

CASE TYPE 2
GRANT COUNTY SUPERIOR COURT
CASE INFORMATION COVER SHEET

Case Number 13-2-01396-3 **Case Title:** Anselmo Land Company, et al. v. Kittitas County

Attorney Name: Nancy Bainbridge Rogers

Bar Membership Number: 26662

Please check one category that best describes this case for indexing purposes. Accurate case indexing not only saves time in docketing new cases, but helps in forecasting needed judicial resources. Cause of action definitions are listed on the back of this form. Thank you for your cooperation.

APPEAL/REVIEW

- Administrative Law Review (ALR 2)
- Appeal of a Department of Licensing Revocation (DOL 2)
- Civil, Non-Traffic (LCA 2)
- Civil, Traffic (LCI 2)

CONTRACT/COMMERCIAL

- Breach of Contract (COM 2)
- Commercial Contract (COM 2)
- Commercial Non-Contract (COL 2)
- Third Party Collection (COL 2)

PROTECTION ORDER

- Civil Harassment (HAR 2)
- Domestic Violence (DVP 2)
- Foreign Protection Order (FPO 2)
- Sexual Assault Protection (SXP 2)
- Vulnerable Adult Protection (VAP 2)

JUDGMENT

- Abstract Only (ABJ 2)
- Foreign Judgment (FJU 2)
- Judgment, Another County (ABJ 2)
- Judgment, Another State (FJU 2)
- Tax Warrant (TAX 2)
- Transcript of Judgment (TRJ 2)

OTHER COMPLAINT/PETITION

- Action to Compel/Confirm Private Binding Arbitration (MSC 2)
- Change of Name (CHN 2)
- Deposit of Surplus Funds (MSC 2)
- Emancipation of Minor (EOM 2)
- Injunction (INJ 2)
- Interpleader (MSC 2)
- Malicious Harassment (MHA 2)
- Minor Settlement (No guardianship) (MST 2)
- Petition for Civil Commitment (Sexual Predator)(PCC 2)
- Property Damage-Gangs (PRG 2)
- Public Records Act (PRA 2)
- School District – Required Action Plan (SDR 2)
- Seizure of Property from Commission of Crime (SPC 2)

- Seizure of Property Resulting from a Crime (SPR 2)
- Subpoenas (MSC 2)

PROPERTY RIGHTS

- Condemnation (CON 2)
- Foreclosure (FOR 2)
- Land Use Petition (LUP 2)
- Property Fairness (PFA 2)
- Quiet Title (QTI 2)
- Unlawful Detainer (UND 2)

TORT, MEDICAL MALPRACTICE

- Hospital (MED 2)
- Medical Doctor (MED 2)
- Other Health Care Professional (MED 2)

TORT, MOTOR VEHICLE

- Death (TMV 2)
- Non-Death Injuries (TMV 2)
- Property Damage Only (TMV 2)
- Victims of Motor Vehicle Theft (VVT 2)

TORT, NON-MOTOR VEHICLE

- Asbestos (PIN 2)
- Other Malpractice (MAL 2)
- Personal Injury (PIN 2)
- Products Liability (TTO 2)
- Property Damage (PRP 2)
- Wrongful Death (WDE 2)

WRIT

- Habeas Corpus (WHC 2)
- Mandamus (WRM 2)
- Restitution (WRR 2)
- Review (WRV 2)
- Miscellaneous Writs (WMW 2)

IF YOU CANNOT DETERMINE THE APPROPRIATE CATEGORY, PLEASE DESCRIBE THE CAUSE OF ACTION BELOW.

Please Note: Public information in court files and pleadings may be posted on a public Web site.

APPEAL/REVIEW

Administrative Law Review-Petition to the superior court for review of rulings made by state administrative agencies.

Appeal of a Department of Licensing Revocation-Appeal of a DOL revocation (RCW 46.20.308(9)).

Lower Court Appeal-Civil-An appeal for a civil case; excludes traffic infraction and criminal matters.

Lower Court Appeal-Infractions-An appeal for a traffic infraction matter.

CONTRACT/COMMERCIAL

Breach of Contract-Complaint involving monetary dispute where a breach of contract is involved.

Commercial Contract-Complaint involving monetary dispute where a contract is involved.

Commercial Non-Contract-Complaint involving monetary dispute where no contract is involved.

Third Party Collection-Complaint involving a third party over a monetary dispute where no contract is involved.

PROTECTION ORDER

Civil Harassment-Petition for protection from civil harassment.

Domestic Violence -Petition for protection from domestic violence.

Foreign Protection Orders-Any protection order of a court of the United States, or of any state, territory, or tribal land, which is entitled to full faith and credit in this state.

Sexual Assault Protection - Petition under RCW 7.90.020.

Vulnerable Adult Protection-Petition for protection order for vulnerable adults, as those persons are defined in RCW 74.34.020.

JUDGMENT

Abstract Only-A certified copy of a judgment docket from another superior court, an appellate court, or a federal district court.

Foreign Judgment-Any judgment, decree, or order of a court of the United States, or of any state or territory, which is entitled to full faith and credit in this state.

Judgment, Another County-A certified copy of a judgment docket from another superior court within the state.

Judgment, Another State-Any judgment, decree, or order from another state which is entitled to full faith and credit in this state.

Tax Warrant-A notice of assessment by a state agency creating a judgment/lien in the county in which it is filed.

Transcript of Judgment-A certified copy of a judgment from a court of limited jurisdiction to a superior court in the same county.

OTHER COMPLAINT/PETITION

Action to Compel/Confirm Private Binding Arbitration-Petition to compel or confirm private binding arbitration.

Change of Name-Petition for a change of name. If change is confidential due to domestic violence/antiharassment see case type 5 instead.

Deposit of Surplus Funds-Deposit of money or other item with the court.

Emancipation of Minor-Petition by a minor for a declaration of emancipation.

Injunction-Complaint/petition to require a person to do or refrain from doing a particular thing.

Interpleader-Petition for the deposit of disputed earnest money from real estate, insurance proceeds, and/or other transaction(s).

Malicious Harassment-Suit involving damages resulting from malicious harassment.

Minor Settlements-Petition for a court decision that an award to a minor is appropriate when no letters of guardianship are required (e.g., net settlement value \$25,000 or less).

Petition for Civil Commitment (Sexual Predator)-Petition for the involuntary civil commitment of a person who 1) has been convicted of a sexually violent offense whose term of confinement is about to expire or has expired, 2) has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial who is about to be released or has been released, or 3) has been found not guilty by reason of insanity of a sexually violent offense and who is about to be released or has been released, and it appears that the person may be a sexually violent predator.

Property Damage-Gangs-Complaint involving damage to property related to gang activity.

Public Records Act-Actions filed under RCW 42.56.

School District-Required Action Plan-Petition filed requesting court selection of a required action plan proposal relating to school academic performance.

Seizure of Property from the Commission of a Crime-Seizure of personal property which was employed in aiding, abetting, or commission of a crime, from a defendant after conviction.

Seizure of Property Resulting from a Crime-Seizure of tangible or intangible property which is the direct or indirect result of a crime, from a defendant following criminal conviction (e.g., remuneration for, or contract interest in, a depiction or account of a crime).

Subpoenas-Petition for a subpoena.

PROPERTY RIGHTS

Condemnation-Complaint involving governmental taking of private property with payment, but not necessarily with consent.

Foreclosure-Complaint involving termination of ownership rights when a mortgage or tax foreclosure is involved, where ownership is not in question.

Land Use Petition-Petition for an expedited judicial review of a land use decision made by

a local jurisdiction (RCW 36.70C.040).

Property Fairness-Complaint involving the regulation of private property or restraint of land use by a government entity brought forth by Title 64 RCW.

Quiet Title-Complaint involving the ownership, use, or disposition of land or real estate other than foreclosure.

Unlawful Detainer-Complaint involving the unjustifiable retention of lands or attachments to land, including water and mineral rights.

TORT, MEDICAL MALPRACTICE

Hospital-Complaint involving injury or death resulting from a hospital.

Medical Doctor-Complaint involving injury or death resulting from a medical doctor.

Other Health Care Professional-Complaint involving injury or death resulting from a health care professional other than a medical doctor.

TORT, MOTOR VEHICLE

Death-Complaint involving death resulting from an incident involving a motor vehicle.

Non-Death Injuries -Complaint involving non-death injuries resulting from an incident involving a motor vehicle.

Property Damage Only-Complaint involving only property damages resulting from an incident involving a motor vehicle.

TORT, NON-MOTOR VEHICLE

Asbestos-Complaint alleging injury resulting from asbestos exposure.

Other Malpractice-Complaint involving injury resulting from other than professional medical treatment.

Personal Injury-Complaint involving physical injury not resulting from professional medical treatment, and where a motor vehicle is not involved.

Products Liability-Complaint involving injury resulting from a commercial product.

Property Damages-Complaint involving damage to real or personal property excluding motor vehicles.

Wrongful Death-Complaint involving death resulting from other than professional medical treatment.

WRIT

Writ of Habeas Corpus-Petition for a writ to bring a party before the court.

Writ of Mandamus-Petition for writ commanding performance of a particular act or duty.

Writ of Restitution-Petition for a writ restoring property or proceeds; not an unlawful detainer petition.

Writ of Review-Petition for review of the record or decision of a case pending in the lower court; does not include lower court appeals or administrative law reviews.

Miscellaneous Writs

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SUPERIOR COURT OF WASHINGTON FOR GRANT COUNTY

ANSELMO LAND COMPANY, LLC, a
Washington limited liability company;
NEVERSWAT LAND COMPANY, LLC, a
Washington limited liability company;
ORPHAN GIRL LAND COMPANY, LLC, a
Washington limited liability company; and
PLUM CREEK TIMBER COMPANY, INC., a
Washington corporation,

Petitioners,

v.

KITTITAS COUNTY,

Respondent.

NO. 13-2-01396-3

SUMMONS

TO: RESPONDENT KITTITAS COUNTY

A lawsuit has been started against you in the above-entitled court by Petitioners Anselmo Land Company, LLC, Neversweat Land Company, LLC, Orphan Girl Land Company, LLC, all Washington limited liability companies, and Plum Creek Timber Company, Inc., a Washington corporation. Petitioners' claim is stated in the written Petition, a copy of which is served upon you with this summons.

In order to defend against this lawsuit, you must respond to the complaint by stating your defense in writing, and by serving a copy upon the person signing this summons within 20 days after the service of this summons, excluding the day of service, or a default judgment may be

1 entered against you without notice. A default judgment is one where plaintiff is entitled to what
2 is asked for because you have not responded. If you serve a notice of appearance on the
3 undersigned person, you are entitled to notice before a default judgment may be entered.

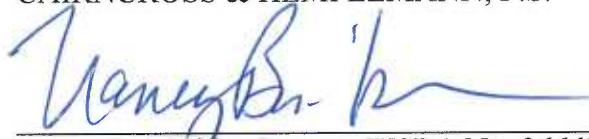
4 You may demand that the petitioners file this lawsuit with the court. If you do so, the
5 demand must be in writing and must be served upon the person signing this summons. Within
6 14 days after you serve the demand, the petitioners must file this lawsuit with the court, or the
7 service on you of this summons and complaint will be void.

8 If you wish to seek the advice of an attorney in this matter, you should do so promptly so
9 that your written response, if any, may be served on time.

10 This summons is issued pursuant to Rule 4 of the Superior Court Civil Rules of the State
11 of Washington.

12 DATED this 18th day of October, 2013.

13 CAIRNCROSS & HEMPELMANN, P.S.

14 

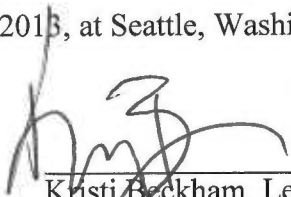
15 Nancy Bainbridge Rogers, WSBA No. 26662
16 E-mail: nrogers@cairncross.com
17 Randall P. Olsen, WSBA No. 38488
18 E-mail: rolsen@cairncross.com
19 524 Second Avenue, Suite 500
20 Seattle, WA 98104-2323
21 Telephone: (206) 587-0700
22 Facsimile: (206) 587-2308
23 Attorneys for Petitioners
24
25
26

1 Certificate of Service

2 I, Kristi Beckham, certify under penalty of perjury of the laws of the State of Washington
3 that on October 18, 2013, I caused a copy of the document to which this is attached to be served
4 on the following individual(s) via legal messenger:

5 Jerry V. Pettit
6 Kittitas County Auditor
7 205 W. 5th Avenue, Ste. 105
8 Ellensburg, WA 98926

9 DATED this 18th day of October, 2013, at Seattle, Washington.

10 

11 _____
12 Kristi Beckham, Legal Assistant
13 CAIRNCROSS & HEMPELMANN, P.S.
14 524 Second Avenue, Suite 500
15 Seattle, WA 98104-2323
16 Telephone: (206) 254-4494
17 Facsimile: (206) 254-4594
18 E-mail: kbeckham@cairncross.com

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SUPERIOR COURT OF WASHINGTON FOR GRANT COUNTY

ANSELMO LAND COMPANY, LLC, a
Washington limited liability company;
NEVERSWEAT LAND COMPANY, LLC, a
Washington limited liability company;
ORPHAN GIRL LAND COMPANY, LLC, a
Washington limited liability company; and
PLUM CREEK TIMBER COMPANY, INC., a
Washington corporation,

Petitioners,

v.

KITTITAS COUNTY,

Respondent.

NO. 13-2-01396-3

LAND USE PETITION PURSUANT
TO CHAPTER 36.70C RCW

I. INTRODUCTION

Anselmo Land Company, LLC, Neversweat Land Company, LLC, Orphan Girl Land Company, LLC, all Washington limited liability companies, and Plum Creek Timber Company, Inc. a Washington corporation (collectively, the “Petitioners”), by and through their undersigned attorneys, Cairncross & Hempelmann, P.S., Nancy Bainbridge Rogers and Randall P. Olsen, petition this Court pursuant to the Land Use Petition Act, Ch. 36.70C RCW (“LUPA”), for review of a land use decision made by Kittitas County involving Petitioners’ three applications for administrative segregations (the “Applications”). The challenged land use decision is the Kittitas County Board of County Commissioners’ October 1, 2013 decision (the “Board Decision”) in which the Board concluded, among other things, that the Applications were subject

1 to the standards in Ordinance 2012-006 (adopted September 18, 2012) and were not vested to the
2 Kittitas County codes in effect on June 21, 2012, which was the date the Applications were
3 submitted, or even July 19, 2012, the date the Applications were deemed complete by operation
4 of law, as the Board Decision states.

5 Petitioners recognize that the Board Decision correctly ruled that County staff erred by
6 ceasing to process the Applications without any explanation, and that the Board Decision
7 properly directs the County to continue processing the Applications. Petitioners believe that
8 even under the new processing standards imposed by Ordinance 2012-006, which should not
9 apply to the Applications, the County may nevertheless be able to timely process and approve the
10 Applications. For this reason, Petitioners may be willing to stipulate to a limited stay of these
11 proceedings to provide the County a reasonable opportunity to process and approve the
12 Applications under the new standards in Ordinance 2012-006. If the Applications are timely
13 processed and approved and not appealed, then Petitioners will dismiss this petition. However, if
14 the Applications are denied due to application of the new standards in Ordinance 2012-006 or
15 there is significant delay in processing and approving the Applications, then Petitioners will be
16 forced to prosecute this matter.

17 Petitioners request that the Court reverse portions of the Board Decision so as to direct
18 County Staff to continue processing the Applications under the County codes in effect on July
19 19, 2012.

20 II. LAND USE PETITION (Ch. 36.70C RCW)

21 Petitioners state and allege as follows:

22 A. Name and Mailing Address of Petitioners

23 1. The names and mailing addresses of Petitioners are:

24 Anselmo Land Company, LLC
25 Neversweat Land Company, LLC
 Orphan Girl Land Company, LLC
26 c/o Township 110 Land Company, LLC (Governing Member)
 Plum Creek Timber Company, Inc.

1 999 3rd Avenue, Ste. 4300
2 Seattle, WA 98104

3 **B. Name and Mailing Address of Petitioners' Attorneys**

4 2. All service and correspondence on Petitioners should be directed to their attorneys:

5 Nancy Bainbridge Rogers and Randall P. Olsen
6 Cairncross & Hempelmann, P.S.
524 Second Avenue, Suite 500
Seattle, WA 98104

7 **C. Name and Mailing Address of the Local Jurisdiction Whose Land Use Decision is at Issue**

8 3. Kittitas County is the local jurisdiction whose land use decision is at issue. Pursuant to
9 RCW 4.28.080, the County's mailing address is:

10 Kittitas County
11 Jerry V. Pettit, Kittitas County Auditor
205 W 5th Avenue, Ste 105
12 Ellensburg, WA 98926

13 **D. Identification of the Decision-Making Body or Officer and Copy of the Decision**

14 4. The decision-making body or officer is the Kittitas County Board of Commissioners (the
15 "Board").

16 5. The decision being appealed is the Final Order of the Kittitas County Board of
17 Commissioners dated October 1, 2013 (the "Board Decision"), a copy of which is attached
18 hereto as **Exhibit A** and incorporated herein by reference.

19 **E. Identification of Each Person to be Made a Party Under RCW 36.70C.040(2)(b)-(d)**

20 6. The written decision being appealed is the Board Decision.

21 7. The Board Decision identified Anselmo Land Company, LLC, Neversweat Land
22 Company, LLC, and Orphan Girl Land Company, LLC by name as the applicant for the permit
23 approvals at issue.

24 8. The Board Decision did not identify any parties by name and address as an owner of the
25 properties at issue. The records of the Kittitas County assessor identify Anselmo Land
26 Company, LLC as the owner of and taxpayer for Tax Parcel No. 756935, Neversweat Land

1 Company, LLC as the owner of and taxpayer for Tax Parcel No. 269434, Orphan Girl Land
2 Company, LLC as the owner of and taxpayer for Tax Parcel No. 599434.

3 9. Only Anselmo Land Company, LLC, Neversweat Land Company, LLC, and Orphan Girl
4 Land Company, LLC filed an appeal to the Board of Commissioners. Plum Creek Timber
5 Company, Inc. ("Plum Creek"), which is also represented herein by the undersigned attorneys, is
6 affiliated with those entities but did not file an appeal. Presumably because of Plum Creek's
7 affiliation with the limited liability companies named above, the Board Decision identified Plum
8 Creek as having filed an appeal to the Board regarding the land use decision at issue.
9 Consequently, Plum Creek is named in this petition in an abundance of caution to comply with
10 RCW 36.70C.040. Plum Creek's participation in this matter is not necessary to the resolution of
11 this case.

12 **F. Jurisdiction, Venue, and Facts Demonstrating that Petitioners have Standing to**
13 **Seek Judicial Review Under RCW 36.70C.060**

14 10. The Superior Court of Washington in and for Grant County has jurisdiction over this
15 action pursuant to RCW 2.08.010 (original jurisdiction) and RCW 36.70C.040(1).

16 11. Venue is proper pursuant to RCW 36.01.050 because Grant County is one of the two
17 judicial districts nearest Respondent Kittitas County.

18 12. Petitioners have standing pursuant to RCW 36.70C.060(1). Petitioners are the owners of
19 the properties and applicants for the approvals to which the Board Decision is directed.

20 13. Among other things, the Board Decision violates Petitioners' vested rights.

21 14. A ruling in favor of Petitioners would allow Petitioners' Applications to be processed
22 under the land use regulations to which the Applications are vested.

23 15. Petitioners have exhausted available administrative remedies. The Kittitas County Code
24 provides for a single administrative appeal to the Board of County Commissioners. Ch. 15A.07
25 KCC. Once the Commissioners issue their decision on such an appeal, the Commissioner's
26 decision then is appealable to superior court under LUPA. Ch. 15A.08 KCC.

1 **G. Separate and Concise Statement of Each Error Alleged to have been Committed**

2 16. Petitioners re-allege and incorporate by reference the preceding paragraphs.

3 17. For the reasons summarized in this concise statement of errors, the Board Decision
4 violates four of LUPA's standards of review in RCW 36.70C.130:

- 5 • The Board Decision is an erroneous interpretation of the law (RCW
6 36.70C.130(1)(b));
- 7 • The Board Decision is not supported by evidence that is substantial when viewed in
8 light of the whole record before the court (RCW 36.70C.130(1)(c));
- 9 • The Board Decision is a clearly erroneous application of the law to the facts (RCW
10 36.70C.130(1)(d)); and
- 11 • The Board Decision violates the constitutional rights of the party seeking relief (RCW
12 36.70C.130(1)(f)).

13 18. The Board erred by concluding that the Applications did not vest to the regulations in
14 effect at the time the fully complete Applications were submitted.

15 19. The Board erred by concluding that the procedures for administrative segregations under
16 the Kittitas County Code are not a "division of land" under Ch. 58.17 RCW.

17 20. The Board erred by concluding that sufficient evidence in the record established that the
18 required document submittals and review processes for administrative segregations under the
19 Kittitas County Code are not in excess of the minimal processing allowed to remain exempt from
20 Ch. 58.17 RCW.

21 21. The Board erred by not ruling that, by failing to continue processing the Applications,
22 Kittitas County violated KCC 15A.10.030, which provides that "[i]f, during the project review,
23 Kittitas County identifies deficiencies in county plans or regulations, the project permit review
24 shall continue, and the identified deficiencies shall be docketed for possible future amendments
25 pursuant to KCC Title 15B." (Emphasis added).
26

1 22. The Board erred by concluding that the standards adopted by the County in the Ordinance
2 applied to the Applications.

3 23. The Board erred by failing to conclude that the County's apparent deliberate delay in
4 granting preliminary approval to the Applications violated County Code, State law, and
5 Petitioners' due process rights.

6 24. The Board erred by failing to conclude that the Ordinance is unconstitutionally vague as
7 applied to the Applications.

8 **H. Concise Statement of Facts Upon Which the Petitioners Rely to Sustain the**
9 **Statement Of Error**

10 25. On June 21, 2012, Petitioners submitted the Applications, each of which sought
11 preliminary approval of an administrative segregation, as authorized by the then applicable
12 Kittitas County Code ("KCC") 16.06.020 and 16.06.030(2).

13 26. Anselmo Land Company, LLC ("Anselmo") submitted an application to divide its 597.32
14 acre property, Tax Parcel No. 756935, into seven lots ranging from approximately 80-93 acres in
15 size each. In connection with its application, Anselmo provided a unified site plan of the
16 existing and proposed lot lines, signatures of all property owners, and a narrative project
17 description. With its application materials seeking "preliminary approval" of the Administrative
18 Segregation, Anselmo also: (1) provided an aerial depiction of the property to illustrate
19 boundary lines, dimensions, existing buildings, well heads, and drain fields; (2) provided a
20 preliminary survey; (3) provided legal descriptions for each proposed tax parcel; and (4) paid an
21 application fee totaling \$875.00. As evidenced by internal County email correspondence, the
22 County engaged in review of this application. The County Staff review involved an evaluation
23 of the preliminary survey and the conclusion that "there are no existing structures, wells or septic
24 systems to be concerned about."

25 27. Neversweat Land Company, LLC ("Neversweat") followed the same application
26 procedures as Anselmo and submitted similar materials. More specifically, Neversweat sought

1 to divide its 620.17 acre property, Tax Parcel No. 269434, into seven lots ranging from
2 approximately 80-139 acres each. A completed application with numerous accompanying
3 materials was submitted and another \$875.00 fee was paid. Again, and as evidenced by internal
4 County email correspondence, the County engaged in review of this application. In addition, on
5 August 21, 2012, the Kittitas County Department of Public Works sent Neversweat a
6 Memorandum indicating it reviewed the Neversweat application and requiring that prior to “final
7 approval” inquiry should be made to the City of Cle Elum to determine whether any
8 improvements to a specific private road would be required and that easements for cul-de-sacs
9 should be shown on the final survey prior to recording and final approval. The Memorandum
10 did not request additional information related to the request for “preliminary approval” under
11 KCC 16.06.030(2). The Memorandum also variously described the Application as a “Request
12 for Parcel Segregation Application,” and as “the proposed plat,” and noted that “any further
13 subdivision or lots to be served by proposed access may result in further access requirements.”

14 28. Orphan Girl Land Company, LLC (“Orphan Girl”) also followed an identical application
15 process and submitted similar materials. Orphan Girl sought to divide its 485.70 acre property,
16 Tax Parcel No. 599434, into six lots ranging from approximately 80-83 acres each. Once again,
17 a completed application with extensive materials was submitted along with another \$875.00 fee
18 paid.

19 29. All of the applications were exempt from review under the State Environmental Policy
20 Act (“SEPA”), Ch. 43.21C RCW. The County’s record includes no documentation of this
21 exemption, because, by law, the administrative segregations were categorically exempt from
22 SEPA review. Consistent with that exemption, the County’s administrative records for the
23 Applications include no requests for any environmental information under SEPA.

24 30. Similarly, the County’s administrative records include no requests for any other
25 additional materials or analysis related to the requested “preliminary approvals,” including no
26 requests made within 28 days of the filing of the applications on June 21, 2012.

1 31. As the Board Decision states at page 2, by operation of law, the Applications were
2 deemed complete as of July 19, 2012.¹ See also KCC 15A.03.040, RCW 36.70B.070.

3 32. Finally, as to all three Applications, the County's administrative record includes no
4 indication that any code standard was not met.²

5 33. On September 18, 2012, the County adopted Ordinance 2012-006 (the "Ordinance")
6 amending the county code language regarding administrative segregations.

7 34. The Ordinance repealed the administrative segregation process from the County's
8 subdivision codes and imposed certain new standards for only certain categories of previously
9 pending administrative segregation applications.

10 35. The Ordinance was silent as to pending applications like Anselmo, Orphan Girl, and
11 Neversweat that were complete but had not yet received preliminary approval.

12 36. On June 12, 2013, the County sent Petitioners three nearly identical letters setting forth
13 the County Staff Planner's administrative decision for each application (the "Administrative
14 Decisions").

15 37. The delayed issuance of these Administrative Decisions failed to meet the required 120-
16 day decision timeline set by KCC 15A.03.090(7).

17 38. The Administrative Decisions indicated that the "Prosecuting Attorney's Office has
18 determined that the lack of provisions for pending applications without preliminary approval in
19 Ordinance 2012-006 renders them null and void."

20 39. Thus, because each of the Anselmo, Orphan Girl, and Neversweat applications "was not
21 given preliminary approval prior to September 18, 2012," the Kittitas County Community
22 Development Services deemed the Applications to be "null and void" as of June 12, 2013. No
23 analysis or report from the Prosecuting Attorney's Office was provided to Petitioners in support

24 _____
25 ¹ The County's internal permit processing records, entitled "SEG Application Process Sheets," also reflect that the
Applications were deemed complete.

26 ² The same internal County documents referenced in Footnote 1 show that "Application Processing" was "Done" in
August 2012, and that no comment period applied.

1 of this determination.

2 40. Pursuant to KCC 15A.07.010 and the instructions stated in the County's Administrative
3 Decisions, Petitioners timely appealed all three decisions and paid a \$500.00 fee for each appeal
4 on June 25, 2013. The County consolidated the three appeals for processing.

5 41. On appeal to the Board of County Commissioners, Petitioners argued, among other
6 things, that the Applications had vested to the regulations in effect when the fully complete
7 applications were submitted, the County was required by KCC 15A.10.030 and state law to
8 continue processing the Applications, the County's failure to provide a timely preliminary
9 approval of the Applications violated Petitioners' reasonable expectation of adequate due
10 process, and the Ordinance is unconstitutionally vague and the County lacked authority to
11 interpret the Ordinance in such a way as to void the Applications.

12 42. The Board Decision concluded that (a) the Applications did not vest to the regulations in
13 effect on the date of submission of a fully complete application because, despite the County's
14 practice of imposing subdivision processing requirements on administrative segregations, "an
15 administrative segregation is not a 'division of land, as defined in RCW 58.17.020' and so is not
16 subject to vested rights pursuant to RCW 58.17.033"; (b) Petitioners' Applications are subject to
17 the provisions in the Ordinance because even if the Applications were vested, one can vest only
18 to "land use controls" and the provisions in the Ordinance are not land use controls under RCW
19 58.17.030(1); and (c) by operation of law, the Applications were deemed complete as of July 19,
20 2012 and the County staff erred when it issued the administrative decision voiding the
21 Applications and, therefore, County staff was directed to continue processing the Applications in
22 accordance with the provisions in the Ordinance (adopted September 18, 2012).

23 43. The provisions in the Ordinance impose new standards that did not exist at the time the
24 Applications were submitted (June 21, 2012) or at the time the Applications were deemed
25 complete by operation of law (July 19, 2012).

26 44. The Board Decision issued October 1, 2013.

1 45. While the County may be able to timely process and approve the Applications under the
2 Ordinance's new requirements (and Petitioners may be willing to stipulate to a limited stay of
3 these proceedings to determine whether processing and approval can be achieved on a reasonable
4 timetable), Petitioners have timely filed this LUPA petition to preserve its challenges to the
5 Board Decision, including that portion of the Board Decision that concludes that the Ordinance's
6 new requirements apply to the Applications.

7 **I. Request for Relief Specifying the Type and Extent of Relief Requested**

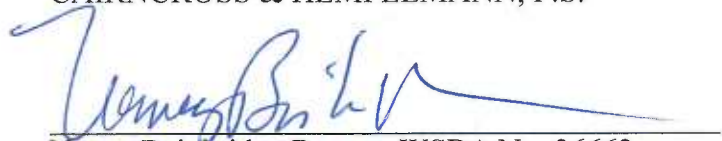
8 46. Provided that the parties agree to stipulate to a limited stay during which the County will
9 have the opportunity to process and approve the Applications, Petitioners request that the Court
10 enter an order staying these proceedings in accordance with the parties' stipulation.

11 47. If the Applications are not approved under the Ordinance, then Petitioners request that the
12 Court, pursuant to RCW 36.70C.140, issue an order reversing the Board Decision and directing
13 the County to process the Applications according to the regulations in effect on July 19, 2012.

14 48. Petitioners request such other relief as the Court deems just and equitable, including, but
15 not limited to, the recovery of costs and attorneys' fees as provided by law.

16 DATED this 18th day of October, 2013.

17 CAIRNCROSS & HEMPELMANN, P.S.

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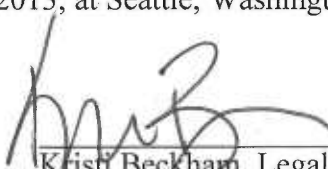
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20 Nancy Bainbridge Rogers, WSBA No. 26662
21 E-mail: nrogers@cairncross.com
22 Randall P. Olsen, WSBA No. 38488
23 E-mail: rolsen@cairncross.com
24 524 Second Avenue, Suite 500
25 Seattle, WA 98104-2323
26 Telephone: (206) 587-0700
Facsimile: (206) 587-2308
Attorneys for Petitioners

1 Certificate of Service

2 I, Kristi Beckham, certify under penalty of perjury of the laws of the State of Washington
3 that on October 18, 2013, I caused a copy of the document to which this is attached to be served
4 on the following individual(s) via legal messenger:

5 Jerry V. Pettit
6 Kittitas County Auditor
7 205 W. 5th Avenue, Ste. 105
8 Ellensburg, WA 98926

9 DATED this 18th day of October, 2013, at Seattle, Washington.

10 

11 _____
12 Kristi Beckham, Legal Assistant
13 CAIRNCROSS & HEMPELMANN, P.S.
14 524 Second Avenue, Suite 500
15 Seattle, WA 98104-2323
16 Telephone: (206) 254-4494
17 Facsimile: (206) 254-4594
18 E-mail: kbeckham@cairncross.com

EXHIBIT A

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LUPA PETITION - 12

CAIRNCROSS & HEMPELMANN, P.S.
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KITTITAS COUNTY BOARD OF COMMISSIONERS

IN RE SEGREGATION APPEALS:)	
ANSELMO LAND)	NO. SG-12-00002
ORPHAN GIRL)	SG-12-00003
NEVERSWEAT LAND.)	SG-12-00004
)	
)	FINAL ORDER
)	

I. INTRODUCTION

Plum Creek Timber Company submitted an appeal of the administrative voiding of three of its administrative segregation applications. The administrative appeal was conducted according to the County's administrative appeal process as outlined in Ch. 15A.07 KCC. In that appeal, Plum Creek asserted four arguments for the reversal of voiding of its three administrative segregation applications. The Board of County Commissioners, after reviewing the administrative record and briefs deliberated and decided upon those four arguments as contained herein.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

Plum Creek first argued that its applications were subject to vested rights and so not subject to the County's newer regulation. The Board of County Commissioners finds that, because the required document submittals and review processes are so different between an administrative segregation and the "divisions of land" described in RCW 58.17.020, that an administrative segregation is not a "division of land, as defined in RCW 58.17.020" and so is not subject to

 ORIGINAL

1 vested rights pursuant to RCW 58.17.033. Because there is no local regulation creating vested
2 rights for administrative segregation application, and because these applications, as just
3 explained, are not subject to vested rights under state law, this argument by Plum Creek fails.

4 Plum Creek next argues that its applications must be processed under the regulation in place
5 at the time of application submittal and so are not subject to the current regulation's sunset
6 provisions. This is another argument dependent upon the applications being subject to vested
7 rights, which, as explained above, the Board of County Commissioners has already determined
8 that these applications are not so subject. The Board of County Commissioners finds that the
9 County's sunset provisions in the current code, because they regulate time limits upon permit
10 processing and do not regulate what can or cannot be done upon land, are not "land use
11 controls." Because the current sunset regulation is not a "land use control," even if these
12 applications were subject to vested rights, which, as explained above, they are not, they would
13 remain subject to these current sunset regulations. One only vests to "land use controls" under
14 RCW 58.17.030(1), and sunset provisions are not "land use controls" and so are not something
15 that one vests to or vests to the absence of. This argument by Plum Creek fails.

16 Plum Creek next argues that the County improperly ceased processing its applications. The
17 Board of County Commissioners finds that the exemption from the statutory notice provisions in
18 KCC 15A.03.080(1) does not exempt administrative segregations from other statutory processing
19 provisions and deadlines found in both the KCC and RCW. The Board of County
20 Commissioners finds that, though the applications were never given a determination of
21 completeness, by operation of RCW 36.70B.070 and KCC 15A.03.040, they were "deemed
22 complete" 28 days after submission. The Board of County Commissioners finds that RCW
23 36.70B.080 and KCC 15A.03.090(7) provide for issuance of a decision 120 days after
24 completion of applications. Such decision did not issue, instead the County actually ceased
25 processing the applications. The Petitioner argued that "The Board should reverse the

1 Administrative Decision and instruct County Staff to complete processing of the applications.”
2 The Board of County Commissioners finds (1) no explanation why the applications’ processing
3 was ceased and a decision not rendered within the statutory timeframe, and (2) that the
4 appropriate remedy is as argued by Plum Creek-that the administrative decision voiding the
5 applications be reversed and that the County staff be directed to continue processing the
6 applications.

7 Plum Creek finally argued that the County’s regulation was vague and not applicable to its
8 applications. Because of the resolution of the third argument, the Board of County
9 Commissioners did not reach this issue and made no decision thereon.

10 III. ORDER

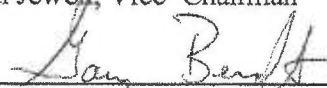
11 The Board of County Commissioners hereby reverses the administrative decision voiding the
12 applications that are the subject of this appeal and hereby directs staff to both consider them
13 “deemed complete” and to continue processing them subject to the County’s current regulation.

14 DATED this 1 day of October, 2013 at Ellensburg, Washington.

15 BOARD OF COUNTY COMMISSIONERS
16 KITTITAS COUNTY, WASHINGTON

17 
18 Obie O'Brien, Chairman

19 
20 Paul Jewell, Vice- Chairman

21 
22 Gary Berndt, Commissioner



23
24
25 
Julie A. Kjorsvik