically use of a site as an RV park without permits. *Id.* In that case, the Appellant admitted in testimony that he allowed people to reside in RVs on the parcel for which he collected rent for at least one of the RVs. *Id.* at 6.

The Hearing Examiner stated the following in Conclusion 2:

Section 18.10.180 JCC sets forth the following definition:

“Recreational Vehicle Park” means a commercially developed tract of land in which two or more recreational vehicle sites are established as the principal use of the land.

In the present case DCD has established that two or three RVs are present on the appellant’s site, and the appellant collects rent from at least one of the RVs. Thus, since no single-family residential dwelling is located on the site, an RV

park is its principal use. The site is located within the RR1:5 zone classification of the JCC that requires a conditional use permit for a RV park. Appellant has not acquired such permit, and therefore its use of the site for a RV park is a civil code violation and constitutes a nuisance.

Att.2 at 7. The Hearing Examiner denied the appeal and ordered the appellant to come into compliance.
Att.2 at 8.

The Lomita Trust Letter points to the definition of RV park, as included in the above quote from the Hearing Examiner decision, and argues that because it states that the definition of “RV park” includes two or more sites, the definition of “campground and camping facilities” should be read to include two or more sites. The Administrator does not find that argument to be persuasive. “RV park” and “campground and camping facilities” are separate uses in the land use code, and have different requirements for siting. Nothing in the Hearing Examiner’s decision supports the argument that the two definitions should be read as identical uses. Because they are listed as separate uses in the Unified Development Code, the intent of the code is clearly to regulate them as different uses.

The Hearing Examiner decision is consistent with the Administrator’s interpretation of the definition of “campground and camping facilities.” The facts underlying this code interpretation are similar to those in the Hearing Examiner decision, wherein the principal use operated on the property is commercial rental of a camping site or sites in the RR1:5 zone. Both the “RV park” use and the “Campground and camping facility” use require a conditional use permit in the RR1:5. JCC 18.15.040 Table 3-1. In both cases, the owner has failed to obtain the conditional use permit and is in violation of the code. The civil code violations in both instances constitute a nuisance pursuant to JCC 19.10.015(36).

Finally, as stated above, the Lomita Trust Letter points to JCC 18.20.350(6), which relates to small-scale recreation and tourist activities and asserts that the code section equates the following land uses: recreational vehicle parks, travel trailer park, and commercial campground.

JCC 18.20.350 provides the standards for small-scale recreation and tourist uses, which “may be conducted in the land use districts specified in Tables 3-1 and 3A-1 in JCC 18.15.040 and as provided for in small-scale recreation and tourist (SRT) overlay districts under JCC 18.15.470 and 18.15.572.” JCC 18.20.350(1) lists separately “campground and camping facilities” in JCC 18.20.350(1)(d) and “recreational vehicle parks, travel trailer parks, and commercial campgrounds on parcels at least five acres in size” in JCC 18.20.350(1)(o). As stated above in the rules of statutory construction, JCC 18.20.350 must be read as a whole. The fact that JCC 18.20.350(6) provides similar limits on RV parks and campgrounds as small-scale recreational and tourist uses does not mean they are the same uses.

While JCC 18.20.350(6) provides similar limits on uses of RV parks and campgrounds as small-scale recreational and tourist uses JCC 18.15.040 “Categories of land use.” Table 3-1 of JCC 18.15.040 make clear that “Campground and camping facilities” and “Recreational vehicle parks” are separate land uses and that both uses must meet the standards of JCC 18.20.350, 18.20.140, and JCC 18.20.290. The separation of “Recreational vehicle park” and “Campground and camping facilities” as separate uses with different regulatory provisions in Table 3-1 of JCC 18.15.040 affirms separate construction of their respective definitions.

Conclusion: The Administrator finds the Appeal Decision of COM2018-00156 supports the Administrator’s interpretation in Section II, C.1; the Appeal Decision did not interpret the definition of “RV park” or “Campground and camping facilities” in a manner inconsistent with the Administrator’s interpretation. Moreover, JCC 18.20.350, which groups a number of uses under

the heading of “small-scale recreation and tourist uses,” must be read as a whole. “Campground and camping facilities” and “Recreational vehicle parks” are separate land uses with different regulatory requirements.

Analysis Summary, Applicability, and Appeal Statement

Based upon the statement of the issue, the Jefferson County Code, and other relevant information, the Administrator makes the following findings:

- A. The permitted OSS, under SEP2014-00058, shows a septic tank with an ADU and primary residence hookup (approval on August 7, 2014). However, the as-built site plan of record, dated December 1, 2014, shows only one septic hookup for an RV was installed and was extended within the 150-foot shoreline buffer and 10-foot development setback, with an unpermitted parking pad.
- B. COM2021-00074 included complaints for unpermitted development and use of the property for short-term RV and tent camping vacation rental activities. Booking availability at <www.eastmarrowstone.com> confirms ongoing commercial camping facility use of the site.
- C. Photographs submitted from the public for COM2021-00074 show RV and tent camping on both the east and west portions of the property.
- D. The west portion of the property is not supplied with septic or water hookups for RV site or campsite use.
- E. The unpermitted structure described in COM2021-00074 is a garage with living space above the garage, as noted in CAM2021-00188. No hookup to the septic system was approved for a residential structure as indicated by the as-built site plan of record under SEP2014-00058.
- F. JCC 18.10.005(1) informs the reading of all definitions within JCC 18.10. The purpose of this section to provide clarity to the code by specifying that the use of the plural or singular in any definition of JCC 18.10 shall include the singular and the plural.
- G. Under the proviso of JCC 18.10.005(1), the definition of “Campground and camping facilities” of JCC 18.10.030 includes both the singular and plural meanings of “sites”, “persons”, “tents”, and “other personal, portable overnight shelters”.
- H. The definition in RCW 19.105.300 (1) of “camping resort” is not controlling in the interpretation of the JCC 18.10.030 definition of “Campground and camping facilities” and the JCC 18.10.180 definition of “Recreational vehicle parks,” for the reasons indicated in this Code Interpretation.
- I. “Recreational vehicle parks” and “Campground and camping facilities” are separate uses per Table 3-1 of JCC 18.15.040 and thus separate construction is appropriate.
- J. The JCC 18.10.030 definition of “Campground and camping facilities” includes a single campsite available for rent by the public.

This interpretation applies to:

All properties within unincorporated Jefferson County, with particular findings for 2324 East Marrowstone Road, Nordland, WA, Jefferson County, Parcel No. 976200704.

Applicability:

In accordance with JCC 18.40.380, this Code Interpretation will remain in effect unless and until the Administrator issues a written rescission or the code is formally amended to supersede this interpretation. This Code Interpretation may be enforced in the same manner that any provision of the Unified Development Code is enforced.

How to Appeal:

Per JCC 18.40.390 and JCC 18.25.610(2), the Code Interpretation may be appealed 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 7th day of January, 2022.

A handwritten signature in blue ink, appearing to read "Brent Butler", is written over a horizontal line.

Brent Butler, Title 18 JCC Administrator