

62993-0

62993-0

No. 62993-0-I

(King County Superior Court No. 08-2-14133-1 SEA)

WASHINGTON STATE COURT OF APPEALS
DIVISION ONE

KING COUNTY, a municipal corporation of the State of Washington,

Appellant,

vs.

PALMER COKING COAL COMPANY, a Washington Corporation,
WHITE RIVER FORESTS LLC, a Delaware limited liability company, and
JOHN HANCOCK LIFE INSURANCE COMPANY, a Massachusetts life
insurance company,

Respondents.

**CROSS-APPELLANT REPLY BRIEF OF
PALMER COKING COAL COMPANY**

John M. Groen, WSBA No. 20864
Attorneys for Respondent,
Palmer Coking Coal Company

GROEN STEPHENS & KLINGE LLP
11100 NE 8th Street, Suite 750
Bellevue, WA 98004

Telephone: (425) 453-6206

FILED
STATE OF WASHINGTON
2009 NOV 17 AM 11:14

ORIGINAL

Table of Contents

INTRODUCTION1

STATEMENT OF FACTS1

ARGUMENT2

I. THE PROPERTIES ARE LEGALLY SEPARATE AND
DISTINCT PARCELS OF LAND.....2

 A. King County Cannot Render As Unlawful the Lots
 Previously Created Under Federal Law3

 B. The Phrase “But Not Limited To” Means That Subsections
 A.1 through A.4 Are Not The Exclusive Means of
 Demonstrating That Lots Were Lawfully Created.....7

 C. The Declaration of Joe Miles Concedes That The
 “Approved Road” Criteria in Subsection A.1 Is Not The
 Exclusive Means For Establishing A Lawful Pre-1937 Lot.....10

II. THE 40-ACRE PARCELS SATISFY THE FACTUAL
CIRCUMSTANCES OF KCC 19A.08.070 A.4.D.12

III. DDES’ CODE INTERPRETATION IS UNLAWFUL17

CONCLUSION.....19

Table of Authorities

CASES

City of Seattle v. Williams,
128 Wn.2d 341 (1995)..... 10

Greenblum v. Gregory,
160 Wash. 42 (1930)..... 4, 5

Guimont v. Clarke,
121 Wn.2d 586 (1993)..... 6

Manufactured Housing Cmty. of Washington v. State,
142 Wn.2d 347 (2000)..... 6

Plein v. Lackey,
149 Wn.2d 214 (2003)..... 18

Rettkowski v. Dept. of Ecology,
128 Wn.2d 508 (1996)..... 8

State v. Roggenkamp,
153 Wn.2d 614 (2005)..... 16

STATUTES

43 U.S.C. § 751..... 3

43 U.S.C. § 752..... 3

43 U.S.C. § 753..... 3

OTHER AUTHORITIES

The Manual of Surveying Instructions for the Survey of the Public
Lands of the United States (1973), § 3-75..... 4

COUNTY CODE PROVISIONS

KCC 18A.08.040 14

KCC 19A.08.070 *passim*

KCC 2.100.010 17

INTRODUCTION

This cross-appellant's reply brief is filed by Palmer Coking Coal Company. Pursuant to RAP 10.1(g), Palmer Coking Coal hereby adopts by reference the entire brief and arguments submitted by White River Forest LLC/John Hancock Life Insurance Company (White River). As in the prior briefing, Palmer Coking Coal and White River have coordinated their separate briefs so as to minimize repetition and to stress different aspects of the argument.

The 40-acre parcels at issue here were created pursuant to federal law as original quarter-quarter sections, *i.e.* 40-acre parcels. Under King County Code (KCC) 19A.08.070, these lots should be recognized as lawfully created under the rules in effect at the time they were created. The 40-acre parcels have not been further subdivided and remain in substantially their original form. Clerk's Papers (CP) at 348 and 57. Properly construed, the County code must recognize the lawfulness of these parcels.

STATEMENT OF FACTS

The facts have previously been set forth and there is no need for further clarification beyond the discussion in the body of the argument.

ARGUMENT

I.

THE PROPERTIES ARE LEGALLY CREATED SEPARATE AND DISTINCT PARCELS OF LAND

In the Brief of Respondent submitted by Palmer Coking Coal, the challenge was laid to King County to show that the 40-acre parcels were unlawfully created. The Brief challenged the County as follows.

These parcels were segregated according to federal law. They were transferred to private parties according to the procedures of federal law. King County **has not, will not, and cannot** show that these 40-acre parcels were somehow unlawfully created. Accordingly, the County's refusal to recognize the legal status of the lots should be reversed.

Brief of Respondent Palmer Coking Coal, at 13 (emphasis in original).

As predicted, King County has not shown in any way that the 40-acre parcels were illegally created. This fact is very important because the whole point of KCC 19A.08.070 is to determine, in the **past tense**, whether the lots were created in compliance with the law in effect at that time. Palmer Coking Coal previously highlighted the language from KCC 19A.08.070 that the legal lot inquiry is whether a "lot **was** created" according to the laws "**in effect at the time** the lot **was** created." (emphasis added). Likewise, the definition of a "lot" in the King County Code is based on this same inquiry. The definition states:

Lot: a physically separate and distinct parcel of property that **has been created** pursuant to the provisions of this title, or **pursuant to any previous laws governing** the subdivision, short subdivision or **segregation of land**.

KCC 19A.04.210 (emphasis added).

King County cannot dispute the plain language that both KCC 19A.08.070, as well as the definition of “lot” in KCC 19A.04.210, are phrased with this past tense inquiry. Nor does King County deny that the policy behind the code provisions is to incorporate a “grandfathering” concept. That is, a lot that was lawfully created should continue to be recognized as a legal lot even if the rules for lot creation are subsequently changed. This grandfathering concept protects property owners from the impacts of ever-changing rules.

A. King County Cannot Render As Unlawful the Lots Previously Created Under Federal Law

The 40-acre parcels were created pursuant to the federal laws governing the segregation and subdivision of the public domain. The government plats that created the 40-acre parcels have not, *and cannot*, be revoked by King County.

The “legal subdivision” of the public domain required, first, a government survey, followed by filing with the government land office the official plat setting forth the parcels. Once these steps occurred, the parcels could be conveyed. *See generally* 43 U.S.C. §§ 751, 752 and 753.

The function of the cadastral surveyor of the Bureau of Land Management has been fulfilled when he has executed and monumented his survey properly and returned an official record in the form of detailed field notes and a plat. **The plats** are constructed in harmony with the field notes returned by the surveyor. The **lands are identified** on the ground by fixed monuments established in the survey. A United States patent **conveys the title to an area defined** by those fixed monuments and related by description and outline to **the official plat**.

The Manual of Surveying Instructions for the Survey of the Public Lands of the United States (1973), § 3-75 (emphasis added).

Our Washington Supreme Court has recognized that completion of these steps is referred to as the “legal subdivision” of the land. Specifically, the term “legal subdivision” is used to describe the segregation of the public domain, including the 40-acre quarter-quarter sections. As clarified by the Supreme Court.

The phrase quoted [“legal subdivision”] has a definite meaning attached to it ... It applies only to the divisions of land which result from the application of the ordinary methods used in the making of a government survey; the smallest of these being the 40-acre square, or quarter-quarter section ...

Greenblum v. Gregory, 160 Wash. 42, 47 (1930). This definition is not unique to Washington, but is the standard use of that term by the Department of Interior. After quoting the above language from *Greenblum*, the Department of Interior appeals board stated:

The Glossary of Public Land Terms, published by the Department of Interior (1959 reprint), under the term “legal subdivision” states: In a general sense, a subdivision of a township, such as a section, quarter section, lot, etc., which is authorized under the public land laws...

74 Interior Dec. 373, 375 (Nov. 7, 1967).

It should be no surprise that the term “legal subdivision” also is used by the Washington Legislature. First enacted in 1890, and still on the books today, is RCW 84.40.160, which directs the County assessor to list all real property according to the applicable “legal subdivision.”

The assessor shall list all real property according to the largest legal subdivision as near as practicable.

Id. (emphasis added).

Most important for purposes here, these “legal subdivisions” under the public land laws could not be subsequently modified by the County.

The federal law controlled. The Court in *Greenblum* continued:

No authority has been cited, nor are we able to find any, which permits the county officials to resurvey, replat, or change the legal subdivisions as established.

Greenblum, 160 Wash. at 48.

On the cross-motions for partial summary judgment, this law was backed up by the facts. Although set forth in Palmer Coking Coal’s first brief, the following quotation from the declaration of Stephen Graddon bears repeating:

All of these properties were historically created lots that were legally subdivided under the applicable land segregation laws and rules in place at the time of their creation. ... These laws resulted in parcels or lots being created as quarter-quarter sections of land or 40-acre lots, known as the "Smallest Legal Subdivision" of a 640 acre Section of land under federal law.

CP at 348. King County cannot deny these facts or the related federal law.

By contending that KCC 19A.08.070 does not include recognition of these federally created 40-acre lots, King County is ignoring the grandfathering concept of the ordinance. Moreover, the County is walking right into potential damages claims that the grandfathering concept is intended to protect against. For example, if King County's interpretation of KCC 19A.08.070 is correct, that means these 40-acre parcels cannot even be sold or transferred to another party. KCC 19A.08.170 (prohibiting sale or transfer of a lot that is not recognized as a legal lot under KCC 19A). Of course, the right to dispose of property is a fundamental attribute of property ownership. *Guimont v. Clarke*, 121 Wn.2d 586, 595 (1993); *Manufactured Housing Cmty. of Washington v. State*, 142 Wn.2d 347, 369 (2000). By taking previously legal parcels, and rendering them illegal through a strained interpretation of KCC 19A.08.070, King County is eliminating rights in property and setting itself up for further litigation in damages claims. It appears that the County attorneys are simply making arguments to try to win this case

without thinking about the potential damages actions that would result from their arguments.

Fortunately for the public good, the language of KCC 19A.08.070 provides a relief valve to avoid eliminating rights in property. As set forth in Palmer Coking Coal's first brief, the phrase "but not limited to" allows for the circumstances of this case.

B. The Phrase "But Not Limited To" Means That Subsections A.1 through A.4 Are Not The Exclusive Means of Demonstrating That Lots Were Lawfully Created

Palmer Coking Coal previously set forth the framework of KCC 19A.08.070. Brief of Respondent/Cross-Appellant Palmer Coking Coal at 7 – 9. In short, the code provision sets forth various ways that an owner can demonstrate that a lot was lawfully created under the laws in effect at that time. The subsections A.1 through A.4 are based on various state laws and code provisions that were in effect at some point in time and that could have been used to create a lot.

The drafters of the ordinance certainly attempted to identify most of the lawful methods by which legal lots could have been created. However, the drafters must have recognized that there may be other circumstances, *not identified in the ordinance*, by which lots could have been lawfully created. That is why the phrase "but not limited to" is included as a qualifier to the list. The federal creation of the 40-acre

parcels is just the type of circumstance that the phrase “but not limited to” was intended to cover.

In response, King County states *without explanation* that Palmer Coking Coal is raising a new contention. Reply Brief of Appellant King County at 9 -10. How the County can think that arguing for a proper interpretation of KCC 19A.08.070 is a new contention is somewhat mysterious. The issue of whether subsection A.1 is the exclusive means of establishing the legality of pre-1937 lots was a central issue in the cross-motions for summary judgment. The issue is certainly not being raised for the first time on appeal. Moreover, the issue is one of statutory construction which is a question of law that reviewed *de novo*. *Rettkowski v. Dept. of Ecology*, 128 Wn.2d 508, 515 (1996).

King County next contends, *again without explanation*, that the 40-acre parcels are not “lots.” Reply Brief of King County at 10. But that statement does not square with the definition of “lot” set forth in KCC 19A.08.210. The parcels are certainly “physically separate and distinct parcel[s] of property.” The second criteria for a “lot” specifies that the parcel must have been created either pursuant to KCC Title 19A, “**or** pursuant to **any** previous laws governing the subdivision, short subdivision or **segregation of land.**” *Id.* (emphasis added). Obviously, the federal segregation laws, referred to as the “legal subdivision” of the

public domain, are laws governing the segregation of land. The term “any” is very broad and must include the original subdivision of the land into 40-acre parcels. In short, the 40-acre parcels are “lots” under the King County Code definition. Other than its unexplained statement, the County makes no argument to the contrary.

The County also contends that **if** the phrase “but not limited to” is interpreted as argued by Palmer Coking Coal, the result will be to render “superfluous” the other provisions in subsections A.1 through A.4. This response by the County is simply not true. The other provisions in KCC 19A.08.070 will continue to serve their purpose of identifying various factual circumstances that will be recognized as creating legal lots. Those provisions are not rendered superfluous by also recognizing that there may be other circumstances, not expressly identified in the ordinance, that will also demonstrate that the proposed lot was lawfully created under the laws in effect at that time. That is the plain meaning of the phrase “but not limited to.”

Of course, the glaring deficiency in King County’s response is any alternative explanation for the meaning of the phrase “but not limited to.” The plain meaning is that a landowner is “**not limited to**” demonstrating the fact patterns identified in the ordinance. There may be other facts, such as the federal land segregation laws, which show that a lot was

lawfully created under the laws in place at the time. If the phrase “but not limited to” does not have this meaning, *what is it doing in the ordinance?* King County offers no alternative meaning.

Of course, the rule of interpretation is to give effect to all language and not render any portion thereof meaningless. *See, e.g., City of Seattle v. Williams*, 128 Wn.2d 341, 349 (1995). Here, the plain meaning should be given effect.

C. The Declaration of Joe Miles Concedes That The “Approved Road” Criteria in Subsection A.1 Is Not The Exclusive Means For Establishing A Lawful Pre-1937 Lot

In its prior brief, Palmer Coking Coal argued that King County has in fact allowed lots that were created prior to 1937 **without** meeting the “approved road” criteria in subsection A.1. This means that the A.1 criteria is not the exclusive means for establishing lawful pre-1937 lots. It also gives effect to the language “but not limited to.”

Specifically, *in this very case*, some of the 40-acre parcels were granted legal lot status based upon those particular lots being sold or transferred to a different private party after 1937. Although created under federal law prior to 1937, the subsequent sale or transfer was used a ground to recognize legal lot status even though the “approved road” criteria was not satisfied. This was expressly acknowledged by DDES Deputy Director Joe Miles.

DDES recognized as valid all of the lot applications submitted by the petitioner that involved a **post-1937 sale** or transfer (whether sold by deed, shown on an old tax statement, or in a post-1937 plat or short plat). That is, **any lot** for which petitioners demonstrated that there was a valid **post-1937** (and pre-1972) **sale or transfer was recognized as a legal lot by DDES without the need to satisfy the “approved road” requirement.**

CP at 370 (Declaration of Joe Miles at 4:8-12 (emphasis added)).

In response to this argument, King County makes only one point.

At page 5 of its brief, the County objects to the use of Joe Miles’ “deposition” because the deposition is hearsay and DDES did not have the opportunity to cross-examine the witness. The County’s response completely fails.

The County completely misses the fact that the quote from Joe Miles is **NOT** from some uncompleted deposition. Rather, it is from his “Declaration” made under penalty of perjury (CP at 367), and signed on September 11, 2008. CP at 374. Moreover, it was submitted **by the County** in support of its motion for summary judgment. Accordingly, there is no valid basis for the County to object to the evidence.

The result is a major hole in the County’s analysis. On one hand, the County wants to convince this Court that the phrase “but not limited to” has no meaning and that subsection A.1. is the exclusive method to recognize lots created before 1937. On the other hand, the County has

effectively conceded that subsection A.1 is not exclusive because the County has in fact acknowledged pre-1937 as lawful when such lots were subsequently transferred after 1937. As Joe Miles stated, such lots were recognized “without the need to satisfy the ‘approved road’ requirement.” CP at 370.

The County offers no rebuttal to the Joe Miles concession. Nor is there one. The admission by Joe Miles is completely consistent with the interpretation that legal lot recognition is “not limited to” only the factual circumstances set forth in the ordinance.

In short, the 40-acre parcels were lawfully created. Properly interpreted, KCC 19A.08.070 allows recognition of legal lot status to lots that were lawfully created under the laws in effect at that time. Accordingly, the decision below should be reversed and the matter remanded to the trial court for additional proceedings to identify the separate and distinct parcels created pursuant to the federal public land laws.

II.

THE 40-ACRE PARCELS SATISFY THE FACTUAL CIRCUMSTANCES OF KCC 19A.08.070 A.4.D.

Although unnecessary, the 40-acre parcels also meet the circumstances described for legal lot status in KCC 19A.08.070,

subsection A.4.d.

That subsection recognizes as legal lots those parcels that were created “at a size twenty acres or greater, recognized prior to January 1, 2000.” The County argues that this provision does not apply because there is allegedly no evidence that “the ‘lots’ were ever ‘created’ by any alternative means allowed by state statute or code.” Reply Brief of King County at 17.

The County’s position is wrong. The lots were created pursuant to federal law. Of course, state law allows the creation of lots pursuant to federal law. Indeed, as argued above, state law could not prohibit the federal segregation of land even if it wanted to. *Supra*, at 4-5. Moreover, RCW 84.40.160 concerning taxation of real property, acknowledges and provides for taxation of these separate and distinct parcels created by the federal segregation laws. As referenced above, each county assessor is required to list all real property subject to taxation. At the beginning of statehood, and continuing today, that listing is to follow the “legal subdivision” of the land. RCW 84.40.160. In 1890, long before enactment of the modern subdivision laws, the term “legal subdivision” included primarily the subdivisions pursuant to the federal segregation laws. Accordingly, state law not only “allowed” the operation of the federal laws, it set up taxation procedures that acknowledged and taxed the

resulting 40-acre parcels.

The County next argues that even under the authority for creation of large lots (20 acres or greater), the owner still had to subdivide those lots to create them. As stated by King County in its brief, “the land owner was still required to subdivide its parcels into lots.” Reply Brief of King County at 18.

The County’s position makes no sense at all. The whole point of the large lot segregations was that such lots would be recognized as lawful even though they were not subdivided. Under RCW 58.17.040, and the corresponding KCC 18A.08.040, these large lots were expressly identified as an “exemption” from the subdivision act. In other words, such lots were lawful *without having to go through the subdivision process*. They were **exempt** from that process. The County’s argument that such lots still needed to be created by subdivision is just wrong.

The County next argues that, as used in subsection A.4.d., the term “recognized” does not include recognition by the County Assessor. Several responses are appropriate.

First, King County ignores the plain dictionary definitions set forth in Palmer Coking Coal’s prior brief. Under those definitions the term “recognize” means to perceive, acknowledge, or take notice of. Brief of Respondent Palmer Coking Coal at 16.

Second, the County does not deny that under these definitions, these parcels have all been identified, acknowledged and taxed by King County through the County Assessor.

Third, with respect to the notion that recognition by the County Assessor is not sufficient, King County has simply misconstrued the rules of statutory interpretation. The County points out that in subsection A.1.b.(2) we find the language stating “recognized prior to October 1, 1972, as a separate tax lot by the county assessor.” A similar identification of the County Assessor is not made in subsection 4.d.

Of course, it makes sense that in A.1.b.(2) the County Assessor is specifically identified because the reference is to recognition “as a separate tax lot.” That recognition of a “tax lot” is necessarily by the Assessor. In that subsection, recognition by the Assessor is the **only** recognition authorized to satisfy the “separate tax lot” criteria.

In sharp contrast, the language in subsection 4.d. is much broader. All that is required is that the parcel be “recognized.” The provision does not specify how that occurs. In other words, rather than excluding recognition by the County Assessor, the language in subsection 4.d could allow lot recognition in some other manner as well. Leaving out the specific reference to the “County Assessor” does not limit the provision; rather, it expands and broadens the type of recognition that could take

place.

For purposes here, it is enough that the term “recognized” at least includes acknowledgement in the tax records as a separate parcel. Obviously, the use of the term “recognized” in subsection A.1.b.(2), as referring to lots being recognized in historic tax records, is a reasonable and normal understanding of the term. This use of the same term, in the same code provision, strongly supports the reasonableness of construing that identical term in subsection 4.d in like manner. *State v. Roggenkamp*, 153 Wn.2d 614, 635 (2005) (rule of statutory construction is to construe identical terms alike).

The County has conceded the recognition of these lots as separate tax parcels.

Second, for the vast majority of the proposed lots, the petitioners presented evidence that the lot was **recognized** as a “tax parcel” prior to 1937. The existence of these pre-1937 tax parcels is not disputed for purposes of this motion.

CP at 108 (King County Motion at 1:17-19) (emphasis added). Nor can the County dispute that the parcels are all twenty acres or greater.

Accordingly, they meet the factual circumstances identified in subsection 4.d. and should be recognized as legal lots under that basis.

III.

DDES' CODE INTERPRETATION IS UNLAWFUL

Palmer Coking Coal contends that the DDES Final Code Interpretation (FCI) exceeded the lawful authority of the Director. A formal code interpretation is only authorized for interpreting a “development regulation” KCC 2.100.010. However, KCC 19A.08.070 does not regulate development. Indeed, the landowners are not seeking to develop anything. They simply want to establish that they own legal lots that can be transferred or sold without penalty under KCC 19A.08.170.

The County responds that all of “Title 19A” deals with land subdivision and that, being included within Title 19A, the lot recognition ordinance must also be a development regulation. This argument does not withstand scrutiny. Whether the lot recognition code section is a “development regulation” is not determined by where the section is placed in the code. The determination should be based on what the ordinance actually does. Unlike development regulations, the lot recognition code section does not regulate development. It is simply a mechanism to determine **existing** legal lots. The code provision does not create, change, or subdivide anything. Tellingly, the County could not muster up any argument explaining how KCC 19A.08.070 actually regulates the physical development of the land. That code section simply does not regulate.

The County does complain that this is a new argument on appeal. However, the landowners contended below that the Director exceeded her lawful authority in issuing the Final Code Interpretation. Where the record is sufficiently developed, the Court has inherent power to consider a statute or code provision for the first time on appeal. *Plein v. Lackey*, 149 Wn.2d 214, 222 (2003). Here, the code provision limiting the authority of the Director to issuing code interpretations only for development regulations should be considered. The record is fully developed for that issue.

The County itself repeatedly stressed in its opening brief that the landowners were not developers, did not have a development project, and did not intend to actually change the use of their properties.¹ King County's Opening Brief at 17, 19, and 20. So be it. Of course, this also means that there is no development project that is being regulated by KCC 19A.08.070. In short, KCC 19A.08.070 is not a development regulation and the Final Code Interpretation was issued in excess of legal authority. Accordingly, the FCI should be declared invalid.

¹ In several places, the County has argued that Palmer Coking Coal and White River are seeking to invalidate the 80-acre zoning that was adopted for these areas. That is not true. Neither of the landowner entities challenges the legality of the 80-acre zoning. The zoning is simply not relevant to the issues because the landowners are not seeking to subdivide any property.

In a last gasp, the County requests leave to file a motion to dismiss the LUPA appeal of the FCI for lack of jurisdiction. Reply Brief of King County at 24. However, the conclusion that the Director exceeded her lawful authority does not cause the Superior Court and Court of Appeals to lose jurisdiction over the validity of the FCI. The fact is that the FCI was issued by the Director. The only mechanism for seeking judicial review is pursuant to LUPA. RCW 36.70C.020(1)(b). A conclusion that the Director exceeded her authority and issued an FCI inappropriately does not deprive the Court of jurisdiction. Rather, it simply results in a ruling that the Director's action exceeded lawful authority and is invalid and of no effect.

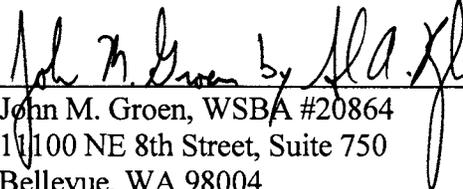
CONCLUSION

The 40-acre parcels were lawfully created pursuant to federal law. The County has no basis to claim otherwise. Properly interpreted, KCC 19A.08.070 provides for the legal status of those lots to be acknowledged. For all the foregoing reasons, it is respectfully requested that the Court reverse the trial court ruling on that issue, and remand to the trial court for

further proceedings to identify each of these separate and distinct parcels.

RESPECTFULLY submitted this 16th day of November, 2009.

GROEN STEPHENS & KLINGE LLP

By:  WSBA # 35347
John M. Groen, WSBA #20864
11100 NE 8th Street, Suite 750
Bellevue, WA 98004
(425) 453-6206

DECLARATION OF SERVICE

I, Linda Hall, declare:

I am not a party in this action.

I reside in the State of Washington and am employed by Groen Stephens & Klinge LLP in Bellevue, Washington.

On November 16, 2009, a true copy of Cross-Appellant Reply Brief of Palmer Coking Coal Company was placed in envelopes, which envelopes with postage thereon fully prepaid were then sealed and deposited in a mailbox regularly maintained by the United State Postal Service in Bellevue, Washington addressed to:

Attorneys for Petitioner, King County:

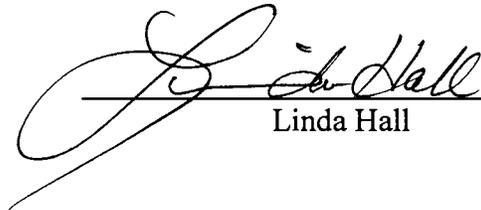
Daniel T. Satterberg,
King County Prosecuting Attorney
Cristy Craig,
Senior Deputy Prosecuting Attorney
King County Prosecutor's Office
516 Third Ave., W400
Seattle, WA 98104

Attorneys for Respondents, White River Forests LLC and John Hancock Life Insurance:

Lawrence A. Costich
Christopher H. Howard
Averil Rothrock
Schwabe, Williamson & Wyatt, P.C.
1420 5th Ave., Ste. 3010
Seattle, WA 98104

Co-Counsel for Respondent, Palmer Coking Coal Company:
Michele McFadden
Law Offices of Michele McFadden
P.O. Box 714
Wauna, WA 98395

I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed this 16th day of November, 2009 at Bellevue, Washington.



Linda Hall