

Return Address:

SKAMANIA COUNTY

<i>Document Title(s) or transactions contained herein:</i> SUMMONS CASE NO 06-2-00014-7
<i>GRANTOR(S) (Last name, first name, middle initial)</i> SKAMANIA COUNTY <input type="checkbox"/> Additional names on page _____ of document.
<i>GRANTEE(S) (Last name, first name, middle initial)</i> MARBLE CREEK LLC CREAGAN DAVE <input type="checkbox"/> Additional names on page _____ of document.
<i>LEGAL DESCRIPTION (Abbreviated: i.e., Lot, Block, Plat or Section, Township, Range, Quarter/Quarter)</i> SECTION 23 T7N R5E AND SECTION 26 T7N R5E <input type="checkbox"/> Complete legal on page _____ of document.
<i>REFERENCE NUMBER(S) of Documents assigned or released:</i> <input type="checkbox"/> Additional numbers on page _____ of document.
<i>ASSESSOR'S PROPERTY TAX PARCEL/ACCOUNT NUMBER</i> 07-05-26-0-0-0600-00 07-05-26-0-0-0700-00 07-05-26-0-0-0800-00 <input type="checkbox"/> Property Tax Parcel ID is not yet assigned <input type="checkbox"/> Additional parcel numbers on page _____ of document.
The Auditor/Recorder will rely on the information provided on the form. The Staff will not read the document to verify the accuracy or completeness of the indexing information.

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7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
8 FOR THE COUNTY OF SKAMANIA

9 MARBLE CREEK, LLC and DAVE
10 CREAGAN,

11 Petitioners,

12 vs.

13 SKAMANIA COUNTY,

14 Respondent.

No. 06-2-00014-7

SUMMONS

15 TO THE RESPONDENTS: A lawsuit has been started against you in the
16 above-entitled court by the Petitioners, Marble Creek, LLC and Dave Creagan. Petitioners'
17 claim is stated in the written Petition and Complaint, a copy of which is served upon you
18 with this Summons.

19 In order to defend against this lawsuit, you must respond to the Complaint by stating
20 your defense in writing, and by serving a copy upon the person signing this Summons within
21 20 days (or if you reside outside the state 60 days) after the service of the Summons,
22 excluding the day of service, or a default judgment may be entered against you without
23 notice. A default judgment is one where Petitioners are entitled to what they ask for because
24 you have not responded. If you serve a notice of appearance on the undersigned person, you
25 are entitled to notice before a default judgment may be entered.

26 You may demand that the Petitioners file this lawsuit with the court. If you do so, the

SUMMONS - 1

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Attorneys at Law
Vancouvercenter, 700 Washington Street,
Suite 701, Vancouver, WA 98660
Telephone 360-694-7551

1 demand must be in writing and must be served upon the person signing this Summons.
2 Within 14 days after you serve the demand, the Petitioners must file this lawsuit with the
3 court, or the service of you of this Summons, Petition and Complaint will be void.

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

6 This Summons is issued pursuant to Rule 4 of the Superior Court Civil Rules
7 of the State of Washington.

8 Dated this 27th day of January, 2006.

9 SCHWABE, WILLIAMSON & WYATT, P.C.

10
11 By: 

12 Bradley W. Andersen, WSBA #20640

13 Steve C. Morasch, WSBA #22651

14 Attorneys for Plaintiffs

15 Marble Creek, LLC and Dave Creagan
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SUMMONS - 2

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7 IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
8 FOR THE COUNTY OF SKAMANIA

9 MARBLE CREEK, LLC and DAVE
10 CREAGAN,

11 Petitioners,

12 vs.

13 SKAMANIA COUNTY,

14 Respondent.
15
16

No. 06-2-00014-7

LAND USE PETITION,
DECLARATORY JUDGMENT,
PETITION AND AFFIDAVIT FOR
STATUTORY AND
CONSTITUTIONAL WRITS OF
CERTIORARI, COMPLAINT FOR
DAMAGES UNDER RCW 64.40, AND
WRIT OF MANDAMUS

17 1. **Petitioners.** The Petitioners are Dave Creagan and Marble Creek, LLC.
18 Petitioners own property that is subject to the decisions being challenged in this matter.
19 Petitioners' mailing address is 1805 Howard Way, Suite A, Woodland, Washington, 98674.

20 2. **Petitioners' attorney.** The Petitioners' attorneys are Schwabe Williamson &
21 Wyatt, 700 Washington, Suite 701, Vancouver, Washington, 98660.

22 3. **Local jurisdiction.** The local jurisdiction whose actions are at issue include
23 the Skamania County Planning and Community Development Department, whose mailing
24 address is P.O. Box 790, Stevenson, Washington, 98468, and the Skamania County Board of
25 Commissioners, whose mailing address is P.O. Box 790, Stevenson, Washington, 98468.

26 ///

LAND USE PETITION - 1

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4. **Identification of decision making body and decisions.** The decision making bodies are the Skamania County Planning and Community Development Department and the Skamania County Board of Commissioners. The decisions appealed hereunder are the Board of County Commissioners Resolution 2006-02 (adopting, endorsing and certifying by motion the amendment to the 1977 Comprehensive Plan "A" and associated map to include all land geographically located within the boundaries of unincorporated Skamania County into Comprehensive Plan "A" and designating those areas as conservancy if not previously designated as rural 1 or rural 2, or located in a specific sub-area plan), which was adopted on January 9, 2006, by the Skamania County Board of Commissioners; and the Skamania County Planning and Community Development Department's decision not to accept or approve three short plat applications known as Marble Creek South, Marble Creek North and Marble Creek East and affecting tax parcels 070526000 600 00, 070526000 800 00, and 070526000 700 00, which parcels are located in Skamania County. A copy of Resolution 2006-02 is attached as Exhibit A hereto. The County's decision not to accept the short plat applications was not a written decision.

5. Additional parties. There are no additional parties to this matter.

• • •

FIRST CLAIM FOR RELIEF

LAND USE PETITION CHALLENGING RESOLUTION 2006-02

6. **Facts supporting Petitioners' right to review.** Petitioners have standing to seek judicial review under RCW 36.70C.060(1) of the Land Use Petition Act (LUPA), Petitioners are the owners of property to which Resolution 2006-02 is directed. In addition, Petitioners have standing under RCW 36.70C.060(2) because: (i) Petitioners are adversely affected and aggrieved by the decision appealed hereunder, (ii) Petitioners' interests are among those the local jurisdiction was required to consider when it made the land use decisions, (iii) Petitioners have exhausted all available administrative remedies, and (iv)

LAND USE PETITION - 2

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1 Petitioners' rights and interests have been severely prejudiced by the decisions appealed
2 hereunder and that prejudice can be redressed by a favorable judgment. The Petitioners are
3 also seeking relief under RCW Chapter 7.24 (Declaratory Judgment Act), RCW Chapter 7.16
4 (Statutory Writ of Certiorari), Constitutional Writ of Certiorari, RCW Chapter 64.40 and
5 Writ of Mandamus to have the court declare the rights and status of the parties and award
6 damages.

7 **7. Errors Alleged.** Petitioners allege that the Board of Commissioners erred as
8 follows:

9 **7.1** The Board of Commissioners erred in approving Resolution 2006-02
10 without first referring the matter to the Planning Commission for a hearing and
11 recommendation. The County's authority to zone is governed by the Planning Enabling Act
12 (RCW Chapter 36.70). Resolution 2006-02 violated a number of sections of the Planning
13 Enabling Act, including, but not limited to RCW 36.70.410-430, 550-650, and 790-795
14 because Resolution 2006-02 was not first referred to the Planning Commission for public
15 hearings and a recommendation. Further, Resolution 2006-02 did not contain a finding that
16 an emergency exists, and therefore this Resolution could not be adopted as "interim zoning"
17 under RCW 36.70.790.

18 **7.2** The Skamania County Board of Commissioners failed to comply with
19 SEPA (RCW Chapter 43.21C) in the adoption of Resolution 2006-02. SEPA requires the
20 County to consider the environmental consequences of its legislative actions. At a minimum,
21 SEPA requires notice of the proposed action, public comment, an environmental checklist
22 and a threshold determination. Skamania County erred by failing to undertake any of those
23 requirements and failing to prepare an Environmental Impact Statement. The County failed
24 to comply with the procedural and substantive elements of SEPA.

25 **8. Facts Sustaining the Statements of Error.** Petitioners rely upon the
26 following facts to sustain their statements of error as provided in paragraph 7 (above):

LAND USE PETITION - 3

SCHWABE, WILLIAMSON & WYATT, P.C.
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1 **8.1** Resolution 2006-02 purports to amend the Skamania County
2 Comprehensive Plan by adding the comprehensive plan mapping designation known as
3 “conservancy” to all land located within the boundaries of unincorporated Skamania County
4 that was not previously designated as rural 1 or rural 2, or located in a specific sub-area plan.
5 Under Ordinance number 1981-03, all short plats must conform to the County
6 comprehensive land use plan in existence at the time of the application for the short plat.
7 The effect of Resolution 2006-02 is to place a ten acre minimum lot size conservancy zone
8 on Petitioners’ property that was previously unzoned in Skamania County. The Skamania
9 County Board of Commissioners adopted Resolution 2006-02 without first referring the
10 matter to the Skamania County Planning Commission, and the Skamania County Planning
11 Commission never held the required hearing nor made the required recommendation to the
12 Skamania County Board of Commissioners. Resolution 2006-02 does not contain a finding
13 that there is an emergency.

14 **8.2** Resolution 2006-02 is a comprehensive plan amendment that amends
15 the comprehensive plan mapping designation for a significant portion of the County. As
16 such, Resolution 2006-02 is a “major action” or “proposal for legislation” which
17 significantly affects the environment requiring the filing of an Environmental Impact
18 Statement under SEPA. Skamania County did not file an Environmental Impact Statement
19 on Resolution 2006-02, nor did Skamania County publish the required SEPA notice of the
20 proposed action, solicit public comment, prepare an environmental checklist or issue a
21 threshold determination.

22 . . .

23 In addition to the foregoing, Petitioners also allege as follows:

24 . . .

1 SECOND CLAIM FOR RELIEF

2 LAND USE PETITION CHALLENGING COUNTY'S REFUSAL TO ACCEPT OR
3 APPROVE MARBLE CREEK LLC'S SHORT PLAT APPLICATIONS

4 9. Petitioners reallege all of the paragraphs above.

5 10. Facts supporting Petitioners' right to review. Petitioners have standing to
6 seek judicial review under RCW 36.70C.060(1) of the Land Use Petition Act (LUPA),
7 because Marble Creek LLC is the owner and applicant for the three short plat applications.
8 In addition, Petitioners have standing under RCW 36.70C.060(2) because: (i) Petitioners are
9 adversely affected and aggrieved by the decisions appealed hereunder, (ii) Petitioners'
10 interests are among those the local jurisdiction was required to consider when it made the
11 land use decisions, (iii) Petitioners have exhausted all available administrative remedies, and
12 (iv) Petitioners' rights and interests have been severely prejudiced by the decisions appealed
13 hereunder and that prejudice can be redressed by a favorable judgment.

14 11. Errors Alleged. Petitioners allege that the Planning and Community
15 Development Department and the Board of Commissioners erred as follows: The Skamania
16 County Planning and Community Development Department had no lawful basis to reject
17 Petitioners' short plat applications, since Resolution 2006-02 was invalid and the short plat
18 applications were complete and met all other applicable requirements. Further, irrespective
19 of the validity of Resolution 2006-02, the County had no legal right to refuse to accept and
20 process the short plat applications. Skamania County violated its own ordinances in Title 17
21 of the Skamania County code, as well as RCW Chapter 58.17, which require the County to
22 process short plat applications. County planning staff has no authority under the code or the
23 state land use statutes to simply dismiss an application out of hand without following the
24 established process for reviewing short plat applications. Skamania County's refusal to
25 accept the short plat applications amounted to a constructive denial of those applications.

26 ///

12. **Facts Sustaining the Statements of Error.** Petitioners rely upon the following facts to sustain their statements of error as provided in paragraph 11 (above): On or about January 20, 2006, Petitioners submitted three short plat applications known as the Marble Creek South, Marble Creek North and Marble Creek East and affecting tax parcels 070526000 600 00, 070526000 800 00, and 070526000 700 00. The short plat applications were complete when submitted and met all applicable requirements, with the exception of Resolution 2006-02. Since Resolution 2006-02 is invalid, it cannot be applied to these short plat applications or used as a basis to reject or deny them. Skamania County Planning staff refused to accept the applications.

In addition to the foregoing, Petitioners also allege as follows:

THIRD CLAIM FOR RELIEF

DECLARATORY JUDGMENT

13. Petitioners reallege all of the paragraphs above.

14. In 1935 (and as amended thereafter), the Washington legislature duly adopted Chapter 7.24 of the Revised Code of Washington, in full force and effect at all times relevant herein, which sets forth a cause of action, wherein courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. RCW 7.24.010.

15. As identified in the errors claimed above, in paragraphs 7.1 and 7.2, justiciable controversies exist regarding the validity of Resolution 2006-02 and the status of Petitioners' short plat applications that affect the rights of the parties and can be resolved by declaratory relief.

In addition to the foregoing, Petitioners also allege as follows:

1 . . .

2 **FOURTH CLAIM FOR RELIEF**

3 **STATUTORY AND CONSTITUTIONAL WRITS OF CERTIORARI**

4 16. Petitioners reallege all of the paragraphs above.

5 17. Petitioners are adversely affected and aggrieved as stated in paragraph 6,
6 above, because Petitioners ability to develop their property has been frustrated by Resolution
7 2006-02.

8 18. For the reasons stated in paragraphs 7.1 and 7.2, above, as supported by the
9 facts stated in paragraphs 8.1 and 8.2, above, Resolution 2006-02 violates the Planning
10 Enabling Act and SEPA.

11 19. Petitioners will suffer irreparable harm if their property is rezoned to a
12 "conservancy" comprehensive plan designation as purported by Resolution 2006-02.

13 20. The Petitioners are without adequate remedy at law to redress the harm which
14 they have sustained and will sustain if Resolution 2006-02 is not invalidated.

15 . . .

16 In addition to the foregoing, Petitioners also allege as follows:

17 . . .

18 **FIFTH CLAIM FOR RELIEF**

19 **COMPLAINT FOR DAMAGES AND ATTORNEY FEES PURSUANT TO**
20 **RCW 64.40.020 AGAINST SKAMANIA COUNTY**

21 21. Petitioners reallege all of the paragraphs above.

22 22. The property which concerns this litigation is situated within the boundaries
23 of Skamania County, and is subject to the general zoning and police powers of the County.

24 23. Skamania County's decision not to accept Petitioners' short plat applications
25 was arbitrary, capricious, unlawful and exceeded the County's lawful authority in violation
26 of RCW 64.40.020. The County knew or should reasonably have known that its decision

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1 County's decision not to accept Petitioners' short plat applications and remanding those
2 applications to the County with instructions that the County shall process those applications
3 based only on valid ordinances that were in existence on the date the applications were
4 submitted and that Resolution 2006-02 shall not apply to those applications since it was
5 invalid.

6 **30.3** On its Third Claim for Relief, for an order declaring Resolution
7 2006-02 to be invalid, null and void.

8 **30.4** On its Fourth Claim for Relief, for an order declaring Resolution
9 2006-02 to be invalid, null and void.


10 **30.5** On its Fifth Claim for Relief, for judgment against Skamania County
11 for an amount of damages to be determined at trial, together with Petitioners' costs and
12 attorneys' fees incurred herein, and such other relief as the court deems just and proper.

13 **30.6** On its Sixth Claim for Relief, for an order reversing Skamania
14 County's decision not to accept Petitioners' short plat applications and remanding those
15 applications to the County with instructions that the County shall process those applications
16 based only on valid ordinances that were in existence on the date the applications were
17 submitted and that Resolution 2006-02 shall not apply to those applications since it was
18 invalid.

19 Dated this 27th day of January, 2006.

20 SCHWABE, WILLIAMSON & WYATT, P.C.

21
22 By:


23 Bradley W. Andersen, WSBA #20640
24 Steve C. Morasch, WSBA #22651
25 Attorneys for Plaintiffs
26 Marble Creek, LLC and Dave Creagan

VERIFICATION


STATE OF WASHINGTON)
County of)ss

I, Dave Creagan, am an owner of property subject to Resolution 2006-02 and I have read the foregoing Petition and Complaint and believe the same to be true and correct to the best of my information and belief, under penalty of perjury of the laws of the state of Washington. Dated at Vancouver, Washington, this 27th day of January, 2006.


DAVE CREAGAN

SUBSCRIBED AND SWORN TO before me this 27th day of January, 2006.




THERESA A. GORDON
NOTARY PUBLIC for the State of Washington
My Appointment Expires: 10-26-07

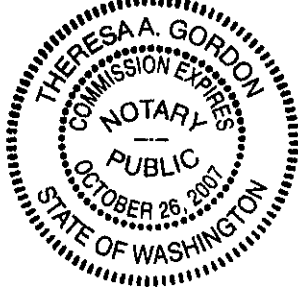
STATE OF WASHINGTON)
County of)ss


I, Dave Creagan, am a duly authorized representative of Marble Creek, LLC owner of property subject to Resolution 2006-02 and the applicant for the three short plats known as Marble Creek South, Marble Creek North and Marble Creek East and affecting tax parcels 070526000 600 00, 070526000 800 00, and 070526000 700 00 and I have read the foregoing Petition and Complaint and believe the same to be true and correct to the best of my information and belief, under penalty of perjury of the laws of the state of Washington. Dated at Vancouver, Washington, this 27th day of January, 2006.

MARBLE CREEK, LLC

By: 

SUBSCRIBED AND SWORN TO before me this 27th day of January, 2006.




THERESA A. GORDON
NOTARY PUBLIC for the State of Washington
My Appointment Expires: 10-26-07

LAND USE PETITION

SCHWABE, WILLIAMSON & WYATT, P.C.
Attorneys at Law
Vancouvercenter, 700 Washington Street,
Suite 701, Vancouver, WA 98660
Telephone 360-694-7551

RESOLUTION 2006-02

(Adopting, Endorsing and Certifying by Motion the Amendment to the 1977 Comprehensive Plan "A" and Associated Map to include all land geographically located within the boundaries of unincorporated Skamania County into Comprehensive Plan "A" and designating those areas as Conservancy if not previously designated as Rural 1 or Rural 2, or located in a specific Subarea Plan)

WHEREAS, RCW 36.70 authorizes Counties to engage in creation of Comprehensive Plans and the adoption and certification thereof by motion; and,

WHEREAS, the original 1977 Comprehensive Plan "A" only created land use designations of Rural 1, Rural 2, and Conservancy in the Southern portion of Skamania County.

WHEREAS, since 1977 several amendments to the original Comprehensive Plan have been adopted creating other land use designations within specific Subareas (National Scenic Area, Carson, and Westend) in the Southern portion of Skamania County; and,

WHEREAS, development within Skamania County is taking place in areas outside of the current geographical boundaries of the 1977 Comprehensive Plan "A", as amended; and,

WHEREAS, it is in the public interest to include all land geographically located within the boundaries of unincorporated Skamania County into Comprehensive Plan "A" to provide guidance on land use issues by assigning a land use designation; and,

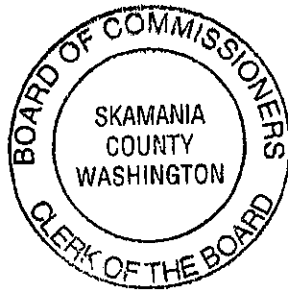
WHEREAS, all land geographically located within the boundaries of unincorporated Skamania County that was not previously designated as Rural 1 or Rural 2 in the original 1977 Comprehensive plan "A", or included within a specific Subarea Plan (National Scenic Area, Carson or Westend) shall be a land use designation of Conservancy; and,

WHEREAS, the Board of County Commissioners, having provided proper notice in the official newspaper of general circulation and with a quorum present, conducted a public hearing to include all land geographically located within the boundaries of unincorporated Skamania County into Comprehensive Plan "A" and designating those areas as Conservancy if not previously designated as Rural 1 or Rural 2 or located in a specific Subarea Plan, on January 9, 2006 in the Board of County Commissioner's Meeting Room at 1:30 pm; and,

WHEREAS, after all those attending the hearing were given the opportunity to speak; the public hearing was closed to public testimony; and,

NOW THEREFORE, BE IT RESOLVED, that the Skamania County Board of Commissioners amend the 1977 Comprehensive Plan "A" to include all land geographically located within the boundaries of unincorporated Skamania County into Comprehensive Plan "A" and designating those areas as Conservancy if not previously designated as Rural 1 or Rural 2, or located in a specific Subarea Plan;

PASSED IN REGULAR SESSION this 9th day of January 2006.



SKAMANIA COUNTY
BOARD OF COMMISSIONERS

1 out 1 seen
Chairman

James D. Richardson
Commissioner

Albert E. McKee
Commissioner

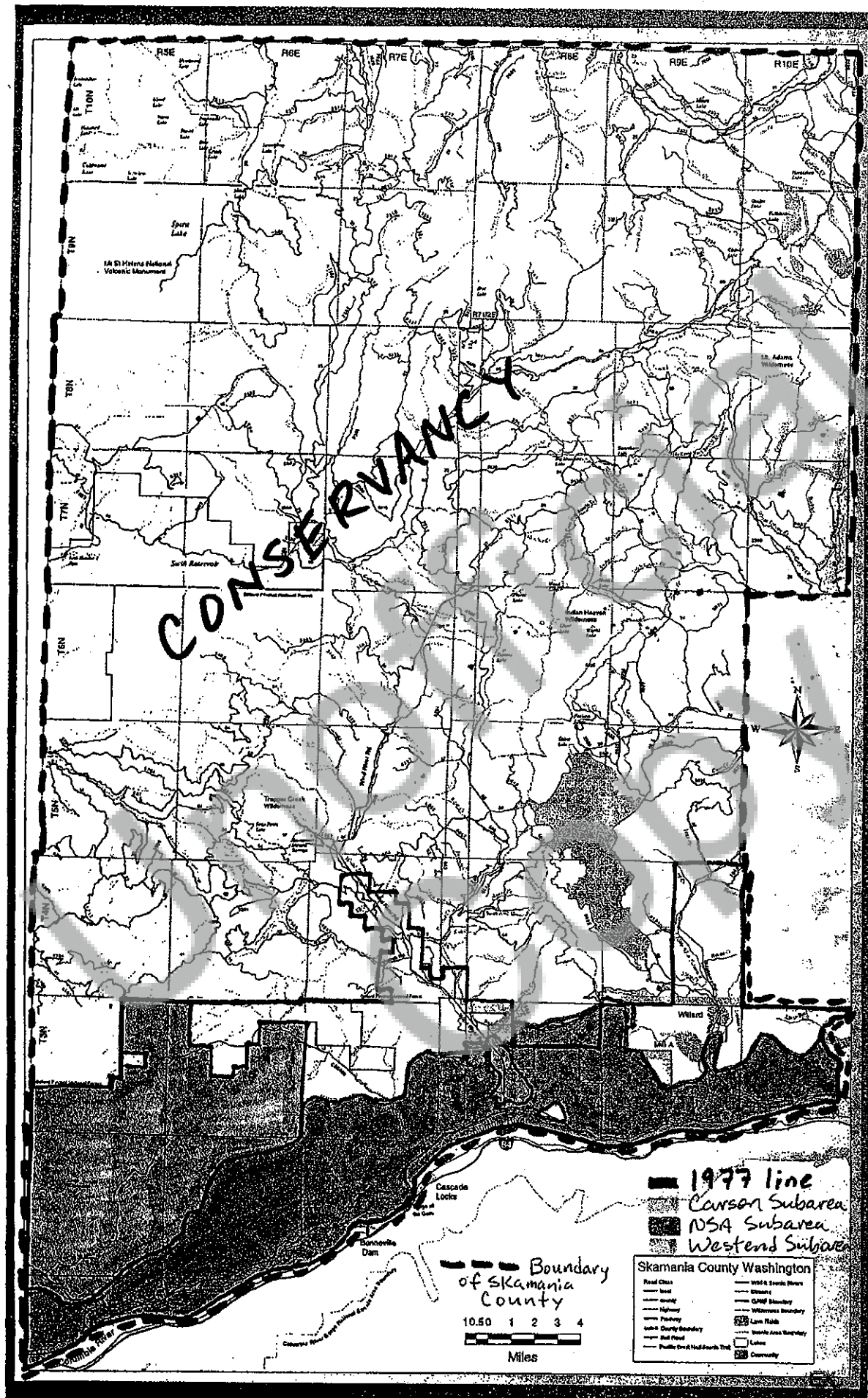
ATTEST:

Danella Johnson
Clerk of the Board

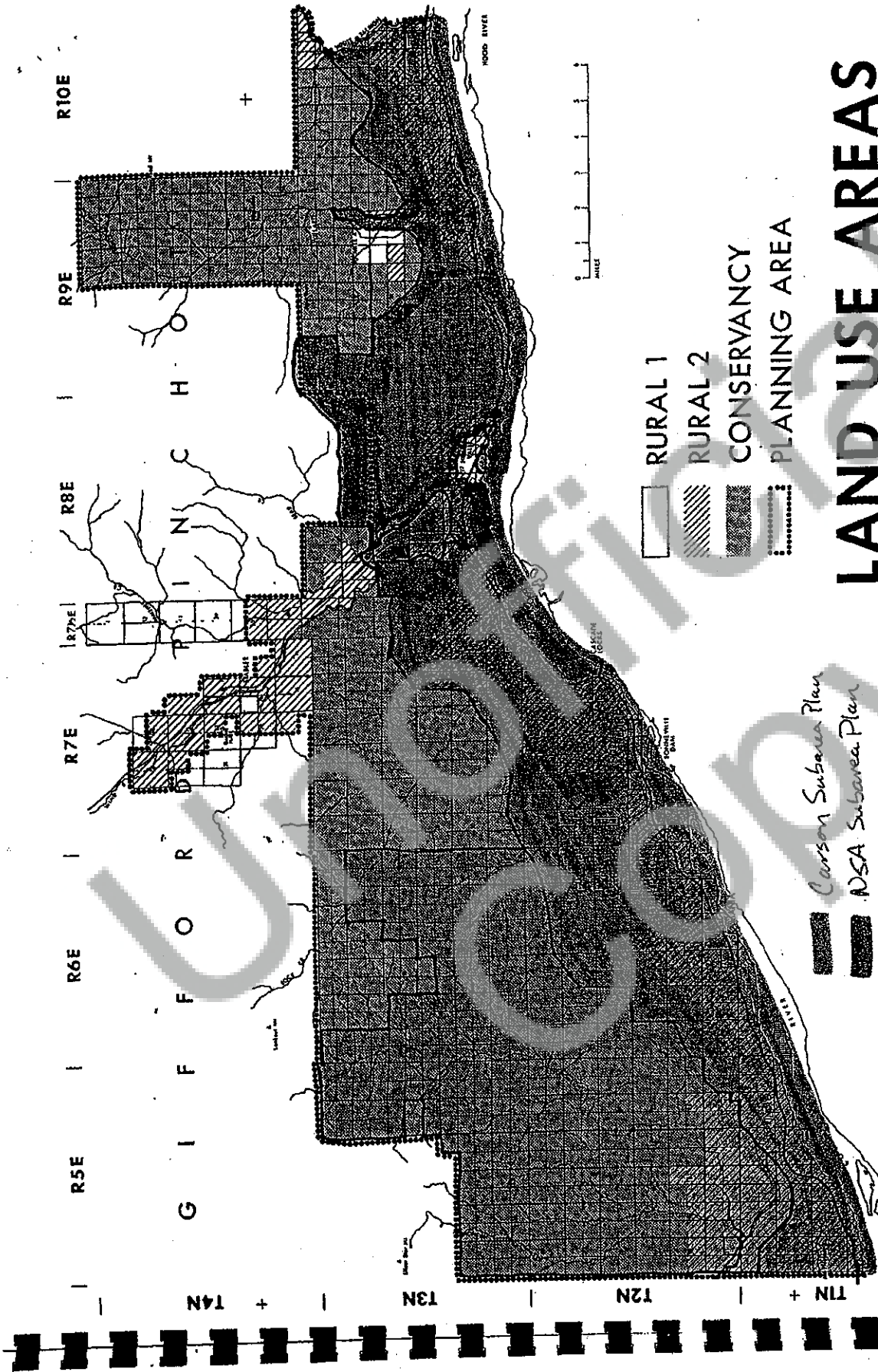
Approved as to form only:

[Signature]
Skamania County Prosecuting Attorney

AYE 3
NAY 0
ABSTAIN 0
ABSENT 0



EX. A



LAND USE AREAS

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EX. A
PA 4 of 4