

62993-0

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NO. 62993-0

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION 1

KING COUNTY,

Appellant,

v.

PALMER COKING COAL COMPANY, ET AL.,

Respondents.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JUDGE MICHAEL TRICKEY

RESPONSE/REPLY BRIEF OF APPELLANT KING COUNTY

DANIEL T. SATTERBERG
King County Prosecuting Attorney

CRISTY CRAIG, WSBA #27451
Senior Deputy Prosecuting Attorney
Attorney for Petitioner

King County Prosecuting Attorney
King County Administration Building
516 Third Avenue, Suite W400
Seattle, Washington 98104
(206) 296-9015

FILED
COURT OF APPEALS
STATE OF WASHINGTON
2009 OCT 16 PM 4:39

ORIGINAL

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A. INTRODUCTION

The cross-appeal before this Court is a thinly veiled attempt by large corporate interests to circumvent the King County Zoning Code by forcing an illegal subdivision process. Under the King County Land Segregation Code 80 acre parcels are exempt from the subdivision process in resource zones (forty acre parcels are exempt outside the resource zones). The LLD applicants' proposed 40 acre lots are located in King County's Forest Zone, a resource zone, so 80 acre minimum size lots are required. The LLD applicants seek legal status for hundreds of parcels, each of which is half the size required by the zoning code, on land that has never been subdivided, in order to double the number of development rights (TDRs) they can sell. Although LLD applicants are interested in TDRs now, once a LLD application is granted the lot can be used for any legal purpose, including residential development.

The fundamental basis of the LLD applicants' argument is that because their proposed lots were part of the historical federal land survey, under which 40 acre parcels (quarter quarter sections) were divided and distributed to settlers, King County is required to recognize them as legal lots. LLD applicants are mistaken. As a legal matter, after the government passed title to a settler the question became one of private right. Warren v. Van Brunt, 86 U.S. 646. 1873 WL 15879 (U.S. Minn.

1873), attached as appendix A. As a practical matter, virtually the entire Western United States was included in the land survey, yet minimum lot sizes much larger than 40 acres are common in resource zones all over the Country. See i.e. Caspersen v. City of Lyme, 139 N.H. 637 at 643, 661 A.2d 759 at 764, which cites a list of case law discussing large minimum lot zones and also cites *The National Agricultural Lands Study, The Protection of Farmland, A Reference Guidebook for State and Local Governments'* discussion of "forty-five selected communities with agricultural minimum lot sizes ranging from ten to 640 acres, average being sixty-three acres," attached as appendix B. Furthermore, Washington's Growth Management Act (GMA) specifically authorizes these types of zoning techniques. See RCW 36.70A.177.

Minimum lot size requirements are a common zoning tool, and the constitutional analysis allowing them is long-established. Like other zoning regulations, minimum lot size regulations are valid absent proof that a landowner has suffered special damages from application of the ordinance. The LLD applicants can show no such damages, and instead attempt to deflect attention from the true issue through speculation, omissions, manufactured facts and unsupported conclusions.

The property at issue always has been and still is used for forestry. LLD applicants' claimed current interest is to maximize the number of

TDRs they can sell from their massive holdings in unincorporated King County, but there is no way to predict whether TDR transactions would actually occur. This Court should decline LLD applicants' invitation to interpret the legal lot determination process in a manner that guts the Forest Zone's 80 acre minimum lot size requirement. The record is completely devoid of evidence showing that LLD applicants' proposed "lots" were ever "created" by any means.

B. ISSUE STATEMENT

1. **Should DDES' Legal Lot Determination decision be upheld because LLD applicants' parcels are not "legal lots" under the plain language of the King County Code and because they do not meet the requirements of KCC § 19A.08.070?**
 - a. **Does KCC §19A describe how land can be segregated or recognized as previously segregated in King County and all exemptions from its land segregation processes?**
 - b. **Does the phrase "including, but not limited to" contained in KCC § 19A.08.070's preamble describe the information that the "property owner shall demonstrate to the satisfaction of the department" before DDES may grant a legal lot determination application or does it create a vague uncodified exception to King County's Land Segregation Code as LLD applicants argue?**
 - c. **Have LLD applicants met their burden to show that DDES' decision denying their Legal Lot Determination application was legally erroneous or a misapplication of the law to the facts where the Agency Record contains no facts supporting the conclusion that their "forest roads" were approved by any agency or that they are "open" or "public"?**

- d. **Did DDES correctly determine that LLD applicants do not have "legal lots" under KCC §19A.08.070(A)(4)(d) where no evidence shows that their large contiguous holdings were ever segregated under any state or local process?**
2. **Should the DDES Director's Final Code Interpretation be upheld and given deference where it was issued under her directly delegated authority pursuant to KCC §2.100?**
 - a. **Did the DDES Director exceed her jurisdiction when she issued a code interpretation defining the ambiguous phrase "approved roads"?**
 - b. **Was the Director's Final Code Interpretation erroneous as a matter of law because it applied the 1993 King County Road Standards to define an "approved road"?**
 - c. **Do *Cowiche Canyon Conservancy v. Bosley* and *Sleasman v. City of Lacey* support DDES' application of its Final Code Interpretation to the Legal Lot Determination applications here?**
3. **If this Court concludes that either the Final Code Interpretation or the Legal Lot Determinations were in error what is the proper remedy?**

C. STATEMENT OF THE CASE

King County hereby incorporates the Statement of the Case contained in its opening brief. There is no significant dispute regarding the timeline and content of the LLD applications, the DDES Director's Final Code Interpretation, or the Legal Lot Determination decision letters. While DDES objects to the LLD applicants' self-serving characterization of the facts, it declines to state specific denials. This is a LUPA review

confined to the agency record. Specific "facts" alleged by LLD applicants are discussed in the following analysis as needed.

DDES does specifically object to LLD applicants' characterization of evidence provided by Joe Miles and Ray Florent because their depositions were incomplete. Depositions are hearsay statements and DDES never had the opportunity to engage in cross-examination of either witness. Northern Indiana Public Service Co. v. East Chicago Sanitary District, 590 N.E. 2d 1067 (1992).

IV. ARGUMENT

LLD applicants seek a decision from this Court allowing them to avoid the minimum lot size requirements set forth in the King County Zoning Code. DDES, the King County agency assigned to enforce the Zoning Code, correctly denied their legal lot determination applications because the proposed lots did not meet King County Code requirements. The DDES Director also acted correctly and within her specifically delegated discretion when she issued a Code Interpretation which impacted the pending LLD applications. This Court should reverse the Superior Court's decision that the Director's Code Interpretation was not entitled to deference as to the pending LLD applications and uphold the rest of the Superior Court's decision.

1. **DDES' Legal Lot Determination decision was neither legally erroneous nor an incorrect application of the law to the facts; LLD applicants do not hold "legal lots" as defined in the King County Code and they do not meet the requirements of §19A.08.070.**

LLD applicants have the burden to show agency error in this case.

King County DDES' decisions interpreting its Zoning and Subdivision Codes are entitled to deference. Because LLD applicants have not shown agency error their appeal should be denied.

On review of land use decisions, the Court of Appeals stands in the shoes of the superior court and reviews the agency action de novo based on the agency record. Wells v. Whatcom County, Water Dist. No. 10, 105 Wash.App. 599, 5 P.3d 713, review denied 141 Wash.2d 1023, 10 P.3d 1075. A reviewing court may grant relief under LUPA only if the appealing party meets their burden to show that one of the following standards is met:

(a) The body or officer that made the land use decision engaged in unlawful procedure or failed to follow a prescribed process, unless the error was harmless;

(b) The land use decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise;

(c) The land use decision is not supported by evidence that is substantial when viewed in light of the whole record before the court;

(d) The land use decision is a clearly erroneous application of the law to the facts;

(e) The land use decision is outside the authority or jurisdiction of the body or officer making the decision; or

(f) The land use decision violates the constitutional rights of the party seeking relief.

RCW 36.70C.130(1). With regard to DDES' decision denying their Legal Lot Determination applications, LLD applicants' arguments appear to reference RCW 36.70C.130(1)(b) and (d). Because the LLD applicants have shown neither legal error nor an erroneous application of the law to any facts in the record their appeal should be denied.

- a. **KCC Title 19A describes every circumstance under which land can be segregated or recognized as previously segregated in King County as well as all exemptions from the Land Segregation Code.**

The purpose of King County Code (KCC) Title 19A is to "[e]stablish the authority and procedures for segregating land in King County" and to "[d]efine and regulate divisions of land that are exempt from the short subdivision or subdivision requirements." KCC § 19A.01.010(A) and (B). (All King County Code sections referenced are attached in numerical order at appendix C.) Every segregation of land in King County is subject to Title 19A except as explicitly exempted. KCC § 19A.08.010. Exemptions include divisions of land for cemeteries,

divisions of land into forty acre parcels outside of resource zones, divisions of land into eighty acre parcels inside resource zones, and divisions of land into lots or tracts five acres or larger for transfer to a public agency. KCC § 19A.08.040(A)-(C). KCC § 19A.08.070, at issue here, does not describe exemptions from Title 19A, but instead allows the County to acknowledge individual lots created by a state or local segregation process before it went into effect.

Under KCC § 19A.08.070(A) DDES will grant a legal lot determination if the requested lot was legally created in compliance with applicable ". . . state and local land segregation statutes or codes . . ." during the lifetime of the ordinance. KCC § 19A.08.070(A)(2)-(4) describe the effective timelines of all applicable previous state and local land segregation statutes and ordinances, beginning in 1937 and ending in 2000, when Title 19A was adopted. If an applicant can demonstrate to DDES' satisfaction that their lot was created under any of those laws or exemptions to those laws, DDES will grant a legal lot determination application. See Table of Ordinances attached as appendix D.

The Council required a different showing for pre-1937 parcels because before 1937 to the extent that state or local land division rules existed their purpose was not to control development in a manner which protected public health and safety. See Final Code Interpretation,

Discussion at page 1, attached at appendix E, and Laws 1937, ch. 186 § 1, attached as appendix F. Pre-1937 parcels that have never gone through any state or local segregation process are not "legal lots" under KCC § 19A.08.070, unless they meet the requirements of KCC § 19A.08.070(A)(1)(a).

The LLD applicants' holdings were not created pursuant the King County Code, or by state or local land segregation ordinances. Therefore, before DDES can grant a legal lot determination application for a parcel smaller than 80 acres it must meet the requirements of KCC § 19A.08.070(A)(1). LLD applicants cannot meet their burden to show that DDES erred when it denied their applications because their proposed lots do not satisfy KCC § 19A.08.070(A)(1)(a).

- b. **The phrase "including, but not limited to" contained in KCC §19A.08.070's preamble describes the information that the "property owner shall demonstrate" before DDES may grant a legal lot determination application, it does not create a broad uncodified exception to Title 19A.**

For the first time on appeal, LLD applicants completely rewrite KCC § 19A.08.070 to support their new theory that it allows additional unspecified means by which a legal lot determination applicant can show lot creation. In their new argument LLD applicants blatantly mischaracterize § 19A.08.070's description of LLD application

requirements by omitting half of the Code language. This Court should not be misled, and should instead decline to consider issues that were not raised before the superior court. RAP 2.5(a).

LLD applicants argue that all a property owner has to show is that when a lot was created it complied with then-existing law and that:

. . . this is accomplished by the property owner demonstrating ". . . that a lot **was** created, in compliance with applicable state and local land segregation statutes or codes **in effect at the time** the lot **was created**, including, but not limited to, demonstrating that the lot was created: 1. ...; or 2. ...; or 3. ...; or 4. ..." KCC 19A.08.070 A.

Brief of Respondent/Cross-Appellant Palmer Coking Coal Company at page 7 (emphasis and ampersands as drafted). LLD applicants claim that the ". . . not limited to, demonstrating . . ." language is an "express recognition" that the required showing for legal lot determinations is "not limited to" the list described in KCC § 19A.08.070(A)(1) through (A)(4). LLD applicants argue that because their 40 acre parcels were legally created by the land survey KCC § 19A.08.070 is satisfied, and therefore DDES erred by applying KCC § 19A.08.070(A)(1)(a). Brief of Respondent/Cross-Appellant Palmer Coking Coal Company at page 8.

LLD applicants' theory fails in the first instance because the land survey did not create "lots" by a state or local land segregation statute or code. LLD applicants' theory additionally fails because it requires this

Court to ignore the lion's share of KCC § 19A.08.070, invalidates the 80 acre resource zone large lot exemption described in KCC § 19A.08.040(B), and renders KCC § 19A.08.070(A)-(D) superfluous.

KCC § 19A.08.070 states that what an applicant "**shall demonstrate**" to the "**Department's satisfaction**" **includes** but is not limited to the items listed in the remainder of the Code section. It reads:

A property owner may request that the department determine whether a lot was legally segregated. **The property owner shall demonstrate to the satisfaction of the department** that, a **lot** was created, in compliance with **applicable state and local land segregation statutes or codes in effect at the time** the lot was created, **including**, but not limited to, **demonstrating** that the lot was created [within the timelines of all applicable state and local ordinances as described below, or before 1937 if additional facts are shown]:

KCC § 19A.08.070(A)(1)(a) and (b). This Court should not read KCC § 19A.08.070 in a manner that renders other sections of Title 19A meaningless and requires mainline agency staff to speculate regarding what other "state and local land segregation statutes or codes" might have existed. This would be an absurd result, particularly because KCC § 19A.08.070(A)(2)-(4) describe the effective dates of all "applicable state and local land segregation statutes or codes." Appendix D.

Under the Rules of Statutory Construction it is well established that "a statute is to be interpreted so as to give effect to its purpose while

avoiding absurd or pointless consequences." Wellington River Hollow, LLC v. King County, 121 Wash.App. 224, 233-234, 54 P.3d 213, 217 - 218 (internal citations omitted). Instead courts must "construe statutes so as to avoid rendering meaningless any word or provision." Id. Where a statute specifically designates the things or classes of things upon which it operates, an inference arises in law that all things or classes of things omitted from it were intentionally omitted by the legislature under the maxim *expressio unius est exclusio alterius*-specific inclusions exclude implication." Wash. Natural Gas Co. v. Pub. Util. Dist. No. 1, 77 Wash.2d 94, 98, 459 P.2d 633. These principles apply to interpretation of local ordinances. Whatcom County Fire Dist. No. 21 v. Whatcom County, 215 P.3d 956, 959 (Div. 1, June 2009).

Here, the County Council specifically designated by reference applicable state and local ordinances. The law presumes that its decision not to include the land survey was intentional. This Court should give effect to all of KCC § 19A.08.070 and uphold DDES' decision that KCC § 19A.08.070(A)(1)(a) applies to the LLD applications at issue here.

LLD applicants have not met their burden to show agency error. DDES neither committed legal error by applying KCC § 19A.08.070(A)(1)(a) to the LLD applications nor erroneously applied KCC § 19A.08.070 to the facts presented. Even under LLD applicants'

proposed construction they did not meet their burden because the federal land survey is not "an applicable state [or] local land segregation statute or code" and no facts in the record establish that they ever created "legal lots" on their parcels. Their appeal should be denied.

- c. **No evidence in the record proves that LLD applicants' parcels contain "roads" by their own definition nor that any of their "forest roads" were "approved" by a government agency.**

LLD applicants bear the burden to show agency error based upon the agency record. RCW 36.70C.120(1). In this case the parties submitted a stipulated agency record for review. See Stipulated Agency Record. The Stipulated Agency Record contains no evidence that supports the conclusion, even under LLD applicants' proposed "plain language" reading of KCC § 19A.08.070(A)(1)(a), that their proposed lots are accessed by "approved roads." DDES' denials of their LLD applications were correct. See Legal Lot Determination Letters, attached as appendix G and H.

LLD applicants cite Webster's Third New International Dictionary, Unabridged in support of their theory that "approved roads" is unambiguous. Brief of Petitioners/Respondents/Cross-Appellants White River Forest, LLC White River and John Hancock Life Insurance Company (WR Brief) at 19. According to LLD applicants Websters

defines "approve" as "to judge and find commendable or acceptable" or "to express often formally agreement with and support of or commendation of as meeting a standard." Id. Webster's defines "road" as "an open way or public passage for vehicles, persons, and animals; a track or transportation to and fro serving as means of communication between two places usually having distinguishing names." Id. LLD applicants claim that forest roads are "an open way for vehicles, person, and animals," and that "Forest roads must meet the Department of Natural Resources standards codified in Washington's Forest Practice Act." Id. But they cite no evidence in the agency record to show that their claims are true as to any of the specific roads at issue.

LLD applicants site no evidence because the agency record contains no evidence regarding DNR standards or approvals, showing that any government agency "judged, and found [any roads] commendable or acceptable," or that any agency formally expressed that their roads complied with any standard. With regard to "approval" LLD applicants' only factual support is a cryptic reference to "CR 238 P 7". Id.

CR 238 is page 3 of the Declaration of John Davis in Support of Petitioner's White River's Motion for Summary Judgment. Paragraph 7 is a general description of forest roads in which Mr. Davis states:

The properties that are the subject of this litigation are situated within and among state and privately held natural resource lands. Access to these properties is usually obtained by state and or county roads and easements across private lands. The roads constructed on private easements are typically gravel roads built and maintained to standards required by Washington's Forest Practice Act and rules established by the Department of Natural Resources. These roads are constructed to meet the demands of the intended use, typically log hauling. As a consequence they are durable roads that are constructed to exacting standards and maintained in strict accordance with DNR requirements.

CR 238 P 7. While Mr. Davis' declaration provides a helpful starting point, it is insufficient to prove agency error. Additionally, it illustrates a general lack of knowledge regarding the contents of the Washington Administrative Code.

As discussed in more detail below, the DNR standards contemplate temporary roads, take into account the reality that forest roads are frequently abandoned after timber is removed, do not provide a mechanism by which DNR "approves" roads, and by definition explicitly excludes county roads and residential access roads. WAC 222-16-010, WAC 222-24-010(4), WAC 222-24-026, WAC 222-24-035(3). (All referenced WAC sections are attached as appendix I). DNR requires submission of a plan for road maintenance and abandonment, completion of which is not required until 2016. WAC 222-24-051, WAC 222-24-050. Abandoned forest roads must be barricaded so that vehicle traffic cannot

pass. WAC 222-24-052(3)(c). The agency record contains no facts regarding whether a road maintenance and abandonment plan was submitted for any of the subject parcels. Even if a plan was in the record it would be insufficient to prove that DDES committed legal error because a plan is not an approval.

Similarly, no facts in the record establish that the LLD applicants' proposed parcels contain "roads" that are "an open way or public passage for vehicles, persons, and animals; [or] a track or transportation to and from serving as means of communication between two places usually having distinguishing names." Instead, the agency record shows that many of the applications were denied because the roads were gated, and that where the parcel had confirmed roads the application was granted. WR brief at 38, Lot Determination Letters, AR 851-853 Draft Lot Count, attached as appendix J. A gated road is not an "open way or public passage for vehicles, persons and animals." Instead, a gated forest road is very likely one that has been abandoned. See WAC 222-24-052(3)(c). Likewise, no facts in the record show that the applicants' "roads" are a means of communication between two places with distinguishing names.

The record simply does not contain proof that LLD applicants' proposed lots contain "approved roads." They have failed to meet their burden to prove agency error under the law or as a matter of application.

Because LLD applicants have failed to establish facts upon which relief can be granted their appeal should be denied. RCW 36.70C.130, RAP 2.5(a)(2).

d. **LLD applicants' proposed 40 acre lots are not legal under KCC § 19A.08.070(A)(4)(d).**

LLD applicants have not met their burden to show that DDES committed legal error by failing to recognize their proposed lots under KCC § 19A.08.070(A)(4)(d). To qualify for a legal lot determination under the plain language of KCC § 19A.08.070(A)(4)(d) LLD applicants would have to establish that:

. . . a lot was created:

(4) Through the following alternative *means allowed by the state statute or code,*

(d) at a size twenty acres or greater, recognized prior to January 1, 2000

(emphasis added). The record is completely devoid of evidence showing that LLD applicants' proposed "lots" were ever "created" by any alternate means allowed by state statute or code. Their appeal should be denied on that basis alone.

KCC § 19A.08.070(A)(4)(d) references the large lot exemption in former KCC Title 19. (Attached as appendix K, and see Table at appendix D.) Title 19 contained an exemption from the requirements of its subdivision Code for parcels twenty acres or larger if they met the

minimum lot size in their zones. But § 19.08.010 contemplated that specific lots would be created. It exempted:

Any division of land into lots or tracts each one of which is twenty acres or larger, or in the case of zone classifications requiring a minimum lot area greater than twenty acres, each of which complies with the lot area requirements of that classification. Once the original parcel is **subdivided into its maximum number of lots** or tracts allowed under this section, no additional subdivision of these lots or tracts shall be done except through the subdivision or short subdivision process.

Former KCC 19.08.010(B), (Ord. 11901 § 1, 1995: Ord. 11619 § 15, 1994: Ord. 11017 § 11, 1993: Ord. 9543 § 16, 1990: Ord. 1380 § 3, 1972: Res. 11048 § II (part), 1948)(emphasis added). But as the language of Title 19 made clear the land owner was still required to subdivide its parcels into lots. There is no evidence in the record that any lots were ever created on LLD applicants' parcels pursuant to KCC § 19, or that their forest zoned parcels would have qualified for the exemption.

LLD applicants argue that their parcels satisfy the plain language of KCC § 19A.08.070(A)(4)(d) because they were "recognized" as *tax lots* prior to January 1, 2000. That argument fails under the rules of statutory construction. The aim of statutory construction is to effectuate the

legislature's intent. To discern that intent, the court begins by looking at the plain language and ordinary meaning of the statute, but also considers the legislative enactment as a whole. Richards v. City of Pullman, 134 Wash.App. 876, 881, 142 P.3d 1121, 1123 (internal citations omitted). Plain meaning is discerned from "the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole." Whatcom County Fire Dist. No. 21 v. Whatcom County, 215 P.3d 956, 959 citing Faben Point Neighbors v. City of Mercer Island, 102 Wash.App. 775, 778, 11 P.3d 322 (2000).

When KCC § 19A.08.070 is considered as a whole it is clear that the word "recognized" in KCC § 19A.08.070(A)(4)(d) does not mean *by the county assessor*. Where the King County Council intended "recognized" to mean by the tax assessor it said so explicitly. For legal lot determination under KCC § 19A.08.070(A)(1) the Council required a parcel to be "recognized prior to October 1, 1972, as a separate lot *by the county assessor*." KCC § 19A.08.070(A)(1)(b)(2)(emphasis added). It is an "elementary rule that where the Legislature uses certain statutory language in one instance, and different language in another, there is a difference in legislative intent." Spain v. Employment Sec. Dept., 164 Wash.2d 252, 259-260, 185 P.3d 1188, 1192 (internal citations omitted).

Had the County Council intended "recognized" in (4)(d) to mean "by the county assessor" it would have expressly said so as it did in (1)(b)(2).

As a matter of law and as a matter of fact LLD applicants have not met their burden to show that DDES erred when it denied their Legal Lot Determination applications. No facts in the record support the conclusion that they ever created lots, or that their parcels have "approved roads." They do not meet the requirements of KCC § 19A.08.070. Their appeal should be denied.

2. **The DDES Director's Final Code Interpretation of the ambiguous phrase "approved roads" was properly adopted and the Superior Court erred by failing to give deference.**

Lawyers often castigate legislative bodies such as the King County Council for failing to draft clear statutes. Achieving consensus can muddy clear waters in any circumstance. For local governments drafting a development ordinance such as 19A anticipating every situation that may arise in application is ever tougher. This is why reviewing courts give so much deference to agency interpretations. The law values the experience and understanding developed by regular application of a particular ordinance. The DDES Director utilized that experience and understanding when she interpreted King County's subdivision ordinance in this case and her interpretation of "approved roads" was entitled to deference.

- a. **The DDES Director did not exceed her jurisdiction when she issued her Code Interpretation defining "approved roads" because it is an ambiguous phrase, and it is contained in a development regulation.**

The DDES Director is authorized to interpret ambiguous development regulations. KCC § 2.100.030(A). A statute is ambiguous when it is amenable to two reasonable interpretations. If a statute is ambiguous, courts defer to the statutory interpretation of the administrative agency charged with administering and enforcing the statute. Lakeside Industries v. Thurston County, 119 Wash.App. 886, 896-897, 83 P.3d 433, 438 quoting Hama Hama Co. v. Shorelines Hearings Bd., 85 Wash.2d 441, 448, 536 P.2d 157 (1975). In the challenged Final Code Interpretation DDES' Director interpreted the words "approved" and "roads" contained in King County's Land Segregation Ordinance. Both words are ambiguous when considered in light of the LLD applications at issue here.

To qualify for a legal lot determination LLD applicants must show that their proposed lots "have been provided with approved sewage disposal or water systems or roads." KCC § 19A.08.070(A)(1)(a). Neither word is defined in the Code. "Approved" could be reasonably interpreted to mean approved by King County, by King County DDES, by the King County road engineer, by any State or Federal agency, or as

argued by LLD applicants, by following some set of guidelines. Similarly "roads" could mean anything from the simplest of dirt trails to a required system of public right-of-ways deeded to the County in preparation for development. See i.e. KCC § 19A.08.100 (requiring dedication of right-of-ways for public streets in order to serve proposed developments). As illustrated, the DDES Director and the Superior Court correctly concluded that "approved roads" is ambiguous because it is amenable to multiple different reasonable interpretations. Because "approved roads" is ambiguous the Code Interpretation was within the DDES Director's directly delegated jurisdiction under KCC § 2.100.

KCC § 2.100 "establish[es] the procedure by which King County will render a formal interpretation of a development regulation. The purpose of such an interpretation includes clarifying conflicting or ambiguous provisions in King County's development regulations." KCC 2.100.010. "Development regulation" means "the controls placed on development or land use activities by the county including, but not limited to zoning ordinances, critical areas ordinances, shoreline master programs, subdivision ordinances, official controls, and binding site plan ordinances . . ." KCC 2.100.020(C).

KCC Title 19A is entitled "Land Segregation." "Segregation" means "a division of land by any of the following means: subdivisions,

short subdivisions, binding site plans and divisions described in KCC § 19A.04.040." KCC § 19A.04.280. "Subdivision" means "Outside the urban growth area a division or redivision of land into five or more lots, tracts, or parcels, for the purpose of sale, lease, or transfer of ownership . . ." KCC § 19A.04.320. In other words § 19A is King County's subdivision ordinance. Thus, under the plain language of KCC § 2.100.020(C), KCC § 19A.08.070 is a development regulation, and subject to the DDES Director's interpretation authority. She did not exceed her jurisdiction when she issued her Code Interpretation regarding the meaning of "approved roads."

Because Title 19A is King County's subdivision ordinance LLD applicants' new theory, raised for the first time on appeal, that Title 19A is not a development regulation is incorrect. Likewise their completely unsupported claim that notice of Title 19A amendments was not sent to the Washington Department of Community, Trade, and Economic Development is also wrong. See AR 1617 Letter to Growth Management Services, attached as appendix L. This Court should decline to consider LLD applicants new "not a development regulation" theory under RAP 2.5(a). However, should this Court conclude that 19A is not a

development regulation King County requests leave to file a motion to dismiss for lack of LUPA jurisdiction¹.

- b. **The Director's Code Interpretation was not legally erroneous or a clearly erroneous application of the law to the facts because it defined "approved roads" according to the King County Road Standards or because it concluded that temporary forest roads are not generally be "approved."**

The DDES Director did not commit legal error by utilizing the 1993 King County Road Standards to interpret the meaning of the ambiguous words "approved roads." She did not erroneously apply the law to the facts by stating as a general matter that temporary forest roads will not satisfy KCC § 19A.08.070(A)(1)(a). LLD applicants have not met their burden under RCW 36.70C.130(1)(b).

A reviewing court will uphold an agency's interpretation of ambiguous regulatory language as long as the agency's interpretation is *plausible and consistent* with the legislative intent. Alpine Lakes Prot. Soc'y v. Dep't of Natural Res., 102 Wash.App. 1, 14, 979 P.2d 929 (1999)(emphasis added). Courts do not substitute their judgment for that

¹ LUPA applies only to land use decisions. "An interpretative or declaratory decision regarding the application to a specific property of zoning or other ordinances or rules regulating the improvement, development, modification, maintenance, or use of real property" is a land use decision subject to LUPA review. RCW 36.70C.020(1)(b). If, as LLD applicants argue, 19A is not a "development regulation" the LLD applicants lack standing to challenge DDES' interpretive (the Code Interpretation) and declarative (the LLD applications) decisions, and this LUPA appeal should simply be dismissed. RCW 36.70C.060.

of the agency and “will upset [an agency's] determination only if the evidence establishes it was arrived at by unlawful, arbitrary or capricious action.” State ex rel. Rosenberg v. Grand Coulee Dam Sch. Dist. No. 301 J, 85 Wash.2d 556, 563, 536 P.2d 614 (1975).

LUPA adopted this general standard by placing the burden on the challenging party to establish that “[t]he land use decision is an erroneous interpretation of the law, after allowing for such deference as is due the construction of a law by a local jurisdiction with expertise.” RCW 36.70C.130(1)(b). A party claiming an agency's decision is arbitrary and capricious has the burden to show it “is willful and unreasoning and taken without regard to the attending facts or circumstances.” Wash. Indep. Tel. Ass'n v. Wash. Utils. & Transp. Comm'n, 149 Wash.2d 17, 26, 65 P.3d 319 (2003) (internal citations omitted).

LLD applicants simply cannot make such a showing. Instead, the record shows that the DDES Director engaged in a careful five-page analysis considering the history and purpose of Title 19A when she issued her Final Code Interpretation. See Final Code Interpretation, attached as appendix E.

The DDES Director determined that because the 1993 Road Standards were in effect when Title 19A was first adopted that they would be “used to determine whether an approved road has been provided to a

pre-1937 lot." Id. at page 3. The Director noted that the King County Road Standards define "road" as "[a] facility providing public or private access including the roadway and all other improvements inside the right-of-way." A "right-of-way" is defined as "[l]and, property, or property interest (e.g., an easement), usually in a strip, acquired for or devoted to transportation purposes," and "roadway" is defined as "pavement width plus any non-paved shoulders." Id. With regard to whether a road was "approved," the Director concluded that "the road must have been constructed to the standards in effect at the time the road was approved by King County or other public agency with authority to approve the road." Id. at page 4.

The Director considered logging and forest roads and concluded that they "would generally not meet the test for approval." Id. The Director also noted that "a logging road that only provides access to forest lands for hauling timber on a temporary basis" was not devoted to transportation purposes." Id.

This decision was not "willful, unreasoning, or taken without regard" to applicable facts. Instead, the Code Interpretation reflects agency expertise regarding Washington State Forest Practice Rules as set forth in the Washington Administrative Code. Under the WAC there is no requirement that forest roads be approved by any agency, they are often

temporary by design, and the WAC anticipates that they will be abandoned after timber is removed. "Forest roads" specifically exclude highways, local government roads and roads used for "residential access."

The WAC defines "forest roads" as:

. . . ways, lanes, roads, or driveways on forest land used since 1974 for forest practices. 'Forest road' does not include skid trails, highways, or local government roads except where the local governmental entity is a forest landowner. For road maintenance and abandonment planning purposes only, 'forest road' does not include forest roads used exclusively for residential access located on a small forest landowner's forest land.

WAC 222-16-010. The WAC requires logging companies to have a planned system which protects forests, wetlands, streams, and endangered species, but not humans. These plans are called "Road maintenance and abandonment plans" and some of the things they must include are:

Ownership maps showing all forest roads, including orphan roads; planned and potential abandonment, all typed water, Type A and B Wetlands that are adjacent to or crossed by roads, stream adjacent parallel roads and an inventory of the existing condition;

WAC 222-24-051. WAC maintenance requirements do not have to be achieved until 2016. WAC-222-24-050. New forest road

construction must only "[u]se the *minimum* design standard that produces a road sufficient to carry the anticipated traffic load with *reasonable safety*." WAC 222-24-020(9).

The WAC requirements do not reflect the same purpose as state and local land segregation codes, which is to protect the public health, safety, and welfare. RCW 58.17.010, KCC § 19A.01.010(E). The DDES Director did not commit legal error by adopting the King County Road Standards to assess current roads on parcels proposed for legal lot determination. The King County Road Standards, like the King County Land Segregation Code, is concerned with public use. The Director noted that previously approved roads would be considered in light of the standards applied by the approving agency. Her decision carefully considered the ambiguous words "approved roads" in light of the Council's fundamental purpose in adopting Title 19A: to promote public safety and welfare.

The DDES Director also did not erroneously apply the law to the facts. The Code Interpretation did not consider specific facts, but only general information regarding forest roads. To the extent that the Code Interpretation applies the law to the facts at all the Director correctly considered the general purpose of forest roads - which is to extract timber. Temporary roads cannot be assumed to provide access, and gated roads

can be assumed to be abandoned under the WAC. LLD applicants have not shown that the Final Code Interpretation was legally erroneous, that it erroneously applied the law to the facts, or that it was not supported by substantial evidence. Their appeal should be denied.

- c. **Cowiche Canyon Conservancy v. Bosley and Sleasman v. City of Lacey support DDES' application of the Final Code Interpretation to the LLD applications in this case.**

Judge Trickey doggedly wound his way around complicated issues of statutory construction to arrive at his Order on Summary Judgment. His interpretation of the King County Code was right, but his interpretation of Cowiche and Sleasman was wrong. Judge Trickey concluded that the Final Code Interpretation couldn't be applied to LLD applicants in part because it was not clearly consistent with the intent of the Council and in part because he concluded that Cowiche and Sleasman required proof of a consistent policy application before DDES' Final Code Interpretation was entitled to deference. Judge Trickey was wrong on each of those issues. As argued in King County's opening brief, Judge Trickey applied the wrong standard of review and failed to recognize that the Final Code Interpretation was *consistent* with the Council's intent. Most importantly he misapplied the procedural history of Cowiche and Sleasman to the Final Code Interpretation at issue here.

Cowiche and Sleasman were both Code enforcement cases. In both cases the appellants were accused of violating Code provisions. In both cases the landowner appealed the agency's finding and in both cases the Court of Appeals decided that the agency interpretation was not entitled to deference because the words at issue were not ambiguous. In both cases the Washington Supreme Court concluded that under the plain meaning of the Code section at issue the landowners were not guilty of violating the Code. Cowiche Canyon Conservancy v. Bosley, 118 Wash.2d 801, 812, 828 P.2d 549, 555 (1992), Sleasman v. City of Lacey, 159 Wash.2d 639, 643, 151 P.3d 990, 992 (2007). In both cases the Supreme Court noted that the agency **had no agency interpretation** of the statute at issue but rather **argued at trial** that their theory of the case was entitled to deference. Cowiche, 118 Wash.2d at 814, Sleasman at 648. Both cases noted that if an agency is asserting that its interpretation is entitled to great weight it must ". . . show that it has adopted and applied such interpretation as a matter of agency policy." Cowiche at 815, Sleasman at 646. The agency policy ". . . must represent a policy decision by the person or persons responsible." Cowiche at 815.

Here the Final Code Interpretation was adopted by the DDES Director and represents her policy decision regarding highly ambiguous Code language. There was no ongoing litigation at the time it was

adopted. LLD applicants were not accused of a Code violation. Cowiche and Sleasman simply do not support the conclusion that a Final Code Interpretation such as this one would have to be applied over time to be entitled to deference. Taken to its logical extreme such a rule would require that a formal agency interpretation would never be entitled to deference the first time it was applied, or the second, and maybe not the third or fourth either. What would be the point in adopting such a policy?

It is agreed by DDES and LLD applicants that when the King County Council adopted § 19A.08.070 it intended to require that pre-1937 parcels had some indicia of **development** including "**access.**" See WR Brief at page 24. It is also clear that when it adopted Ordinance 15031 the Council intended to extend that requirement to parcels "recognized by the Assessor as a separate tax lot" prior to October 1, 1972 as described in § 19A.08.070(A)(1)(b). See AR 1630 Approved Amendment, attached as appendix M. The Sleasman decision was based on the plain meaning of the word "develop." The Sleasman Court noted ". . . Webster's defines the term 'develop' as 'to convert (as raw land) into an area suitable' for 'building' or 'residential or business purposes.'" Sleasman v. City of Lacey, 159 Wash.2d at 643.

Sleasman and Cowiche, when properly applied to the facts of this case support the conclusion that the Final Code Interpretation was entitled

to deference. The Final Code Interpretation was consistently applied to 251 legal lot determination applications. Neither the Final Code Interpretation nor the LLD application decisions were erroneous. Logging roads are not an indicia of development and their purpose is not to provide public access. Judge Trickey's decision should be upheld except to the extent that he declined to apply the Final Code Interpretation to the LLD applications. That part of his decision should be reversed.

3. **If this Court determines that either the Code Interpretation or the Legal Lot Determinations were erroneous remand to DDES is the proper remedy.**

The application of the Final Code Interpretation to the LLD applications does not affect the legality of the Code Interpretation itself, and as argued above the LLD decisions stand without the Code Interpretation. However, if this Court determines that one or the other was incorrectly issued remand to DDES for reconsideration is the proper remedy.

LUPA provides that a reviewing court may "affirm or reverse a land use decision under review or remand it for modification or further proceedings." RCW 36.70C.140. Assuming for sake of argument that this Court decides that DDES erred, the Court should also conclude that the record is insufficient to establish that the LLD applications should be

granted, or how "approved roads" should be interpreted. Remand to DDES is the proper remedy.

Additionally, should the LLD applicants prevail with regard to with the LLD applications or the Final Code Interpretation this Court should not award attorney fees. RCW 4.84.370(1) provides for an award of attorney fees only in land use appeals involving a site-specific rezone, zoning, plat, conditional use, variance, shoreline permit, building permit, site plan, or similar land use approval or decision. This case does not involve any of those things. Therefore under the plain language of RCW 4.84.370(1) no attorneys' fees should be awarded. Tugwell v. Kittitas County, 90 Wn.App. 1, 15, 951 P.2d 272 (1997), Sleasman v. City of Lacey, 159 Wash.2d at 648.

CONCLUSION

Zoning codes change over time, and with them the limits on a landowner's rights. Ordinances enacted by a local government regulating buildings and land for residential and other purposes will be upheld as valid exercises of police power if they promote public health, safety or welfare and bear reasonable relation to accomplishing the purpose pursued. See i.e Tekoa Construction, Inc v. City of Seattle, 56 Wash.App. 28, 781 P.2d 1324 (Div. 1 1989.). KCC 19A.08.070(A)(1)(a) is an example of such an Ordinance. The King County Council particularly

structured Title 19A with historic changes in subdivision law in mind.

Where a landowner can show their property was segregated pursuant to state or local law the County will grant a legal lot determination application, even if the lots do not meet current zoning requirements. But where a parcel has never been segregated under state or local law, KCC § 19A.08.070(A) applies.

DDES is required to apply King County's Zoning and Land Segregation Codes as written. LLD applicants hold huge parcels in a zone with 80 acre minimum lots. They cannot show that any exception to the 80 acre minimum lot size applies to them. They cannot show that their parcels were ever segregated under state or local law. They cannot show any vested right to a 40 acre legal lot. They have not shown that DDES changed any previously existing policy regarding "approved roads," because before 2004 the Code did not require approved roads. DDES' decision to enforce its Code should be upheld and the LLD applicants' attempts to circumvent the King County Zoning Code should be denied. This matter should be remanded to the Superior Court with instructions to apply the Final Code Interpretation as drafted.

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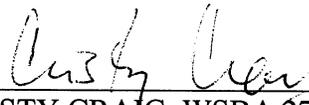
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DATED this 16th day of October, 2009.

RESPECTFULLY submitted,

By:



CRISTY CRAIG, WSBA 27451
Senior Deputy Prosecuting Attorney
Attorney for the King County

DECLARATION OF SERVICE

The undersigned declares under penalty of perjury, under the laws of the State of Washington, that the foregoing is true and correct:

That on October 16, 2009, I sent in the manner indicated below, true and correct copies of the BRIEF OF APPELLANT KING COUNTY and this DECLARATION OF SERVICE to:

JOHN M. GROEN
GROEN STEPHENS & KLINGE, LLP
11100 NE 8th Street, Ste. 750
Bellevue, WA 98004
(425) 453-6206
for Plaintiff Palmer Coking Coal Co.
[Legal Messenger]

CURTIS R. SMELSER
LAWRENCE A. COSTICH
SCHWABE, WILLIAMSON & WYATT, P.C.
US Bank Centre
1420 5th Avenue Ste. 3010
Seattle, WA 98101
for defendants White River LLC and
John Hancock Life Insurance Company
[Legal Messenger]

DATED at Seattle, Washington this 16th day of October, 2009.


Diana Cherberg

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STATE OF WASHINGTON
2009 OCT 16 PM 4:39

APPENDIX A

86 U.S. 646, 1873 WL 15879 (U.S.Minn.), 22 L.Ed. 219, 19 Wall. 646
 (Cite as: 86 U.S. 646, 1873 WL 15879 (U.S.Minn.))

Page 1

H

Supreme Court of the United States
 WARREN
 v.
 VAN BRUNT.
 October Term, 1873

**1 ERROR to the Supreme Court of Minnesota.

This was a contest between two pre-emption claimants, Warren, on the one hand, and the representatives of Van Brunt, deceased, on the other, for the ownership of the southeast quarter of the northeast quarter, section 13, township 108 N., R. 27 W. (forty acres), in the State of Minnesota. These last had the legal title under a patent from the United States, issued upon the claim of Van Brunt. Warren, alleging that he had an elder and better right of pre-emption, sought by his action in the court below to charge the representatives of Van Brunt as his trustees, and to compel them to convey to him the title they acquired by the patent.

The case was decided below upon facts found by the court, and stated in the record. No exception was taken to the finding, and the question presented, therefore, for the determination of this court was, whether upon the facts as found there was error in the decree.

These facts were substantially as follows: Warren and Van Brunt being each, in May, 1853, and thereafter until the death of Van Brunt, legally competent to avail themselves of the pre-emption laws of the United States, in the said month jointly selected for occupancy about two hundred and eighty acres of *unsurveyed* public lands in Minnesota, to which the Indian title had been extinguished.^{FN1} They settled upon the forty acres in dispute, and after ploughing and planting two or three acres, proceeded with their joint means and labor to erect thereon a house for a residence, into which they moved with their families in June. They occupied

this house together until the 18th of July, when, a difficulty having arisen between them, a contract of partition was entered into, by which, after establishing a dividing line, which ran diagonally across the premises in controversy and through the ploughed lands, it was agreed that Warren should have the sole and exclusive use of all the lands *648 selected for occupancy situated on the east side of the line, and Van Brunt of all on the west. The house they had built was on the part set off to Warren, but by the agreement Van Brunt was to have the exclusive use of it until May 1st, 1854, when, on the payment to him of one-half its cost, he was to surrender the possession to Warren for his exclusive use thereafter. Upon the execution of this contract, Warren went with his family to the town of Mankato—a town in the neighborhood of the two hundred and forty acres of land, but not on any part of it—leaving Van Brunt in the house. Soon after, and within a reasonable time, he began the erection of a new house on a part of the premises set off to him, adjoining the disputed property, into which he moved in the autumn of 1853 with his family.

1. Where two persons, before a public survey of it, made a settlement in Minnesota on the same forty acres of land (a quarter of a quarter-section and the smallest legal subdivision allowed by statute), which settlement was *in point of fact* made at the *same* time—a joint settlement therefore—the circumstance that in his declaratory statement, one of the settlers has stated that his settlement was made on a day anterior to the day which the other in his declaratory statement fixed as the date of *his*, is not a circumstance which will induce this court to reverse a decision of the register and receiver of the land office, affirmed by the Secretary of the Interior, awarding the tract to him who the other alleges made the later settlement; there being no fraud, imposition, or mistake in the case. The court will regard the facts of the case, not the allegations of the parties.

**2 2. Where two joint settlers on such a piece of

86 U.S. 646, 1873 WL 15879 (U.S.Minn.), 22 L.Ed. 219, 19 Wall. 646
(Cite as: 86 U.S. 646, 1873 WL 15879 (U.S.Minn.))

land, built from joint means and for a time jointly occupied a house there, which house-on a misunderstanding between them and the running of a line apportioning the land between them-was found to be on the land of one who now removed from and remained away from the land for several months, leaving the other in possession of the house (not as his tenant but as part owner, and till he-the one on whose land it was-could pay to the other half the sum which its erection had cost), and then, on payment of this money, evicted the co-settler and put his own tenants in (he himself occupying a wholly different forty acres, while the co-settler remained in effect on the old tract, and built and afterwards occupied a house for himself and family on it), *held*-on a bill which set up a superior right of pre-emption to the whole forty acres and not an equitable right to a joint ownership, or an ownership to part as settled by the dividing line-that this court would not reverse a decision of the register and receiver affirmed by the Secretary of the Interior which on a similar claim by the party who had removed, awarded the whole to the other party who with his family remained.

3. A party cannot set up in his replication a claim not in any way made in his bill, and the granting of which he asks in his replication only in the event that the case made in his bill fails.

4. An entry of the public land by one person in trust for another being forbidden by statute, equity will not, on a bill to enforce such a trust, decree that any entry in trust was made.*647

West Headnotes

Appeal and Error 30 ↪265(1)

30 Appeal and Error

30V Presentation and Reservation in Lower Court of Grounds of Review

30V(C) Exceptions

30k265 Exceptions to Decision or Findings by Court

30k265(1) k. In General. Most Cited

Cases

Where no exception was taken to the trial court's finding of facts the question presented, therefore, for the determination of the Supreme Court, was whether, on the facts as found, there was error in the decree.

Public Lands 317 ↪25

317 Public Lands

317II Survey and Disposal of Lands of United States

317II(A) Surveys

317k25 k. Operation and Effect in General. Most Cited Cases

Where there was no legal subdivision of public lands less than a quarter of a quarter section, or 40 acres, except in the case of fractional sections, public lands could not have been subdivided for the purposes of entry and purchase by pre-emption claimants, and 40 acres was required to be taken as a whole or not at all. 10 Stat. 576.

Public Lands 317 ↪34

317 Public Lands

317II Survey and Disposal of Lands of United States

317II(B) Entries, Sales, and Possessory Rights

317k34 k. Pre-Emption. Most Cited Cases

Where, at the time pre-emption claimants made their settlements on public lands in 1853, the congressional act then in force only gave the right to settlers on lands in the territory of Minnesota which had been surveyed, the claimants acquired no right of pre-emption. 5 Stat. 455, § 10.

Public Lands 317 ↪106(1)

317 Public Lands

317II Survey and Disposal of Lands of United States

317II(I) Proceedings in Land Office

317k105 Conclusiveness and Effect of Decisions

86 U.S. 646, 1873 WL 15879 (U.S.Minn.), 22 L.Ed. 219, 19 Wall. 646
(Cite as: 86 U.S. 646, 1873 WL 15879 (U.S.Minn.))

317k106 In General

317k106(1) k. In General. Most

Cited Cases

Where pre-emption claimants of public lands claimed the right to enter the whole of the disputed tract and on that claim the parties went to a hearing before officers of the land department, the claimant who had laid claim to the whole was concluded by his election from thereafter claiming that he made his entry jointly with another.

Public Lands 317 ↪114(1)

317 Public Lands

317II Survey and Disposal of Lands of United States

317II(J) Patents

317k114 Construction and Operation in General

317k114(1) k. In General. Most Cited Cases

Where issue of patent on award of officers of the United States was final and conclusive as between the United States and the pre-emption claimants of public lands, it passed the legal title to the patentee and the remedy, if any, of the defeated claimants was by a proceeding against the patentee or those claiming under him.

Public Lands 317 ↪128

317 Public Lands

317II Survey and Disposal of Lands of United States

317II(K) Remedies in Cases of Fraud, Mistake, or Trust

317k124 Relief to Claimant of Land

317k128 k. Establishment of Trust.

Most Cited Cases

Where the proper officers of a land office decide controverted questions of fact arising out of pre-emption claims to public lands, and their decision is, on appeal, affirmed by the secretary of the interior, their decision on these questions will be final, in the absence of fraud, imposition, or mistake. But it is the right of the proper courts to inquire after the

title has passed from the government and the question becomes one of private right, whether, according to the established rules of equity and the acts of congress concerning the public lands the party holding that title should hold absolutely as his own or as trustee for another. Since an entry of the public land by one person in trust for another is forbidden by statute, equity will not, on a bill to enforce such trust, decree that any entry in trust was made.

FN1 This was, of course, meant to correspond with seven tracts of forty acres each, *i. e.*, seven quarters of quarter-sections.

****3** Van Brunt continued to occupy the first house in accordance with the terms of the contract of partition until May 1st, 1854, when Warren, having paid him for one-half its cost, evicted him by legal proceedings. After his eviction, he went into an abandoned 'claim-shanty' on the part of the premises set off to him, and remained there from two to four weeks, during which time he erected a new house upon the disputed property, but on his side of the dividing line. As soon as this house was completed he moved into it with his family and resided there until his death, on the 5th of January, A. D. 1856. His family occupied the same house as their residence after his death, until their title was perfected under his claim. In 1853 and 1854 he ploughed and cultivated about twenty acres of the land occupied by him, seventeen of which were on the disputed forty. In 1854 and 1855, he ploughed a few acres more and cultivated all his improved lands. In 1855 he inclosed all his improvements with a fence, and dug some ditches. In addition to his house, he put up on the disputed property a large corn-crib, a cow-house, and other outbuildings.

After the eviction of Van Brunt from the first house, Warren moved into it and resided there until the autumn of 1854. He then went back to the house he built after the partition, and remained there until after Van Brunt's heirs *649 perfected their title. He cultivated and improved his lands upon the east of

86 U.S. 646, 1873 WL 15879 (U.S.Minn.), 22 L.Ed. 219, 19 Wall. 646
(Cite as: 86 U.S. 646, 1873 WL 15879 (U.S.Minn.))

and up to the agreed division line, by fencing, ploughing, and planting, and kept tenants in the first house all the time after he left it until the commencement of the action in the court below. Neither of the parties disputed the right of the other to occupy and cultivate up to the line of division until after the title of the Van Brunt heirs was perfected.

The township lines were surveyed through the public lands, which included the premises in dispute, in 1854, and the subdivision lines in 1855. When the township lines were run, Warren was residing with his family in the first house, and his improvements on the disputed forty, including the house, were then equal to, if not greater in value, than those of Van Brunt.

On the 19th July, 1855, Van Brunt filed in the land office his declaratory statement under the pre-emption laws, claiming the right to enter and purchase the north half of the southeast quarter and south half of the northeast quarter, section 13, T. 108 N., R. 27 W., containing one hundred and sixty acres. His claim included the forty acres in dispute. In his statement he gave the *4th of June, 1855, as the date of his settlement.*

It appeared from the pleadings and the statements of the counsel for the plaintiff, in the argument, that in December, 1855, Warren filed his declaratory statement, also claiming the right under the pre-emption laws to enter and purchase the disputed premises, and the northwest quarter, southwest quarter, and south half of the northwest quarter, section 18, T. 108 N., R. 26 W., in all one hundred and sixty acres. He gave the date of *his settlement as November 17th, 1853.* On the 7th March, 1856, Warren served a notice upon the widow and administratrix of Van Brunt, that he should contest her claim to the pre-emption of the forty acres in controversy, and, in consequence of this notice, both claimants appeared before the register and receiver of the land office and produced and examined their witnesses. After a full *650 hearing, these officers were unable to agree upon a decision, and the papers and proofs were thereupon sent to the Com-

missioner of the General Office, who, on the 4th of April, 1857, decided in favor of the Van Brunt claim. Warren appealed to the Secretary of the Interior, who, on the 31st of October, A. D. 1857, affirmed the decision of the commissioner. On the 15th of May, 1860, a patent was issued to the heirs of Van Brunt for the whole one hundred and sixty acres claimed by him. In January, 1857, Warren received a patent for the one hundred and twenty acres claimed by him in section 18, and in February, 1865, filed a bill in one of the State courts of Minnesota to recover from Van Brunt's heirs the disputed forty acres.

***4* The bill prayed a decree that Van Brunt's representatives should convey to Warren the *whole forty acres.*

The answer-which mentioned as part of a history of things which it gave, that the parties had divided their claims by running a line, which line they supposed when they made it would correspond with the east line of the forty acres, as that line would be laid down by the government survey-resisted this claim of the plaintiff and asserted title in the whole forty acres in Van Brunt's representatives.

The replication, denying that the division-line as thus agreed on gave Van Brunt any title to the forty acres, thus continued:

'And the plaintiff prays in addition to the prayer of original complaint, that, in case the court should not find for the plaintiff that he is entitled to a decree for a release of the whole disputed forty acres, that then the court may ascertain how the said alleged division-line divides said forty acres, and that the defendants, on terms of payment of the original cost of the same, be decreed to convey so much thereof as may be found to have been assigned to him, to the plaintiff.'

The Supreme Court of Minnesota, to which the case finally got, adjudged the title to be in the heirs of Van Brunt, and Warren brought the case here on error.*651

86 U.S. 646, 1873 WL 15879 (U.S.Minn.), 22 L.Ed. 219, 19 Wall. 646
(Cite as: 86 U.S. 646, 1873 WL 15879 (U.S.Minn.))

Messrs. M. S. Wilkinson and C. K. Davis, for the plaintiff in error:

1. Warren, in his declaratory statement, dates his settlement as of November 17th, 1853. Van Brunt does not pretend that *his* was made prior to June 4th, 1855. Warren's settlement was thus anterior to Van Brunt's. Where two or more persons have settled on the same quarter-section the right of pre-emption belongs to him who has made the first settlement.

2. If, in this view of the case, Warren is not entitled to the whole forty acres, a joint entry should have been allowed by the land department. There is nothing in the pre-emption laws which forbids a joint settlement, declaration, and purchase. The admitted rule, 'that where two or more persons have settled upon the same quarter-section each shall be permitted to enter his improvement as near as may be by legal subdivisions,' is very well so far as it goes, but it will not apply where both claimants have their improvements on the same quarter of the quarter-section, or forty acres, the smallest legal subdivision. In such a case exact justice would seem to require that they enter jointly the whole.^{FN2}

FN2 Opinion of the Secretary of the Interior; *Laughton v. Caldwell*, 1 *Lester's Land Laws*, p. 387, Nos. 430, 431.

3. Finally. The very least that Warren is entitled to is the part of what now turns out to be the quarter of a quarter-section; that would fall to him by giving effect to the dividing-line agreed on by the parties before the government survey. That is what he asks for, as an alternative.

Messrs. J. M. Carlisle and J. D. McPherson, contra.

The CHIEF JUSTICE, having stated the case, delivered the opinion of the court.

**5 When Warren and Van Brunt made their settlement upon the lands, in 1853, they acquired no

right of pre-emption, as the act of Congress then in force only gave that right to settlers upon lands in the then Territory of Minnesota which *652 had been surveyed.^{FN3} On the 4th of August, A.D. 1854, the provisions of the Pre-emption Act were extended to unsurveyed lands in that Territory; but it was further provided that if, when the lands were surveyed, it should appear that two or more persons had settled upon the same quarter-section, each should be permitted to enter his improvements as near as might be by legal subdivisions.^{FN4}

FN3 5 Stat. at Large, 455, § 10.

FN4 10 Id. 576.

There is no legal subdivision of the public lands less than a quarter of a quarter-section, or forty acres, except in the case of fractional sections. The lands in controversy, therefore, could not have been subdivided for the purposes of entry and purchase. The forty acres must be taken as a whole or not at all.

Warren and Van Brunt each claimed the right to purchase the whole. There could be no entry by either until the questions arising between them had been settled. To meet such a case, the act of Congress under which they each made claim, provided that the register and receiver of the land district in which the land was situated should make such settlement, subject to an appeal to, and revision by, the Secretary of the Interior.^{FN5} The Commissioner of the General Land Office exercised a supervision over this action of the register and receiver under his general powers in respect to private land claims and the issuing of patents.^{FN6} The issue of the patent upon the award of these officers was final and conclusive as between the United States and the several claimants. It passed the legal title to the patentee. The remedy of the defeated party, if any thereafter, was by a proceeding in the courts against the patentee or those claiming under him.

FN5 5 Id. § 11; 9 Id. 395, § 3.

86 U.S. 646, 1873 WL 15879 (U.S.Minn.), 22 L.Ed. 219, 19 Wall. 646
(Cite as: 86 U.S. 646, 1873 WL 15879 (U.S.Minn.))

FN6 5 Id. 107, § 1; *Barnard's Heirs v. Ashley's Heirs*, 18 Howard, 44.

It is claimed on the part of the defendants in error that the decision of the government officers in this case is conclusive as between the claimants themselves, inasmuch as there was an actual submission of the controversy by both, and the court has found that there was no fraud, unfairness, *653 or misconduct in the hearing or in the production of the testimony, either on the part of Van Brunt or his heirs, or the several officers who were called upon to act.

**6 This question has recently been fully considered by this court, in the case of *Johnson v. Towsley*,^{FN7} and it was there held^{FN8} that 'when those officers decide controverted questions of fact, in the absence of fraud or impositions, or mistake, their decision on those questions will be final,' but ^{FN9} that 'it was the right of the proper courts to inquire, after the title had passed from the government and the question became one of private right, whether, according to the established rules of equity and the acts of Congress concerning the public lands, the party holding that title should hold absolutely as his own or as trustee for another.' We are satisfied with this ruling, and this leads us to inquire whether, upon the facts as found by the court, the officers of the government did err in awarding the patent to Van Brunt. The record does not disclose the facts found by the officers.

FN7 13 Wallace, 72.

FN8 Page 86.

FN9 Page 87.

It is first contended by Warren that the patent should have been issued to him, because his settlement upon the disputed premises was both in fact and by the declaratory statements of the respective parties anterior to that of Van Brunt, and because by the act of Congress the first settlement gives the better right. It is not important for us to know what the claims of the parties have been. We must look

to the facts as they actually existed, and from these it appears that neither of the parties had an advantage over the other by reason of a prior settlement. They both went upon the premises at the same time and, for awhile, their occupancy was joint. After the partition, Van Brunt remained in the house alone. He was there in no respect as the tenant of Warren, but by reason of his right as part owner. His short absence after his eviction upon his lands adjoining, cannot be considered an abandonment of his possession, for he must have been all the time at work upon his new house, which was finished and ready for occupation in *654 from two to four weeks. Warren was absent at Mankato, after the partition, from July until October, and he did not actually reside himself on the disputed forty acres many months. He had, therefore, no claim superior to that of Van Brunt on account of his possession.

It is next insisted that a joint entry of the forty acres by the two should have been permitted. No such demand was made upon the government by Warren. He claimed the right to enter the whole, and upon that claim the parties went to a hearing. He might have asked to make his entry jointly with Van Brunt, but he did not. He is concluded by his election made at the time. Having been defeated upon his claim as made, he cannot, in the absence of fraud or surprise, come into court and ask relief upon another, which he might have urged then. Besides, he asks no such relief in his bill, which is the foundation of the present proceeding. He there claims a superior right of pre-emption to the whole, and not an equitable right to a joint ownership.

**7 It is again insisted that a decree should have been entered in favor of Warren, charging the heirs of Van Brunt as his trustees for all that part of the premises situated on the east side of the partition-line. This claim was not made in the bill, but the contract of partition having been set out in the answers for the purpose of explaining the character of the occupancy of Van Brunt, Warren asked in his replication to be allowed the benefit of it in case he failed to maintain his right to the whole. He was

86 U.S. 646, 1873 WL 15879 (U.S.Minn.), 22 L.Ed. 219, 19 Wall. 646
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willing to repudiate the contract if by so doing he could get an advantage, but if he failed in that, insisted upon its enforcement. But such a contract cannot be enforced to any extent. The pre-emption laws provided, at the time of this entry and purchase, that before any person should be allowed to enter lands upon a claim for pre-emption he must make oath that he had not directly or indirectly made any agreement or contract in any way or manner with any person, by which the title he might acquire by his purchase should enure in whole or in part to the benefit of any person except himself. *655 Forfeiture of title to the land purchased, and of the money paid for it, was made the penalty of false swearing in this particular. An entry could not have been made, therefore, by Van Brunt in trust for Warren; and if it could not have been made, a court of equity will not decree that it was. All contracts in violation of this important provision of the act are void and are never enforced. It has been so decided many times by the Supreme Court of Minnesota.^{FN10} We are satisfied with these decisions.

FN10 St. Peter Co. v. Bunker, 5 Minnesota, 199; Evans v. Folsom, Ib. 422; Bruggerman v. Hoerr, 7 Id. 343; McCue v. Smith, 9 Id. 259.

In our opinion, there was no error in the decision of the government officers, or in the decree of the Supreme Court of Minnesota.

DECREE AFFIRMED.

U.S.,1873
Warren v. Van Brunt
86 U.S. 646, 1873 WL 15879 (U.S.Minn.), 22 L.Ed.
219, 19 Wall. 646

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APPENDIX B

C

Supreme Court of New Hampshire.
 Finn M.W. CASPERSEN and Barbara M. Caspersen,
 Trustees of a Revocable Trust Dated December 27,
 1972

v.

TOWN OF LYME and another.
 No. 92-070.

June 27, 1995.

Landowners brought action against town challenging validity of zoning ordinance. The Superior Court of Grafton County, Perkins, J., upheld validity of zoning ordinance and landowners appealed. The Supreme Court, Horton, J., held that: (1) landowners lacked standing to bring exclusionary zoning claims; (2) zoning ordinance was properly enacted; (3) provisions of ordinance did not violate landowners' substantive due process rights; and (4) ordinance was not growth control ordinance.

Affirmed.

Brock, C.J., concurred specially and filed an opinion.

West Headnotes

[1] Declaratory Judgment 118A ⚡209

118A Declaratory Judgment
118AII Subjects of Declaratory Relief
118AII(K) Public Officers and Agencies
118Ak209 k. Counties and Municipalities
 and Their Officers. Most Cited Cases

Zoning and Planning 414 ⚡564

414 Zoning and Planning
414X Judicial Review or Relief
414X(A) In General
414k563 Nature and Form of Remedy
414k564 k. Appeal. Most Cited Cases

Zoning and Planning 414 ⚡567**414 Zoning and Planning**414X Judicial Review or Relief414X(A) In General414k563 Nature and Form of Remedy414k567 k. Suit in Equity. Most Cited**Cases**

Party may appeal adverse zoning action by way of statutory appeal, by way of declaratory judgment, or by way of equitable proceeding. RSA 677:2, 677:4.

[2] Declaratory Judgment 118A ⚡129118A Declaratory Judgment118AII Subjects of Declaratory Relief118AII(F) Ordinances118Ak129 k. Zoning Ordinances. Most Cited Cases**Zoning and Planning 414 ⚡564**414 Zoning and Planning414X Judicial Review or Relief414X(A) In General414k563 Nature and Form of Remedy414k564 k. Appeal. Most Cited Cases

Facial challenge to zoning ordinance may be initiated by way of statutory appeal or declaratory judgment.

[3] Declaratory Judgment 118A ⚡209118A Declaratory Judgment118AII Subjects of Declaratory Relief118AII(K) Public Officers and Agencies118Ak209 k. Counties and Municipalities
and Their Officers. Most Cited Cases**Zoning and Planning 414 ⚡564**414 Zoning and Planning414X Judicial Review or Relief414X(A) In General414k563 Nature and Form of Remedy414k564 k. Appeal. Most Cited Cases**Zoning and Planning 414 ⚡567**

414 Zoning and Planning

414X Judicial Review or Relief

414X(A) In General

414k563 Nature and Form of Remedy

414k567 k. Suit in Equity. Most Cited

Cases

Challenge to zoning action as applied to particular property may be initiated by way of statutory appeal, by way of declaratory judgment, or by way of equitable proceeding.

[4] Zoning and Planning 414 ↪571

414 Zoning and Planning

414X Judicial Review or Relief

414X(A) In General

414k571 k. Right of Review. Most Cited

Cases

To have standing to take direct statutory appeal from zoning action of legislative body, appealing party must have been "aggrieved" by that action; aggrievement is when appealing party shows direct definite interest in outcome of proceedings and existence of that interest is factual determination. RSA 677:4.

[5] Zoning and Planning 414 ↪571

414 Zoning and Planning

414X Judicial Review or Relief

414X(A) In General

414k571 k. Right of Review. Most Cited

Cases

General interest in diverse community is not sufficient aggrievement to sustain standing to challenge zoning action of legislative body.

[6] Zoning and Planning 414 ↪571

414 Zoning and Planning

414X Judicial Review or Relief

414X(A) In General

414k571 k. Right of Review. Most Cited

Cases

Landowners were not sufficiently aggrieved by exclusionary effect of ordinance that they alleged made it financially impracticable for developers to build affordable housing where landowners admitted they were not in construction business and had no present or future intention to provide low to moderate income

housing on their land. RSA 677:4.

[7] Zoning and Planning 414 ↪131

414 Zoning and Planning

414II Validity of Zoning Regulations

414II(C) Procedural Requirements

414k131 k. In General. Most Cited Cases

Ordinances and regulations that controlled disparate land uses and not all property development did not represent definite and detailed legislation to control land development and were not so comprehensive as to be de facto zoning, and thus, subsequent zoning ordinance was properly enacted by simple majority, where ordinances and regulations controlled mobile home and trailer parks, signs, building permits, excavation, driveway access, flood plain, institutional land, and town beach.

[8] Zoning and Planning 414 ↪131

414 Zoning and Planning

414II Validity of Zoning Regulations

414II(C) Procedural Requirements

414k131 k. In General. Most Cited Cases

Zoning ordinance is properly enacted by simple majority where preexisting land use regulations are not so comprehensive as to acquire status of de facto zoning. RSA 675:5.

[9] Constitutional Law 92 ↪3847

92 Constitutional Law

92XXVII Due Process

92XXVII(A) In General

92k3847 k. Relationship to Other Constitu-

tions. Most Cited Cases

(Formerly 92k251)

In deciding substantive due process claims Supreme Court first looks to State Constitution and then, if necessary, to Federal Constitution to determine whether it provides claimants greater rights, and if federal law is not more favorable to claimants Supreme Court will make no separate federal analysis. U.S.C.A. Const.Amend. 14.

[10] Constitutional Law 92 ↪1022

92 Constitutional Law

92VI Enforcement of Constitutional Provisions

92VI(C) Determination of Constitutional Questions

92VI(C)3 Presumptions and Construction as to Constitutionality

92k1006 Particular Issues and Applications

92k1022 k. Due Process. Most Cited

Cases

(Formerly 92k48(4.1))

Constitutional Law 92 ↪ 4092

92 Constitutional Law

92XXVII Due Process

92XXVII(G) Particular Issues and Applications

92XXVII(G)3 Property in General

92k4091 Zoning and Land Use

92k4092 k. In General. Most Cited

Cases

(Formerly 92k278.2(1))

Zoning and Planning 414 ↪ 672

414 Zoning and Planning

414X Judicial Review or Relief

414X(C) Scope of Review

414X(C)3 Presumptions

414k672 k. Validity of Regulations in General. Most Cited Cases

Substantive due process challenge questions fundamental fairness of local zoning ordinances both generally and in relation to particular ordinance applied to particular property under particular considerations existing at time of litigation and there is presumption that properly enacted zoning ordinance is valid. U.S.C.A. Const.Amend. 14.

[11] Zoning and Planning 414 ↪ 647.1

414 Zoning and Planning

414X Judicial Review or Relief

414X(C) Scope of Review

414X(C)2 Additional Proofs and Trial De Novo

414k647 Validity of Regulations, Sufficiency of Evidence

414k647.1 k. In General. Most Cited

Cases

Finding that 50-acre minimum lot size in mountain

and forest district was rationally related to town's legitimate goals of encouraging forestry and timber harvesting was supported by expert testimony that small lots create access problems, that there are not any opportunities for harvesting on small lots and there are more opportunities for harvesting on 50 acre lots and that size has important effect on profitability of forestry enterprises.

[12] Constitutional Law 92 ↪ 4093

92 Constitutional Law

92XXVII Due Process

92XXVII(G) Particular Issues and Applications

92XXVII(G)3 Property in General

92k4091 Zoning and Land Use

92k4093 k. Particular Issues and Applications. Most Cited Cases

(Formerly 92k278.2(1))

Zoning and Planning 414 ↪ 63

414 Zoning and Planning

414II Validity of Zoning Regulations

414II(B) Regulations as to Particular Matters

414k62 Architectural and Structural Designs; Value

414k63 k. Area and Frontage Requirements. Most Cited Cases

There is no arbitrary maximum lot size under substantive due process analysis of zoning ordinance controlling lot size and lot size must be assessed in light of zoning goals and if goals are legitimate and lot size is reasonable means of accomplishing goals there is no constitutional violation. U.S.C.A. Const.Amend. 14.

[13] Zoning and Planning 414 ↪ 63

414 Zoning and Planning

414II Validity of Zoning Regulations

414II(B) Regulations as to Particular Matters

414k62 Architectural and Structural Designs; Value

414k63 k. Area and Frontage Requirements. Most Cited Cases

Mere fact that other towns in state had minimum lot sizes less than 50 acres did not render ordinance setting minimum lot size at 50 acres in mountain and

forest district unconstitutional where there was no evidence comparing means and objectives of other towns with similar geographic characteristics and many of those other zoning districts were residential or commercial. U.S.C.A. Const.Amend. 14.

[14] Constitutional Law 92 ↪ 4092

92 Constitutional Law
92XXVII Due Process
92XXVII(G) Particular Issues and Applications

92XXVII(G)3 Property in General
92k4091 Zoning and Land Use
92k4092 k. In General. Most Cited

Cases

(Formerly 92k278.2(1))

In determining whether zoning ordinance is constitutional, analysis of least restrictive alternatives is not part of rational basis analysis and Supreme Court will not second guess town's choice of means to accomplish its legitimate goals so long as means chosen are rationally related to those goals, despite argument that better alternatives exist to accomplish goals. U.S.C.A. Const.Amend. 14.

[15] Zoning and Planning 414 ↪ 278.1

414 Zoning and Planning
414V Construction, Operation and Effect
414V(C) Uses and Use Districts
414V(C)1 In General
414k278 Particular Terms and Uses
414k278.1 k. In General. Most Cited

Cases

Growth control ordinances are intended to regulate and control timing of development. RSA 674:22.

[16] Zoning and Planning 414 ↪ 278.1

414 Zoning and Planning
414V Construction, Operation and Effect
414V(C) Uses and Use Districts
414V(C)1 In General
414k278 Particular Terms and Uses
414k278.1 k. In General. Most Cited

Cases

Ordinance is not growth control ordinance merely because it has effect on growth where it places no time-related controls on district, and where nothing in

ordinance prevents development of district to its full capacity immediately even though density of development would be lower in one district than in another. RSA 674:22.

****760 *638** Castaldo, Hanna & Malmberg, P.C., Concord (Neil F. Castaldo, orally, on the brief, and Steven L. Winer, on the brief), for the plaintiffs.

Baldwin & De Seve, Concord (Carolyn W. Baldwin, on the brief and orally), for the defendant, Town of Lyme.

Daschbach, Kelly and Cooper, P.A., Lebanon (Joseph F. Daschbach, on the brief and orally), for the intervenors.

Jed Z. Callen, New Boston, by brief for the American Planning Ass'n, as amicus curiae.

H. Bernard Waugh, Jr., Concord, by brief for the New Hampshire Mun. Ass'n, as amicus curiae.

David L. Harrigan, Concord, by brief for the Society for the Protection of New Hampshire Forests, as amicus curiae.

HORTON, Justice.

The plaintiffs, Finn M.W. Caspersen and Barbara M. Caspersen, trustees, appeal a decision of the Superior Court (Perkins, J.) ****761** upholding the validity of a zoning ordinance enacted by the defendant, Town of Lyme (town). On appeal, the plaintiffs argue that a provision in the ordinance that prohibits lot sizes of less than fifty acres in a mountain and forest district: (1) violates their substantive due process and equal protection rights under the State and Federal Constitutions; (2) is exclusionary; (3) violates New Hampshire's controlled growth statutes; and (4) was improperly adopted. We affirm.

The town is a rural community situated on the western edge of the State, roughly at the midpoint of the border between New Hampshire ***639** and Vermont. It is bounded on the west by the Connecticut River and on the east by mountainous, undeveloped terrain.

The plaintiffs own roughly 800 acres of land in the southeast corner of town, which they purchased between 1962 and 1990. They manage the property for

forestry. For tax purposes, they keep all but a few acres classified as open space land. See RSA 79-A:2, IX (Supp.1994). The plaintiffs have never attempted to develop their land and have no plans to do so.

In 1989, the town adopted a comprehensive zoning ordinance which is the subject of this appeal. In the years preceding the town's adoption of the zoning ordinance, the town passed numerous general ordinances regulating certain land uses. During the early 1980's, the town's planning board began developing a master plan pursuant to RSA 674:1-:4 (1986 & Supp.1994). In 1985, having completed the master plan, the town began work on a comprehensive zoning ordinance.

The first ordinance proposal was rejected by the voters. This proposal allowed only one dwelling per lot and prohibited subdivision. The voters were concerned about these provisions. The planning board, in the words of one of its members, "went back to the drawing board."

The present version of the zoning ordinance permits forestry and single family dwellings within the mountain and forest district. It establishes a minimum conforming lot size of fifty acres. The stated objectives of the mountain and forest district include: (1) encouraging the continuation of large tracts of forest land; (2) encouraging "forestry and timber harvesting," while permitting other compatible uses including low density development; (3) protecting wildlife habitat and natural area; and (4) avoiding unreasonable town expenses.

Two public hearings on the revised ordinance were held in January and February 1989. On March 6, 1989, the plaintiffs and other landowners from the proposed mountain and forest district submitted a protest petition to the town pursuant to RSA 675:5 (1986) (current version at RSA 675:5 (1986 & Supp.1994)). The revised ordinance was passed at a regular town meeting. Less than a two-thirds majority voted for its passage.

The plaintiffs challenged the ordinance. The town's board of selectmen held a rehearing but did not sustain the plaintiffs' challenge. The plaintiffs appealed to the superior court. See RSA 677:4 (1986) (current version at RSA 677:4 (Supp.1994)). Several town residents intervened in the action in support of the

town. The superior court upheld the validity of the ordinance. This appeal followed.

I. Standing to Challenge Exclusionary Zoning

In their appeal to the superior court, the plaintiffs complained that the zoning ordinance is exclusionary because it effectively precludes development of low- or moderate-income housing on their property in the *640 mountain and forest district. The trial court ruled that the plaintiffs lacked standing to challenge the ordinance on that basis. We agree.

[1][2][3] The plaintiffs appealed to the superior court under the provisions of RSA 677:4. A party may appeal an adverse zoning action: (1) by way of statutory appeal, see RSA 677:2 (1986) (current version at RSA 677:2 (Supp.1994)) and RSA 677:4; (2) by way of declaratory judgment, see Blue Jay Realty Trust v. City of Franklin, 132 N.H. 502, 503, 504, 567 A.2d 188, 193, 195 (1989); or (3) by way of an equitable proceeding, see Soares v. Atkinson, 129 N.H. 313, 314, 529 A.2d 867, 867 (1987) (underlying action commenced by bill in equity**762 seeking injunctive relief). A facial challenge to a zoning ordinance may be initiated by way of statutory appeal, see Towle v. Nashua, 106 N.H. 394, 395-96, 212 A.2d 204, 205 (1965), or declaratory judgment, see Gutoski v. Town of Winchester, 114 N.H. 414, 415, 322 A.2d 4, 5 (1974). A challenge to zoning action as applied to a particular property may be initiated by way of statutory appeal, see, e.g., Narbonne v. Town of Rye, 130 N.H. 70, 72, 534 A.2d 388, 389 (1987), declaratory judgment, see Blue Jay Realty, 132 N.H. at 503-04, 567 A.2d at 193-95, or equitable proceeding, see Soares, 129 N.H. at 314, 529 A.2d at 867.

[4] To have standing to take a direct statutory appeal from a zoning action of a legislative body, the appealing party must have been "aggrieved" by that action. RSA 677:4 (1986); see Shaw v. City of Manchester, 118 N.H. 158, 160, 384 A.2d 491, 493 (1978). Aggrievement is found when the appellant shows a direct definite interest in the outcome of the proceedings. See Weeks Restaurant Corp. v. City of Dover, 119 N.H. 541, 544, 404 A.2d 294, 296-97 (1979). The existence of this interest, and the resultant standing to appeal, is a factual determination in each case. *Id.* at 544-45, 404 A.2d at 296.

To have standing to appeal the validity of the zoning

ordinance to the superior court, the plaintiffs had to show that they were "aggrieved" by the town's decision to adopt the ordinance. RSA 677:4 (1986). Whether the plaintiffs have a sufficient interest in contesting the effect of the ordinance on the availability of low- or moderate-income housing so as to be aggrieved by the alleged exclusionary effect of the ordinance requires a factual examination of the circumstances.

[5][6] The plaintiffs own land in the mountain and forest district and, therefore, themselves, are not excluded from the area by the alleged exclusionary effect of the ordinance. Although they allege that the ordinance "makes it financially impracticable for developers to build affordable housing," they admit that they are not in the construction business and have no present or future intention to provide low- or moderate-income housing on their own land. The plaintiffs' general interest in a diverse community is not sufficient to *641 sustain their standing on this issue. Warth v. Seldin, 422 U.S. 490, 512-14, 95 S.Ct. 2197, 2212-13, 45 L.Ed.2d 343 (1975). Based on the record below, we affirm the trial court's factual finding that the plaintiffs are not sufficiently aggrieved by the ordinance to challenge the alleged exclusionary effect of the ordinance on others.

II. Enactment of the Zoning Ordinance

The plaintiffs contend that the ordinance was not validly enacted because it was only passed by a simple majority vote. They argue that the pre-existing land use ordinances were sufficiently comprehensive, when taken together, to constitute *de facto* zoning, and therefore the approval of the *de jure* ordinance in 1989 was not an adoption of a new zoning ordinance, but an amendment of the existing *de facto* zoning. Accordingly, they argue that pursuant to RSA 675:5, I (1986) (current version at RSA 675:5 (Supp.1994)), a two-thirds majority favorable vote was required to amend the *de facto* scheme and pass the zoning ordinance.

"When legislation attempts to control population growth through definite and detailed control of land development, it must be enacted in accordance with the zoning statute." Beck v. Town of Raymond, 118 N.H. 793, 799, 394 A.2d 847, 851 (1978). In *Beck*, the Town of Raymond enacted a growth control ordinance pursuant to its general police power. We held

that the enactment of the ordinance was an invalid exercise of the town's police power because the ordinance was "so comprehensive" as to require compliance with the zoning enabling act. *Id.* at 799-800, 394 A.2d at 851. Although the plaintiffs rely on *Beck* as support for their argument, the claim brought by the plaintiffs differs from the one brought in *Beck*. In this case, the town complied with the zoning enabling act in adopting the ordinance. Moreover, even if our analysis in *Beck* applied to the facts of this case, we are not persuaded that the land use regulations enacted before the plan were so comprehensive as to constitute *de facto* zoning.

[7][8] Prior to adopting the comprehensive zoning ordinance in 1989, and pursuant to several enabling acts, the town adopted a mobile home and trailer park ordinance, a sign ordinance, a town beach bylaw, a building permit ordinance, excavation regulations, driveway access regulations, a floodplain ordinance, and a large institutional land ordinance. Considered collectively, these regulations do not represent "definite and detailed" legislation designed to control land development. See *Beck*, 118 N.H. at 799-800, 394 A.2d at 851. Whereas the growth control ordinance in *Beck* affected all property development in Raymond, these ordinances regulate a set of disparate land uses. Because we do not find that the pre-existing land use regulations were "so comprehensive" as to acquire the status of *de facto* zoning, we hold that the town properly enacted the zoning ordinance by a simple majority.

*642 III. Equal Protection and Substantive Due Process

The plaintiffs argue that the ordinance violates their substantive due process and equal protection rights under the State and Federal Constitutions without distinguishing between the two arguments. Consideration of the plaintiffs' substantive due process claim is appropriate. The plaintiffs' amended petition to appeal to the superior court, although not using the words, states a substantive due process claim and asserts an unconstitutional action. Further, a substantial portion of the trial record is devoted to the merits of a substantive due process claim. Such is not the case with any claim of equal protection. Other than under the subject of exclusionary zoning, which is dealt with above, there is no claim articulated, either in the amended petition to appeal or in the trial re-

cord, that the ordinance fails to provide equal protection to any person or class. There are passing and undeveloped references to equal protection in the plaintiffs' requests for findings of fact and rulings of law and a passing reference to equal protection in the order of the trial court. The plaintiffs' notice of appeal includes equal protection in its general challenge to the constitutionality of the ordinance, and the plaintiffs' brief makes a general claim that the equal protection clauses "protect individuals' property rights from unrestrained intrusion by the government in the form of zoning." Such a broad statement may be true of substantive due process, but it is hardly true of equal protection, in the case where the unrestrained intrusion is equally applied to all persons and classes. Therefore, we will address only whether the ordinance violates the plaintiffs' substantive due process rights. See N.H. CONST. pt. I, arts. 2, 12, 15; U.S. CONST. amend. XIV, § 1.

[9] In deciding this case, we first look to our own State Constitution, and then, if necessary, to the Federal Constitution to determine whether it provides the plaintiffs greater rights, *State v. Ball*, 124 N.H. 226, 232, 471 A.2d 347, 351 (1983), citing decisions of federal courts and courts of other jurisdictions when helpful in analyzing and deciding the State issue. *State v. Maya*, 126 N.H. 590, 594, 493 A.2d 1139, 1143 (1985). Because federal law is not more favorable to the plaintiffs in this case, we make no separate federal analysis. See *Resolution Trust Corp. v. Town of Highland Beach*, 18 F.3d 1536, 1549 (11th Cir.1994).

[10] A substantive due process challenge questions the fundamental fairness of "local zoning ordinances ... both generally and in the relationship of the particular ordinance to particular property under particular conditions existing at the time of litigation." 1 E. Ziegler, Jr., *Rathkopf's The Law of Zoning and Planning*, § 3.01[1], at 3-3 (1994) (footnote omitted). "The appropriate inquiry for reviewing [a] substantive due process claim is whether the claimants proved that the provision constitutes a restriction on property rights that is not rationally related to the town's legitimate goals." *643 *Asselin v. Town of Conway*, 137 N.H. 368, 372, 628 A.2d 247, 250 (1993) (emphasis omitted). Given the presumption that a properly enacted zoning ordinance is valid, our analysis focuses on whether the record supports the trial court's decision upholding the ordinance. *Id.*

The plaintiffs concede that the ordinance was passed for legitimate purposes, including to encourage forestry and timber harvesting in the mountain and forest district. See RSA 672:1, III-c (Supp.1994) (effective date after passage of subject ordinance). Nevertheless, **764 the plaintiffs maintain that the ordinance is constitutionally infirm because the record does not support the conclusion that the fifty-acre minimum lot size in the mountain and forest district is rationally related to the accomplishment of those goals. We disagree.

[11][12] Robert Burke, an expert in forestry, testified that small lots create access problems because of the necessity to gain permission to cross abutting lots. He testified that "on small properties you don't have many opportunities for harvesting," and therefore "size has an important effect" on the profitability of forestry enterprises. Burke noted that on fifty acres, there are more opportunities for harvesting because you have the potential to grow enough different kinds of trees. He concluded that fifty acres is the minimum lot size where forestry becomes profitable. The evidence supports a finding that the fifty-acre minimum lot size in the mountain and forest district is rationally related to the town's legitimate goals of encouraging forestry and timber harvesting in that district. There is no arbitrary maximum lot size controlling a substantive due process analysis. The constitutionality of a lot size must be assessed in light of the town's zoning goals. See, e.g., *Gisler v. County of Madera*, 38 Cal.App.3d 303, 112 Cal.Rptr. 919, 921-22 (1974) (eighteen acres for agricultural use); *D & R Pipeline Const. Co. v. Greene County*, 630 S.W.2d 236, 237 (Mo.Ct.App.1982) (ten acres for reservoir protection); So. *Burlington Cty. N.A.A.C.P. v. Mt. Laurel Tp.*, 92 N.J. 158, 456 A.2d 390, 471 (1975) (five acres for open space); *Oregonians in Action v. LCDL*, 121 Or.App. 497, 854 P.2d 1010, 1014-15 (1993) (eighty acres for new farm parcels); *Codorus Tp. v. Rodgers*, 89 Pa.Cmwlt. 79, 492 A.2d 73, 75 (1985) (fifty acres for agricultural use); see also Wis.Stat. § 91.75(1) (1992) (legislatively created thirty-five acre minimum for farmland preservation); National Agricultural Lands Study, *The Protection of Farmland: A Reference Guidebook for State and Local Governments* 114-16 (1981) (forty-five selected communities with agricultural minimum lot sizes ranging from ten to 640 acres, average being sixty-three acres). If a town's goals are legitimate, and a

large minimum lot size a reasonable means of accomplishing those goals, then there is no constitutional violation.

*644 [13] Nor do we find support in the record for the plaintiffs' argument that the fifty-acre minimum is unreasonable when considered in a regional context. The plaintiffs did not offer evidence comparing the means and objectives of other towns with similar geographic characteristics. The mere fact that other towns in the State have minimum lot sizes less than fifty acres does not render the Lyme ordinance unconstitutional. Many of those zoning districts are, no doubt, residential or commercial in character. The fifty-acre minimum lot size would probably be invalid as applied to a residential or commercial zoning district. The primary objective of the mountain and forest district is the encouragement of the continuation of large tracts of forest land to promote "forestry and timber harvesting." *Town of Lyme Zoning Ordinance*, art. III, § 3.257 (1989).

[14] Finally, we note that the plaintiffs have argued that the fifty-acre minimum lot size is unconstitutional because better alternatives exist to accomplish the town's goals of encouraging forestry and timber harvesting. An analysis of least restrictive alternatives is not part of a rational basis analysis. *Heller v. Doe by Doe*, 509 U.S. 312, ---, 113 S.Ct. 2637, 2648, 125 L.Ed.2d 257 (1993). We will not second-guess the town's choice of means to accomplish its legitimate goals, so long as the means chosen is rationally related to those goals.

IV. Growth Control

The plaintiffs' final argument is that the ordinance is a growth control ordinance that did not comply with RSA 674:22 (1986). They maintain that the fifty-acre minimum operates as a growth control because it effectively halts development in one-half of the town's area, thereby restricting growth in the town as a whole.

RSA 674:22 provides:

The local legislative body may further exercise the powers granted under this subdivision to regulate and control the timing of development. Any ordinance imposing **765 such a control may be adopted only after preparation and adoption by the planning board

of a master plan and a capital improvement program and shall be based upon a growth control management process intended to assess and balance community development needs and consider regional development needs.

[15][16] Growth control ordinances are intended "to regulate and control the timing of development." RSA 674:22; see *Stoney-Brook Dev. Corp. v. Town of Fremont*, 124 N.H. 583, 589, 474 A.2d 561, 564 (1984). Applying this definition to this case, we hold that the Lyme ordinance is not a growth control ordinance pursuant to RSA 674:22. *645 The ordinance places no time-related controls on the mountain and forest district. See, e.g., *Stoney-Brook Dev. Corp.*, 124 N.H. at 586, 474 A.2d at 562 (annual limits on building permits); *Beck*, 118 N.H. at 795, 394 A.2d at 848 (number of annual building permits based on town-wide annual growth rates). Nothing in the ordinance prevents development of the district to its full capacity immediately, albeit the density of such development would be lower in the mountain and forest district than in the other districts. "Any denial of subdivision approval will naturally have the secondary effect of limiting growth." *Zukis v. Town of Fitzwilliam*, 135 N.H. 384, 387, 604 A.2d 956, 958 (1992). RSA 674:22, however, does not apply to a zoning action merely because the zoning action has an effect on growth. The Lyme ordinance is not designed to "regulate and control the timing" of development in the town. We hold that RSA 674:22 is not applicable to this case and affirm the trial court's refusal to find that the "ordinance is an invalidly enacted growth control ordinance."

In summary, we hold that the plaintiffs lack standing to bring an exclusionary zoning claim, that the Lyme zoning ordinance was properly enacted under RSA chapter 675, that the provisions of the ordinance do not violate the plaintiffs' substantive due process rights, and that the ordinance is not a growth control ordinance pursuant to RSA 674:22. The trial court's decision is affirmed.

Affirmed.

JOHNSON and THAYER, JJ., did not sit; BROCK, C.J., concurred specially; BATCHELDER, J., concurred. BROCK, Chief Justice, concurring specially: I concur in the result reached by the majority in this case. I would reach a different result under the sub-

stantive due process analysis had the plaintiffs not conceded, at the trial court and on appeal, that the ordinance was passed for legitimate purposes. Section 3.257 of the ordinance reads, in its entirety, as follows:

Mountain and Forest Conservation District. The boundaries of the Mountain and Forest Conservation District are shown on the Lyme Zoning Map. Lands in the Mountain and Forest District are extremely remote and are reserved for very low intensity land uses. The *primary objective* of the Mountain and Forest Conservation District is to preserve and protect Lyme's natural heritage of large tracts of undeveloped forest land in the more remote sections of Town and thereby serve the following additional objectives: (1) encourage continuation of large contiguous tracts of forest land in private ownership to provide forest resources and outdoor recreation; (2) encourage forestry and timber harvesting and permit other compatible uses including very low intensity development that will *646 allow the land to appreciate in value; (3) protect natural areas; (4) protect wildlife habitat; (5) maintain ecological balance; (6) preserve scenic views; (7) avoid the burden of unreasonable municipal expenditures for the purpose of providing municipal services to remote and difficult locations; and (8) avoid the risk to health and safety of municipal employees and volunteers of providing emergency services to remote and difficult locations.

(Emphasis added.) I would have a difficult time finding the "primary objective" of the ordinance, preserving and protecting a "heritage" of "large tracts of undeveloped forest land," to be a legitimate zoning purpose. I also fail to understand how a fifty-acre minimum lot size requirement on residential land **766 relates to the encouragement of commercial forestry.

Further, I believe that, given an appropriate occasion, we should review our holding in *Asselin v. Town of Conway*, 137 N.H. 368, 372, 628 A.2d 247, 250 (1993), that substantive due process challenges to zoning ordinances are evaluated under the rational basis standard, while equal protection challenges to those same ordinances are reviewed with heightened scrutiny. The constitutional guarantees of substantive due process and equal protection involve complementary concepts: If a challenged law burdens all persons equally when they exercise a particular right,

we review the law under the due process clause, but if the law distinguishes between who may and may not exercise a particular right, then we review it under the equal protection guarantee. E.g., 2 R. Rotunda & J. Nowak, *Treatise on Constitutional Law: Substance and Procedure* § 15.4, at 400 (2d ed. 1992). The difference in analysis is not based on the individual right being exercised or infringed upon; it is, rather, based on the way that the challenged law or action operates on individuals. Under the United States Constitution, the identity of scrutiny seems never to have been challenged: "Analysis under the equal protection clause of the fourteenth amendment is identical to that used under the due process clauses." *Id.* § 14.7, at 370.

Ownership, use, and enjoyment of property are fundamental rights protected by both the State and Federal Constitutions. *Town of Chesterfield v. Brooks*, 126 N.H. 64, 67, 489 A.2d 600, 603-04 (1985); see *Asselin v. Town of Conway*, 135 N.H. 576, 577-78, 607 A.2d 132, 133 (1992). Zoning ordinances should be reviewed with heightened scrutiny, *Brooks*, 126 N.H. at 69, 489 A.2d at 604, regardless of the nature of the constitutional challenge made to them.

N.H., 1995.
Caspersen v. Town of Lyme
139 N.H. 637, 661 A.2d 759

END OF DOCUMENT

APPENDIX C

Chapter 2.100
CODE INTERPRETATIONS OF DEVELOPMENT REGULATIONS

Sections:

- 2.100.010 Purpose.
- 2.100.020 Definitions.
- 2.100.030 Requests – acknowledgement – notice.
- 2.100.040 Procedure for issuance.
- 2.100.050 Administrative appeals.
- 2.100.060 Rules.
- 2.100.070 Fees.

2.100.010 Purpose. This chapter establishes the procedure by which King County will render a formal interpretation of a development regulation. The purpose of such an interpretation includes clarifying conflicting or ambiguous provisions in King County's development regulations. (Ord. 14033 § 3, 2001).

2.100.020 Definitions.

A. "Code interpretation" means a formal statement regarding the meaning or requirements of a particular provision in King County's development regulations.

B. "Department" means the King County department with primary responsibility for administering or implementing a particular development regulation.

C. "Development regulation" means the controls placed on development or land use activities by the county including, but not limited to, zoning ordinances, critical areas ordinances, shoreline master programs, official controls, planned unit development ordinances, subdivision ordinances and binding site plan ordinances, together with any amendments thereto. A development regulation does not include a decision to approve a project permit application, as defined in RCW 36.70B.020, even though the decision may be expressed in an ordinance by the county.

D. "Director" means the director or the director's designee of the King County department with primary responsibility for administering or implementing a particular development regulation.

E. "Party of record" means a person who has submitted written comments, testified, asked to be notified or is the sponsor of a petition entered as part of the official county record on a specific development proposal. (Ord. 14033 § 2, 2001).

2.100.030 Requests – acknowledgement – notice.

A. A person may request a code interpretation by submitting a request in accordance with this chapter. The director may also issue a code interpretation on the director's own initiative.

B. A request for a code interpretation must be submitted in writing to the director of the department with primary responsibility administering or implementing the development regulation that is the subject of the request. If the person is uncertain as to the appropriate department to which the code interpretation request should be submitted, the person shall submit the request to the director of the department of development and environmental services, who shall make the determination and forward the request to the appropriate department, and notify the person as to which department is responsible for responding to the request.

C. A code interpretation request must:

1. Be in writing and shall be clearly labeled "Request for Code Interpretation." Failure to satisfy this requirement relieves the director of any obligation to acknowledge or otherwise process the request;
2. Identify the person seeking the code interpretation and provide an address to which correspondence regarding the requested code interpretation should be mailed;
3. Identify the specific section or sections of King County's development regulations for which an interpretation is requested;
4. Identify the parcel or site, if the code interpretation request involves a particular parcel of property or site;
5. Identify the code enforcement action, if the code interpretation request involves a code enforcement case;
6. Be accompanied by the fee required under K.C.C. 2.100.070; and
7. Be limited to a single subject, which may require interpretation of one or more code sections.

D.1. Within fifteen business days after receiving a code interpretation request, the director shall acknowledge receipt of the request. The director shall mail the acknowledgment to the person submitting the request at the address provided in the request. The acknowledgment shall include the following information, as applicable:

a. If the director determines that the code interpretation request does not contain the information required under this section, the director shall identify in the acknowledgment the deficiencies in the code interpretation request. In such a situation, the director is under no obligation to process the code interpretation request until a code interpretation request complying with this chapter is submitted;

b. If the director determines that the code interpretation request is ambiguous or unclear, the director may request that the person making the request to clarify the request. The director is under no obligation to process the code interpretation request until an adequately clarified code interpretation request is submitted;

c. If the director determines that the code interpretation request presents substantially the same issue as is pending before an adjudicatory body, such as the King County hearing examiner, the King County council when acting as a quasi-judicial body, any other quasi-judicial agency or any local, state or federal court, the director shall so state in the acknowledgment. The director is then under no obligation to further process the code interpretation request; and

d. If a code interpretation is requested regarding an issue that the director has previously addressed through a code interpretation, the director is not obligated to issue another code interpretation and shall so state in the acknowledgment required by this section and shall identify the previous code interpretation.

2. If the director determines that the code interpretation request relates to a particular parcel of property, the director shall cause notice of the code interpretation request to be given to the taxpayer of record for the subject parcel.

3. If the code interpretation request relates to a specific development project pending before the county, the director shall cause notice of the code interpretation request to be given to all parties of record for that project, including the applicant.

4. The notice required under this section must include a copy of the code interpretation request and a copy of the director's acknowledgment. Notice required under this section may be by United States mail or other appropriate method of delivery. (Ord. 15605 § 1, 2006; Ord. 14033 § 4, 2001).

2.100.040 Procedure for issuance.

A. A person may submit written analysis and supporting documentation to assist the director in analyzing a code interpretation request.

B. The director may conduct research or investigation as the director deems necessary to resolve the issue presented in the code interpretation request and may refer the request to department staff and other county staff for review and analysis.

C. A code interpretation must be in writing, clearly labeled "Code Interpretation," and describe the basis for the interpretation.

D. The director shall issue a code interpretation within sixty days after receiving the code interpretation request, unless the director determines that based on the unusual nature of the issue additional time is necessary to respond to the request. If the code interpretation request relates to a specific development proposal that is pending before the department of development and environmental services or relates to a code enforcement action that is subject to appeal under K.C.C. chapter 23.36, the code interpretation shall become final when the department of development and environmental service issues its final decision on the underlying development proposal for a type 1 or 2 decision, the department makes its recommendation on a type 3 or 4 decision or, based on the code interpretation, the department issues a notice and order, citation or stop work order under K.C.C. Title 23. If the director determines that a code interpretation request does not relate to a specific development proposal that is currently pending before the county or to a code enforcement action, the code interpretation is final when issued by the director.

E. The director shall maintain a list of indexed code interpretations for public inspection and post the index and code interpretations on a King County web site and transmit a copy of each code interpretation to the clerk of the King County council.

F. The director shall mail copies of the code interpretation to the following:

1. The person who requested the code interpretation;
2. If the director determines that the code interpretation relates to a specific development proposal that is pending before the county, the applicant and all other parties of record for that proposal;
3. If the director determines the code interpretation relates to a specific parcel of property, the taxpayer of record for that parcel; and
4. Any person who has submitted written comments regarding the director's review of the code interpretation request.

G. When it is final, a code interpretation remains in effect until it is rescinded in writing by the director or it is modified or reversed on appeal by the hearing examiner, the King County council or an adjudicatory body.

H. A code interpretation issued by the director governs all staff review and decisions unless withdrawn or modified by the director or modified or reversed on appeal by the King County hearing examiner, King County council, or an adjudicatory body. (Ord. 15605 § 2, 2006; Ord. 14033 § 5, 2001).

**Title 19A
LAND SEGREGATION**

Chapters:

- 19A.01 Purpose**
- 19A.04 Definitions**
- 19A.08 Administration**
- 19A.12 Subdivisions and Short Subdivision**
- 19A.16 Final Plat and Final Short Plat Maps for Preliminarily Approved Subdivisions and Short Subdivisions**
- 19A.20 Binding Site Plans**
- 19A.24 Condominiums**
- 19A.28 Minor Adjustments**

**Chapter 19A.01
PURPOSE**

Sections:

19A.01.010 Purpose.

19A.01.010 Purpose. The purpose of this title is to:

- A. Establish the authority and procedures for segregating land in King County.
- B. Define and regulate divisions of land that are exempt from the short subdivision or subdivision requirements.
- C. Insure consistency with and implement the King County Comprehensive Plan as amended in accordance with the Washington State Growth Management Act, RCW 36.70A.120.
- D. Require uniform monumenting of land subdivisions and conveyance by accurate legal description.
- E. Protect and preserve the public health, safety and general welfare in accordance with the standards established by King County and the state of Washington.
- F. Insure consistency with chapter 58.17 RCW. (Ord. 13694 § 2, 1999).

**Chapter 19A.04
DEFINITIONS**

Sections:

19A.04.010	Acre.
19A.04.020	Alteration.
19A.04.030	Applicant.
19A.04.040	Binding site plan.
19A.04.050	Building envelope.
19A.04.060	Building site.
19A.04.070	Civil engineer.
19A.04.080	Condominium.
19A.04.090	Dedication
19A.04.100	Department.
19A.04.110	Development engineer.
19A.04.120	Director.
19A.04.130	Easement.
19A.04.140	Engineered preliminary drainage plan.
19A.04.150	Financial guarantee.
19A.04.160	General site plan.
19A.04.170	Homeowners' association.
19A.04.180	Improvements.
19A.04.190	Innocent purchaser.
19A.04.200	Land surveyor.
19A.04.210	Lot.
19A.04.220	Nonbuilding lot.
19A.04.230	Ownership interest.
19A.04.240	Parent parcel.
19A.04.250	Plat, final.
19A.04.260	Plat, preliminary.
19A.04.270	Revisions.
19A.04.280	Segregation.
19A.04.290	Short plat, final.
19A.04.300	Short plat, preliminary.
19A.04.310	Short subdivision.
19A.04.320	Subdivision.
19A.04.330	Tract.

19A.04.010 Acre. Acre: an area of land equal to forty-three thousand, five hundred sixty square feet. (Ord. 13694 § 3, 1999).

19A.04.020 Alteration. Alteration: the modification of a previously recorded plat, short plat, binding site plan, or any portion thereof, that results in modifications to conditions of approval, the addition of new lots or more land, or the deletion of existing lots or the removal of plat or lot restrictions or dedications that are shown on the recorded plat. (Ord. 13694 § 4, 1999).

19A.04.030 Applicant. Applicant: a property owner, or a public agency or public or private utility that owns a right-of-way or other easement or has been adjudicated the right to such easement pursuant to RCW 8.12.090, or any person or entity designated or named in writing by the property or easement owner to be the applicant, in an application for a development proposal, permit or approval. (Ord. 13694 § 5, 1999).

19A.04.040 Binding site plan. Binding site plan: a plan drawn to scale processed in accordance with *K.C.C. 19A.16.080 through 19A.20.040 and chapter 58.17 RCW. (Ord. 13694 § 6, 1999).

**Reviser's note: The reference to "sections 68 through 73 of this ordinance," codified as K.C.C. 19A.16.080 through 19A.20.040, appears to be erroneous. Reference to K.C.C. 19A.20.010 through 19A.20.060 was apparently intended*

19A.04.050 Building envelope. Building envelope: the area of a lot that delineates the limits of where a building may be placed on a lot. (Ord. 13694 § 7, 1999).

19A.04.060 Building site. Building site: an area of land, consisting of one or more lots or portions of lots, that is:

A. Capable of being developed under current federal, state, and local statutes, including zoning and use provisions, dimensional standards, minimum lot area, minimum lot area for construction, minimum lot width, shoreline master program provisions, critical area provisions and health and safety provisions; or

B. Currently legally developed. (Ord. 15031 § 4, 2004; Ord. 13694 § 8, 1999).

19A.04.070 Civil engineer. Civil engineer: an individual registered and licensed as a professional civil engineer pursuant to chapter 18.43 RCW. (Ord. 13694 § 9, 1999).

19A.04.080 Condominium. Condominium: real property, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions as defined in chapters 64.32 and 64.34 RCW. Real property is not a condominium unless the undivided interests in the common elements are vested in the unit owners and unless a declaration, survey map and plans have been recorded pursuant to chapter 64.32 or 64.34 RCW. (Ord. 13694 § 11, 1999).

19A.04.090 Dedication. Dedication: the deliberate conveyance of land by an owner for any general and public uses, reserving no rights other than those that are compatible with the full exercise and enjoyment of the public uses for which the property has been conveyed. The intention to dedicate shall be evidenced by the owner by the presentment for filing of a final plat, short plat or binding site plan showing the dedication thereon or quit claim deed. The acceptance by the public shall be evidenced by the approval of such plat, short plat, binding site plan or quit claim deed for filing by the county. (Ord. 13694 § 12, 1999).

19A.04.100 Department. Department: the King County department of development and environmental services. (Ord. 13694 § 13, 1999).

19A.04.110 Development engineer. Development engineer: the director of the department of development and environmental services or his or her designee, authorized to oversee the review, conditioning, inspection and acceptance of right-of-way use permits, road and drainage projects constructed pursuant to permits administered by the department and required pursuant to this title. The designee shall be a professional civil engineer registered and licensed pursuant to chapter 18.43 RCW. (Ord. 13694 § 14, 1999).

19A.04.120 Director. Director: the director of the King County department of development and environmental services or his or her designee. (Ord. 13694 § 15, 1999).

19A.04.130 Easement. Easement: a right granted by a property owner to specifically named parties or to the public for the use of certain land for specified purposes, that may include, but are not limited to, road access, pedestrian or bicycle pathways, minerals, utility easements, drainage and open space. (Ord. 13694 § 16, 1999).

19A.04.140 Engineered preliminary drainage plan. Engineered preliminary drainage plan: a preliminary plan, consistent with the King County Surface Water Design Manual, that shows the locations, types and approximate sizes of the proposed drainage and conveyance facilities, including any required bioswales, wetponds or other water quality facilities. (Ord. 13694 § 10, 1999).

19A.04.150 Financial guarantee. Financial guarantee: a form of financial security posted to ensure timely and proper completion of improvements, compliance with the King County Code or to warrant materials, workmanship of improvements and design. Financial guarantees include assignments of funds, cash deposits, surety bonds and other forms of financial security acceptable to the director. (Ord. 13694 § 17, 1999).

19A.04.160 General site plan. General site plan: a site plan approved pursuant to this title that is not based on a recorded final planned unit development, a building permit, an as-built site plan for developed sites or a site development permit issued for the entire site. (Ord. 13694 § 18, 1999).

19A.04.170 Homeowners' association. Homeowners' association: any combination or grouping of persons or any association, corporation or other entity that represents homeowners residing in a short subdivision, subdivision or binding site plan. A homeowners' association need not have any official status as a separate legal entity under the laws of the state of Washington. (Ord. 13694 § 19, 1999).

19A.04.180 Improvements. Improvements: constructed appurtenances, including but not limited to road and drainage construction, utility installation, recreational features, lot grading prior to a building permit, plat monument signs, survey monuments. (Ord. 13694 § 20, 1999).

19A.04.190 Innocent purchaser. Innocent purchaser: an individual who has purchased real property for value and states under oath that he or she had no knowledge at any time prior to or during the sale that the lot had been or is being created in violation of the provisions of this title. (Ord. 13694 § 21, 1999).

19.04.200 Land surveyor. Land surveyor: an individual licensed as a land surveyor pursuant to chapter 18.43 RCW. (Ord. 13694 § 22, 1999).

19.04.210 Lot. Lot: a physically separate and distinct parcel of property that has been created pursuant to the provisions of this title, or pursuant to any previous laws governing the subdivision, short subdivision or segregation of land. (Ord. 13694 § 23, 1999).

19A.04.220 Nonbuilding lot. Nonbuilding lot: a lot created defined as a nonbuilding lot on the face of the plat or short plat, for which improvements for the purpose of human habitation or occupancy are prohibited. (Ord. 13694 § 24, 1999).

19A.04.230 Ownership interest. Ownership interest: having property rights as a fee owner, contract purchaser. (Ord. 13694 § 25, 1999).

19A.04.240 Parent parcel. Parent parcel: each existing lot that is located within the perimeter of a proposed boundary line adjustment application. (Ord. 13694 § 35, 1999).

19A.04.250 Plat, final. Final plat: the final drawing of the subdivision and dedication prepared for filing with the county auditor and containing all elements and requirements set forth in this title and in chapter 58.17 RCW. (Ord. 13694 § 26, 1999).

19A.04.260 Plat, preliminary. Preliminary plat: a neat and approximate drawing of a proposed subdivision showing the general layout of streets, alleys, lots, blocks and other elements of a subdivision required by this title and chapter 58.17 RCW. The preliminary plat shall be the basis for the approval or disapproval of the general layout of a subdivision. (Ord. 13694 § 27, 1999).

19A.04.270 Revisions. Revisions: a change prior to recording of a previously approved preliminary plat, preliminary short plat or binding site plan that includes, but is not limited to, the addition of new lots, tracts or parcels. (Ord. 13694 § 28, 1999).

19A.04.280 Segregation. Segregation: a division of land by any of the following means: subdivisions, short subdivisions, binding site plans and divisions described in K.C.C. 19A.04.040. (Ord. 13694 § 29, 1999).

19A.04.290 Short plat, final. Final short plat: the final drawing of the short subdivision and dedication prepared for filing with the county auditor and containing all elements and requirements set forth in this title and in chapter 58.17 RCW. (Ord. 13694 § 30, 1999).

19A.04.300 Short plat, preliminary. Preliminary short plat: a neat and approximate drawing of a proposed short subdivision showing the general layout of streets, alleys, lots, blocks and other elements of a short subdivision required by this title and chapter 58.17 RCW. The preliminary short plat shall be the basis for the approval or disapproval of the general layout of a subdivision. (Ord. 13694 § 31, 1999).

19A.04.310 Short subdivision. Short subdivision: inside the Urban Growth Area, a division or redivision of land into nine or fewer lots, tracts, parcels or sites for the purpose of the sale, lease or transfer of ownership. Outside the Urban Growth Area, a division or redivision of land into four or fewer lots, tracts, parcels or sites for the purpose of sale, lease or transfer of ownership. (Ord. 14788 § 1, 2003; Ord. 13694 § 32, 1999).

19A.04.320 Subdivision. Subdivision: outside the Urban Growth Area, a division or redivision of land into five or more lots, tracts or parcels for the purpose of sale, lease or transfer of ownership; inside the Urban Growth Area, a division or subdivision of land into ten or more lots, tracts or parcels for the purpose of sale, lease or transfer of ownership. (Ord. 14788 § 2, 2003; Ord. 13694 § 33, 1999).

19A.04.330 Tract. Tract: land reserved for specified uses including, but not limited to, reserve tracts, recreation, open space, sensitive areas, surface water retention, utility facilities and access. Tracts are not considered lots or building sites for purposes of residential dwelling construction. (Ord. 13694 § 34, 1999).

**Chapter 19A.08
ADMINISTRATION**

Sections:

- 19A.08.010 Scope of chapter.
- 19A.08.020 Adverse possession lawsuit – consent or judgment required.
- 19A.08.030 Transfer of land or granting of an easement to a public agency.
- 19A.08.040 Exemptions – subdivision and short subdivision.
- 19A.08.045 Limitations in closed basins.
- 19A.08.050 Recording map and legal descriptions.
- 19A.08.060 Review for conformity with other codes, plans and policies.
- 19A.08.070 Determining and maintaining legal status of a lot.
- 19A.08.080 Removing limitations on nonbuilding lots.
- 19A.08.090 Determining innocent purchaser status.
- 19A.08.100 Public street rights-of-way.
- 19A.08.110 Limitations within future road corridors.
- 19A.08.120 Affidavit of correction.
- 19A.08.130 Vertical and horizontal survey controls.
- 19A.08.140 Financial guarantees.
- 19A.08.150 Application requirements for preliminary plats, preliminary short plats and preliminary binding site plans.
- 19A.08.160 Minimum subdivision and short subdivision improvements.
- 19A.08.170 Violations and enforcement.
- 19A.08.180 Circumvention of zoning density prohibited.
- 19A.08.190 Rules.

19A.08.010 Scope of chapter. This chapter contains provisions general to the administration of land segregation. Any segregation of land is subject to the provisions of this title except as stated herein. (Ord. 13694 § 36, 1999).

19A.08.020 Adverse possession lawsuit – consent or judgment required. Applications for segregation allowed by this title concerning lands on which there is a pending lawsuit for adverse possession will not receive final approval without the consent of the adverse possession claimant or until a trial court judgment settling the lawsuit is entered. (Ord. 13694 § 37, 1999).

19A.08.030 Transfer of land or granting of an easement to a public agency. The transfer of land or granting of an easement to a public agency for road and utility purposes shall not be considered a segregation of land. (Ord. 13694 § 38, 1999).

19A.08.040 Exemptions – subdivision and short subdivision. The subdivision and short subdivision provisions of this title shall not apply to:

- A. Divisions of lands for cemeteries and other burial plots while used for that purpose.
- B. Divisions of land into lots or tracts each one of which is one-sixteenth of a section of land or larger, or forty acres or larger if the land is not capable of description as a fraction of a section of land; provided, that for purposes of computing the size of a lot that borders on a street or road, the lot size shall be expanded to include that area that would be bounded by the center line of the road or street and the side lot lines of the lot running perpendicular to such center line and further provided that within the resource zones, each lot or tract shall be of a size that meets the minimum lot size requirements of K.C.C. 21A.12.040.A for the respective zone.
- C. Divisions of land into lots or tracts that are one-one hundred twenty-eighth of a section, or five acres or larger only for the purpose of allowing fee simple purchase or deeding of such lots or tracts to public agencies.

- D. Divisions of land made by testamentary provisions or laws of descent.
- E. Divisions of land into lots or tracts consistent with RCW 58.17.040(7), for which a condominium binding site plan has been recorded in accordance with the binding site plan provisions set forth in this title.
- F. An adjustment of boundary lines in accordance with the provisions of this title.
- G. Divisions of land for the purpose of lease when no residential structures other than mobile homes are permitted to be placed upon the land and for which a binding site plan for the use of the land as a mobile home park has been approved by the director.
- H. Divisions of land by binding site plan into lots or tracts classified for industrial or commercial use consistent with the binding site plan provisions of this title.
- I. Divisions of land by a public roadway or freeway, as defined by the King County Roadway Functional Classification System, that is planned, established, financed and constructed by a state or county agency after January 1, 2000. (Ord. 13694 § 39, 1999).

19A.08.045 Limitations in closed basins. In a closed basin, as defined by chapters 173-507, 173-503, 173-509, 173-510 and 173-515 WAC, an application for further segregation may not be submitted within five years after recording, if the application relies on a public water system created to provide domestic water that uses an exempt well under RCW 90.44.050 or proposes an additional exempt well and the proposed segregation will result in the creation of more than six lots within the boundaries of the original subdivision or short subdivision. (Ord. 15031 § 1, 2004).

19A.08.050 Recording map and legal descriptions. The final recording map and legal description of a plat, short plat, boundary line adjustment or binding site plan shall be prepared by a land surveyor in accordance with chapter 58.09 RCW and chapter 332-130 WAC, Surveys and Recording, and be recorded with the records and licensing services division as required by this title. (Ord. 15971 § 85, 2007; Ord. 13694 § 40, 1999).

19A.08.060 Review for conformity with other codes, plans and policies. Applications for approvals pursuant to this title shall be reviewed in accordance with the applicable procedures of any combination of this title and K.C.C. chapters 20.20 and 20.24. Furthermore, applications for subdivisions, short subdivisions and binding site plans may be approved, approved with conditions or denied in accordance with the following adopted county and state rules, regulations, plans and policies including, but not limited to:

- A. Chapter 43.21C RCW (SEPA);
- B. Chapter 58.17 RCW (Subdivisions);
- C. Chapters 36.70A and 36.70B RCW (Growth Management and Project Review);
- D. K.C.C. Title 9 (Surface Water Management);
- E. K.C.C. Title 13 (Sewer and Water);
- F. K.C.C. Title 14 (Roads and Bridges);
- G. K.C.C. Title 17 (Fire Code);
- H. K.C.C. chapter 20.44 (SEPA);
- I. K.C.C. Title 21A (Zoning);
- J. K.C.C. Title 23 (Code Enforcement);
- K. K.C.C. Title 25 (Shoreline Master Program);
- L. Administrative rules adopted pursuant to K.C.C. chapter 2.98;
- M. King County board of public health rules and regulations;
- N. King County approved utility comprehensive plans;
- O. King County Comprehensive Plan;
- P. County wide Planning Policies;
- Q. This title.

(Ord. 13694 § 41, 1999).

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

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

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

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

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

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

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

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

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

19A.08.080 Removing limitations on nonbuilding lots. Limitations placed on a nonbuilding lot may be removed and the lot recognized by King County as a building lot by approval of a subdivision, short subdivision, binding site plan or alteration of a plat, short plat or binding site plan. (Ord. 13694 § 43, 1999).

19A.08.090 Determining innocent purchaser status.

A. An innocent purchaser of a parcel divided in violation of King County subdivision requirements who files a notarized affidavit of innocent purchase with the department on forms approved by the director may seek to establish the parcel's eligibility for county development approvals and for lawful future conveyance; provided that nothing herein is intended to exempt development on innocent purchaser lots from compliance with development standards of the county's zoning code.

B. All contiguous parcels divided in violation of this title that are under common ownership at the time of application for innocent purchaser status shall be recognized only as a single lot.

C. Innocent purchaser status shall not be granted to any individual or group more than once. (Ord. 13694 § 44, 1999).

19A.08.100 Public street rights-of-way. Dedication or deeding to the county of right-of-way or a portion thereof for public streets shall be required within or along the boundaries of all binding site plans, subdivisions and short subdivisions or of any lot or lots within them, under the following circumstances, where facts support that such dedication is reasonably necessary as a result of the impact created by the proposed development:

A. Where the six-year capital improvement plan or transportation needs report indicates the necessity of a new right-of-way or portion thereof for street purposes;

B. Where necessary to extend or to complete the existing or future neighborhood street pattern;

C. Where necessary to provide additions of right-of-way to existing county right-of-way;

D. Where necessary to comply with county road standards and King County road plans;

E. Where necessary to provide a public transportation system that supports future development of abutting property consistent with the King County Comprehensive Plan or King County zoning code, provided that the right-of-way shall:

1. Provide for vehicular and pedestrian circulation within and between neighborhoods;

2. Provide local traffic alternatives to the use of arterial streets; and

3. Reduce potential traffic impacts to existing residential access streets. (Ord. 13694 § 45, 1999).

19A.08.110 Limitations within future road corridors. In order to allow for the development of future road corridors that would complete the public circulation system or that would provide a sole source of access for an abutting property, the county may limit improvements within specific areas of a proposed binding site plan, subdivision or short subdivision. These limitations may preclude the construction of buildings, driveways, drainage facilities or other improvements within the specified areas. (Ord. 13694 § 46, 1999).

APPENDIX D

**APPENDIX D
TABLE OF ORDINANCES**

<p>1. Lot created prior to June 9, 1937, and has been:</p> <p>1 a. provided with approved sewage disposal or water systems or roads; and</p> <p>1 b.(1) conveyed as an individually described parcel to separate, noncontiguous ownerships through a fee simple transfer or purchase prior to October 1, 1972</p> <p>(2) recognized prior to October 1, 1972, as a separate tax lot by the county assessor</p> <p>2 Through a review and approval process recognized by the county for the creation of four lots or less from June 9, 1937, to October 1, 1972, or the subdivision process on or after June 9, 1937</p> <p>3. Through the short subdivision process on or after October 1, 1972</p> <p>4. a. Lots used for the raising of agricultural crops or livestock, in parcels greater than ten acres, between September 3, 1948, and August 11, 1969</p> <p>4. b. Lots for cemeteries or other burial plots, while used for that purpose, on or after August 11, 1969</p> <p>4. c. Lots five acres or greater, recorded between August 11, 1969, and October 1, 1972, and did not contain a dedication</p> <p>4. d. Twenty acres or greater, recognized prior to January 1, 2000, provided, however, for remnant lots not less than seventeen acres and no more than one per quarter section</p>	<p>Session Laws, 1937, Ch. 186. CP 112 King County Ordinance 13694. CP 114</p> <p>Platting Resolution 11048. CP 114 King County Ordinance 1380. CP 114</p> <p>Platting Resolution 11048. CP 114 King County Ordinance 1380 CP 114 King County Ordinance 13694. CP 114</p> <p>King County Ordinance 1380. CP 114 King County Ordinance 13694. CP 114</p> <p>King County Ordinance 13694. CP 114 Platting Resolution 11048. CP 114</p> <p>King County Ordinance 13694. CP 114 KCC 19A.08.040. Former KCC 19.08.010 A and C. Laws 1969, Ch. 271. CP 113, 122 RCW 58.17.040 (3)</p> <p>Laws 1969, Ch. 271. CP 113, 122 Former KCC 19.08.010</p> <p>Laws 1969, Ch. 271. CP 113, 122 Former KCC 19.08.010</p>
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<p>4. e. Lots created upon a court order entered between August 11, 1969, to July 1, 1974</p>	<p>King County Ordinance 13694. CP 114 Laws 1969, Ch. 271. CP 113, 122</p>
<p>4. f. Lots transferred through testamentary provisions or the laws of descent after August 10, 1969</p>	<p>King County Ordinance 13694. CP 114 KCC 19A.08.040 D. Laws 1969, Ch. 271 CP 113, 122</p>
<p>4. g. Lots created through an assessor's plat made in accordance with RCW 58.18.010 after August 10, 1969</p>	<p>King County Ordinance 13694. CP 114 RCW 58.18.010 (Assessors Plat statute)</p>
<p>4. h. Lots created as a result of deeding land to a public body after April 3, 1977, and that is consistent with King County zoning code, access and board of health requirements so as to qualify as a building site pursuant to K.C.C. 19A.04.050</p>	<p>King County Ordinance 13694. CP 114</p>
<p>4. i. Lots created by a partial fulfillment deed pursuant to a real estate contract recorded prior to October 1, 1972, and no more than four lots were created per the deed</p>	<p>King County Ordinance 13694. CP 114 Former KCC 19.08.010G</p>

APPENDIX E



King County

Department of Development
and Environmental Services
900 Oakesdale Avenue Southwest
Renton, WA 98057-5212

206-296-6600 TTY 206-296-7217

www.kingcounty.gov

FINAL CODE INTERPRETATION L08CI002

Background

The Department of Development and Environmental Services (DDES) has recently received several applications for lot recognition that rely upon "forest roads" or "logging roads" to satisfy the criteria set forth in K.C.C. 19A.08.070A. I.a. K.C.C. Title 19A does not include a definition of the term "road."

K.C.C. 2.100.030A allows the Director of DDES to issue a code interpretation on the Director's own initiative. The Director has determined that a code interpretation on this issue will provide certainty to permit applicants and ensure consistent application of the King County Code.

Discussion

Prior to 1937, the creation of lots did not receive any significant review by King County. There was no review to ensure that appropriate infrastructure, such as sewer, water, and roads, were available. Indeed, such infrastructure was often not in place when the lot was created. In many cases, lots were created in blocks of equal size, e.g. 5,000 square feet, that could then be combined in different combinations based on the desires of the property owner and potential purchasers. As a result, many pre-1937 lots are not consistent with King County's current zoning.

In 1937, the Washington Legislature adopted the first state subdivision regulations. Those regulations for the first time included requirements for consideration of issues related to the public health, safety, and welfare as part of the subdivision process. In 1969, the Washington Legislature updated its subdivision regulations. Those regulations are codified in RCW Title 58. Current subdivision law continues to state that one purpose of the subdivision process is to ensure that the subdivision of land "promote[s] the public health, safety, and general welfare ..." RCW 58.17.010. The subdivision process accomplishes this by establishing uniform procedural standards, requiring consideration of factors relating to the public health and general welfare, and requiring public notice and an opportunity to comment.

K.C.C. Title 19A is King County's implementation of RCW Chapter 58.17. Prior to January 1, 2000, the King County Code addressed lot recognition through its definition of "separate lot." These were defined as lots "created in compliance with the subdivision or short subdivision laws

in effect at the time of the creation of the lot." Former K.C.C. 19.04.420. This did not address those lots that were created prior to subdivision laws. Effective January 1, 2000, K.C.C. Title 19A was amended to include a specific provision establishing standards for when King County will recognize lots established under all of the prior regulatory schemes.

K.C.C. 19A.08.070A divides legal lot recognition standards into three different periods: One period covers years prior to 1937, before the adoption of state subdivision standards and consideration of public health, safety, and welfare. The second period covers the years between 1937 and 1972, when state law governed creation of more than four lots and King County regulations governed the creation of four or fewer lots. The third period covers the years since 1972, when King County adopted its regulations implementing the 1969 state subdivision statute.

With respect to recognition of pre-1937 lots, K.C.C. 19A.08.070A.1 provides:

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

1. Prior to June 9, 1937, and has been:

a. provided with approved sewage disposal or water systems or roads;

and

b.(1) conveyed as an individually described parcel to separate, noncontiguous ownerships through a fee simple transfer or purchase prior to October 1, 1972; or

(2) recognized prior to October 1, 1972, as a separate tax lot by the county assessor;

Thus, under existing K.C.C. 19A.08.070A, in order for a pre-1937 lot to receive recognition as a separate lot, it must meet two conditions. First, prior to October 1, 1972, the lot must either have been conveyed as an individual parcel or have been recognized by the county assessor as a separate tax lot. Second, the lot must have been provided with "approved" roads, sewage disposal, or water. K.C.C. Title 19A does not provide guidance on the approval process for this infrastructure or provide a definition for a road. Therefore, other relevant provisions of the King County Code must be examined in order to determine this provision's meaning.

As noted above, prior to the January 1, 2000 effective date of K.C.C. Title 19A, King County's subdivision law did not specifically address the issue of pre-1937 lots. The provision was recommended by the King County Executive in order to address a growing concern that pre-1937 lots, which were created during a period when no public health, safety, or welfare review was required, were being recognized without undergoing the subdivision process. These lots often lacked even basic infrastructure. The obvious purpose of the King County Council in adopting this provision was to limit the circumstances under which pre-1937 lots would be recognized as legal lots.

In a prior consideration of a related issue, DDES concluded that in order for a pre-1937 lot to be recognized, the approved infrastructure must have been provided to the lot prior to the January 1, 2000 effective date of K.C.C. Title 19A. See, *Regulatory Review Committee Meeting Minutes, September 28, 2006*. The Committee was not asked to consider the questions of how to determine when infrastructure has been provided, as required by K.C.C. 19A.08.070A.1., or what standards were to be used to determine if the infrastructure was approved.

For purposes of determining whether approved infrastructure has in fact been provided, the definitions and the standards used to approve infrastructure that were in effect on January 1, 2000 would be consistent with the Regulatory Review Committee's analysis of K.C.C. 19A.08.070A.1. This approach implements the intent of K.C.C. 19A.08.070A.1. to limit lot recognition to those circumstances where approved infrastructure has been provided. At the same time, it does not place the impossible burden on property owners to demonstrate that the infrastructure meets current standards. Requiring that the infrastructure criteria had to be approved prior to 1937 would impose too stringent a burden on applicants, because very few lots had any approved infrastructure prior to 1937.

Likewise, applying the definition of "road" in effect at the time of the application for lot recognition would also unnecessarily limit the recognition of lots. Road standards are updated on an ongoing basis. The most recent King County Road Standards were adopted in 2007. Limiting lot recognition by holding applicants to ever-evolving criteria could potentially prohibit future lot recognition.

On January 1, 2000, the 1993 King County Road Standards ("*1993 Road Standards*") were in effect. The 1993 Road Standards will be used to determine whether an approved road has been provided to a pre-1937 lot, as required by K.C.C. 19A.08.070A.1.

The 1993 Road Standards defined several terms that are relevant to an interpretation of K.C.C. 19A.08.070A.1.

The 1993 Road Standards define a "road" as "A facility providing public or private access including the roadway and all other improvements inside the right-of-way." The "right-of-way" is defined as "Land, property, or property interest (e.g., an easement), usually in a strip, acquired for or devoted to transportation purposes." A "roadway" is defined as "Pavement width plus any non-paved shoulders." By way of contrast, a "driveway" is "a privately maintained access to residential, commercial, or industrial properties." *1993 Roads Standards*.

From these definitions, several characteristics of a road can be gleaned. One important characteristic is that the road must be located within a right-of-way, easement or similar instrument that was dedicated for transportation purposes prior to 2000. The road must also be used or devoted to transportation purposes. For example, a driveway does not meet this test because it is not devoted to transportation purposes — it only provides access to the property. In this respect, a logging road that only provides access to forest lands for hauling timber on a temporary basis is not devoted to transportation purposes.

A second important characteristic for a road is that the road must have a defined form and must be surfaced. For example, an unimproved track that follows a right-of-way is not a roadway.

Assuming that a road meets these standards, K.C.C. 19A.08.070A.1 also requires that the road was "approved." To meet this element of the test, the road must have been constructed to the standards in effect at the time the road was approved by King County or other public agency with authority to approve the road.

Under this requirement, a public road or highway constructed to county or state highway standards at the time would be considered approved. However, even if it meets the standard for a road, a logging road or forest service road would generally not meet the test for approval. The Washington State Forest Practice Rules establish standards for logging roads. These standards (see *Chapter 222.24 WAC* and *Forest Practice Board Manual, Chapter 3*) are intended to promote forest management, protect water quality and riparian habitats and prevent potential or actual damage to public resources. These standards are not intended to promote or protect the public health, safety and general welfare, the standards that apply under the subdivision statutes. As a result, logging roads will generally not meet this test.

In summary, roads built for the primary use of providing safe access to local residences and businesses or to provide safe transportation within urban and rural areas are approved roads within the meaning of K.C.C. 19A.08.070A.1. These roads are built within a right-of-way and consist of a smooth, durable surface.

In contrast, "logging roads," "forest service roads," and other similar rudimentary access roads are not approved roads for purposes of K.C.C. 19A.08.070A.1. These roads are built for the purposes of the logging industry for logging and forest management purposes, not for transportation purposes, and were not subject to an appropriate approval process. In a similar manner, temporary construction access or dozer bladed access do not qualify.

Decision

Under K.C.C. 19A.08.070A.1.a, in order for a pre-1937 lot to be recognized, it must have been provided with approved water, sewerage, or roads prior to January 1, 2000. A forest service or logging road that has been constructed under state forest practice regulations or similar regulations does not meet the definition of "road" for purposes of lot recognition under K.C.C. 19A.08.070A.1.a. For purposes of K.C.C. 19A.08.070A.1.a, a road must have been constructed prior to January 1, 2000 and meet the requirements of the 1993 King County Road Standards.

Appeal of Code Interpretations

Under K.C.C. 2.100.050, a code interpretation that is not related to permit or code enforcement action that is pending before the Department is final when the Director issues the Code Interpretation. The Director determines that this code interpretation is final on the date it is issued.



Stephanie Warden
Director
Development and Environmental Services

2/22/08
Date

APPENDIX F

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CHAPTER 186.

[S. B. 20.]

PLATTING AND DEDICATION OF LANDS.

AN ACT relating to the platting, subdivision and dedication of land.

Be it enacted by the Legislature of the State of Washington:

SECTION 1. The platting and subdividing of land into lots, or tracts comprising five (5) or more of such lots or tracts, or containing a dedication of any part thereof as a public street or highway is hereby required to proceed under, and in compliance with, the provisions of this act.

Platting and dedication of lands.

SEC. 2. Each such plat, subdivision or dedication, before any of its lots or tracts may be sold or offered for sale, shall first be submitted for approval to the legislative or planning authority having jurisdiction thereof as herein prescribed, and no sale or offer for sale shall be made unless and until the same shall be approved by such authority as herein provided with the written approval of such authority duly shown thereon or attached thereto and until the same has been duly filed for record with the auditor of such county in which the land so platted, subdivided or dedicated is located.

Proposed plat submitted for approval.

SEC. 3. Whenever any land proposed to be platted, subdivided or dedicated is situate within the boundaries of any city or town of the State of Washington, the same shall be submitted for approval to the council or other legislative body of such city or town: *Provided,* That whenever any such city or town has created a city or town planning commission, such city or town planning commission shall have authority to take appropriate action thereon in lieu of the council or other legislative body on behalf of any such city or town.

City council.

SEC. 4. Any and all proposed plats, subdivisions and dedications of land that are not situate within

County commissioners.

any city or town shall be submitted for approval to the board of county commissioners of the county within which such land is situate: *Provided*, That whenever such board has created a county planning commission, such county planning commission shall have authority to take appropriate action thereon on behalf of such county in lieu of the board of county commissioners: *And provided further*, That whenever any land so proposed to be so platted, subdivided or dedicated is adjacent to or a part of the metropolitan or suburban area of any city or town although outside its corporate limits, before action thereon is taken by the board of commissioners or county planning commission of such county, due notice of the pendency of such application shall be given to the appropriate council, legislative body or planning commission of such city or town to the end that it may be heard and the interests of such city or town may be protected before any decision is made thereon.

Regulations.

SEC. 5. To effectuate the policy of this legislation, every legislative or planning authority charged with the duty of passing upon and giving or withholding approval of plats, subdivisions and dedications shall establish reasonable regulations, with the continuing right of amendment thereof, controlling the form of plats, subdivisions and dedications to be filed, the minimum width of streets and alleys, the minimum lot or tract area, street arrangement, provision for improvement of streets and public places and for water supply, sewerage and other public services, dedications of parks, playgrounds and other public places. No plat, subdivision or dedication shall be approved unless accompanied by a complete survey of the section or sections in which it may be located, with complete field and computation notes showing original or reestablished corners, with description of the same and actual traverse showing error of closure and method of balancing, with sketch show-

Proposed
plat to be
accompanied
by survey.

... approval to
 oners of the county
 ate: *Provided*, That
 ed a county planning
 ing commission shall
 ropriate action thereon
 lieu of the board of
rovided further, That
 to be so platted, sub-
 it to or a part of the
 of any city or town
 limits, before action
 of commissioners or
 of such county, due
 application shall be
 l, legislative body or
 ty or town to the end
 nterests of such city
 fore any decision is

... of this legislation,
 thority charged with
 iving or withholding
 andications shall
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 dedication shall be
 y a complete survey
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 rs, with description
 e showing error of
 ; with sketch show-

ing all distances, angles and calculations required to determine corners and distances of the plat. The allowable error of closure shall not exceed one (1) foot in four thousand (4,000) feet. In order that there may be consultation tending toward a reasonable degree of uniformity in such regulations, the legislative or planning authority shall submit to the State Planning Council at least sixty (60) days in advance of final adoption, its proposed regulations and shall file with the Planning Council a copy of the regulations as finally established by it. Thereafter amendments thereto shall be likewise submitted to the Planning Council not less than ten (10) days before final adoption and there shall also be filed with the Planning Council a copy of each amendment as finally established by it.

SEC. 6. Whenever any such proposed plat, subdivision or dedication is submitted to any such city, town or county authority, the clerk or secretary thereof shall at once cause, at the expense of the person proposing such plat, subdivision or dedication, not less than three (3) notices of a hearing thereof to be posted in conspicuous places on, or adjacent to the land proposed to be so platted or subdivided, giving notice of the time and place where such hearing is to be held, which notices shall be posted not less than seven (7) days prior to the hearing thereof. Such authority may also give such additional notice by mail as it deems requisite to adjacent land owners or others. Any and all such hearings shall be open to the public.

Notice posted of proposed plat.

SEC. 7. It shall be the duty of such city, town or county authority to inquire into the public use and public interest proposed to be served by the establishment of such a plat, subdivision or dedication, and it shall also see that appropriate provision is made in any such plat or subdivision for streets and other public ways, parks and playgrounds, and

Plat approved if public interest served.

shall also consider all other facts deemed by it relevant and designed to indicate whether or not the public interest will be served or advantaged by such platting, subdividing or dedication; and if it find that the plat, subdivision or dedication makes appropriate provision for streets and other public ways, parks and playgrounds, and that the public use and interest will be served or advantaged by such platting, subdividing or dedication, then it will give its written approval which shall be suitable [suitably] inscribed on such plat, subdivision or dedication and executed by it. Thereupon, upon compliance with the provisions of sections 9290 and 9291 of Remington's Revised Statutes of Washington, such plat, subdivision or dedication shall be eligible for filing with the county auditor of the county in which such land is located, and thenceforth it shall be known as a duly authorized plat, subdivision or dedication of such land.

Plat approved or disapproved within sixty days.

SEC. 8. Such proposed plat, subdivision or dedication shall be approved, disapproved or returned to the applicant for modification or correction by such city, town or county authority within sixty (60) days from date of filing thereof unless the applicant in the meantime shall have filed written consent for a longer period in which to act thereon.

Review.

SEC. 9. Any decision approving or refusing to approve any such plat, subdivision or dedication shall be reviewable for arbitrary, capricious or corrupt action or nonaction, by writ of review before the superior court of the county in which such matter is pending by any property owner of the city, town or county having jurisdiction thereof, who deems himself aggrieved thereby: *Provided*, That due application for such writ of review shall be made to such court within thirty (30) days from the date of any decision so to be reviewed.

SEC. 10. It shall be the duty of each county auditor and county assessor to refuse to accept for filing

emed by it
 er or not the
 uged by such
 if it find that
 appropriate
 ways, parks
 and interest
 platting, sub-
 e its written
 ly] inscribed
 und executed
 h the provi-
 ington's Re-
 , subdivision
 ng with the
 such land is
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sion or dedi-
 r returned to
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refusing to
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 ch such mat-
 of the city,
 thereof, who
 ovided, That
 shall be made
 rom the date

county audi-
 ept for filing

any plat, subdivision or dedication until the ap-
 proval thereof as herein prescribed has been given
 by the appropriate city, town or county authority.
 Should any such plat, subdivision or dedication be so
 filed without the securing of such approval, the
 prosecuting attorney of the county in which such
 plat is filed is hereby required to institute applica-
 tion for writ of mandate in the superior court for
 such county in the name of and on behalf of the
 city, town, or county authority required to approve,
 requiring the county auditor thereof to remove from
 his files or records any such plat, subdivision or dedi-
 cation, and the costs in such action shall be taxed
 against the county auditor so accepting for filing
 without approval thereof as herein provided.

Duty of audi-
 tor and
 assessor to
 refuse to file
 unapproved
 plat.

SEC. 11. Whoever, being the owner or agent of
 the owner of any land located within a plat or sub-
 division, transfers or sells, or agrees to sell or option
 any land by reference to or exhibition of or by any
 other use or [of] a plat or map of a subdivision, be-
 fore such plat or map has been approved by the city,
 town or county authority having jurisdiction thereof
 and before the same has been filed in the office of the
 appropriate county auditor, shall forfeit and pay a
 penalty of one hundred dollars (\$100) for each lot
 or parcel so transferred, or sold or agreed or optioned
 to be sold and the description of such lot by metes
 and bounds in the instrument of transfer, agreeing or
 optioning, shall not exempt the transaction from
 such penalty or from the remedies herein provided.
 The said city, town or county authority may enjoin
 such transfer, sale agreement or option by action for
 injunction brought in the superior court of the ap-
 propriate county, or may recover the said penalty
 by a civil action in any court of competent jurisdic-
 tion.

Penalty for
 sale of land
 before plat
 is approved.

Passed the Senate March 4, 1937.

Passed the House March 10, 1937.

Approved by the Governor March 17, 1937.

APPENDIX G



King County

Department of Development and Environmental Services

900 Oakesdale Avenue Southwest
Renton, WA 98057-5212

206-296-6600 TTY 206-296-7217

www.metrokc.gov

March 27, 2008

Stephen J. Graddon
Graddon Consulting & Research, Inc.
PO Box 54083
Redondo, WA. 98054

RE: Determination of Legal Lot Status, File No. L07M0098

Mr. Graddon:

The following legal lot decisions have been determined through the application of King County Code (KCC) 19A.08.070 and associated Final Code Interpretation (FCI) under King County Department of Development and Environmental Services (DDES) File No. L08CI002. As noted below, some of the lots requested have been approved and some of the lots requested have been denied. For those lots that have been denied legal lot status, there will be either a written explanation of the denial, or, a number will be listed that corresponds to the following:

1. Site is not served by an approved road pursuant to FCI.
2. A private gate intentionally prevents access to on-site logging/ forest access roads.
3. No Right-of-Way (e.g., an easement) has been devoted to transportation purposes.
4. No approved roads accessing site. Site fronts on a "Managed Access" state highway pursuant to Washington State Department of Transportation (WSDOT) website <http://www.wsdot.wa.gov/NR/rdonlyres/21020E34-737D-46E7-9EB8-D19A0B7017EC/0/NWLimitedAccess.pdf>. No proof of private access permit provided with request for legal lot status.

The determinations in this letter are based solely on the information provided by the applicant or agent. The applicant may provide additional evidence of proof of legal lot for any of the parcels denied within this letter in a separate application. Non-contiguous parcels must be submitted as individual applications.

Stephen J. Graddon
L07M0098
March 27, 2008
Page 2 of 5

The property known as Tax Lot No. 162007-9001, and graphically shown on "Exhibit 1A" is recognized as one legal lot by King County pursuant to KCC 19A.08.070. The additional lots requested to be recognized have been denied per referenced items 1, 2 and 3 as noted above.

The property known as Tax Lot No. 162007-9004, and graphically shown on "Exhibit 1A" is recognized as one legal lot by King County pursuant to KCC 19A.08.070. The additional lots requested to be recognized have been denied per referenced items 1, 2 and 3 as noted above.

The property known as Tax Lot No. 162007-9009, and graphically shown on "Exhibit 1A" is recognized as one legal lot by King County pursuant to KCC 19A.08.070. The additional lots requested to be recognized have been denied per referenced items 1, 2 and 3 as noted above.

The property known as Tax Lot No. 272007-9005 and graphically shown on "Exhibit 2A" is recognized as one legal lot by King County pursuant to KCC 19A.08.070. The additional lots requested to be recognized have been denied per referenced items 1, 2 and 3 as noted above.

The property known as Tax Lot No. 282007-9001 and graphically shown on "Exhibit 3A" is recognized as one legal lot by King County pursuant to KCC 19A.08.070. The additional lots requested to be recognized have been denied per referenced items 1, 2 and 3 as noted above.

The property known as Tax Lot No. 202007-9001 and graphically shown on "Exhibit 4A" is recognized as one legal lot by King County pursuant to KCC 19A.08.070. The additional lots requested to be recognized have been denied per referenced items 1, 2 and 3 as noted above.

Stephen J. Graddon
L07M0098
March 27, 2008
Page 3 of 5

The property known as Tax Lot No. 292007-9001 and graphically shown on "Exhibit 5A" is recognized as one legal lot by King County pursuant to KCC 19A.08.070. The additional lots requested to be recognized have been denied per referenced items 1, 2 and 3 as noted above.

--- --- --- --- ---

The property known as Tax Lot No. 322007-9003 and graphically shown on "Exhibit 6A" is recognized as two legal lots by King County pursuant to KCC 19A.08.070. These two lots are graphically depicted on "Exhibit 6A". The additional lots requested to be recognized have been denied per referenced items 1, 2 and 3 as noted above.

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The property known as Tax Lot No. 332007-9001 and graphically shown on "Exhibit 7A" is recognized as one legal lot by King County pursuant to KCC 19A.08.070. The additional lots requested to be recognized have been denied per referenced items 1, 2, 3 and 4 as noted above.

--- --- --- --- ---

The property known as Tax Lot No. 332007-9015 and graphically shown on "Exhibit 7A" is recognized as two legal lots by King County pursuant to KCC 19A.08.070. These two lots are graphically depicted on "Exhibit 7A". The additional lots requested to be recognized have been denied per referenced items 1, 2, 3 and 4 as noted above.

--- --- --- --- ---

The property known as Tax Lot No. 342007-9001 and graphically shown on "Exhibit 8A" is recognized as one legal lot by King County pursuant to KCC 19A.08.070. The additional lots requested to be recognized have been denied per referenced items 1, 2 and 3 as noted above.

--- --- --- --- ---

The property known as Tax Lot No. 342007-9005 and graphically shown on "Exhibit 8A" is recognized as one legal lot by King County pursuant to KCC 19A.08.070. The additional lots requested to be recognized have been denied per referenced items 1, 2 and 3 as noted above.

Stephen J. Graddon
L07M0098
March 27, 2008
Page 4 of 5

The property known as Tax Lot No. 021907-9001 and graphically shown on "Exhibit 9A" is recognized as one legal lot by King County pursuant to KCC 19A.08.070. The additional lots requested to be recognized have been denied per referenced items 1, 2, 3 and 4 as noted above.

--- --- --- --- ---

The property known as Tax Lot No. 021907-9005 and graphically shown on "Exhibit 9A" is recognized as one legal lot by King County pursuant to KCC 19A.08.070. The additional lots requested to be recognized have been denied per referenced items 1, 2, 3 and 4 as noted above.

--- --- --- --- ---

The property known as Tax Lot No. 031907-9001 and graphically shown on "Exhibit 10A" is recognized as one legal lot by King County pursuant to KCC 19A.08.070. The additional lots requested to be recognized have been denied per referenced items 1, 2, 3 and 4 as noted above.

--- --- --- --- ---

The property known as Tax Lot No. 031907-9005 and graphically shown on "Exhibit 10A" is recognized as six legal lots by King County pursuant to KCC 19A.08.070. These six lots are graphically depicted on "Exhibit 10A". The additional lots requested to be recognized have been denied per referenced items 1, and 3 as noted above.

--- --- --- --- ---

The property known as Tax Lot No. 041907-9001 and graphically shown on "Exhibit 11A" is recognized as three legal lots by King County pursuant to KCC 19A.08.070. These three lots are graphically depicted on "Exhibit 11A". The additional lots requested to be recognized have been denied per referenced items 1, 2, 3 and 4 as noted above.

The attached maps used to define the real property referenced within this letter are only for the general purpose of locating said real property on a King County Assessor's Tax Parcel map, and are not for the use of real property conveyance.

Stephen J. Graddon
L07M0098
March 27, 2008
Page 5 of 5

These lots were created in compliance with the applicable state and local land segregation statutes or codes in effect at the time of creation of the lots. Evidence of these lots being legally created is by historic tax card records consistent with 19A.08.070.A.1.b.2.

Recognition of the property as a separate lot under K.C.C. 19A.08.070 is not to be regarded as a commitment of any sort by King County that the lots in their present state contain a building site; or that the lots may become building sites through the boundary line adjustment process; or are suitable for development under applicable King County ordinances. Any application for development approval will be reviewed under the ordinances and laws in effect at that time.

This determination of separate lot status under the King County Code is not intended to provide legal or other professional advice. If you have questions regarding the legal status of your lot, or whether your lot may be sold or transferred, you should consult an attorney or other professional. State law prohibits the sale of lots which have not been legally subdivided. See RCW 58.17.300.

If you have any questions on this procedure, please contact Ray Florent, at 206-296-6790.

Sincerely,

Joe Miles
Deputy Director

cc: Randy Sandin, Division Director, Land Use Services Division
Raymond E. Florent, PLS, DDES Chief Land Surveyor, LUSD

APPENDIX H



King County

**Department of Development
and Environmental Services**
900 Oakesdale Avenue Southwest
Renton, WA 98057-5212
206-296-6600 TTY 206-296-7217
www.metrokc.gov

April 4, 2008

Stephen J. Graddon
Graddon Consulting & Research, Inc.
PO Box 54083
Redondo, WA. 98054.

RE: Determination of Legal Lot Status, File No. L07M0097

Mr. Graddon:

The following final legal lot decisions have been determined through the application of King County Code (KCC) 19A.08.070 and associated Final Code Interpretation (FCI) under King County Department of Development and Environmental Services (DDES) File No. L08CI002. As noted below, some of the lots requested have been approved and some of the lots requested have been denied. For those lots that have been denied legal lot status, there will be either a written explanation of the denial, or, a number will be listed that corresponds to the following:

1. Site is not served by an approved road pursuant to FCI.
2. A private gate prevents access to on-site logging/ forest access roads.
3. No Right-of-Way (e.g., an easement) has been devoted to transportation purposes.

The determinations in this letter are based on the information provided by the applicant or agent. The applicant may provide additional evidence of proof of legal lot for any of the parcels denied within this letter in a separate application. Non-contiguous parcels must be submitted as individual applications.

Stephen J. Graddon
L07M0097
April 4, 2008
Page 2 of 7

In addition to the review guidelines stated in the first paragraph of this letter, the following legal lot decisions utilize the following applications;

STANDARD APPLICATION OF KING COUNTY CODE 19A.08:

- A) Unless previously merged by deed to a parcel in a different section, a singular 40 acre ownership within a section (640 acres typical) is considered a legal lot, based on "F" below.
- B) If a road right-of-way or railway right-of-way was removed from an original parcel, it does not change the creation date of said parcel.
- C) If a parcel to be recognized as a legal lot is over 80 acres in size, in the "F" Zone, then the entire parcel is recognized as a legal lot pursuant to KCC Title 19A.08.040(B).
- D) If a legal lot has been legally segregated from another legal lot, the entire remainder is a legal lot.
- E) An approved King County plat, short plat, boundary line adjustment, or binding site plan extinguishes any old underlying lots that may have existed prior to the approval.
- F) There is a minimum of one legal lot per section.
- G) Intervening ownerships do not create separate lots.

The property known as Tax Lot No. 132507-9001 and generally described as:

Section 13, Township 25 North, Range 7 East, W.M., in King County, Washington.

is recognized as one legal lot by King County pursuant to KCC 19A.08.070. See attached "Exhibit 1A" for a graphic representation of this parcel. The additional lots requested to be recognized have been denied per referenced items 1, 2 and 3 as noted above.

Stephen J. Graddon
L07M0097
April 4, 2008
Page 3 of 7

The property known as Tax Lot No. 252507-9001 and generally described as:

Section 25, Township 25 North, Range 7 East, W.M., in King County, Washington.

is recognized as one legal lot by King County pursuant to KCC 19A.08.070. See attached "Exhibit 2A" for a graphic representation of this parcel. The additional lots requested to be recognized have been denied per referenced items 1, 2 and 3 as noted above.

The property known as Tax Lot No. 112407-9001 and graphically depicted on "Exhibit 3A" is recognized as two legal lots by King County pursuant to KCC 19A.08.070. These two lots, in general terms, are described as (1) those portions of the North half and the Southwest quarter of said Section 11 currently owned by FTGA Timberlands LLC, and (2) that portion of the Southwest quarter of said Section 11 currently owned by FTGA Timberlands LLC. These two lots are graphically depicted as Lots 1 and 2 on attached "Exhibit 3A". The additional lots requested to be recognized have been denied per referenced items 1 and 3 as noted above.

The property known as Tax Lot No. 212408-9001 and described as:

Lot B of King County Boundary Line Adjustment No. L06L0081, as recorded under Recording Number 20070305900007, records of King County, Washington.

is recognized as one legal lot by King County pursuant to KCC 19A.08.070. See attached "Exhibit 4A" for a graphic representation of this parcel. The additional lots requested to be recognized have been denied per referenced items 1, 2 and 3 as noted above.

Stephen J. Graddon
L07M0097
April 4, 2008
Page 4 of 7

The property known as Tax Lot No. 272408-9009 and described as:

The fractional Southwest quarter of Section 27, Township 24 North, Range 8 East, W.M., in King County, Washington; LESS AND EXCEPT that portion of said fractional Southwest quarter lying within the North Fork Road (428th Avenue Southeast).

is recognized as four legal lots by King County pursuant to KCC 19A.08.070. These lots are described as follows:

1) The North half of the Southwest quarter of Section 27, Township 24 North, Range 8 East, W.M., in King County, Washington.

The additional lots requested to be recognized in this portion have been denied per referenced items 1 and 3 as noted above.

2) Government Lot 7, LESS the South 330 feet of the East half thereof, in Section 27, Township 24 North, Range 8 East, W.M., in King County, Washington.

3) Government Lot 8, LESS the East 330 feet thereof, TOGETHER WITH the East 330 feet of the South 330 feet of Government Lot 8, in Section 27, Township 24 North, Range 8 East, W.M., in King County, Washington; LESS AND EXCEPT that Portion lying within the North Fork Road (428th Avenue Southeast).

4) The South 330 feet of the East half of Government Lot 7, TOGETHER WITH the South 330 feet of Government Lot 8, LESS the East 330 feet thereof, in Section 27, Township 24 North, Range 8 East, W.M., in King County, Washington.

See attached "Exhibit 5A" for a graphic representation of these parcels.

The property known as Tax Lot No. 282408-9013 and described as:

The Northeast quarter of the Southeast quarter of Section 28, Township 24 North, Range 8 East, W.M., in King County, Washington.

is recognized as one legal lot by King County pursuant to KCC 19A.08.070. See attached "Exhibit 6A" for a graphic representation of this parcel.

Stephen J. Graddon
L07M0097
April 4, 2008
Page 5 of 7

The property known as Tax Lot No. 342408-9008 and described as:

That portion of the fractional North half of the Northwest quarter (Government Lots 3 and 4), in Township 24 North, Range 9 East, W.M., in King County, Washington, lying North and West of a line which is 30.0 feet, when measured at right angles, South and east of the following described line:

Beginning at a point on the East line of said Lot 3 which is 30.0 feet South of the Northeast corner thereof; thence South $89^{\circ} 49' 54''$ West a distance of 403.50 feet; thence South $50^{\circ} 38'$ West a distance of 129.00 feet; thence South $28^{\circ} 51'$ West a distance of 222.45 feet; thence South $45^{\circ} 03'$ West a distance of 171.19 feet; thence South $62^{\circ} 36'$ West a distance of 118.00 feet; thence South $50^{\circ} 44'$ West a distance of 131.11 feet; thence South $89^{\circ} 14'$ West a distance of 96.58 feet; thence South $51^{\circ} 31'$ West a distance of 137.50 feet; thence South $23^{\circ} 40'$ West a distance of 254.08 feet; thence South $44^{\circ} 13'$ West a distance of 259.00 feet; thence South $22^{\circ} 03'$ West a distance of 137.59 feet; thence South $12^{\circ} 35' 24''$ West a distance of 317.88 feet, more or less, to a point of the South line of said Lot 4 which is 1108.0 feet East of the Southwest corner of said Lot 4; LESS AND EXCEPT any portion with Asa J. Storey County Road No. 122 (428th Avenue Southeast).

is recognized as one legal lot by King County pursuant to KCC 19A.08.070. See attached "Exhibit 7A" for a graphic representation of this parcel. The additional lots requested to be recognized have been denied per referenced items 1 and 3 as noted above.

The property known as Tax Lot No. 142408-9001 and described as:

The fractional Northeast quarter; the Southeast quarter; and the fractional Southwest quarter of Section 14, Township 24 North, Range 8 East, W.M., in King County, Washington.

is recognized as one legal lot by King County pursuant to KCC 19A.08.070. See attached "Exhibit 8A" for a graphic representation of this parcel. The additional lots requested to be recognized have been denied per referenced items 1, 2 and 3 as noted above.

Stephen J. Graddon
L07M0097
April 4, 2008
Page 6 of 7

The property known as Tax Lot No. 112408-9001 and generally described as:

Section 11, Township 24 North, Range 8 East, W.M., in King County, Washington,
LESS THE Southwest quarter thereof.

is recognized as one legal lot by King County pursuant to KCC 19A.08.070. See attached "Exhibit 9A" for a graphic representation of this parcel. The additional lots requested to be recognized have been denied per referenced items 1, 2 and 3 as noted above.

--- --- --- --- ---

The property known as Tax Lot No. 192409-9001, recognized and described in the letter dated February 24, 2006 under King County Separate Lot Review Number L03M0007, 1 of 4, and graphically depicted on attached "Exhibit 10 A", is recognized as one legal lot by King County pursuant to KCC 19A.08.070. The additional lots requested to be recognized have been denied per referenced items 1, 2 and 3 as noted above.

The attached maps used to define the real property referenced within this letter are only for the general purpose of locating said real property on a King County Assessor's Tax Parcel map, and are not for the use of real property conveyance.

Each of the lots above were created in compliance with the applicable state and local land segregation statutes or codes in effect at the time of creation of the lots. Evidence of these lots being legally created is by historic tax card records consistent with 19A.08.070.A.1.b.2.

Recognition of the property as a separate lot under K.C.C. 19A.08.070 is not to be regarded as a commitment of any sort by King County that the lots in their present state contain a building site; or that the lots may become building sites through the boundary line adjustment process; or are suitable for development under applicable King County ordinances. Any application for development approval will be reviewed under the ordinances and laws in effect at the time of application.

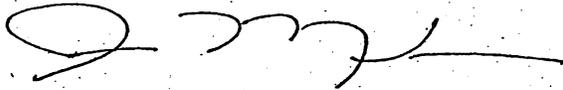
Stephen J. Graddon
L07M0097
April 4, 2008
Page 7 of 7

State law prohibits the sale of lots which have not been legally subdivided. See RCW 58.17.300.

This determination of separate lot status under the King County Code is not intended to provide legal or other professional advice. If you have questions regarding the legal status of your lot, or whether your lot may be sold or transferred, you should consult an attorney or other professional.

If you have any questions on this procedure, please contact Ray Florent, at 206-296-6790.

Sincerely,

A handwritten signature in black ink, appearing to read "Joe Miles", written over a horizontal line.

Joe Miles
Deputy Director

cc: Randy Sandin, Division Director, Land Use Services Division
Raymond E. Florent, PLS, DDES Chief Land Surveyor, LUSD

13-25-07
EXHIBIT 1 A

13

PARCEL
13-25-07-9001

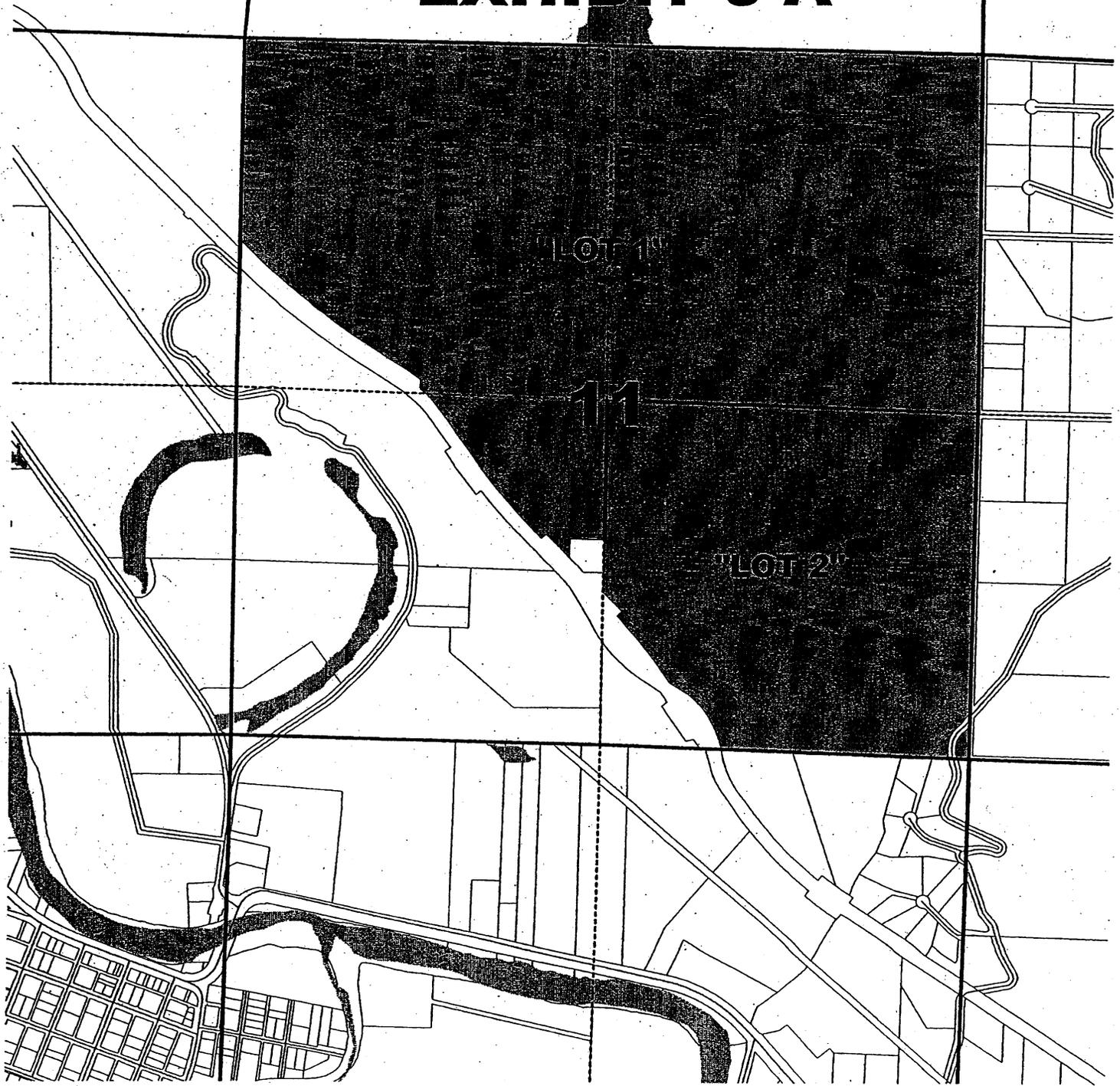
25-25-07

EXHIBIT 2 A

25

EXHIBIT
25-25-07-001

11-24-07
EXHIBIT 3 A



21-24-08

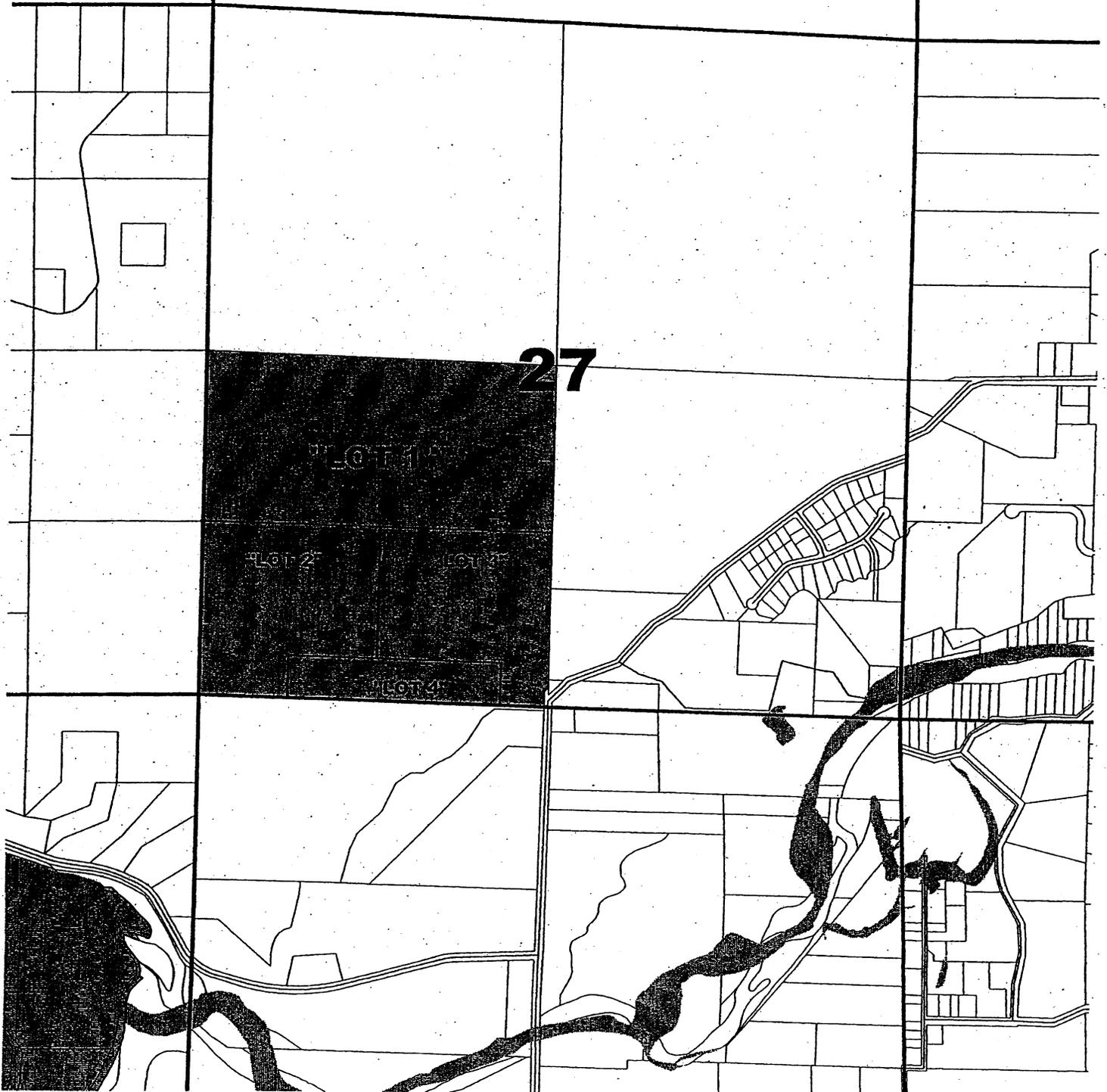
EXHIBIT 4 A

INCLUDES ROAD R/W IN
ADJOINING SECTION 20

21

Lot E of King County Boundary
Line Adjustment No. 10610081
200721305100067

27-24-08
EXHIBIT 5 A

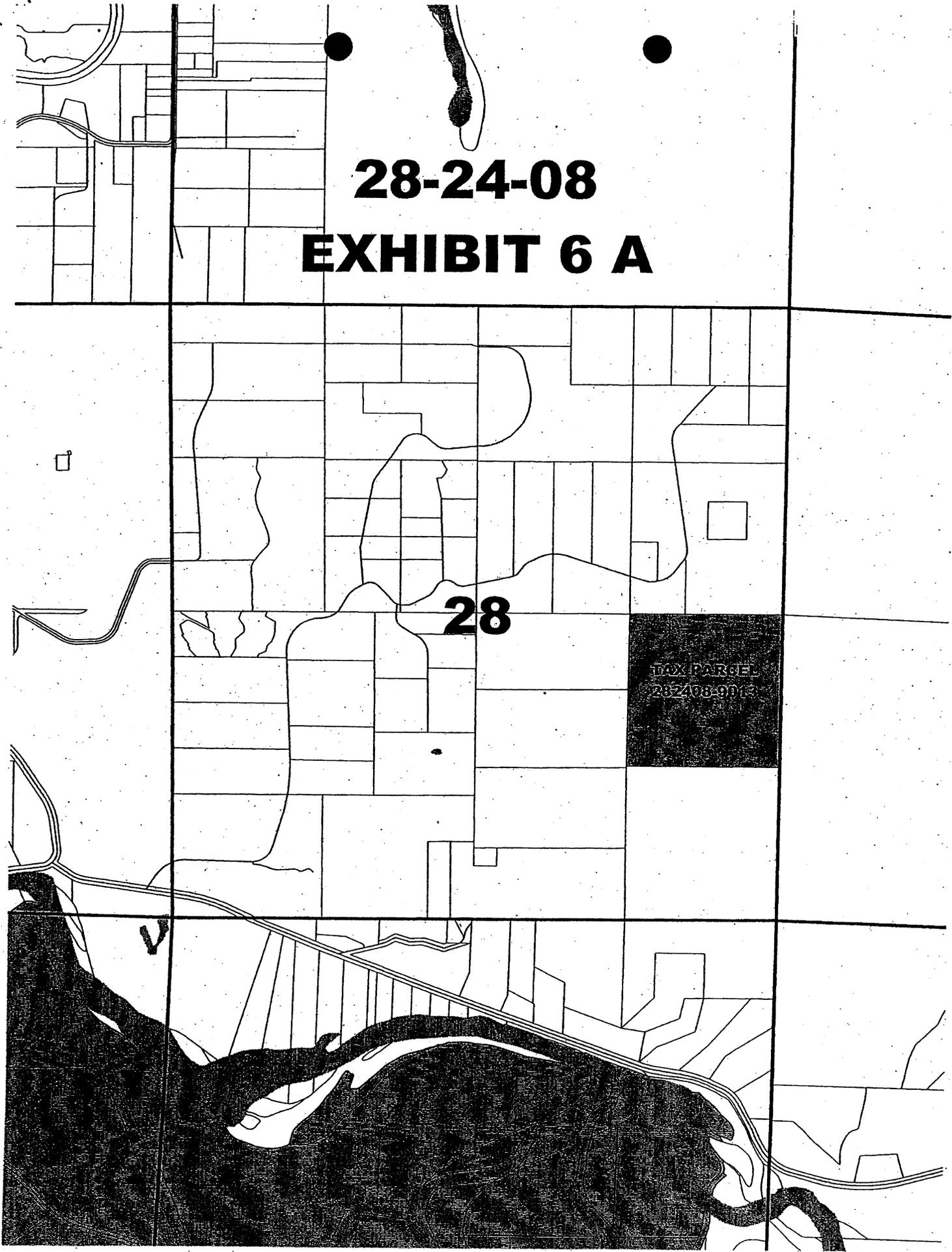


28-24-08

EXHIBIT 6 A

28

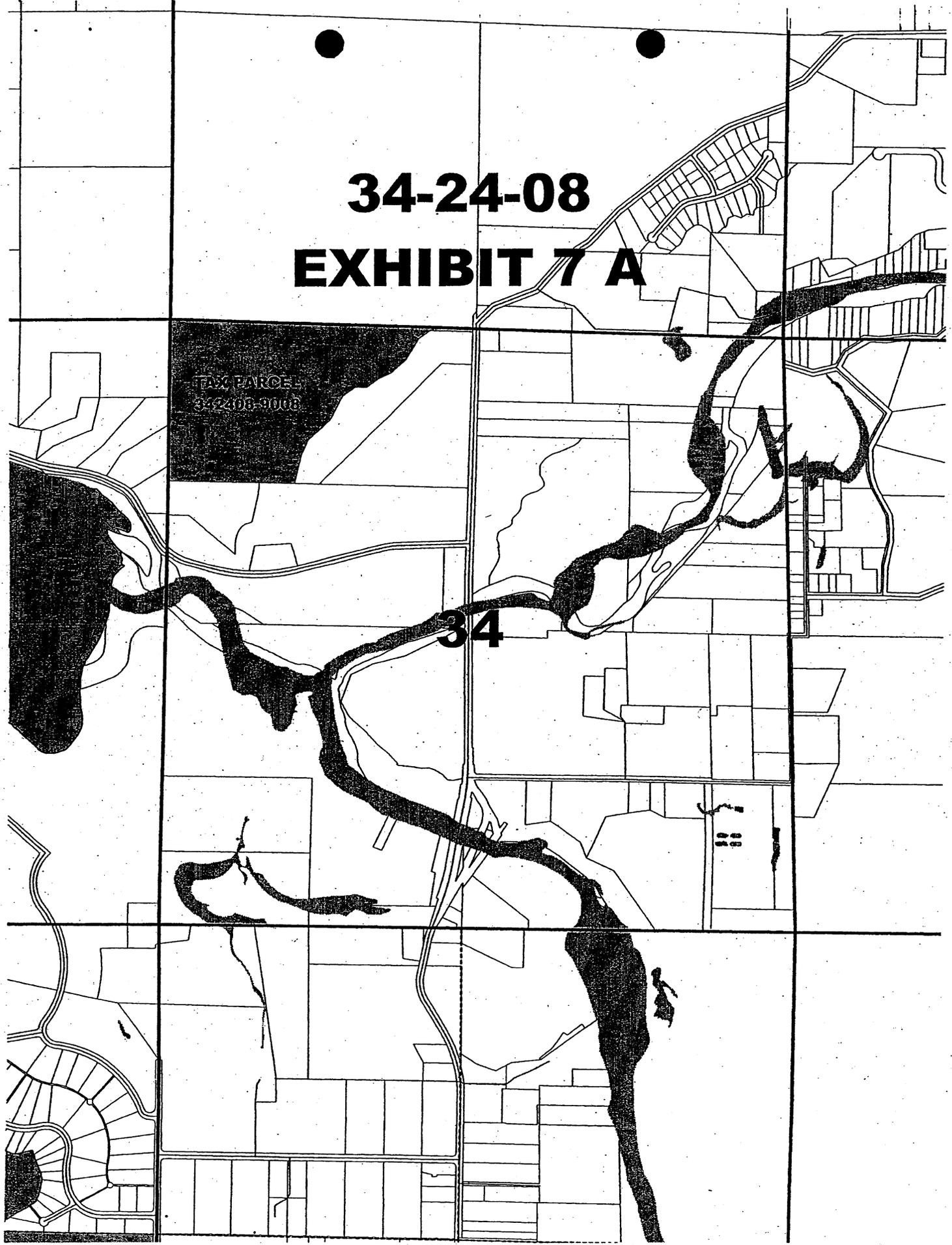
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34-24-08 EXHIBIT 7 A

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EXHIBIT 8 A

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EXHIBIT 9 A

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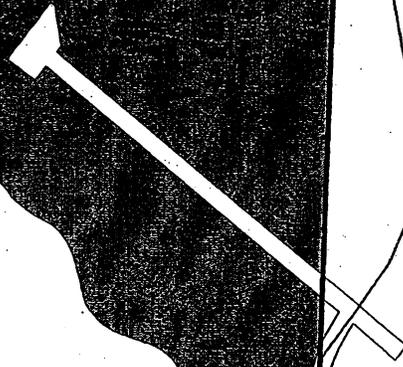
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EXHIBIT 10 A

TAX PARCEL
19-24-09-0001

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APPENDIX I

WACs > Title 222 > Chapter 222-16 > Section 222-16-010

Beginning of Chapter << 222-16-010 >> 222-16-030

WAC 222-16-010

Agency filings affecting this section

*General definitions.

Unless otherwise required by context, as used in these rules:

"Act" means the Forest Practices Act, chapter 76.09 RCW.

"Affected Indian tribe" means any federally recognized Indian tribe that requests in writing from the department information on forest practices applications and notification filed on specified areas.

"Alluvial fan" see "sensitive sites" definition.

"Appeals board" means the forest practices appeals board established in the act.

"Aquatic resources" means water quality, fish, the Columbia torrent salamander (*Rhyacotriton kezeri*), the Cascade torrent salamander (*Rhyacotriton cascadae*), the Olympic torrent salamander (*Rhyacotriton olympian*), the Dunn's salamander (*Plethodon dunnii*), the Van Dyke's salamander (*Plethodon vandyke*), the tailed frog (*Ascaphus truei*) and their respective habitats.

"Area of resource sensitivity" means areas identified in accordance with WAC 222-22-050 (2)(d) or 222-22-060(2).

"Bankfull depth" means the average vertical distance between the channel bed and the estimated water surface elevation required to completely fill the channel to a point above which water would enter the flood plain or intersect a terrace or hillslope. In cases where multiple channels exist, the bankfull depth is the average depth of all channels along the cross-section. (See board manual section 2.)

"Bankfull width" means:

(a) For streams - the measurement of the lateral extent of the water surface elevation perpendicular to the channel at bankfull depth. In cases where multiple channels exist, bankfull width is the sum of the individual channel widths along the cross-section (see board manual section 2).

(b) For lakes, ponds, and impoundments - line of mean high water.

(c) For tidal water - line of mean high tide.

(d) For periodically inundated areas of associated wetlands - line of periodic inundation, which will be found by examining the edge of inundation to ascertain where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland.

"Basal area" means the area in square feet of the cross section of a tree bole measured at 4 1/2 feet above the ground.

"Bedrock hollows" (colluvium-filled bedrock hollows, or hollows; also referred to as zero-order basins, swales, or bedrock depressions) means landforms that are commonly spoon-shaped areas of convergent topography within unchannelled valleys on hillslopes. (See board manual section 16 for identification criteria.)

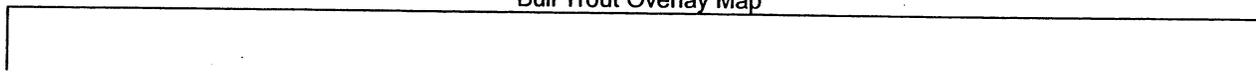
"Board" means the forest practices board established by the act.

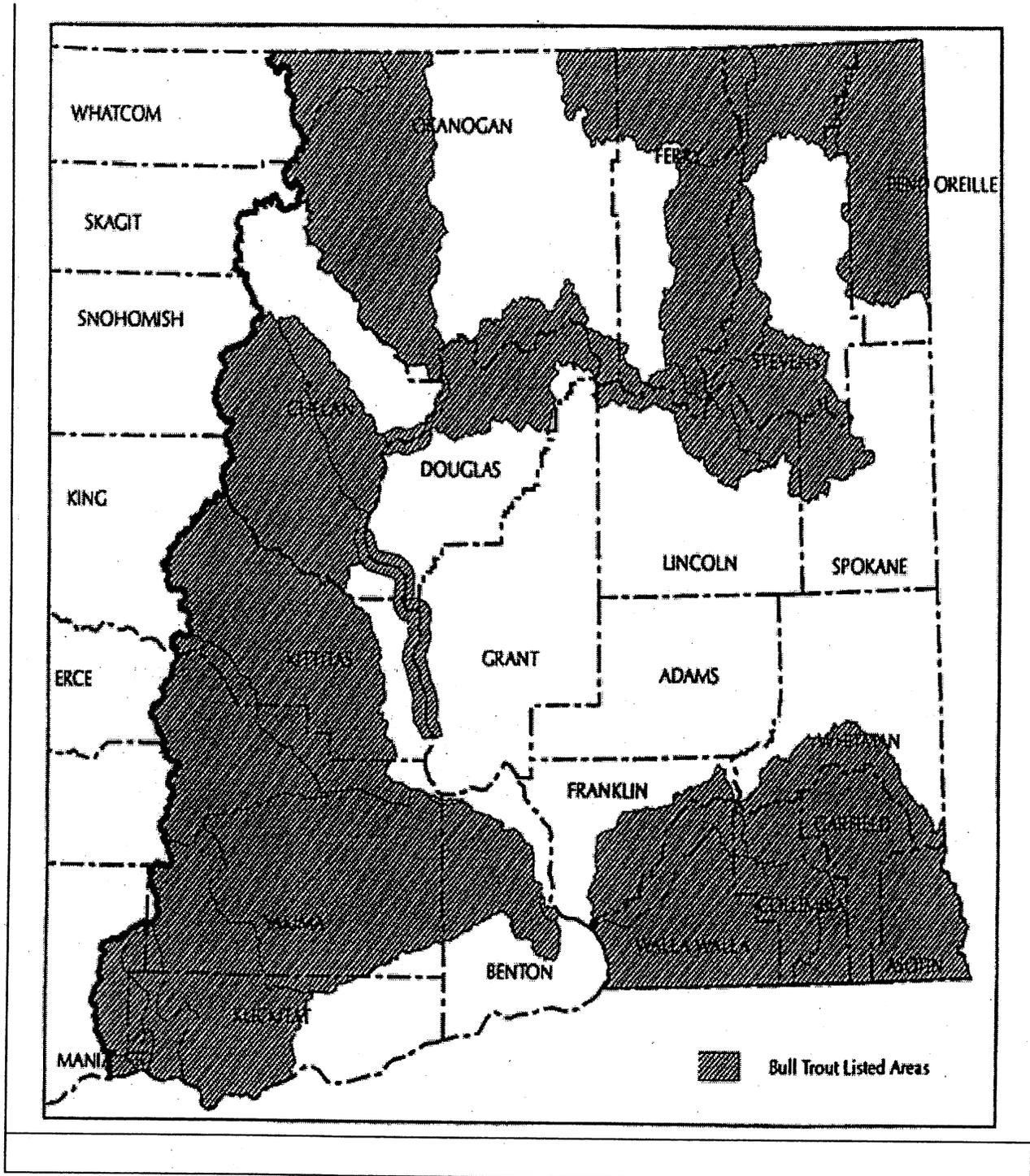
"Bog" means wetlands which have the following characteristics: Hydric organic soils (peat and/or muck) typically 16 inches or more in depth (except over bedrock or hardpan); and vegetation such as sphagnum moss, Labrador tea, bog laurel, bog rosemary, sundews, and sedges; bogs may have an overstory of spruce, western hemlock, lodgepole pine, western red cedar, western white pine, Oregon crabapple, or quaking aspen, and may be associated with open water. This includes nutrient-poor fens. (See board manual section 8.)

"Borrow pit" means an excavation site outside the limits of construction to provide material necessary to that construction, such as fill material for the embankments.

"Bull trout habitat overlay" means those portions of Eastern Washington streams containing bull trout habitat as identified on the department of fish and wildlife's bull trout map. Prior to the development of a bull trout field protocol and the habitat-based predictive model, the "bull trout habitat overlay" map may be modified to allow for locally-based corrections using current data, field knowledge, and best professional judgment. A landowner may meet with the departments of natural resources, fish and wildlife and, in consultation with affected tribes and federal biologists, determine whether certain stream reaches have habitat conditions that are unsuitable for supporting bull trout. If such a determination is mutually agreed upon, documentation submitted to the department will result in the applicable stream reaches no longer being included within the definition of bull trout habitat overlay. Conversely, if suitable bull trout habitat is discovered outside the current mapped range, those waters will be included within the definition of "bull trout habitat overlay" by a similar process.

Bull Trout Overlay Map





"Channel migration zone (CMZ)" means the area where the active channel of a stream is prone to move and this results in a potential near-term loss of riparian function and associated habitat adjacent to the stream, except as modified by a permanent levee or dike. For this purpose, near-term means the time scale required to grow a mature forest. (See board manual section 2 for descriptions and illustrations of CMZs and delineation guidelines.)

"Chemicals" means substances applied to forest lands or timber including pesticides, fertilizers, and other forest chemicals.

"Clearcut" means a harvest method in which the entire stand of trees is removed in one timber harvesting operation. Except as provided in WAC 222-30-110, an area remains clearcut until:

It meets the minimum stocking requirements under WAC 222-34-010(2) or 222-34-020(2); and

The largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

"Columbia River Gorge National Scenic Area or CRGNSA" means the area established pursuant to the Columbia River Gorge

National Scenic Area Act, 16 U.S.C. § 544b(a).

"CRGNSA special management area" means the areas designated in the Columbia River Gorge National Scenic Area Act, 16 U.S.C. § 544b(b) or revised pursuant to 16 U.S.C. § 544b(c). For purposes of this rule, the special management area shall not include any parcels excluded by 16 U.S.C. § 544f(o).

"CRGNSA special management area guidelines" means the guidelines and land use designations for forest practices developed pursuant to 16 U.S.C. § 544f contained in the CRGNSA management plan developed pursuant to 15 U.S.C. § 544d.

"Commercial tree species" means any species which is capable of producing a merchantable stand of timber on the particular site, or which is being grown as part of a Christmas tree or ornamental tree-growing operation.

"Completion of harvest" means the latest of:

Completion of removal of timber from the portions of forest lands harvested in the smallest logical unit that will not be disturbed by continued logging or an approved slash disposal plan for adjacent areas; or

Scheduled completion of any slash disposal operations where the department and the applicant agree within 6 months of completion of yarding that slash disposal is necessary or desirable to facilitate reforestation and agree to a time schedule for such slash disposal; or

Scheduled completion of any site preparation or rehabilitation of adjoining lands approved at the time of approval of the application or receipt of a notification: Provided, That delay of reforestation under this paragraph is permitted only to the extent reforestation would prevent or unreasonably hinder such site preparation or rehabilitation of adjoining lands.

"Constructed wetlands" means those wetlands voluntarily developed by the landowner. Constructed wetlands do not include wetlands created, restored, or enhanced as part of a mitigation procedure or wetlands inadvertently created as a result of current or past practices including, but not limited to: Road construction, landing construction, railroad construction, or surface mining.

"Contamination" means introducing into the atmosphere, soil, or water, sufficient quantities of substances as may be injurious to public health, safety or welfare, or to domestic, commercial, industrial, agriculture or recreational uses, or to livestock, wildlife, fish or other aquatic life.

"Convergent headwalls" (or headwalls) means teardrop-shaped landforms, broad at the ridgetop and terminating where headwaters converge into a single channel; they are broadly concave both longitudinally and across the slope, but may contain sharp ridges separating the headwater channels. (See board manual section 16 for identification criteria.)

"Conversion activities" means activities associated with conversions of forest land to land uses other than commercial timber operation. These activities may be occurring during or after timber harvest on forest land. They may include but are not limited to the following:

- Preparation for, or installation of, utilities on the forest practices activity site. The development or maintenance of existing rights of way providing utilities exclusively for other ownerships shall not be considered conversions of forest land (see WAC 222-20-010(5)).
- Any of, or any combination of, the following activities in preparation for nonforestry use of the land: Grading, filling, or stump removal.
- Preparation for, or construction of, any structure requiring local government approval.
- Construction of, or improvement of, roads to a standard greater than needed to conduct forest practices activities.
- Clearing for, or expansion of, rock pits for nonforest practices uses or developing surface mines.

"Conversion option harvest plan" means a voluntary plan developed by the landowner and approved by the local governmental entity indicating the limits of harvest areas, road locations, and open space.

"Conversion to a use other than commercial timber operation" means a bona fide conversion to an active use which is incompatible with timber growing.

"Cooperative habitat enhancement agreement (CHEA)" see WAC 222-16-105.

"Critical habitat (federal)" means the habitat of any threatened or endangered species designated as critical habitat by the United States Secretary of the Interior or Commerce under Sections 3 (5)(A) and 4 (a)(3) of the Federal Endangered Species Act.

"Critical nesting season" means for marbled murrelets - April 1 to August 31.

"Critical habitat (state)" means those habitats designated by the board in accordance with WAC 222-16-080.

"Cultural resources" means archaeological and historic sites and artifacts, and traditional religious, ceremonial and social uses and activities of affected Indian tribes.

"Cumulative effects" means the changes to the environment caused by the interaction of natural ecosystem processes with the effects

of two or more forest practices.

"Daily peak activity" means for marbled murrelets - one hour before official sunrise to two hours after official sunrise and one hour before official sunset to one hour after official sunset.

"Debris" means woody vegetative residue less than 3 cubic feet in size resulting from forest practices activities which would reasonably be expected to cause significant damage to a public resource.

"Deep-seated landslides" means landslides in which most of the area of the slide plane or zone lies below the maximum rooting depth of forest trees, to depths of tens to hundreds of feet. (See board manual section 16 for identification criteria.)

"Demographic support" means providing sufficient suitable spotted owl habitat within the SOSEA to maintain the viability of northern spotted owl sites identified as necessary to meet the SOSEA goals.

"Department" means the department of natural resources.

"Desired future condition (DFC)" is a reference point on a pathway and not an endpoint for stands. DFC means the stand conditions of a mature riparian forest at 140 years of age, the midpoint between 80 and 200 years. Where basal area is the only stand attribute used to describe 140-year old stands, these are referred to as the "Target Basal Area."

"Diameter at breast height (dbh)" means the diameter of a tree at 4 1/2 feet above the ground measured from the uphill side.

"Dispersal habitat" see WAC 222-16-085(2).

"Dispersal support" means providing sufficient dispersal habitat for the interchange of northern spotted owls within or across the SOSEA, as necessary to meet SOSEA goals. Dispersal support is provided by a landscape consisting of stands of dispersal habitat interspersed with areas of higher quality habitat, such as suitable spotted owl habitat found within RMZs, WMZs or other required and voluntary leave areas.

"Drainage structure" means a construction technique or feature that is built to relieve surface runoff and/or intercepted ground water from roadside ditches to prevent excessive buildup in water volume and velocity. A drainage structure is not intended to carry any typed water. Drainage structures include structures such as: Cross drains, relief culverts, ditch diversions, water bars, or other such structures demonstrated to be equally effective.

"Eastern Washington" means the geographic area in Washington east of the crest of the Cascade Mountains from the international border to the top of Mt. Adams, then east of the ridge line dividing the White Salmon River drainage from the Lewis River drainage and east of the ridge line dividing the Little White Salmon River drainage from the Wind River drainage to the Washington-Oregon state line.

Eastern Washington Definition Map



"Eastern Washington timber habitat types" means elevation ranges associated with tree species assigned for the purpose of riparian management according to the following:

Timber Habitat Types	Elevation Ranges
ponderosa pine	0 - 2500 feet
mixed conifer	2501 - 5000 feet
high elevation	above 5000 feet

"Edge" of any water means the outer edge of the water's bankfull width or, where applicable, the outer edge of the associated channel migration zone.

"End hauling" means the removal and transportation of excavated material, pit or quarry overburden, or landing or road cut material from the excavation site to a deposit site not adjacent to the point of removal.

"Equipment limitation zone" means a 30-foot wide zone measured horizontally from the outer edge of the bankfull width of a Type Np or Ns Water. It applies to all perennial and seasonal nonfish bearing streams.

"Erodible soils" means those soils that, when exposed or displaced by a forest practices operation, would be readily moved by water.

"Even-aged harvest methods" means the following harvest methods:

Clearcuts;

Seed tree harvests in which twenty or fewer trees per acre remain after harvest;

Shelterwood regeneration harvests in which twenty or fewer trees per acre remain after harvest;

Group or strip shelterwood harvests creating openings wider than two tree heights, based on dominant trees;

Shelterwood removal harvests which leave fewer than one hundred fifty trees per acre which are at least five years old or four feet in average height;

Partial cutting in which fewer than fifty trees per acre remain after harvest;

Overstory removal when more than five thousand board feet per acre is removed and fewer than fifty trees per acre at least ten feet in height remain after harvest; and

Other harvesting methods designed to manage for multiple age classes in which six or fewer trees per acre remain after harvest.

Except as provided above for shelterwood removal harvests and overstory removal, trees counted as remaining after harvest shall be at least ten inches in diameter at breast height and have at least the top one-third of the stem supporting green, live crowns. Except as provided in WAC 222-30-110, an area remains harvested by even-aged methods until it meets the minimum stocking requirements under WAC 222-34-010(2) or 222-34-020(2) and the largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

"Fen" means wetlands which have the following characteristics: Peat soils 16 inches or more in depth (except over bedrock); and vegetation such as certain sedges, hardstem bulrush and cattails; fens may have an overstory of spruce and may be associated with open water.

"Fertilizers" means any substance or any combination or mixture of substances used principally as a source of plant food or soil amendment.

"Fill" means the placement of earth material or aggregate for road or landing construction or other similar activities.

"Fish" means for purposes of these rules, species of the vertebrate taxonomic groups of *Cephalospidomorphi* and *Osteichthyes*.

"Fish habitat" means habitat, which is used by fish at any life stage at any time of the year including potential habitat likely to be used by fish, which could be recovered by restoration or management and includes off-channel habitat.

"Fish passage barrier" means any artificial in-stream structure that impedes the free passage of fish.

"Flood level - 100 year" means a calculated flood event flow based on an engineering computation of flood magnitude that has a 1 percent chance of occurring in any given year. For purposes of field interpretation, landowners may use the following methods:

Flow information from gauging stations;

Field estimate of water level based on guidance for "Determining the 100-Year Flood Level" in the forest practices board manual section

2.

The 100-year flood level shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or under license from the federal government, the state, or a political subdivision of the state.

"Forest land" means all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing. Forest land does not include agricultural land that is or was enrolled in the conservation reserve enhancement program by contract if such agricultural land was historically used for agricultural purposes and the landowner intends to continue to use the land for agricultural purposes in the future. For small forest landowner road maintenance and abandonment planning only, the term "forest land" excludes the following:

(a) Residential home sites. A residential home site may be up to five acres in size, and must have an existing structure in use as a residence;

(b) Cropfields, orchards, vineyards, pastures, feedlots, fish pens, and the land on which appurtenances necessary to the production, preparation, or sale of crops, fruit, dairy products, fish, and livestock exist.

"Forest landowner" means any person in actual control of forest land, whether such control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner. However, any lessee or other person in possession of forest land without legal or equitable title to such land shall be excluded from the definition of "forest landowner" unless such lessee or other person has the right to sell or otherwise dispose of any or all of the timber located on such forest land. The following definitions apply only to road maintenance and abandonment planning:

(1) **"Large forest landowner"** is a forest landowner who is not a small forest landowner.

(2) **"Small forest landowner"** is a forest landowner who at the time of submitting a forest practices application or notification meets all of the following conditions:

- Has an average annual timber harvest level of two million board feet or less from their own forest lands in Washington state;
- Did not exceed this annual average harvest level in the three year period before submitting a forest practices application or notification;
- Certifies to the department that they will not exceed this annual harvest level in the ten years after submitting the forest practices application or notification.

However, the department will agree that an applicant is a small forest landowner if the landowner can demonstrate that the harvest levels were exceeded in order to raise funds to pay estate taxes or to meet equally compelling and unexpected obligations such as court-ordered judgments and extraordinary medical expenses.

"Forest practice" means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to:

Road and trail construction;

Harvesting, final and intermediate;

Precommercial thinning;

Reforestation;

Fertilization;

Prevention and suppression of diseases and insects;

Salvage of trees; and

Brush control.

"Forest practice" shall not include: Forest species seed orchard operations and intensive forest nursery operations; or preparatory work such as tree marking, surveying and road flagging; or removal or harvest of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber or public resources.

"Forest road" means ways, lanes, roads, or driveways on forest land used since 1974 for forest practices. "Forest road" does not include skid trails, highways, or local government roads except where the local governmental entity is a forest landowner. For road maintenance and abandonment planning purposes only, "forest road" does not include forest roads used exclusively for residential access located on a small forest landowner's forest land.

"Forest trees" does not include hardwood trees cultivated by agricultural methods in growing cycles shorter than 15 years if the trees

were planted on land that was not in forest use immediately before the trees were planted and before the land was prepared for planting the trees. "Forest trees" includes Christmas trees but does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.

"Full bench road" means a road constructed on a side hill without using any of the material removed from the hillside as a part of the road. This construction technique is usually used on steep or unstable slopes.

"Green recruitment trees" means those trees left after harvest for the purpose of becoming future wildlife reserve trees under WAC 222-30-020(11).

"Ground water recharge areas for glacial deep-seated slides" means the area upgradient that can contribute water to the landslide, assuming that there is an impermeable perching layer in or under a deep-seated landslide in glacial deposits. (See board manual section 16 for identification criteria.)

"Headwater spring" means a permanent spring at the head of a perennial channel. Where a headwater spring can be found, it will coincide with the uppermost extent of Type Np Water.

"Herbicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any tree, bush, weed or algae and other aquatic weeds.

"Horizontal distance" means the distance between two points measured at a zero percent slope.

"Hyporheic" means an area adjacent to and below channels where interstitial water is exchanged with channel water and water movement is mainly in the downstream direction.

"Identified watershed processes" means the following components of natural ecological processes that may in some instances be altered by forest practices in a watershed:

Mass wasting;

Surface and road erosion;

Seasonal flows including hydrologic peak and low flows and annual yields (volume and timing);

Large organic debris;

Shading; and

Stream bank and bed stability.

"Inner gorges" means canyons created by a combination of the downcutting action of a stream and mass movement on the slope walls; they commonly show evidence of recent movement, such as obvious landslides, vertical tracks of disturbance vegetation, or areas that are concave in contour and/or profile. (See board manual section 16 for identification criteria.)

"Insecticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insect, other arthropods or mollusk pests.

"Interdisciplinary team" (ID Team) means a group of varying size comprised of individuals having specialized expertise, assembled by the department to respond to technical questions associated with a proposed forest practices activity.

"Islands" means any island surrounded by salt water in Kitsap, Mason, Jefferson, Pierce, King, Snohomish, Skagit, Whatcom, Island, or San Juan counties.

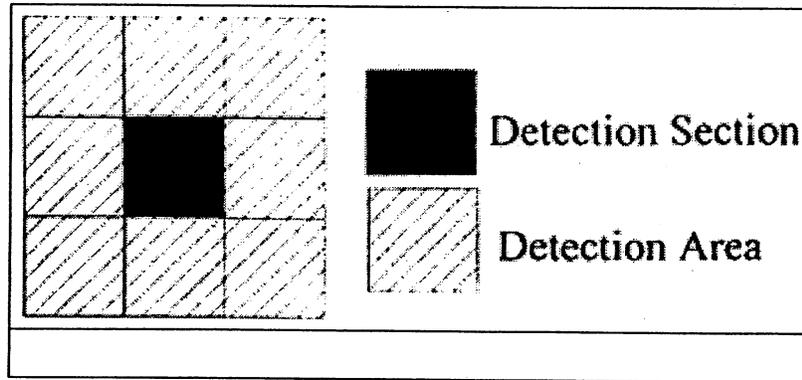
"Limits of construction" means the area occupied by the completed roadway or landing, including the cut bank, fill slope, and the area cleared for the purpose of constructing the roadway or landing.

"Load bearing portion" means that part of the road, landing, etc., which is supportive soil, earth, rock or other material directly below the working surface and only the associated earth structure necessary for support.

"Local governmental entity" means the governments of counties and the governments of cities and towns as defined in chapter 35.01 RCW.

"Low impact harvest" means use of any logging equipment, methods, or systems that minimize compaction or disturbance of soils and vegetation during the yarding process. The department shall determine such equipment, methods or systems in consultation with the department of ecology.

"Marbled murrelet detection area" means an area of land associated with a visual or audible detection of a marbled murrelet, made by a qualified surveyor which is documented and recorded in the department of fish and wildlife data base. The marbled murrelet detection area shall be comprised of the section of land in which the marbled murrelet detection was made and the eight sections of land immediately adjacent to that section.



"Marbled murrelet nesting platform" means any horizontal tree structure such as a limb, an area where a limb branches, a surface created by multiple leaders, a deformity, or a debris/moss platform or stick nest equal to or greater than 7 inches in diameter including associated moss if present, that is 50 feet or more above the ground in trees 32 inches dbh and greater (generally over 90 years of age) and is capable of supporting nesting by marbled murrelets.

"Median home range circle" means a circle, with a specified radius, centered on a spotted owl site center. The radius for the median home range circle in the Hoh-Clearwater/Coastal Link SOSEA is 2.7 miles; for all other SOSEAs the radius is 1.8 miles.

"Merchantable stand of timber" means a stand of trees that will yield logs and/or fiber:

Suitable in size and quality for the production of lumber, plywood, pulp or other forest products;

Of sufficient value at least to cover all the costs of harvest and transportation to available markets.

"Multiyear permit" means a permit to conduct forest practices which is effective for longer than two years but no longer than five years.

"Northern spotted owl site center" means:

(1) Until December 31, 2008, the location of northern spotted owls:

(a) Recorded by the department of fish and wildlife as status 1, 2 or 3 as of November 1, 2005; or

(b) Newly discovered, and recorded by the department of fish and wildlife as status 1, 2 or 3 after November 1, 2005.

(2) After December 31, 2008, the location of status 1, 2 or 3 northern spotted owls based on the following definitions:

Status 1: Pair or reproductive - a male and female heard and/or observed in close proximity to each other on the same visit, a female detected on a nest, or one or both adults observed with young.

Status 2: Two birds, pair status unknown - the presence or response of two birds of opposite sex where pair status cannot be determined and where at least one member meets the resident territorial single requirements.

Status 3: Resident territorial single - the presence or response of a single owl within the same general area on three or more occasions within a breeding season with no response by an owl of the opposite sex after a complete survey; or three or more responses over several years (i.e., two responses in year one and one response in year two, for the same general area).

In determining the existence, location, and status of northern spotted owl site centers, the department shall consult with the department of fish and wildlife and use only those sites documented in substantial compliance with guidelines or protocols and quality control methods established by and available from the department of fish and wildlife.

"Notice to comply" means a notice issued by the department pursuant to RCW 76.09.090 of the act and may require initiation and/or completion of action necessary to prevent, correct and/or compensate for material damage to public resources which resulted from forest practices.

"Occupied marbled murrelet site" means:

(1) A contiguous area of suitable marbled murrelet habitat where at least one of the following marbled murrelet behaviors or conditions occur:

(a) A nest is located; or

(b) Downy chicks or eggs or egg shells are found; or

(c) Marbled murrelets are detected flying below, through, into or out of the forest canopy; or

(d) Birds calling from a stationary location within the area; or

(e) Birds circling above a timber stand within one tree height of the top of the canopy; or

(2) A contiguous forested area, which does not meet the definition of suitable marbled murrelet habitat, in which any of the behaviors or conditions listed above has been documented by the department of fish and wildlife and which is distinguishable from the adjacent forest based on vegetative characteristics important to nesting marbled murrelets.

(3) For sites defined in (1) and (2) above, the sites will be presumed to be occupied based upon observation of circling described in (1) (e), unless a two-year survey following the 2003 Pacific Seabird Group (PSG) protocol has been completed and an additional third-year of survey following a method listed below is completed and none of the behaviors or conditions listed in (1)(a) through (d) of this definition are observed. The landowner may choose one of the following methods for the third-year survey:

(a) Conduct a third-year survey with a minimum of nine visits conducted in compliance with 2003 PSG protocol. If one or more marbled murrelets are detected during any of these nine visits, three additional visits conducted in compliance with the protocol of the first nine visits shall be added to the third-year survey. Department of fish and wildlife shall be consulted prior to initiating third-year surveys; or

(b) Conduct a third-year survey designed in consultation with the department of fish and wildlife to meet site specific conditions.

(4) For sites defined in (1) above, the outer perimeter of the occupied site shall be presumed to be the closer, measured from the point where the observed behaviors or conditions listed in (1) above occurred, of the following:

(a) 1.5 miles from the point where the observed behaviors or conditions listed in (1) above occurred; or

(b) The beginning of any gap greater than 300 feet wide lacking one or more of the vegetative characteristics listed under "suitable marbled murrelet habitat"; or

(c) The beginning of any narrow area of "suitable marbled murrelet habitat" less than 300 feet in width and more than 300 feet in length.

(5) For sites defined under (2) above, the outer perimeter of the occupied site shall be presumed to be the closer, measured from the point where the observed behaviors or conditions listed in (1) above occurred, of the following:

(a) 1.5 miles from the point where the observed behaviors or conditions listed in (1) above occurred; or

(b) The beginning of any gap greater than 300 feet wide lacking one or more of the distinguishing vegetative characteristics important to murrelets; or

(c) The beginning of any narrow area of suitable marbled murrelet habitat, comparable to the area where the observed behaviors or conditions listed in (1) above occurred, less than 300 feet in width and more than 300 feet in length.

(6) In determining the existence, location and status of occupied marbled murrelet sites, the department shall consult with the department of fish and wildlife and use only those sites documented in substantial compliance with guidelines or protocols and quality control methods established by and available from the department of fish and wildlife.

"Old forest habitat" see WAC 222-16-085 (1)(a).

"Operator" means any person engaging in forest practices except an employee with wages as his/her sole compensation.

"Ordinary high-water mark" means the mark on the shores of all waters, which will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation: Provided, That in any area where the ordinary high-water mark cannot be found, the ordinary high-water mark adjoining saltwater shall be the line of mean high tide and the ordinary high-water mark adjoining freshwater shall be the line of mean high-water.

"Other forest chemicals" means fire retardants when used to control burning (other than water), nontoxic repellents, oil, dust-control agents (other than water), salt, and other chemicals used in forest management, except pesticides and fertilizers, that may present hazards to the environment.

"Park" means any park included on the parks register maintained by the department pursuant to WAC 222-20-100(2). Developed park recreation area means any park area developed for high density outdoor recreation use.

"Partial cutting" means the removal of a portion of the merchantable volume in a stand of timber so as to leave an uneven-aged stand of well-distributed residual, healthy trees that will reasonably utilize the productivity of the soil. Partial cutting does not include seedtree or shelterwood or other types of regeneration cutting.

"Pesticide" means any insecticide, herbicide, fungicide, or rodenticide, but does not include nontoxic repellents or other forest chemicals.

"Plantable area" is an area capable of supporting a commercial stand of timber excluding lands devoted to permanent roads, utility

rights of way, that portion of riparian management zones where scarification is not permitted, and any other area devoted to a use incompatible with commercial timber growing.

"Power equipment" means all machinery operated with fuel burning or electrical motors, including heavy machinery, chain saws, portable generators, pumps, and powered backpack devices.

"Preferred tree species" means the following species listed in descending order of priority for each timber habitat type:

Ponderosa pine habitat type	Mixed conifer habitat type
all hardwoods	all hardwoods
ponderosa pine	western larch
western larch	ponderosa pine
Douglas-fir	western red cedar
western red cedar	western white pine
	Douglas-fir
	lodgepole pine

"Public resources" means water, fish, and wildlife and in addition means capital improvements of the state or its political subdivisions.

"Qualified surveyor" means an individual who has successfully completed the marbled murrelet field training course offered by the department of fish and wildlife or its equivalent.

"Rehabilitation" means the act of renewing, or making usable and reforesting forest land which was poorly stocked or previously nonstocked with commercial species.

"Resource characteristics" means the following specific measurable characteristics of fish, water, and capital improvements of the state or its political subdivisions:

For fish and water:

Physical fish habitat, including temperature and turbidity;

Turbidity in hatchery water supplies; and

Turbidity and volume for areas of water supply.

For capital improvements of the state or its political subdivisions:

Physical or structural integrity.

If the methodology is developed and added to the manual to analyze the cumulative effects of forest practices on other characteristics of fish, water, and capital improvements of the state or its subdivisions, the board shall amend this list to include these characteristics.

"Riparian function" includes bank stability, the recruitment of woody debris, leaf litter fall, nutrients, sediment filtering, shade, and other riparian features that are important to both riparian forest and aquatic system conditions.

"Riparian management zone (RMZ)" means:

(1) For Western Washington

(a) The area protected on each side of a Type S or F Water measured horizontally from the outer edge of the bankfull width or the outer edge of the CMZ, whichever is greater (see table below); and

Site Class	Western Washington Total RMZ Width
I	200'
II	170'

III	140'
IV	110'
V	90'

(b) The area protected on each side of Type Np Waters, measured horizontally from the outer edge of the bankfull width. (See WAC 222-30-021(2).)

(2) For Eastern Washington

(a) The area protected on each side of a Type S or F Water measured horizontally from the outer edge of the bankfull width or the outer edge of the CMZ, whichever is greater (see table below); and

Site Class	Eastern Washington Total RMZ Width
I	130'
II	110'
III	90' or 100**
IV	75' or 100**
V	75' or 100**

* Dependent upon stream size. (See WAC 222-30-022.)

(b) The area protected on each side of Type Np Waters, measured horizontally from the outer edge of the bankfull width. (See WAC 222-30-022(2).)

(3) For exempt 20 acre parcels, a specified area alongside Type S and F Waters where specific measures are taken to protect water quality and fish and wildlife habitat.

"RMZ core zone" means:

(1) For Western Washington, the 50 foot buffer of a Type S or F Water, measured horizontally from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-021.)

(2) For Eastern Washington, the thirty foot buffer of a Type S or F Water, measured horizontally from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-022.)

"RMZ inner zone" means:

(1) For Western Washington, the area measured horizontally from the outer boundary of the core zone of a Type S or F Water to the outer limit of the inner zone. The outer limit of the inner zone is determined based on the width of the affected water, site class and the management option chosen for timber harvest within the inner zone. (See WAC 222-30-021.)

(2) For Eastern Washington, the area measured horizontally from the outer boundary of the core zone 45 feet (for streams less than 15 feet wide) or 70 feet (for streams more than 15 feet wide) from the outer boundary of the core zone. (See WAC 222-30-022.)

"RMZ outer zone" means the area measured horizontally between the outer boundary of the inner zone and the RMZ width as specified in the riparian management zone definition above. RMZ width is measured from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-021 and 222-30-022.)

"Road construction" means either of the following:

- (a) Establishing any new forest road;
- (b) Road work located outside an existing forest road prism, except for road maintenance.

"Road maintenance" means either of the following:

- (a) All road work located within an existing forest road prism;
- (b) Road work located outside an existing forest road prism specifically related to maintaining water control, road safety, or visibility,

such as:

- Maintaining, replacing, and installing drainage structures;
- Controlling road-side vegetation;
- Abandoning forest roads according to the process outlined in WAC 222-24-052(3).

"**Rodenticide**" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate rodents or any other vertebrate animal which the director of the state department of agriculture may declare by regulation to be a pest.

"**Salvage**" means the removal of snags, down logs, windthrow, or dead and dying material.

"**Scarification**" means loosening the topsoil and/or disrupting the forest floor in preparation for regeneration.

"**Sensitive sites**" are areas near or adjacent to Type Np Water and have one or more of the following:

(1) **Headwall seep** is a seep located at the toe of a cliff or other steep topographical feature and at the head of a Type Np Water which connects to the stream channel network via overland flow, and is characterized by loose substrate and/or fractured bedrock with perennial water at or near the surface throughout the year.

(2) **Side-slope seep** is a seep within 100 feet of a Type Np Water located on side-slopes which are greater than 20 percent, connected to the stream channel network via overland flow, and characterized by loose substrate and fractured bedrock, excluding muck with perennial water at or near the surface throughout the year. Water delivery to the Type Np channel is visible by someone standing in or near the stream.

(3) **Type Np intersection** is the intersection of two or more Type Np Waters.

(4) **Headwater spring** means a permanent spring at the head of a perennial channel. Where a headwater spring can be found, it will coincide with the uppermost extent of Type Np Water.

(5) **Alluvial fan** means a depositional land form consisting of cone-shaped deposit of water-borne, often coarse-sized sediments.

(a) The upstream end of the fan (cone apex) is typically characterized by a distinct increase in channel width where a stream emerges from a narrow valley;

(b) The downstream edge of the fan is defined as the sediment confluence with a higher order channel; and

(c) The lateral margins of a fan are characterized by distinct local changes in sediment elevation and often show disturbed vegetation.

Alluvial fan does not include features that were formed under climatic or geologic conditions which are not currently present or that are no longer dynamic.

"**Shorelines of the state**" shall have the same meaning as in RCW 90.58.030 (Shoreline Management Act).

"**Side casting**" means the act of moving-excavated material to the side and depositing such material within the limits of construction or dumping over the side and outside the limits of construction.

"**Site class**" means a grouping of site indices that are used to determine the 50-year or 100-year site class. In order to determine site class, the landowner will obtain the site class index from the state soil survey, place it in the correct index range shown in the two tables provided in this definition, and select the corresponding site class. The site class will then drive the RMZ width. (See WAC 222-30-021 and 222-30-022.)

(1) For Western Washington

Site class	50-year site index range (state soil survey)
I	137+
II	119-136
III	97-118
IV	76-96
V	<75

(2) For Eastern Washington

Site class	100-year site index range (state soil survey)	50-year site index range (state soil survey)
I	120+	86+
II	101-120	72-85
III	81-100	58-71
IV	61-80	44-57
V	≤60	<44

(3) For purposes of this definition, the site index at any location will be the site index reported by the *Washington State Department of Natural Resources State Soil Survey*, (soil survey) and detailed in the associated forest soil summary sheets. If the soil survey does not report a site index for the location or indicates noncommercial or marginal forest land, or the major species table indicates red alder, the following apply:

(a) If the site index in the soil survey is for red alder, and the whole RMZ width is within that site index, then use site class V. If the red alder site index is only for a portion of the RMZ width, or there is on-site evidence that the site has historically supported conifer, then use the site class for conifer in the most physiographically similar adjacent soil polygon.

(b) In Western Washington, if no site index is reported in the soil survey, use the site class for conifer in the most physiographically similar adjacent soil polygon.

(c) In Eastern Washington, if no site index is reported in the soil survey, assume site class III, unless site specific information indicates otherwise.

(d) If the site index is noncommercial or marginally commercial, then use site class V.

See also section 7 of the board manual.

"Site preparation" means those activities associated with the removal of slash in preparing a site for planting and shall include scarification and/or slash burning.

"Skid trail" means a route used by tracked or wheeled skidders to move logs to a landing or road.

"Slash" means pieces of woody material containing more than 3 cubic feet resulting from forest practices activities.

"Small forest landowner long-term application" means a proposal from a small forest landowner to conduct forest practices activities for terms of three to fifteen years. Small forest landowners as defined in WAC 222-21-010(13) are eligible to submit long-term applications.

"SOSEA goals" means the goals specified for a spotted owl special emphasis area as identified on the SOSEA maps (see WAC 222-16-086). SOSEA goals provide for demographic and/or dispersal support as necessary to complement the northern spotted owl protection strategies on federal land within or adjacent to the SOSEA.

"Spoil" means excess material removed as overburden or generated during road or landing construction which is not used within limits of construction.

"Spotted owl dispersal habitat" see WAC 222-16-085(2).

"Spotted owl special emphasis areas (SOSEA)" means the geographic areas as mapped in WAC 222-16-086. Detailed maps of the SOSEAs indicating the boundaries and goals are available from the department at its regional offices.

"Stop work order" means the "stop work order" defined in RCW 76.09.080 of the act and may be issued by the department to stop violations of the forest practices chapter or to prevent damage and/or to correct and/or compensate for damages to public resources resulting from forest practices.

"Stream-adjacent parallel roads" means roads (including associated right of way clearing) in a riparian management zone on a property that have an alignment that is parallel to the general alignment of the stream, including roads used by others under easements or cooperative road agreements. Also included are stream crossings where the alignment of the road continues to parallel the stream for more than 250 feet on either side of the stream. Not included are federal, state, county or municipal roads that are not subject to forest practices rules, or roads of another adjacent landowner.

"Sub-mature habitat" see WAC 222-16-085 (1)(b).

"Suitable marbled murrelet habitat" means a contiguous forested area containing trees capable of providing nesting opportunities:

(1) With all of the following indicators unless the department, in consultation with the department of fish and wildlife, has determined that the habitat is not likely to be occupied by marbled murrelets:

(a) Within 50 miles of marine waters;

(b) At least forty percent of the dominant and codominant trees are Douglas-fir, western hemlock, western red cedar or sitka spruce;

(c) Two or more nesting platforms per acre;

(d) At least 7 acres in size, including the contiguous forested area within 300 feet of nesting platforms, with similar forest stand characteristics (age, species composition, forest structure) to the forested area in which the nesting platforms occur.

"Suitable spotted owl habitat" see WAC 222-16-085(1).

"Temporary road" means a forest road that is constructed and intended for use during the life of an approved forest practices application/notification. All temporary roads must be abandoned in accordance to WAC 222-24-052(3).

"Threaten public safety" means to increase the risk to the public at large from snow avalanches, identified in consultation with the department of transportation or a local government, or landslides or debris torrents caused or triggered by forest practices.

"Threatened or endangered species" means all species of wildlife listed as "threatened" or "endangered" by the United States Secretary of the Interior or Commerce, and all species of wildlife designated as "threatened" or "endangered" by the Washington fish and wildlife commission.

"Timber" means forest trees, standing or down, of a commercial species, including Christmas trees. However, timber does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.

"Unconfined avulsing stream" means generally fifth order or larger waters that experience abrupt shifts in channel location, creating a complex flood plain characterized by extensive gravel bars, disturbance species of vegetation of variable age, numerous side channels, wall-based channels, oxbow lakes, and wetland complexes. Many of these streams have dikes and levees that may temporarily or permanently restrict channel movement.

"Validation," as used in WAC 222-20-016, means the department's agreement that a small forest landowner has correctly identified and classified resources, and satisfactorily completed a roads assessment for the geographic area described in Step 1 of a long-term application.

"Water bar" means a diversion ditch and/or hump in a trail or road for the purpose of carrying surface water runoff into the vegetation duff, ditch, or other dispersion area so that it does not gain the volume and velocity which causes soil movement and erosion.

"Watershed administrative unit (WAU)" means an area shown on the map specified in WAC 222-22-020(1).

"Watershed analysis" means, for a given WAU, the assessment completed under WAC 222-22-050 or 222-22-060 together with the prescriptions selected under WAC 222-22-070 and shall include assessments completed under WAC 222-22-050 where there are no areas of resource sensitivity.

"Weed" is any plant which tends to overgrow or choke out more desirable vegetation.

"Western Washington" means the geographic area of Washington west of the Cascade crest and the drainages defined in Eastern Washington.

"Wetland" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, such as swamps, bogs, fens, and similar areas. This includes wetlands created, restored, or enhanced as part of a mitigation procedure. This does not include constructed wetlands or the following surface waters of the state intentionally constructed from wetland sites: Irrigation and drainage ditches, grass lined swales, canals, agricultural detention facilities, farm ponds, and landscape amenities.

"Wetland functions" include the protection of water quality and quantity, providing fish and wildlife habitat, and the production of timber.

"Wetland management zone" means a specified area adjacent to Type A and B Wetlands where specific measures are taken to protect the wetland functions.

"Wildlife" means all species of the animal kingdom whose members exist in Washington in a wild state. The term "wildlife" includes, but is not limited to, any mammal, bird, reptile, amphibian, fish, or invertebrate, at any stage of development. The term "wildlife" does not include feral domestic mammals or the family Muridae of the order Rodentia (old world rats and mice).

"Wildlife reserve trees" means those defective, dead, damaged, or dying trees which provide or have the potential to provide habitat

for those wildlife species dependent on standing trees. Wildlife reserve trees are categorized as follows:

Type 1 wildlife reserve trees are defective or deformed live trees that have observably sound tops, limbs, trunks, and roots. They may have part of the top broken out or have evidence of other severe defects that include: "Cat face," animal chewing, old logging wounds, weather injury, insect attack, or lightning strike. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 1 wildlife reserve trees. These trees must be stable and pose the least hazard for workers.

Type 2 wildlife reserve trees are dead Type 1 trees with sound tops, limbs, trunks, and roots.

Type 3 wildlife reserve trees are live or dead trees with unstable tops or upper portions. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 3 wildlife reserve trees. Although the roots and main portion of the trunk are sound, these reserve trees pose high hazard because of the defect in live or dead wood higher up in the tree.

Type 4 wildlife reserve trees are live or dead trees with unstable trunks or roots, with or without bark. This includes "soft snags" as well as live trees with unstable roots caused by root rot or fire. These trees are unstable and pose a high hazard to workers.

"Windthrow" means a natural process by which trees are uprooted or sustain severe trunk damage by the wind.

"Yarding corridor" means a narrow, linear path through a riparian management zone to allow suspended cables necessary to support cable logging methods or suspended or partially suspended logs to be transported through these areas by cable logging methods.

"Young forest marginal habitat" see WAC 222-16-085 (1)(b).

[Statutory Authority: RCW 76.09.040, 08-17-092, § 222-16-010, filed 8/19/08, effective 9/19/08; 08-06-039, § 222-16-010, filed 2/27/08, effective 3/29/08. Statutory Authority: RCW 76.09.040, 76.09.010 (2)(d), 07-20-044, § 222-16-010, filed 9/26/07, effective 10/27/07. Statutory Authority: [RCW 76.09.040]. 06-17-128, § 222-16-010, filed 8/21/06, effective 9/21/06; 06-11-112, § 222-16-010, filed 5/18/06, effective 6/18/06; 05-12-119, § 222-16-010, filed 5/31/05, effective 7/1/05; 04-05-087, § 222-16-010, filed 2/17/04, effective 3/19/04. Statutory Authority: Chapter 34.05 RCW, RCW 76.09.040, [76.09.]050, [76.09.]370, 76.13.120 (9), 01-12-042, § 222-16-010, filed 5/30/01, effective 7/1/01. Statutory Authority: RCW 76.09.040 and chapter 34.05 RCW. 98-07-047, § 222-16-010, filed 3/13/98, effective 5/1/98; 97-24-091, § 222-16-010, filed 12/3/97, effective 1/3/98; 97-15-105, § 222-16-010, filed 7/21/97, effective 8/21/97. Statutory Authority: Chapters 76.09 and 34.05 RCW. 96-12-038, § 222-16-010, filed 5/31/96, effective 7/1/96. Statutory Authority: RCW 76.09.040 and chapter 34.05 RCW. 94-17-033, § 222-16-010, filed 8/10/94, effective 8/13/94; 93-12-001, § 222-16-010, filed 5/19/93, effective 6/19/93. Statutory Authority: RCW 76.09.040, 76.09.050 and chapter 34.05 RCW. 92-15-011, § 222-16-010, filed 7/2/92, effective 8/2/92. Statutory Authority: RCW 76.09.040, 76.09.050 and 34.05.350. 92-03-028, § 222-16-010, filed 1/8/92, effective 2/8/92; 91-23-052, § 222-16-010, filed 11/15/91, effective 12/16/91. Statutory Authority: RCW 76.09.040. 88-19-112 (Order 551, Resolution No. 88-1), § 222-16-010, filed 9/21/88, effective 11/1/88; 87-23-036 (Order 535), § 222-16-010, filed 11/16/87, effective 1/1/88. Statutory Authority: RCW 76.09.040 and 76.09.050. 82-16-077 (Resolution No. 82-1), § 222-16-010, filed 8/3/82, effective 10/1/82; Order 263, § 222-16-010, filed 6/16/76.]

WACs > Title 222 > Chapter 222-16 > Section 222-16-010

Beginning of Chapter << 222-16-010 >> 222-16-030

WAC 222-16-010

Agency filings affecting this section

*General definitions.

Unless otherwise required by context, as used in these rules:

"Act" means the Forest Practices Act, chapter 76.09 RCW.

"Affected Indian tribe" means any federally recognized Indian tribe that requests in writing from the department information on forest practices applications and notification filed on specified areas.

"Alluvial fan" see "sensitive sites" definition.

"Appeals board" means the forest practices appeals board established in the act.

"Aquatic resources" means water quality, fish, the Columbia torrent salamander (*Rhyacotriton kezeri*), the Cascade torrent salamander (*Rhyacotriton cascadae*), the Olympic torrent salamander (*Rhyacotriton olympian*), the Dunn's salamander (*Plethodon dunnii*), the Van Dyke's salamander (*Plethodon vandyke*), the tailed frog (*Ascaphus truei*) and their respective habitats.

"Area of resource sensitivity" means areas identified in accordance with WAC 222-22-050 (2)(d) or 222-22-060(2).

"Bankfull depth" means the average vertical distance between the channel bed and the estimated water surface elevation required to completely fill the channel to a point above which water would enter the flood plain or intersect a terrace or hillslope. In cases where multiple channels exist, the bankfull depth is the average depth of all channels along the cross-section. (See board manual section 2.)

"Bankfull width" means:

(a) For streams - the measurement of the lateral extent of the water surface elevation perpendicular to the channel at bankfull depth. In cases where multiple channels exist, bankfull width is the sum of the individual channel widths along the cross-section (see board manual section 2).

(b) For lakes, ponds, and impoundments - line of mean high water.

(c) For tidal water - line of mean high tide.

(d) For periodically inundated areas of associated wetlands - line of periodic inundation, which will be found by examining the edge of inundation to ascertain where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland.

"Basal area" means the area in square feet of the cross section of a tree bole measured at 4 1/2 feet above the ground.

"Bedrock hollows" (colluvium-filled bedrock hollows, or hollows; also referred to as zero-order basins, swales, or bedrock depressions) means landforms that are commonly spoon-shaped areas of convergent topography within unchannelled valleys on hillslopes. (See board manual section 16 for identification criteria.)

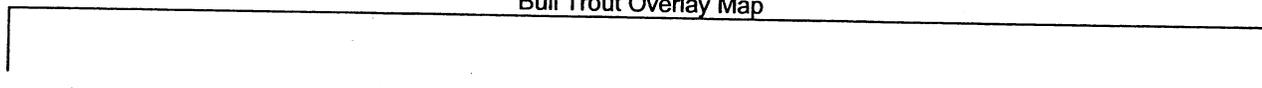
"Board" means the forest practices board established by the act.

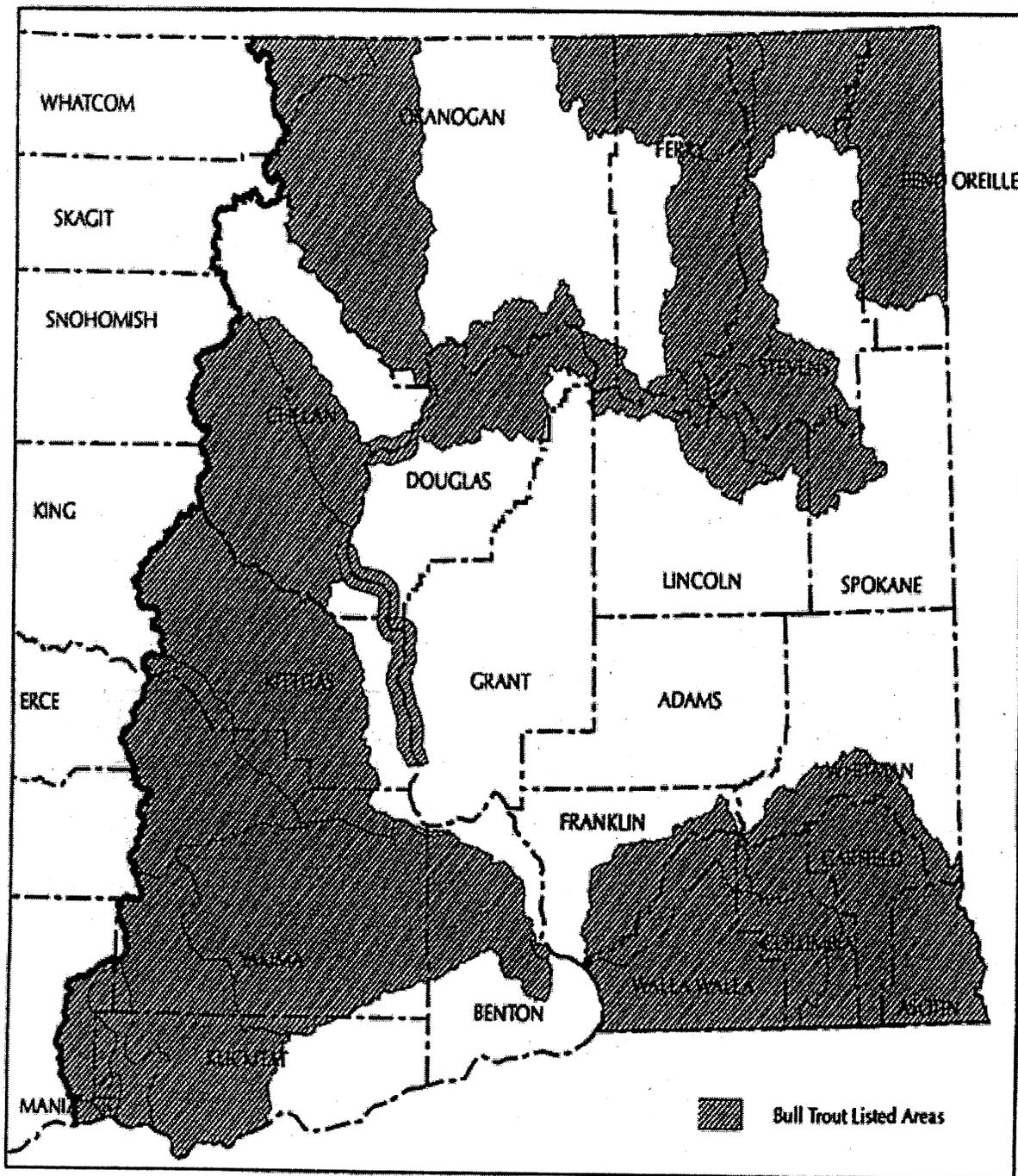
"Bog" means wetlands which have the following characteristics: Hydric organic soils (peat and/or muck) typically 16 inches or more in depth (except over bedrock or hardpan); and vegetation such as sphagnum moss, Labrador tea, bog laurel, bog rosemary, sundews, and sedges; bogs may have an overstory of spruce, western hemlock, lodgepole pine, western red cedar, western white pine, Oregon crabapple, or quaking aspen, and may be associated with open water. This includes nutrient-poor fens. (See board manual section 8.)

"Borrow pit" means an excavation site outside the limits of construction to provide material necessary to that construction, such as fill material for the embankments.

"Bull trout habitat overlay" means those portions of Eastern Washington streams containing bull trout habitat as identified on the department of fish and wildlife's bull trout map. Prior to the development of a bull trout field protocol and the habitat-based predictive model, the "bull trout habitat overlay" map may be modified to allow for locally-based corrections using current data, field knowledge, and best professional judgment. A landowner may meet with the departments of natural resources, fish and wildlife and, in consultation with affected tribes and federal biologists, determine whether certain stream reaches have habitat conditions that are unsuitable for supporting bull trout. If such a determination is mutually agreed upon, documentation submitted to the department will result in the applicable stream reaches no longer being included within the definition of bull trout habitat overlay. Conversely, if suitable bull trout habitat is discovered outside the current mapped range, those waters will be included within the definition of "bull trout habitat overlay" by a similar process.

Bull Trout Overlay Map





"Channel migration zone (CMZ)" means the area where the active channel of a stream is prone to move and this results in a potential near-term loss of riparian function and associated habitat adjacent to the stream, except as modified by a permanent levee or dike. For this purpose, near-term means the time scale required to grow a mature forest. (See board manual section 2 for descriptions and illustrations of CMZs and delineation guidelines.)

"Chemicals" means substances applied to forest lands or timber including pesticides, fertilizers, and other forest chemicals.

"Clearcut" means a harvest method in which the entire stand of trees is removed in one timber harvesting operation. Except as provided in WAC 222-30-110, an area remains clearcut until:

It meets the minimum stocking requirements under WAC 222-34-010(2) or 222-34-020(2); and

The largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

"Columbia River Gorge National Scenic Area or CRGNSA" means the area established pursuant to the Columbia River Gorge

National Scenic Area Act, 16 U.S.C. § 544b(a).

"CRGNSA special management area" means the areas designated in the Columbia River Gorge National Scenic Area Act, 16 U.S.C. § 544b(b) or revised pursuant to 16 U.S.C. § 544b(c). For purposes of this rule, the special management area shall not include any parcels excluded by 16 U.S.C. § 544f(o).

"CRGNSA special management area guidelines" means the guidelines and land use designations for forest practices developed pursuant to 16 U.S.C. § 544f contained in the CRGNSA management plan developed pursuant to 15 U.S.C. § 544d.

"Commercial tree species" means any species which is capable of producing a merchantable stand of timber on the particular site, or which is being grown as part of a Christmas tree or ornamental tree-growing operation.

"Completion of harvest" means the latest of:

Completion of removal of timber from the portions of forest lands harvested in the smallest logical unit that will not be disturbed by continued logging or an approved slash disposal plan for adjacent areas; or

Scheduled completion of any slash disposal operations where the department and the applicant agree within 6 months of completion of yarding that slash disposal is necessary or desirable to facilitate reforestation and agree to a time schedule for such slash disposal; or

Scheduled completion of any site preparation or rehabilitation of adjoining lands approved at the time of approval of the application or receipt of a notification: Provided, That delay of reforestation under this paragraph is permitted only to the extent reforestation would prevent or unreasonably hinder such site preparation or rehabilitation of adjoining lands.

"Constructed wetlands" means those wetlands voluntarily developed by the landowner. Constructed wetlands do not include wetlands created, restored, or enhanced as part of a mitigation procedure or wetlands inadvertently created as a result of current or past practices including, but not limited to: Road construction, landing construction, railroad construction, or surface mining.

"Contamination" means introducing into the atmosphere, soil, or water, sufficient quantities of substances as may be injurious to public health, safety or welfare, or to domestic, commercial, industrial, agriculture or recreational uses, or to livestock, wildlife, fish or other aquatic life.

"Convergent headwalls" (or headwalls) means teardrop-shaped landforms, broad at the ridgetop and terminating where headwaters converge into a single channel; they are broadly concave both longitudinally and across the slope, but may contain sharp ridges separating the headwater channels. (See board manual section 16 for identification criteria.)

"Conversion activities" means activities associated with conversions of forest land to land uses other than commercial timber operation. These activities may be occurring during or after timber harvest on forest land. They may include but are not limited to the following:

- Preparation for, or installation of, utilities on the forest practices activity site. The development or maintenance of existing rights of way providing utilities exclusively for other ownerships shall not be considered conversions of forest land (see WAC 222-20-010(5)).
- Any of, or any combination of, the following activities in preparation for nonforestry use of the land: Grading, filling, or stump removal.
- Preparation for, or construction of, any structure requiring local government approval.
- Construction of, or improvement of, roads to a standard greater than needed to conduct forest practices activities.
- Clearing for, or expansion of, rock pits for nonforest practices uses or developing surface mines.

"Conversion option harvest plan" means a voluntary plan developed by the landowner and approved by the local governmental entity indicating the limits of harvest areas, road locations, and open space.

"Conversion to a use other than commercial timber operation" means a bona fide conversion to an active use which is incompatible with timber growing.

"Cooperative habitat enhancement agreement (CHEA)" see WAC 222-16-105.

"Critical habitat (federal)" means the habitat of any threatened or endangered species designated as critical habitat by the United States Secretary of the Interior or Commerce under Sections 3 (5)(A) and 4 (a)(3) of the Federal Endangered Species Act.

"Critical nesting season" means for marbled murrelets - April 1 to August 31.

"Critical habitat (state)" means those habitats designated by the board in accordance with WAC 222-16-080.

"Cultural resources" means archaeological and historic sites and artifacts, and traditional religious, ceremonial and social uses and activities of affected Indian tribes.

"Cumulative effects" means the changes to the environment caused by the interaction of natural ecosystem processes with the effects

Timber Habitat Types	Elevation Ranges
ponderosa pine	0 - 2500 feet
mixed conifer	2501 - 5000 feet
high elevation	above 5000 feet

"Edge" of any water means the outer edge of the water's bankfull width or, where applicable, the outer edge of the associated channel migration zone.

"End hauling" means the removal and transportation of excavated material, pit or quarry overburden, or landing or road cut material from the excavation site to a deposit site not adjacent to the point of removal.

"Equipment limitation zone" means a 30-foot wide zone measured horizontally from the outer edge of the bankfull width of a Type Np or Ns Water. It applies to all perennial and seasonal nonfish bearing streams.

"Erodible soils" means those soils that, when exposed or displaced by a forest practices operation, would be readily moved by water.

"Even-aged harvest methods" means the following harvest methods:

Clearcuts;

Seed tree harvests in which twenty or fewer trees per acre remain after harvest;

Shelterwood regeneration harvests in which twenty or fewer trees per acre remain after harvest;

Group or strip shelterwood harvests creating openings wider than two tree heights, based on dominant trees;

Shelterwood removal harvests which leave fewer than one hundred fifty trees per acre which are at least five years old or four feet in average height;

Partial cutting in which fewer than fifty trees per acre remain after harvest;

Overstory removal when more than five thousand board feet per acre is removed and fewer than fifty trees per acre at least ten feet in height remain after harvest; and

Other harvesting methods designed to manage for multiple age classes in which six or fewer trees per acre remain after harvest.

Except as provided above for shelterwood removal harvests and overstory removal, trees counted as remaining after harvest shall be at least ten inches in diameter at breast height and have at least the top one-third of the stem supporting green, live crowns. Except as provided in WAC 222-30-110, an area remains harvested by even-aged methods until it meets the minimum stocking requirements under WAC 222-34-010(2) or 222-34-020(2) and the largest trees qualifying for the minimum stocking levels have survived on the area for five growing seasons or, if not, they have reached an average height of four feet.

"Fen" means wetlands which have the following characteristics: Peat soils 16 inches or more in depth (except over bedrock); and vegetation such as certain sedges, hardstem bulrush and cattails; fens may have an overstory of spruce and may be associated with open water.

"Fertilizers" means any substance or any combination or mixture of substances used principally as a source of plant food or soil amendment.

"Fill" means the placement of earth material or aggregate for road or landing construction or other similar activities.

"Fish" means for purposes of these rules, species of the vertebrate taxonomic groups of *Cephalospidomorphi* and *Osteichthyes*.

"Fish habitat" means habitat, which is used by fish at any life stage at any time of the year including potential habitat likely to be used by fish, which could be recovered by restoration or management and includes off-channel habitat.

"Fish passage barrier" means any artificial in-stream structure that impedes the free passage of fish.

"Flood level - 100 year" means a calculated flood event flow based on an engineering computation of flood magnitude that has a 1 percent chance of occurring in any given year. For purposes of field interpretation, landowners may use the following methods:

Flow information from gauging stations;

Field estimate of water level based on guidance for "Determining the 100-Year Flood Level" in the forest practices board manual section

2.

The 100-year flood level shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or under license from the federal government, the state, or a political subdivision of the state.

"Forest land" means all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing. Forest land does not include agricultural land that is or was enrolled in the conservation reserve enhancement program by contract if such agricultural land was historically used for agricultural purposes and the landowner intends to continue to use the land for agricultural purposes in the future. For small forest landowner road maintenance and abandonment planning only, the term "forest land" excludes the following:

(a) Residential home sites. A residential home site may be up to five acres in size, and must have an existing structure in use as a residence;

(b) Cropfields, orchards, vineyards, pastures, feedlots, fish pens, and the land on which appurtenances necessary to the production, preparation, or sale of crops, fruit, dairy products, fish, and livestock exist.

"Forest landowner" means any person in actual control of forest land, whether such control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner. However, any lessee or other person in possession of forest land without legal or equitable title to such land shall be excluded from the definition of "forest landowner" unless such lessee or other person has the right to sell or otherwise dispose of any or all of the timber located on such forest land. The following definitions apply only to road maintenance and abandonment planning:

(1) **"Large forest landowner"** is a forest landowner who is not a small forest landowner.

(2) **"Small forest landowner"** is a forest landowner who at the time of submitting a forest practices application or notification meets all of the following conditions:

- Has an average annual timber harvest level of two million board feet or less from their own forest lands in Washington state;
- Did not exceed this annual average harvest level in the three year period before submitting a forest practices application or notification;
- Certifies to the department that they will not exceed this annual harvest level in the ten years after submitting the forest practices application or notification.

However, the department will agree that an applicant is a small forest landowner if the landowner can demonstrate that the harvest levels were exceeded in order to raise funds to pay estate taxes or to meet equally compelling and unexpected obligations such as court-ordered judgments and extraordinary medical expenses.

"Forest practice" means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to:

Road and trail construction;

Harvesting, final and intermediate;

Precommercial thinning;

Reforestation;

Fertilization;

Prevention and suppression of diseases and insects;

Salvage of trees; and

Brush control.

"Forest practice" shall not include: Forest species seed orchard operations and intensive forest nursery operations; or preparatory work such as tree marking, surveying and road flagging; or removal or harvest of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber or public resources.

"Forest road" means ways, lanes, roads, or driveways on forest land used since 1974 for forest practices. "Forest road" does not include skid trails, highways, or local government roads except where the local governmental entity is a forest landowner. For road maintenance and abandonment planning purposes only, "forest road" does not include forest roads used exclusively for residential access located on a small forest landowner's forest land.

"Forest trees" does not include hardwood trees cultivated by agricultural methods in growing cycles shorter than 15 years if the trees

were planted on land that was not in forest use immediately before the trees were planted and before the land was prepared for planting the trees. "Forest trees" includes Christmas trees but does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.

"Full bench road" means a road constructed on a side hill without using any of the material removed from the hillside as a part of the road. This construction technique is usually used on steep or unstable slopes.

"Green recruitment trees" means those trees left after harvest for the purpose of becoming future wildlife reserve trees under WAC 222-30-020(11).

"Ground water recharge areas for glacial deep-seated slides" means the area upgradient that can contribute water to the landslide, assuming that there is an impermeable perching layer in or under a deep-seated landslide in glacial deposits. (See board manual section 16 for identification criteria.)

"Headwater spring" means a permanent spring at the head of a perennial channel. Where a headwater spring can be found, it will coincide with the uppermost extent of Type Np Water.

"Herbicide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any tree, bush, weed or algae and other aquatic weeds.

"Horizontal distance" means the distance between two points measured at a zero percent slope.

"Hyporheic" means an area adjacent to and below channels where interstitial water is exchanged with channel water and water movement is mainly in the downstream direction.

"Identified watershed processes" means the following components of natural ecological processes that may in some instances be altered by forest practices in a watershed:

Mass wasting;

Surface and road erosion;

Seasonal flows including hydrologic peak and low flows and annual yields (volume and timing);

Large organic debris;

Shading; and

Stream bank and bed stability.

"Inner gorges" means canyons created by a combination of the downcutting action of a stream and mass movement on the slope walls; they commonly show evidence of recent movement, such as obvious landslides, vertical tracks of disturbance vegetation, or areas that are concave in contour and/or profile. (See board manual section 16 for identification criteria.)

"Insecticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate any insect, other arthropods or mollusk pests.

"Interdisciplinary team" (ID Team) means a group of varying size comprised of individuals having specialized expertise, assembled by the department to respond to technical questions associated with a proposed forest practices activity.

"Islands" means any island surrounded by salt water in Kitsap, Mason, Jefferson, Pierce, King, Snohomish, Skagit, Whatcom, Island, or San Juan counties.

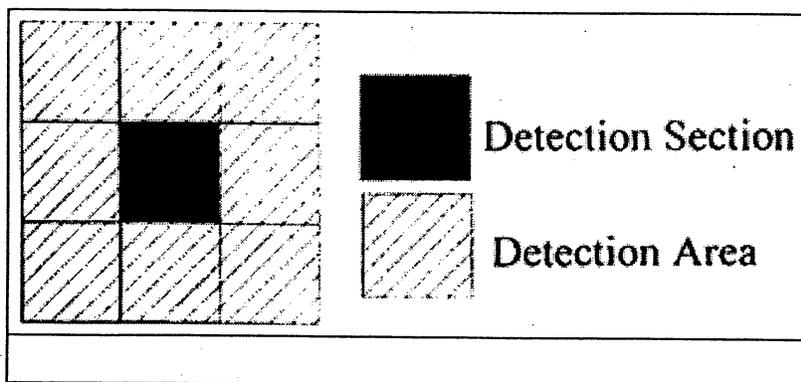
"Limits of construction" means the area occupied by the completed roadway or landing, including the cut bank, fill slope, and the area cleared for the purpose of constructing the roadway or landing.

"Load bearing portion" means that part of the road, landing, etc., which is supportive soil, earth, rock or other material directly below the working surface and only the associated earth structure necessary for support.

"Local governmental entity" means the governments of counties and the governments of cities and towns as defined in chapter 35.01 RCW.

"Low impact harvest" means use of any logging equipment, methods, or systems that minimize compaction or disturbance of soils and vegetation during the yarding process. The department shall determine such equipment, methods or systems in consultation with the department of ecology.

"Marbled murrelet detection area" means an area of land associated with a visual or audible detection of a marbled murrelet, made by a qualified surveyor which is documented and recorded in the department of fish and wildlife data base. The marbled murrelet detection area shall be comprised of the section of land in which the marbled murrelet detection was made and the eight sections of land immediately adjacent to that section.



"Marbled murrelet nesting platform" means any horizontal tree structure such as a limb, an area where a limb branches, a surface created by multiple leaders, a deformity, or a debris/moss platform or stick nest equal to or greater than 7 inches in diameter including associated moss if present, that is 50 feet or more above the ground in trees 32 inches dbh and greater (generally over 90 years of age) and is capable of supporting nesting by marbled murrelets.

"Median home range circle" means a circle, with a specified radius, centered on a spotted owl site center. The radius for the median home range circle in the Hoh-Clearwater/Coastal Link SOSEA is 2.7 miles; for all other SOSEAs the radius is 1.8 miles.

"Merchantable stand of timber" means a stand of trees that will yield logs and/or fiber:

Suitable in size and quality for the production of lumber, plywood, pulp or other forest products;

Of sufficient value at least to cover all the costs of harvest and transportation to available markets.

"Multiyear permit" means a permit to conduct forest practices which is effective for longer than two years but no longer than five years.

"Northern spotted owl site center" means:

(1) Until December 31, 2008, the location of northern spotted owls:

(a) Recorded by the department of fish and wildlife as status 1, 2 or 3 as of November 1, 2005; or

(b) Newly discovered, and recorded by the department of fish and wildlife as status 1, 2 or 3 after November 1, 2005.

(2) After December 31, 2008, the location of status 1, 2 or 3 northern spotted owls based on the following definitions:

Status 1: Pair or reproductive - a male and female heard and/or observed in close proximity to each other on the same visit, a female detected on a nest, or one or both adults observed with young.

Status 2: Two birds, pair status unknown - the presence or response of two birds of opposite sex where pair status cannot be determined and where at least one member meets the resident territorial single requirements.

Status 3: Resident territorial single - the presence or response of a single owl within the same general area on three or more occasions within a breeding season with no response by an owl of the opposite sex after a complete survey; or three or more responses over several years (i.e., two responses in year one and one response in year two, for the same general area).

In determining the existence, location, and status of northern spotted owl site centers, the department shall consult with the department of fish and wildlife and use only those sites documented in substantial compliance with guidelines or protocols and quality control methods established by and available from the department of fish and wildlife.

"Notice to comply" means a notice issued by the department pursuant to RCW 76.09.090 of the act and may require initiation and/or completion of action necessary to prevent, correct and/or compensate for material damage to public resources which resulted from forest practices.

"Occupied marbled murrelet site" means:

(1) A contiguous area of suitable marbled murrelet habitat where at least one of the following marbled murrelet behaviors or conditions occur:

(a) A nest is located; or

(b) Downy chicks or eggs or egg shells are found; or

(c) Marbled murrelets are detected flying below, through, into or out of the forest canopy; or

(d) Birds calling from a stationary location within the area; or

(e) Birds circling above a timber stand within one tree height of the top of the canopy; or

(2) A contiguous forested area, which does not meet the definition of suitable marbled murrelet habitat, in which any of the behaviors or conditions listed above has been documented by the department of fish and wildlife and which is distinguishable from the adjacent forest based on vegetative characteristics important to nesting marbled murrelets.

(3) For sites defined in (1) and (2) above, the sites will be presumed to be occupied based upon observation of circling described in (1) (e), unless a two-year survey following the 2003 Pacific Seabird Group (PSG) protocol has been completed and an additional third-year of survey following a method listed below is completed and none of the behaviors or conditions listed in (1)(a) through (d) of this definition are observed. The landowner may choose one of the following methods for the third-year survey:

(a) Conduct a third-year survey with a minimum of nine visits conducted in compliance with 2003 PSG protocol. If one or more marbled murrelets are detected during any of these nine visits, three additional visits conducted in compliance with the protocol of the first nine visits shall be added to the third-year survey. Department of fish and wildlife shall be consulted prior to initiating third-year surveys; or

(b) Conduct a third-year survey designed in consultation with the department of fish and wildlife to meet site specific conditions.

(4) For sites defined in (1) above, the outer perimeter of the occupied site shall be presumed to be the closer, measured from the point where the observed behaviors or conditions listed in (1) above occurred, of the following:

(a) 1.5 miles from the point where the observed behaviors or conditions listed in (1) above occurred; or

(b) The beginning of any gap greater than 300 feet wide lacking one or more of the vegetative characteristics listed under "suitable marbled murrelet habitat"; or

(c) The beginning of any narrow area of "suitable marbled murrelet habitat" less than 300 feet in width and more than 300 feet in length.

(5) For sites defined under (2) above, the outer perimeter of the occupied site shall be presumed to be the closer, measured from the point where the observed behaviors or conditions listed in (1) above occurred, of the following:

(a) 1.5 miles from the point where the observed behaviors or conditions listed in (1) above occurred; or

(b) The beginning of any gap greater than 300 feet wide lacking one or more of the distinguishing vegetative characteristics important to murrelets; or

(c) The beginning of any narrow area of suitable marbled murrelet habitat, comparable to the area where the observed behaviors or conditions listed in (1) above occurred, less than 300 feet in width and more than 300 feet in length.

(6) In determining the existence, location and status of occupied marbled murrelet sites, the department shall consult with the department of fish and wildlife and use only those sites documented in substantial compliance with guidelines or protocols and quality control methods established by and available from the department of fish and wildlife.

"Old forest habitat" see WAC 222-16-085 (1)(a).

"Operator" means any person engaging in forest practices except an employee with wages as his/her sole compensation.

"Ordinary high-water mark" means the mark on the shores of all waters, which will be found by examining the beds and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation: Provided, That in any area where the ordinary high-water mark cannot be found, the ordinary high-water mark adjoining saltwater shall be the line of mean high tide and the ordinary high-water mark adjoining freshwater shall be the line of mean high-water.

"Other forest chemicals" means fire retardants when used to control burning (other than water), nontoxic repellents, oil, dust-control agents (other than water), salt, and other chemicals used in forest management, except pesticides and fertilizers, that may present hazards to the environment.

"Park" means any park included on the parks register maintained by the department pursuant to WAC 222-20-100(2). Developed park recreation area means any park area developed for high density outdoor recreation use.

"Partial cutting" means the removal of a portion of the merchantable volume in a stand of timber so as to leave an uneven-aged stand of well-distributed residual, healthy trees that will reasonably utilize the productivity of the soil. Partial cutting does not include seedtree or shelterwood or other types of regeneration cutting.

"Pesticide" means any insecticide, herbicide, fungicide, or rodenticide, but does not include nontoxic repellents or other forest chemicals.

"Plantable area" is an area capable of supporting a commercial stand of timber excluding lands devoted to permanent roads, utility

rights of way, that portion of riparian management zones where scarification is not permitted, and any other area devoted to a use incompatible with commercial timber growing.

"Power equipment" means all machinery operated with fuel burning or electrical motors, including heavy machinery, chain saws, portable generators, pumps, and powered backpack devices.

"Preferred tree species" means the following species listed in descending order of priority for each timber habitat type:

Ponderosa pine habitat type	Mixed conifer habitat type
all hardwoods	all hardwoods
ponderosa pine	western larch
western larch	ponderosa pine
Douglas-fir	western red cedar
western red cedar	western white pine
	Douglas-fir
	lodgepole pine

"Public resources" means water, fish, and wildlife and in addition means capital improvements of the state or its political subdivisions.

"Qualified surveyor" means an individual who has successfully completed the marbled murrelet field training course offered by the department of fish and wildlife or its equivalent.

"Rehabilitation" means the act of renewing, or making usable and reforesting forest land which was poorly stocked or previously nonstocked with commercial species.

"Resource characteristics" means the following specific measurable characteristics of fish, water, and capital improvements of the state or its political subdivisions:

For fish and water:

Physical fish habitat, including temperature and turbidity;

Turbidity in hatchery water supplies; and

Turbidity and volume for areas of water supply.

For capital improvements of the state or its political subdivisions:

Physical or structural integrity.

If the methodology is developed and added to the manual to analyze the cumulative effects of forest practices on other characteristics of fish, water, and capital improvements of the state or its subdivisions, the board shall amend this list to include these characteristics.

"Riparian function" includes bank stability, the recruitment of woody debris, leaf litter fall, nutrients, sediment filtering, shade, and other riparian features that are important to both riparian forest and aquatic system conditions.

"Riparian management zone (RMZ)" means:

(1) For Western Washington

(a) The area protected on each side of a Type S or F Water measured horizontally from the outer edge of the bankfull width or the outer edge of the CMZ, whichever is greater (see table below); and

Site Class	Western Washington Total RMZ Width
I	200'
II	170'

III	140'
IV	110'
V	90'

(b) The area protected on each side of Type Np Waters, measured horizontally from the outer edge of the bankfull width. (See WAC 222-30-021(2).)

(2) For Eastern Washington

(a) The area protected on each side of a Type S or F Water measured horizontally from the outer edge of the bankfull width or the outer edge of the CMZ, whichever is greater (see table below); and

Site Class	Eastern Washington Total RMZ Width
I	130'
II	110'
III	90' or 100**
IV	75' or 100**
V	75' or 100**

* Dependent upon stream size. (See WAC 222-30-022.)

(b) The area protected on each side of Type Np Waters, measured horizontally from the outer edge of the bankfull width. (See WAC 222-30-022(2).)

(3) For exempt 20 acre parcels, a specified area alongside Type S and F Waters where specific measures are taken to protect water quality and fish and wildlife habitat.

"RMZ core zone" means:

(1) For Western Washington, the 50 foot buffer of a Type S or F Water, measured horizontally from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-021.)

(2) For Eastern Washington, the thirty foot buffer of a Type S or F Water, measured horizontally from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-022.)

"RMZ inner zone" means:

(1) For Western Washington, the area measured horizontally from the outer boundary of the core zone of a Type S or F Water to the outer limit of the inner zone. The outer limit of the inner zone is determined based on the width of the affected water, site class and the management option chosen for timber harvest within the inner zone. (See WAC 222-30-021.)

(2) For Eastern Washington, the area measured horizontally from the outer boundary of the core zone 45 feet (for streams less than 15 feet wide) or 70 feet (for streams more than 15 feet wide) from the outer boundary of the core zone. (See WAC 222-30-022.)

"RMZ outer zone" means the area measured horizontally between the outer boundary of the inner zone and the RMZ width as specified in the riparian management zone definition above. RMZ width is measured from the outer edge of the bankfull width or the outer edge of the channel migration zone, whichever is greater. (See WAC 222-30-021 and 222-30-022.)

"Road construction" means either of the following:

- (a) Establishing any new forest road;
- (b) Road work located outside an existing forest road prism, except for road maintenance.

"Road maintenance" means either of the following:

- (a) All road work located within an existing forest road prism;
- (b) Road work located outside an existing forest road prism specifically related to maintaining water control, road safety, or visibility,

such as:

- Maintaining, replacing, and installing drainage structures;
- Controlling road-side vegetation;
- Abandoning forest roads according to the process outlined in WAC 222-24-052(3).

"Rodenticide" means any substance or mixture of substances intended to prevent, destroy, repel, or mitigate rodents or any other vertebrate animal which the director of the state department of agriculture may declare by regulation to be a pest.

"Salvage" means the removal of snags, down logs, windthrow, or dead and dying material.

"Scarification" means loosening the topsoil and/or disrupting the forest floor in preparation for regeneration.

"Sensitive sites" are areas near or adjacent to Type Np Water and have one or more of the following:

(1) **Headwall seep** is a seep located at the toe of a cliff or other steep topographical feature and at the head of a Type Np Water which connects to the stream channel network via overland flow, and is characterized by loose substrate and/or fractured bedrock with perennial water at or near the surface throughout the year.

(2) **Side-slope seep** is a seep within 100 feet of a Type Np Water located on side-slopes which are greater than 20 percent, connected to the stream channel network via overland flow, and characterized by loose substrate and fractured bedrock, excluding muck with perennial water at or near the surface throughout the year. Water delivery to the Type Np channel is visible by someone standing in or near the stream.

(3) **Type Np intersection** is the intersection of two or more Type Np Waters.

(4) **Headwater spring** means a permanent spring at the head of a perennial channel. Where a headwater spring can be found, it will coincide with the uppermost extent of Type Np Water.

(5) **Alluvial fan** means a depositional land form consisting of cone-shaped deposit of water-borne, often coarse-sized sediments.

(a) The upstream end of the fan (cone apex) is typically characterized by a distinct increase in channel width where a stream emerges from a narrow valley;

(b) The downstream edge of the fan is defined as the sediment confluence with a higher order channel; and

(c) The lateral margins of a fan are characterized by distinct local changes in sediment elevation and often show disturbed vegetation.

Alluvial fan does not include features that were formed under climatic or geologic conditions which are not currently present or that are no longer dynamic.

"Shorelines of the state" shall have the same meaning as in RCW 90.58.030 (Shoreline Management Act).

"Side casting" means the act of moving excavated material to the side and depositing such material within the limits of construction or dumping over the side and outside the limits of construction.

"Site class" means a grouping of site indices that are used to determine the 50-year or 100-year site class. In order to determine site class, the landowner will obtain the site class index from the state soil survey, place it in the correct index range shown in the two tables provided in this definition, and select the corresponding site class. The site class will then drive the RMZ width. (See WAC 222-30-021 and 222-30-022.)

(1) For Western Washington

Site class	50-year site index range (state soil survey)
I	137+
II	119-136
III	97-118
IV	76-96
V	<75

(2) For Eastern Washington

Site class	100-year site index range (state soil survey)	50-year site index range (state soil survey)
I	120+	86+
II	101-120	72-85
III	81-100	58-71
IV	61-80	44-57
V	≤60	<44

(3) For purposes of this definition, the site index at any location will be the site index reported by the *Washington State Department of Natural Resources State Soil Survey*, (soil survey) and detailed in the associated forest soil summary sheets. If the soil survey does not report a site index for the location or indicates noncommercial or marginal forest land, or the major species table indicates red alder, the following apply:

(a) If the site index in the soil survey is for red alder, and the whole RMZ width is within that site index, then use site class V. If the red alder site index is only for a portion of the RMZ width, or there is on-site evidence that the site has historically supported conifer, then use the site class for conifer in the most physiographically similar adjacent soil polygon.

(b) In Western Washington, if no site index is reported in the soil survey, use the site class for conifer in the most physiographically similar adjacent soil polygon.

(c) In Eastern Washington, if no site index is reported in the soil survey, assume site class III, unless site specific information indicates otherwise.

(d) If the site index is noncommercial or marginally commercial, then use site class V.

See also section 7 of the board manual.

"Site preparation" means those activities associated with the removal of slash in preparing a site for planting and shall include scarification and/or slash burning.

"Skid trail" means a route used by tracked or wheeled skidders to move logs to a landing or road.

"Slash" means pieces of woody material containing more than 3 cubic feet resulting from forest practices activities.

"Small forest landowner long-term application" means a proposal from a small forest landowner to conduct forest practices activities for terms of three to fifteen years. Small forest landowners as defined in WAC 222-21-010(13) are eligible to submit long-term applications.

"SOSEA goals" means the goals specified for a spotted owl special emphasis area as identified on the SOSEA maps (see WAC 222-16-086). SOSEA goals provide for demographic and/or dispersal support as necessary to complement the northern spotted owl protection strategies on federal land within or adjacent to the SOSEA.

"Spoil" means excess material removed as overburden or generated during road or landing construction which is not used within limits of construction.

"Spotted owl dispersal habitat" see WAC 222-16-085(2).

"Spotted owl special emphasis areas (SOSEA)" means the geographic areas as mapped in WAC 222-16-086. Detailed maps of the SOSEAs indicating the boundaries and goals are available from the department at its regional offices.

"Stop work order" means the "stop work order" defined in RCW 76.09.080 of the act and may be issued by the department to stop violations of the forest practices chapter or to prevent damage and/or to correct and/or compensate for damages to public resources resulting from forest practices.

"Stream-adjacent parallel roads" means roads (including associated right of way clearing) in a riparian management zone on a property that have an alignment that is parallel to the general alignment of the stream, including roads used by others under easements or cooperative road agreements. Also included are stream crossings where the alignment of the road continues to parallel the stream for more than 250 feet on either side of the stream. Not included are federal, state, county or municipal roads that are not subject to forest practices rules, or roads of another adjacent landowner.

"Sub-mature habitat" see WAC 222-16-085 (1)(b).

"Suitable marbled murrelet habitat" means a contiguous forested area containing trees capable of providing nesting opportunities:

(1) With all of the following indicators unless the department, in consultation with the department of fish and wildlife, has determined that the habitat is not likely to be occupied by marbled murrelets:

(a) Within 50 miles of marine waters;

(b) At least forty percent of the dominant and codominant trees are Douglas-fir, western hemlock, western red cedar or sitka spruce;

(c) Two or more nesting platforms per acre;

(d) At least 7 acres in size, including the contiguous forested area within 300 feet of nesting platforms, with similar forest stand characteristics (age, species composition, forest structure) to the forested area in which the nesting platforms occur.

"Suitable spotted owl habitat" see WAC 222-16-085(1).

"Temporary road" means a forest road that is constructed and intended for use during the life of an approved forest practices application/notification. All temporary roads must be abandoned in accordance to WAC 222-24-052(3).

"Threaten public safety" means to increase the risk to the public at large from snow avalanches, identified in consultation with the department of transportation or a local government, or landslides or debris torrents caused or triggered by forest practices.

"Threatened or endangered species" means all species of wildlife listed as "threatened" or "endangered" by the United States Secretary of the Interior or Commerce, and all species of wildlife designated as "threatened" or "endangered" by the Washington fish and wildlife commission.

"Timber" means forest trees, standing or down, of a commercial species, including Christmas trees. However, timber does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.

"Unconfined avulsing stream" means generally fifth order or larger waters that experience abrupt shifts in channel location, creating a complex flood plain characterized by extensive gravel bars, disturbance species of vegetation of variable age, numerous side channels, wall-based channels, oxbow lakes, and wetland complexes. Many of these streams have dikes and levees that may temporarily or permanently restrict channel movement.

"Validation," as used in WAC 222-20-016, means the department's agreement that a small forest landowner has correctly identified and classified resources, and satisfactorily completed a roads assessment for the geographic area described in Step 1 of a long-term application.

"Water bar" means a diversion ditch and/or hump in a trail or road for the purpose of carrying surface water runoff into the vegetation duff, ditch, or other dispersion area so that it does not gain the volume and velocity which causes soil movement and erosion.

"Watershed administrative unit (WAU)" means an area shown on the map specified in WAC 222-22-020(1).

"Watershed analysis" means, for a given WAU, the assessment completed under WAC 222-22-050 or 222-22-060 together with the prescriptions selected under WAC 222-22-070 and shall include assessments completed under WAC 222-22-050 where there are no areas of resource sensitivity.

"Weed" is any plant which tends to overgrow or choke out more desirable vegetation.

"Western Washington" means the geographic area of Washington west of the Cascade crest and the drainages defined in Eastern Washington.

"Wetland" means those areas that are inundated or saturated by surface or ground water at a frequency and duration sufficient to support, and under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions, such as swamps, bogs, fens, and similar areas. This includes wetlands created, restored, or enhanced as part of a mitigation procedure. This does not include constructed wetlands or the following surface waters of the state intentionally constructed from wetland sites: Irrigation and drainage ditches, grass lined swales, canals, agricultural detention facilities, farm ponds, and landscape amenities.

"Wetland functions" include the protection of water quality and quantity, providing fish and wildlife habitat, and the production of timber.

"Wetland management zone" means a specified area adjacent to Type A and B Wetlands where specific measures are taken to protect the wetland functions.

"Wildlife" means all species of the animal kingdom whose members exist in Washington in a wild state. The term "wildlife" includes, but is not limited to, any mammal, bird, reptile, amphibian, fish, or invertebrate, at any stage of development. The term "wildlife" does not include feral domestic mammals or the family Muridae of the order Rodentia (old world rats and mice).

"Wildlife reserve trees" means those defective, dead, damaged, or dying trees which provide or have the potential to provide habitat

for those wildlife species dependent on standing trees. Wildlife reserve trees are categorized as follows:

Type 1 wildlife reserve trees are defective or deformed live trees that have observably sound tops, limbs, trunks, and roots. They may have part of the top broken out or have evidence of other severe defects that include: "Cat face," animal chewing, old logging wounds, weather injury, insect attack, or lightning strike. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 1 wildlife reserve trees. These trees must be stable and pose the least hazard for workers.

Type 2 wildlife reserve trees are dead Type 1 trees with sound tops, limbs, trunks, and roots.

Type 3 wildlife reserve trees are live or dead trees with unstable tops or upper portions. Unless approved by the landowner, only green trees with visible cavities, nests, or obvious severe defects capable of supporting cavity dependent species shall be considered as Type 3 wildlife reserve trees. Although the roots and main portion of the trunk are sound, these reserve trees pose high hazard because of the defect in live or dead wood higher up in the tree.

Type 4 wildlife reserve trees are live or dead trees with unstable trunks or roots, with or without bark. This includes "soft snags" as well as live trees with unstable roots caused by root rot or fire. These trees are unstable and pose a high hazard to workers.

"Windthrow" means a natural process by which trees are uprooted or sustain severe trunk damage by the wind.

"Yarding corridor" means a narrow, linear path through a riparian management zone to allow suspended cables necessary to support cable logging methods or suspended or partially suspended logs to be transported through these areas by cable logging methods.

"Young forest marginal habitat" see WAC 222-16-085 (1)(b).

[Statutory Authority: RCW 76.09.040, 08-17-092, § 222-16-010, filed 8/19/08, effective 9/19/08; 08-06-039, § 222-16-010, filed 2/27/08, effective 3/29/08. Statutory Authority: RCW 76.09.040, 76.09.010 (2)(d), 07-20-044, § 222-16-010, filed 9/26/07, effective 10/27/07. Statutory Authority: [RCW 76.09.040]. 06-17-128, § 222-16-010, filed 8/21/06, effective 9/21/06; 06-11-112, § 222-16-010, filed 5/18/06, effective 6/18/06; 05-12-119, § 222-16-010, filed 5/31/05, effective 7/1/05; 04-05-087, § 222-16-010, filed 2/17/04, effective 3/19/04. Statutory Authority: Chapter 34.05 RCW, RCW 76.09.040, [76.09.]050, [76.09.]370, 76.13.120 (9), 01-12-042, § 222-16-010, filed 5/30/01, effective 7/1/01. Statutory Authority: RCW 76.09.040 and chapter 34.05 RCW. 98-07-047, § 222-16-010, filed 3/13/98, effective 5/1/98; 97-24-091, § 222-16-010, filed 12/3/97, effective 1/3/98; 97-15-105, § 222-16-010, filed 7/21/97, effective 8/21/97. Statutory Authority: Chapters 76.09 and 34.05 RCW. 96-12-038, § 222-16-010, filed 5/31/96, effective 7/1/96. Statutory Authority: RCW 76.09.040 and chapter 34.05 RCW. 94-17-033, § 222-16-010, filed 8/10/94, effective 8/13/94; 93-12-001, § 222-16-010, filed 5/19/93, effective 6/19/93. Statutory Authority: RCW 76.09.040, 76.09.050 and chapter 34.05 RCW. 92-15-011, § 222-16-010, filed 7/2/92, effective 8/2/92. Statutory Authority: RCW 76.09.040, 76.09.050 and 34.05.350. 92-03-028, § 222-16-010, filed 1/8/92, effective 2/8/92; 91-23-052, § 222-16-010, filed 11/15/91, effective 12/16/91. Statutory Authority: RCW 76.09.040. 88-19-112 (Order 551, Resolution No. 88-1), § 222-16-010, filed 9/21/88, effective 11/1/88; 87-23-036 (Order 535), § 222-16-010, filed 11/16/87, effective 1/1/88. Statutory Authority: RCW 76.09.040 and 76.09.050. 82-16-077 (Resolution No. 82-1), § 222-16-010, filed 8/3/82, effective 10/1/82; Order 263, § 222-16-010, filed 6/16/76.]

WACs > Title 222 > Chapter 222-24 > Section 222-24-010

Beginning of Chapter << 222-24-010 >> 222-24-015

WAC 222-24-010

Agency filings affecting this section

Policy.

*(1) A well designed, located, constructed, and maintained system of forest roads is essential to forest management and protection of the public resources. Riparian areas contain some of the more productive conditions for growing timber, are heavily used by wildlife and provide essential habitat for fish and wildlife and essential functions in the protection of water quality. Wetland areas serve several significant functions in addition to timber production: Providing fish and wildlife habitat, protecting water quality, moderating and preserving water quantity. Wetlands may also contain unique or rare ecological systems.

*(2) To protect water quality and riparian habitat, roads must be constructed and maintained in a manner that will prevent potential or actual damage to public resources. This will be accomplished by constructing and maintaining roads so as not to result in the delivery of sediment and surface water to any typed water in amounts, at times or by means, that preclude achieving desired fish habitat and water quality by:

- Providing for fish passage at all life stages (see Washington state department of fish and wildlife hydraulic code Title 220 WAC);
- Preventing mass wasting;
- Limiting delivery of sediment and surface runoff to all typed waters;
- Avoiding capture and redirection of surface or ground water. This includes retaining streams in their natural drainages and routing subsurface flow captured by roads and road ditches back onto the forest floor;
- Diverting most road runoff to the forest floor;
- Providing for the passage of some woody debris;
- Protecting stream bank stability;
- Minimizing the construction of new roads; and
- Assuring no net loss of wetland function.

The road construction and maintenance rules in this chapter must be applied in achieving these goals. Additional guidance is identified in board manual section 3. If these goals are not achieved using the rules and the applied guidance, additional management strategies must be employed.

*(3) Extra protection is required during road construction and maintenance to protect public resources and timber growing potential. Landowners and fisheries and wildlife managers are encouraged to cooperate in the development of road management and abandonment plans. Landowners are further encouraged to cooperate in sharing roads to minimize road mileage and avoid duplicative road construction.

*(4) This section covers the location, design, construction, maintenance and abandonment of forest roads, bridges, stream crossings, quarries, borrow pits, and disposal sites used for forest road construction and is intended to assist landowners in proper road planning, construction and maintenance so as to protect public resources.

(Note: Other laws and rules and/or permit requirements may apply. See chapter 222-50 WAC.)

[Statutory Authority: RCW 76.09.040, 06-11-112, § 222-24-010, filed 5/18/06, effective 6/18/06; 05-12-119, § 222-24-010, filed 5/31/05, effective 7/1/05. Statutory Authority: Chapter 34.05 RCW, RCW 76.09.040, [76.09.]050, [76.09.]370, 76.13.120(9), 01-12-042, § 222-24-010, filed 5/30/01, effective 7/1/01. Statutory Authority: RCW 76.09.040, 76.09.170 and chapter 34.05 RCW, 94-01-134, § 222-24-010, filed 12/20/93, effective 1/1/94. Statutory Authority: RCW 76.09.040, 76.09.050 and chapter 34.05 RCW, 92-15-011, § 222-24-010, filed 7/2/92, effective 8/2/92. Statutory Authority: RCW 76.09.040, 87-23-036 (Order 535), § 222-24-010, filed 11/16/87, effective 1/1/88. Statutory Authority: RCW 76.09.040 and 76.09.050, 82-16-077 (Resolution No. 82-1), § 222-24-010, filed 8/3/82, effective 10/1/82; Order 263, § 222-24-010, filed 6/16/76.]

WACs > Title 222 > Chapter 222-24 > Section 222-24-020

222-24-015 << 222-24-020 >> 222-24-026

WAC 222-24-020

No agency filings affecting this section since 2003

Road location and design.

- (1) **Fit the road to the topography** so that a minimum of alterations to the natural features will occur.
- * (2) Except for crossings, new stream-adjacent parallel roads shall not be located within natural drainage channels, channel migration zones, sensitive sites, equipment limitation zones, and riparian management zones when there would be substantial loss or damage to fish or wildlife habitat unless the department has determined that other alternatives will cause greater damage to public resources. Proposals with new stream-adjacent parallel roads will require an on-site review by an interdisciplinary team. The appropriate federal representative (s) will be invited to attend the interdisciplinary team to determine if the proposal is in compliance with the Endangered Species Act.
- * (3) Roads shall not be constructed in bogs or low nutrient fens.
- * (4) Roads shall not be located in wetlands if there would be substantial loss or damage to wetland functions or acreage, unless the department has determined that alternatives will cause greater damage to public resources.
- * (5) **Minimize the number of stream crossings.**
- * (6) Where stream crossings are necessary:
- Design stream crossings to minimize alterations to natural features;
 - Locate and design culverts to minimize sediment delivery; and
 - Whenever practical**, cross streams at right angles to the main channel.
- * (7) **Avoid duplicative roads** by keeping the total amount of construction to a minimum. Use existing roads whenever practical and avoid isolating patches of timber which, when removed, may require unnecessary road construction.
- * (8) **All new road construction** on side slopes that exceed 60 percent, which have the potential to deliver sediment to any typed water or wetland must utilize full bench construction techniques, including end hauling, over hauling or other special techniques. The department may waive the full bench construction requirement if a site review is conducted and the absence of delivery potential to any typed water or wetlands is determined.
- (9) Use the minimum design standard that produces a road sufficient to carry the anticipated traffic load with reasonable safety.
- * (10) **Subgrade width** should average not more than 32 feet for double lane roads and 20 feet for single lane roads, exclusive of ditches, plus any additional width necessary for safe operations on curves and turnouts. Where road location in wetlands is unavoidable (see WAC 222-24-015 (1)(b)), minimize subgrade width.
- (11) **Balance excavation** and embankments so that as much of the excavated material as is practical will be deposited in the roadway fill sections. Where full bench construction is necessary, design suitable embankments so that the excavated material may be end hauled to appropriate deposit areas.
- (12) Cut and fill slopes must be designed and constructed in a manner that will assure a high likelihood of remaining stable throughout the life of the road.
- * (13) **All roads** shall be outsloped or ditched on the uphill side and appropriate surface drainage shall be provided by the use of adequate drainage structures such as: Cross drains, ditches, drivable dips, relief culverts, water bars, diversion ditches, or other such structures demonstrated to be equally effective.
- * (14) Drainage structures shall not discharge onto erodible soils, or over fill slopes unless adequate outfall protection is provided.
- * (15) **Relief culverts** installed on forest roads shall meet the following minimum specifications: (See the board manual, section 3 for culvert spacing.)
- Be at least 18 inches in diameter or equivalent in western Washington and 15 inches in diameter or equivalent in eastern Washington.
 - Be installed in a manner that efficiently captures ditchline flow and passes it to the outside of the road.
- * (16) **Ditch diversion.** Where roadside ditches slope toward any typed water, or Type A or B Wetland, a ditch relief structure must be located as close to the stream crossing or wetland as possible so it drains off before reaching the stream. On stream-adjacent parallel roads, relief culverts shall be located at maximum distances from stream channels to minimize sediment delivery. The relief structure must allow the sediment to be deposited onto the forest floor and not carry surface water or sediment into the stream channel or wetland.

***(17) Outslope the road surface** where practical. Where outsliping is not practical, provide a ditch with drainage structure on the inside of the road, except where roads are constructed in rock or other materials not readily susceptible to erosion.

***(18) Crown or slope** the road to prevent the accumulation of water on the road surface.

***(19) Install rock armor headwall inlets** on all stream-crossing culverts where the stream gradient above the crossing is greater than 6 percent.

***(20) Install rock armored headwalls** and rock armored ditchblocks for drainage structure culverts located on erodible soils or where the affected road has a gradient greater than 6 percent.

***(21) Install drainage structures** at locations where **seeps and springs** are known or discovered during construction to route accumulated surface water across the road prism. The water from the seeps and springs must be returned to the forest floor as close to the point of origin as reasonably practicable.

***(22) The department may require additional information** for proposed road construction as part of a complete application, including:

(a) A map with detailed topographic information showing the location and alignment of the road in relation to all typed water and wetlands as required in WAC 222-16-035;

(b) Location, size, alignment and number of water crossing and drainage structures;

(c) Detailed plans for bridges, large culverts or other complex elements of the proposal; and

(d) Other information identified by the department.

[Statutory Authority: Chapter 34.05 RCW, RCW 76.09.040, [76.09.]050 , [76.09.]370, 76.13.120(9). 01-12-042, § 222-24-020, filed 5/30/01, effective 7/1/01. Statutory Authority: RCW 76.09.040, 76.09.050 and chapter 34.05 RCW. 92-15-011, § 222-24-020, filed 7/2/92, effective 8/2/92. Statutory Authority: RCW 76.09.040. 87-23-036 (Order 535), § 222-24-020, filed 11/16/87, effective 1/1/88. Statutory Authority: RCW 76.09.040 and 76.09.050. 82-16-077 (Resolution No. 82-1), § 222-24-020, filed 8/3/82, effective 10/1/82; Order 263, § 222-24-020, filed 6/16/76.]

WACs > Title 222 > Chapter 222-24 > Section 222-24-026

222-24-020 << 222-24-026 >> 222-24-030

WAC 222-24-026

No agency filings affecting this section since 2003

***Temporary roads.**

Temporary roads as defined in WAC 222-16-010 shall:

- (1) Be constructed in a manner to facilitate closure and abandonment when the intended use is completed.
- (2) Be designed to provide the same level of protection for public resources as provided by the rules during the length of its use.
- (3) Be identified on the forest practices application or notification, along with an abandonment date. Abandonment must be accomplished under WAC 222-24-052*(3) to the specifications approved by the department by the date specified in the approved forest practices application.

[Statutory Authority: Chapter 34.05 RCW, RCW 76.09.040,[76.09.]050 , [76.09.]370, 76.13.120(9). 01-12-042, § 222-24-026, filed 5/30/01, effective 7/1/01.]

WACs > Title 222 > Chapter 222-24 > Section 222-24-035

222-24-030 << 222-24-035 >> 222-24-040

WAC 222-24-035

No agency filings affecting this section since 2003

Landing location and construction.

*(1) Landing location:

Locate landings to prevent potential or actual damage to public resources. Avoid excessive excavation and filling. Landings shall not be located within natural drainage channels, channel migration zones, RMZ core and inner zones, Type Np RMZs, sensitive sites, equipment limitation zones, and Type A or B Wetlands or their wetland management zones. Minimize placement and size of landings within forested wetlands. (See WAC 222-24-015, Construction in wetlands.)

(2) Landing construction.

(a) Landings requiring sidecast or fill shall be no larger than reasonably necessary for safe operation of the equipment expected to be used.

*(b) Where the slopes exceed 60 percent, fill material used in construction of landings shall be free from loose stumps and excessive accumulations of slash and shall be mechanically compacted where necessary and practical in layers by tractor to prevent soil erosion and mass soil movement. Chemical compacting agents may be used in accordance with WAC 222-38-020.

*(c) Truck roads, skid trails, and fire trails shall be outsloped or cross drained uphill of landings and the water diverted onto the forest floor away from the toe of any landing fill.

*(d) Landings shall be sloped to minimize accumulation of water on the landing.

*(e) Excavation material shall not be sidecast where there is high potential for material to enter wetland management zones or within the bankfull width of any stream or the 100-year flood level of any typed water.

*(f) All spoils shall be located outside of Type A and Type B Wetlands and their wetland management zones. Spoils shall not be located within the boundaries of forested wetlands without written approval of the department and unless a less environmentally damaging location is unavailable. No spoil area greater than 0.5 acre in size shall be allowed within wetlands. (See WAC 222-24-015, Construction in wetlands.)

*(3) Temporary landings.

(a) A temporary landing is intended for use during the life of an approved application/notification.

(b) It must be constructed to facilitate abandonment when the intended use is complete or upon seasonal shutdown, whichever is sooner.

(c) It must be designed to provide the same level of protection for public resources as provided by the rules during the length of its intended use.

(d) Temporary landings must be identified on the forest practices application or notification, along with an abandonment date.

(e) Temporary landings must be abandoned to the specifications approved by the department by the date specified on the approved forest practices application.

[Statutory Authority: Chapter 34.05 RCW, RCW 76.09.040, [76.09.]050 , [76.09.]370, 76.13.120(9), 01-12-042, § 222-24-035, filed 5/30/01, effective 7/1/01. Statutory Authority: RCW 76.09.040, 76.09.050 and chapter 34.05 RCW. 92-15-011, § 222-24-035, filed 7/2/92, effective 8/2/92. Statutory Authority: RCW 76.09.040, 87-23-036 (Order 535), § 222-24-035, filed 11/16/87, effective 1/1/88. Statutory Authority: RCW 76.09.040 and 76.09.050. 82-16-077 (Resolution No. 82-1), § 222-24-035, filed 8/3/82, effective 10/1/82.]

WACs > Title 222 > Chapter 222-24 > Section 222-24-050

222-24-040 << 222-24-050 >> 222-24-051

WAC 222-24-050

Agency filings affecting this section

***Road maintenance and abandonment.**

The goals for road maintenance are established in WAC 222-24-010. Guidelines for how to meet these goals and standards are in the board manual section 3. Replacement will not be required for existing culverts functioning with little risk to public resources or for culverts installed under an approved forest practices application or notification and are capable of passing fish, until the end of the culvert's functional life.

The goals for road maintenance outlined in this chapter are expected to be achieved by July 1, 2016. The strategies for achieving the goals are different for large forest landowners and small forest landowners.

For large forest landowners, all forest roads must be improved and maintained to the standards of this chapter prior to July 1, 2016. Work performed toward meeting the standards must generally be even flow over the fifteen-year period with priorities for achieving the most benefit to the public resources early in the period. These goals will be achieved through the road maintenance and abandonment plan process outlined in WAC 22-24-051 [222-24-051].

For small forest landowners, the goals will be achieved through the road maintenance and abandonment plan process outlined in WAC 222-24-0511, by participation in the state-led family forest fish passage program, and by compliance with the Forest Practices Act and rules. The purpose of the family forest fish passage program is to assist small forest landowners in providing fish passage by offering cost-share funding and prioritizing projects on a watershed basis, fixing the worst fish passage barriers first. The department, in consultation with the departments of ecology and fish and wildlife, will monitor the extent, effectiveness, and progress of checklist road maintenance and abandonment plan implementation and report to the legislature and the board by December 31, 2008, and December 31, 2013.

[Statutory Authority: RCW 76.09.040. 06-11-112, § 222-24-050, filed 5/18/06, effective 6/18/06. Statutory Authority: Chapter 34.05 RCW, RCW 76.09.040, [76.09.] 050, [76.09.]370, 76.13.120(9). 01-12-042, § 222-24-050, filed 5/30/01, effective 7/1/01. Statutory Authority: RCW 76.09.040 and chapter 34.05 RCW. 97-24-091, § 222-24-050, filed 12/3/97, effective 1/3/98; 93-12-001, § 222-24-050, filed 5/19/93, effective 6/19/93. Statutory Authority: RCW 76.09.040, 76.09.050 and chapter 34.05 RCW. 92-15-011, § 222-24-050, filed 7/2/92, effective 8/2/92. Statutory Authority: RCW 76.09.040. 87-23-036 (Order 535), § 222-24-050, filed 11/16/87, effective 1/1/88. Statutory Authority: RCW 76.09.040 and 76.09.050. 82-16-077 (Resolution No. 82-1), § 222-24-050, filed 8/3/82, effective 10/1/82; Order 263, § 222-24-050, filed 6/16/76.]

WACs > Title 222 > Chapter 222-24 > Section 222-24-051

222-24-050 << 222-24-051 >> 222-24-0511

WAC 222-24-051

Agency filings affecting this section

*Large forest landowner road maintenance schedule.

All forest roads must be included in an approved road maintenance and abandonment plan by July 1, 2006. This includes all roads that were constructed or used for forest practices after 1974. Inventory and assessment of orphan roads must be included in the road maintenance and abandonment plans as specified in WAC 222-24-052(4).

*(1) Landowners must maintain a schedule of submitting plans to the department that cover 20% of their roads or land base each year.

*(2) For those portions of their ownership that fall within a watershed administrative unit covered by an approved watershed analysis plan, chapter 222-22 WAC, landowners may follow the watershed administrative unit-road maintenance plan, providing the roads they own are covered by the plan. A proposal to update the road plan to meet the current road maintenance standards must be submitted to the department for review on or before the next scheduled road maintenance plan review. If annual reviews are not required as part of the watershed analysis road plan, the plan must be updated by October 1, 2005. All roads in the planning area must be in compliance with the current rules by July 1, 2016.

*(3) Plans will be submitted by landowners on a priority basis. Road systems or drainages in which improvement, abandonment or maintenance have the highest potential benefit to the public resource are the highest priority. Based upon a "worst first" principle, work on roads that affect the following are presumed to be the highest priority:

(a) Basins containing, or road systems potentially affecting, waters which either contain a listed threatened or endangered fish species under the federal or state law or a water body listed on the current 303(d) water quality impaired list for road related issues.

(b) Basins containing, or road systems potentially affecting, sensitive geology/soils areas with a history of slope failures.

(c) Road systems or basins where other restoration projects are in progress or may be planned coincident to the implementation of the proposed road plan.

(d) Road systems or basins likely to have the highest use in connection with future forest practices.

*(4) Based upon a "worst first" principle, road maintenance and abandonment plans must pay particular attention to:

(a) Roads with fish passage barriers;

(b) Roads that deliver sediment to typed water;

(c) Roads with evidence of existing or potential instability that could adversely affect public resources;

(d) Roads or ditchlines that intercept ground water; and

(e) Roads or ditches that deliver surface water to any typed waters.

*(5) Road maintenance and abandonment plans must include:

(a) Ownership maps showing all forest roads, including orphan roads; planned and potential abandonment, all typed water, Type A and B Wetlands that are adjacent to or crossed by roads, stream adjacent parallel roads and an inventory of the existing condition; and

(b) Detailed description of the first years work with a schedule to complete the entire plan within fifteen years; and

(c) Standard practices for routine road maintenance; and

(d) Storm maintenance strategy that includes prestorm planning, emergency maintenance and post storm recovery; and

(e) Inventory and assessment of the risk to public resources or public safety of orphaned roads; and

(f) The landowner or landowner representative's signature.

*(6) Priorities for road maintenance work within plans are:

(a) Removing fish passage barriers beginning on roads affecting the most habitat first, generally starting at the bottom of the basin and working upstream;

(b) Preventing or limiting sediment delivery (areas where sediment delivery or mass wasting will most likely affect bull trout habitat will be given the highest priority);

(c) Correcting drainage or unstable sidecast in areas where mass wasting could deliver to public resources or threaten public safety;

(d) Disconnecting road drainage from typed waters;

(e) Repairing or maintaining stream-adjacent parallel roads with an emphasis on minimizing or eliminating water and sediment delivery;

(f) Improving hydrologic connectivity by minimizing the interruption of surface water drainage, interception of subsurface water, and pirating of water from one basin to another; and

(g) Repair or maintenance work which can be undertaken with the maximum operational efficiency.

*(7) Initial plans must be submitted to the department during the year 2001 as scheduled by the department.

*(8) Each year on the anniversary date of the plan's submittal, landowners must report work accomplished for the previous year and submit to the department a detailed description of the upcoming year's work including modifications to the existing work schedule.

The department's review and approval will be conducted in consultation with the department of ecology, the department of fish and wildlife, affected tribes and interested parties. The department will:

(a) Review the progress of the plans annually with the landowner to determine if the plan is being implemented as approved; and

(b) The plan will be reviewed by the department and approved or returned to the applicant with concerns that need to be addressed within forty-five days of the plan's submittal.

(c) Additional plans will be signed by the landowner or the landowner's representative.

*(9) The department will facilitate an annual water resource inventory area (WRIA) meeting with landowners, the department of fish and wildlife, the department of ecology, affected tribes, the National Marine Fisheries Service, the U.S. Fish and Wildlife Service, affected counties, local U.S. Forest Service, watershed councils, and other interested parties. The purpose of the meeting is to:

(a) Suggest priorities for road maintenance and abandonment planning; and

(b) Exchange information on road maintenance and stream restoration projects.

*(10) Regardless of the schedule for plan development, roads that are currently used or proposed to be used for timber hauling must be maintained in a condition that prevents potential or actual damage to public resources. If the department determines that log haul on such a road will cause or has the potential to cause material damage to a public resource, the department may require the applicant to submit a plan to address specific issues or segments on the haul route.

*(11) If a landowner is found to be out of compliance with the work schedule of an approved road maintenance and abandonment plan and the department determines that this work is necessary to prevent potential or actual damage to public resources, then the department will exercise its authority under WAC 222-46-030 (notice to comply) and WAC 222-46-040 (stop work order) to restrict use of the affected road segment.

(a) The landowner may submit a revised maintenance plan for maintenance and abandonment and request permission to use the road for log haul.

(b) The department must approve use of the road if the revised maintenance plan provides protection of the public resource and maintains the overall schedule of maintenance of the road system or basin.

*(12) If a landowner is notified by the department that their road(s) has the potential to damage public resources, the landowner must, within 90 days, submit to the department for review and approval a plan or plans for those drainages or road systems within the area identified by the department.

[Statutory Authority: RCW 76.09.040, 06-11-112, § 222-24-051, filed 5/18/06, effective 6/18/06; 05-12-119, § 222-24-051, filed 5/31/05, effective 7/1/05. Statutory Authority: Chapter 34.05 RCW, RCW 76.09.040, [76.09.]050,[76.09.]370 , 76.13.120(9). 01-12-042, § 222-24-051, filed 5/30/01, effective 7/1/01.]

WACs > Title 222 > Chapter 222-24 > Section 222-24-052

222-24-0511 << 222-24-052 >> 222-24-060

WAC 222-24-052

No agency filings affecting this section since 2003

Road maintenance.

***(1) Forest roads.** Forest roads are defined in WAC 222-16-010. To the extent necessary to prevent potential or actual damage to public resources, the following maintenance shall be conducted on forest roads, except as addressed in subsections *(5) and *(6) of this section:

- (a) Drainage structures shall be kept functional.
- (b) Ground water that has been captured by ditchline must be diverted onto stable portions of the forest floor by using ditchouts, culverts or drivable dips.
- (c) Road surface must be maintained as necessary to:
 - (i) Minimize erosion of the surface and the subgrade; and
 - (ii) Minimize direct delivery of surface water to typed water; and
 - (iii) Minimize sediment entry to typed water; and
 - (iv) Direct any ground water that is captured by the road surface onto stable portions of the forest floor.
- (d) During and on completion of the following operations, the road surface shall be crowned, outsloped, or water barred and berms removed from the outside edge except those intentionally constructed for protection of fills:
 - (i) Log, pulp, chip, or specialized forest product haul;
 - (ii) Rock haul; and
 - (iii) Road building.
- (e) Before the first winter rainy season following termination of operations, drainage structures must be cleared and the road surface must be crowned, outsloped, water barred or otherwise left in a condition which prevents accelerated erosion, interruption of water movement within wetlands, mass wasting, or direct delivery of water or sediment to a typed water. (See the board manual section 3 for specific guidance.)
- (f) Thereafter, except as provided in (d) of this subsection, the landowner must clear or repair ditches or drainage structures that are known or should be known to be nonfunctional and causing or likely to cause material damage to a public resource.
- (g) The landowner will not be liable for penalties or monetary damages, under the act, for damage occurring from a condition brought about by public use, unless the landowner fails to make repairs as directed by a notice to comply.
- (h) During the regular course of road maintenance on stream-adjacent parallel roads, down wood that is blocking vehicle passage shall be placed on the side of the road closest to the adjacent water.

***(2) Additional drainage structure maintenance.** If the department determines, based on a field inspection and physical evidence, that the above road maintenance has been or will be inadequate to protect public resources, and that additional measures will provide adequate protection, the department will require the landowner or operator to install additional or larger drainage structures or other drainage improvements identified as necessary by the department.

***(3) Abandoned roads.** An abandoned road is a road which the forest landowner has abandoned in accordance with procedures of (a) through (e) of this subsection. Roads are exempt from maintenance under this section only after (e) of this subsection is completed.

- (a) Roads are outsloped, water barred, or otherwise left in a condition suitable to control erosion and maintain water movement within wetlands and natural drainages;
- (b) Ditches are left in a suitable condition to reduce erosion;
- (c) The road is blocked so that four wheel highway vehicles cannot pass the point of closure at the time of abandonment;
- (d) Water crossing structures and fills on all typed waters are removed, except where the department determines other measures would provide adequate protection to public resources; and
- (e) The department shall determine whether the road has been abandoned according to procedures of this subsection. If the department determines the road is properly abandoned, it must notify the landowner in writing within thirty days that the road is officially abandoned.

***(4) Orphaned roads.** An orphaned road is a road or railroad grade that the forest landowner has not used for forest practices activities since 1974. Many of these roads are overgrown or closed off, but have not satisfied the abandonment process.

(a) An inventory and assessment, of the risk to public resources, or public safety must be completed by the landowner in conjunction with the road maintenance and abandonment plan.

(b) Five years after the effective date of this rule, when the extent of any problems associated with the orphaned roads is known, the hazard-reduction statute will be evaluated to determine if it is still needed and if funds for cost-sharing are needed to effect repair or abandonment of orphan roads. See RCW 76.09.300.

(c) Landowners are not obligated under this rule to repair or abandon such roads before the end of the five year period, but they can voluntarily take this action.

***(5) Brush control.** Chemical control of roadside brush will be done in accordance with WAC 222-38-020.

***(6) Road surface treatment.**

(a) Apply oil to the road surface only when the temperature is above 55 degrees F and during the season when there is a minimal chance of rain for the next 48 hours. Use of waste oil is subject to RCW 70.951.060(5).

(b) Water the road surface prior to application of oil to assist in penetration.

(c) Construct a temporary berm along the road shoulder wherever needed to control runoff of the applied chemical.

(d) Take extreme care to avoid excess application of road chemicals. Shut off the flow at all bridges.

(e) Dispose of the rinse water fluids on the road surface or in a place safe from potential contamination of water when cleaning out chemical storage and application equipment tanks used for storage and application of road treatment materials.

(f) Comply with WAC 222-38-020 when using dry road chemicals.

[Statutory Authority: Chapter 34.05 RCW, RCW 76.09.040, [76.09.]050 , [76.09.]370, 76.13.120(9). 01-12-042, § 222-24-052, filed 5/30/01, effective 7/1/01.]

APPENDIX J

L07M0098
DRAFT LOT COUNT
BASED ON "MANAGED ACCESS" STATE HIGHWAY

FOR 3/27/08
MEETING WITH
RSAN, JAMIL, RET
RFLO,
STEVE HOSSIS

INITIAL ASSUMPTIONS:

That all lots are pre 1937 lots, unless documented otherwise.
That an individual lot in a section must be recognized.
That the state highway is a "managed access" highway.

(1) SECTION 16-20-07, TAX PARCEL 9001

Request is to recognize four 1/4 1/4's, within this tax lot. No road.
REMAINS as one legal lot.

TAX PARCEL 9004

Request is to recognize five 1/4 1/4's, within this tax lot. No road.
REMAINS as one legal lot.

TAX PARCEL 9009

Request is to recognize four 1/4 1/4's, within this tax lot. No road.
REMAINS as one legal lot.

TOTAL 3 THIS SECTION

(2) SECTION 27-20-07

Request is to recognize ten lots within tax lot 9005. No roads.
REMAINS as one legal lot.

TOTAL 1 THIS SECTION

(3) SECTION 28-20-07

Request is to recognize 16 lots within tax parcel 9001, all are pre 1937. No roads.
REMAINS as one legal lot.

TOTAL 1 THIS SECTION

(4) SECTION 20-20-07

Request is to recognize the SE of the SE out of a much larger tax parcel 9001. No road.
REMAINS as one legal lot.

TOTAL 1 THIS SECTION

(5) SECTION 29-20-07

Request is to recognize the NE of the NE out of a much larger tax parcel 9001. No road.
REMAINS as one legal lot.

TOTAL 1 THIS SECTION

~~NOT CORRECT~~

(6) SECTION 32-20-07

Request is to recognize 6 of the 9 ¼ ¼'s in tax parcel 9003. One is adjacent to road.
RECOGNIZE the NE of the SW as a lot. Balance of parcel is also a lot.

TOTAL 2 THIS SECTION

(7) SECTION 33-20-07, TAX PARCEL 9001

Request is to recognize 5 lots in this tax parcel. All are pre 1937 lots. No road.
REMAINS as one legal lot.

TAX PARCEL 9015

Request is to recognize 4 lots in this tax parcel. All are pre 1937 lots, except old TL 34.
No roads.

RECOGNIZE that portion of SE of SE West of road (old TL 34) as one legal lot.

RECOGNIZE balance of TL 15 as one legal lot.

TOTAL 3 THIS SECTION

(8) SECTION 34-20-07, TAX PARCEL 9001

Request is to recognize all 8 ¼ ¼'s in this half section. No roads.
REMAINS as one legal lot.

TAX PARCEL 9005

Request is to recognize all 8 ¼ ¼'s in this half section. No roads.

REMAINS as one legal lot.

TOTAL 2 THIS SECTION

(9) SECTION 02-19-07, TAX PARCEL 9001

Request is to recognize 7 1/2 lots in this tax parcel. No road.
REMAINS as one legal lot.

TAX PARCEL 9005

Request is to recognize 4 1/2 lots in this tax parcel. No road.

REMAINS as one legal lot.

TOTAL 2 THIS SECTION

L07M0098

Page 3 of 3

(10) SECTION 03-19-07, TAX PARCEL 9001

Request is to recognize 5 lots in this tax parcel. No roads.

REMAINS as one legal lot.

TAX PARCEL 9005

Request is to recognize 9 lots in this tax parcel. The following $\frac{1}{4}$ $\frac{1}{4}$'s are recognized with roads: NW of NW, SW of NW, SE of NW, NW of SW, NE of SW. The remnant 3 parcels remain as one lot.

TOTAL 7 THIS SECTION

(11) SECTION 04-19-07

Request is to recognize 8 lots in the east half of this tax parcel, with large remnant parcel. Has roads. NE of SE & SE of SE ok by roads. Balance is one lot.

RECOGNIZE THREE LOTS.

TOTAL 3 THIS SECTION

TOTAL 26

REQUEST WAS FOR 109 LOTS

- 5 = 21

APPENDIX K

19.08.010 Applicability. This title shall apply to all divisions of land into two or more lots or tracts, for the purpose of sale, lease or transfer of ownership. Except as provided herein the provisions of this title shall not apply to:

A. Cemeteries and other burial plots while used for that purpose.

B. Any division of land into lots or tracts each one of which is twenty acres or larger, or in the case of zone classifications requiring a minimum lot area greater than twenty acres, each of which complies with the lot area requirements of that classification. Once the original parcel is subdivided into its maximum number of lots or tracts allowed under this section, no additional subdivision of these lots or tracts shall be done except through the subdivision or short subdivision process.

C. Any division of land made by testamentary provisions or the laws of descent. Any development on lots created by this means must comply with all applicable development regulations, including zoning.

D. Any division of land into lots or tracts consistent with RCW 58.17.040, Section 7 for which a residential condominium binding site plan has been recorded in accordance with the provisions set forth in K.C.C. 19.34, Residential Condominium Binding Site Plan.

¹ [Deposit of bond pending improvement, see Chapter 19.16.]

(King County 6-96)

667

GENERAL PRINCIPLES OF ACCEPTABILITY

19.08.010

E. Any transfer of land to a public body, or any division of land solely for the installation of electric power, telephone, water supply, sewer service or other utility facilities of a similar or related nature provided that no more than four lots are created and provided further that any remaining lot or lots which are not consistent with King County zoning, access, or health requirements shall not be considered as building sites by King County.

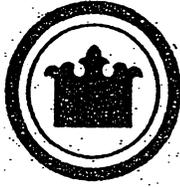
F. A division made for the purpose of alteration by adjusting boundary lines, between platted or unplatted lots or both, which does not create any additional lot, tract, parcel, site, or division nor create any additional lot, tract, parcel, site, or division which contains insufficient area and dimension to meet minimum requirements for width and area for a building site, provided the adjustment is reviewed and approved as set forth in K.C.C. 19.08.112 or 19.08.113.

G. Any conveyance of land by a partial fulfillment deed pursuant to a real estate contract; provided that the entire lot within the original real estate contract shall be recognized as a single legal building site until the property is subdivided in compliance with this title, and that there shall be no retransfer of any lot created by partial fulfillment deed without compliance with this title.

H. Any division of land for the purpose of lease when no residential structures other than mobile homes are permitted to be placed upon the land and for which a binding site plan for the use of the land as a mobile home park has been approved by the director in accordance with the provisions of K.C.C. 21A.14.

I. Divisions of land by binding site plan into lots or tracts classified for industrial or commercial use pursuant to K.C.C. 19.33. (Ord. 11901 § 1, 1995: Ord. 11619 § 15, 1994: Ord. 11017 § 11, 1993: Ord. 9543 § 16, 1990: Ord. 1380 § 3, 1972: Res. 11048 § II (part), 1948).

APPENDIX L



Metropolitan King County Council

Anne Noris, Clerk of the Council
Room 1025, King County Courthouse
516 Third Avenue
Seattle, WA 98104-3272

(206) 296-1020
FAX (206) 205-8165
E-mail: anne.noris@metrokc.gov
TTY/TDD (206) 296-1024

October 7, 2004

Mr. Ike Nwankwo
Growth Management Planner
State of Washington
Office of Community Development
Growth Management Services
906 Columbia Street S.W.
PO Box 48350
Olympia, WA 98504-8350

Re: Final Adoption Notice for Ordinance Nos. 15028, 15029, 15030, 15031, 15032

Dear Mr. Nwankwo:

In accordance with RCW 36.70A.290(2)(b), the Metropolitan King County Council hereby notifies the Office of Community Development Growth Management Services of final adoption of Ordinance Nos. 15028, 15029, 15030, 15031 & 15032, relating to comprehensive planning and zoning.

Please direct inquiries to Lauren Smith, Legislative Analyst at (206) 296-0352.

Sincerely,

Anne Noris
Clerk of the Council

Attachment: Ordinances 15028, 15029, 15030, 15031 & 15032

APPENDIX M

15031

39.5

9-27-04 Council Mtg.

Sponsor: Dwight Pelz

Proposed No.: 2004-0117

1 AMENDMENT TO PROPOSED ORDINANCE 2004-0117, VERSION 2

2

3 On page 2, delete lines 27 through 34 and insert the following:

4 "1. Prior to June 9, 1937, and ~~((the lot))~~ has been:

5 a. ~~((P))~~ provided with approved sewage disposal or water systems or roads (~~(;~~
6 ~~or))~~; and

7 b1. ~~((C))~~ conveyed as an individually described parcel to separate,
8 noncontiguous ownerships through a fee simple transfer or purchase prior to October 1,
9 1972, or

10 b2. ~~((e-R))~~ recognized prior to October 1, 1972, as a separate tax lot by the
11 county assessor(~~(;)~~);

12

13

14 **EFFECT:** This amendment clarifies that to determine legal lot status for pre-1937 lots, a
15 property owner must demonstrate that the lot has infrastructure (sewage disposal or water
16 or roads) and that prior to October 1, 1972 it was either: 1) conveyed to someone as an
17 individual parcel or 2) recognized by the Assessor as a separate tax lot.

18

DP moved 10-1 SH "NO"
Hague / PUR Et.

GO A

APPENDIX N



King County
Public Speaker List

1200 King County Courthouse
516 Third Avenue
Seattle, WA 98104

9/20/2004 Metropolitan King County Council

15031

2004-0114

adopting the KC Comprehensive Plan 2004 amendments to the Comprehensive Plan 2000 and area zoning

2004-0117

- 1 Barry Anderson
PO Box 7157
Covington, WA 98042
Home Phone: 253-630-3284
- 2 Mark Lanza
26414 199th Place SE
Covington, WA 98042
Home Phone: 253-630-3284
- 3 Steve McNey
622 S. 320th Street
Federal Way, WA 98003
Home Phone: 253-946-4000
- 4 Thomas Barnes
16025 10th Avenue SW
Burien, WA 98166
Home Phone: 206-244-8489
- 5 Susan Horan
622 S. 320th Street
Federal Way, WA 98003
Home Phone: 253-765-2209
- 6 Jeff McCann
1900 S. Puget Drive
Renton, WA 98055
Home Phone: 206-499-3443
- 7 Joe Tovar
16720 SE 271st Street, #10
Covington, WA 98042
Home Phone: 253-638-1110

- 8 Andy Dempsey
16720 SE 271st Street, #100
Covington, WA 98042
Home Phone: 253-638-1110
- 9 Robert Thorpe
705 2nd Avenue, #710
Seattle, WA 98104
Home Phone: 206-624-6239
- 10 Barb Holt
24920 177th Avenue SE
Kent, WA 98042
Home Phone: 253-639-2797
- 11 Donald Dahlgren
440 McGilvra Blvd. E.
Seattle, WA 98112
Home Phone: 206-624-0483
- 12 Julie Stivers
16128 3rd Drive NE
Arlington, WA 98223
Home Phone: 425-508-2009
- 13 Magnus Andersson
10777 Main Street
Bellevue, WA 98004
Home Phone: 425-454-3374
- 14 Hank Haynes
17427 195th Place SE
Renton, WA 98058
Home Phone: 425-432-5791
- 15 Maxine Keesling
15241 NE 153rd
Woodinville, WA 98072
Home Phone: 425-483-8523
- 16 Jens Molbak
13625 NE 175th Street
Woodinville, WA 98072

15031

15031

- 17 Darlene Madenwald
2235 Fairview Avenue E., #7
Seattle, WA 98102
Home Phone: 206-324-2217
- 18 Amy Kosterlitz
2025 1st Avenue
Seattle, WA 98104
Home Phone: 206-382-9540
- 19 Robin Herberger
6401 Lake Washington Blvd.
Kirkland, WA 98033
- 20 Bill Moffet
13835 62nd Avenue NE
Kirkland, WA 98034
Home Phone: 253-232-0562
- 21 Geraldine Miles
24807 156th Avenue SE
Kent, WA 98042
- 22 Elizabeth Jovanovich
24639 156th SE
Kent, WA 98042
Home Phone: 253-639-0123
- 23 Joe Miles
24639 156th Avenue SE
Kent, WA 98042
- 24 Bob Johns
1500 114th SE, #102
Bellevue, WA 98004
Home Phone: 425-467-9960
- 25 Paul Carkeek
General Delivery
Preston, WA 98050
Home Phone: 425-222-5662

15031

- 26 Greg Wingard
PO Box 4051
Seattle, WA 98104
Home Phone: 206-261-2670
- 27 Jeff Martine
13534 476th Avenue SE
North Bend, WA 98045
Home Phone: 425-888-1115
- 28 Karen Bohlke
24833 180th Avenue SE
Kent, WA 98042
Home Phone: 253-630-3780
- 29 Sasha Rabkin
24633 180th Avenue SE
Kent, WA 98042
Home Phone: 206-853-7274
- 30 Roy Wilson
24833 180th Avenue SE
Kent, WA 98042
Home Phone: 253-630-3780
- 31 Tiffany Radebaugh
24833 180th Avenue SE
Kent, WA 98042
Home Phone: 206-948-2174
- 32 Lailani Ovalles
24833 180th Avenue SE
Kent, WA 98042
Home Phone: 206-890-7660
- 33 Shevanthi Daniel
24633 180th Avenue SE
Kent, WA 98042
Home Phone: 206-930-3993
- 34 Nyla Rosen
24633 180th Avenue SE
Kent, WA 98042

35 Rob Odle
15610 NE 85th Street
Redmond, WA 98073
Home Phone: 425-556-2417

15031

METROPOLITAN KING COUNTY COUNCIL

Item Nos 5-9, 12 and 13

Date 9/20/2004

Proposed Ordinance No. ~~2004-0117.2~~, 2004-0118.2, 2004-0410, 2004-0411.2, 2004-0114.2, 2004-0115.2, 2004-0116.2

15031

SPEAKER#	NAME	MAILING ADDRESS (Please Include City and Zip Code)	PHONE#
----------	------	---	--------

PLEASE PRINT

1.	Barry Anderson	PO BOX 7157 Covington 98042	/
2.	Mark Lenza	26414 19th Pl. SE Covington 98042	253 630-3284
3.	Steve McNeely	622 S. 320th St Fed Way 98003	253 946-4000
4.	Thomas Barnes	16025 10th Ave SW Burien 98146	206 244-8789
5.	Susan Horan	622 S. 320th St Fed Way 98003	253 765-2209
6.	Jeff McCann	1900 S. Puget Dr. Renton 98055	206 499-3443
7.	Joe Towar	City of Covington 116720 SE 271st St #100 Covington 98042	253 638-1110 x2226
8.	Andy Dempsey	116720 SE 271st St #100 Covington 98042	253 638-1110
9.	Robert Thorne	705 2nd Ave #710 Seattle 98104	206 624-6239
10.	Barb Holt	24920 171th Ave SE Cent 98042	253 639-2797

METROPOLITAN KING COUNTY COUNCIL

Item Nos 5-9, 12 and 13

Date 9/20/2004

15031

Proposed Ordinance No. 2004-0114.2, 2004-0115.2, 2004-0116.2, 2004-0117.2, 2004-0118.2, 2004-0410, 2004-0411.2

SPEAKER#	NAME	MAILING ADDRESS (Please Include City and Zip Code)	PHONE#
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PLEASE PRINT

1.	Donald Dahlgren	440 MCGILVERA BLVD. E Seattle, WA 98112	206 624-0483
2.	Julie Stivers	16128 3rd Drive NE Arlington 98223	425 508-2009
3.	Magnus Andersson	10777 Main St. Bellevue, 98004	425 454-3374
4.	Hank Haynes	17427 195th PL SE Renton 98058	425 432-5791
5.	Maxine Keesling	15241 NE 153rd Woodinville 98072	425 483-8523
6.	Jens Molbak	13625 NE 175th St Woodinville 98072	/
7.	Darlene Madenwald	2235 Fairview Ave E Sea. 98102 #7	206 324-2217
8.	Amy Kosterlitz	2025 1st Ave Sea. 98104	206 382-9540
9.	Robin Herberger	6401 UKWA BLVD Kirkland 98033	/
10.	Bill Moffet	13835 62nd AVE NE Kirkland 98034	253 232-0502

METROPOLITAN KING COUNTY COUNCIL

15031

Item Nos 5-9, 12 and 13

Date 9/20/2004

Proposed Ordinance No. 2004-0114.2, 2004-0115.2, 2004-0116.2, 2004-0117.2, 2004-0118.2, 2004-0410, 2004-0411.2

SPEAKER#	NAME	MAILING ADDRESS (Please Include City and Zip Code)	PHONE#
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PLEASE PRINT

1.	Geraldine Miles	24807 156th Ave SE Kent 98042	/
2.	Elizabeth Jovanovich	24639 156th SE Kent 98042	253 639-0123
3.	Joe Miles	24639 156th Ave SE Kent 98042	/
4.	Bob Johns	1500 114th SE #102 Bellevue 98004	425 467-9960
5.	Paul Carkeek	General Delivery Preston 98050	425 222-5662
6.	Greg Wingard	PO BOX 4051 Seattle 98104	206 261-2670
7.	Jeff Martine	13534 476th Ave SE N. Bend 98045	425 888-1115
8.			
9.			
10.			

METROPOLITAN KING COUNTY COUNCIL

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SPEAKER#	NAME	MAILING ADDRESS (Please Include City and Zip Code)	PHONE#
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PLEASE PRINT

1.	Karen Bohke	24833 180th Ave SE Kent 98042	253 630-3780
2.	Sasha Rabkin	24633 180th Ave SE Kent 98042	206 853-7274
3.	Roy Wilson	24833 180th Ave SE Kent 98042	253 630-3780
4.	Tiffany Radebaugh	24833 180th Ave SE Kent 98042	206 948-2174
5.	Kailani Ovalles	24833 180th Ave SE Kent 98042	206 890-7660
6.	Shevanthi Daniel	24633 180th Ave SE Kent 98042	206 930-3993
7.	Nyla Rosen	24633 180th Ave SE Kent 98042	↙
8.			
9.			
10.			

METROPOLITAN KING COUNTY COUNCIL

Item No. 5-9, 12 and 13

Date 9/20/2004

Proposed Ordinance No. 2004-0114.2, 2004-0115.2, 2004-0116.2, 2004-0117.2, 2004-0118.2, 2004-0410, 2004-0411.2

SPEAKER#	NAME	MAILING ADDRESS (Please Include City and Zip Code)	PHONE#
----------	------	---	--------

PLEASE PRINT

1.	Rob Odle	City of Redmond 15670 NE 85th St Redmond 98073	425 556-2417
2.			
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6.			
7.			
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