

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.

**BRIEF OF RESPONDENT/CROSS-APPELLANT
PALMER COKING COAL COMPANY**

John M. Groen, WSBA No. 20864
GROEN STEPHENS & KLINGE LLP
11100 NE 8th Street, Suite 750
Bellevue, WA 98004

Telephone: (425) 453-6206

3
FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2009 SEP 17 AM 10:43

Table of Contents

Table of Authorities iii

INTRODUCTION1

ASSIGNMENTS OF ERROR.....1

STATEMENT OF THE CASE.....3

ARGUMENT7

I. THE PROPERTIES ARE LEGALLY CREATED
SEPARATE AND DISTINCT PARCELS OF LAND.....7

A. Overview of KCC 19A.08.0707

B. The Subject Lots Were Created In Compliance With
the Law In Effect At The Time Of Creation of the
Lots9

C. The Legal Status of the Parcels Does Not Require
Meeting the Circumstances Set Forth in Subsections
A.1 through A.4 of KCC 18A.08.070.....13

II. CROSS-APPELLANTS’ PARCELS SATISFY THE
FACTUAL CIRCUMSTANCES OF KCC 19A.08.070 A.4.D.....15

A. The Parcels Were All “Recognized” Prior to January
1, 2000.....16

B. Compliance With Subsection A.1. Is Not Mandatory19

III. DDES’ CODE INTERPRETATION IS UNLAWFUL21

A. The Code Interpretation Exceeds Lawful Authority.....21

B. The 1993 King County Road Standards Were
Erroneously Utilized by the Director to Define the
Term “Road”25

IV. EVEN IF NOT UNLAWFUL, THE TRIAL COURT
CORRECTLY CONCLUDED THE DDES CODE
INTERPREATION IS NOT APPLICABLE TO CROSS-
APPELLANTS26

CONCLUSION.....28

Table of Authorities

CASES

<i>City of Seattle v. Burlington Northern R. Co.</i> , 145 Wn.2d 661 (2002).....	14
<i>First Covenant Church v. City of Seattle</i> , 120 Wn.2d 203 (1992).....	16
<i>New Castle Investments v. City of LaCenter</i> , 98 Wn. App. 224 (1999).....	24
<i>Sleasman v. City of Lacey</i> , 159 Wn.2d 639 (2007).....	28
<i>State v. Bolar</i> , 129 Wn.2d 361 (1996).....	16
<i>State v. Roggenkamp</i> , 153 Wn.2d 614 (2005).....	18, 19
<i>United States v. Hurlburt</i> , 72 F.2d 427 (10th Cir. 1934).....	12
<i>Warren v. Van Brunt</i> , 86 U.S. 646 (1873).....	11

STATUTES

RCW 36.70A.030 (7).....	22
RCW 36.70A.108 3(a).....	23
RCW 36.70A.280 (1)(a).....	23
43 U.S.C. § 751.....	14
43 U.S.C. § 752.....	14
43 U.S.C. § 753.....	11, 14

COUNTY CODE PROVISIONS

KCC 19A.04.210	8, 9
KCC 19A.08.070	<i>passim</i>

KCC 19A.08.070 A.....	8, 9, 15
KCC 19A.08.070 A.1.....	6
KCC 19A.08.070 A.1.b.(2).....	19
KCC 19A.08.070 A.4.d.....	2, 6, 15, 18, 21, 28
KCC 19A.08.170	1, 15
KCC 2.100.010	22
KCC 2.100.020	21, 25
KCC 2.100.020 C.....	22

CONSTITUTIONAL PROVISIONS

U.S. Const., Art. IV, section 3	14
---------------------------------------	----

COURT RULES

RAP 10.1(g).....	1
------------------	---

OTHER AUTHORITIES

<u>Manual of Surveying Instructions for the Survey of the Public</u>	
<u>Lands of the United States</u> (1973), § 1-9.....	10, 11
18 William B. Stoebeck & John W. Weaver, Washington Practice:	
Real Estate: Transactions § 13.2 (2d ed. 2009)	11
<u>The Merriam-Webster Dictionary</u> 582 (3d ed. 1974).....	16
<u>Webster's New Collegiate Dictionary</u> 965 (8th ed. 1977).....	16

INTRODUCTION

This case will require a ruling on the correct application of King County Code (KCC) 19A.08.070. That code section addresses the methods of recognizing whether a parcel of property has legal status as a separate and distinct lot.

The determination of status as a legally created lot is important for many reasons. For purposes here, it is sufficient to point out that it is unlawful for any person to even sell or transfer a lot, tract, or parcel that is not a legal lot under Chapter 19A KCC. KCC 19A.08.170.

This brief is filed by Palmer Coking Coal Company. Co-respondent/cross-appellant is White River Forest LLC and John Hancock Life Insurance Company (White River). Pursuant to RAP 10.1(g), Palmer Coking Coal Company hereby adopts by reference the entire brief submitted by White River. Co-Respondents have attempted to coordinate their separate briefs so as to minimize repetition and for each co-respondent to stress different aspects of the arguments.

ASSIGNMENTS OF ERROR

1. Palmer Coking Coal assigns error to certain portions of the Order Granting In Part and Denying In Part Cross-Motions For Partial Summary Judgment (Order). Specifically, Palmer Coking Coal assigns error to the

rulings identified as D.1 and D.2.

The issues pertaining to this assignment relate to the proper interpretation of KCC 19A.08.070 and, more specifically, whether subsection A.1 provides the exclusive means of establishing that a pre-1937 lot was created in compliance with the laws in existence at the time the lot was created.

2. Error is also assigned to rulings D.5 and D.6 of the Order. The issue is whether the Final Code Interpretation (FCI) issued by the Director of the King County Department of Development and Environmental Services (DDES) exceeded lawful authority and is an erroneous interpretation and application of the law. Palmer Coking Coal agrees with and incorporates the numerous contentions of White River on this point, and particularly contends that the FCI was clearly erroneous in defining the term “road” by reference to selected portions of the 1993 King County Road Standards rather than utilizing the plain and ordinary dictionary definition.

3. Error is also assigned to ruling D.7. Palmer Coking Coal contends that KCC 19A.08.070 A.4.d. provides an alternative basis to determine that the subject parcels are legal lots.

4. Error is also assigned to rulings D.9, D.10, D.11, and D.12. The issues are similar to those already identified in that they all focus on the correct interpretation and application of KCC 19A.08.070.

STATEMENT OF THE CASE

In October 2007, Palmer Coking Coal Company filed requests with the King County Department of Development and Environmental Services (DDES) to determine that 98 of its parcels in eastern King County are separate and distinct legal parcels. CP at 348 (Declaration of Stephen J. Graddon at 2:1-2 and 3:1-3). These properties all derived from original 40-acre “quarter-quarter sections” created by the federal government and conveyed by land patent to individuals. With few exceptions, these parcels remain in their original form. CP at 348 (Declaration of Stephen Graddon at 2); CP at __ (Petitioner’s Motion for Summary Judgment at 3). The parcels have not been further subdivided into smaller units.

White River Forests LLC, co-cross appellant, filed a similar request seeking determination of legal status as to 153 separate lots. Similar to Palmer Coking Coal Company’s parcels, King County has acknowledged:

Most of the parcels proposed in the legal lot recognition at issue were approximately 40 acres, and were based on historic land survey quarter-quarter sections.

Appellant's Opening Brief at 3, *citing also* CP 237.

In reviewing these requests, King County staff decided to secure a Final Code Interpretation from the DDES Director. In support of its motion for summary judgment, King County submitted a declaration by Deputy Director Joe Miles stating as follows:

As part of the process of reviewing petitioners' legal lot applications, staff and I determined that we needed to review and interpret the meaning of the term "approved road" as it was used in KCC 19A.08.070 (A)(1). This was because we realized that in processing prior legal lot recognition applications DDES had not been given proper attention or meaning to this term.

Ultimately, the determination of how the term "approved road" in KCC 19A.08.070 (A)(1) was to be applied was resolved by the DDES Director, Stephanie Warden, in a *Final Code Interpretation* issued on February 2, 2008.

CP at 368 (bold added).

The Final Code Interpretation concludes that for **any lot** that was **created prior to 1937** (*i.e.* all of the respondents' parcels), such lot can be legal under Chapter 19A **only** if the lot is provided with approved sewage disposal, or water systems, or roads. Final Code Interpretation at 2 (Appendix B to King County's Opening Brief). Such infrastructure must

have been provided prior to January 1, 2000. *Id.*¹

The term “road” is not defined in the code provision. Rather than employing the plain and usual dictionary definition, the FCI utilized selected portions of the 1993 King County Road Standards to define the term. In what respondents contend was a very strained effort, the FCI, concluded that transporting logs is not a transportation purpose. *Id.* Also, based on the Road Standards, the FCI concluded that to qualify as a road it must be surfaced. The FCI concluded that logging roads do not qualify as a “road” under KCC 19A.08.070 A.1. *Id.*

Based on the FCI, King County staff rejected 75 of Palmer Coking Coal Company’s parcels as legal lots. CP at 349. Similarly, 115 lots proposed by White River were rejected. *Id.*

Palmer Coking Coal and White River both timely sought judicial review of the Final Code Interpretation as well as the rejection of the legal status of their respective parcels. The cases were consolidated and brought before the Honorable Michael Trickey on cross-motions for partial summary judgment.

¹ In addition to the infrastructure requirement, any pre-1937 lot must also have been conveyed as a separate lot prior to October 1, 1972, or recognized as a separate tax lot by the County assessor prior to October 1, 1972. KCC 19A.08.070 A.1

Respondents/cross-appellants contend that KCC 19A.08.070 does not mandate that all pre-1937 lots have approved sewage disposal, water systems, or roads in order to be legal lots. Moreover, under a proper interpretation of KCC 19A.08.070, the proposed lots should be recognized as legal lots because they were all created under the laws in effect at the time of their creation. The lots also qualify as legal lots under KCC 19A.08.070 A.4.d. because they are all 20 acres or greater in size and were recognized by the County assessor prior to January 1, 2000.

With respect to the FCI, Respondents/cross-appellants contend that the Director's interpretation exceeds her authority and is an arbitrary, capricious and erroneous application of the law. Moreover, the FCI is not entitled to deference because it does not reflect prior County policy or practice, but was created for the first time as part of the review of these particular applications. Cross-appellants support the decision of Judge Trickey to not apply the FCI to the present requests for determination of legal lot status.

Judge Trickey certified the partial summary judgment for appeal under CR 54(b) and all parties appealed.

ARGUMENT

I.

THE PROPERTIES ARE LEGALLY CREATED SEPARATE AND DISTINCT PARCELS OF LAND

This case turns on the understanding of KCC 19A.08.070.

Accordingly, the argument below begins with an overview of that code provision. For convenient reference, a copy of the entire code section is provided at Appendix A to this brief.

A. Overview of KCC 19A.08.070

The overall purpose of KCC 19A.08.070 is to provide a mechanism for a property owner to secure a determination that a parcel is a legally created lot. The code section states that this is accomplished by the property owner demonstrating

... that, a lot **was** created, in compliance with applicable state and local land segregation statutes or codes **in effect at the time** the lot **was created**, including, but not limited to, demonstrating that the lot was created: 1. ...; or 2. ...; or 3. ...; or 4. ...

KCC 19A.08.070 A. (emphasis added).

Of first importance is that the code language refers to the creation of the lot in the **past tense**. The property owner must show that when the lot was originally created, it complied with then existing law.

The code provision identifies various ways that an owner may make this showing. Subsections A.1 through A.4 set forth certain facts that, if shown, the County has determined will satisfy the requirement that a lot was legally created. However, these factual demonstrations are not the only methods of showing that a lot was created in compliance with the laws in effect at that time. This is expressly recognized by the qualifying phrase, quoted above, stating that the landowner is “**not limited to, demonstrating ...**” the A.1 through A.4 circumstances. KCC 19A.08.070 A. (emphasis added).

A fundamental policy underlying the code provision is that individuals should not be able to create a lot unlawfully, and then benefit from the unlawful act. Conversely, 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.

The *past tense* focus on determining whether the lot *was* legally created under the law in effect at the time is also reflected in KCC 19A.04.210. That provision defines the term “lot” as follows:

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).

Significantly, this definition of a “lot” does not require any particular method of showing that the lot was legally created. Rather, the definition allows for lots that were created “pursuant to **any previous laws**” governing land segregation. *Id.* (emphasis added). This definition incorporates the grandfathering concept mentioned above.

B. The Subject Lots Were Created In Compliance With the Law In Effect At The Time Of Creation of the Lots

To begin, it is important for the Court to understand that Respondent/cross-appellants’ parcels have never been the subject of a town plat, or any type of subdivision. How then did they come into existence?

The evidence is undisputed that these lots were segregated out of the public domain by the federal government as original 40-acre parcels. The United States government transferred the parcels as 40-acre lots to private parties through land patents. These lots have never been further subdivided. The following will explain in more detail.

The public domain included land transferred to the federal government by the 13 Colonial States and other lands acquired from foreign powers or native Indians either by trades, purchase or treaty.

Manual of Surveying Instructions for the Survey of the Public Lands of the United States (1973), § 1-9 (published by the Bureau of Land Management). For example, the area that comprises Washington was originally included within the Oregon Territory, title to which was established in 1846. *Id.* at § 1-23. The State of Washington is one of 30 states that were formed out of the public domain. *Id.*

With the acquisition of a vast public domain, there was a need for Congress to establish an efficient system for segregation and disposal of parcels. To meet that need, Congress adopted a system of surveying known as the Rectangular System. This system is based on establishing meridian and base lines from which the land is divided into rectangular townships and sections. Each section contains one square mile, or 640 acres. Each township contains 36 sections. *Id.* at §§ 1-18; 3-2; 3-3; 43 U.S.C. § 751.

While Congress authorized disposal of entire sections to some entities (such as railroads), there was also a need to dispose of smaller parcels. Accordingly, Congress authorized the subdivision of sections into half sections, quarter sections, half quarters, and quarter-quarter sections. A quarter-quarter section is 40 acres.

Significantly, the 40-acre parcel, *i.e.* a quarter-quarter section, is the smallest subdivision authorized by Congress to be sold. 43 U.S.C. § 753 (“... the corners and contents of quarter quarter sections, **which may thereafter be sold**, shall be ascertained ...”) (emphasis added). *See also* Manual of Surveying Instructions, § 1-18. As stated by the Supreme Court:

There is no legal subdivision of the public lands less than a quarter of a quarter-section, or forty acres, except in the case of fractional sections. ... The forty acres must be taken as a whole or not at all.

Warren v. Van Brunt, 86 U.S. 646, 652 (1873).²

For the Oregon Territory (including Washington), the Government Survey was completed and adopted in 1851. 18 William B. Stoebuck & John W. Weaver, *Washington Practice: Real Estate: Transactions* § 13.2 (2d ed. 2009). That survey established the Willamette Meridian from which all of Washington and Oregon are measured. *Id.* Significantly, until the government survey was completed and approved by the Surveyor General, no public domain parcels could lawfully be segregated and conveyed to homesteaders. Manual of Surveying Instructions, § 9-3 (“No

² An example of a fractional section occurs where a lake precludes having a full 160 acre quarter section. In those situations, the quarter-quarter sections are to be subdivided as near as practical with the remaining acreage described and conveyed as a Government Lot. Manual of

subdivisions are to be disposed of until so identified”); *see also United States v. Hurlburt*, 72 F.2d 427, 428 (10th Cir. 1934).

Against this backdrop of federal law, cross-appellants’ expert on title research reviewed the title history for the subject parcels. He concluded that all of these parcels were 40-acre parcels created under the federal law.

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. In most instances, the lots were created prior to Washington statehood in 1889 in a series of federal actions further discussed later herein. 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 (Declaration of Stephen J. Graddon In Support of Palmer Coking Coal Company Motion for Summary Judgment at 2:3-8).

King County **does not dispute** that the 40-acre parcels are the original quarter-quarter sections created by the federal government and transferred into private hands by land patent. Indeed, in its brief to this Court, the County concedes:

Most of the parcels proposed in the legal lot recognition at issue were approximately 40 acres,

Surveying Instructions, § 1-18; 43 U.S.C. § 753.

and were based on the historic land survey quarter-quarter sections.

Appellant's King County Opening Brief at 3 (citing CP 237).

Under these undisputed facts, this Court should rule as a matter of law that the subject parcels are legally segregated. Properly construed, KCC 19A.08.070 requires that the owner demonstrate that lot was created in compliance with the law "in effect at the time the lot was created." 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.

C. The Legal Status of the Parcels Does Not Require Meeting the Circumstances Set Forth in Subsections A.1 through A.4 of KCC 18A.08.070

King County contends that the *only way* to determine that a lot was legally created is to satisfy one of the factual circumstances set forth in subsections A.1 through A.4 of KCC 19A.08.070. However, the plain language of the code section proves otherwise.

KCC 19A.08.070 clearly states that the factual showings identified in subsections A.1 through A.4 are not exclusive. Rather, the demonstration that a lot was created in compliance with the then-existing

law is described as “**not limited to**” the subsequently listed factual showings. KCC 19A.08.070 A. (emphasis added). Obviously, the plain language contemplates that there may be other factual circumstances, outside of the listed circumstances, where a property owner can show that his/her parcels were legally created. One such circumstance, not mentioned in the code provision, is when the lot was created by the federal government.

By overlooking federally created lots from its list of types of legal lots, King County cannot suddenly render as “unlawful” such lots that were, in fact, lawfully created pursuant to federal law. U.S. Const., Art. IV, section 3 (Congress has exclusive power to establish rules for lawful sale and conveyance of federal land); *see generally* 43 U.S.C §§ 751-53; *City of Seattle v. Burlington Northern R. Co.*, 145 Wn.2d 661, 668 (2002) (federal preemption applies to local ordinances). Indeed, avoiding such absurd results explains why the code includes the qualifying phrase “not limited to.” The code drafters clearly understood that they may have missed identifying various circumstances where lots were, in fact, lawfully created. The “not limited to” code language allows those circumstances to be taken into account.

In short, the subject 40-acre parcels were lawfully segregated

under federal law. Unlike most other properties, they have not been further subdivided or platted. King County has no evidence, and no argument, that these 40-acre lots were not legally created. Accordingly, the fundamental showing of KCC 19A.08.070 – that is, the lots were created in compliance with the laws “in effect at the time the lot was created” – has been satisfied. The landowners are therefore entitled to a determination that the lots have proper legal status, and they should be able to sell or transfer those parcels without risk of penalties and enforcement proceedings under KCC 19A.08.170.

II.

CROSS-APPELLANTS’ PARCELS SATISFY THE FACTUAL CIRCUMSTANCES OF KCC 19A.08.070 A.4.D.

Even assuming, *arguendo*, that if the factual circumstances listed in KCC 19A.08.070 must be met in order to secure legal lot status, the parcels nevertheless meet the criteria. Specifically, the subject parcels meet the circumstances described in subsection A.4.d.

Under subsection A.4.d., a property owner may demonstrate that a parcel was legally created by demonstrating that the parcel was created “at a size twenty acres or greater, recognized prior to January 1, 2000...”

KCC 19A.08.070 A.4.d.³

Here, there is no dispute that all parcels are greater than 20 acres. The only question is whether the lots were “recognized” prior to January 1, 2000. As will be shown, the clear answer is “yes,” they were recognized.

A. The Parcels Were All “Recognized” Prior to January 1, 2000

The term “recognized” is not defined in the code. Accordingly, the Court should utilize the plain and ordinary meaning, *i.e.* the dictionary definition of the term. *State v. Bolar*, 129 Wn.2d 361, 366 (1996) (“In the absence of a statutory definition of a word, we employ the plain and ordinary meaning of the word as found in a dictionary”); *see also First Covenant Church v. City of Seattle*, 120 Wn.2d 203, 220 (1992).

According to The Merriam-Webster Dictionary 582 (3d ed. 1974) the term “recognize” means to identify as previously known, or to perceive, acknowledge, or take notice. Similarly, Webster’s New Collegiate Dictionary 965 (8th ed. 1977) defines recognize as “to perceive” or “acknowledge.” Copies provided at Appendix B.

Of course, the subject parcels have long been perceived, known, or acknowledged. First, the parcels were known and acknowledged when

³ The subsection also limits remnant parcels to no less than 17 acres and

they were created under federal law and transferred from the public domain into private hands. As mentioned previously, the parcels have not been further subdivided.

These parcels have also been recognized by King County through its County Assessor for many years. All of these parcels have been identified, acknowledged, recognized and taxed by the County as shown in the historic tax records. Cross-appellants' expert concluded:

I researched PCCC's properties through the historic tax records of King County, and documented the historic existence of each and every lot, all the documentation was furnished to King County in the applications for legal lot recognition for PCCC, along with two other similar applications for co-petitioner White River.

CP at 348-49 (Declaration of Stephen J. Graddon at 2:23-25 and 3:1).

King County does not dispute the existence of the historic tax records showing that these parcels were recognized as existing lots and subject to taxation. Indeed, in King County's Motion for Partial Summary Judgment, the County conceded as follows:

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.

only one remnant parcel per quarter section.

CP at __ (King County Motion at 1:17-19) (emphasis added).

It is worth noting that in the concession quoted above, even the King County deputy prosecuting attorney used the term “recognized” with reference to these parcels. The plain meaning obviously includes “recognition” by the County in the historic tax records.

Finally, with respect to the term “recognized,” it is helpful to see that the same term is used elsewhere in the same code provision, namely, in subsection A.1.b.(2). The phrase there states:

recognized prior to October 1, 1972, as a separate tax lot by the county assessor.

KCC 19A.08.070 A.1.b.(2) (emphasis added). Obviously, this use of “recognized” 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).

In short, all of these lots are indisputably over 20 acres in size and have been “recognized” by the County through its tax records long before January 1, 2000. Accordingly, these parcels meet the factual circumstances described in KCC 19A.08.070 A.4.d and should therefore

be determined to be legal lots.

B. Compliance With Subsection A.1. Is Not Mandatory

The County will contend that if a lot was created *prior to 1937*, the lot can *only* be determined as a legally created lot if it meets the criteria set forth in subsection A.1. Because these subject lots were created long before 1937, the County contends that compliance with A.4.d. does not matter.

As will be shown, the County's position ignores key terms used in KCC 19A.08.070. The County's argument is unreasonable and should be rejected.

First, the County seeks to ignore the phrase "but not limited to." The rule of statutory construction requires giving effect to the language included in the provision. The Court cannot delete language or render it meaningless or superfluous. *Roggenkamp*, 153 Wn.2d at 633. Obviously, to have effect, this language must mean what it says, -- *i.e.*, the factual circumstances are "not limited to" the listed showings. This is the plain meaning of such a qualifying phrase. Accordingly, while lots created prior to 1937 **can be** determined as legally created lots by meeting the facts of subsection A.1, those factual circumstances cannot be considered exclusive. The plain meaning of the phrase "but not limited to" forecloses

such exclusive means of showing that a lot was legally created.

This conclusion is strongly reinforced by the County's own actions in the present case. After issuance of the Final Code Interpretation, Deputy Director Joe Miles approved certain of petitioners' parcels as legal lots. In his declaration, he explained the following:

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).

So, here is a situation, in this very case, where the subsection A.1. facts were not mandatory for lots created before 1937. Although the lots were created long before 1937, some were nevertheless recognized by the County as legal lots even though the "approved road" requirement was not met. This can only mean that for lots created prior to 1937, providing the infrastructure described in subsection A.1 is **not the exclusive means** of establishing that a pre-1937 lot was legally created. Rather, there are other factual circumstances that will also support legal lot recognition for a pre-1937 lot. In the above quote, Joe Miles explains that one of those is when

a pre-1937 lot is sold or transferred after 1937. This action by the County can only be reconciled with the ordinance provisions by giving effect to the phrase “but not limited to.”

In summary, KCC 19A.08.070 A.4.d. provides that among the various means of showing that a lot was legally created, an owner may show that the lot is 20 acres in size or greater and was recognized prior to January 1, 2000. All of the cross-appellants’ parcels meet this criteria. Accordingly, the lots should be determined to have legal status.

III.

DDES’ CODE INTERPRETATION IS UNLAWFUL

As previously mentioned, Palmer Coking Coal Company agrees with and adopts by reference the arguments presented by White River regarding the Final Code Interpretation. The following is intended to supplement and support those arguments.

A. The Code Interpretation Exceeds Lawful Authority

First, at a fundamental level, the Director exceeded lawful authority by even issuing a code interpretation related to KCC 19A.08.070. The authority for issuing formal code interpretations is set forth in KCC 2.100.020. Under that authority, a formal code interpretation is authorized only to interpret “development regulations.”

The code states:

This chapter establishes the procedure by which King County will render a formal interpretation of a **development regulation**. The purpose of such interpretation includes clarifying conflicting or ambiguous provisions in King County's **development regulations**.

KCC 2.100.010 (emphasis added).

The term "development regulation" is defined in the code as "the controls placed on development or land use activities." KCC 2.100.020 C.

"Development regulation" means the **controls** placed on development or land use activities by the County including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances and binding site plan ordinances, together with any amendments thereto.

Id. (emphasis added).

Significantly, this definition mirrors, *word for word*, the definition in the Growth Management Act found at RCW 36.70A.030(7). By using the **exact same definition** as in the Growth Management Act, the County was clearly intending the term "development regulation" to mean the same thing as used in the Growth Management Act.

The problem is that the code provision at issue here, KCC 19A.08.070, dealing with legal lot determination, is not a "development

regulation.” This is because the legal lot determination does not control or regulate land use activities. It is merely a mechanism for a landowner to find out what he owns. Nowhere in KCC 19A.08.070 does the ordinance regulate in any manner what may be done with a particular parcel.

The definition of a “development regulation” is not a cavalier or meaningless thing. By claiming that a code provision is a development regulation, there are certain responsibilities and jurisdictional issues that are triggered. For example, a proposed amendment to a development regulation is required to be first provided to the Washington Department of Community, Trade and Economic Development for review prior to adoption. RCW 36.70A.108 3(a). Of course, such notice of amendments to KCC 19A.08.070 never occurred in 2000 and 2004 because King County knew that KCC 19A.08.070 is not actually a development regulation.

From a jurisdictional standpoint, claiming that a code provision is a “development regulation” also triggers jurisdiction of the growth management hearing board to review challenges to the enacting ordinance. RCW 36.70A.280 (1)(a). Of course, the hearings board would have no interest in KCC 19A.08.070 because it actually does not regulate development.

The only analogous authority is *New Castle Investments v. City of LaCenter*, 98 Wn. App. 224 (1999). In that case, the appellate court ruled that a traffic impact fee was not a “land use control ordinance.” *Id.* at 226. The court reasoned that while a traffic impact fee might increase the cost of development, it did not limit or change the actual development in any way. *Id.* at 229. The same is true for KCC 19A.08.070.

This very point is stressed by King County in its opening brief where the County repeatedly highlights that respondents have not applied for any development and have no vested rights. The County states:

The LLD applicants are not developers or permit applicants

Appellant’s King County Opening Brief at 17.

In contrast to permit applications which are entitled to vest, a legal lot recognition application does not seek to partition or develop land.

Id. at 19.

The LLD applicants here are not permit applicants who are invested in a development project.

Id.

They have not and do not intend to actually change the present use of their holdings.

Id. at 20.

In short, KCC 19A.08.070 is not a development regulation. Accordingly, the Director exceeded her lawful authority by issuing a formal code interpretation of that provision. KCC 2.100.020 simply does not authorize the action taken by the Director. Accordingly, the FCI should be ruled unlawful and of no effect.

B. The 1993 King County Road Standards Were Erroneously Utilized by the Director to Define the Term “Road”

As previously mentioned, Palmer Coking Coal adopts by reference all of the arguments made by White River regarding the Final Code Interpretation and the term “approved roads.” Those arguments need not be repeated here.

Palmer Coking Coal does highlight that the action of the Director to ignore the plain and ordinary dictionary definition of “road,” and instead turn to a strained interpretation based on the 1993 King County Road Standards is so clearly erroneous that it must be rejected. Indeed, it is completely nonsensical to use road standards that are intended to control actual construction design as a basis to determine whether lots were legally created before 1937 under the laws in effect at the time they were created. No one reading the KCC 19A.08.070 would have any clue that in order to understand the term “roads” that person must look to and interpret the 1993 standards for construction design. Moreover, anyone in past

decades, as in before 1937, would have no ability to make sure their lots were legally created at that time because the 1993 Road Standards did not even exist.

The County's attempt to retroactively apply the road standards is a blatant attempt to simply eliminate lawfully created lots. Even the 1993 Road Standards themselves expressly acknowledge that they only apply prospectively to new construction.

Applicability. These Standards shall apply **prospectively** to all **newly constructed** road and right-of-way facilities, both public and private, within King County.

King County Roads Standards – 1993, section 1.02, page 2 (emphasis added). For the Director to apply the Road Standards retroactively to a determination of legal lot status for pre-1937 lots is truly remarkable. If that is the law, we are all in trouble.

IV.

EVEN IF NOT UNLAWFUL, THE TRIAL COURT CORRECTLY CONCLUDED THE DDES CODE INTERPREATION IS NOT APPLICABLE TO CROSS-APPELLANTS

As previously mentioned, Palmer Coking Coal Company agrees with and adopts by reference the arguments set forth by White River concerning the deference due and applicability of the FCI to the

respondents. The trial court correctly ruled that the FCI interpretation of “approved roads” is not consistent with past administrative practice and does not reflect legislative intent. Order at 3, D.3. Accordingly, the trial court correctly ruled that the Director’s FCI is not entitled to deference and cannot be applied to respondent’s applications. The legal support for these positions is well set forth in the White River brief and need not be repeated here.

Palmer Coking Coal adds one highlight to the arguments made by White River. That is, there can be no doubt that the FCI was a blatant maneuver to create a document that could justify the denial of legal recognition for these lots. The County knew that that the strained and new interpretation advanced by the Director in the FCI could not withstand judicial scrutiny if it was made for the first time in a decision on the lot determination requests. Accordingly, in an attempt to provide some legal “cover” and to try to take advantage of the deference doctrine, the FCI was issued. The County, however, cannot overcome the reality that the FCI was issued as part of the review process for these applications. That point was effectively conceded by Deputy Director Joe Miles in his declaration. As he stated:

As part of the process of reviewing petitioners’ legal lot applications, staff and I determined that we

needed to review and interpret the meaning of the term “approved road” as it was used in KCC 19A.08.070 (A)(1). This was because we realized that in processing prior legal lot recognition applications DDES had not been given proper attention or meaning to this term.

Ultimately, the determination of how the term “approved road” in KCC 19A.08.070 (A)(1) was to be applied was resolved by the DDES Director, Stephanie Warden, in a *Final Code Interpretation* issued on February 2, 2008.

CP at 368 (emphasis added).

The trial court correctly realized that the FCI was not an objective, independent code interpretation, nor an expression of previously implemented policy. Rather, it was part of the review process for these particular lot recognition requests. Accordingly, the FCI is not entitled to deference. *Sleasman v. City of Lacey*, 159 Wn.2d 639, 646 (2007).

CONCLUSION

The parcels proposed for legal lot recognition were all lawfully created under the laws in existence at that time. The segregation of 40-acre parcels pursuant to federal law was legal, and the County has no basis to claim otherwise. Accordingly, the demonstration under KCC 19A.08.070 has been made and the lots should be determined as legal lots. Properly construed, KCC 19A.08.070 A.4.d also provides for the legal status of those lots to be acknowledged.

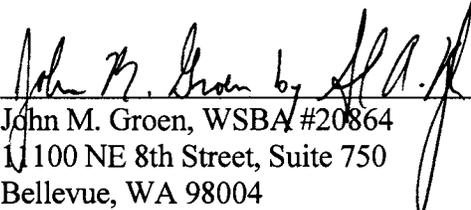
The County's refusal to acknowledge the legal status of these lots is contrary to its own code. Moreover, attempting to wipe out lawfully created lots will only lead to constitutional claims for compensation and further litigation. The correct result is for the lawfully created lots to be acknowledged as such. This will allow respondents to sell and transfer the lots without penalty and enforcement actions against them.

For the foregoing reasons, Palmer Coking Coal respectfully requests that the trial court's order be reversed in part and that the respondents' lots be ruled legal as a matter of law.

RESPECTFULLY submitted this 16th day of September, 2009.

GROEN STEPHENS & KLINGE LLP

By:


John M. Groen, WSBA #20864
1100 NE 8th Street, Suite 750
Bellevue, WA 98004
(425) 453-6206

WSBA # 35347

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 September 16, 2009, a true copy of Brief of Respondent/Cross-Appellant 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
Cristy Craig
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 September, 2009 at Bellevue, Washington.


Linda Hall

APPENDIX A

19A.08.070 Determining and maintaining legal status of a lot.

A. A property owner may request that the department determine whether a lot was legally segregated. The property owner shall demonstrate to the satisfaction of the department that a lot was created, in compliance with applicable state and local land segregation statutes or codes in effect at the time the lot was created, including, but not limited to, demonstrating that the lot was created:

1. Prior to June 9, 1937, and has been:
 - a. provided with approved sewage disposal or water systems or roads; and
 - b.(1) conveyed as an individually described parcel to separate, noncontiguous ownerships through a fee simple transfer or purchase prior to October 1, 1972; or
 - (2) recognized prior to October 1, 1972, as a separate tax lot by the county assessor;
2. Through a review and approval process recognized by the county for the creation of four lots or less from June 9, 1937, to October 1, 1972, or the subdivision process on or after June 9, 1937;
3. Through the short subdivision process on or after October 1, 1972; or
4. Through the following alternative means allowed by the state statute or county code:
 - a. for the raising of agricultural crops or livestock, in parcels greater than ten acres, between September 3, 1948, and August 11, 1969;
 - b. for cemeteries or other burial plots, while used for that purpose, on or after August 11, 1969;
 - c. at a size five acres or greater, recorded between August 11, 1969, and October 1, 1972, and did not contain a dedication;
 - d. at a size twenty acres or greater, recognized prior to January 1, 2000, provided, however, for remnant lots not less than seventeen acres and no more than one per quarter section;
 - e. upon a court order entered between August 11, 1969, to July 1, 1974;
 - f. through testamentary provisions or the laws of descent after August 10, 1969;
 - g. through an assessor's plat made in accordance with RCW 58.18.010 after August 10, 1969;
 - h. as a result of deeding land to a public body after April 3, 1977, and that is consistent with King County zoning code, access and board of health requirements so as to qualify as a building site pursuant to K.C.C. 19A.04.050; or
 - i. by a partial fulfillment deed pursuant to a real estate contract recorded prior to October 1, 1972, and no more than four lots were created per the deed.

B. In requesting a determination, the property owner shall submit evidence, deemed acceptable to the department, such as:

1. Recorded subdivisions or division of land into four lots or less;
2. King County documents indicating approval of a short subdivision;
3. Recorded deeds or contracts describing the lot or lots either individually or as part of a conjunctive legal description (e.g. Lot 1 and Lot 2); or
4. Historic tax records or other similar evidence, describing the lot as an individual parcel. The department shall give great weight to the existence of historic tax records or tax parcels in making its determination.

C. Once the department has determined that the lot was legally created, the department shall continue to acknowledge the lot as such, unless the property owner reagggregates or merges the lot with another lot or lots in order to:

1. Create a parcel of land that would qualify as a building site, or
2. Implement a deed restriction or condition, a covenant or court decision.

D. The department's determination shall not be construed as a guarantee that the lot constitutes a building site as defined in K.C.C. 19A.04.050.

E. Reaggregation of lots after January 1, 2000, shall only be the result of a deliberate action by a property owner expressly requesting a permanent merger of two or more lots. (Ord. 15031 § 2, 2004: Ord. 13694 § 42, 1999).

APPENDIX B



**The
Merriam-Webster
Dictionary**

A Merriam-Webster®



PUBLISHED BY POCKET BOOKS NEW YORK

0-871-52612-X

Most Pocket Books are available at special quantity discounts for bulk purchases for sales promotions, premiums or fund raising. Special books or book excerpts can also be created to fit specific needs.

For details write the office of the Vice President of Special Markets, Pocket Books, 1230 Avenue of the Americas, New York, New York 10020.



POCKET BOOKS, a division of Simon & Schuster, Inc.
1230 Avenue of the Americas, New York, N.Y. 10020

Copyright © 1974 by G. & C. Merriam Co.
Philippines copyright 1974 by G. & C. Merriam Co.

Published by arrangement with G. & C. Merriam Co.

All rights reserved, including the right to reproduce
this book or portions thereof in any form whatsoever.
For information address G. & C. Merriam Co., 47
Federal Street, Springfield, Mass. 01101

ISBN: 0-671-52612-X

First Pocket Books printing August, 1974

45 44 43 42 41

POCKET and colophon are registered trademarks
of Simon & Schuster, Inc.

Printed in the U.S.A.

Preface

THE FIRST Merriam-Webster Pocket Dictionary was published in 1947. It soon won the respect of the dictionary-buying public, and a second edition, called the New Merriam-Webster Pocket Dictionary, was brought out in 1964. With the publication in 1973 of Webster's New Collegiate Dictionary (the eighth in the Merriam-Webster series of Collegiates dating from 1898), a third edition has become necessary if the needs of those who want an up-to-date record of present-day English in compact form are to be met. The Merriam-Webster Dictionary, an enlarged and completely revised work, is designed to meet these needs. Its approximately 57,000 entries constitute the core of the English language, and every definition is based on examples of actual use found among the more than 11,500,000 citations in the Merriam-Webster files.

The heart of The Merriam-Webster Dictionary is the A-Z vocabulary. It is followed by several sections that dictionary users have long found helpful: a list of foreign words and phrases that frequently occur in English texts but that have not become part of the English vocabulary; a list of the nations of the world; a list of places in the United States having 12,000 or more inhabitants, with a summary by states; a similar list of places in Canada, with a summary by provinces and territories; and a section devoted to widely used signs and symbols. The A-Z vocabulary is preceded by a series of Explanatory Notes that should be read carefully by every user of the dictionary. An understanding of the information contained in these notes will add markedly to the satisfaction and pleasure that come with looking into the pages of a dictionary.

The Merriam-Webster Dictionary is the product of a company that has been publishing dictionaries for more than 125 years. It has been edited by an experienced staff of professional lexicographers who believe that the user will find in it "infinite riches in a little room."

Editor in Chief
Henry Bosley Woolf

Senior Editors
Edward Artha • P. Stuart Crawford
E. Ward Gilman • Mairé Weir Kay
Roger W. Pease, Jr.

Associate Editors
Gretchen Brunk • Robert D. Copeland
Grace A. Kellogg • James G. Lowe
George M. Sears

Assistant Editors
William Parr Black • Kathleen M. Doherty
Kathryn K. Flynn • Kerry W. Metz
James E. Shea, Jr. • Anne H. Soukhanov
Raymond R. Wilson

Editorial Consultant
Philip W. Cummings

Editorial Staff

Librarian
Alan D. Campbell

Departmental Secretary
Hazel O. Lord

Head of Typing Room
Evelyn G. Summers

Clerks and Typists
Maude L. Barnes • Florence Cresscott
Patricia Jensen • Maureen E. McCartney
Mildred M. McWha • Catherine T. Meaney
Frances W. Muldrew • Mildred C. Paquette
Genevieve M. Sherry • Francine A. Socha

Typographic Designer
Michael Stancik, Jr.

recitation \res-ə-'tā-shən\ *n* 1: RECITING, RECITAL 2: delivery before an audience of something memorized 3: a classroom exercise in which pupils answer questions on a lesson they have studied; also: a class period
re-cite \ri-'sīt\ *v* re-cit-ed; re-cit-ing 1: to repeat verbatim (as something memorized) 2: to recount in some detail; RELATE 3: to reply to a teacher's questions on a lesson - re-cit-er *n*
reck-less \'rek-ləs\ *adj*: lacking caution; RASH syn hasty, headlong, impetuous - reck-less-ly *adv* - reck-less-ness *n*
reck-on \'rek-ən\ *v* reck-oned; **reck-on-ing** \-'(ə-)nɪŋ\ 1: COUNT, CALCULATE, COMPUTE 2: CONSIDER, REGARD 3: chiefly *dat*: THINK, SURPOSE, GUESS - **reck-on-er** *n*
reck-on-ing \-'ɪŋ\ *n* 1: an act or instance of reckoning 2: calculation of a ship's position 3: a settling of accounts (day of ~)
re-claim \ri-'klām\ *v* 1: to recall from wrong conduct; REFORM 2: to put into a desired condition (as by labor or discipline) (~ marshy land) 3: to obtain (as rubber) from a waste product or by-product syn save, redeem, rescue - **re-claim-able** *adj* - **re-claim-a-tion** \ri-'klām-ə-'tā-shən\ *n*
re-claim \ri-'klām\ *n* 1: public acclaim; FAME
re-claim \ri-'klām\ *v* re-claimed; **re-claim-ing** 1: to lean or incline backward 2: to lie down; REST
re-claim \ri-'klām\ *n* 1: a person who lives in seclusion or leads a solitary life; HERMIT
re-cog-ni-tion \ri-'kɔŋ-ɪ-'nɪʃ-ən, -ə-ŋ\ *n* 1: the act of recognizing; the state of being recognized 1: ACKNOWLEDGEMENT 2: special notice or attention
re-cog-ni-tion \ri-'kɔŋ-ɪ-'nɪʃ-ən\ *n* 1: a promise recorded before a court or magistrate to do something (as to appear in court or to keep the peace) usu. under penalty of a money forfeiture
re-cog-nize \ri-'kɔŋ-ɪ-'nɪz, -ə-ŋ\ *v* re-cog-nized; re-cog-niz-ing 1: to identify as previously known 2: to perceive clearly; REALIZE 3: to take notice of 4: to acknowledge with appreciation 5: to acknowledge acquaintance with 6: to acknowledge (as a speaker in a meeting) as one entitled to be heard at the time 7: to acknowledge the existence or the independence of (a country or government) - **re-cog-niz-able** \ri-'kɔŋ-ɪ-'nɪz-ə-bəl, -ə-ŋ-ə-bəl\ *adj* - **re-cog-niz-ably** \-'bɪl\ *adv*
re-coil \ri-'kɔɪl\ *v* 1: to draw back 2: RETREAT 2: to spring back to or as if to a starting point syn shrink, flinch, wince
re-coil \ri-'kɔɪl, ri-'kɔɪl\ *n* 1: the action of recoiling (as by a gun or spring)
re-coil-less \-'kɔɪl-ləs, -'kɔɪl\ *adj*: having a minimum of recoil (~ gun)
re-collect \ri-'kɔl-ə-'lekt\ *v* 1: to recall to mind; REMEMBER syn recall, remind, reminisce, bethink

re-collec-tion \ri-'kɔl-ə-'lekt-ən\ *n* 1: the act of recollecting 2: the power of recollecting 3: the time within which things can be recollected; MEMOIR 4: something recollected
re-com-mend \ri-'kɔm-'mend\ *v* 1: to present as deserving of acceptance or trial 2: to give in charge; COMMEND 3: to cause to receive favorable attention 4: ADVISE, COUNSEL - **re-com-mend-able** \-'men-də-bəl\ *adj* - **re-com-mend-a-to-ry** \-'dɑ-tɔr-ē-tɔr-\ *adj* - **re-com-mend-er** *n*
re-com-men-da-tion \ri-'kɔm-'mend-ə-'tā-shən\ *n* 1: the act of recommending 2: something that recommends 3: a thing or a course of action recommended
re-com-pense \ri-'kɔm-'pens\ *v* re-com-pensed; re-com-pens-ing 1: to give compensation to; pay for 2: to return in kind; REQUIT syn reimburse, indemnify, repay
re-compense *n*; COMPENSATION
re-con-cile \ri-'kɔn-'sɪl\ *v* re-con-ciled; re-con-cil-ing 1: to cause to be friendly or harmonious again 2: ADJUST, SETTLE (~ differences) 3: to bring to submission or acceptance syn conform, accommodate, adapt - **re-con-cil-able** *adj* - **re-con-cil-ment** *n*
re-con-cil-er *n* - **re-con-cil-i-a-tion** \ri-'kɔn-'sɪl-ē-'tā-shən\ *n*
re-con-dite \ri-'kɔn-'dɪt\ *adj* 1: hard to understand 1: PROFOUND, ABSTRUSE 2: little known; OSCURE
re-con-nais-sance \ri-'kɔn-'nə-'sɑns\ *n* 1: a preliminary survey of an area; esp: an exploratory military survey of enemy territory
re-con-noi-ter \ri-'kɔ-'nɔɪ-tər, -nɔɪ-tər\ *v* 1: to make a reconnaissance of; engage in reconnaissance
re-con-sid-er \ri-'kɔn-'sɪd-ər\ *v* 1: to consider again with a view to changing or reversing; esp: to take up again in a meeting - **re-con-sid-er-a-tion** \ri-'kɔn-'sɪd-ər-ə-'tā-shən\ *n*
re-con-si-tute \ri-'kɔn-'sɪt-ə-'tʃu:z\ *v* 1: to restore to a former condition by adding water (~ powdered milk)
re-con-struct \ri-'kɔn-'strʌkt\ *v* 1: to construct again; REBUILD
re-con-struc-tion \ri-'kɔn-'strʌk-tʃən\ *n* 1: the action of reconstructing; the state of being reconstructed 2: often *cap*: the reorganization and reestablishment of the seceded states in the Union after the American Civil War 3: something reconstructed
re-cord \ri-'kɔrd\ *v* 1: to set down (as proceedings in a meeting) in writing 2: to register permanently 3: RE-REGISTER, READ 4: to cause (as sound or visual images) to be registered (as on magnetic tape) in a form that permits reproduction 5: to give evidence of
re-cord \ri-'kɔrd\ *n* 1: the act of recording 2: a written account of proceedings 3: known facts about a person 4: an attested top performance 5: something on which sound or visual images have been recorded

re-cord-er \ri-'kɔrd-ər\ *n* 1: a person who records (transactions) officially (~ of deeds) 2: a judge in some city courts 3: a conical wind instrument with a whistle mouthpiece and eight fingerholes 4: a recording instrument or device
re-cord-ing \ri-'kɔrd-ɪŋ\ *n*; RECORD 5
re-cord-ist \ri-'kɔrd-ɪst\ *n* 1: one who records sound esp. on film
re-count \ri-'kaʊnt\ *v* 1: to relate in detail; TELL 2: ENUMERATE syn recite, rehearse, narrate, describe, state, report
re-count \ri-'kaʊnt\ *n* 1: to count again
re-count \ri-'kaʊnt, ('rɪ-'kaʊnt)\ *n* 1: a second or fresh count
re-coup \ri-'kʌp\ *v* 1: to get an equivalent or compensation for; make up for something lost syn retrieve, regain, recover
re-coup \ri-'kʌp, ri-'kʌp\ *n* 1: a turning to someone or something for assistance or protection; RESORT 2: a source of aid
re-cov-er \ri-'kɔv-ər\ *v* 1: to get back again 1: RECOVER, RETRIEVE 2: to regain normal health, pulse, or status 3: RECLAIM (~ land from the sea) 4: to make up for; RECOUP (~ed all his losses) 5: to obtain a legal judgment in one's favor - **re-cov-er-able** *adj* - **re-cov-er-y** \ri-'kɔv-ər-ē-\ *n*
re-cov-er \ri-'kɔv-ər\ *v* 1: to cover again
re-cu-sant \ri-'kʌs-ənt\ *adj* [ME, fr. MF fr. prp. of *recrute* to renounce one's cause in a trial by battle, fr. *re-back* + *crute* to believe, fr. *L credere*] 1: COWARDLY, CRAVEN 2: UNPAINFUL, FALSE
re-cre-ant *n* 1: COWARD 2: DESERTER
re-cre-ate \ri-'kri-'eɪt\ *v* re-cre-ated; re-cre-ating 1: to give new life or freshness to again - **re-cre-ative** \-'tɪv\ *adj*
re-cru-er \ri-'kru-ər\ *n* 1: a refreshing of strength or spirits after work; 2: a means of refreshment syn diversion, relaxation - **re-cru-er-ial** \ri-'kru-ər-ē-əl\ *adj* - **re-cru-er-ial-ly** \-'tɪv-əl\ *adv*
re-cru-er-ial \ri-'kru-ər-ē-əl\ *n* 1: the act of creating over again; RENEWAL
re-crim-i-nate \ri-'krɪm-ə-'næt\ *v* re-crim-i-nated; re-crim-i-nat-ing 1: to make an accusation against an accuser - **re-crim-i-na-tion** \ri-'krɪm-ə-'nā-shən\ *n* - **re-crim-i-na-tive** \ri-'krɪm-ə-'nā-tɪv\ *adj* - **re-crim-i-na-to-ry** \ri-'krɪm-ə-'nā-tɔr-ē-\ *adj*
re-cru-er-er \ri-'kru-ər-ər\ *n* 1: a new outbreak after a period of abatement or inactivity - **re-cru-er-er-er** \ri-'kru-ər-ər-ər\ *v*
re-cruit \ri-'kru:ɪt\ *n* 1: RECRUIT, RECRUIT fresh growth, new levy of soldiers, fr. MF fr. *recrūtare* to grow up again, fr. *L recrecere*, fr. *re-* again + *crecere* to grow) 2: a newcomer to an activity or field; esp: a newly enlisted member of the armed forces
re-cruit \ri-'kru:ɪt\ *v* 1: to form or strengthen

with new members (~ an army) 2: to secure the services of (~ engineers) 3: to restore or increase in health or vigor (resting to ~ his strength) - **re-cruit-er** *n* - **re-cruit-ment** *n*
rec *sec* *abbr* recording secretary
rect-able \ri-'kɔl-ə-bəl\ *adj* 1: rectangular 2: receipt 3: rectified
rect-ify \ri-'kɔl-ə-faɪ\ *v* 1: to correct the rectum - **rect-ify-ly** \-'fai-ly\ *adv*
rect-an-gle \ri-'kɔl-'æŋ-gəl\ *n* 1: a 4-sided figure with four right angles - **rect-an-gu-lar** \ri-'kɔl-'æŋ-gʊ-lər\ *adj*
rec-ti-fi-er \ri-'kɔl-ə-'fai-ər\ *n* 1: one that rectifies; esp: a device for converting alternating current into direct current
rec-ti-fy \ri-'kɔl-ə-'fai\ *v* rec-ti-fied; rec-ti-fy-ing 1: to make or set right; CORRECT 2: to convert alternating current into direct current syn amend, amend, remedy, redress - **rec-ti-fica-tion** \ri-'kɔl-ə-'fai-ʃən\ *n*
rec-ti-lin-ear \ri-'kɔl-ə-'lɪn-ē-ər\ *adj* 1: moving in a straight line 2: characterized by straight lines
rec-ti-tude \ri-'kɔl-ə-'tɪd\ *n* 1: moral integrity 2: correctness of procedure syn virtue, goodness, morality
rec-tor \ri-'kɔl-ər\ *n* 1: a dignitary in charge of a parish 2: the head of a university or school - **rec-tor-ate** \ri-'kɔl-ər-ət\ *n* - **rec-tor-ial** \ri-'kɔl-ər-ē-əl\ *adj*
rec-tor-y \ri-'kɔl-ər-ē-\ *n*, *pl* rec-tor-ies 1: the residence of a rector
rec-tum \ri-'kɔl-əm\ *n*, *pl* rec-tums or rec-ta \-'tə\ 1: the last part of the intestine joining colon and anus
re-cum-bent \ri-'kʌm-'bent\ *adj* 1: lying down; RECLINING
re-cu-per-ate \ri-'kʌp-ər-ət\ *v* re-cu-per-ated; re-cu-per-ating 1: to get back (as health, strength, or losses) 2: RECOVER - **re-cu-per-a-tion** \ri-'kʌp-ər-ə-'tā-shən\ *n* - **re-cu-per-a-tive** \ri-'kʌp-ər-ət-ɪv\ *adj*
re-cur \ri-'kʌr\ *v* re-curred; re-cur-ring 1: to go or come back in thought or discussion 2: to occur or appear again esp. after an interval - **re-cur-rence** \ri-'kʌr-əns\ *n* - **re-cur-rent** \-'vənt\ *adj*
re-cy-cle \ri-'kɪkl\ *v* 1: to pass again through a cycle of changes or treatment 2: to pass (as liquid body wastes) continuously through a purification process to produce a product fit for human use
red \red\ *adj* red-der; red-dest 1: of the color red 2: endorsing radical social or political change esp. by force 3: of or relating to the U.S.S.R. or its allies - **red-ly** *adv* - **red-ness** *n*
red *n* 1: the color of blood or of the ruby 2: a revolutionary in politics 3: *cap*; COMMUNIST 4: the condition of showing a loss (in the ~)
red-act \ri-'dækt\ *v* 1: to put in writing; FRAME 2: EDIT - **red-act-er** \-'dækt-ər\ *n*
red-act-ion \ri-'dækt-ə-ʃən\ *n* 1: an act

Copyright © 1977 by G. & C. Merriam Co.

Philippines Copyright 1977 by G. & C. Merriam Co.

Library of Congress Cataloging in Publication Data
Main entry under title:

Webster's new collegiate dictionary.

Editions for 1898-1948 have title: Webster's collegiate dictionary.

1. English language—Dictionaries.

PE1628.W4M4 1977 423 76-46539

ISBN 0-87779-348-4

ISBN 0-87779-349-2 (indexed)

ISBN 0-87779-350-6 (deluxe)

Previous editions copyright © 1973, 1974, 1975, 1976 by G. & C. Merriam Co.

Previous editions Philippines Copyright 1973, 1974, 1975, 1976 by G. & C. Merriam Co.

COLLEGIATE is a registered trademark.

All rights reserved. No part of this work covered by the copyrights hereon may be reproduced or copied in any form or by any means—graphic, electronic, or mechanical, including photocopying, recording, taping, or information and retrieval systems—without written permission of the publisher.

Made in the United States of America

10202122RMCN797877

