

Kittitas County Prosecutor

**Agenda Staff Report**

**AGENDA DATE:** March 6, 2012

**ACTION REQUESTED:** Approve and sign Order affirming the County's denial of a series of exempt segregation applications denominated as SG-10-00003, SG-10-00004, SG-10-00005, SG-10-00006, SG-10-00007, and SG-10-00008.

**BACKGROUND:**

Plum Creek Timber Company L.P. submitted a series of applications to Kittitas County denominated as SG-10-00003, SG-10-00004, SG-10-00005, SG-10-00006, SG-10-00007, and SG-10-00008. These applications were denied, and Plum Creek appealed that denial. The administrative record was certified to the BOCC and both Plum Creek and the County submitted briefing. After due notice and consideration of the record and briefing, the BOCC held the administrative appeal on February 23, 2012. The BOCC voted 2-1 to affirm the denial of these applications with Commissioner Crankovich voting against.

**INTERACTION**

Deputy Prosecutor Caulkins drafted an order memorializing the BOCC's findings and orders.

**RECOMMENDATION:**

Approve and sign the Order affirming the denial of this series of applications.

**HANDLING:**

Once signed, send copies to Plum Creek and the Prosecutor's Office.

**LEAD STAFF:**

Neil Caulkins

IN RE PLUM CREEK TIMBER COMPANY,)
L.P. ADMINISTRATIVE SEGREGATION )
APPEAL )

This matter came before the Kittitas County Board of Commissioners (BOCC) as an administrative appeal from a denial of a set of applications made by appellant Plum Creek Timber Company, L.P. (Plum Creek) . After certification of the record, briefing by the parties, and due notice, the BOCC conducted the administrative appeal at 1:30 p.m. February 23, 2012 in the commissioners' auditorium. Having considered the record, briefing of the parties, and being fully advised in the premises, the BOCC finds and orders as follows:

The BOCC finds that Plum Creek was not requesting a set of administrative segregations (given that the applications do not comport with that code provision), but rather was seeking recognition of government lots, which is something the County has neither a process nor enacted code to perform. The BOCC finds that to act in the absence of adopted code and process would be arbitrary and capricious, and so denial of these applications was the proper response. The BOCC finds that it is precluded from recognizing undeveloped pre-1936 parcels in the absence of subjecting such parcels to the scrutiny of modern land use laws such as the Growth Management Act and the State Environmental Policy Act. The BOCC finds that a Superior Court, not a county,

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1 has jurisdiction to answer questions of title regarding lots that have been merged or aggregated, and  
2 the BOCC declined to determine if the lots involved in this matter were merged or aggregated. The  
3 BOCC finds that any past erroneous practices of the County do not create vested rights to the  
4 continuation of those errors. A motion to affirm the denial was approved on a 2-1 vote with  
5 Commissioner Crankovich voting against.

6 IT IS ORDERED that the motion to augment the administrative record is granted, thereby  
7 adding a letter from Joseph Rehberger dated 10/14/11 and emails from David Sprinkle dated  
8 8/31/11 and 9/1/11 as AR 652-665; and

9 IT IS ORDERED that the denial of project application numbers SG-10-00003, SG-10-  
10 00004, SG-10-00005, SG-10-00006, SG-10-00007, and SG-10-00008 is affirmed.

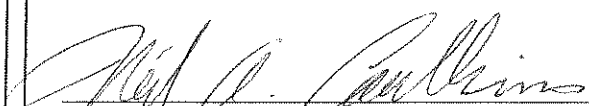
11  
12 Ordered this \_\_\_\_\_ day of March, 2012.

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Alan Crankovich, Chairman

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Obie O'Brien, Vice-Chairman

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Paul Jewell, Commissioner

20 Presented by:

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Neil A. Caulkins, WSBA 31759  
24 Deputy Prosecuting Attorney  
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