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No. 102586-6

SUPREME COURT OF
THE STATE OF WASHINGTON
COURT OF APPEALS NO. 84166-1

COURT OF APPEALS STATE OF WASHINGTON
DIVISION I

PUBLIC UTILITY DISTRICT NO. 1 OF SNOHOMISH
COUNTY, a Washington Municipal corporation; BARRY
CHRISMAN and KERRY CHRISMAN, individually and as
husband and wife,

Appellants.

v.

THE STATE OF WASHINGTON, SIERRA PACIFIC
INDUSTRIES DBA SIERRA PACIFIC INDUSTRIES, INC., a
California corporation, PRECISION FORESTRY, INC., a
Washington corporation, and ABC CORPORATIONS 1-10,

Respondents.

PETITION FOR REVIEW

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TABLE OF CONTENTS

	Page
I. IDENTITY OF PETITIONER.....	1
II. CITATION TO THE COURT OF APPEALS DECISION	1
III. ISSUES PRESENTED FOR REVIEW	1
IV. STATEMENT OF THE CASE.....	2
A. Superior Court proceedings.....	2
B. Court of Appeals proceedings.	4
V. ARGUMENT	5
A. Grounds for accepting review exist here.	5
B. Review is necessary under RAP 13.4(b)(2) because the Court of Appeals’ opinion conflicts with the jurisprudence of other Courts of Appeals.....	6
1. The Court of Appeals’ decision conflicts with the holding of <i>Ruiz</i>	6
2. The Court of Appeals’ opinion improperly limits immunity to entities who decided which trees could be harvested.....	8
3. The Court of Appeals’ decision improperly interprets the scope of “forestland owner.”	11
4. The Court of Appeals’ opinion improperly interpreted the statute reference to “these actions.”	14
5. The Court of Appeals’ opinion improperly allows Precision’s actions to be judged by rules not in effect at the time of harvesting.	18

C. Review is necessary under RAP 13.4(b)(4) because the issue of the Forestry Practices Act immunity based on RMZ designations is of substantial public interest. 20

D. Precision adopts the arguments in SPI’s and DNR’s motions for discretionary review. 23

VI. CONCLUSION 23

VII. APPENDIX 26

TABLE OF AUTHORITIES

Page(s)

Table of Cases

Cases

Alpental Cmty. Club, Inc. v. Seattle Gymnastics Soc., 154 Wn.2d 313, 111 P.3d 257, 262 (2005)..... 7

Hurley v Port Blakely Tree Farms L.P., 182 Wn. App. 753, 767, 332 P.3d 469 (2014) 20

Johnson Forestry Contracting, Inc. Wash. State Dept. of Natural Resources, 131 Wn. App. 13, 126 P.3d 45 (2005)... 5, 18, 21

Lynch v. State, 19 Wn.2d 802, 810, 145 P.2d 265, 269 (1944) 18

Mercer Enterprises, Inc. v. City of Bremerton, 93 Wn.2d 624, 631, 611 P.2d 1237, 1241 (1980) 18, 19

Pub. Util. Dist. No. 1 et. al. v. State, et. al., _Wn. App. 2d _, 534 P.3d 1210, 1217-18 (2023)..... 1, 8, 10, 12, 14, 18, 26

Ruiz v. State, 154 Wn. App. 454, 225 P.3d 458 (2010) 1, 5, 6, 12, 8, 9, 10, 12, 18, 19

Sorensen v. Western Hotels, Inc., 55 Wn.2d 625, 349 P.2d 232 (1960)..... 19

State v. Sullivan, 143 Wn.2d 162, 175, 19 P.3d 1012, 1019 (2001)..... 14

State v. Akin, 77 Wn. App. 575, 892 P.2d 774 (1995)..... 14

State v. Blake, 197 Wn.2d 170, 204, 481 P.3d 521, 539 (2021) 14

State v. J.P., 149 Wn.2d 444, 450, 69 P.3d 318, 320 (2003)... 16

Statutes

RCW 76.09.010 20
RCW 76.09.020(16) 9, 11, 13
RCW 76.09.020(23) 9
RCW 76.09.060 5
RCW 76.09.330 1, 3, 4, 5, 6, 8, 10, 11, 13, 15, 16, 17, 20, 21,
22, 23, 24

Rules

RAP 10.1(g) 23
RAP 13.4(b)(2) 1, 5, 6
RAP 13.4(b)(4) 2, 5, 20

I. IDENTITY OF PETITIONER

Petitioner Precision Forestry Inc., (Precision), a defendant in superior and a respondent at the Court of Appeals, asks this Court to accept review of the decision identified in Part II below.

II. CITATION TO THE COURT OF APPEALS DECISION

The published opinion by Division One of the Court of Appeals, in *Pub. Util. Dist. No. 1 et. al. v. State, et. al.*, _Wn. App. 2d __, 534 P.3d 1210, 1217-18 (2023), issued on September 5, 2023, reversing a decision of the Snohomish County Superior Court granting all three defendants' motions for summary judgment, is attached in Appendix A.

III. ISSUES PRESENTED FOR REVIEW

1. Whether the Supreme Court should accept review of the opinion of the Court of Appeals pursuant to RAP 13.4(b)(2), where its ruling conflicts with the holdings in *Ruiz v. State*, 154 Wn. App. 454, 225 P.3d 458 (2010), and eliminates statutory immunity provided in RCW 76.09.330 to

entities which are included in the definition of “forestland owner” to which immunity applies under a plain reading of the statute?

2. Whether the Supreme Court should accept review of the decision of the Court of Appeals pursuant to RAP 13.4(b)(4), where its ruling addresses a topic of substantial public interest pertaining to the operations of the forestry industry and all landowners who are required to follow Washington Department of Natural Resources’ (DNR) determination of the Riparian Management Zone (RMZ), and allows plaintiffs to retroactively revise the RMZ conditions contained in a DNR approved Forest Practice Application and timber sale contract upon which the foresters relied when harvesting timber.

IV. STATEMENT OF THE CASE

A. Superior Court proceedings.

This case presents an issue of first impression about the statutory construction of the scope of immunity provided in the

Forest Practices Act, particularly RCW 76.09.330. The Court of Appeals' fundamentally rewrote and diminished the scope of persons covered by immunity under RCW 76.09.330, contrary to its plain meaning, and subjects foresters to potential liability by allowing retroactive redefinition of a RMZ.

The Complaints in this matter, Snohomish County Superior Court Cause No. 21-2-01118-31, are the consolidation of two actions relating to the injuries sustained by Barry Chrisman, occurring on March 13, 2018, when a tree, which was in the DNR designated RMZ, fell on Mr. Chrisman's car during a windstorm. Mr. Chrisman sued for damages associated with his personal injuries, and Snohomish County PUD sued for damages relating to the self-insured payments it made to Mr. Chrisman for his injuries. (PUD-Chrisman). PUD-Chrisman asserted claims of negligence against Precision relating to its harvest of trees just outside the RMZ which had been designated by the DNR pursuant to an administrative procedure process under RCW 34.05.

Precision and its co-defendants, Sierra Pacific Industries, (SPI) the purchaser of timber owned by the DNR, and the DNR filed motions for summary judgment to dismiss all claims against them. The motions were heard jointly on May 13, 2022, and the superior court granted all motions for summary judgment, thus dismissing the plaintiffs' claims on the grounds that they were immune from suit under the immunity provided by RCW 76.09.330.

B. Court of Appeals proceedings.

PUD-Chrisman appealed the dismissal of their complaints. The opinion of the Court of Appeals, published on September 5, 2023, reversed the summary judgment and remanded for further proceedings.

Respondent, DNR filed a motion for reconsideration which was joined by Respondents Precision and SPI. The motion was denied in an order dated October 25, 2023.

V. ARGUMENT

A. Grounds for accepting review exist here.

The Supreme Court should accept review under RAP 13.4(b)(2), and (b)(4). The Court of Appeals' opinion conflicts with the published decision of *Ruiz*, 154 Wn. App. at 461, by erroneously limiting immunity under RCW 76.09.330 to entities who own the land on which an RMZ is designated and were involved in the determination of the RMZ area.

The interpretation of statutes and rules relating to the designation of a RMZ is of public interest to the forestry community given that foresters must rely on DNR's designations of protected areas to comply with the Forest Practice Act. RC 76.09. *Johnson Forestry Contracting, Inc. Wash. State Dept. of Natural Resources*, 131 Wn. App. 13, 126 P.3d 45 (2005)(forester fined for violating the forest practices application pursuant to RCW 76.09.060, .090, and .170). Here, the RMZ was approved in an administrative hearing, and governed by statutes setting forth the process of hearing and

appeals. Because of the potential penalties imposed by the Forest Practice Act, foresters need certainty that their actions will not be judged as violative of the RMZ based on a later redesignation of the RMZ by the DNR or plaintiffs.

B. Review is necessary under RAP 13.4(b)(2) because the Court of Appeals' opinion conflicts with the jurisprudence of other Courts of Appeals.

1. The Court of Appeals' decision conflicts with the holding of *Ruiz*.

The facts presented to the court in *Ruiz*, 154 Wn. App. at 456-57, are virtually identical to the facts in this matter. The Court of Appeals' opinion in this case conflicts with *Ruiz's* holding that RCW 76.09.330 provides immunity to forestland owners from personal injury claims arising from trees blown over when a new forest edge makes trees vulnerable to falling in the wind.

In *Ruiz*, the plaintiff argued that logging next to the road knowingly left exposed trees at the edge of a riparian zone and created a dangerous condition that caused his injury. *Id.* at 459.

PUD-Chrisman likewise claims that Precision knowingly left trees at the RMZ edge, having a high risk of blowing over, and should have left a buffer of trees next to the RMZ boarder. Appendix B, CP 441, CP 1447-1454; CP 1503-07. The *Ruiz* court rejected this legal theory as an exception to immunity provided by the statute. *Ruiz*, 154 Wn. App. at 459. For the reasons stated in *Ruiz*, PUD-Chrisman’s arguments should have been rejected by the appellate court.

This court has previously accepted review of an appellate court opinion involving the interpretation of immunity to nuisance claims involving the forest practices pursuant to RCW 7.48.305. *Alpental Cmty. Club, Inc. v. Seattle Gymnastics Soc.*, 154 Wn.2d 313, 111 P.3d 257, 262 (2005). In *Alpental*, this Court held that the Court of Appeals did not properly apply the term “forest practices” as defined in RCW 7.09.020(11) to the nuisance statute. *Id.* at 321. Similarly, review by this court is needed to clarify that ownership of the land on which an RMZ is designated, is not a

requirement for the broad immunity to all forestland owners in RCW 76.09.330; and that those foresters harvesting trees, which necessarily create a new forest edge at the RMZ, are provided immunity under the statute.

The Court of Appeals' overly narrow interpretation of who is a forestland owner entitled to immunity and its opinion allowing PUD-Chrisman to redefine the size of the RMZ under which Precision's work was performed, directly conflict with the wide scope of immunity provided by the plain wording of the statute and holdings in *Ruiz*.

2. The Court of Appeals' opinion improperly limits immunity to entities who decided which trees could be harvested.

The Court of Appeals held that Precision was not entitled to immunity because it played no role in the decision of which trees to leave and which trees to harvest. *Pub. Util. Dist.*, 534 P.3d at 1217-18. But this is not a requirement stated in the immunity statute, RCW 76.09.330.

In *Ruiz*, the forestland was owned by White River Forests, LLC, and managed by Hancock Forest Management Inc. (Hancock). The application for the permit to harvest was handled exclusively by Hancock, and not signed by White River Forests LLC. *Ruiz*, 154 Wn. App. at 456. The court recognized that landowners and “forestland operators” must submit applications for permits to harvest trees. *Id.* at 461. A forestland “operator” is separately defined in the statute from a “forestland owner.” RCW 76.09.020 (16) and (23). The court described Hancock as a forest operator, when discussing the its role in obtaining the permit and designating the RMZ. Yet, when deciding the scope of immunity, *Ruiz* referred to the term “forestland owner.” All that was required for immunity under *Ruiz*, is that the Hancock met the definition of “forestland owner.” *Id.* at 461-62. Had the actual landowner, White River Forests, LLC, been a party to the appeal, the court certainly would have found it entitled to immunity even though it was not involved in the decision of which trees should be left

standing. However, under the rationale in the Court of Appeals' opinion in this case, a different result would follow because opinion limits immunity to persons involved in the decision of which trees to leave and which trees to harvest. *Pub. Util. Dist.*, 534 P.3d at 1218. This artificial limitation would have resulted in the landowner having no immunity, which is an absurd result given the plain language of the statute.

Here, the Court of Appeals' opinion adds to the immunity statute by grafting on a requirement that a forestland owner has to be the entity which made the decision which trees would be left standing under timber harvest permit. *Pub. Util. Dist.*, 534 P.3 at 1218. This opinion conflicts with the holding that *Ruiz* that all entities within the definition of "forestland owner" are entitled to immunity. There is nothing in RCW 76.09.330 requiring "forestland owner" to have been the person who is deciding the designation of the RMZ in order for immunity to apply.

3. The Court of Appeals' decision improperly interprets the scope of "forestland owner."

The appellate court's opinion excludes Precision from the definition of "forestland owner," by ignoring the express terms of the applicable statutes, RCW 76.09.020(16) and RCW 76.09.330. The opinion looked to Precision's contract terms, which limited Precision to harvesting trees in areas outside the RMZ, as determinative of whether it was a "forestland owner" as defined in RCW 76.09.020(16). The statute definition of "forestland owner" does not exclude entities which harvest trees. The statute provides.

"Forestland owner" means **any person** in actual control of **forestland**, whether such control is based either on legal or equitable title, **or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land** in any manner. However, any lessee or other person in possession of forestland without legal or equitable title to such land shall be excluded from the definition of "forestland owner" unless such lessee or other person has the right to sell or otherwise dispose of any or all of the timber located on such forestland.

RCW 76.09.020(16) (emphasis added).

Precision met the definition of forestland owner based on its role in harvesting trees as agent of SPI and its right to harvest and dispose of forest products as described in testimony, and specific terms of the bill of sale and contract. App. B, CP 766-67, CP 777, CP 1145 (Section G001), CP 1177(¶ (i) and (v)).

The Court of Appeals held that because Precision, although within the definition of “forestland owner” generally, was not a “forestland owner” for the purpose of immunity because it did not own the land or have the right to harvest timber in the RMZ. *Pub. Util. Dist.*, 534 P.3d at 1217.

In its analysis of who is protected by immunity, the opinion states that *Ruiz* is distinguishable because Hancock was a property manager, and Precision is a forester which did not own the land area where the RMZ was designated. *Id.* This distinction based on ownership of land in the RMZ conflicts with *Ruiz*'s holding that Hancock, as manager of the forest, was entitled to immunity. *Ruiz*, 154 Wn. App. at 461. The statutory

immunity was not circumscribed by any requirement that Hancock controlled the timber growing in the RMZ. As the *Ruiz* court clearly recognized, Hancock did not have the right to dispose of the timber which was located in the RMZ. *Id.* at 457. Thus, the decision granting immunity to Hancock in *Ruiz* did not turn on the fact that Hancock controlled the trees in the RMZ, since it had no right to harvest them based on the DNR permit. Under the misguided interpretation of “forestland owner” that the Court of Appeals erroneously followed in this matter, Hancock would not be a forestland owner because it could not harvest trees in the RMZ.

The Court of Appeals’ opinion runs afoul of a basic statutory construction rule that the same word in a different sections of a statute should be given the same meaning in both sections. The immunity statute, RCW 76.09.330, uses the term “forestland owner” as defined by RCW 76.09.020(16). The immunity statute does not contain any language that alters the statutory definition of “forestland owner.” Legislative

definitions provided by the statute are controlling. *State v. Sullivan*, 143 Wn.2d 162, 175, 19 P.3d 1012, 1019 (2001). When the same language appears in different portions of the statute the court gives it the same meaning in both sections. *State v. Akin*, 77 Wn. App. 575, 892 P.2d 774 (1995). An interpretation of the statute that ignores the statutory interpretation rules or the legislature’s intent is erroneous. *State v. Blake*, 197 Wn.2d 170, 204, 481 P.3d 521, 539 (2021). It follows that the appellate court erred by excluding Precision from the definition of “forestland owner” when interpreting the immunity statute.

4. The Court of Appeals’ opinion improperly interpreted the statute reference to “these actions.”

The Court of Appeals’ opinion connects the term “these actions” to the legislative mandate to “leave trees” in riparian areas unharvested. *Pub. Util. Dist.*, 534 P.3d at 1218. Based on this rationale, the Court of Appeals concluded that because Precision did not participate in deciding which trees would be

in the RMZ, and therefore was not entitled to immunity under RCW 76.09.330. *Id.*, 534 P.3d at 1218. But limiting immunity to those who participated in the decision of which trees to leave standing leads to absurd results.

A landowner, timber owner or an operator can apply for a logging permit. Appendix B, CP 1229-36. The following scenario illustrates the error in the Court of Appeals' logic in this case. Forestland owner A owns the forestland immediately adjacent to a river. Forestland owner B owns the forestland adjacent to, and upland from, A's land and wants to harvest his timber. B applies for a permit under the Forest Practices Act and the riparian zone is set so that it encompasses A's land and part of B's land. B hires C to harvest the timber and leaves a new forest edge at the RMZ boundary, which RMZ includes only ten feet of B's property and all of A's property. Later a tree on A's land falls on plaintiff, and plaintiff sues A and B and C on the theory that C's harvesting created a new forest edge which caused the tree on A's land to fall.

Under the Court of Appeals' rationale, A would not be entitled to any immunity because he had not applied for the permit and had no right to determine the RMZ. A did not "leave" any trees standing because A never intended to log his parcel. C would not be entitled to immunity even though he was the agent of B who obtained the permit and was prohibited from harvesting trees in the RMZ. B would not be immune because he was not required to leave the offending tree standing, because he did not own the offending tree and never sought a permit to harvest on A's land. The Court of Appeals rationale would result in none of the three entities being immune under RCW 76.09.330 despite its stated intent to provide immunity for the injury sustained. This Court should reject interpretations of a statute which lead to absurd results because it will not be presumed that the legislature intended absurd results. *State v. J.P.*, 149 Wn.2d 444, 450, 69 P.3d 318, 320 (2003);

The narrow interpretation of the immunity statute given by the appellate court, limiting immunity to only those that applied for the permit, unnecessarily creates gaps in immunity contrary the legislature's express intent to immunize all forestland owners from claims arising from fallen trees that were in a designated RMZ. The Court of Appeals' opinion recognizes that Precision was required to leave all the trees standing which were in the designated RMZ. *Id.* at 1219. It later defines "required" to mean that the "forestland owner must leave a tree standing in order to comply with the relevant regulations." *Id.* at 1220. This is exactly what Precision had to do when it harvested the trees in the sale area. It follows that Precision should be included in the immunity provided by RCW 76.09.330 because is an entity whose actions resulted in leaving trees standing because of its duty not to harvest trees in the designate RMZ.

5. The Court of Appeals' opinion improperly allows Precision's actions to be judged by rules not in effect at the time of harvesting.

The decision of the Court of Appeals opens the question of whether the RMZ was correctly designated, *Pub. Util. Dist.*, 534 P.3d at 1221, thus allowing PUD-Chrisman to argue to the jury that Precision should have cut more or less trees. PUD-Chrisman's experts could not agree on whether the RMZ should have been narrower or wider. App. B, CP 391, CP 437-41. Precision had to abide by the RMZ in effect at the time of timber harvesting or be subject to penalties. *Ruiz*, 154 Wn. App. at 461; *Johnson Forestry*, 131 Wn. App. at 23-24. Imposing a different RMZ designation, which would then determine whether Precision was negligent or violated the permit in 2018, violates fundamental legal concept of fairness. *See Lynch v. State*, 19 Wn.2d 802, 810, 145 P.2d 265, 269 (1944)(the law in effect at the time of an occurrence applies and not the law in force at a subsequent time); *see Mercer Enterprises, Inc. v. City of Bremerton*, 93 Wn.2d 624, 631, 611

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P.2d 1237, 1241 (1980) (owner subject to zoning ordinances in force at the time of completed building permit application); See *Sorensen v. Western Hotels, Inc.*, 55 Wn.2d 625, 349 P.2d 232 (1960) (building code at time of construction applied and owner's alleged negligence was not to be judged based on later enacted codes).

By reversing the summary judgment in favor of Precision, the Court of Appeals' opinion exposes Precision, SPI and the State to a change of the rules under which the trees were harvested in 2018. Allowing the appellants to redefine the RMZ conflicts with the holding in *Ruiz*. *Ruiz* held that a post-harvest determination that RMZ size should be changed "does not repeal the prior requirements" that the defendants needed to meet. *Ruiz*, 154 Wn. App. at 461. The Court of Appeals' decision in this matter directly contradicts long held jurisprudence and *Ruiz*, by allowing the fact finder to change the rules which Precision was required to follow in 2018.

C. Review is necessary under RAP 13.4(b)(4) because the issue of the Forestry Practices Act immunity based on RMZ designations is of substantial public interest.

The Court of Appeals has recognized that logging is a commercially significant industry in Washington. *Hurley v. Port Blakely Tree Farms L.P.*, 182 Wn. App. 753, 767, 332 P.3d 469 (2014). Forestland resources are among the most valuable resources in the state and a viable forest products industry is of prime importance in the state's economy. RCW 76.09.010. Forest Practices Act, RCW 76.09, was enacted to preserve forest land on thousands of acres of forestlands owned the federal, state and private landowners. The Legislature found that leaving trees standing in riparian areas was beneficial to the ecology and wildlife. Knowing that leaving a buffer of trees to protect riparian areas would leave a new forest edge, the Legislature enacted RCW 76.09.330 to provide immunity when not all trees are harvested and protected the persons defined and "forestland owners" from

liability of a tree later fell and caused personal or property damage.

The statutory immunity provided should not be negated by claimants seeking to alter the rules under which the timber was harvested; rules which the forestland owners were legally required to follow as established by a thorough administrative process designating the riparian zones where trees must be left standing. *Johnson Forestry*, 131 Wn. App. at 17-23.

Redefining the RMZ could expose foresters to fines for removing timber when such removal had been approved when the permit was issued. Forestland owners will have no certainty that the immunity promised by RCW 76.09.330 will exist if the RMZ is redefined, undermining any interest in protecting riparian forestlands, and defeating a key element of the statutory scheme to encourage protection of riparian forests.

The new forest edge created by harvesting to the RMZ line will exist for decades until mature trees fill in the harvested

area. Thus, any risk from falling trees continues long after the harvesting concludes.

The Legislature recognized that forestland owners want all trees harvested to avoid potential liability for fallen trees. Providing immunity is the bargain price paid for leaving trees unharvested. Foresters could seek to avoid the risk of creating a new forest edge at the RMZ, by harvesting fewer trees to create a wind buffer for the trees at the edge of the RMZ, as suggested by plaintiffs' expert. Appendix B, CP 441. Doing so, loggers create a new forest edge, equally likely to have trees blown over under similar circumstances. However, there would be no protection from immunity under RCW 76.09.330, for any forestland owner if the trees in the new wind buffer area blew down and injured someone. This is because the trees in the new wind buffer area were not "required" by the DNR policies or RCW 76.09.330 to be left standing.

Foresters pay a set price to harvest trees in the area subject to permit, regardless of how many trees are harvested.

Appendix B, CP 1141-43. Forestland owners need certainty in how to operate under the Forest Practices Act, and harvesting fewer trees, with the commensurate loss in income to loggers, to create wind buffer that would not provide immunity under RCW 76.09.330, to any forestland owner is not rational. The current system, providing immunity to all “forestland owners” including loggers, provides the incentive to leave trees standing, while providing predictability to all forestland owners.

D. Precision adopts the arguments in SPI’s and DNR’s motions for discretionary review.

Pursuant to RAP 10.1(g), Precision adopts the legal arguments presented in the Petitions for Review filed in this Court by SPI and DNR relating to the substantial public interest raised by the issues in this matter.

VI. CONCLUSION

This issue of first impression profoundly affects an industry declared by the legislature to be of public interest. Immunity was provided to all forestland owners to encourage

the protection of riparian lands, when logging on them necessarily creates a new forest edge, with its resultant risk of blown down trees. Excluding foresters like Precision from immunity under RCW 76.09.330 conflicts with the purposes of the Forest Practices Act and the proper construction of RCW 76.09.330. Precision respectfully requests that the court accept review and reverse the opinion of the Court of Appeals.

Respectfully submitted this 27th day of November, 2023.

I certify that this memorandum contains
3873 words, in compliance with RAP
18.17.

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VII. APPENDIX

Appendix A	<i>Public Utility District No. 1 of Snohomish County v. State</i> , 534 P.3d 1210 (2023)
Appendix B	Clerk's Papers 389-391, 437-441, 441, 766-767, 777, 1141-1143, 1145-1147, 1176-1180, 1229-1236, 1447-1454, 1503-1507

CERTIFICATE OF SERVICE

The undersigned certifies under penalty of perjury under the laws of the State of Washington, that on November 27, 2023, I caused service of the foregoing pleading on each and every attorney of record herein via e-mail:

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DATED this 27th day of November, 2023.

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APPENDIX A

534 P.3d 1210

Court of Appeals of Washington, Division 1.

PUBLIC UTILITY DISTRICT NO. 1 OF
SNOHOMISH COUNTY, a Washington Municipal
corporation; Barry Chrisman and Kerry Chrisman,
individually and as husband and wife, Appellants,
v.

STATE of Washington, Sierra Pacific Industries
dba Sierra Pacific Industries, Inc., a California
corporation, Precision Forestry, Inc., a
Washington Corporation, John Doe Nos. 1-10,
and ABC Corporations 1-10, Respondents.

No. 84166-1-I (consolidated with No. 84167-0-I)

1
Filed September 5, 2023

Synopsis

Background: Public utility district, whose employee had been injured after tree fell and struck vehicle, brought action against State, purchaser of timber rights, and company that contracted to fell and process timber, seeking compensation for property damage and for payments it made through workers' compensation, and employee and spouse brought separate action, seeking recovery for personal injuries and loss of consortium. Following consolidation, the Superior Court, Snohomish County, [Janice E. Ellis, J., 2022 WL 18277349](#), granted summary judgment in favor of defendants, dismissed claims, and denied reconsideration. Public utility district, employee, and spouse appealed.

Holdings: The Court of Appeals, [Hazelrigg, A.C.J.](#), held that:

court would strictly construe statute that indicated that, notwithstanding any statutory provision, rule, or common law doctrine to contrary, landowners, Department of Natural Resources, and State could not be held liable for injury or damages resulting from trees forestland owners were required to leave standing in riparian and upland areas;

purchaser and company were not “forestland owners”;

State was entitled to immunity only for decision to leave tree in designated riparian management zone;

district, employee, and spouse were permitted to challenge designation of zone through lawsuit;

any immunity of State only attached if zone were properly drawn;

factual issue as to whether zone existed and, by extension, whether tree was outside zone precluded summary judgment; and

court would decline company's invitation to analyze additional arguments.

Reversed and remanded.

Procedural Posture(s): On Appeal; Motion for Summary Judgment; Motion for Reconsideration.

*1214 Appeal from Snohomish Superior Court, Docket No: 21-2-01118-1, Honorable [Janice E. Ellis](#), Judge

Attorneys and Law Firms

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PUBLISHED OPINION

[Hazelrigg, A.C.J.](#)

¶1 Barry Chrisman and his spouse, along with the Snohomish County Public Utility District No. 1, appeal from summary judgment dismissal of their respective claims against the State and other involved entities following a tragic tree-

fall accident which left Chrisman with devastating injuries. Because *1215 there is a genuine issue of material fact, and because the respondents are not entitled to statutory immunity as a matter of law, dismissal was improper. We reverse and remand for further proceedings consistent with this opinion.

FACTS

¶2 In 2017, the State of Washington, through the Department of Natural Resources (DNR), auctioned timber harvesting rights for an area named “Lugnut” in Snohomish County. Olney Creek runs through this area; the creek is classified as a Type S Stream requiring a riparian management zone (RMZ) under [WAC 222-30-021](#). An RMZ is an area near a stream, set aside by the DNR, where timber harvesting is limited or excluded so the trees may fall naturally for the benefit of the wetland environment. [WAC 222-30-010](#). The DNR sectioned Lugnut into three units; Sierra Pacific Industries (SPI) purchased the timber rights to Unit 2. The RMZ surrounding Olney Creek, as designated by the DNR, is located outside of the sale area.

¶3 SPI contracted with Precision Forestry (Precision) to fell and process the timber in Unit 2, pursuant to the constraints set out in the timber sale agreement between the State and SPI. Precision began harvesting activities in mid-February 2018 and completed all cutting “up to the timber sale boundary tags” in the beginning of March 2018. On March 13, 2018, around 8:30 a.m., Barry Chrisman, an employee of the Snohomish County Public Utility District No. 1 (PUD), was driving a PUD vehicle on Sultan Basin Road in this area. The wind speeds were “extremely high” at the time and had been throughout the morning. An uprooted tree fell, striking the PUD car, and caused catastrophic injuries to Chrisman. The PUD filed a complaint against the State, SPI, and Precision (collectively, the respondents), seeking compensation for property damage and for payments it made for Chrisman's injuries through workers' compensation. Chrisman and his spouse also sued the respondents, seeking recovery for personal injuries and loss of consortium. The Snohomish County Superior Court consolidated the two cases.

¶4 The respondents all separately moved for summary judgment dismissal, arguing they were each immune from all claims under the Forest Practices Act of 1974 (FPA).¹ Precision additionally argued dismissal of all claims against it was warranted because there was no issue of material fact as to the elements of negligence or gross negligence,

strict liability was inapplicable, and the nuisance claims of both appellants were duplicative of their claims for negligence. The parties offered a number of declarations in support of their respective positions on summary judgment. The State submitted a declaration from John Moon, a forester with the DNR who assisted in planning the Lugnut sale. The PUD responded with a declaration from Galen Wright, an expert in forestry and vegetation management, including riparian vegetation. Chrisman filed a declaration from Michael Jackson, a forester and expert on forestry practices. The court granted the respondents' motions for summary judgment and dismissed all of the claims based on statutory immunity. Chrisman and the PUD (collectively, the appellants) moved for reconsideration, which the court denied. Chrisman and the PUD timely appealed.

ANALYSIS

¶5 This court reviews a trial court's decision on summary judgment de novo, engaging in the same inquiry as the trial court. [Davies v. MultiCare Health Sys.](#), 199 Wash.2d 608, 616, 510 P.3d 346 (2022). Viewing the evidence in the light most favorable to the nonmoving party, summary judgment is proper “when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” [Dobson v. Archibald](#), 1 Wash.3d 102, 107, 523 P.3d 1190 (2023). The moving party bears the initial burden to show there is no issue of material fact; if it successfully does so, the burden shifts to the nonmoving party to demonstrate a material question of fact. [Atherton Condo. Apt.-Owners Ass'n Bd. of Dirs. v. Blume Dev. Co.](#), 115 Wash.2d 506, 516, 799 P.2d 250 (1990). A genuine issue of material fact exists *1216 when reasonable minds could reach different conclusions regarding evidence upon which the outcome of the litigation depends. [Haley v. Amazon.com Servs., LLC](#), 25 Wash. App. 2d 207, 217, 522 P.3d 80 (2022). “On summary judgment, the trial court may not weigh the evidence, assess credibility, consider the likelihood that the evidence will prove true, or otherwise resolve issues of material fact.” [Id.](#)

¶6 This court interprets the meaning of a statute de novo. [Dep't of Ecology v. Campbell & Gwinn, LLC](#), 146 Wash.2d 1, 9, 43 P.3d 4 (2002). Our aim is to carry out the intention of the legislature, and “if the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent.” [Id.](#) at 9-10, 43 P.3d 4. We first look to the text of the statute and context of the provision. [Dobson](#), 1 Wash.3d at 107, 523 P.3d 1190. Where a term is

undefined by statute, we may rely on a dictionary definition to discern the plain meaning of the term. Nissen v. Pierce County, 183 Wash.2d 863, 881, 357 P.3d 45 (2015). If there is more than one reasonable interpretation, we turn to the canons of statutory construction, legislative history, and other case law to determine the legislative intent. Cockle v. Dep't of Lab. & Indus., 142 Wash.2d 801, 808, 16 P.3d 583 (2001).

¶7 “Statutes in derogation of the common law are construed strictly to apply only to those who fall within the terms of the statute.” In re Gen. Receivership of EM Prop. Holdings, LLC, 199 Wash.2d 725, 734, 511 P.3d 1258 (2022).² “Strict construction is simply a requirement that, where two interpretations are equally consistent with legislative intent, the court opts for the narrower interpretation of the statute.” Est. of Bunch v. McGraw Residential Ctr., 174 Wash.2d 425, 432-33, 275 P.3d 1119 (2012).

I. Immunity Under Forest Practices Act

¶8 The appellants contend the trial court erred by applying an overbroad interpretation of RCW 76.09.330 in holding that the immunity afforded by the FPA applies to any injuries caused by trees that are left, regardless of the allegedly wrongful act that constitutes a breach. RCW 76.09.330 provides:

The legislature hereby finds and declares that riparian ecosystems on forestlands in addition to containing valuable timber resources, provide benefits for wildlife, fish, and water quality. The legislature further finds and declares that leaving riparian areas unharvested and leaving snags and green trees for large woody debris recruitment for streams and rivers provides public benefits including but not limited to benefits for threatened and endangered salmonids, other fish, amphibians, wildlife, and water quality enhancement. The legislature further finds and declares that leaving upland areas unharvested for wildlife and leaving snags and green trees for future snag recruitment provides benefits for wildlife. Forestland owners may be required to leave

trees standing in riparian and upland areas to benefit public resources. It is recognized that these trees may blow down or fall into streams and that organic debris may be allowed to remain in streams. This is beneficial to riparian dependent and other wildlife species. Further, it is recognized that trees may blow down, fall onto, or otherwise cause damage or injury to public improvements, private property, and persons. Notwithstanding any statutory provision, rule, or common law doctrine to the contrary, the landowner, the department, and the state of Washington shall not be held liable for any injury or damages resulting from these actions, including but not limited to wildfire, erosion, flooding, personal injury, property damage, damage to public improvements, and other injury or damages *1217 of any kind or character resulting from the trees being left.

A. Forestland Owner

¶9 Under the plain language of the statute, only the State of Washington, the DNR, and the relevant landowner are entitled to immunity under the FPA. The statute articulates in part that “[f]orestland owners may be required to leave trees standing in riparian and upland areas” and that “the landowner ... shall not be held liable for any injury or damages resulting from these actions.” RCW 76.09.330. While the statute operates to immunize landowners who leave riparian trees, as required, for the benefit of the ecological system, that immunity is limited to the State, the DNR, and the forestland owner. Id. “Forestland owner” is defined by statute as “any person in actual control of forestland, whether such control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner.” RCW 76.09.020(16). Precision concedes it did not have the right to harvest in the RMZ, but argues it had the right to dispose of the timber and slash from Unit 2, giving it partial control and fulfilling the statutory definition of forestland owner. SPI asserts that it had

the right to sell or dispose of the timber in Unit 2 under the terms of the Bill of Sale with the State and, as such, was a forestland owner entitled to statutory immunity.

¶10 Under the Bill of Sale, SPI (and Precision, by extension through the Logging Agreement) had the “right to harvest and remove forest products from the timber sale area.” The Bill of Sale defined the “Contract Area” as:

All timber bounded by white timber sale boundary tags, adjacent young stands, the Sultan Basin Road and the SP-ML and SP-02 roads except cedar salvage (cedar snags, preexisting dead and down cedar trees and cedar logs), trees marked with blue paint on the bole and root collar, and forest products tagged out by yellow leave tree area tags in Unit #2.

The Timber Sale Map reveals sale boundary tags along the RMZ near Sultan Basin Road and establishes that the RMZ is not part of the sale area. In its brief, SPI admits that “[t]he only trees adjacent to Sultan Basin Road on March 13, 2018, near the accident to the south, were standing trees within the RMZ and outside the timber sale area.” (Emphasis added.) The express terms of the Timber Sale Agreement exclude SPI and Precision from the RMZ. Consequently, they have no control over that zone and, thus, are not covered by the FPA. Based on the contractual language, SPI and Precision had no right to harvest or remove forest products from the RMZ and, therefore, are not forestland owners of that area under the statutory definition. Accordingly, they are not entitled to statutory immunity under the FPA, as to these claims, based on the plain language of the contract and the statute.

¶11 Precision alternatively contends immunity applies regardless of whether it had the right to harvest trees in the RMZ under Ruiz v. State, 154 Wash. App. 454, 225 P.3d 458 (2010). However, the appellant in Ruiz argued that the respondent was not a landowner within the meaning of the FPA because it was merely a management company for the landowner, not because it did not have possession or control of the area where the tree was left. Br. of Appellant at 28, Ruiz v. State, 154 Wash. App. 454, 225 P.3d 458 (2010), No. 63783-6-I.³ This is distinct from the appellants’ argument here, where they contend Precision and SPI are not forestland

owners because they have no control or possession of the RMZ. As such, Ruiz is distinguishable and does not control; we instead look to the plain language of the statute.

¶12 Precision and SPI are not forestland owners required to leave trees standing in riparian areas—they were not involved in the decision regarding which trees to leave and which to harvest, and they had no control or possession outside of the timber sale area under the terms of the contract, independent of the DNR’s reasoning for excluding the trees from the timber sale. Because Precision and SPI do not meet the statutory definition of “forestland owner,” neither is entitled to ***1218** statutory immunity as a matter of law. The trial court erred in dismissing the appellants’ claims against those respondents under the Forest Practices Act.

B. Immunized Acts

¶13 In the original 1987 amendment, RCW 76.09.330 immunized landowners from “damages resulting from the leave trees falling from natural causes in riparian areas.” LAWS OF 1987, ch. 97, § 7. In 1992, the legislature removed this language and amended the statute to read, “It is recognized that these trees may blow down or fall into streams ... The landowner shall not be held liable for any injury or damages resulting from these actions, including but not limited to wildfire, erosion, flooding, and other damages resulting from the trees being left.” LAWS OF 1992, ch. 52, § 5. (emphasis added to amended portion). In 1999, the legislature again amended the statute, adding: “it is recognized that trees may blow down, fall onto, or otherwise cause damage or injury to public improvements, private property, and persons. Notwithstanding any statutory provision, rule, or common law doctrine to the contrary,” the applicable parties are immune from liability for injury or damages. LAWS OF 1999, 1st Spec. Sess., ch. 4, § 602. The 1999 amendments also added to the injuries listed, providing immunity for “personal injury, property damage, damage to public improvement, and other injury or damages of any kind of character” and expressly added the DNR and State to the list of parties or entities not liable for damages arising from these actions. Id.

¶14 These amendments reflect the clear aim of the legislature to protect entities who are required to leave riparian trees standing to protect valuable ecological systems, despite the risk of damage. While these legislative amendments expanded the provision of immunity, the legislature expanded only the acknowledged harms and protected parties, not the protected acts. In each iteration of the statute, only the act

of leaving a tree, and the damage resulting therefrom, is shielded. The plain language of the statute is unambiguous and protects only “these actions:” leaving a riparian tree as required.

¶15 Under this plain language, SPI and Precision are not entitled to immunity as a matter of law. As Precision admits, neither it nor SPI had any authority to determine the RMZ or decide what trees would be cut and what trees would be left standing, regardless of the DNR’s reasoning for such designation. Indeed, the area was already marked and the parameters of the RMZ set at the time the Bill of Sale was signed. Because these entities did not make the decision to leave the injury-causing tree standing, there is no act by them subject to immunity under the statute. SPI and Precision are not shielded from liability under [RCW 76.09.330](#) as a matter of law because they are not forestland owners and because they had no part in deciding what trees would be left.

¶16 In contrast, the State (through the DNR) designated the RMZ, decided what trees would be harvested, and determined what trees would be left. Again, under the plain language of [RCW 76.09.330](#), only this act of leaving a tree is immunized. While the State decided the injury-causing tree was required to be left, the State also elected to permit a successful bidder to strip Unit 2 up to the boundary of the RMZ despite the known risk of forest-edge effects. The choice to permit SPI and Precision to log all trees in Unit 2, and to designate an RMZ without a wind buffer,⁴ rendered the RMZ trees vulnerable to forest-edge effects. These acts are distinct from the decision to leave the RMZ trees standing, and, under the plain language of the statute, are not *1219 immunized. For these reasons, the State is not entitled to immunity under [RCW 76.09.330](#) as a matter of law on these claims.

C. Designation of RMZ

¶17 The appellants also argue there is an issue of material fact as to whether the respondents were required to leave the injury-causing tree. They contend immunity under [RCW 76.09.330](#) only applies if the forestland owner is required to leave the injury-causing tree standing. The appellants concede the tree that fell on Chrisman was within the State-designated RMZ, but they assert that the RMZ was erroneously measured and therefore the respondents were not legally required to leave the tree. As discussed previously, Precision and SPI were required to leave all trees designated by the State as outside of the Timber Sale Area and had no authority to determine the RMZ. See Section I.A, supra.

¶18 The State responds in its brief that the propriety of RMZ designations may only be challenged through the administrative process under the Administrative Procedure Act (APA)⁵ and that the RMZ was accurately designated, or alternatively, that immunity applies to the DNR’s allotment of the RMZ regardless of whether the classification is accurate.

i. Application of Administrative Procedure Act

¶19 The respondents contend the appellants can only challenge the RMZ specification through the administrative process under the APA, not through the present civil suit. The appellants respond that this court may choose to not reach this argument under the Rules of Appellate Procedure, or alternatively, that the APA explicitly makes an exception for personal injury claims from the limitations on judicial review.

¶20 Under [RAP 9.12](#), we “will only consider evidence and issues called to the attention of the trial court.” Here, the trial court explained in a supplemental letter decision that, in making its summary judgment ruling, it did not rely upon the APA argument advanced by the respondents in their reply. In the court’s order granting summary judgment, it noted it had considered the reply memoranda by Precision in support of the respondents’ motions for summary judgment without any limitations identified. However, this court may affirm a summary judgment dismissal on any ground supported by the record. [Port of Anacortes v. Frontier Indus., Inc.](#), 9 Wash. App. 2d 885, 892, 447 P.3d 215 (2019); see also [Wolf v. State](#), 24 Wash. App. 2d 290, 303, n.7, 519 P.3d 608 (2022) (reaching merits of an issue raised in a reply supporting a motion for summary judgment).

¶21 The APA is the “exclusive means of judicial review of agency action” subject to three exceptions. [RCW 34.05.510](#). The first exception is where “the sole issue is a claim for money damages or compensation and the agency whose action is at issue does not have statutory authority to determine the claim.” [RCW 34.05.510\(1\)](#). None of the respondents addressed this statutory exception before the trial court or this court. The appellants brought a claim for money damages; the parties cite no legal precedent providing the DNR authority to determine this claim.⁶ As the appellants note, a holding that the parties had to challenge the RMZ through the administrative process, two years before Chrisman was injured, would create absurd results.

¶22 Under [RCW 34.05.510\(1\)](#), the appellants may challenge the designation of the RMZ through this suit, rather than through an administrative proceeding. We determine that judicial review of the propriety of the RMZ designation, based on the claims presented, is proper.

ii. Immunity for Incorrectly-Drawn RMZ

¶23 The State argues immunity attaches for any damages caused by an RMZ-designated *1220 tree regardless of whether the DNR has measured the zone correctly. It cites no authority for this contention, nor does it engage in an analysis of the plain language of the statute.

¶24 [RCW 76.09.330](#) states in relevant part:

Forestland owners may be required to leave trees standing in riparian and upland areas to benefit public resources ... the state of Washington shall not be held liable for any injury or damages resulting from these actions, including but not limited to ... injury or damages of any kind or character resulting from the trees being left.

“Required” is not defined by the statute. Where a term is not defined by the legislature, this court may look to the context of the statute and dictionary definitions to determine the plain meaning of the word. [Samish Indian Nation v. Dep't of Licensing](#), 14 Wash. App. 2d 437, 442, 471 P.3d 261 (2020). The dictionary definition of “require” includes “to demand as necessary or essential (as on general principles or in order to comply with or satisfy some regulation).” WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1929 (2002).

¶25 Under the plain language of [RCW 76.09.330](#), immunity attaches only where a forestland owner must leave a tree standing in order to comply with the relevant regulations. This interpretation is consistent with the general rule that this court strictly construes immunity in derogation of the common law. See [Michaels](#), 171 Wash.2d at 600, 257 P.3d 532 (“Statutory grants of immunity in derogation of the common law are strictly construed.”). Under the plain language of the statute, immunity only attaches if the RMZ is properly drawn.

iii. Genuine Issue of Material Fact as to Designation of RMZ

¶26 The appellants aver there is a question of material fact as to whether the tree was properly located in an RMZ. They argue Olney Creek is classified as a Class III stream that requires a 140-foot RMZ under [WAC 222-16-010](#), while the RMZ designated by the DNR is 162 feet. Alternatively, the appellants argue that there is an issue of material fact as to whether a Channel Migration Zone (CMZ)⁷ exists in the area, modifying the correct size of the RMZ. The State responds that 162 feet is the required width under the Habitat Conservation Plan (HCP) and aligns with the Incidental Take Permit. DNR expert Moon declared that the RMZ width of 162 feet “was determined based on HCP rules” and reflected the “required width under the HCP standard.” While the appellants repeatedly rely on the standard for RMZ width in [WAC 222-16-010](#), they did not address the width required under the HCP in the litigation at the trial court or in briefing on appeal. PUD expert Wright opined that only the first 140 feet of the RMZ was required under the FPA, but did not address the HCP requirements. Both appellants fail to address the expert opinion that the RMZ was measured not only under the FPA and [WAC 222-16-010](#), but also under the HCP standard. The State established through Moon's uncontroverted expert testimony that the RMZ was the width required by the HCP.

¶27 The appellants alternatively argue there is a question of material fact as to whether a CMZ exists in the area, based on the opinions of their respective experts. PUD expert Wright opined that the tree that struck Chrisman was located 227 feet from the ordinary high-water mark of Olney Creek; outside of the 162-foot RMZ. He declared that there is “a topological break at Olney Creek,” preventing a CMZ. Chrisman's expert Jackson adduced that there is no CMZ based on “the physical features at the site.” He noted that on the top of the Olney Creek bank, there is a tree cut in the late 1800s, indicating that the bank has been in place since at least that time. However, DNR expert Moon's opinion was that there is a CMZ present and that the CMZ was delineated *1221 based on the Forest Practices Board Manual. But, he did not describe what that process is or what guidance the manual provides. An expert's opinion “ ‘cannot simply be a conclusion or based on an assumption if it is to survive summary judgment.’ ” [Strauss v. Premera Blue Cross](#), 194 Wash.2d 296, 301, 449 P.3d 640

(2019) (quoting [Volk v. DeMeerleer](#), 187 Wash.2d 241, 277, 386 P.3d 254 (2016)).

¶28 Viewing all facts in the light most favorable to the appellants, as we must, there is a genuine issue of material fact as to whether a CMZ exists in Olney Creek and, by extension, whether the tree that struck Chrisman was outside of the 162-foot RMZ. Even if the 162-foot RMZ is proper under the HCP, the appellants have raised an issue of material fact as to whether the tree is outside that zone based on the existence (or nonexistence) of a CMZ. We have decided DNR expert Moon's declaration reflects a mere conclusion, thus, without more, it is insufficient to demonstrate there is no genuine issue of material fact on this question. As such, summary judgment was improper as to the State.

II. Conclusion

¶29 Based on the plain language of the FPA and our summary judgment standard, dismissal of the appellants' claims was improper. SPI and Precision are not entitled to statutory immunity under the FPA as a matter of law because they do not meet the statutory definition of "forestland owner," nor were they involved in the only act protected by the statute. The State is not entitled to statutory immunity because its act of stripping the wind-barrier is not protected by the FPA. Further, there is a genuine issue of material fact as to whether the RMZ was correctly designated and, by extension, whether FPA immunity applies to the State on that alternate basis. For these reasons, summary judgment dismissal of the negligence

claims under the FPA for all respondents was improper and we reverse.⁸

¶30 We decline to reach the other bases for summary judgment raised by Precision. Precision moved for dismissal of Chrisman and PUD's claims on alternative grounds, arguing the appellants' negligence claims should be dismissed because it did not owe any duty to Chrisman, that the appellants' nuisance claims were duplicative of its negligence claims, that there was no genuine issue of material fact as to the slight care element of gross negligence, and that Chrisman's claim for strict liability was inapplicable to Precision. The trial court did not reach the merits of these claims as it determined they were mooted by its ruling on statutory immunity. We likewise decline Precision's invitation to analyze the merits of these issues.

¶31 We reverse the summary judgment dismissal and remand for further proceedings consistent with this opinion.

WE CONCUR:

[Smith, C.J.](#)

[Coburn, J.](#)

All Citations

534 P.3d 1210

Footnotes

1 LAWS OF 1974, 3rd Ex. Sess., c 137, § 1.

2 SPI argues that [RCW 76.09.330](#) is not in derogation of the common law and, even if it is, the court is not required to construe the statute narrowly because the meaning is plain on its face. The relevant statute provides for immunity "[n]otwithstanding any statutory provision, rule, or common law doctrine to the contrary." [RCW 76.09.330](#).

"Statutory grants of immunity in derogation of the common law are strictly construed." [Michaels v. CH2M Hill, Inc.](#), 171 Wash.2d 587, 600, 257 P.3d 532 (2011). Accordingly, the statute is construed strictly to the extent the language is not plain on its face.

3 <https://www.courts.wa.gov/content/Briefs/A01/637835%20appellants.pdf>.

4 Despite Precision's statement to the contrary at oral argument before this court, the record reflects that no wind buffer was included in the RMZ at issue here, though RMZs do generally include a wind buffer. Wash. Ct.

of Appeals oral argument, [Pub. Util. Dist. No. 1 of Snohomish County v. State](#), No. 84166-1-I (July 18, 2023), at 16 min., 00 sec., [video recording by TVW](#), Washington State's Public Affairs Network, <https://twv.org/video/division-1-court-of-appeals-2023071123>.

Counsel for the PUD countered this assertion in rebuttal argument by quoting from the Forest Practices Application/Notification Addendum for the Luginut Sale prepared by the DNR that clearly states, “ ‘no wind buffers were applied’ to Olney Creek’s 162-foot RMZ.” Wash. Ct. of Appeals oral argument, [supra](#), at 21 min., 25 sec.

5 Ch. 34.05 RCW.

6 “Where no authorities are cited in support of a proposition, we are not required to search out authorities, but may assume that counsel, after diligent search, has found none.” [Helmbreck v. McPhee](#), 15 Wash. App. 2d 41, 57, 476 P.3d 589 (2020).

7 A Channel Migration Zone is “the area where the active channel of a stream is prone to move and this results in a potential near-term loss of riparian function and associated habitat adjacent to the stream.” [WAC 222-16-010](#). Near-term is “the time scale required to grow a mature forest.” [Id.](#)

8 Because the trial court erred in granting summary judgment, its denial of the motion for reconsideration was an error of law and therefore an abuse of discretion. See [Council House, Inc. v. Hawk](#), 136 Wash. App. 153, 159, 147 P.3d 1305 (2006).

APPENDIX B

FILED

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HEIDI PERCY
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21-2-01118-31
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Declaration Affidavit
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR SNOHOMISH COUNTY

PUBLIC UTILITY DISTRICT NO. 1 OF
SNOHOMISH COUNTY, a Washington
Municipal corporation; BARRY CHRISMAN and
KERRY CHRISMAN, individually and as
husband and wife,

Plaintiffs,

v.

THE STATE OF WASHINGTON,
SIERRA PACIFIC INDUSTRIES DBA SIERRA
PACIFIC INDUSTRIES, INC., a California
corporation, PRECISION FORESTRY, INC., a
Washington corporation, and ABC
CORPORATIONS 1-10,

Defendants.

NO. 21-2-01118-31

DECLARATION OF MICHAEL D.
JACKSON, CF, ACF

I, Michael D. Jackson, am over the age of 18 and am competent to testify to the matters set forth
herein based upon my personal knowledge:

1. I completed a Bachelor of Science Degree in Forest Management from Oregon State
University in 1964. I work as a Certified Forester at Professional Forestry, Inc. in Tumwater,
Washington. I have been a member of the Society of American Foresters since 1964, and a member of

DECLARATION OF MICHAEL D. JACKSON - 1 -

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ORIGINAL

1 the Association of Consulting Foresters of American, Inc. since 1974. My qualifications are more fully
2 described in my curriculum vitae, which is attached as Exhibit A.

3 2. I have testified as a Certified Forester in numerous trials, including federal and state
4 cases.

5 3. I was retained to assess the forestry practices which led to the incident of March 13, 2018,
6 wherein Barry Chrisman was seriously injured by a tree while he was driving on the Sultan Basin Road
7 near Sultan, Washington.

8 4. The conclusions in my analysis are reported on a more-probable-than-not basis, to a
9 reasonable degree of professional certainty.

10 5. My conclusions contained herein are based on my education, training, skills, experience,
11 and my review of the following, which are the types of documents customarily and reasonably relied
12 upon by experts in my field. These documents and items include:
13

- 14 a) Videos taken by John Spilman on the day of the incident (March 13, 2018);
15 b) Declaration of Blair Stadin;
16 c) Declaration of Sydney J. Martinez;
17 d) Declaration of Bill Turner;
18 e) Declaration of Greg Erwin;
19 f) Declaration of John Moon;
20 g) Discovery excerpts produced by the defendants in this case; and
21 h) Documents produced by the Washington State Department of Natural Resources in response
22 to a public records request regarding this incident and the Lugnut timber sale.
23

24 6. My conclusions and opinions herein are also based upon my site visit to the incident
25 scene at the Sultan Basin Road on April 28, 2022. On this date, I conducted measurements of various
26

DECLARATION OF MICHAEL D. JACKSON - 2 -

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1 locations relative to the tree that fell onto Mr. Chrisman's vehicle and its relationship to the location of
2 Olney Creek, and other physical features at the scene.

3 7. Based upon my review of the materials and my site visit, it is my professional opinion
4 that the tree that fell onto Barry Chrisman's Snohomish County PUD vehicle was located outside of the
5 Riparian Management Zone mandated by the applicable rules and regulations imposed by the State of
6 Washington, including but not limited to RCW Title 76.09 and WAC 222-16-010.

7
8 8. According to the Department of Natural Resources' own documents, Olney Creek is
9 classified as an S Stream requiring a Site Class III buffer width. According to the applicable rules and
10 regulations imposed by the State of Washington, Site Class III in Western Washington require a Riparian
11 Management Zone of 140 feet. According to the Department of Natural Resources own documents, the
12 tree that fell on Mr. Chrisman's vehicle was located, at a minimum, 22 feet outside the 140-foot Riparian
13 Management Zone. This document is attached hereto as Exhibit B.

14
15 9. In my opinion, and based in part on measurements I took during my site visit, the tree
16 that fell onto Mr. Chrisman's vehicle was located more than 80 feet outside of the Site Class III riparian
17 zone. This tree should have been cut and removed from the area because it was located outside the
18 Riparian Management Zone and posed a substantial risk of falling onto the Sultan Basin Road.

19 10. In my opinion, there is no indication of a Channel Migration Zone between the location
20 of the tree that fell onto Mr. Chrisman's PUD vehicle and Olney Creek. To the extent any map or other
21 document indicating a Channel Migration Zone between the tree that fell onto Mr. Chrisman's PUD
22 vehicle and Olney Creek, it would be erroneous and contrary to the physical features at the site. Attached
23 as Exhibit C is a photograph taken on April 28, 2022 of the land between Sultan Basin Road and Olney
24 Creek, directly across the road from the tree that struck Mr. Chrisman. This photograph illustrates there
25
26

DECLARATION OF MICHAEL D. JACKSON - 3 -

DEARIE LAW GROUP, P.S.
2025 First Avenue, Suite 1140
Seattle, Washington 98121
Tel (206) 239-9920/Fax (206) 239-9921

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THE HONORABLE JANICE E. ELLIS
Noted for Hearing: May 13, 2022 at 9:30 A.M.
With Oral Argument

ELECTRONICALLY FILED
5/2/2022 3:28 PM
Heidi Percy
County Clerk
Snohomish County, WASH
Case Number: 21-2-01118-31

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR SNOHOMISH COUNTY

PUBLIC UTILITY DISTRICT NO. 1 OF
SNOHOMISH COUNTY, a Washington
municipal corporation,

Plaintiff,

v.

STATE OF WASHINGTON, SIERRA
PACIFIC INDUSTRIES DBA SIERRA
PACIFIC INDUSTRIES, INC., a California
corporation, PRECISION FORESTRY, INC.,
a Washington corporation, and JOHN DOE
NOS. 1-10,

Defendants.

Case No. 21-2-01118-31
(Consolidated Under This Matter)

**DECLARATION OF GALEN M.
WRIGHT IN SUPPORT OF THE
PUBLIC UTILITY DISTRICT NO. 1
OF SNOHOMISH COUNTY'S
OMNIBUS OPPOSITION TO
DEFENDANTS' MOTIONS FOR
SUMMARY JUDGMENT**

BARRY CHRISMAN and KERRY
CHRISMAN, individually and as husband and
wife,

Plaintiffs,

v.

THE STATE OF WASHINGTON, SIERRA
PACIFIC INDUSTRIES DBA SIERRA
PACIFIC INDUSTRIES, INC., a California
corporation, PRECISION FORESTRY, INC.,
a Washington corporation, and ABC
CORPORATIONS 1-10,

Defendants.

Case No. 21-2-01145-31

DECLARATION OF GALEN M. WRIGHT
CASE NO. 21-2-01118-31

GOLDFARB & HUCK
ROTH RIOJAS, PLLC
925 Fourth Avenue, Suite 3950
Seattle, WA 98104
Phone: (206) 452-0260

1 I, Galen M. Wright, do hereby state and declare as follows:

2 I am over 18 years of age and competent to testify to matters contained herein, of which
3 I have personal and professional knowledge. I have worked in the forest products industry,
4 forestry extension and research, and utility forestry and consulting for over 40 years. I currently
5 own, operate, and manage Washington Forestry Consultants, Inc., which has been in business as
6 a full-time forestry and vegetation management consulting firm since 1994. I received my BSF
7 degree in Forest Management in 1976 and my MSF in Silviculture and Forest Soils from the
8 University of Missouri in 1979. I am a Certified Forester, Board Certified Master Arborist, Tree
9 Risk Assessor Qualified, and Tree and Plant Appraisal Qualified. I have been Certified by the
10 Washington Dept. of Natural Resources to serve as a specialist in: Mass Wasting, Riparian
11 Vegetation, Hydrology, and Soil Erosion assessments.

- 12 1. I have reviewed the following documents in this case:
- 13 ▪ Declaration of John Moon in Support of Defendant State of Washington’s Motion
14 for Summary Judgment;
 - 15 ▪ Declaration of Bill Turner in Support of Defendant Sierra Pacific Industries’
16 Summary Judgment Motion;
 - 17 ▪ Declaration of Blair Stadin in Support of Defendant Precision Forestry, Inc.’s
18 Motion for Summary Judgment;
 - 19 ▪ Declaration of Sydney J. Martinez in Support of Defendant Precision Forestry,
20 Inc.’s Motion for Summary Judgment;
 - 21 ▪ Photographs of the incident scene;
 - 22 ▪ Video recordings of the incident scene;
 - 23 ▪ Deposition of Blair Stadin; and
 - 24 ▪ Deposition of John Spilman.

25 My opinions contained in this declaration are made on a more probable than not basis.

26

1 2. On March 13, 2018, Mr. Barry Chrisman was driving a vehicle owned by the
2 Public Utility District No. 1 of Snohomish County on Sultan Basin Road when a stand of trees
3 blew down striking his vehicle and severely injuring him (the “Incident”).

4 3. On December 1, 2021, I travelled to the scene of the Incident. (“First Visit”).

5 4. On April 7, 2022 I again visited the scene of the Incident (“Second Visit”).

6 **A. Forest Edge Effect**

7 5. Forest edges are the transition zones from a forested area to a non-forested area
8 (i.e. fields or open spaces). Harvesting timber can, and often does, create a new forest edge. The
9 trees in new forest edges along public rights-of-ways and developed properties are a high or
10 extreme risk to fail, and dangerous to vehicles, pedestrians, and structures because the trees on
11 the newly created edge have not had time to adapt to the increased exposure to external factors
12 such as wind. Trees within a new forest edge can take up to 2 years to stabilize after exposure
13 to new edge conditions. There will be increased risk of windthrow for many years.

14 6. When new forest edges are created by logging or land clearing, the new forest
15 edge is now made up of interior trees that previously relied on protection and sheltering by their
16 adjacent trees (cohorts), and they typically are not stable trees.

17 7. The effects of forest edges, as well as the effects of creating new forest edges, are
18 known as “forest edge effects” or “edge effects.” Forest edge effects are well-known in both
19 forestry science and the logging industry. Forest edge effects can have a wide range of
20 consequences, including a substantially increased risk of “blowdown” by wind, commonly called
21 “windthrow” events—trees being uprooted by wind. Additionally, new forest edges that leave
22 narrow strips of trees further exacerbates blowdown/ windthrow risk.

23 8. Moreover, blowdown/windthrow risk is also exacerbated when the trees within
24 the new forest edge are tall and the stand is densely stocked with trees. Dense stocking in conifer
25 forests produces trees with slender stems (poor taper) that are more prone to failure when exposed
26 to winds from site changes (e.g. adjacent timber harvesting).

DECLARATION OF GALEN M. WRIGHT - 2
CASE NO. 21-2-0118-31

GOLDFARB & HUCK
ROTH RIOJAS, PLLC
925 Fourth Avenue, Suite 3950
Seattle, WA 98104
Phone: (206) 452-0260

1 9. Simply stated, when timber is harvested in such a way that it creates a narrow strip
2 of tall and slender trees with a new forest edge, that strip of trees is at substantial risk of uprooting
3 and blowing down. This risk is well-known and universally understood in forestry and by
4 logging contractors. Even many laymen understand that trees depend on the support of their
5 neighboring trees and are susceptible to failure if exposed to the prevailing winds and storms.

6 **B. Forest Edge Effects at the Incident Area.**

7 10. On my First and Second Visits, I examined the scene of the Incident and the
8 general surrounding area. I am familiar with the boundaries of Sale Area of Luginut Unit 2. I am
9 also familiar with what the defendants in this action contend to be the boundaries of the purported
10 Riparian Management Zone (“RMZ”). Additionally, I am familiar with what the defendants in
11 this action contend to be the boundaries of the purported channel migration zone.

12 11. It is my opinion that the cause of the stand of trees blowing down, one of which
13 was the tree that struck Mr. Chrisman’s vehicle and injured him (the “Blowdown Trees”), was
14 the State of Washington Department of Natural Resources’ (“DNR’s”) decision to allow the stand
15 of trees in the Luginut Unit 2 Sale area which were directly south of and adjacent to the Blowdown
16 Trees (“Adjacent Stand”) to be harvested as well as defendants Sierra Pacific Industries’ and
17 Precision Forestry, Inc.’s decision to harvest the Adjacent Stand.

18 12. When the defendants caused the Adjacent Stand to be harvested, they created a
19 new forest edge on the stand of trees containing the Blowdown Trees, which created a risk of
20 blowdown. When the defendants caused the Adjacent Stand to be harvested, they turned the
21 stand of trees containing the Blowdown Trees into a narrow strip (called a sliver by WADNR
22 staff forester) of trees, which also created a predictable risk that the Blowdown Trees would be
23 windthrown or blown down. Additionally, the stand of trees containing the Blowdown Trees
24 were tall and slender from growing in a densely stocked stand for their 80 years plus lifetime,
25 and were in excess of 150 feet in height. This set of conditions created an ‘Extreme’ risk of
26 blowdown for the new edge trees. The Adjacent Stand was harvested using the ‘Clearcutting’

1 silvicultural system creating a new forest edge less than a tree-height away from Sultan Basin
2 Road. Due to the proximity of the new forest edge uphill and within 90 feet of the Sultan Basin
3 Road, and this new forest edge oriented to take the blunt wind force of the prevailing winds and
4 southerly storms, most trees blowing down from that new forest edge would fall onto Sultan
5 Basin Road and potentially strike people driving on that road. Any new forest edge should have
6 been more than a tree length away from Sultan Basin Road, so that any trees blowing down from
7 the edge would not be able to reach and fall onto Sultan Basin Road. Finally, because the
8 defendants harvested the Adjacent Stand during the winter storm season, defendants further
9 exacerbated the risks that the Blowdown Trees would fail because the general area of the Incident
10 is a mountainous area prone to variable high winds and heavy rain during the winter. Had
11 defendants waited just a few months before clearcutting the Adjacent Stand, the Blowdown Trees
12 would have had some time to adapt to their new site conditions before the return of high winds
13 and rain during the following winter. This would potentially reduce the failure potential, but not
14 eliminate the risk of this new forest edge.

15 13. On a more probable than not basis, the defendant's actions of harvesting the
16 Adjacent Stand and turning the exposed strip of trees into hazard trees substantially increased the
17 risk of windthrow, and was the cause of Blowdown Trees failing in the winds. This increased
18 risk to public safety was predictable by experienced foresters and others.

19 14. Had the defendants not caused the Adjacent Stand to be harvested, the Blow
20 Down Trees, on a more probable than not basis, would not have blown down. A previous harvest
21 years before, retained a strip of trees above Sultan Basin Road that protected people from blown
22 down edge trees. The recent harvesting cut that buffer width of trees in half, such that now new
23 edge trees could reach the road. This was predictable by the professional foresters involved in
24 setting up and performing this timber harvest.

1 silvicultural system creating a new forest edge less than a tree-height away from Sultan Basin
2 Road. Due to the proximity of the new forest edge uphill and within 90 feet of the Sultan Basin
3 Road, and this new forest edge oriented to take the blunt wind force of the prevailing winds and
4 southerly storms, most trees blowing down from that new forest edge would fall onto Sultan
5 Basin Road and potentially strike people driving on that road. Any new forest edge should have
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8 defendants harvested the Adjacent Stand during the winter storm season, defendants further
9 exacerbated the risks that the Blowdown Trees would fail because the general area of the Incident
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11 defendants waited just a few months before clearcutting the Adjacent Stand, the Blowdown Trees
12 would have had some time to adapt to their new site conditions before the return of high winds
13 and rain during the following winter. This would potentially reduce the failure potential, but not
14 eliminate the risk of this new forest edge.

15 13. On a more probable than not basis, the defendant's actions of harvesting the
16 Adjacent Stand and turning the exposed strip of trees into hazard trees substantially increased the
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18 risk to public safety was predictable by experienced foresters and others.

19 14. Had the defendants not caused the Adjacent Stand to be harvested, the Blow
20 Down Trees, on a more probable than not basis, would not have blown down. A previous harvest
21 years before, retained a strip of trees above Sultan Basin Road that protected people from blown
22 down edge trees. The recent harvesting cut that buffer width of trees in half, such that now new
23 edge trees could reach the road. This was predictable by the professional foresters involved in
24 setting up and performing this timber harvest.

1 A. Oh. I'm a little confused about: Is this Sierra
2 Pacific or Precision Forestry?

3 Q. Sierra Pacific's code of safe work practices.

4 A. No.

5 Q. Item 6 says, Safety instruction will given to each
6 employee regarding his or her job along with
7 precautionary measures.

8 Do you see that?

9 A. Safety instruction will be -- yeah.

10 Q. With respect to logging the Lugnut Unit 2 timber, what
11 safety instructions were given to the employees in
12 Precision Forestry in precautionary measures, if you
13 know?

14 A. Safety instructions for what? For the job?

15 Q. For the job.

16 A. Just our meeting and our plan, the emergency plan.

17 Q. That's your meetings that happen monthly and the
18 emergency plan that you testified about earlier; is
19 that right?

20 A. Yes.

21 Q. We're looking at -- we'd be on Exhibit 5 now?

22 COURT REPORTER: Yes.

23 (Exhibit No. 5 marked for identification.)

24 Q. (MR. ROTH continuing) Mr. Stadin, I've marked as
25 Exhibit 5 a document titled, Logging Plan of

1 Operations, State of Washington Department of Natural
2 Resources Logging Plan of Operations. Do you see that?

3 A. Yes.

4 Q. It's dated July 6, 2017. Do you see that?

5 A. Yes.

6 Q. And lists purchaser's on-site representative as Blair
7 Stadin. Do you see that?

8 A. Yes.

9 Q. Have you seen this document before?

10 A. I believe so.

11 Q. As of July 6, 2017, had you given Sierra Pacific
12 authorization to list you as Sierra Pacific's on-site
13 representative with respect to the Lugnut timber sale?

14 A. Yes.

15 Q. You previously met with Sierra Pacific about the Lugnut
16 timber sale? Is that before July 6, 2017; is that
17 right?

18 A. I don't know exactly on that date.

19 Q. But you must've met with them before July 6, 2017, if
20 you're listed as the purchaser's on-site representative
21 on July 6, 2017; is that right?

22 A. I believe. I don't -- I don't remember.

23 Q. You don't remember when you first met with Sierra
24 Pacific for purposes of the Lugnut timber sale?

25 A. No. No. Not on this form. No.

1 what, if anything, did Precision Forestry have control
2 over regarding Luginut Unit 2?

3 A. Harvesting.

4 Q. And you mean simply the harvesting operation?

5 A. Yeah. Just extracting the trees.

6 MR. ROTH: Give me just one second. I think I'm
7 having -- my computer -- I'm having computer
8 difficulty. Give me just a second. Sorry, folks.

9 MR. PARKER: Do you think we could take a
10 five-minute break?

11 MR. ROTH: Yeah. That would be fine.

12 MR. PARKER: Great. Thanks.

13 THE VIDEOGRAPHER: We'll be going off the record.
14 The time is 3:29 p.m.

15 (Recess taken at 3:29 p.m.)

16 (Proceedings resumed at 3:42 p.m.)

17 THE VIDEOGRAPHER: We are back on the record. The
18 time is currently 3:42 p.m.

19 Q. (MR. ROTH continuing) Mr. Stadin, during the break,
20 did you speak with anyone?

21 A. No.

22 Q. Okay. I'm going to go back to Exhibit 2. Give me just
23 one second. All right. Does this video appear on your
24 end, Mr. Stadin?

25 A. Yeah. I see it.



TIMBER NOTICE OF SALE

SALE NAME: LUGNUT

AGREEMENT NO: 30-093898

AUCTION: February 22, 2017 starting at 10:00 a.m., COUNTY: Snohomish Northwest Region Office, Sedro Woolley, WA

SALE LOCATION: Sale located approximately 6 miles northeast of Sultan, WA.

PRODUCTS SOLD AND SALE AREA:

All timber bounded by white timber sale boundary tags, adjacent young stands and the SP-10 Road, except cedar salvage (cedar snags, preexisting dead and down cedar trees and cedar logs), trees marked with blue paint on the bole and root collar, and forest products tagged out by yellow leave tree area tags in Unit #1.

All timber bounded by white timber sale boundary tags, adjacent young stands, the Sultan Basin Road and the SP-ML and SP-02 roads except cedar salvage (cedar snags, preexisting dead and down cedar trees and cedar logs), trees marked with blue paint on the bole and root collar, and forest products tagged out by yellow leave tree area tags in Unit #2.

All timber bounded by white timber sale boundary tags and adjacent young stands, except cedar salvage (cedar snags, preexisting dead and down cedar trees and cedar logs), trees marked with blue paint on the bole and root collar, and forest products tagged out by yellow leave tree area tags in Unit #3.

All timber bounded by orange right of way tags, except that title to the timber within the right of way tags is not conveyed to the Purchaser unless the road segment is actually constructed.

The above described products on part(s) of Sections 12, 13, 14 and 15 all in Township 28 North, Range 8 East, Sections 7 all in Township 28 North, Range 9 East, W.M., containing 183 acres, more or less.

CERTIFICATION: This sale is certified under the Sustainable Forestry Initiative® program Standard (cert no: BV-SFIS-US09000572)

ESTIMATED SALE VOLUMES AND QUALITY:

Table with columns: Species, Avg DBH, Ring Count, Total MBF, and MBF by Grade (IP, 2P, 3P, SM, 1S, 2S, 3S, 4S, UT). Rows include Douglas fir, Hemlock, Red cedar, Maple, Red alder, Cottonwood, and Sale Total.

MINIMUM BID: \$1,500,000.00

BID METHOD: Sealed Bids

PERFORMANCE SECURITY:

\$100,000.00

SALE TYPE: Lump Sum



TIMBER NOTICE OF SALE

EXPIRATION DATE: March 31, 2019

ALLOCATION: Export Restricted

BID DEPOSIT: \$150,000.00 or Bid Bond. Said deposit shall constitute an opening bid at the appraised price.

HARVEST METHOD: Cable; cable or shovel on sustained slopes 35% or less; in addition, a self-leveling shovel and/or self-leveling harvester may operate on sustained slopes up to 55% in Unit 1 with prior written approval of the Contract Administrator. Falling and Yarding will not be permitted from November 1 to March 31 unless authorized in writing by the Contract Administrator (THIS PERTAINS TO GROUND-BASED EQUIPMENT ONLY) to reduce soil damage and erosion.

Additional restrictions apply, see Remarks section below.

ROADS: 0.40 stations of required reconstruction. 100.06 stations of optional construction. 76.80 stations of existing road to be abandoned. 100.06 stations of road to be abandoned if built. 185.10 stations of required pre-haul maintenance. 67.60 stations of optional pre-haul maintenance. Removal of a log-stringer bridge and subsequent replacement via repair of and installation of a State supplied 40-foot steel bridge.

Rock may be obtained from the following source(s) on State land at no charge to the Purchaser: SP-0202 Hard Rock at station 9+60 of the SP-02 Road.

Development of existing rock source(s) will involve clearing, stripping, drilling, shooting, and processing rock to generate riprap and 3-inch-minus ballast.

An estimated total quantity of rock needed for this proposal: 373 cubic yards of riprap and 6,910 cubic yards of ballast rock.

Additional restrictions apply, see Remarks section below.

Road work and the hauling of rock will not be permitted from November 1 to March 31 unless authorized in writing by the Contract Administrator to reduce soil damage and siltation. The hauling of forest products will not be permitted from November 1 to March 31 unless authorized in writing by the Contract Administrator to reduce soil damage and siltation.

ACREAGE DETERMINATION

CRUISE METHOD: Acres determined by GPS traverse. 199 acres gross. 10.1 acres deducted for green tree retention clumps and 6.3 acres deducted for existing road area. 182.6 acres net. Cruised using variable plot method. Expansion factors used are 20.00, 40.00, 46.9, 54.4, 62.5. Sighting height is 4.5 feet. A total of 93 plots were taken.

Shapefiles of units are available upon request.

FEES: \$100,891.00 is due on day of sale. \$9.00 per MBF is due upon removal. These are in addition to the bid price.

SPECIAL REMARKS: 1. Timing Restriction: SP-ML (23+00 to 23+40), any in-stream work associated with bridge replacement (see BRIDGE INSTALLATION DETAIL in road plan) is not allowed October 1 to July 1, not to be waived by the Contract Administrator except with written approval from Forest Practices and WDFW.



TIMBER NOTICE OF SALE

2. Timing Restriction: SP-ML (116+70 to 119+70), Construction, Heavy Abandonment is not allowed November 1 to March 31, not to be waived by the Contract Administrator.

3. Timing restrictions will be implemented in portions of the sale area as depicted on the timber sale map. Timing restrictions will be implemented for any activity associated with harvesting timber, road building, and rock pit development. Harvest activities include but are not limited to: falling, yarding, loading, running chainsaws, or running heavy equipment. The timing restrictions will be in effect from April 1 through August 31, from one hour before to two hours after official sunrise, and one hour before to one hour after official sunset.

**STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES**

**BILL OF SALE AND CONTRACT FOR
FOREST PRODUCTS**

Export Restricted Lump Sum AGREEMENT NO. 30-093898

SALE NAME: LUGNUT

**THE STATE OF WASHINGTON DEPARTMENT OF NATURAL
RESOURCES, HEREINAFTER ACTING SOLELY, IN ITS PROPRIETARY
CAPACITY, STATE, AND Sierra Pacific Industries PURCHASER, AGREE AS
FOLLOWS:**

Section G: General Terms

G-001 Definitions

The following definitions apply throughout this contract;

Bill of Sale and Contract for Forest Products: Contract between the Purchaser and the State, which sets forth the procedures and obligations of the Purchaser in exchange for the right to remove forest products from the sale area. The Bill of Sale and Contract for Forest Products may include a Road Plan for any road construction or reconstruction, where applicable.

Contract Administrator: Region Manager's designee responsible for assuring that the contractual obligations of the Purchaser are met.

Forest Product: Any material derived from the forest for commercial use.

Purchaser: The company or individual that has entered a Bill of Sale and Contract for Forest Products with the State for the right to harvest and remove forest products from the timber sale area.

Road Construction: Includes building new and maintaining existing forest roads and associated work that may be optional or required as described in the Road Plan.

State: The Washington State Department of Natural Resources, landowner and seller of Forest Products from the timber sale area. The State is represented by the Region Manager as designated on the contract signature page. Contractual obligations to the State are enforced by the Region Manager or the designated Contract Administrator.

Subcontractor: Individual or company employed by the Purchaser to perform a portion or all of the services required by The Bill of Sale and Contract for Forest Products. The Purchaser is responsible for independently negotiating, procuring and paying for all subcontracted services rendered.

G-011 Right to Remove Forest Products and Contract Area

Purchaser was the successful bidder on February 22, 2017 and the sale was confirmed on 3-8-17. The State, as owner, agrees to sell to Purchaser, and Purchaser agrees to purchase as much of the following forest products as can be cut and removed during the term of this contract: All timber bounded by white timber sale boundary tags, adjacent young stands and the SP-10 Road, except cedar salvage (cedar snags, preexisting dead and down cedar trees and cedar logs), trees marked with blue paint on the bole and root collar, and forest products tagged out by yellow leave tree area tags in Unit #1.

All timber bounded by white timber sale boundary tags, adjacent young stands, the Sultan Basin Road and the SP-ML and SP-02 roads except cedar salvage (cedar snags, preexisting dead and down cedar trees and cedar logs), trees marked with blue paint on the bole and root collar, and forest products tagged out by yellow leave tree area tags in Unit #2.

All timber bounded by white timber sale boundary tags and adjacent young stands, except cedar salvage (cedar snags, preexisting dead and down cedar trees and cedar logs), trees marked with blue paint on the bole and root collar, and forest products tagged out by yellow leave tree area tags in Unit #3.

All timber bounded by orange right of way tags, except that title to the timber within the right of way tags is not conveyed to the Purchaser unless the road segment is actually constructed.

The above described products, located on approximately 183 acres on part(s) of Sections 12, 13, 14, and 15 all in Township 28 North, Range 8 East, Section 7 in Township 28 North, Range 9 East W.M. in Snohomish County(s) as designated on the sale area and as shown on the attached timber sale map.

All forest products described above from the bole of the tree that meet or exceed 2 inches diameter inside bark on the small end are eligible for removal. Above ground components of a tree that remain as by-products after the manufacture of logs,

including but not limited to tree tops, branches, limbs, needles, leaves, stumps, are not eligible for removal under the terms of this contract.

Forest products purchased under a contract that is designated as export restricted shall not be exported until processed. Forest products purchased under a contract that is designated as exportable may be exported prior to processing.

G-020 Inspection By Purchaser

Purchaser hereby warrants to the State that they have had an opportunity to fully inspect the sale area and the forest products being sold. Purchaser further warrants to the State that they enter this contract based solely upon their own judgment of the value of the forest products, formed after their own examination and inspection of both the timber sale area and the forest products being sold. Purchaser also warrants to the State that they enter this contract without any reliance upon the volume estimates, acreage estimates, appraisals, pre-bid documentation, or any other representations by the State Department of Natural Resources.

G-025 Schedules

The following attached schedules are hereby incorporated by reference:

Schedule	Title
A	NW Ground-Based Equip Specifications (Rev 10/7/16)

G-031 Contract Term

Purchaser shall complete all work required by this contract prior to March 31, 2019.

G-040 Contract Term Adjustment - No Payment

Purchaser may request an adjustment in the contract term. A claim must be submitted in writing and received by the State within 30 days after the start of interruption or delay. The claim must also indicate the actual or anticipated length of interruption or delay. The State may grant an adjustment without charge only if the cause for contract term adjustment is beyond Purchaser's control. The cause must be one of the following and the adjustment may be granted only if operations or planned operations under this contract are actually interrupted or delayed:

- a. Road and bridge failures which deny access.
- b. Access road closures imposed by road owner.
- c. Excessive suspensions as provided in clause G-220.
- d. Regulatory actions not arising from Purchaser's failure to comply with this contract which will prevent timber harvest for a period less than 6 months.

G-051 Contract Term Extension - Payment

Extensions of this contract term may be granted only if, in the judgment of the State, Purchaser is acting in good faith and is endeavoring to remove the forest products

**LOGGING AGREEMENT
(FEE LAND)**

This Logging Agreement ("Agreement") is entered into on January 4, 2018 ("Effective Date"), by and between SIERRA PACIFIC INDUSTRIES ("Company") and Precision Forestry ("Contractor").

RECITALS

WHEREAS, Company owns certain timberlands in fee and such real property is described hereinafter; and

WHEREAS, Contractor desires to cut and remove said timber on behalf of Company.

NOW, THEREFORE, in consideration of the following mutual covenants, Contractor and Company agree as follows:

1. **DESCRIPTION OF WORK.**

(a) Contractor acknowledges that it has received and read, and understands, the approved Forest Practices Applications (each, an "FPA") covering the real property to be logged hereunder as more particularly described on **Schedule A** attached hereto. Contractor represents and warrants that it is acquainted with the real property, located in Whatcom, Skagit and Snohomish County, Washington, upon which the timber that is to be logged hereunder is located, and the means of access to such property for the purpose of removing the timber (such property and access thereto shall be collectively referred to herein as the "Property"). Such FPAs are by this reference incorporated herein and made a part of this Agreement, whether or not they are actually attached (the "Documents"). The originals of said Documents are on file at the office of Company and shall be, at all times during Company's business hours, available for inspection by Contractor. Company has not made any representation of any type, sort, or nature to Contractor, and Contractor is not acting upon any representation of any type, sort, or nature by Company, but is relying solely and exclusively upon its own inspection of the Property and Documents and upon any other independent advice and information it obtains.

(b) Prior to entering the Property or commencing any Work, Contractor shall provide to Company the following: (a) certification that Contractor is registered pursuant to RCW 18.27; (b) certification that Contractor maintains a complete and accurate set of financial books and records that reflect all of the Contractor's business income and expenses; and (c) proof acceptable to the Company that Contractor has an industrial insurance account in good standing with the Washington Department of Labor and Industries ("L&I") or is a self-insured employer certified by L&I.

(c) Both parties hereto agree that the work (the "Work") to be performed by Contractor under this Agreement shall include, but shall not be limited to, all work described in Sections 1 and 2 hereof and **Schedule A** attached hereto and all other work specified elsewhere in this Agreement or the Documents. The Work shall include:

- (i) Within such periods as may be designated by Company, Contractor shall fall, limb, buck, lop, skid, yard and load; and dispose of slash, perform erosion control work, and perform all other related activities required in the Documents at the time and in the manner designated and required therein.
- (ii) Contractor shall construct and maintain spur roads, skid trails, landings, stream crossings, and other structures required in the Documents or as required by the Forest Practices Act or by Company, to be constructed or maintained, all as more particularly described on **Schedule A**.
- (iii) Contractor shall take particular care to minimize breakage and waste in falling and bucking and shall use the highest degree of care in the conduct of its operations to avoid injury by fire, logging operations or other cause to young growth or timber below merchantable size, and timber on adjoining lands.
- (iv) Contractor shall use log branding hammer(s) supplied by Company to brand and paint logs as specified by Company.
- (v) Contractor shall lop, crush, bury, scatter, chip, pile and/or remove slash as required in the Documents.
- (vi) Contractor shall separate logs by species and size in the woods prior to loading unless written consent is given by Company for mixed loads to be shipped.
- (vii) Contractor shall haul all logs to destinations designated by Company from time to time unless Company has elected to perform such hauling. If Company elects to perform such hauling, Contractor shall request, in a timely manner, the number of trucks required on each operating site and Contractor shall efficiently utilize the trucks so furnished by Company to perform the hauling.
- (viii) If Contractor desires to use routes for log hauling other than those designated in the Documents for such hauling, and Company approves of such use, Contractor shall, at its own expense, secure the necessary rights of way, pay applicable road tolls and fees and provide all drainage structures, improvements and materials required for such use.
- (ix) Contractor shall perform any other work reasonably related to each approved FPA which is or becomes a part of this Agreement and which is requested by Company. Such work and the compensation to be paid to Contractor therefor shall be described in a written estimate executed by Contractor and Company. Upon execution of such a written estimate, such executed written estimate shall be attached to this Agreement and become a part hereof and such additional work shall thereafter be governed by this Agreement and shall become a part of the Work.

(d) All Work required hereunder shall be performed by Contractor in a thorough and complete workmanlike manner, only by Contractor's employees and subcontractors, in accordance with all of the provisions of this Agreement, the schedules and exhibits attached hereto, the schedules and exhibits which later become a part of this Agreement as provided herein, and the Documents.

(e) A schedule in substantially the form of **Schedule B-1** attached hereto (each such schedule, a "Schedule B") shall be completed for each of the above-referenced FPAs and shall be attached hereto and incorporated herein. Additional FPAs may be added to this Agreement at any time by completion and execution of a Schedule B describing such FPA and the compensation to be paid to Contractor by Company with respect thereto. In addition, any Schedule B shall be deemed superseded upon execution by Company and Contractor of a revised Schedule B in substantially the form of **Schedule B-2** attached hereto (each such schedule, a "Revised Schedule B").

(f) Company and Contractor agree it is impossible to accurately designate the total volume of logs to be delivered to Company from each timber tract or the total volume of logs to be delivered to Company during the logging season. However, Contractor understands and agrees that although Company must have a continuous supply of logs to operate its manufacturing facilities, Company does not have the milling and log decking capacity to adequately handle unlimited quantities of logs each day. Company shall, at its sole discretion, have the right to (i) limit the daily quantity of logs delivered by Contractor or (ii) suspend further delivery of logs once Company's winter supply of logs or decks are completed.

(g) Contractor agrees that within five (5) days of any request by the Company, Contractor shall execute the assignment of account agreement with N/A Bank, which is attached hereto as **Schedule C** and incorporated herein.

(h) Contractor and Company agree that, unless a separate written agreement in substantially the form of this Agreement between Contractor and Company is entered into for any services performed by Contractor that are in addition to the Work, any such additional services shall also be governed by the terms and provisions of this Agreement.

2. LOGGING SPECIFICATIONS.

(a) Logs are to be bucked to lengths specified by Company and such logs shall be bucked clean and square on both ends and limbed on all sides flush with the bark.

(b) If logs or portions of logs are wasted resulting in a "chunk" scale, Contractor shall fell, buck and remove all merchantable trees and/or logs meeting "utilization standards." Contractor is liable for any stumpage payments, penalties or other charges for any material not meeting minimum utilization standards that would have qualified as merchantable if bucking lengths had been varied to include such material and if all trees designated by Company to be cut had been felled.

(c) Contractor shall maintain all phases of its operation in reasonable balance to prevent one phase or another from becoming too far ahead. Contractor agrees and understands that Company, at its sole discretion, has the right to require any one phase of the operation be suspended temporarily to allow other phases not considered by Company to be in balance to catch up.

(d) Company shall furnish, from time to time, the specific location of the areas to be worked or the specific portion of any areas to be worked and the order in which they are to be worked and Contractor agrees to conduct its operations according to such direction.

(e) Contractor shall be responsible for conducting its operations within the boundaries of the specific areas designated by Company. If Contractor commits any trespass, whether intentional or inadvertent, over or outside the boundaries of the specific areas designated by Company, unless Company incorrectly marks property boundaries or trees to be felled, Contractor shall be solely and exclusively liable for such trespass and any and all damages related thereto in accordance with the indemnification provisions of this Agreement.

(f) The total volume of timber to be logged hereunder is not guaranteed and may be changed at Company's sole discretion.

(g) Company shall have the right to designate to Contractor, from time to time, special log deliveries to additional mills or log deliveries of separate species to Company's mills. If Company designates any such delivery, Company and Contractor shall consult in good faith and agree on an increase or decrease in the compensation payable hereunder based on the cost of haul and number of possible trips per day.

(h) Contractor shall be held responsible for failure on the part of Contractor, or any of its employees, agents, or assigns, to comply with all instructions from Company or Company's agents and all terms, conditions, and provisions of the Documents. If, in the opinion of Contractor, it has been issued instructions by Company conflicting with any of the terms, provisions or conditions of any of the Documents, Contractor shall immediately notify Company of such fact and Company shall interpret the conflicting terms, provisions or conditions and shall render a decision and Contractor agrees to comply with such decision by Company.

(i) If Company, upon inspection of the Work required hereunder, determines in its sole judgment, that further work is required to bring any phase or portion of the Work up to standards as set forth herein, Contractor shall return to the site where such deficiencies occur and remedy them to Company's satisfaction.

(j) On logging or road construction sites where Company has furnished metal culvert or other construction items, Contractor shall be responsible for the safe storage and full utilization of such construction items. If Company determines upon inspection that Contractor has wasted metal culvert either by installing lengths that are too long, or by performing careless handling or improper storage, Company may charge Contractor's account the value of such wasted material plus transportation costs.

(k) Upon completion of each and every portion of the Work to be conducted hereunder, Contractor shall collect all excess construction materials that were furnished by Company and deliver same to Company's yard or to the next construction site Company designates.

3. OTHER LOGGING.

Nothing contained herein shall be construed as prohibiting or preventing Company from contracting with other logging contractors or other contractors for the performance of similar services.

4. COMPANY REPRESENTATIVE.

Company hereby assigns Burlington District Forester as Company's representative ("Forester"). Contractor shall follow directives only from the Forester.

5. CONTRACTOR'S ACKNOWLEDGMENTS.

Contractor acknowledges this Agreement is not a transfer of any right, title or interest of Company, but is solely an agreement for the performance of the Work by Contractor on behalf of Company.

6. MATERIALS AND TOOLS: INSPECTION.

Unless otherwise expressly provided herein or unless such expenses are previously approved by Company in writing prior to their expenditure, Contractor agrees to provide, at its sole expense, all the necessary labor, machinery, tools, equipment, supplies, materials and appliances required to perform the Work.

Company and its agents, representatives and employees shall have the right to inspect Contractor's operations at any time to determine whether Contractor is complying with this Agreement.

7. COMPENSATION: ACCEPTANCE OF WORK.

(a) In exchange for the satisfactory performance and completion of the Work, as determined by the Forester, in such Forester's reasonable discretion, Company shall pay Contractor the amounts set forth in the applicable Schedule B or Revised Schedule B, subject to this Section 7.

(b) Subject to this Section 7, on or before the first business day following the tenth (10th) day of each month, Company shall pay Contractor for all logs delivered between the sixteenth (16th) day and the last day of the previous month. On or before the first business day following the twenty-fifth (25th) day of each month, Company shall pay Contractor for all logs delivered between the first (1st) and fifteenth (15th) days of the same month. Such bi-monthly payments shall not be construed to be an acceptance of any Work completed by Contractor.



**Forest Practices Application/Notification
Western Washington**

For DNR Region Office Use Only	
FPA/N #:	2815489
Region:	NW
Received Date:	10-31-2016

Lugnut #93898

PLEASE USE THE INSTRUCTIONS TO COMPLETE THIS APPLICATION. TYPE OR PRINT IN INK.

1. Landowner, Timber Owner and Operator

Legal Name of LANDOWNER	Legal Name of TIMBER OWNER (if different than Landowner)	Legal Name of OPERATOR (if different than Landowner)
Department of Natural Resources		
Mailing Address: 919 N. Township St.	Mailing Address:	Mailing Address:
City, State, Zip Sedro-Woolley, WA 98284	City, State, Zip	City, State, Zip
Phone (360)856-3500	Phone ()	Phone ()
Email:	Email:	Email:

2. Contact Person

Contact Person: Laurie Bergvall	Phone (360)856-3500 Email: laurie.bergvall@dnr.wa.gov
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3. Landownership information: See instructions

RECEIVED NW REGION

a. No Yes Are you a small forest landowner per RCW 76.09.450?

If yes, continue to b.

OCT 31 2016

b. No Yes Is your entire proposed harvest area on a single contiguous ownership consisting of one or more parcel?

4. If you are harvesting timber, enter the Forest Tax Reporting Account Number of the Timber Owner:

For tax reporting information or to receive a tax number, call the Department of Revenue at 1-800-548-8829.

5. Are you substituting prescriptions from an approved state or federal conservation agreement or watershed analysis?

No Yes Write 'HCP' or 'Using Prescriptions' in tables that apply. Attach or reference prescriptions and/or crosswalks on file at the Region office.

See HCP Attached

6. What is the legal description of your forest practices?

Section	Township	Range	EW	Tax Parcel Number	County
06, 07	28	09	E	-----	Snohomish
12	28	08	E	-----	Snohomish
13	28	08	E	-----	Snohomish
15	28	08	E	-----	Snohomish
14	28	08	E	-----	Snohomish

*Does not include legal description for pre-haul maintenance; it is not a Forest Practices activity

7. When are you planning to begin work on the proposed activity? In 6+ months

8. Is the taxpayer eligible for the EARR Tax Credit?

No Yes

9. Have you reviewed this forest practices activity area to determine whether it may involve historic sites and/or Native American cultural resources? Read the instructions before answering this question.

No Yes See FPA Narrative

10. Do you have a DNR approved Road Maintenance and Abandonment Plan (RMAP)?

a. No Yes List the RMAP number: R2800010L

If no, continue to b.

b. No Yes Is a Checklist RMAP required (see instructions)?

11. Are there potentially unstable slopes or landforms in the area of your forest practices activity?

No Yes – attach Slope Stability Informational Form. If applicable, attach geotechnical report, the SEPA Environmental Checklist, HCP, or Watershed Analysis prescriptions.

12. Are there potentially unstable slopes or landforms around the area of your forest practices activity?

No Yes – attach Slope Stability Informational Form. If applicable, attach geotechnical report, HCP, or Watershed Analysis prescriptions.

13. Is this forest practice application/notification (answer every question):

a. No Yes Within city limits or inside an urban growth area? If yes, see instructions for additional required documents.

b. No Yes For road work that is included in an approved Road Maintenance and Abandonment Plan (RMAP)?

c. No Yes Within a public park? If yes, include SEPA Environmental Checklist or SEPA Determination - except for harvest/salvage of less than 5,000 board feet within a developed public park.

d. No Yes Within 500 feet of a public park? Park name: _____

e. No Yes In an approved Conversion Option Harvest Plan (COHP) from the local government? If yes, include a copy. This only applies to proposals within urban growth areas.

f. No Yes Within 200' of the Ordinary High Water Mark (OHWM) or floodway of Type S water? If yes, check with the county or city to determine whether a substantial development permit is required under the local shorelines master plan.

g. No Yes A request for a multi-year permit? If yes, length requested: 4 years or 5 years. Not everyone qualifies for a multi-year permit. See instructions for details.

- h. No Yes An Alternate Plan? If yes, include a copy.
- i. No Yes Within 50 miles of saltwater and do you own more than 500 acres of forest land in Washington State? If yes, include Marbled Murrelet Form or attach/reference HCP prescriptions.
- j. No Yes In or directly adjacent to a potential Channel Migration Zone (CMZ)? If yes, include CMZ Assessment Form. Attach/reference applicable HCP and/or Watershed Analysis prescriptions.

***** **If not working in or over typed waters, skip to Question 18** *****

You are required to verify Type Np and Ns water types within 200 feet of your proposed forest practices activities prior to submitting a Forest Practices Application / Notification. Use the Additional Information section, additional pages, the Water Type Classification Worksheet, and/or a Water Type Modification form to explain how you verified water types. See Water Typing Requirements in the instructions.

Prior to answering Questions 14-17 in this section please refer to the Forest Practices Application Instructions and Forest Practices Board Manual Section 5.

14. Are you proposing any of the following projects NOT permitted by current HPAs from WDFW?
- a. No Yes Installing, replacing, or repairing a culvert at or below the bankfull width of Type S or F water(s) that exceeds a five percent gradient?
 - b. No Yes Constructing, replacing, or repairing a bridge at or below the bankfull width of unconfined streams in Type S or F water(s)?
 - c. No Yes Placing fill material within the 100-year flood level of unconfined streams in Type S or F water(s)?
15. Have you consulted with DNR and/or WDFW about the proposed hydraulic project(s) in or over Type S or F water? No Yes
16. If installing, replacing, removing, or maintaining structures in or over any typed water, complete the table below. Type S and F waters require detailed plan information. Provide plan details in Question 31 or attach plan to the FPA/N. Provide crossing locations and identifiers on your Activity Map. A detailed plan with profiles may also be required for more complex hydraulic projects in Type N Waters per WAC 222-24-042(2).

Crossing Identifier (letter and/or number)	Water Type (S, F, Np, Ns)	*Existing HPA Number (if applicable)	HPA Expiration Date (if applicable)	Planned Activity (install, replace, remove, temporary, structure maintenance)	Structure (culvert, bridge, ford**, punchon, arch, other)	Proposed Size (dimensions of structure)	Culvert Design Method (No-slope, Stream-sim, Hydraulic, Other (F and S only)	Channel Bed Width (ft) (F and S only)	Stream Gradient (%) (F and S only)	RMAP Project (Y or N)	FFPP Project (Y or N)
See FPA Narrative											

*Existing HPAs issued by WDFW will be complied and enforced by WDFW until expiration. Plan details are not required for hydraulic projects permitted with an existing HPA (see instructions).

** Fords and equipment crossings on Type S and F Waters may result in an unauthorized incidental take of certain endangered or threatened fish species. For more information, see 'Background for the State's Incidental Take Permits for certain endangered and threatened fish species' following Question 24 of the FPA/N Instructions.

17. If conducting any of the following activities in or over typed water, complete the table below. Some activities will require identifiers on the Activity map and/or more information in Question 31. See instructions.

*Activity	Type S Water	Type F Water	Type Np Water	Type Ns Water
Equipment Crossing**			x	x
Suspending Cables			x	x
Cable Yarding			x	x
LWD Placement/Removal				
Beaver Dam Removal				
Felling and Bucking			x	x
Other (describe in Question 31)				

*Existing HPAs issued by WDFW will be complied and enforced by WDFW until expiration. Plan details are not required for hydraulic projects permitted with an existing HPA (see instructions).

** Fords and equipment crossings on Type S and F Waters may result in an unauthorized incidental take of certain endangered or threatened fish species. For more information, see 'Background for the State's Incidental Take Permits for certain endangered and threatened fish species' following Question 24 of the FPA/N Instructions.

18. If constructing or abandoning forest roads, complete the table below. Show the road locations and identifiers on the Activity Map. Include abandonment plans for temporary roads and abandonment projects.

Road Identifier (name, number)	Road Construction		Road Abandonment	
	Length (feet)	Steepest Side-slope (%)	Length (feet)	Abandonment Date
See FPA Narrative				
Total Construction	10,006	65	17,686	03/31/2019
Total Reconstruction	40			

19. If depositing spoils and/or expanding or developing a rock pit for forestry use, complete the table below. Show locations and identifiers on the Activity Map.

Spoil Area Identifier (letter, number)	Amount of Spoils Deposited (cubic yards)	Rock Pit Identifier (name, number or letter)	Acres of New Rock Pit Developed	Acres of Existing Rock Pit Expanded
SP-ML ▽	1000	SP-0202 Hard Rock Pit		0.2
SP-0205 ▽	2000			

20. If operating in or within 200 feet of a wetland, complete the table below. Show the boundaries of each wetland, along with its identifier, and WMZ on the Activity Map. See instructions for information.

Wetland Identifier (number, letter)	Wetland Type (A, B, or Forested)	Planned Activities in Wetland	Planned Activities in Maximum Width WMZ	Total Wetland Area (acres)	How many acres will be drained?	How many acres will be filled?
See Aquatics Addendum						

***** If not harvesting or salvaging timber, skip to Question 29 *****

21. If harvesting or salvaging timber, complete the table below. Show all harvest areas and unit numbers on the Activity Map. For even-aged harvest units, also show surrounding stand information on the Activity Map.

Unit Number	Harvest Type (Even-aged, Uneven-aged, Salvage, Right-of-Way)	Biomass Harvest (Y/N)	Harvest Method (Rubber Tired Skidder, Tracked Skidder, Dozer, Shovel, Full Suspension Cable, Lead-end Suspension Cable, Helicopter, Animal, Chipper-forwarder, Slash Bundler)	Acres to be Harvested	Volume to be Harvested (mbf)	Volume to be Harvested (biomass tonnage)	Volume to be Harvested (%)	Steepest Slope in Harvest Unit (%)
1*	Even-aged, Right-of-Way	N	Ground, Cable	26.2	980	--	95	80
2**	Even-aged, Right-of-Way	N	Ground, Cable	80.9	3,199	--	95	195
3***	Even-aged, Right-of-Way	N	Ground, Cable	75.5	1,505	--	95	66
Total				182.6	5,684			

22. Reforestation. Check the appropriate box(es).

*Unit 1 - includes 0.9Ac of ROW
 **Unit 2 - includes 0.5Ac of ROW
 ***Unit 3 - includes 0.2Ac of ROW

Planting. Tree Species: Douglas-fir, western redcedar

Natural. Include a Natural Regeneration Plan

Not required because of one or more of the following:

I am converting some or all of this land to non-forest land in the next 3 years or lands are exempted under WAC 222-34-050.

Individual dead, dying, down, or wind-thrown trees will be salvaged.

Trees are removed under a thinning program reasonably expected to maximize the long-term productivity of commercial timber.

I am leaving at least 100 vigorous, undamaged, and well-distributed saplings or merchantable trees per acre.

An average of 190 tree seedlings per acre are established on the harvest area and my harvest will not damage it.

Road right-of-way or rock pit development harvest only.

**** If you own MORE than 80 forested acres in Washington, skip to Question 27 ****

23. Are you using the exempt 20-acre parcel riparian management zone (RMZ) rule on type S, F, or Np waters?

No If no, continue to Question 27.

Yes If yes, continue to Question 24. See instructions for qualifications and information.

24. Choose the answer below that best fits your situation. Show all RMZs on the Activity Map.

a. ALL of the following apply to me and my land: (If no, answer b.)

- Between June 5, 2006 and today's date I have always owned less than 80 acres of forestland in Washington.
- Between June 5, 2006 and today's date this parcel has always been 20 acres or less of contiguous ownership. See RCW 76.09.020 for definition of 'contiguous'.
- Between June 5, 2006 and today's date this parcel has always been owned by me or someone else that has owned less than 80 acres of forestland in Washington.

b. ONE OR MORE of the following apply to me and/or my land (check all that apply):

- I currently own more than 80 acres of forestland in Washington.
- Between June 5, 2006 and today's date I have owned more than 80 acres of forestland in Washington.
- Between June 5, 2006 and today's date this parcel has been a part of more than 20 acres of contiguous ownership. See RCW 76.09.020 for definition of 'contiguous'.
- Between June 5, 2006 and today's date this parcel has been owned by someone that has owned more than 80 forested acres in Washington.

If any of the statements in (b) above apply AND you use the 20-acre exempt RMZ rule, you are NOT authorized under the State's Incidental Take Permits (see explanation in FPA instructions under Questions 24).

25. If harvesting within 115 feet of a Type S or F water on an exempt 20-acre parcel, complete the table below. Show RMZs and stream segment identifiers on the Activity Map. If you are harvesting within 75 feet or within the maximum RMZ (whichever is less), stream shade must be assessed and met following harvest. Describe how stream shade was determined to be met, using the 'Stream Shade Assessment Worksheet' if necessary.

Stream Segment Identifier (letter)	Water Type (S, F)	Segment Length (feet)	Bankfull Width (feet)	Maximum RMZ Width (feet)	Are you harvesting within the maximum RMZ? (Y or N)

26. Are you harvesting within 29 feet of a Type Np water on a 20-acre exempt parcel?

- No Continue to Question 29.
- Yes See instructions and describe leave tree strategy in Question 31. Then continue to Question 29.

27. If harvesting within 200 feet of any of Type S or F water, complete the table below. Include DFC for all inner zone harvests unless you have an HCP prescription. Show RMZs, CMZs, and stream segment identifiers on the Activity Map. If you are harvesting within 75 feet or within the maximum RMZ (whichever is less), stream shade must be assessed and met following harvest. Describe how stream shade was determined to be met, using the 'Stream Shade Assessment Worksheet' if necessary.

Stream Segment Identifier (letter)	Water Type (S or F)	Site Class (I - V)	Stream Width (feet)	Is there a CMZ? (Y/N)	RMZ Harvest Code(s) (see instructions)	DFC Run Number	Total width of RMZ (feet)
See Aquatics Addendum							

28. If harvesting within 50 feet of Type Np water, complete the table(s) below. Show RMZs and stream segment identifiers on the Activity Map.

Stream Segment Identifier (letter)	Total Stream Length in Harvest Unit (feet)	Length of No-Harvest, 50-foot Buffers in Harvest Unit (feet)	Stream Segment Identifier (letter)	Total Stream Length in Harvest Unit (feet)	Length of No-Harvest, 50-foot Buffers in Harvest Unit (feet)
See Aquatics Addendum					

29. How are the following marked on the ground? (Flagging, paint, road, fence, etc.)

- Harvest Boundaries: See FPA Narrative
- Clumped Wildlife Reserve Trees/Green Recruitment Trees: Yellow "Leave Tree Area" Tags and Blue Paint
- Right-of-way limits/road centerlines: Centerlines marked with wooden stakes, limits tagged out w/Orange ROW Tags
- Stream Crossing Work: To be flagged by operator, then approved by State lands Contract Administrator with consultation of FP Forester.
- Riparian Management Zone Boundaries and Leave/Take Trees: N/A
- Channel Migration Zone: Not marked, however Timber Sale Tags for RMZ are a site index distance off the CMZ
- Wetland Management Zone Boundaries and Leave/Take Trees: N/A

30. Are you converting the land to non-forestry use within 3 years of harvest?

No Yes If yes, include your SEPA Determination and/or SEPA checklist.


31. Additional Information (attach additional pages if necessary): For hydraulic projects in or over Type S, F, or complex N water(s) see instructions for required plan information.

See attached FPA Narrative.

32. We acknowledge the following:

- The information on this application/notification is true.
- We understand this proposed forest practice is subject to:
 - The Forest Practices Act and Rules AND
 - All other federal, state or local regulations.
- Compliance with the Forest Practices Act and Rules does not ensure compliance with the Endangered Species Act or other federal, state or local laws.
- If we said that we would not convert the land to non-forestry use, the county or city may deny development permits on this parcel for the next 6 years.
- The following may result in an unauthorized incidental take of certain endangered or threatened fish species:
 - Conversion of land to non-forestry use.
 - Harvesting within the maximum RMZ on a 20-acre exempt parcel that was acquired after June 5, 2006.
 - Equipment Crossings/Fords in or over Type S and F Waters.
- Inadvertent Discovery – Chapters 27.44, 27.53, 68.50 and 68.60 RCW
 - If you find or suspect you have found an archaeological object or Native American cairn, grave, or glyptic record, immediately cease disturbance activity, protect the area and promptly contact the Department of Archaeology and Historic Preservation at 360 586-3077.
 - If you find or suspect you have found human skeletal remains, immediately cease disturbance activity, protect the area, and contact the County Coroner or Medical Examiner and local law enforcement as soon as possible. Failure to report human remains is a misdemeanor.

The landowner understands that by signing and submitting this FPA, he/she is authorizing the Department of Natural Resources to enter the property in order to review the proposal, inspect harvest operations, and monitor compliance for up to three years after its expiration date. RCW 76.09.150

Signature of LANDOWNER  Print Name: Holly S. Crapo Date: 9/6/16	Signature of TIMBER OWNER* (If different than landowner) Print Name: Date:	Signature of OPERATOR (If different than landowner) Print Name: Date:
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* NOTE: If you are a "Perpetual Timber Rights Owner," and are submitting this without the Landowner's Signature, provide written evidence the landowner has been notified.

Please make a copy of this FPA/N for your records. If this FPA/N contains a hydraulic project requiring WDFW concurrence review, it will not be available online for public review until after the WDFW concurrence review period.

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR SNOHOMISH COUNTY

PUBLIC UTILITY DISTRICT NO. 1 OF
SNOHOMISH COUNTY, a Washington
municipal corporation,

Plaintiff,

v.

STATE OF WASHINGTON, SIERRA
PACIFIC INDUSTRIES DBA SIERRA
PACIFIC INDUSTRIES, INC., a California
corporation, PRECISION FORESTRY, INC.,
a Washington corporation, and JOHN DOE
NOS. 1-10,

Defendants.

No. 21-2-01118-31

AMENDED COMPLAINT

Plaintiff Public Utility District No. 1 of Snohomish County, for causes of action against defendants State of Washington, Sierra Pacific Industries DBA Sierra Pacific Industries, Inc., Precision Forestry, Inc., and John Doe Nos. 1-10 (collectively, “Defendants”), alleges as follows.

PARTIES

1. Plaintiff Public Utility District No. 1 of Snohomish County (“Plaintiff” or the “District”) is a municipal corporation and publicly owned utility, situated in Snohomish County, Washington, with its headquarters in Everett, Washington. The District provides power and water to customers in Snohomish County and on Camano Island.

1 2. Defendant State of Washington acted through its Department of Natural
 2 Resources (collectively with the State of Washington, "DNR"), a department of the State of
 3 Washington created by and organized under Chapter 43.30 RCW.

4 3. On information and belief, defendant Sierra Pacific Industries DBA Sierra
 5 Pacific Industries, Inc. ("Sierra") is a California corporation with its principal place of business
 6 in Anderson, California.

7 4. On information and belief, defendant Precision Forestry, Inc. ("Precision") is a
 8 Washington corporation with its principal place of business in Arlington, Washington.

9 5. Defendants John Doe Nos. 1-10, whose true identities are not yet known, are
 10 believed to be additional persons and/or entities who caused, contributed to, or were a
 11 substantial factor in bringing about the occurrences, injuries, and/or damages discussed below,
 12 including without limitation parents, subsidiaries, owners, agents, or other personnel of any of
 13 the named Defendants.

14 JURISDICTION AND VENUE

15 6. This Court has subject matter jurisdiction by grant of authority under the
 16 Constitution of the State of Washington and pursuant to RCW 2.08.010, RCW 54.16.110, and
 17 Chapter 4.92 RCW.

18 7. This Court has personal jurisdiction over Sierra, including pursuant to
 19 RCW 4.28.185 and the United States Constitution, because Sierra:

- 20 a. Did and does business in Washington, including related to the subject of this
- 21 Complaint;
- 22 b. Committed tortious acts in Washington, including related to the subject of
- 23 this Complaint; and
- 24 c. Maintains a registered agent authorized to accept service in Washington.

25 8. This Court has personal jurisdiction over Precision, including because Precision:

- 26 a. Is headquartered and resides in the State of Washington,

- 1 b. Did and does business in Washington, including related to the subject of this
2 Complaint;
3 c. Committed tortious acts in Washington, including related to the subject of
4 this Complaint; and
5 d. Maintains a registered agent authorized to accept service in Washington.

6 9. Venue in this Court is proper pursuant to, *inter alia*, RCW 4.12.010,
7 RCW 4.12.020, RCW 4.12.025, and CR 82(a).

8 10. More than sixty days before commencing this action against DNR, the District
9 properly presented a Washington State Tort Claim Form to DNR concerning this matter,
10 pursuant to and in compliance with Chapter 4.92 RCW.

11 **FACTS**

12 11. In February 2017, DNR held a public auction of timber sales on land owned by
13 DNR. DNR's public auction included, *inter alia*, a timber sale named "Lugnut," located on
14 approximately 183 acres of timber on parts of Sections 12, 13, 14, and 15 in Township 28
15 North, Range 8 East, and part of Section 7 in Township 28 North, Range 9 East W.M., in
16 Snohomish County (the "Lugnut Timber Sale"). The areas comprising the Lugnut Timber Sale
17 were divided into three geographic sections, identified as Unit 1, Unit 2, and Unit 3,
18 respectively.

19 12. Sierra participated in the public auction and was the successful bidder on the
20 Lugnut Timber Sale, on or about February 22, 2017. In March 2017, Sierra entered into a Bill
21 of Sale and Contract for Forest Products Export Restricted Lump Sum Agreement No. 30-
22 093898 with DNR, for the Lugnut Timber Sale (the "Timber Sale Agreement"). Pursuant to
23 the Timber Sale Agreement, DNR indicated the timber that could be harvested in the Lugnut
24 Timber Sale areas.

25 13. On information and belief, Precision facilitated the harvesting of the timber in
26 Unit 2 of the Lugnut Timber Sale.

1 14. In 2017 and early 2018, timber harvesting operations in the areas comprising the
2 Lugnut Timber Sale were conducted by and/or under the supervision of Sierra, Precision,
3 and/or DNR.

4 15. The harvesting operations affected timber near a busy roadway, Sultan Basin
5 Road.

6 16. The timber in the area of Unit 2 was addressed and/or harvested in a negligent,
7 reckless, improper, and/or wrongful manner.

8 17. The timber in the area of Unit 2 was addressed and/or harvested in a manner
9 inconsistent with proper and current industry standards.

10 18. As a result of Defendants' conduct and/or omissions, on March 13, 2018,
11 numerous trees fell down on and around Sultan Basin Road, in an area near milepost 8
12 (the "Incident"). On information and belief, Defendants were or should have been aware that
13 the trees were at risk of falling down, and such risks were foreseeable by Defendants.

14 19. At the time of the Incident, Barry Chrisman was traveling on Sultan Basin Road
15 near milepost 8, while in the employ of the District. Several of the falling trees struck the
16 District vehicle that Mr. Chrisman was driving, injuring Mr. Chrisman.

17 20. The District has incurred, and continues to incur, substantial expenses and losses
18 related to the injuries that Mr. Chrisman sustained in the Incident, including without limitation
19 under the District's self-insured workers compensation benefits, as well as related to
20 administering those benefits. Payments made by the District under its self-insured workers
21 compensation benefits, on account of the injuries sustained by Mr. Chrisman in the Incident,
22 total at least \$1,156,458.19 and are accruing. The District is entitled to recover its damages
23 from Defendants, including as a self-insurer under Chapter 51.24 RCW.

24 21. The District has also incurred other damages resulting from the Incident,
25 including without limitation damages to the District vehicle that Mr. Chrisman was driving and
26 other District equipment and property, as well as business disruption and other damages.

AMENDED COMPLAINT - 4

GOLDFARB & HUCK
ROTH RIOJAS, PLLC
925 Fourth Avenue, Suite 3950
Seattle, WA 98104
Phone: (206) 452-0260

1 **FIRST CAUSE OF ACTION**

2 **(Negligence)**

3 22. The District repeats and re-alleges each and every allegation contained in the
4 paragraphs above, as if fully set forth herein.

5 23. Defendants owed a duty of care in conducting their timber harvesting operations
6 and addressing timber in the area of Unit 2 of the Luginut Timber Sale area.

7 24. Defendants failed to meet the standard of care.

8 25. The District has been damaged as a direct, proximate, and foreseeable result of
9 Defendants' negligence, as set forth above.

10 26. Accordingly, the District is entitled to damages for Defendants' negligence in an
11 amount to be proven at trial.

12 **SECOND CAUSE OF ACTION**

13 **(Gross Negligence)**

14 27. The District repeats and re-alleges each and every allegation contained in the
15 paragraphs above, as if fully set forth herein.

16 28. Defendants owed a duty of care in conducting their timber harvesting operations
17 and addressing timber in the area of Unit 2 of the Luginut Timber Sale area.

18 29. Defendants knew or should have known, and/or recklessly disregarded, that
19 trees in the vicinity of Sultan Basin Road would fall onto the road and/or presented a
20 substantial risk of falling onto the road.

21 30. Defendants failed to exercise slight care and meet the standard of care.

22 31. The District has been damaged as a direct, proximate, and foreseeable result of
23 Defendants' gross negligence, as set forth above.

24 32. Accordingly, the District is entitled to damages for Defendants' gross
25 negligence in an amount to be proven at trial.

1 **THIRD CAUSE OF ACTION**

2 **(Nuisance)**

3 33. The District repeats and re-alleges each and every allegation contained in the
4 paragraphs above, as if fully set forth herein.

5 34. Pursuant to RCW 7.48.010, “[t]he obstruction of any highway or ... whatever is
6 injurious to health or indecent or offensive to the senses, or an obstruction to the free use of
7 property, so as to essentially interfere with the comfortable enjoyment of the life and property,
8 is a nuisance and the subject of an action for damages and other and further relief.” “Such
9 action may be brought by any person whose property is, or whose patrons or employees are,
10 injuriously affected or whose personal enjoyment is lessened by the nuisance.” RCW 7.48.020.

11 35. Pursuant to RCW 7.48.120, nuisance is broadly defined as follows: “Nuisance
12 consists in unlawfully doing an act, or omitting to perform a duty, which act or omission either
13 annoys, injures or endangers the comfort, repose, health or safety of others, offends decency, or
14 unlawfully interferes with, obstructs or tends to obstruct, or render dangerous for passage, any
15 lake or navigable river, bay, stream, canal or basin, or any public park, square, street or
16 highway; or in any way renders other persons insecure in life, or in the use of property.”

17 36. Pursuant to RCW 7.48.140, “[i]t is a public nuisance: ... [t]o obstruct or
18 encroach upon public highway, private ways, streets, alleys, commons, landing places, and
19 ways to burying places or to unlawfully obstruct or impede the flow of municipal transit
20 vehicles as defined in RCW 46.04.355 or passenger traffic”

21 37. Washington’s pattern jury instructions include a similar definition of nuisance:
22 “Nuisance is unlawfully doing an act or failing to perform a duty, which act or failure to act:
23 (1) Annoys, injures, or endangers the comfort, repose, health, or safety of others; (2) Offends
24 decency; (3) Unlawfully interferes with, obstructs or tends to obstruct, or renders dangerous for
25 passage, any lake, navigable river, bay, stream, canal, or basin; (4) Unlawfully interferes with,
26 obstructs or tends to obstruct, or renders dangerous for passage any public park, square, street,

1 or highway; or (5) In any way renders other persons insecure in life, or in the use of property.”
2 WPI 380.01 Nuisance in General—Definition, 6A Wash. Prac., Wash. Pattern Jury Instr. Civ.
3 WPI 380.01 (6th ed.) (brackets omitted).

4 38. In addition to Chapter 7.48 RCW, Washington also proscribes “common law
5 nuisance.” *See Kitsap Cty. v. Kitsap Rifle & Revolver Club*, 184 Wn. App. 252, 282, 337 P.3d
6 328 (2014), amended on denial of reconsideration (Feb. 10, 2015); *see also* WPI 380.00
7 Introduction, 6A Wash. Prac., Wash. Pattern Jury Instr. Civ. WPI 380.00 (6th ed.) (“State law
8 nuisance claims are based on specific statutory provisions and the common law.”).

9 39. Defendants’ conduct and/or omissions created or participated in creating the
10 nuisance alleged herein.

11 40. Pursuant to Chapter 7.48 RCW and Washington common law, the District is
12 entitled to obtain disgorgement, restitution, and/or damages occasioned by the nuisance.

13 41. Accordingly, the District requests an order providing for disgorgement,
14 restitution, and/or damages in amounts to be proven at trial.

15 **PRAYER FOR RELIEF**

16 Wherefore, the District respectfully asks this Court to award the following relief:

- 17 1. For judgment against Defendants, jointly and severally, and an award of
18 disgorgement, restitution, and/or all damages allowed by law, including without limitation
19 general and special damages, in amounts to be proven at trial;
 - 20 2. For attorney’s fees and costs pursuant to any applicable provision of law;
 - 21 3. For pre- and post-judgment interest as allowed by law;
 - 22 4. For leave to amend this Complaint as necessary; and
 - 23 5. For any other relief that the Court deems just and proper.
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RESPECTFULLY SUBMITTED this 6th day of April, 2021.

Goldfarb & Huck Roth Riojas, PLLC

/s/ Kit W. Roth
Kit W. Roth, WSBA No. 33059
Christopher M. Huck, WSBA No. 34104

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Attorneys for Plaintiff

FILED

21 MAR 12 AM 10:00

HEIDI PERCY
COUNTY CLERK
SNOHOMISH CO. WASH

21-2-01145-31
CMP 5
Complaint
9927043



IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR SNOHOMISH COUNTY

BARRY CHRISMAN and KERRY CHRISMAN,)
individually and as husband and wife,)

21 2 01145 31
NO.

Plaintiffs,)

COMPLAINT FOR DAMAGES

v.)

THE STATE OF WASHINGTON,)
SIERRA PACIFIC INDUSTRIES DBA SIERRA)
PACIFIC INDUSTRIES, INC., a California)
corporation, PRECISION FORESTRY, INC., a)
Washington corporation, and ABC)
CORPORATIONS 1-10,)

Defendants.)

COMES NOW the above-named Plaintiffs, BARRY AND KERRY CHRISMAN, by and through their attorney of record, Raymond J. Dearie of the Dearie Law Group, P.S., aver and allege as follows:

I. PARTIES, JURISDICTION & VENUE

1.1 Plaintiff Barry Chrisman, at all times relevant to this action, has been married to Plaintiff Kerry Chrisman and is a resident of the State of Washington.

1.2 Plaintiff Kerry Chrisman, at all times relevant to this action, has been married to Plaintiff Barry Chrisman and is a resident of the State of Washington.

///

COMPLAINT FOR DAMAGES

- 1 -

Dearie Law Group, P.S.
2025 First Avenue, Suite 1200
Seattle, Washington 98121
Telephone 206.239.9920
Facsimile 206.239.9921

ORIGINAL

1 1.3 Defendant State of Washington is a municipal corporation and does business in
2 Snohomish County, Washington.

3 1.4 On information and belief, Defendant Sierra Pacific Industries DBA Sierra Pacific
4 Industries, Inc. (Sierra) is a California corporation with its principal place of business in Anderson,
5 California.

6 1.5 On information and belief, Defendant Precision Forestry, Inc. (Precision) is a
7 Washington corporation with its principal place of business in Arlington, Washington.

8 1.6 Defendants ABC Corporations 1-10, whose true identities are not yet known, are believed
9 to be the corporation(s) whose negligent and/or reckless actions and/or omissions caused, contributed,
10 or were a substantial factor in bringing about the Plaintiffs' injuries and damages. Defendants ABC
11 Corporations may be agents, ostensible agents, employees, and/or independent contractors of any named
12 Defendant specified herein and/or they may be parent or subsidiary companies of any of named
13 Defendant specified herein, or other wholly unrelated entities.

14 **II. JURISDICTION & VENUE**

15 2.1 The incident giving rise to this action occurred in Snohomish County, Washington.

16 2.2 This Court is vested with jurisdiction and venue is proper because Defendants engage in
17 business in and the incident giving rise to this action occurred in Snohomish County, Washington.

18 2.3 Tort claims were filed in this matter pursuant to 4.92, *et seq.*, and sixty days have elapsed
19 without any resolution of these claims.

20 **III. FACTS**

21 3.1 In February 2017, the State of Washington, through its subsidiary agency, the
22 Washington State Department of Natural Resources, held a public auction of timber sales on land owned
23 by the State of Washington. This public auction included a timber sale named "Lugnut," located on
24 approximately 183 acres of timber on parts of Sections 12, 13, 14, and 15 in Township 28 North, Range
25 8 East, and part of Section 7 in Township 28 North, Range 9 East W.M., in Snohomish County (the
26 Lugnut Timber Sale). The areas comprising the Lugnut Timber Sale were divided into three geographic

1 sections, identified as Unit 1, Unit 2, and Unit 3, respectively.

2 3.2 Defendant Sierra participated in the public auction and was the successful bidder on the
3 Lugnut Timber Sale, on or about February 22, 2017. In March 2017, Sierra entered into a Bill of Sale
4 and Contract for Forest Products Export Restricted Lump Sum Agreement No. 30-093898 with the State
5 of Washington, for the Lugnut Timber Sale (the Timber Sale Agreement). Pursuant to the Timber Sale
6 Agreement, the State of Washington indicated the timber that could be harvested in the Lugnut Timber
7 Sale areas.

8 3.3 On information and belief, Defendant Precision facilitated the harvesting of the timber
9 in Unit 2 of the Lugnut Timber Sale.

10 3.4 In 2017 and early 2018, timber harvesting operations in the areas comprising the Lugnut
11 Timber Sale were conducted by and/or under the supervision of Sierra, Precision, and/or the State of
12 Washington.

13 3.5 The harvesting operations affected timber near a busy public highway, Sultan Basin
14 Road.

15 3.6 The timber in the area of Unit 2 was addressed and/or harvested in a negligent and/or
16 reckless manner and/or improper manner.

17 3.7 The timber in the area of Unit 2 was addressed and/or harvested in a manner inconsistent
18 with proper and current industry standards.

19 3.8 As a result of Defendants negligent and/or reckless actions and/or omissions, on March
20 13, 2018, numerous trees fell down on and around Sultan Basin Road, in an area near milepost 8. On
21 information and belief, the Defendants knew or should have known that the trees near the Sultan Basin
22 Road posed a safety risk to the travelling public on Sultan Basin Road.

23 3.9 At that time the trees fell onto Sultan Basin Road, Plaintiff Barry Chrisman was traveling
24 on Sultan Basin Road near milepost 8. Several of the falling trees struck the vehicle that Mr. Chrisman
25 was driving, and severely injuring Mr. Chrisman.

26 ///

1 3.10 As a result of Defendants' negligent, reckless and/or improper actions and/or omissions,
2 Mr. Chrisman nearly died at the scene.

3 3.11 As a result of Defendants' negligent, reckless and/or improper actions and/or omissions,
4 Mr. Chrisman nearly died several times at Harborview Medical Center in Seattle, Washington, where
5 Mr. Chrisman was life-flighted immediately after the incident.

6 3.12 As a direct and proximate result of the acts and/or omissions of the Defendants, Plaintiff
7 Barry Chrisman sustained serious physical and emotional injuries.

8 3.13 As a direct and proximate result of the acts and/or omissions of the Defendants, Plaintiff
9 Kerry Chrisman sustained loss of consortium.

10 **IV. CAUSES OF ACTION**

11 4.1 Defendants are liable under strict liability.

12 4.2 Defendants are liable for negligence.

13 4.3 Defendants are liable for gross negligence.

14 4.4 Defendants are liable for corporate negligence.

15 4.5 Defendants are liable for nuisance.

16 4.6 Plaintiffs reserve their rights to add additional causes of action as discovery occurs.

17 **V. DAMAGES**

18 5.1 Defendants' acts and omissions, as set forth above, directly, substantially, and
19 proximately caused the harm and damages to Plaintiffs as set forth herein.

20 5.2 Plaintiff Barry Chrisman suffered and continues to suffer physical disability and pain,
21 emotional distress and trauma, disfigurement, loss of enjoyment of life, medical expenses, lost income,
22 loss of earning capacity, future medical expenses, and other damages past, present and future, all in
23 amounts to be proven at the time of trial.

24 5.3 Plaintiff Kerry Chrisman suffered and continues to suffer from a loss of consortium.

25 ///

26 ///

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Plaintiffs request judgments, jointly and severally, against each of the
3 Defendants as follows:

- 4 (a) For special damages to be proven at the time of trial;
5 (b) For general damages in an amount to be proven at the time of trial;
6 (c) For pre-judgment interest on liquidated damages;
7 (d) For Plaintiff's costs and disbursements herein;
8 (e) For reasonable attorneys' fees; and
9 (f) For such other and further relief as this Court deems just and proper.

10 DATED this 11th day of March 2021.

11 DEARIE LAW GROUP, P.S.

12
13
14 By 

15 Raymond J. Dearie, WSBA #28792
16 Attorney for Plaintiffs Barry and Kerry
Chrisman

LEE SMART P.S., INC.

November 27, 2023 - 4:26 PM

Filing Petition for Review

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: Case Initiation
Appellate Court Case Title: Public Utility District No. 1 of Snohomish Co., et al., Apps v. State of Wa, et al., Resps (841661)

The following documents have been uploaded:

- PRV_Petition_for_Review_20231127162537SC619208_9495.pdf
This File Contains:
Petition for Review
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A copy of the uploaded files will be sent to:

- TortTAP@atg.wa.gov
- dkirkpatrick@wakefieldkirkpatrick.com
- dlombardi@dearielawgroup.com
- dringold@wakefieldkirkpatrick.com
- ebour@wakefieldkirkpatrick.com
- gcastro@cityoftacoma.org
- huck@goldfarb-huck.com
- jpd@leesmart.com
- jzvers@dearielawgroup.com
- kcox@cityoftacoma.org
- kxc@leesmart.com
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- roth@goldfarb-huck.com
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