

No. 45726-1-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

SCOTT K. LANGE & ELIZABETH R. LANGE, Husband and Wife, and  
TRUSTEES of the LANGE FAMILY TRUST,  
Appellant,

v.

DAVID A. CEBELAK and KRISANNE R. CEBELAK, husband and wife  
and the marital community composed thereof.

Respondents.

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ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF  
WASHINGTON FOR CLALLAM COUNTY  
No. 09-2-01301-1

APPELLANTS' BRIEF

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## I. INTRODUCTION

In December of 2006 a severe winter storm occurred and the Lange beach adjacent to the Cebelak parcel was nearly wiped out. When the Cebelak rock wall was exposed, Lange investigated and discovered the many permit and code violations on the Cebelak parcel. Lange contends that Mr. and Mrs. Cebelak (hereinafter "Cebelak") obtained permits for their house, cabin and rock wall by knowingly misrepresenting the setbacks and location of the Ordinary High Water Mark. (CP 498-499, Paragraphs 3.4 through 3.9) Attached as Appendix A to this Brief (CP - 337 Exhibit A to Declaration of Thomas D. Roorda at page 343) is a drawing showing the misrepresentations and setback violations. The actions of Cebelak in obtaining permits by misrepresentations and violations of permit conditions caused substantial damage to the Lange property and the property to the other side of Cebelak. (CP 500, Paragraph 4.6) Attached as Appendix B are pictures of the damages to the Lange property and the property on the other side of Cebelak.

This proceeding is an appeal from a Summary Judgment ruling of the Honorable Ken Williams, Judge, Clallam County Superior Court (now retired). In that ruling Judge Williams dismissed claims relating to construction and erection of buildings on the property of David A. Cebelak and Krisanne R. Cebelak (hereinafter referred as "Cebelak") based upon the Land Use Petition Act. Judge Williams also dismissed certain damage claims stating the statute of limitations had run even though continuing violations existed. Claims relating to ongoing nuisance relating to a bulkhead/rock wall are still pending before the Trial Court. (CP 155-169)

Lange began seeking enforcement from the County to address these violations previously unknown. The County had a duty under its Code to investigate any permit and code violations. The County systematically failed to investigate the Lange complaints as required by County Code. When the County failed to take any action or even respond to the complaints, Lange filed this lawsuit against the Cebelaks.

This action against Cebelaks was commenced in Clallam County in 2009 seeking relief under the theory of continuing trespass, nuisance, injunctive relief and other relief. All the claims were based on the

structures built by Cebelak constituted continuing nuisances. (CP 496-503)

Lange alleges that the Cebelaks violated the terms of the building permits, shoreline exemption approval, Shoreline Management Act, County setbacks, Clallam County Critical Areas Ordinance and other laws in constructing their rental home, cabin and rock bulkhead. These violations occurred after the building permits and exemptions were issued. There were also material misrepresentations by Cebelaks in applying for the permits and exemptions. The ongoing violation by Cebelaks of terms of the permits and County Codes constitute a public nuisance until such time as they are abated. (CP 496-504).

The Cebelaks filed a Motion for Summary Judgment asserting that the Land Use Petition Act barred the action because no appeal was taken from the initial permits. (CP 419-437)

In 2013 a Summary Judgment Order was issued dismissing some of the Lange claims holding that the Land Use Petition Act prevented challenging the construction of the home and cabin because no appeal was filed within 21 days that the permit was issued. The Order (CP 23-26) is the subject of this Appeal.

## **II. ASSIGNMENTS OF ERROR**

- I. The trial court erred in entering the Order Granting Partial Final Summary Judgment in Favor of Defendants dated December 4, 2013. That Order dismissed nuisance and related claims concerning the building and cabin on the property based upon the Land Use Petition Act.
- II. The trial Court erred in entering the Order Granting Partial Final Summary Judgment in Favor of Defendants dated December 4, 2013 based upon the Statute of Limitations.

## **III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. Does the Land Use Petition Act bar admission of evidence of code and permit violations to establish a continuing public nuisance?
2. Does the Statute of Limitations bar recovery under a continuing nuisance case?

## **IV. STATEMENT OF CASE**

### **a. History**

The Cebelaks became new owners next to Lange, around 1996. They applied for and received building permits and/or exemptions in 1996 for structures on the property. After the Cebelaks began some minor construction activities in 1997, Lange complained to Clallam County on 5/11/97 that it appeared the structure being installed may be violating set back conditions (CP 182-185). Lange had received no notice of any

permit or variance activity, though he was an adjacent landowner (CP 182-185). Lange received a written reply in 24 hours and was assured that the County was watching the situation and setbacks closely (CP 186), though come to find out later there was no evidence the County even visited the site before at the time of the letter, and documentary proof that they never signed off on any structures' set-backs as constructed from the OHWM. (CP 229; 231; 256). Come to find out much later, the Department of Fish and Wildlife had, early on, established the location of the OHWM with the Cebelaks on 1/22/1998 (CP 276-280), and subsequent applications by the Cebelaks misrepresented this location in order to obtain permits or approvals that were originally denied, in the summer of 1998. (CP 260-262; 270; 304-305). Attached as Appendix C are copies of the site plans showing misrepresentations.

During discovery after the lawsuit was filed, Plaintiffs discovered that the Cebelaks had their surveyor determine the building setback lines for their property around May of 1997 as shown on the survey drawing of their surveyor (CP 81). Attached, as Appendix D is the survey showing setbacks. The setback lines on the Cebelak survey drawing are markedly different from the representations made by Cebelaks in obtaining permits. The survey recorded by the Cebelak's surveyor removed the building

setback lines prior to recording and contained conflicting statements regarding the shoreline portion of the survey. (CP 258)

Regardless, after a storm in 2006 exposed a buried bulkhead, Lange, after seeing the damage to both adjacent shorelines apparently caused by its location and configuration did some preliminary investigation into the cause of the damage. Following this investigation Lange advised Clallam County that it appears the bulkhead was responsible for erosion to adjacent shorelines and expressed concern the structure was not lawfully constructed. When Cebelak requested an emergency shoreline exemption to reconstruct and enlarge the bulkhead, Lange advised the County he wished to appeal the exemption. The County rejected Lange's request, and Lange instead filed a formal land use complaint requesting the County to investigate the apparently unlawful structure. (CP 51-56)

Despite Lange's formal complaint, on forms provided by the County, requesting investigation, the County never provided or created a complete response or final determination to that land use complaint. Nor did the County indicate Lange's 2007 land use complaint, in part or entirely, was barred by LUPA, though Lange specifically asked whether it was. No final decision was provided. However, without informing Lange,

and though the property was subject to code enforcement, the County approved an after the fact permit for repairs to the bulkhead more than a year after the storm in 2008. (CP 319-321). Despite advising the County in writing that he wished to appeal the permanent exemption and requesting notice if and when issued, Lange only discovered the exemption had been issued via a public disclosure request in January 2009.

Concerned the County had not responded to the complaint, Lange later commissioned a detailed land survey that overlaid an August 1997 certified WA DNR photo to survey and show the history and extent of set back and permit/exemption condition violations. (CP - 337 Exhibit A to Declaration of Thomas D. Roorda at page 343).

#### **Select Permit Conditions & representations in the record**

Select misrepresentations in applications and facts showing permit/exemption conditions are not being met.

- CP 249 – This is Cebelak’s site plan as submitted with his building permit application. Note she shows 35’ distance to the “vegetation line” to give the appearance the setbacks are met.
- CP 250 – This is the County’s markup on approval of permits. It notes the required 35-foot shoreline setback/buffers from OHWM.
- CP 225 – The building permit worksheet for the structures include the condition of approval that “Must maintain zoning setbacks and critical area setbacks” Permits for both the so-called storage building and the residence explicitly show rear (shoreline) setback to be 35 feet (CP 228;

255), which condition was consistent with the applicable Shoreline Master Program requirements at the time.

- During construction of the buildings in 1997 until final inspection in 1999, the inspector never signed off on the set backs inspection item, though the footings were installed in mid 1997. (CP 461-462).
- In January of 1998, the Cebelak's sought a Shoreline Exemption request from Clallam County to "Install approximately 4' x 150' rock bulk head to replace existing deteriorating logs to protect SFR." (CP 260-262)
- On the same date, they applied for a Hydraulic Project Approval for the same wall. (CP 277-279).
- The Hydraulic Project Approval sketch they provided to WDFW in their application was precisely the same sketch they supplied with their County shoreline exemption. *Compare* (CP 278) *with* (CP 262).
- The difference between the two original sketches provided in the record is that the Washington Department of Fish and Wildlife (WDFW) visited the site and determined where the Ordinary High Water Mark (OHWM) really was in January of 1998. WDFW indicated where the actual OHWM was on the HPA application attachments (CP 278), based upon a site visit on 1/22/1998 (typo on exhibit showing 1.22.1997) at which applicant was present. (CP 279). The actual WDFW field measured OHWM was at the base of the proposed rocks, adjacent to the "existing logs" (CP 279). The actual WDFW field measured OHWM is provided with distance ties to the actual building structures' foundations, so there is no question of the location of that original WDFW field measured OHWM even to this day (26' from the residence and 21' from the so called storage building. (CP 279 and 281). This is well under the required 35' (CP 250).
- 4-4-1998: While the original shoreline exemption request sketch to the County failed to show an OHWM (CP 271), the original shoreline exemption request for a new protective bulkhead at the so called "existing logs" and WDFW OHWM was nonetheless denied as inconsistent with the shoreline master program. (CP 264-268).

- 4-19-1998: The shoreline exemption for the shoreline was reapplied for (CP 270) though the first application did not show the OHWM (CP 260). This go around, the Cebelak's represented that the bulkhead be an "upland sea wall" (again 4' high x 150' long) to provide for protection from "exceptional" waves. (CP 270). Note in the revised shoreline exemption request applicant relocated the OHWM from where determined by WDFW to a point parallel and 19' seaward of its actual location as determined by WDFW on 1/22/98. (CP 270)
- The revised shoreline exemption was approved based upon this representation of a changed location of the sea wall. (CP 272-275.)
- The HPA was issued 6-22-1998, only after Clallam County approved the revised shoreline exemption request based upon the representation that Cebelak moved the proposed bulkhead to a location 20 feet landward of the OHWM. However, WDFW did not know that the location of the bulkhead was changed, (CP 417 - Paragraph 12)

The permits/exemptions indicate both storage building and residence must be 35 feet from OHWM (CP 249-250) and bulkhead must be 20 feet landward from the OHWM. (CP 272) The survey Lange commissioned, however, showed the bulkhead 26 feet from the WDFW OHWM at the residence and the bulkhead 3-4 feet seaward of the WDFW OHWM at the "storage building" (CP - 337 Exhibit A to Declaration of Thomas D. Roorda at page 343), as established by the Washington Department of Fish and Wildlife, and unchallenged by the County or the Cebelak's. (CP 276-280) The WDFW approval showed that the bulkhead was located at the OHWM (the same location as the old log barrier on the

property. Cebelak clearly did not build the bulkhead 20 feet landward of the OWHM as requested in the revised exemption proposal. (CP 270)

On March 30, 2007 Lange hired Jim Johannessen, a licensed engineering geologist working at Coastal Geologist Services, Inc. to provide a report on the causation of the erosion that occurred to Lange's property. [CP P 416, ¶ 9]. Mr. Johannessen's report concluded that it is fair to say that the Cebelak bulkhead is the main culprit in causing the erosion. (CP 375 L 5-16)

On May 13, 2008, the County issued a shoreline exemption to Cebelak for the rebuild of their bulkhead. (CP 319-321). The County noted on the first page under "History" that the bulkhead was located approximately 20 feet landward of the OHWM. As the evidence shows, however, this is simply not the case and in direct conflict with the final land use decision issued by WDFW establishing the location of the OHWM at the Cebelak property. The bulkhead was actually placed further seaward than approved by Clallam County in the grant of the exemption to the Shoreline Act.

## V. ARGUMENT

### A. The Standard of Review on the Granting of Summary Judgment is De Novo.

Summary judgment will be granted when the pleadings, affidavits, depositions, and admissions on file demonstrate that there is no genuine issue as to any material fact, and that the party bringing the motion is entitled to judgment as a matter of law. *Wilson v. Steinbach*, 98 Wn.2d 434, 656 P.2d 1030 (1982); *Barrie v. Hosts of Am., Inc.*, 94 Wn.2d 640, 620 P.2d (1980). The court will consider any facts and the reasonable inferences therefrom in the light most favorable to the non-moving party.

As held in *Wilson*, supra, courts of appeal reviews the materials the same as the trial court, thus their review of Summary Judgment Orders is de novo.

To the extent the court ignored documentary evidence outside the record or simply referred to it for context, all allegations of Lange must be taken as true. *Haberman v. Washington Public Power Supply System*, 109 Wn.2d 107, 120-121, 744 P.2d 1032 (1987). Accordingly, at this stage in the review of the decision on the motion for summary judgment is *de*

*novo*, and all allegations of Lange should be taken as true or the facts should be interpreted in favor of the non-moving party. *See, Bock*, 91 Wn.2d at 99. Either way, all statements of Lange must be taken as true, or all inferences of fact are in favor of the non-moving party, here, the Langes. *See, Haberman*, 109 Wn.2d at 120-121.

Whether the statute of limitations bars a suit is a legal question, and therefore the applicable statute of limitations issue is a question of law reviewed *de novo*. *Bennett v. Computer Task Group, Inc.*, 112 Wn. App. 102, 47 P.3d 594 (2002). However, if there is a dispute of fact regarding when the limitation period began, this is a question for the finder of fact. *Washburn v. Beatt Equip. Co.*, 120 Wn.2d 246, 263, 840 P.2d 860 (1992).

Nearly all the facts in this case are disputed, especially the shoreline setbacks for the house, cabin (storage building) and bulkhead. The Trial Court entered its Order Granting Partial Final Summary Judgment acknowledging these facts. The facts presented by Lange show that the permit conditions were not complied with.

**B. Application of the LUPA statute of limitations must not be interpreted to prevent examination and determinations of violations of permit conditions and/or land use codes.**

David A. Cebelak and Krisanne R. Cebelak (hereinafter "Cebelak") misrepresented the Ordinary High Water Mark on their

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property in order to obtain building permits and a rock sea wall permit. They claim, nevertheless that Lange Complaint must be dismissed because Lange did not file a Land Use Petition Act appeal of the permits within 21 days of their issuance.

They cited the current case law interpretation of the LUPA statute of limitations arguing that despite their misrepresentations and violations of permit conditions they are immune from suit. *Chelan County v. Nykriem*, 146 Wn.2d 904, 52 P.3d 1 (2002) (Declaratory relief on the same land use decision by a government is barred, irrespective of quasi-judicial or ministerial nature of land use decision); *Stafne v. Snohomish County*, 156 Wn. App. 667 (writ of mandamus attempting to force a decision *already made* to not docket a comprehensive plan amendment barred by available appeal remedies) *affirmed on other grounds*, 174 Wn.2d 24, 271 P.3d 868 (2012). Further, subsequent permit decisions are unreviewable based upon the failure to challenge earlier permits under LUPA if the sole ground for appeal was already decided by the previous land use decision. *Habitat Watch v. Skagit County*, 155 Wn.2d 397, 410 (2005). However, review of compliance with the terms and conditions of a land use decision is not barred. *Id.* at 411 (petition for revocation was not barred by LUPA, but failed on its merits because the hearing examiner did not err in

concluding the landowner commenced construction *in accordance* with its special use and grading permits); *see also, Wenatchee Sportsman v. Chelan County*, 141 Wn.2d 169, 182 (2000) (“The only issue that can be raised concerning the rezone is whether the plat application conforms to the [otherwise illegal] zoning requirements.”). Even in *Samuel’s Furniture*, a case involving whether or not the development was within the shoreline jurisdiction or not, it was pointed out that LUPA would not prevent Ecology from challenging compliance with permit conditions “against a party . . . who obtains a permit and then proceeds to violate the conditions of the permit.” *Samuel’s Furniture v. Ecology*, 147 Wn.2d 440, 456, 54 P.3d 1194 (2002).

The application of this blanket argument of LUPA’s application to illegal decisions greatly exceeds the scope of the holding in *Nykriem*, *supra*, applied by the trial court in the present case.

That being said, close review of the *Nykriem* case provides two significant revelations. First, the boundary line adjustment in *Nykriem* was made under Chelan County’s land division code, which does not have International Building Code permit validity language. Second, Chelan County promptly updated its code to include code violations being deemed public nuisances. These two points are discussed below.

**1. Land division code does not have International Building Code language incorporated into it or the land use decisions thereunder.**

Unlike the building code, the land division code does not incorporate the provisions of the International Building Code<sup>1</sup> (hereinafter “IBC”). Attached as Appendix E are the applicable Sections of the IBC. Under RCW 19.27, all counties, cities and towns are required to follow the Washington State building codes that adopt the IBC by reference. Further, under RCW 36.43.030, a County *must* enforce any building code it adopts. In administrative section 303(c) of the 1991 edition<sup>2</sup> of the “UBC, the “Validity of Permit” provision states:

“The issuance or granting of a permit shall not be construed to be a permit for, of an approval of, any violation of any of the provisions of this code or of any other ordinance of the jurisdiction. Permits presuming to give authority to violate or cancel the provisions of this code or other

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<sup>1</sup> The International Building Code is a model building code developed by the International Code Council that has been adopted throughout the United States. The first edition was published in 1997. The predecessor to the IBC was the Uniform Building Code (“UBC”), developed by the International Conference of Building Officials. RCW19.27.031 requires all counties to put into effect the Washington State building code that adopts and incorporates the IBC by reference.

<sup>2</sup> At the time of the initial permits the 1991 edition of the UBC was in effect in Clallam County by Clallam County Ord. 535 - Adopted 11.30.93. The 2006 edition of the IBC currently adopted by Clallam County is available for judicial notice at [www.codepublishing.com/WA/clallamcounty.html](http://www.codepublishing.com/WA/clallamcounty.html).

ordinances of the jurisdiction shall not be valid.”

The IBC language is clear. Such a permit does not authorize violations of applicable codes and a permit is not valid if such violations exist. Under the IBC language, all code violations are also permit violations. *Lauer v. Pierce County*, 173 Wn. 2d at 263. (“A permit application that is not allowed under the regulations in place at the time it is submitted and is issued under a knowing misrepresentation or omission of material fact confers no rights upon the applicant”). This is an important distinction to a land use decision made under a land division code - as in *Nykriem* - where the IBC language does not apply. This distinction has not been adequately brought to the attention of or considered by the courts - or at least could be clarified. If the permit is not valid, especially by its very own terms, it confers no rights upon applicant, the land use remains uncloaked by a LUPA statute of limitations, and remains subject to code and permit enforcement. *Lauer v. Pierce County*, 173 Wn.2d 242, 263,267 P.3d 988 (2011); *Heller Bldg., LLC (HBC) v. City of Bellevue*, 147 Wash. App. 46, 60-62, 194 3d 264 (2008) (code enforcement or rescission based upon violations of permit conditions or invalid permits is not precluded by LUPA). In addition to being invalid by its own terms, by law, the permit remains invalid until the code deficiency is corrected. *See*,

*Biermann v. City of Spokane*, 90 Wn. App. 816, 960 P.2d 434 (1998)(review of erroneous after the fact certificate of compliance not precluded by unchallenged prior building permit where structure built with code violations). Subsequent approvals based upon original applications or approvals that vest no rights, likewise do not vest any rights. *Eastlake Community Council v. Roanoke Associates, Inc.*, 82 Wn.2d 475, 484-486, 513 P.2d 36 (1973). (rejecting equitable defenses to code violations being cured by subsequent approvals, where the original applications and permits vested no rights); *Samuel's Furniture v. Ecology*, 147 Wn.2d 440, 456, 54 P.3d 1194 (2002) *as amended on denial of reconsideration* (2003)(recognizing that while certain types of state agency enforcement is curtailed by the LUPA statute of limitations, LUPA does not protect against or bar code enforcement “against a party . . . who obtains a permit and then proceeds to violate the conditions of the permit.”).

In *Lauer v. Pierce County*, where a permit based on material misrepresentations and prohibited by regulations in effect was invalid, and therefore deemed to “confer no rights upon applicants”. *Lauer v. Pierce County*, 173 Wn.2d 242, 263,267 P.3d 988 (2011) (“A permit application that is not allowed under the regulations in place at the time it is submitted and is issued under a knowing misrepresentation or omission of material

fact confers no rights upon the applicant”). *Lauer* involved code enforcement by a county after it made a land use decision. There the applicant made misrepresentations regarding set-backs, more than 21 days had passed from the building permit decision, construction had commenced, and it was determined through code enforcement the applicant was missing a county level approval that was necessary precondition to the permit previously issued. *Id.* For this analysis, it is important to note that the ruling in *Lauer* was only made possible because Pierce County exercised its code enforcement authority and issued an enforcement decision.<sup>3</sup> Had Pierce County ignored the violations without investigation or issuance of a written decision, through apathy or favor – as the County has apparently done in this case – the LUPA statute of limitations, as now applied in this matter by the Trial Court, would apparently confer improper immunity from challenges to those violations. The Trial Court in this matter must, therefore, also be reversed for these reasons so that the Langes can present evidence of the code violations and violation of permit conditions at trial to support their nuisance claims.

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<sup>3</sup> *Vogel v. City of Richland*, 255 P.3d 805 (2011)(We construe "issuance" under the LUPA to require more than a mere reference; there must be a memorialization sufficient to identify the scope and terms of the decision.”)

**2. Following *Nykriem*, the Chelan County promptly updated its code to expressly incorporate public nuisance into its code violations enforcement code.**

A second revelation emerges from *Nykriem* when examining the 2002 changes to Chelan County code that occurred just after the case was decided. Examination reveals Chelan County upgraded its code and permit enforcement authority by designating all (land use) code and permit violations to constitute a public nuisance. The authority to make such designation was conferred upon Washington counties via RCW 36.32.120(10). RCW 7.48.190 provides: “No lapse of time can legalize a public nuisance, amounting to an actual obstruction of public right.” Accordingly, Chelan County further enhanced its code by clarifying its authority to enforce codes and permit conditions well beyond LUPA’s 21-day jurisdictional window/statute of limitations. Within one year of *Nykriem*, Chelan County’s code had changed to expressly enable the code and permit enforcement LUPA had previously barred. (See Exhibit F)<sup>4</sup>

The majority of Washington counties have exercised the authority granted by RCW36.32.120(10) to deem all land use code and permit violations to constitute a public nuisance (See Exhibit G). As a result, and

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<sup>4</sup>Detailed County Code Analysis - Land Use Enforcement. Spreadsheet matrix summarizing code enforcement mechanisms adopted by Washington counties, including application of RCW36.32.120(10), RCW 7.80, and misdemeanor infractions.

notwithstanding LUPA, most Washington counties have the legal authority to enforce all code and permit violations indefinitely without application of any statute of limitation by operation of RCW 7.48.190. Washington does not recognize doctrines of “active acquiescence” in violations, or “permit by estoppel” *Mercer Island v. Steinmann*, 9 Wn. App. 479, 486 (1973). Rather, where code violations exist and are continuing to injure a neighbor, they must be rectified. *Radach v. Gunderson*, 39 Wn. App. 392 (1985) (equitable injunctive relief abating the condition is appropriate for continuing violations); *State v. Grant*, 156 Wash. 96 (1930). Of course, no passage of time can cure a public nuisance, and RCW 7.48 is consistent with pre-LUPA case law regarding code violations cited above.

Many recent Washington land use cases reflect that local jurisdictions are not constrained by LUPA statute of limitations in their code enforcement efforts. *HJS Development v. Pierce County*, 148 Wn.2d 451, 61 P.3d 1141 (2003); *Heller Bldg., LLC (HBC) v. City of Bellevue*, 147 Wash. App. 46, 60-62, 194.3d 264 (2008)(code enforcement or rescission based upon violations of permit conditions or invalid permits is not precluded by LUPA); *See also, Lauer v. Pierce County*, 173 Wn.2d 242, 267 P.3d 988 (2011)(building permit issued, and LUPA did not bar

enforcement action by County where landowners were required to obtain missing county fish and wildlife variance which was a prerequisite to making the building permit valid and complete); *Biermann v. City of Spokane*, 90 Wn. App. 816, 960 P.2d 434 (1998).

Further, in *Chaney v. Fetterly*, 100 Wn. App. 140, 142 n.2 (2000) review denied, 142 Wn.2d 1001 (2000), the court clarified that LUPA was not the appropriate means of seeking injunctive relief against the construction of a permitted house in violation of set-back regulations, as the action invoked the original jurisdiction, as opposed to the appellate jurisdiction of the Court.

Even *Skamania County* clarified that enforcement of the terms of the approval, not the propriety of a direct injunction action against the landowner by the Commission or the County, was at issue. *Skamania County v. Columbia River Gorge Com'n*, 144 Wn.2d 30, fn.6, 26 P.3d 241 (2001). Likewise, in *Twin Bridge Marine v. Ecology*, 162 Wn.2d 825, 844, 175 P.3d 1050 (2008) there was no issue with compliance with the terms of the building permits, and the building permits only were deemed valid because of Ecology's failure to appeal and an implied shoreline approval where there was a previous shoreline permit and two SEPA

decisions that authorized the permit at issue and the good faith of the applicant.

*Twin Bridge Marine* presents a situation vastly distinct from the permits issued here that indicate on its face that the applicant must comply with state and county laws and ordinances. As set forth below, violations of state and county codes during building constitute a public nuisance. Moreover, it should be pointed out that even a condition that was permitted at one time lawfully or not, can later become a nuisance or government may tolerate a nuisance a permit is not dispositive. *Grundy v. Thurston County*, 155 Wn.2d 1, 7-8 fn.5 (2005)(rejecting a LUPA analysis to certain nuisance claims). Even the dissent in *Grundy*, which would have conducted a LUPA statute of limitations analysis, requires that the development have been authorized by the exemption or permit. *Grundy v. Thurston County*, 155 Wn.2d at 16. This analysis of authorization requires an examination of the terms and conditions of the land use approval and what was actually constructed, which generally should be a question of fact.

Each code enforcement case requires an examination of the terms of the permit and local and state codes under which it is authorized, and the conditions and terms of the permit, to determine whether an action is

an impermissible collateral challenge to a land use decision, or rather, the proper enforcement of the terms of the land use decision. After all, a valid permit and/or valid non-conformity is a defense to a code enforcement action. Counties have broad flexibility in drafting the terms of land use decisions. Clallam County enacted CCC 20.02.010 et. seq. after *Nykriem* allowing Clallam County to bring enforcement action when it discovers that conditions of permit approval are violated. Under CCC 20.02.020 (1) a code violation (including violations of permit conditions) is declared a public nuisance and is subject to abatement. Here the permits issued required the Cebelaks to comply with the zoning and setback requirements of the county code. The permit for both buildings required compliance with a 35' setback from the OHWM. Under the facts alleged by Lange, the Cebelaks violated the 35' building setback requirements of county code and permits issued and the specific requirement to place the bulkhead 20 feet landward of the OHWM. No one challenged the term or condition of approval when the permits were issued. Those terms may be lawfully examined today to determine compliance with the permit and the validity thereof.

**C. The Application Of LUPA Statute Of Limitations Is Inappropriate, Where Underlying Land Use Decisions Are Defective And Subject To Administrative Enforcement Pursuant To Local Code And Their Own Terms.**

As noted above, Washington counties have implemented enforcement codes that use State public nuisance statutes to circumvent statutes of limitations. It is accordingly absurd to assert that any failure on the part of an aggrieved party to file a permit challenge or appeal to a land use decision strips that party of the right to seek enforcement of obvious code or permit violations in connection with a permit that by law is not even valid. Yet, this is exactly what the Cebelaks have done here and are arguing.

**1. Enforcement of permit terms under local code.**

Here there are prima facie ongoing code violations in the record. Here, for example, there is a permit that was issued that requires a 35' set back from the Ordinary High Water Mark. (CP 159, 167). The 1998 Washington Fish and Wildlife Decision (CP 189-190), which was not appealed by the Cebelaks or the County, definitively established the location of the OHWM, and shows it to be within 21 feet of the building that is supposed to be constructed and maintained at 35' set back. (CP 162, 166, 167). Likewise, the approvals conditioning the location of the wall to be set back from the OHWM are likewise enforceable as code violations where the Cebelaks did not build the wall where it was approved and where they said they would (CP 182), especially when it was built in the

location on a permit application that was originally denied (CP 175-176), and then the paperwork was changed to show the appearance of compliance. (CP 171, 178, 182). So the alleged violations of the permit conditions constitute continuing code violations, which in turn are continuing public nuisances. Both code violations and public nuisances, continuing in nature, are not subject a statute of limitations for injunctive abatement relief. RCW 7.48.190. Lange is seeking to show that Cebelaks created a public nuisance by misrepresenting facts on the permit applications and violations of the permit conditions.

Under LUPA, a superior court's LUPA jurisdictional statute of limitations applies only to its *appellate* jurisdiction in regard to final land use decisions. *Chaney v. Fetterly*, 100 Wn. App. 140, 142 n.2 (2000) *review denied*, 142 Wn.2d 1001 (2000).

That is, an enforcement decision based upon the terms of the land use decision is distinguishable from a challenge to that land use decision, because it invokes the concurrent and overlapping *original* jurisdiction of both Clallam County itself administratively, and the superior court to grant relief judicially. *Id.*<sup>5</sup>

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<sup>5</sup> Under the doctrine of administrative efficiency, the expertise lies at the administrative level at the County, and the superior court could properly defer to that tribunal to resolve any enforcement questions. *Chaney v. Fetterly*.

However, when Clallam County declines to assert its original enforcement jurisdiction, and instead ignores the code violations and refuses to initiate enforcement action as warranted or issue a final determination thereon, the Superior Court may then exercise its original enforcement jurisdiction to resolve the matter. *Chaney v. Fetterly*, 100 Wn. App. 140 (2000). Some courts and local jurisdictions have confused the permit issuance process with the code and permit enforcement process- but the two processes are distinct and result in different types of local land use decisions. RCW 36.70C.020(2)(a) and (c).

Courts have improperly ruled on the basis of their limited *appellate* jurisdiction to review land use permits when they should have properly exercised their *original* jurisdiction to examine facts and determine whether there are code or permit violations that are not protected or authorized by the terms of the permit or the LUPA statute of limitations. This confusion can only be resolved when the distinctions between permit issuance and code and permit compliance administrative processes are properly established in judicial application and decisions. This case provides an opportunity for such needed clarification.

A local jurisdiction's authority to enforce its codes and general law beyond LUPA's 21-day jurisdictional window makes simple common

sense. If LUPA precluded such authority, permit recipients could merely wait 22 days until relevant appeal deadlines had expired and then do whatever they wanted without fear of challenge. What does not make sense, however, is that counties should be allowed an indefinite amount of time to enforce codes and permits when in contrast ordinary citizens with constitutional rights are required to become aware of proposed developments, informed about relevant legal standards, seek and receive benefit of counsel, determine if they have property rights and how they might be impacted, and still file timely appeals and challenges within 14 or 21 days.

As a matter of public policy this seems wrong. Citizens should be able to rely on local jurisdictions to enforce codes. Citizens should not be required to stand as ever vigilant sentries to detect and challenge nearby land use decisions that are otherwise issued without notice and that are inconsistent with law – they have a reasonable expectation that the local jurisdiction experts will perform that function *diligently, properly, and equally*. If expertly trained local officials fail or refuse to identify and address defective land use determinations within 21 days, it is unjust that ordinary citizens are likewise given only 14 or 21 days to do so before losing their affected rights. Further, one must ask why anyone should be

required to file a challenge to an already defective and invalid permit in the first place, especially where the terms of the permit allow its invalidation.

Nowhere is this argument more valid than in the “sensitive jurisdictions” such as shorelines and critical areas, and where the IBC permit validity provisions are incorporated into the permits. Local codes clearly reflect higher standards for environmental protection in those areas. Citizens expect local code enforcement efforts to reflect these standards of enhanced protection. However, the indiscriminate summary application of LUPA excuses local jurisdictions from such enforcement, eliminates governmental accountability for preserving those standards, and thwarts the public interest in protecting and preserving these special jurisdictions.

Finality in land use decisions to protect legitimate property rights is a desirable public goal. To apply LUPA to strip aggrieved parties of their rights before they even become aware their rights are at risk is grossly unjust and violates individual constitutional rights. Such interpretation of LUPA by Washington courts is unnecessary. LUPA’s language starts the 21-day appeal clock only upon issuance and entry of a “final” land use decision. *Vogel*. If a land use decision is invalid and

remains *subject to enforcement* by a local jurisdiction by that local jurisdictions own code or the permits terms of approval leave the question of validity open, it can't be deemed final. A final land use decision for purposes of appellate jurisdiction is “one which leaves nothing open to further dispute and which sets at rest a cause of action between the parties” *Samuel's Furniture*, 147 Wn.2d at 452 (quoting Black's Law Dictionary 567 (5<sup>th</sup> ed. 1979)). If a permit decision by its own terms leaves an open question of validity, it cannot be final. Whether the land use decision is invalid by its own terms is therefore a question of fact, not simple passage of time, and an adjudication process must allow an examination of facts and produce a record of determination. Whether a statute of limitations bars a suit is a legal question, and therefore the applicable statute of limitations issue is a question of law. *Bennett v. Computer Task Group, Inc.*, 112 Wn. App. 102, 47 P.3d 594 (2002). However, if there is a dispute of fact regarding when the limitation period began, this is a question for the finder of fact. *Washburn v. Beatt Equip. Co.*, 120 Wn.2d 246, 263, 840 P.2d 860 (1992). There is no reason why these principles would not apply to a determination of when a LUPA statute of limitations applies to a given situation, based upon the type of

decision, the issue being raised (compliance or a challenge), notice, local code, and the terms of the land use decision itself.

When Courts summarily and presumptively apply LUPA to defective land uses and land use decisions, LUPA effectively creates and perpetuates a grant of special privilege to those who have been relieved of society's equal obligations of code and permit compliance. Legislation granting this type of unequal and special privilege violates Article 1, sections 8 and 12 of the Washington Constitution, and should not be interpreted thusly. LUPA should not be interpreted as a beacon of opportunity for scofflaws and those who break the rules and seek refuge behind the apathy or favor of enforcement officials. If equal treatment under the law is to be respected, enforcement must be viewed and treated as a different land use decision than permit issuance under LUPA. Courts must more closely scrutinize the local code distinctions between permit approvals and code and permit enforcement, including final decision authority and different administrative processes for appeals. LUPA already contains the necessary language for making such distinctions, but Washington trial courts can receive clarified direction from this court, to be more discriminating in determining when "finality" actually exists in

land use decisions by examining the terms of the decisions in question and the local codes.

This would encourage applicants to obtain all necessary permits, and discourage omissions and gamesmanship the LUPA statute of limitations is currently inviting.

**D. The Application Of LUPA Statute Of Limitations To Shoreline Jurisdiction Land Use Decisions Which By Their Terms Conflict Directly With Statute And The Public Interest As Expressed In The Shoreline Management Act Of 1971 (RCW 90.58) Is Improper, And The Trial Court's Interpretation Of LUPA Violates Lange's Due Process Rights.**

**1. Government shall ensure compliance of all shoreline development with the shoreline management act.**

The shoreline management act has occupied the field in areas of development within the shorelines of the state. As such, the shoreline management act trumps local codes, where local codes would allow what the act prohibits. *Biggers v. City of Bainbridge Island*, 169 P.3d 14 (2007); *See, Weden v. San Juan County*, 958 P.2d 273 (1998); *Ritchie v. Markley*, 23 Wn. App. 569 (1979) *overruled on other grounds by Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801 (1992) (shoreline management act pre-empts contrary local code). Because enforcement is mandatory under the shoreline management act, RCW 90.58.200, .210 .360, .900, local code to the contrary is pre-empted. While a private

citizen may bring an action for damages but apparently does not have a private right of action against a neighbor for injunctive or declaratory relief for violations of the SMA, *Hedlund v. White*, 67 Wn. App. 409, 415, 836 P.2d 250 (1992), the government *must* investigate and enforce violations and non-compliance with permit conditions. RCW 90.58.210(1).<sup>6</sup>

RCW90.58.210 states:

“.....the attorney general or the attorney for the local government **shall** bring such injunctive, declaratory, or other actions as are necessary to **ensure** that no uses are made of the shorelines of the state in conflict with the provisions and programs of this chapter, and to otherwise enforce the provisions of this chapter.” RCW 90.58.210(1) (emphasis added).

In this case Clallam County had utterly failed to investigate the Shoreline violations by Cebelak. They have left Lange with no choice but to bring his action against Cebeleks for the public nuisance they created by violating the Shoreline code, county code requirements for setbacks and violation of the conditions of permit approval imposed by Clallam County.

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<sup>6</sup> While other language in the statute and the associated WAC provisions may give the appearance of discretionary authority, it is clear those sections provide discretion only as to the *methods* to be used in achieving compliance.

LUPA must not prevent Lange from showing the violations committed by Cebelaks relating to their permits.

Even in *Samuel's Furniture*, a case involving whether or not a development was within the shoreline jurisdiction or not, the court specifically stated that LUPA statute of limitations did not prevent Ecology from challenging compliance with permit conditions “against a party . . . who obtains a permit and then proceeds to violate the conditions of the permit.” *Samuel's Furniture v. Ecology*, 147 Wn.2d 440, 456, 54 P.3d 1194 (2002). This is in part because the shoreline act in part arguably codifies the public trust, which is in the nature of an easement on shoreline areas in trust for the people of the state. *Biggers v. City of Bainbridge Island*, 162 Wn. 2d 683, 169 P.3d 14 (2007); *See also, Orion Corp. v. State*, 109 Wn. 2d 621, 642, 747 P.2d 1062, 1072 (1987).

This court must then allow evidence to be submitted to the jury that Cebelak created a public nuisance by misrepresentations and permit violation from day one. The Order Granting Partial Summary Judgment, if it stands, bars presentation of evidence relating to the permits for the house and cabin.

**E. The Statute of Limitation for Fraud and Misrepresentation do not bar Langes' Claims.**

Judge Williams in his letter memorandum opined the statute of limitation on any action for fraud had expired because no action was brought within three years from the date of the fraud. (Memorandum Opinion on Defendants' Motion for Summary Judgment; CP P 161 L 27 to P 162 L 7). Defendants have taken the position in the trial court that this finding by Judge Williams prohibits discovery of and the introduction at trial of any testimony about the illegality of the home and cabin/storage building. CP 128-130).

Plaintiffs Lange must be allowed to introduce evidence of the illegality of the buildings to show that they constitute a continuing nuisance under the Clallam County Code. This evidence will also show a pattern of misrepresentations by the Defendants in obtaining permits including the bulkhead permit.

The Lange Complaint contends that all permits were obtained by intentional misrepresentation. The same statute of limitations and discovery rule apply to cases of intentional misrepresentation. See *Young v. Savidge*, 155 Wash.App. 806; 230 P.3d 222 (2010). In *Young*, the Court held that the statute of limitations in misrepresentation cases ran from the date of discovery of the misrepresentation.

Under RCW 4.16.080(4) actions for misrepresentation and fraud must be commenced within 3 years after discovery of facts. In *First Maryland Leasecorp v. Rothstein*, 72 Wash.App. 278; 864 P.2d 17 (1993) the court held that the statute does not run until discovery of facts and damages suffered. Here Langes suffered damages in 2006 and filed an action within three years. The construction of the buildings in violation of SMA and the Critical Area Code assisted the Cebelaks in obtaining an exemption from the SMA for construction of the bulkhead. The construction of that bulkhead caused damages in 2006.

Judge Williams did not apply the discovery rule except to state:

To the extent that the allegations of fraud might otherwise impact that issue, even the general statute of limitations has long since passed since the time at which Plaintiffs would have had notice of the nature of the buildings constructed. (CP P 161 L 27 to P 162 L 7).

Mr. Lange had complained to the county that the buildings constructed might not be in compliance with the County Code regarding setbacks. He received a letter in response stating that all setbacks had been complied with. (CP 182-186).

Building setbacks are measured from the Ordinary High Water Mark of the shoreline. The OHWM is established by locating the OHWM by a qualified specialist. The Langes had no knowledge of the location of

the OHWM on the Cebelak property. They had no right to trespass on the Cebelak property to determine its location. It was not until discovery in this case, that the Langes found evidence that the Department of Fisheries and Wildlife had in 1998 located the OHWM. Upon seeing that evidence the Langes retained a surveyor to show the setback lines on the Cebelak property. That was the first time that the Langes had knowledge that the setback lines had been misrepresented the location of the OHWM and the required setbacks for the buildings. Up until this time Lange had been informed by Clallam County that there were no setback violations.

With regard to the shoreline exemption granted for the Cebelak home, it was not until 2013 that the Langes became aware that Clallam County knew that the exemption was improper because the home was a rental. (CP 48-56)

The Langes could not be aware of this until receipt of a memorandum written by the planning director to the Prosecuting Attorney. ( CP 49 L 1-8; CP 51-54)

The facts show that the Langes did not discover these misrepresentations until 2007 or later. The lawsuit was filed in 2009 within three years of the first actual damages sustained by the Langes in

late December 2006 as a result of the Cebelak violations, and thus within three years of discovery of the misrepresentations.

## **VI. Conclusion**

LUPA has no application to this proceeding. The Complaint seeks equitable relief and damages. The trial court proceeding was not an appeal of the action of the County nor the State in issuing a permit

The Langes allege that the Cebelaks misrepresented the setbacks in their application for permits. The permits issued did not comply with the County Code setbacks and critical area provisions. Therefore these violations constitute a continuing public nuisance. The Cebelaks violated the permit conditions. The code and permit violations can be enforced without limitation by the LUPA statute of limitations.

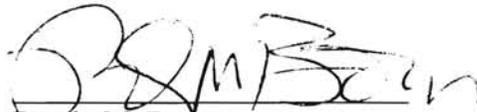
After Judge Williams issued his Memorandum Opinion, the Cebelaks took the position that no evidence of the Cebelak code and permit violations could be brought up in discovery or trial. The Langes are entitled to present evidence of the violations to support their equitable claims.

Our Courts should not allow LUPA to protect parties that obtain permits through intentional misrepresentation. Our Courts should not

allow LUPA to protect parties who intentionally violate the terms of permits issued.

The Order Granting Partial Final Summary Judgment should be reversed.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Randy M. Boyer", written over a horizontal line.

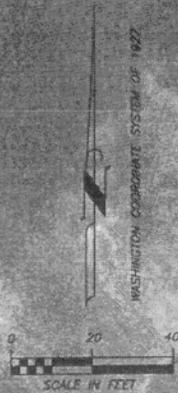
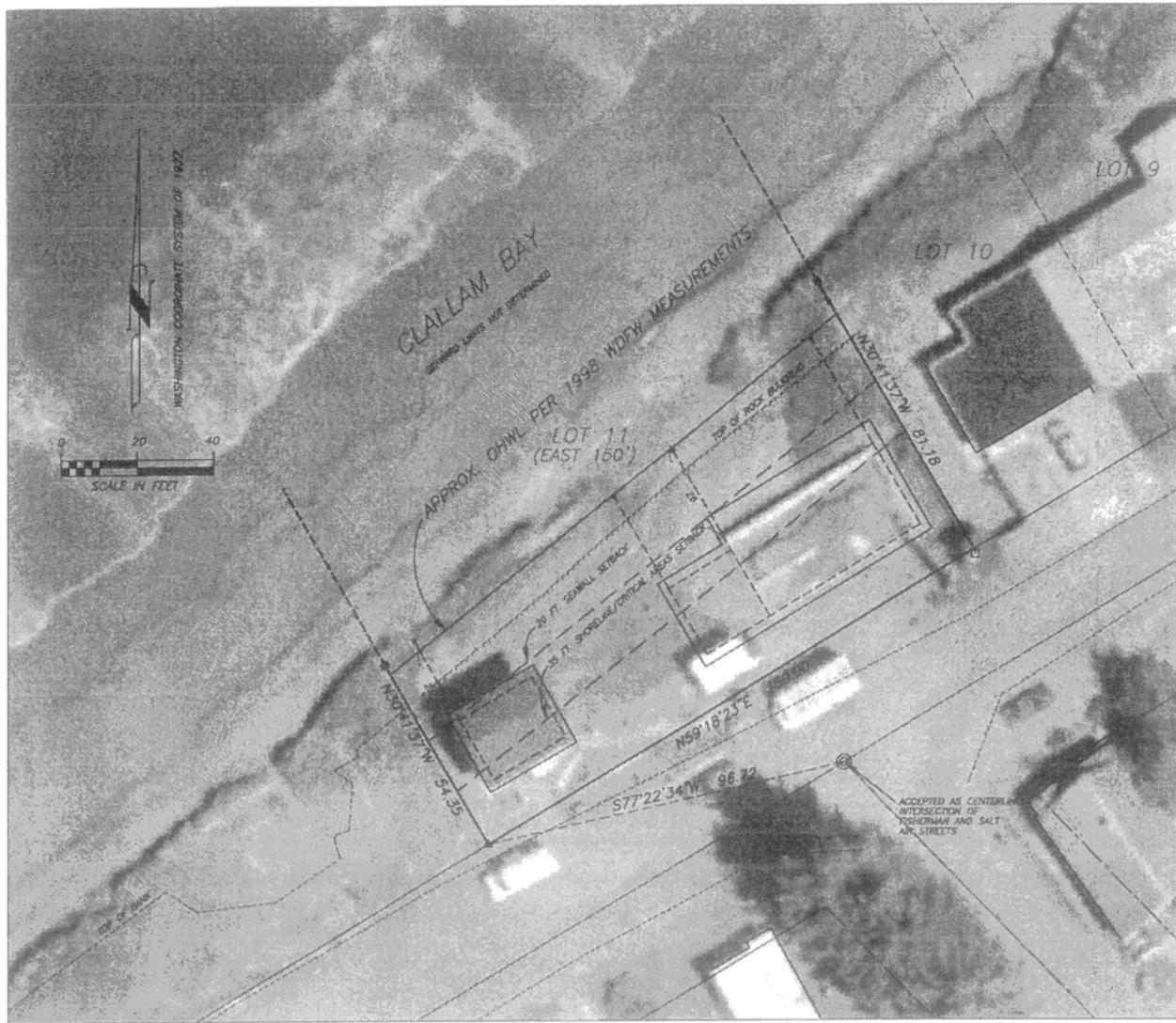
Randy M. Boyer  
Attorney for Appellants.  
WSBA # 8665

## **VII. Appendix**

## **Appendix A**

# Exhibit "A"

of a portion of the Northwest Quarter of  
Section 21, Township 32 North, Range 12  
West, W.M., Clallam County, Washington



### NOTES

- BOUNDARY DIMENSIONS TAKEN FROM SURVEY RECORDED JUNE 12, 1997, PREPARED BY CLARK LAND OFFICE, IN VOLUME 37 OF SURVEYS, PAGE 60, RECORDS OF CLALLAM COUNTY, WA. THE SUBJECT PARCEL IS DESCRIBED AS: THE EAST 150 FEET OF LOT 11, BLOCK 1, TOGETHER WITH ADJOINING SECOND CLASS TIDELANDS SITUATED IN THE LIGHTHOUSE ADDITION TO THE TOWNSITE OF CLALLAM BAY, CLALLAM COUNTY, WASHINGTON, ACCORDING TO THE PLAT THEREOF RECORDED IN VOLUME 4 OF PLATS, PAGE 55, RECORDS OF CLALLAM COUNTY, WASHINGTON.
- THE BACKGROUND PHOTO IMAGE WAS OBTAINED FROM THE WASHINGTON STATE DEPARTMENT OF NATURAL RESOURCES, ENGINEERING DIVISION. THIS IMAGE IS CERTIFIED AS: DATED 8-5-97, SYMBOL OL-57, ROLL 36, FLIGHT 25, EXPOSURE NUMBERS 156,157,158. CERTIFIED COPY ON FILE THIS OFFICE.

### LEGEND

- ▲ FOUND WINTERS REBAR WITH PLASTIC CAP STAMPED PLS 18104 AT THE CALCULATED CORNER POSITION.
- T FOUND METAL FENCE POST NEAR THE CALCULATED CORNER POSITION
- ⊙ CALCULATED POSITION OF REBAR WITH PLASTIC SURVEY CAP STAMPED "CLARK 12223" PER SURVEY RECORDED IN VOL. 37, PG. 60 OF SURVEYS, RECORDS OF CLALLAM COUNTY, WA. NOT FOUND THIS SURVEY.
- ⊞ CALCULATED POSITION OF IRON PIPE WITH WOOD PLUG AND TACK NOTED AS FOUND 1.28 FT. SE. OF CALCULATED POSITION PER SURVEY RECORDED IN VOL. 37, PG. 60 OF SURVEYS, RECORDS OF CLALLAM COUNTY, WA. NOT FOUND THIS SURVEY.
- ▲ SPECIFIED LOCATION OF ROCK BULKHEAD PER HPA LDC NUMBER 00-CRB40-01, ISSUED JUNE 22, 1998.
- SPECIFIED AND EXISTING LOCATION OF ROCK BULKHEAD PER HPA CONTROL NUMBER 108090-1, ISSUED JANUARY 22, 2007.
- △ FOUND 1-INCH IRON PIPE

SCALE: 1" = 80'  
DATE: 8/4/2012  
DRAWN BY: HJR  
PLAT CHECKED BY: TDH  
FINAL REVIEW: TDR  
SHEET 1 OF 7



**NORTHWESTERN TERRITORIES, INC.**

Engineers - Land Surveyors - Geologists  
Construction Inspection - Materials Testing

717 SOUTH PEARSON, FORT KNOX, WASHINGTON 98382, (360) 433-8491 www.nti.ca.com

Exhibit "A"  
for: Scott Lange



21(32N-12W)

## Appendix B



**Figure 11.** Storm damage at Gust property soon after the December 2006 storm, supplied by Mr. Lange.



**Figure 12.** Upper beach at Lange and Cebalak property to northeast after December 2006 storm, supplied by Mr. Lange.

## **Appendix C**

..... (summit, peak, ponds, irrigation ditches, etc.)  
and areas subject to flooding. (Show direction of stream flow.)

For COMMERCIAL BPT applications:  
- show fire lines and fire protection systems (e.g. fire hydrants, ponds, tanks, etc.).  
- Also show parking areas.

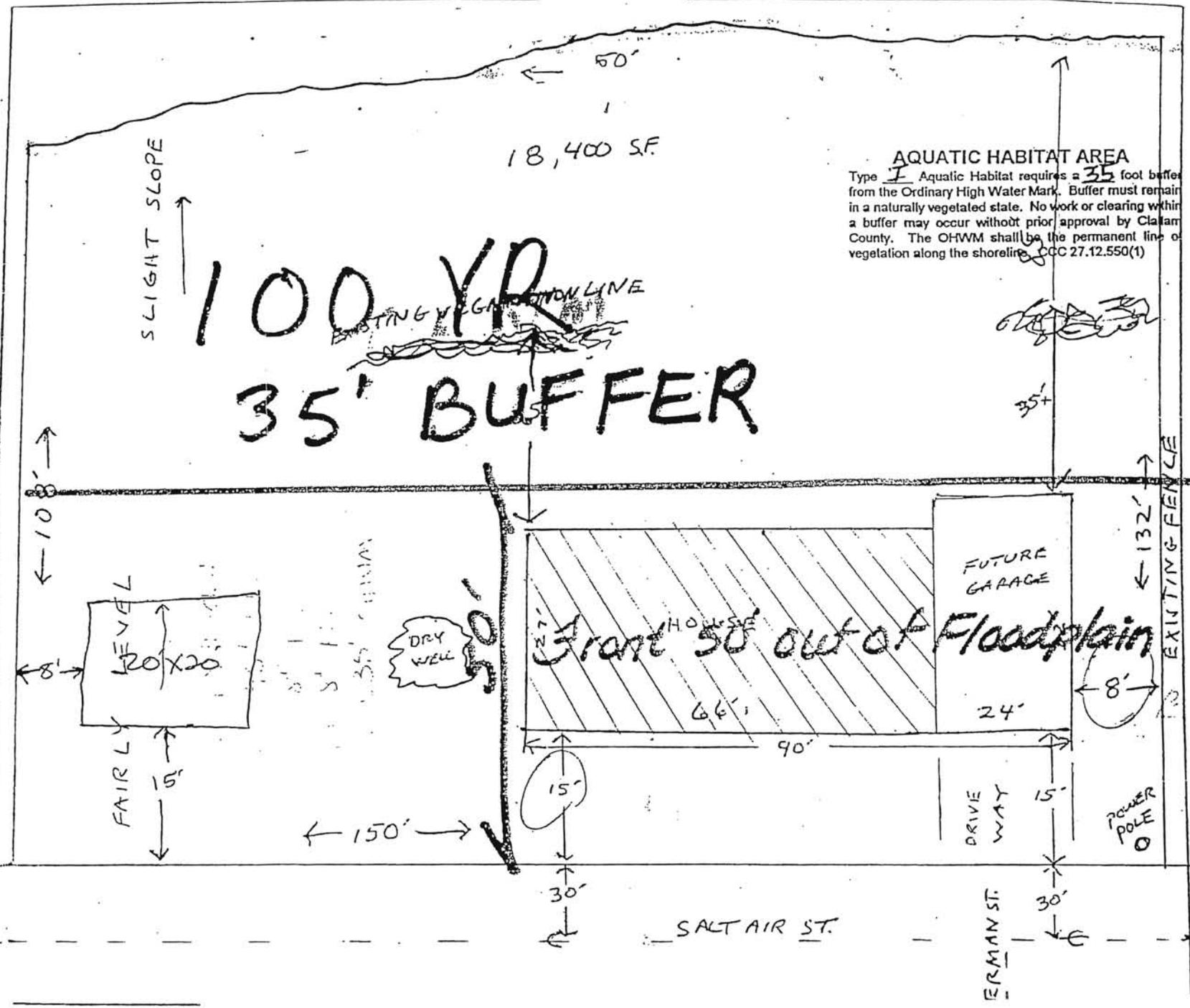
This application is complete and accurate to the best of my knowledge.

Dimensional

Application Signature

Date

STRAIT OF JUAN DE FUCA



**AQUATIC HABITAT AREA**  
Type F Aquatic Habitat requires a 35 foot buffer from the Ordinary High Water Mark. Buffer must remain in a naturally vegetated state. No work or clearing within a buffer may occur without prior approval by Clallam County. The OHWM shall be the permanent line of vegetation along the shoreline. CCC 27.12.550(1)



shorelines, & other structures.

All water features (streams, lakes, ponds, irrigation ditches, etc.) and areas subject to flooding. (Show direction of stream flow.)

For COMMERCIAL BPT applications:

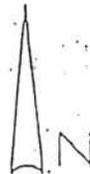
Also show fire lines and fire protection system locations (fire hydrants, ponds, tanks, etc.).

Also show parking areas.

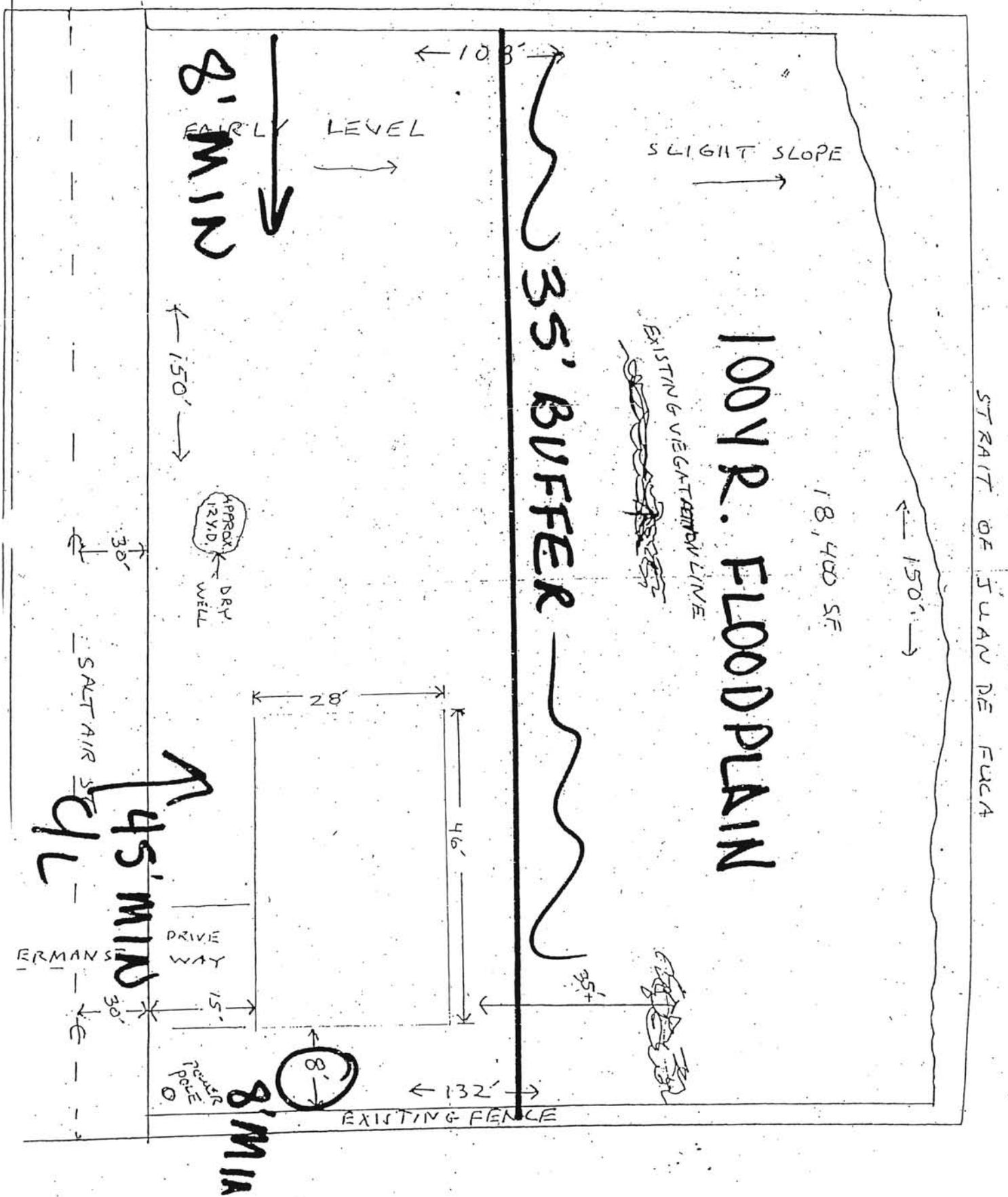
This application is complete and accurate to the best of my knowledge.

Applicant Signature

Date



Dimensional





Use 4-5 man rock  
to stabilize existing  
upland sea wall.

CLALLAM BAY

MEAN HIGHER HIGH WATER

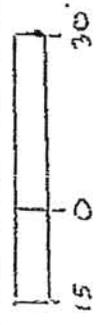
PRIMARY HIGH WATER MARK

up-land sea-wall

~~DO NOT~~  
DOME GRASS  
OVER ABSESS GATE  
OVER ROCK

LOT 11

150'



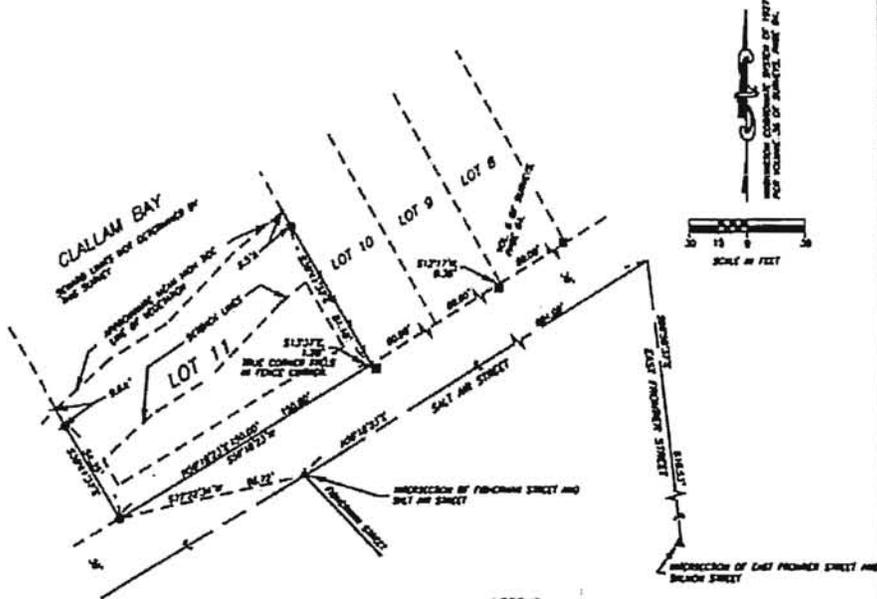
SCALE 1" = 30'
TAX PARCEL NO. 123221 - SIDING
120 SALT AIR CLAMM BAY
CEBELAK U.P.-Land Sea-Wall

SALT AIR STREET

Q

## **Appendix D**

SURVEY FOR: **DAVE CEBELAK**  
 IN SECTION 21, TOWNSHIP 32 NORTH, RANGE 12 WEST, W.M.  
 CLALLAM COUNTY, WASHINGTON



**DESCRIPTION:**  
 THE EAST 150 FEET OF LOT 11, BLOCK 4, FOOTAGE WITH ADJOINING  
 RECORD CLASS INCLUDES IMPROVEMENTS IN THE LEASING AGREEMENT TO  
 THE TOWNSHIP OF CLALLAM CO., WASHINGTON, ACCORDING TO  
 THE PLAT RECORDS ACCORDING TO VOLUME 4 OF PLATS, PAGE 24,  
 RECORDS OF CLALLAM COUNTY, WASHINGTON.

- LEGEND:**
- BENCHES SET BY ME WITH PLASTIC BENCHY CAP STAMPED "DAVE 12223"
  - BENCHES FOUND BY ME WITH PLASTIC BENCHY CAP STAMPED "DAVE 12223"
  - ▲ BENCHES FOUND 1" IRON PIPE WITH BENCH TOP
  - BENCHES FOUND 1" IRON PIPE WITH WOOD PLUG AND INCH
  - BENCHES CHAIN FENCE

- NOTES:**
1. THIS SURVEY WAS PERFORMED BY FIELD SURVEY METHODS USING A 3 BEARING  
 SPOON STYRAC TOPE, STATION AND SPOON, S.W.C.
  2. FOR ADDITIONAL SECTION SUBDIVISION SEE VOL. 4 OF PLATS, PAGE 24,  
 RECORDS OF CLALLAM COUNTY, WASHINGTON.

**SURVEYOR'S CERTIFICATE:**  
 THIS MAP CORRECTLY REPRESENTS A SURVEY MADE BY ME OR UNDER MY  
 SUPERVISION IN CONFORMANCE WITH THE SURVEY RECORDING ACT AT THE REQUEST  
 OF DAVE CEBELAK.

**ALLOTOR'S CERTIFICATE:**  
 FILED FOR RECORD THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 1987,  
 AT \_\_\_\_\_, W.M., IN VOLUME \_\_\_\_\_ OF SURVEYS, PAGE \_\_\_\_\_, RECORDS  
 OF CLALLAM COUNTY, WASHINGTON, AT THE REQUEST OF DAVE CEBELAK.

CLALLAM COUNTY DEPUTY CLERK



24,124-1249

PAGE

SEE  
 THE  
 SURVEY  
 RECORDS  
 OF  
 CLALLAM COUNTY, WASHINGTON  
 VOLUME 4 OF PLATS, PAGE 24

## **Appendix E**

A. U.B.C. Standard No. 27-7, High-strength Bolting

1. by torch  
2. identification of the nut

### 3. Fireproofing

A. U.B.C. Standard No. 43-8, Thickness and Density Determination for Spray-applied Fireproofing

Ch. 43 includes 48 A.B.C.

### Application for Permit

Sec. 302. (a) **Application.** To obtain a permit, the applicant shall first file an application therefor in writing on a form furnished by the code enforcement agency for that purpose. Every such application shall:

1. Identify and describe the work to be covered by the permit for which application is made.
2. Describe the land on which the proposed work is to be done by legal description, street address or similar description that will readily identify and definitely locate the proposed building or work.
3. Indicate the use or occupancy for which the proposed work is intended.
4. Be accompanied by plans, diagrams, computations and specifications and other data as required in Subsection (b) of this section.
5. State the valuation of any new building or structure or any addition, remodeling or alteration to an existing building.
6. Be signed by the applicant, or the applicant's authorized agent.
7. Give such other data and information as may be required by the building official.

(b) **Plans and Specifications.** Plans, engineering calculations, diagrams and other data shall be submitted in one or more sets with each application for a permit. When such plans are not prepared by an architect or engineer, the building official may require any applicant submitting such plans or other data to demonstrate that state law does not require that the plans be prepared by a licensed architect or engineer. The building official may require plans, computations and specifications to be prepared and designed by an engineer or architect licensed by the state to practice as such even if not required by state law. Submittals shall include construction inspection requirements as defined in Section 302 (c).

**EXCEPTION:** The building official may waive the submission of plans, calculations, construction inspection requirements and other data if it is found that the nature of the work applied for is such that reviewing of plans is not necessary to obtain compliance with this code.

(c) **Construction Inspection.** The engineer or architect in responsible charge of the structural design work shall include in the construction documents the following:

1. Special inspections required by Section 306.
2. Other structural inspections required by the engineer or architect in responsible charge of the structural design work.

(d) **Information on Plans and Specifications.** Plans and specifications shall be drawn to scale upon substantial paper or cloth and shall be of sufficient clarity to indicate the location, nature and extent of the work proposed and show in detail that

It will conform to the provisions of this code and all relevant laws, ordinances, rules and regulations.

Plans for buildings more than two stories in height of other than Group R, Division 3 and Group M Occupancies shall indicate how required structural and fire-resistive integrity will be maintained where a penetration will be made for electrical, mechanical, plumbing and communication conduits, pipes and similar systems.

### Permits Issuance

**Sec. 303. (a) Issuance.** The application, plans, specifications, computations and other data filed by an applicant for a permit shall be reviewed by the building official. Such plans may be reviewed by other departments of this jurisdiction to verify compliance with any applicable laws under their jurisdiction. If the building official finds that the work described in an application for a permit and the plans, specifications and other data filed therewith conform to the requirements of this code and other pertinent laws and ordinances, and that the fees specified in Section 304 have been paid, the building official shall issue a permit therefor to the applicant.

When the building official issues the permit where plans are required, the building official shall endorse in writing or stamp the plans and specifications APPROVED. Such approved plans and specifications shall not be changed, modified or altered without authorizations from the building official, and all work regulated by this code shall be done in accordance with the approved plans.

The building official may issue a permit for the construction of part of a building or structure before the entire plans and specifications for the whole building or structure have been submitted or approved, provided adequate information and detailed statements have been filed complying with all pertinent requirements of this code. The holder of a partial permit shall proceed without assurance that the permit for the entire building or structure will be granted.

**(b) Retention of Plans.** One set of approved plans, specifications and computations shall be retained by the building official for a period of not less than 90 days from date of completion of the work covered therein; and one set of approved plans and specifications shall be returned to the applicant, and said set shall be kept on the site of the building or work at all times during which the work authorized thereby is in progress.

**(c) Validity of Permit.** The issuance or granting of a permit or approval of plans, specifications and computations shall not be construed to be a permit for, or an approval of, any violation of any of the provisions of this code or of any other ordinance of the jurisdiction. Permits presuming to give authority to violate or cancel the provisions of this code or other ordinances of the jurisdiction shall not be valid.

The issuance of a permit based on plans, specifications and other data shall not prevent the building official from thereafter requiring the correction of errors in said plans, specifications and other data, or from preventing building operations being carried on thereunder when in violation of this code or of any other ordinances of this jurisdiction.

(d) **Expiration.** Every permit issued by the building official under the provisions of this code shall expire by limitation and become null and void if the building or work authorized by such permit is not commenced within 180 days from the date of such permit, or if the building or work authorized by such permit is suspended or abandoned at any time after the work is commenced for a period of 180 days. Before such work can be recommenced, a new permit shall be first obtained to do so, and the fee therefor shall be one half the amount required for a new permit for such work, provided no changes have been made or will be made in the original plans and specifications for such work; and provided further that such suspension or abandonment has not exceeded one year. In order to renew action on a permit after expiration, the permittee shall pay a new full permit fee.

Any permittee holding an unexpired permit may apply for an extension of the time within which work may commence under that permit when the permittee is unable to commence work within the time required by this section for good and satisfactory reasons. The building official may extend the time for action by the permittee for a period not exceeding 180 days on written request by the permittee showing that circumstances beyond the control of the permittee have prevented action from being taken. No permit shall be extended more than once.

(c) **Suspension or Revocation.** The building official may, in writing, suspend or revoke a permit issued under the provisions of this code whenever the permit is issued in error or on the basis of incorrect information supplied, or in violation of any ordinance or regulation or any of the provisions of this code.

### Fees

**Sec. 304. (a) General.** Fees shall be assessed in accordance with the provisions of this section or shall be as set forth in the fee schedule adopted by the jurisdiction.

(b) **Permit Fees.** The fee for each permit shall be as set forth in Table No. 3-A.

The determination of value or valuation under any of the provisions of this code shall be made by the building official. The value to be used in computing the building permit and building plan review fees shall be the total value of all construction work for which the permit is issued, as well as all finish work, painting, roofing, electrical, plumbing, heating, air conditioning, elevators, fire extinguishing systems and any other permanent equipment.

(c) **Plan Review Fees.** When a plan or other data are required to be submitted by Section 302 (b), a plan review fee shall be paid at the time of submitting plans and specifications for review. Said plan review fee shall be 65 percent of the building permit fee as shown in Table No. 3-A.

The plan review fees specified in this subsection are separate fees from the permit fees specified in Section 304 (b), and are in addition to the permit fees.

Where plans are incomplete or changed so as to require additional plan review, an additional plan review fee shall be charged at the rate shown in Table No. 3-A.

(d) **Expiration of Plan Review.** Applications for which no permit is issued within 180 days following the date of application shall expire by limitation, and plans and other data submitted for review may thereafter be returned to the applicant or destroyed by the building official. The building official may extend the time

for action by the applicant for a period not exceeding 180 days on request by the applicant showing that circumstances beyond the control of the applicant have prevented action from being taken. No application shall be extended more than once. In order to renew action on an application after expiration, the applicant shall re-submit plans and pay a new plan review fee.

(c) **Investigation Fees: Work without a Permit.** 1. **Investigation.** Whenever any work for which a permit is required by this code has been commenced without first obtaining said permit, a special investigation shall be made before a permit may be issued for such work.

2. **Fee.** An investigation fee, in addition to the permit fee, shall be collected whether or not a permit is then or subsequently issued. The investigation fee shall be equal to the amount of the permit fee required by this code. The minimum investigation fee shall be the same as the minimum fee set forth in Table No. 3-A. The payment of such investigation fee shall not exempt any person from compliance with all other provisions of this code nor from any penalty prescribed by law.

(f) **Fee Refunds.** The building official may authorize refunding of any fee paid hereunder which was erroneously paid or collected.

The building official may authorize refunding of not more than 80 percent of the permit fee paid when no work has been done under a permit issued in accordance with this code.

The building official may authorize refunding of not more than 80 percent of the plan review fee paid when an application for a permit for which a plan review fee has been paid is withdrawn or canceled before any plan reviewing is done.

The building official shall not authorize refunding of any fee paid except on written application filed by the original permittee not later than 180 days after the date of fee payment.

### Inspections

Sec. 305. (a) **General.** All construction or work for which a permit is required shall be subject to inspection by the building official and all such construction or work shall remain accessible and exposed for inspection purposes until approved by the building official. In addition, certain types of construction shall have continuous inspection as specified in Section 306.

Approval as a result of an inspection shall not be construed to be an approval of a violation of the provisions of this code or of other ordinances of the jurisdiction. Inspections presuming to give authority to violate or cancel the provisions of this code or of other ordinances of the jurisdiction shall not be valid.

It shall be the duty of the permit applicant to cause the work to remain accessible and exposed for inspection purposes. Neither the building official nor the jurisdiction shall be liable for expense entailed in the removal or replacement of any material required to allow inspection.

A survey of the lot may be required by the building official to verify that the structure is located in accordance with the approved plans.

(b) **Inspection Record Card.** Work requiring a permit shall not be commenced until the permit holder or an agent of the permit holder shall have posted or other-

## **Appendix F**

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## Chapter 20.04 NAME AND PURPOSE

### Sections:

20.04.010 Name and purpose.

20.04.020 Statement of goals.

SOURCE: ADOPTED:

Ord. 812 04/03/07

### **20.04.010 Name and purpose.**

(1) The purpose of this title is to identify processes and methods to achieve compliance with laws and regulations adopted by Clallam County pursuant to Article XI, Section 11 of the Washington Constitution and other State laws that promote and protect the general public health, safety, and environment of Clallam County residents. According to the provisions of RCW 36.32.120(7), this title declares certain acts to be civil violations and establishes civil enforcement procedures and penalties, and also declares certain acts to be misdemeanors, punishable by a fine of not more than \$1,000 and/or imprisonment in a County jail for not more than 90 days.

(2) It is the intent of Clallam County to pursue code compliance actively and vigorously in order to protect the health, safety, and environment of the general public.

(3) While this title authorizes Clallam County to take action to enforce laws and regulations, it shall not be construed as placing responsibility for code compliance or enforcement upon Clallam County in any particular case, or as creating any duty on the part of Clallam County to any particular person(s).

### **20.04.020 Statement of goals.**

It is the policy of Clallam County to emphasize code compliance by education and prevention as a first step. While warnings and voluntary compliance are desirable as a first step, enforcement through civil and criminal remedies should be used as needed to assure and effect code compliance. Abatement should be pursued only when appropriate and feasible.

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### **The Clallam County Code is current through Ordinance 889, passed February 12, 2013.**

Disclaimer: The Clerk of the Board's Office has the official version of the Clallam County Code. Users should contact the Clerk of the Board's Office for ordinances passed subsequent to the ordinance cited above.

Ordinances Adopted But Not Yet Codified  
(<http://www.clallam.net/nav/index.asp?page=countycode>)

County Website: <http://www.clallam.net/>  
(<http://www.clallam.net/>)  
County Telephone: (360) 417-2234  
Code Publishing Company  
(<http://www.codepublishing.com/>)  
eLibrary  
(<http://www.codepublishing.com/elibrary.html>)

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## Chapter 20.08 GENERAL PROVISIONS

### Sections:

- 20.08.010 Definitions.
- 20.08.020 Declaration of public nuisance, misdemeanor.
- 20.08.030 Enforcement authority and administration.
- 20.08.040 Conference.
- 20.08.050 Guidelines regarding responses to potential violations.
- 20.08.060 Investigating potential violations.
- 20.08.070 Enforcing civil code violations.
- 20.08.080 Service of citation, notice and order, and stop work order.
- 20.08.090 Right of entry and warrants.
- 20.08.100 Certificate of correction.
- 20.08.110 Limitation of liability.
- 20.08.120 Denial of permits.

SOURCE: ADOPTED:  
Ord. 812 04/03/07

### **20.08.010 Definitions.**

The words and phrases designated in this section shall be defined for the purposes of this title as follows:

- (1) "Abate" means to take whatever steps are deemed necessary by Clallam County to remove, stop, rehabilitate, demolish, or repair a condition which constitutes a public nuisance.
- (2) "Appellant" means the party appealing a citation, notice and order, order to stop work, or Director's decision on a request for certificate of correction.
- (3) "Civil code violation" means and includes one or more of the following:
  - (a) An act or omission contrary to an ordinance of Clallam County that regulates or protects the public health, safety, environment, or use and development of land or water, whether or not the ordinance is codified; and
  - (b) An act or omission contrary to the conditions of any permit issued pursuant to any such ordinance, or a notice and order or stop work order issued pursuant to this title.
- (4) "Department" means:
  - (a) The Clallam County Department of Community Development; or
  - (b) Such other department as the Clallam County Board of County Commissioners by ordinance authorizes to utilize this title.
- (5) "Director" means, depending on the code violated:
  - (a) The Director of the Department of Community Development, and authorized representatives of the Director, including, but not limited to, enforcement officers and inspectors whose responsibility includes the detection and reporting of civil code violations;

(b) The Director and authorized representatives of such other department as the Clallam County Board of County Commissioners by ordinance authorizes to utilize this title; or

(c) Such other person as the Clallam County Board of County Commissioners by ordinance authorizes to utilize this title.

(6) "Hearing Examiner" means the Clallam County Hearing Examiner, as provided in Chapter 26.04 CCC, Hearing Examiner.

(7) "Mitigate" means to take measures, subject to Clallam County approval, to minimize the harmful effects of the violation where remediation is either impossible or unreasonably burdensome.

(8) "Permit" means any form of written certificate, approval, registration, license, or any other written permission issued by Clallam County.

(9) "Permit conditions" means the conditions of permit approval including but not limited to:

(a) The provisions of any mitigation plans, habitat management plans, and other special reports submitted and approved as part of the permit approval process;

(b) The easement and use limitations shown on the face of an approved final plat map which are intended to serve or protect the general public.

(10) "Person" means any individual, association, partnership, corporation, or legal entity, public or private, and the agents and assigns of the individual, association, partnership, corporation, or legal entity.

(11) "Person responsible for code compliance" means either the person who caused the violation, if that can be determined, or the owner, lessor, lessee, tenant, or other person entitled to control, use or occupy, or any combination of control, use or occupy, of the subject property, or both.

(12) "Remediate" means to restore a site to a condition that complies with regulatory requirements as they existed when the violation occurred; or, for sites that have been degraded under prior ownerships, restore to a condition that does not pose a threat to public health, safety, or environment.

(13) "Subject property" means the real property where the civil code violation has occurred or is occurring.

**20.08.020 Declaration of public nuisance, misdemeanor.**

(1) All civil code violations are hereby determined to be detrimental to the public health, safety, and environment and are hereby declared public nuisances, which may be subject to abatement and recovery of abatement costs pursuant to RCW 36.32.120(10), as now enacted or hereafter amended.

(2) Any person who knowingly causes, aids, or abets a civil code violation by any act of commission or omission is guilty of a misdemeanor, punishable by a fine of not more than \$1,000 and/or imprisonment in a County jail for not more than 90 days. Each calendar week (seven days) such violation continues shall be considered a separate misdemeanor offense.

(3) The Prosecuting Attorney may at any time bring such additional injunctive, declaratory, criminal, or other actions as are necessary to enforce the provisions of the Clallam County Code.

(4) Nothing in this title shall be interpreted to mean that civil and criminal remedies for the same violations may not be brought simultaneously.

**20.08.030 Enforcement authority and administration.**

(1) All conditions determined to be civil code violations may be enforced pursuant to the provisions of this title except to the extent preempted by State or federal law, and except to the extent preempted by any contrary enforcement and penalty provisions contained in the ordinance being enforced.

(2) The procedures set forth in this title shall not in any manner limit or restrict the Director or the Prosecuting Attorney from remedying civil code violations or abating public nuisances in any other manner authorized by law.

(3) If the Director establishes, based on the provisions of CCC 20.08.060, that a civil code violation exists, the Director may:

- (a) Enter into voluntary compliance agreements with persons responsible for code compliance as authorized in this title, and waive a portion of unpaid penalties and associated interest according to the provisions of this title;
- (b) Issue citations and assess civil penalties ("penalties") as authorized by this title;
- (c) Issue notice and orders and order remediation or mitigation of the civil code violation, assess penalties and costs of code compliance ("costs"), and/or suspend or revoke any permit previously issued by the Director, as authorized by this title; and/or
- (d) Issue stop work orders to order work stopped at a site, as authorized by this title.

(4) The Director shall send out regular bills for penalties and costs owing under this title. If penalties and/or costs remain unpaid 90 calendar days after they have been imposed (or, if appealed, 90 calendar days after final resolution of the appeal), the Director is authorized to:

- (a) Impose interest at six percent per annum;
- (b) Record a lien against the subject property if owned by the person responsible for code compliance;
- (c) Use the services of a collection agency according to the provisions of RCW 19.60.500.

(5) In administering the provisions for code enforcement, the Director is authorized to waive any one or more such provisions so as to avoid substantial injustice by application thereof to the acts or omissions of a public or private entity or individual, or acts or omissions on public or private property including, for example, property belonging to public or private utilities, where no apparent benefit has accrued to such entity or individual from a code violation and any necessary remediation is being promptly provided. For purposes of this provision, substantial injustice cannot be based on economic hardship.

(6) The provisions of this title detailing departmental administration of code compliance procedures are intended only for the purpose of providing guidance to Clallam County

employees and are not to be construed as creating a basis for appeal or a defense of any kind to an alleged violation.

(7) The provisions of this title authorizing the enforcement of noncodified ordinances are intended to assure compliance with conditions of approval on permits or approvals which may have been granted pursuant to ordinances which have not been codified, and to enforce new regulatory ordinances which are not yet codified. Departments should be sensitive to the possibility that citizens may not be aware of these ordinances, and should give warnings prior to enforcing such ordinances, except that a stop work order may be issued any time when a civil code violation is found to be in progress.

**20.08.040 Conference.**

An informal conference may be conducted at any time by the Director at his discretion and subject to available resources for the purpose of facilitating communication among concerned persons and providing a forum for efficient resolution of any violation. Interested parties shall not unreasonably be excluded from such conferences.

**20.08.050 Guidelines regarding responses to potential violations.**

It is the County's policy to investigate and to attempt to resolve all potential code violations. At the discretion of the Director, potential violations may be processed in any order that maximizes the efficiency of enforcement. However, at times when not all potential code violations can be investigated due to lack of resources or otherwise, the most serious potential violations should be addressed before less serious potential violations. The following guidelines should be applied by the Director in prioritizing responses to potential violations:

- (1) Violations that present an imminent threat to public health or safety.
- (2) Violations that present a high risk of damage to public resources and/or facilities.
- (3) Violations involving a regulated use or activity under Chapter 27.12 CCC, Clallam County Critical Areas Code, or CCC Title 32, Floodplain Management, or involving shorelines or shorelands under Chapter 35.01 CCC, Shoreline Management.
- (4) Violations that may result in damage to real or personal property.
- (5) Violations that do not fit within any of the previous categories, and have only minor public impacts. These potential violations should be processed in the order in which they are received, and as resources allow.

As a guideline and if resources allow, all potential violations should be investigated within 60 calendar days and enforcement actions should be initiated within 120 calendar days of coming to the Department's attention. Failure to meet these guideline response dates does not in any way prevent the Director from investigating and enforcing potential violations outside of these response dates.

**20.08.060 Investigating potential violations.**

The Director shall determine, based on information derived from such sources as field observations, the statements of witnesses, relevant documents, and available data systems, if the following elements have been established. All elements must be established to determine that a civil code violation has occurred or is occurring.

- (1) The Director shall identify the person responsible for code compliance as defined in this title.

(2) The Director shall identify the specific provision of the relevant ordinance, permit condition, notice and order, or stop work order that has been or is being violated.

(3) The Director shall determine whether there are reasonable grounds to believe that the acts or omissions that constitute the violation did occur or are occurring. Such grounds may be established either by personal observation or by reliable evidence from witnesses.

**20.08.070 Enforcing civil code violations.**

When a civil code violation has been established according to the provisions of CCC 20.08.060, the Director may use the following guidelines in enforcing the violation. Failure to meet the following guidelines does not in any way prevent the Director from enforcing the violation.

(1) Stop work orders should be issued promptly upon discovering a violation in progress.

(2) Except as provided in subsections (1) and (3) of this section, the Director may issue a written warning to the person determined to be responsible for code compliance. Warnings may be mailed by regular mail, hand-delivered in person, or posted on the subject property. The warning shall inform the person determined to be responsible for code compliance of the violation and allow the person an opportunity to correct it or enter into a voluntary compliance agreement as provided for by this title. The site shall be reinspected as identified in the warning.

(3) No warning need be issued in emergencies, repeat violation cases, cases that are already subject to a voluntary compliance agreement, cases in which the violation creates a situation or condition that is not likely to be corrected within a short period of time, cases in which a stop work order is necessary, or if the person responsible for code compliance knows or reasonably should have known that the action was a civil code violation.

(4) Notice and orders may be issued in cases where corrective action, such as remediation and/or mitigation, is necessary to bring about compliance.

(5) Citations may be issued in cases where corrective action is not necessary or already ordered in a previous enforcement action.

Any complainant who provides a mailing address and requests to be kept advised of enforcement efforts shall be mailed copies of all written warnings, voluntary compliance agreements, citations, notice and orders, stop work orders, decisions on requests for certificate of correction, notices of hearings, and orders of Hearing Examiner with regard to the alleged violation. Unless otherwise served as a person responsible for code compliance, the landowner of the subject property, and the applicant of the underlying permit shall also be mailed copies of all written warnings, voluntary compliance agreements, citations, notice and orders, stop work orders, decisions on requests for certificate of correction, notices of hearings, and orders of Hearing Examiner with regard to the alleged violation.

**20.08.080 Service of citation, notice and order, and stop work order.**

(1) Service shall be made on a person responsible for code compliance by one or more of the following methods:

(a) Service in person may be made by leaving a copy of the citation or notice and order with the person, or at the person's house of usual abode with a person of suitable age and discretion who resides there.

(b) Service directed to the landowner and/or occupant of the subject property may be made by posting the citation or notice and order in a conspicuous place on the subject property and concurrently mailing a copy of the same as provided for below, if a mailing address is available.

(c) Service by mail may be made by mailing two copies of the citation or notice and order, postage prepaid, one by ordinary first class mail and the other by certified mail, to the person's last known address. The taxpayer's address as shown on the tax records of Clallam County shall be deemed to be the proper address for the purpose of mailing such notice to the landowner of the subject property. Service by mail shall be deemed effective upon the third business day following the day of mailing.

(d) For notice and orders only, when the address of the person responsible for code compliance cannot reasonably be determined, service may be made by publication once in a local newspaper with general circulation and, in addition, the notice and order should be posted in a conspicuous place on the subject property.

(e) Service of a stop work order may be made by posting the stop work order in a conspicuous place on the subject property or by serving the stop work order in any other manner permitted by this section.

(2) The person effecting the service shall make proof of service by a written declaration stating the date and time of service and the manner by which service was made.

(3) The failure of the Director to make or attempt service on any person named in the citation, notice and order, or stop work order shall not invalidate any proceedings as to any other person duly served.

#### **20.08.090 Right of entry and warrants.**

(1) Any entry made to private property for the purpose of inspection for code violations shall be accomplished in strict conformity with Constitutional and statutory constraints on entry. The Director (or his designee) is authorized to enter upon any property for the purpose of administering this title provided the Director shall make entry only if such entry is consistent with the Constitutions and laws of the United States and the State of Washington.

(2) The Director is authorized to enter upon property or premises to determine whether Clallam County codes are being obeyed, and to make any examinations, surveys, and studies as may be necessary in the performance of his or her duties. These may include but are not limited to the taking of photographs, digital images, videotapes, video images, audio recordings, samples, or other physical evidence. All inspections, entries, examinations, studies, and surveys shall be done in a reasonable manner. If the property is occupied, the Director shall ask permission of the occupants before entering the property. If an owner, occupant, or agent refuses permission to enter or inspect, the Director may seek an administrative or criminal search warrant.

(3) The Prosecuting Attorney may request that a District Court or Superior Court of competent jurisdiction issue an administrative search warrant. The request shall be supported by an affidavit of a person having knowledge of the facts sworn to before the judge and establishing the grounds for issuing the warrant.

(a) If the judge finds that the affidavit given upon proper oath or affirmation shows probable cause to believe that a Clallam County code has been violated, the judge may

issue an administrative warrant for the purpose of conducting administrative inspections or gathering of evidence. The warrant shall:

- (i) State the grounds for its issuance and the name of each person whose affidavit has been taken in support of the warrant;
- (ii) Be directed to the Director (or his designee) or a person authorized by the relevant code to execute it;
- (iii) Command the person to whom it is directed to inspect the area, premises, or building identified for the purpose specified and the evidence that may be gathered;
- (iv) Direct that it be served during normal business hours.

(b) When executed, a copy of the warrant shall be left on the property or the premises searched.

(c) A warrant issued under this section shall be executed and returned, accompanied by a written inventory of any evidence taken, within 10 calendar days of its date unless, upon a showing of a need for additional time, the court orders otherwise.

(d) If evidence is seized pursuant to a warrant, a copy of the written inventory of any evidence taken shall be provided to the person from whom or from whose premises the evidence was taken, together with a receipt for the evidence taken.

(e) The judge who has issued a warrant shall attach thereto a copy of the return (the endorsement made by the person executing the warrant, stating what (s)he has done under it, the time and mode of service, etc.) and all papers returnable in connection therewith and file them with the Clerk of the Court in which the inspection was made.

(4) Any search warrant obtained pursuant to criminal sections authorized under this title shall be governed by appropriate Washington State statutes and court rules.

#### **20.08.100 Certificate of correction.**

(1) It shall be the responsibility of any person identified as a person responsible for code compliance to bring the subject property into compliance with Clallam County Code. Payment of penalties and costs, applications for permits, acknowledgement of stop work orders, and compliance with other remedies does not substitute for performing the corrective work required to bring the subject property into compliance with Clallam County Code.

(2) A violation shall be considered ongoing and daily penalties continue to accrue up to the date that the subject property has been brought into compliance with Clallam County Code, as determined by the Director, and as evidenced by a written certificate of correction in the form of a letter issued by the Director.

(3) A request for a certificate of correction shall be in writing on a form made available by the Director and shall be submitted to the Director. This request shall include the following:

- (a) The address, legal description, and/or Clallam County tax parcel number of the subject property;
- (b) A declaration of corrective actions performed;
- (c) Authorization for the Director or his designee to enter and remain upon the subject property, during normal Clallam County business hours, to verify whether the subject

property has been brought into compliance, in the form of written permission of the occupant or, if not occupied, the landowner; and

(d) Name, mailing address, and phone number of the person requesting the certificate of correction.

(4) The Director shall issue a decision on a request for a certificate of correction in writing within 10 calendar days of receipt of the written request and shall serve the same on the person responsible for code compliance, the party requesting the certificate of correction, the landowner of the subject property, the complainant, and the applicant of the underlying permit, if any, by mailing a copy of the same to the last known address of each party. The person effecting the mailing shall declare in writing the date and address the mailing was made. Service by mail shall be deemed effective upon the third business day following the day of mailing. The decision of the Director on a request for a certificate of correction may be appealed pursuant to the appeal provisions of this title.

(5) The certificate shall include a legal description of the subject property, shall indicate the date on which daily penalties ceased to accrue (the date the request for a certificate of correction was received), and shall state if any unpaid penalties and costs for which liens have been recorded are still outstanding and continue as liens on the subject property.

(6) A certificate of correction shall not constitute nor be considered a warranty, guarantee, or certification of any kind, express or implied, by Clallam County as to the physical condition of the subject property.

#### **20.08.110 Limitation of liability.**

Any person determined to be responsible for code compliance pursuant to a citation or notice and order shall be liable, jointly and severally with all persons responsible for code compliance, for the payment of any and all penalties and costs. However, if the landowner of the subject property affirmatively demonstrates that the action which resulted in the violation was taken without the landowner's knowledge, that landowner shall be liable, jointly and severally with the person responsible for code compliance, only for the costs of bringing the subject property into compliance with Clallam County Code.

#### **20.08.120 Denial of permits.**

The Director shall not issue any permit or other development approval on a property subject to a stop work order, notice and order, citation, or voluntary compliance agreement as long as the civil code violation that is the subject of the stop work order, notice and order, citation, or voluntary compliance agreement remains uncorrected, except that the Director may issue such permits necessary to correct the violation.

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#### **The Clallam County Code is current through Ordinance 889, passed February 12, 2013.**

Disclaimer: The Clerk of the Board's Office has the official version of the Clallam County Code. Users should contact the Clerk of the Board's Office for ordinances passed subsequent to the ordinance cited above.

Ordinances Adopted But Not Yet Codified  
(<http://www.clallam.net/nav/index.asp?page=countycode>)

County Website: <http://www.clallam.net/>  
(<http://www.clallam.net/>)  
County Telephone: (360) 417-2234  
Code Publishing Company  
(<http://www.codepublishing.com/>)  
eLibrary  
(<http://www.codepublishing.com/eLibrary.html>)

## **Appendix G**

County	Code Violation	Permit Violation	Public Nuisance	Fire Code Exception	Enforcement	Appealed Party Rights	Class
Adams			17.88.010 Implied 17.88.040 Misdemean.		17.88.030		
Asotin Benton	17.18.080 (1)(a) 3.02.020;11.54.020		17.18.060 (1)(e)(i) 3.02.030;11.54.020 Civil violation, misdemean.	17.18.080 (1)(c)	17.18.030 - 050 3.02.010; 11.54.010	17.18.010	17.18.090
Chelan Clallam Clark Cowlitz Columbia	16.14.020 (a)(1) 20.08.010 (3)(a) 32.12.020 (1)(i)	16.14.020 (a)(2) 20.08.010 (3)(b) 32.12.020 (1)(i)	16.02.030 20.08.020 (1) 32.04.030 (1) 2.06.040 (A)	16.14.010 (a)(3)  32.12.020 (1)(iv)	16.06.010 20.08.030; 20.08.070 32.04.045 - 070 2.06.040 (B) 18.05.030 18.05.090	16.02.030 (9) 20.08.070 32.08.040 (1)  18.05.070 18.05.080(M) 18.140.030	16.18.10 20.08.030 (4)(b) 32.16.010
Douglas Ferry	14.92.060 (A) (4)	14.92.060 (A)(6) Section 13.02	14.92.020 Violation* Section 13.03 Civil Infraction Code	14.92.060 (A)(2)(3)	14.92.030 (A) Section 13.00		14.92.040 (C)
Franklin	2.08.040 (D) 17.04.040 (D)	2.08.040 (D) 17.04.040 (D)	2.08.010 17.04.010	2.08.040 (C) 17.04.040 (C)	2.08.050 17.04.050		2.08.140 (A,C,E,F) 17.04.150 (A,C,E,F)
Garfield Grant	25.16.020 (3)(4) 25.16.310 (1)(a)	25.16.020 (2)	25.16.040, 25.16.320 25.16.370	25.16.310 (1)(c)	25.16.050	25.16.120(4) 25.16.200 (5) 25.16.210 (1)	25.16.290 25.16.320 (4) 25.16.340
Grays Harbor Island	17.76.070 17.03.260(D)(4) 17.03.260(G)(1)(a)	17.76.020, 17.80.090 17.03.260 (D)(4) 17.03.260(G)(1)(a)	17.03.260	17.76.020 17.03.260(G)(1)(c)	17.76.020 17.03.260	17.76.040, 17.80.070 17.03.250	17.03.260(D)(5) 17.03.260(H)
Jefferson	18.50.020 (4) 18.50.100 (1)(a) 18.50.110 (3)	18.50.020 (4) 18.50.100 (1)(e) 18.50.110 (3)	18.50.010 Implied*	18.50.020 (3) 18.50.100 (1)(d) 18.50.110 (3)	18.50.090	18.50.040(7)	18.50.130(1)(3)(4)(7)
King	23.02.040 (A)(4) 23.02.040 (C)(D) 23.24.100 (1)	23.02.040 (A)(7)	23.02.030 (A) 23.02.030 (B)	23.24.100 (3)	23.02.040 (A)(C)(D) 23.02.070 (A)	23.02.040 (F) 23.02.070 (I) 26.36.010 (2)	23.02.040 (C)(E)
Kitsap	17.530.040		9.56 17.530.020 - 030		2.116.010 - 030 17.530.010	17.530.030 Direct Injunction	9.56.060 (6)
Kittitas	18.06.050	18.06.050	18.01.010 (1)(3) 18.01.040		18.01.020		18.02.030 (9) 18.05.030 (8) - (11)
Klickitat	15.38.060	15.38.060	15.04.020 (B)	15.38.060	15.04.020 (A)	15.04.020 (B) Direct 15.38.080	Full Code Not Accessible
Lewis	17.300.030 (2)(3)	17.300.030 (1) 17.300.040 (2)(a)	17.07.010 - 020 17.300.020				
Lincoln			17.05.030 Civil Infraction Code		17.05.010 (A)		
Mason	15.13.020 (a-c) 15.13.070 (a),(b)(4) 15.13.075 (a-d)	15.13.020 (a-c) 15.13.070 (a),(b)(4) 15.13.075 (a-d)	15.13.020 (d) Civil Infraction	15.13.020 (a-c) 15.13.070 (a),(b)(4) 15.13.075 (a-d) 15.13.030 (c)	15.13.010	15.11.010 (a)	15.13.060 (b)
Okanogan	17.38.010-040	17.38.010-040	17.38.020-030	17.38.010-040	17.38.010-040	17.35.020 Direct 17.35.060-070	17.38.040

County	Code Violation	Regulatory Code Section	Public Health Code	RCW Description	Enforcement	Applicable In Rights	Link
Pacific			Ord. 165 Sec 1(A)(D) Civil Infraction Code XX.92.020 Civil Infraction Code XX.92.030(A)Nuisance		Ord. 165 Sec 1(B)(3)		
Pend Orielle	XX.92.010				XX.92.050		XX.92.080
Pierce	18.140.020 18.140.030(B)(C)	18.140.030 (A)	18.140.020 1.16.010 - 020 Civil Infraction Code 18.100.020 (E)	18.140.050 (C)	1.16		18.140.040 (B)(4)
San Juan	18.100.020 18.100.020 (D) 18.100.030 (F)	18.100.020 18.100.020 (D) 18.100.030 (F)	18.100.020 (E)	18.100.020 (C) 18.100.030 (F)	18.100.030 18.100.060 (A-C)	18.100.060 (C)(1) Direct Injunction	
Skagit	14.44.150 (a)		14.44.010 (1) 14.44.030 (1)(2)	14.44.150 (c)	14.44.010 (2)	14.44.010 (3) 14.06.160 (2)(a) 14.06.170 (2)(a) 14.06.180	14.44.160
Skamania Snohomish	15.04.030 (A) 30.85.020 (3)(4) 30.85.060 (4) 30.85.310 (c)	30.85.020 (2)	15.04.030 (B)(1) 30.85.040 (1)(2) 30.85.370	30.85.310 (c)	15.04.030 (B)(3) 30.85.050	Not clear	30.85.160 (2)(h) 30.85.290 30.85.320 (4) 30.85.330 - 350
Spokane	14.408.020 (1)	14.408.020 (2)	14.408.040;14.408.020(3) Civil Infraction Code 3.40.060		14.408.020	14.408.060(1) 14.408.080 (13) 3.40.040 (C)	
Stevens	3.40.020 (A-C) 3.40.030 (3-6)	3.40.020 (D) 3.40.030 (5)	3.40.060	3.40.030 (1-2)	3.40.010	3.40.040 (C)	
Thurston	20.60.050 (3)	20.60.050 (4)	20.60.050 (2) Civil Infraction Code 30.04.220; 30.04.250 14.13.020 Civil Infraction Code	20.60.050 (4)	20.60.010	20.60.060 (1)(2)	20.60.055 (7)
Wahkiakum Walla Walla	30.04.220 14.13.090 (A) 14.13.110 (A)(4)(5)	30.04.220 14.13.090 (A)	30.04.220; 30.04.250 14.13.020 Civil Infraction Code	14.13.110 (A)(2)(3)	30.04.200; 30.04.210 2.50.020 14.13.030	2.50.070 (A)(8) 2.50.100 (A) 2.50.120 - 130	14.13.090 (D)
Whatcom	20.94.030	20.94.070	20.94.030 (1) Civil Infraction Code 19.05.040 Civil Infraction Code	20.94.070	20.94.020	Not clear	20.94.080
Whitman	19.05.040		19.05.040 Civil Infraction Code		19.05.010 (A)	19.05.040 19.06.052(1) 19.06.060	
Yakima		13.25.030	13.25.010 Civil Infraction Code 13.25.060 Nuisance		13.25.050 15.84.010 - 120	Not clear	

COURT OF APPEALS DIVISION II  
OF THE STATE OF WASHINGTON

SCOTT K. LANGE & ELIZABETH  
R. LANGE, Husband and Wife, and  
Trustees  
Of the Lange Family Trust

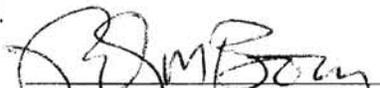
Appellant,  
v.

CLALLAM COUNTY, a municipal  
Corporation, SHEILA ROARK  
MILLER, DIRECTOR of the  
DEPARTMENT OF COMMUNITY  
DEVELOPMENT  
Respondent.

45726 /  
Appeal No. ~~44476-3-H~~  
Return of Service Cover Sheet

Attached hereto for filing is a Return of Service signed by Donald DeMers and received  
by Randy M. Boyer.

DATED Apr. 17, 2014.

  
Randy M. Boyer, WSBA 8665  
Attorney for Appellant

**Superior Court of Washington  
County of Clallam**

SCOTT K. LANGE, Trustee and ELIZABETH  
R. LANGE, Trustee, Trustees of the Lange  
Family Trust

Appellant,

v

DAVID A. CEBELAK AND KRISANNE R.  
CEBELAK, husband and wife and the marital  
community composed thereof,

Respondents.

No. 09-2-01301-1

**Return of Service  
(Optional Use)  
(RTS)**

***I Declare:***

1. I am over the age of 18 years, and I am not a party to this action.
2. I served the following documents to Gregory J. Wall \_\_\_\_\_:

- summons, a copy of which is attached
- petition in this action
- proposed parenting plan or residential schedule
- proposed child support order
- proposed child support worksheets
- sealed financial source documents cover sheet and financial documents
- financial declaration
- Notice Re: Dependent of a Person in Military Service
- notice of hearing for \_\_\_\_\_
- motion for temporary order
- motion for and ex parte order
- motion for and order to show cause re: \_\_\_\_\_
- declarations of \_\_\_\_\_
- temporary order
- other: Appellants' Brief, Brief Appendices, No. 45726-111

3. The date, time and place of service were (if by mail refer to Paragraph 4 below):

Date: April 11, 2014 Time: 10:50 a.m.

Address: 1521 Piperberry Way, Suite 102, Port Orchard, WA 98366

4. Service was made:

- by delivery to the person named in paragraph 2 above.  
 by delivery to (name) \_\_\_\_\_, a person of suitable age and discretion residing at the respondent's usual abode.  
 by publication as provided in RCW 4.28.100. (File Affidavit of Publication separately.)  
 (check this box only if there is a court order authorizing service by mail) by mailing two copies postage prepaid to the person named in the order entered by the court on (date) \_\_\_\_\_. One copy was mailed by ordinary first class mail, the other copy was sent by certified mail return receipt requested. (Tape return receipt below.) The copies were mailed on (date) \_\_\_\_\_.  
 (check this box only if there is a statute authorizing service by mail) by mailing a copy postage prepaid to the person requiring service by any form of mail requiring return receipt. (Tape return receipt below.) The copy was mailed on (date) \_\_\_\_\_.

5. Service of Notice on Dependent of a Person in Military Service.

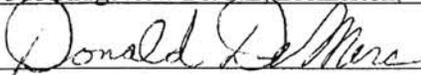
- The Notice to Dependent of Person in Military Service was  served on  mailed by first class mail on (date) \_\_\_\_\_.  
 Other:

6. Other:

I declare under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct.

Signed at 3308 Ridgeview Dr. NE, Bremerton, WA 98310 on April 11, 2014.

Signature



Donald DeMers

Print or Type Name

Washington Registered Process Server 201103170041

Fees:

Service	<u>\$65.00</u>
Mileage	<u>\$13.16</u>
Total	<u>\$78.16</u>

(Tape Return Receipt here, if service was by mail.)

File the original Return of Service with the clerk. Provide a copy to the law enforcement agency where protected person resides if the documents served include a restraining order signed by the court.