

RECEIVED
SUPREME COURT
STATE OF WASHINGTON
09 DEC -9 PM 2:36
BY RONALD R. CARPENTER
CLERK *bjh*

Supreme Court No. 83865-8

Court of Appeals No. 39411-1-II

BAYFIELD RESOURCES COMPANY,

Petitioner-Appellant

v.

**WESTERN WASHINGTON GROWTH MANAGEMENT
HEARINGS BOARD,
THURSTON COUNTY, ADAMS COVE GROUP, and
FUTUREWISE,**

Respondents-Appellees

**APPELLANT BAYFIELD RESOURCES COMPANY'S REPLY
BRIEF**

Eric S. Laschever, WSBA 19969
Leonard J. Feldman, WSBA 20961
STOEL RIVES LLP
600 University Street, Suite 3600
Seattle, WA 98101
Telephone: (206) 624-0900
Facsimile: (206) 386-7500

Attorneys for Petitioner-Appellant
Bayfield Resources Company

ORIGINAL

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	RESPONSE TO COUNTY’S STATEMENT OF FACTS.....	1
	A. The County Was Not Required To Change Its Rural Densities.....	1
	B. The Critical Area Amendment Was Strongly Opposed And Received The Least Support Of Any Option, Including Doing Nothing	3
	1. Planning Commission’s Deliberations.....	3
	2. Board of County Commissioners’ Deliberations	5
III.	ARGUMENT IN REPLY	6
	A. The County Bases Its Substantive Due Process Argument On “Facts” That Cannot Be Presumed To Exist	6
	1. The County’s Argument Regarding <i>Presbytery</i> ’s First Prong Fails Because The Record Shows That Thurston County’s Rural Densities Were Not A Problem Requiring A Solution	7
	2. The County’s Argument Regarding <i>Presbytery</i> ’s Second Prong Fails Because It Is Based On The Board’s Compliance Order, Which Provides No Support For The County’s Argument.....	8
	3. The County’s Argument Regarding <i>Presbytery</i> ’s Third Prong Erroneously Relies On The Board’s Order and Fails To Address The <i>Presbytery</i> Test	9

B. The Board’s Legal Conclusion That The
Constitution And Statute Do Not Protect
Subdivision From Arbitrary And Discriminatory
Action Is Erroneous11

C. The Western Board’s Findings Are Not Based On
Substantial Evidence15

IV. CONCLUSION.....18

TABLE OF AUTHORITIES

	Page(s)
STATE CASES	
<i>Isla Verde International Holdings, Inc. v. City of Camas</i> , 146 Wn.2d 740, 49 P.3d 867 (2002).....	6, 13
<i>Peste v. Mason County</i> , 133 Wn. App. 456, 136 P.3d 140 (2006), <i>rev. denied</i> , 159 Wn.2d 1013 (2007).....	7, 8
<i>Presbytery of Seattle v. King County</i> , 114 Wn.2d 320, 787 P.2d 907 (1990).....	7, 8, 9
<i>Thurston County v. W. Wash. Growth Mgmt. Hearings Bd.</i> , 137 Wn. App. 781, 154 P.3d 959 (2007).....	2
<i>Thurston County v. W. Wash. Growth Mgmt. Hearings Bd.</i> , 164 Wn.2d 329, 190 P.3d 38 (2008).....	2
STATE STATUTES	
RCW 82.02.020	14
OTHER AUTHORITIES – GROWTH MANAGEMENT HEARINGS BOARD	
<i>1000 Friends of Washington v. Thurston County</i> , WWGMHB Case No. 05-2-0002, Compliance Order on Rural Densities and Agricultural Lands Issues (October 22, 2007).....	2
<i>Bayfield Resources v. Thurston County</i> , WWGMHB Case No. 07- 2-0017c Final Decision and Order.....	14
Thurston County Ordinance No. 13884.....	passim

I. INTRODUCTION

Thurston County (the “County”) erroneously asserts in its Response Brief that Thurston County Ordinance No. 13884 (the “Ordinance”) “was the result of many years of litigation which ultimately required the County to make changes to its zoning code.” County Response at 1 (emphasis added). In fact, the County was under no requirement to change its rural land densities when it adopted the Ordinance and is under no such obligation today.

The County also implies that the Critical Area Amendment or “CAIT” received broad support. County Response at 15. To the contrary, the record shows that the CAIT was developed *after* the public workshops and most of the public participation occurred and was the least favored option during the Board of County Commissioners’ deliberation. Bayfield clarifies this and other salient facts in Section II below, followed in Section III by a brief response to the County’s arguments on the merits.

II. RESPONSE TO COUNTY’S STATEMENT OF FACTS

A. The County Was Not Required To Change Its Rural Densities

The County bases its statement that it was required to change its rural densities on a 2005 Western Washington Growth Management Hearings Board (the “Board”) order. County Response at 3. On April 3,

2007, the Court of Appeals reversed the Board on this issue, concluding that “the Board erred in finding that the County’s comprehensive plan and development regulations fail to provide for a variety of rural densities.” *Thurston County v. W. Wash. Growth Mgmt. Hearings Bd.*, 137 Wn. App. 781, 809, 154 P.3d 959 (2007). The Western Board stayed its compliance order pending the Supreme Court’s review of the Court of Appeals Decision after the County argued in its June 2007 Compliance Report that it was no longer required to comply regarding rural land densities. *1000 Friends of Washington v. Thurston County*, WWGMHB Case No. 05-2-0002, Compliance Order on Rural Densities and Agricultural Lands Issues (October 22, 2007), pages 6-12.

On August 20, 2007, three and a half months after the Court of Appeals’ reversed the Board and two months after the County submitted its pleading to the Board asserting it did not need to comply given the Court’s decision, the County adopted the Ordinance.¹ AR 454. Simply put, the County was not required to adopt the Ordinance at all. The

¹ A year after the County acted, the Supreme Court ruled on the case. The Court held that the County’s original code “may be sufficient . . . to achieve a variety of rural densities.” *Thurston County v. W. Wash. Growth Mgmt. Hearings Bd.*, 164 Wn.2d 329, 360, 190 P.3d 38 (2008). The Supreme Court’s ruling, which clearly disagreed with the Board’s ruling, did not require the County to act.

County's repeated assertions² that its action is justified because that action was required should be disregarded.

B. The Critical Area Amendment Was Strongly Opposed And Received The Least Support Of Any Option, Including Doing Nothing

During its deliberations, the Board of County Commissioners considered three basic options: the Planning Commission's Majority Proposal, the Planning Commission's Minority Proposal, and the Critical Area Amendment at issue in this appeal. There is clear record evidence regarding the level of support for these options at two junctures in the process: at the end of the Planning Commission's deliberations and during the Board of County Commissioners' deliberations. The Critical Area Amendment adopted by the Board of County Commissioners did not receive broad support at either stage and was the least-favored proposal when the Board of County Commissioners adopted it.

1. Planning Commission's Deliberations

Following a series of public workshops in late 2005 and early 2006, the Planning Commission conducted a public hearing on draft versions of what became its Majority and Minority proposals. AR 560-61. On September 27, 2006, six weeks after closing the public hearing on

² See County Response at 3, 4, 8, 12, 15, 16.

these proposals, the Planning Commission considered a proposal developed by Don Krupp, the Board of County Commissioners' Chief of Staff. AR 767, September 27, 2006, Special Meeting Minutes at 3. Four of the six Planning Commission members "opposed further review of the proposal." *Id.*

On October 25, 2006, the Planning Commission considered the proposal again. AR 779, Minutes of Thurston County Planning Commission at 5. The Planning Commission discussed reviewing the proposal as part of its separate "upcoming work on critical areas." *Id.*

The Planning Commission, based on its extensive public process and analysis, recommended the Majority Proposal. A minority of Planning Commission members supported the option that, therefore, became known as the Minority Proposal.³ The Planning Commission split on whether to recommend the Critical Area Amendment—which did not use or define the term "unbuildable lands"—for further consideration and did not include the Amendment in its proposal to the Board of County Commissioners. AR 572. The public had no opportunity to comment on

³ The Minority Proposal included a very narrow concept of "unbuildable lands" that included lands already burdened by conservation easements or containing more than 75 percent critical areas. Significantly, this narrowly tailored approach to "unbuildable lands" was far less oppressive than the CAIT, but also lacked majority support.

the Critical Area Amendment up to that point in the process, and the Planning Commission generally did not understand or support the proposal. AR 572, 767, 779.

2. Board of County Commissioners' Deliberations

The County staff summarized the public response to the Majority Proposal, Minority Proposal, and Critical Area Amendment during the Board of County Commissioners' deliberations. AR 642-59. Twenty comments supported taking no or "minimal" action. AR 644-46. One specifically referenced the Court of Appeals' decision discussed above. AR 645 ("Do Nothing' is supported by the Court of Appeals ruling"). Other comments urged the Commissioners to wait until the Supreme Court ruled. *Id.* Twenty-four comments supported the Majority Proposal. AR 650-51. Fifteen comments supported the Minority Proposal. AR 652-54. Twelve comments—the fewest for any option—supported some form of the Critical Area Amendment. AR 655-59. Sixteen comments directly opposed the various versions of the Critical Area Amendment. This was the largest opposition to any of the proposals. AR 657-61.⁴

⁴ The broad support for the general concept of rezoning unbuildable lands, referred to by the County, all but disappeared when specific legislative options were proposed. The County's references to 800 public participants at pages 26 and 27 of its brief does not reflect support for the Amendment that is the subject of this litigation.

In sum, the public preferred all options, including doing nothing, over the Critical Area Amendment that is the subject of this appeal. The County's repeated suggestions that the CAIT was broadly supported are contrary to record evidence and—like the County's other assertions—provide no basis upon which to resolve this appeal in the County's favor.

III. ARGUMENT IN REPLY

A. The County Bases Its Substantive Due Process Argument On "Facts" That Cannot Be Presumed To Exist

The County argues that the Court should find that the Ordinance meets substantive due process⁵ requirements because "[i]f the court can reasonably conceive of a state of facts warranting the legislation, those facts will be presumed to exist." County Response at 12. The County then asks the Court to "conceive" that the County was required to amend its rural densities and that the public strongly supported the Critical Area Amendment. As explained above, the record directly refutes both of these premises. When the County's arguments are stripped of these fictions, the

⁵ The County appears to accept that substantive due process applies to its regulation of subdivisions. Despite this apparent acceptance, the County challenges Bayfield's reliance on *Isla Verde International Holdings, Inc. v. City of Camas*, 146 Wn.2d 740, 49 P.3d 867 (2002). Bayfield cites this case for the proposition that subdivisions must comply with substantive due process. The County does not explain why Bayfield must wait until it has an actual subdivision before Bayfield may challenge the County's subdivision regulation. The Constitution contains no such requirement.

Ordinance fails all three of *Presbytery's* substantive due process tests.

Presbytery of Seattle v. King County, 114 Wn.2d 320, 787 P.2d 907 (1990).

1. The County's Argument Regarding *Presbytery's* First Prong Fails Because The Record Shows That Thurston County's Rural Densities Were Not A Problem Requiring A Solution

The County argues that the Ordinance satisfies *Presbytery's* first prong because the County adopted the Ordinance “in response to the [Board's] order finding the County out of Compliance.” County Response at 12. To buttress this argument, the County relies on the holding in *Peste v. Mason County*, 133 Wn. App. 456, 136 P.3d 140 (2006), *rev. denied*, 159 Wn.2d 1013 (2007), that Mason County “adopted and amended its [development regulation] to comply with the GMA as the Growth Board ordered.” County Response at 14 (*quoting Peste*, 133 Wn. App. at 474). As demonstrated above, the Court of Appeals in the case now before the Court had reversed the Board's order—concluding that the County's rural densities complied with the GMA. At this most basic level, *Peste* is distinguishable and does not apply to this case. Closer inspection below sharpens the distinction between this case and *Peste*.

Specifically, the *Peste* court found, on a very limited record, that Mason County's development regulations “alleviate the problems of

unplanned growth and sprawl.” In contrast to *Peste*, the record regarding Thurston County’s rural lands has been exhaustively reviewed by the Court of Appeals and Supreme Court. The Court of Appeals found that Thurston County’s then existing regulations already had alleviated the problems of unplanned growth and sprawl. As explained fully in Bayfield’s Opening Brief, there was no “public problem” requiring a solution, and therefore, the Ordinance does not meet *Presbytery*’s first prong. Bayfield’s Opening Brief at 21.

2. The County’s Argument Regarding *Presbytery*’s Second Prong Fails Because It Is Based On The Board’s Compliance Order, Which Provides No Support For The County’s Argument

The County’s argument that the Ordinance meets *Presbytery*’s second prong again relies on the so-called “need to meet the [Board’s] order” and *Peste*. County Response at 16-17. As discussed above, the Board’s order regarding rural densities had been reversed when the County adopted the Ordinance, and *Peste* does not apply to the facts in this case.

Bayfield’s Opening Brief established that the Ordinance was “not reasonably necessary” and did not “tend to solve [a public] problem” as required by *Presbytery*’s second prong because (consistent with the County’s success at the Court of Appeals) the Ordinance itself maintained that it was not necessary to comply with the GMA or the Board’s order.

Bayfield's Opening Brief at 22. In addition, the Ordinance stated that the County already "provides a variety of densities." The County does not explain why the Ordinance was reasonably necessary to provide a variety of rural densities when the Ordinance claims the contrary and takes the position that no problem exists.

In addition, the County argues that the Ordinance meets *Presbytery's* second prong because it achieves a variety of rural densities. County Response at 6. This argument oversimplifies *Presbytery's* holding by ignoring the Court's explanation that, to satisfy the second prong, a regulation must use means that are "reasonably necessary" and must "tend to solve [a public] problem." 114 Wn.2d at 330. Simply put, given the absence of a "problem" related to rural densities, the Ordinance was neither "reasonably necessary" nor did it "tend to solve" a public problem. Therefore, the Ordinance fails *Presbytery's* second prong.

3. The County's Argument Regarding *Presbytery's* Third Prong Erroneously Relies On The Board's Order and Fails To Address The *Presbytery* Test

Bayfield's Opening Brief established that the Ordinance was unduly oppressive under *Presbytery's* third prong because (a) the Ordinance significantly reduces the value of Bayfield's property by limiting density; (b) the "seriousness of the problem" the Ordinance addresses is low because the Ordinance itself indicates that the CAIT is entirely unnecessary to achieve a variety of rural densities; (c) "the extent

to which the owner's land contributes to the problem" factor does not support the CAIT because Bayfield's property cannot be contributing to a problem that the County asserts does not exist; and (d) "the feasibility of less oppressive solutions" factor is not satisfied because the County had several less drastic options, including deferring action entirely or adopting only the provisions of the Ordinance actually supported by site-specific analysis. Bayfield's Opening Brief at 22-24.

The County does not respond to any of Bayfield's arguments. The County's silence concedes that the Ordinance causes severe economic loss. The County likewise concedes that a less drastic response to the situation regarding rural densities would have been to do nothing, given the Court of Appeals' ruling, or to adopt only the provisions based on rigorous analysis, which comprise Sections 20.09B and 20.09C of the Ordinance. The County also could have adopted either the Majority or Minority proposal. Rather than respond to these arguments, the County attempts to sidestep the issue in two ways, each of which fails.

First, the County argues that the Ordinance is not unduly oppressive because it applies to unbuildable lands. As discussed elsewhere, this argument makes no sense in the real world where regulations routinely count critical areas as part of the property to which subdivision ratios are applied. A 10-acre parcel with one acre of critical areas still has nine acres of unconstrained lands on which to build the two homes previously allowed by the code and to provide the buffers already

required to protect the critical areas. There is no principled basis to limit the owner to one home—as the Ordinance requires—simply because a small fraction of the lands are critical areas fully protected by buffers.

Second, the County argues that it chose the least intrusive of three alternatives presented at the public hearing. County Response at 18. This is incorrect. The County chose the least restrictive version of the CAIT, but not the least restrictive of the three primary alternatives. The Majority Proposal and Minority Proposal were each less restrictive than the Critical Area Amendment. What the County means to say is that of the three very restrictive Critical Area Amendments that were considered (*e.g.*, subtracting buffer areas as well as critical areas from the density calculation), it chose the least oppressive. That the County could have acted more unconstitutionally than it did does not change the fact that the method it chose was more drastic than several other options.

In sum, the Critical Area Amendment does not solve a public problem, is not reasonably necessary, and is unduly oppressive. The CAIT violates substantive due process.

B. The Board's Legal Conclusion That The Constitution And Statute Do Not Protect Subdivision From Arbitrary And Discriminatory Action Is Erroneous

The Board concluded that the GMA's Goal 6 did not apply to rights to subdivide property because the Constitution and statute do not provide such protections. Bayfield's Opening Brief demonstrated that the

Constitution and state statute protect property owners from inappropriate restrictions on subdivisions and that the GMA's Goal 6, therefore, applies to the Ordinance. Bayfield's Opening Brief at 25-27. The County—perhaps wisely—never disagrees by arguing that it may impose arbitrary and discriminatory regulations on the subdivision process. This, however, is the crux of the Board's legal error and should be reversed. Because the County cannot credibly dispute the real legal issue in this case, it creates several straw arguments, none advanced by Bayfield and all irrelevant to the real issue.

First, the County argues that “[g]oal six is *not* to be applied over all other goals.” County Response at 21. Bayfield agrees, but that point is irrelevant because the Board's error was holding that Goal 6 does not apply in this case at all based on its erroneous conclusion that the Constitution and statute do not protect subdivision rights. The legal issue does not involve balancing of goals, but rather interpreting one goal correctly. The Board failed to do so, and its holding should be reversed.

Second, the County argues that the legal issue is moot because the Board applied Goal 6. County Response at 21-22. The Board's erroneous legal interpretation remains as Board precedent and is not moot. Thus, this argument—like the others—fails.

Third, the County argues that “[i]nterpreting Goal 6 to require all property to be subdivided in the same manner is misguided.” County Response at 22. Bayfield does not propose this interpretation of Goal 6. Bayfield simply points out the verity that the Constitution and statute protect property owners from arbitrary and discriminatory regulations, and the Board’s contrary ruling should be reversed.

Fourth, the County argues that Bayfield’s reliance on *Isla Verde* is improper because *Isla Verde* applies to a specific development proposal. The County misses the point. *Isla Verde* establishes that subdivisions may be reviewed to assure that local governments do not impose requirements that violated substantive due process. 146 Wn.2d at 764-5. Therefore, *Isla Verde* refutes the Board’s contrary conclusion. If the Constitution protects rights during the project stage, Goal 6 applies to the development regulations that the County adopts to govern subdivision at the project stage. Such protection is the reason for having such a goal in the GMA, which applies to only plans and regulations, rather than projects.

Fifth, the County argues that the Board has “interpreted Goal 6 as not protecting the right to have the same subdivision opportunities as someone else.” County Response at 23. This is not the Board’s ruling. The Board interpreted Goal 6 as not applying to subdivisions at all.

Bayfield Resources v. Thurston County, WWGMHB Case No. 07-2-0017c Final Decision and Order, page 27, lines 21-22 (the ability to subdivide is not “the type[] of rights for which the Legislature has intended to be protected under Goal 6”). That is incorrect, and this Court should so rule.

Finally, the County asserts that Bayfield argues that RCW 82.02.020 “protects a developer’s right to subdivide at a maximum density” and that Bayfield did not timely raise this argument. County Response at 23. Bayfield never argues that a developer is entitled to subdivide to a maximum density. Rather, Bayfield demonstrates that RCW 82.02.020 protects property owners from arbitrary and discriminatory subdivision restrictions, and the Board’s contrary ruling was in error. Bayfield did not raise this issue before the Board because the Board had not yet erroneously ruled that statutes do not protect subdivision rights. As soon as the Board so ruled, Bayfield timely raised this issue and thereby properly preserved it as error on appeal.

The Board’s legal error could not be clearer. The Constitution and statute protect subdivision rights from arbitrary restrictions. The GMA’s Goal 6 applies to the Ordinance.

C. The Western Board's Findings Are Not Based On Substantial Evidence

Just as the County ignores the real legal issue above in favor of easier, but irrelevant, arguments, the County also ignores the issues of fact in Bayfield's argument that the Board's factual findings are not based on substantive evidence in the record.

To begin, the County does not attempt to defend the Board's finding that Bayfield had no reasonable expectation regarding achieving certain densities on its property. The County obviously cannot credibly refute Bayfield's argument on this point given that the County's own letter in the record confirms Bayfield's expectations and is the only evidence in the record on this subject.

Next, the County argues that "Bayfield would like the County to present a scientific journal proving that less homes, people, domestic pets, cars, and impervious surfaces can benefit those areas and the wildlife living there." County Response at 25. Of course, Bayfield proposes no such thing. Rather, Bayfield correctly observes that the Western Board cites to no evidence in the record to support its finding on this point. The absence of this necessary evidence means the Board's conclusions regarding the purported environmental benefits derived from the Critical Area Amendment are based on conjecture, rather than substantial

evidence.⁶ As noted in Bayfield's Opening Brief, the County staff's professional judgment supports Bayfield's argument. Simply put, it was error for the Board to find protections and fairness where substantial evidence on both points was absent.

The County next argues that "[t]he evidence demonstrates the County was appropriately balancing the 13 GMA goals." County Response at 25. This argument fails because the issue before the Court is whether the Board's findings in applying Goal 6 are supported by substantial evidence. The issue pertains to evidence relied on by the Board. The County's response does not address this issue.

The County's "balancing argument" also fails because it relies on the County's self-created mythology that the County was in the midst of a mandatory compliance process, that the public broadly supported the CAIT,⁷ and that it was the least-restrictive approach. County Response at 25-26. As discussed in Section III.A above, the record shows instead that

⁶ The County asserts incorrectly that Bayfield did not make this argument to the Board. The County is wrong. Bayfield argued to the Board that a regulation not based on science would be arbitrary and would fail to comply with the GMA's Goal 6. *See* Bayfield's Opening Brief at 20-21.

⁷ The County asserts that 800 participants supported rezoning unbuildable lands. This support occurred before the County formulated specific alternatives. The devil is in the detail and the CAIT's specific approach garnered strong opposition and little support.

the County chose a highly oppressive mechanism to address a problem that the Court of Appeals and the County itself said did not exist. The record also shows that more public comments opposed the Amendment than any other option and that the Amendment received the least support.⁸

The County also argues—again, erroneously—that property owners are not a “protected class of persons” and that, therefore, the Board’s findings are somehow based on substantial evidence. Again, the County fails to address the evidentiary issue before the Court. As Bayfield notes in its Opening Brief, the Board relies on the same unsupported findings in this ruling as it did in its findings that the Amendments were not arbitrary. No evidence exists in the record on these points.

In addition, Goal 6 of the GMA does not require a “protected class” of individuals. The County imposed restrictions on property owners with critical areas when other County regulations already completely protected those critical areas. The County did so after assuring Bayfield that its willingness to place lands in conservation easements would mean that it would receive full credit for subdivision calculations and density bonuses. The County burdened Bayfield and other similarly

⁸ See discussion above, Section II.B.

situated property owners without any accompanying public benefit. The County's action was discriminatory and failed to comply with the GMA's Goal 6.

IV. CONCLUSION

For the foregoing reasons, the Court should hold that (1) the Ordinance violates due process principles and is therefore invalid, (2) the Board erred as a matter of law in concluding that the Constitution and statute do not protect subdivision from arbitrary and discriminatory action, and (3) the Board's findings are not based on substantial evidence. The trial court's contrary rulings are erroneous, and the Ordinance should be invalidated.

DATED this ¹⁴7 day of December 2009.

STOEL RIVES LLP

By 

Eric S. Laschever, WSBA 19969
Leonard J. Feldman, WSBA 20961
STOEL RIVES LLP
600 University Street, Suite 3600
Seattle, WA 98101
(206) 624-0900

Attorneys for Petitioner-Appellant
Bayfield Resources Company

CERTIFICATE OF SERVICE

I hereby declare under penalty of perjury of the laws of Washington State that I caused true and correct copies of the foregoing document to be served via email on the following individual(s) by the method(s) indicated:

Jeffrey Fancher
Thurston County Prosecutors Office
Civil Division
2424 Evergreen Park Drive SW, Suite 102
Olympia, WA 98502
Email: fanchej@co.thurston.wa.us

Via Email/U.S. Mail

Martha P. Lantz
Assistant Attorney General
Licensing and Admin. Law Division
1125 Washington Street
PO Box 40110
Olympia, WA 98504-0110
Email: LALOLyEF@atg.wa.gov

Via U.S. Mail

Dated at Seattle, Washington December 9, 2009


Michele Brandon

OFFICE RECEPTIONIST, CLERK

To: Laschever, Eric S.
Subject: RE: Supreme Court No. 83865-8: Filing - Appellant Bayfield Resources Company's Reply Brief

Rec'd 12/9/09

Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

From: Laschever, Eric S. [mailto:ESLASCHEVER@stoel.com]
Sent: Wednesday, December 09, 2009 2:31 PM
To: OFFICE RECEPTIONIST, CLERK
Subject: Supreme Court No. 83865-8: Filing - Appellant Bayfield Resources Company's Reply Brief

Enclosed for filing in the above matter is:

1. Appellant Bayfield Resource Company's Reply Brief.

The following information is provided in accordance with the Court's rules for e-filing:

Case name: Bayfield Resources Company v. Western Washington Growth Management Hearings Board, et al.

Case number: Supreme Court No. 83865-8 (Court of Appeals No. 39411-1-II.)

Name, phone number, bar number and email address of the person filing the document:

Eric S. Laschever
206-386-7614
WSBA No. 19969
eslaschever@stoel.com