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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SKAGIT

ANNIE JANICKI, )

Petitioner, )

vs. )

CITY OF SEDRO-WOOLLEY, a municipal )  
corporation, and DELUXE RECYCLING )  
AND DISPOSAL LLC, a Washington Limited )  
Liability Company, and FIRE RIDGE LLC, an )  
Oregon Limited Liability Company, )

Respondents, )

vs. )

SKAGIT COUNTY, a political subdivision in )  
the State of Washington, )

Intervenor. )

No. 08-2-01130-8

**PETITIONER'S RESPONSE TO MOTION  
TO DIMISS AND OBJECTION TO  
JOINDER OF FIRE RIDGE LLC**

**COMES NOW** Petitioner, by and through her attorney, C. Thomas Moser, and opposes motions filed by Respondents, City of Sedro-Woolley ("City" hereinafter) and Deluxe Recycling and Disposal LLC ("Deluxe" hereinafter), which seek to dismiss the LUPA Petition as a matter

PETITIONER'S RESPONSE TO MOTION  
TO DIMISS AND OBJECTION TO  
JOINDER OF FIRE RIDGE LLC - 1

1 of law and without a hearing on the merits. Respondent Deluxe also objected to Petitioner's  
2 Notice Of Joinder of Fire Ridge LLC as a party to this action. Separately, Deluxe argues that the  
3 initial appeal of the MDNS to the Hearing Examiner was untimely.

#### 4 I. SUMMARY

5 Aggrieved parties seeking judicial review of a land use decision must, within 21 days, file  
6 and serve a LUPA petition on any project applicant and landowner identified in the  
7 administrative decision. RCW 36.70C.040. If no proponent is identified in the written  
8 administrative decision, then the appeal must be served on the property owner reflected in the  
9 assessor's records. *Id.*

10 The land use decision challenged in this litigation was rendered by the Hearing Examiner  
11 on May 22, 2008 following a May 5, 2008 hearing. In the written decision<sup>1</sup>, Deluxe and its  
12 attorneys are identified by name and address as the project applicant in several places.

13 Eight days later, on May 30, 2008, the property at issue in this litigation was transferred  
14 to Fire Ridge LLC, an Oregon company formed on May 20, 2008, owned by an individual who  
15 is, on information and belief, associated with the Deluxe project through a yet-to-be-discovered  
16 business relationship.

17 On June 12, 2008, basing her appeal on the Hearing Examiner's written decision,  
18 Petitioner Annie Janicki filed this LUPA action. After learning about the property transfer on  
19 her own, Petitioner Janicki filed a Notice of Joinder on June 30, 2008, joining Fire Ridge LLC to  
20

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21 <sup>1</sup>The written decision of the Hearing Examiner is attached to the Petition.

1 this action, even though identification and joinder of necessary parties is a burden under the  
2 LUPA statute that clearly falls on Deluxe as the project applicant. RCW 36.70C.050.

3       Thereafter, Deluxe objected to the joinder and filed the present motion, insisting that the  
4 Court should dismiss Petitioner's appeal with prejudice for failure to serve Fire Ridge LLC  
5 within 21 days of the May 22 decision below. The City of Sedro-Woolley has joined Deluxe's  
6 motion. The motion to dismiss is supported neither by the facts nor the law, and must be denied.

7                   **II. THE HEARING EXAMINER CORRECTLY DETERMINED WHO THE PARTIES**  
8                   **WERE IN THE PROCEEDINGS BELOW AND PETITIONER RELIED ON THE**  
9                   **RECORD IN IDENTIFYING THE PARTIES**

10       The Hearing Examiner determined the parties in the proceeding below, and listed them in  
11 his written decision. Attached as **Exhibit A** is a copy of the last page of the Hearing Examiner's  
12 decision which lists "Parties To The Appeal," identifying the parties by their attorney/agent who  
13 appeared at the public hearing. For example, according to the Hearing Examiner's listing of the  
14 parties, Robert A. Carmichael represented the City, and Phil Serka represented Deluxe,  
15 identifying each by name and address.

16       There was no property owner identified in the Hearing Examiner's written decision.  
17 Therefore, Fire Ridge LLC was not a party below. In addition, there was no mention of either  
18 Fire Ridge LLC or the predecessor in interest in the record below. This is fully understandable:  
19 according to online records maintained by the Oregon Secretary of State, Fire Ridge LLC was  
20 formed on May 20, 2008, and thus Fire Ridge LLC did not exist as a corporate entity when the  
21 Hearing Examiner conducted the hearing below on May 5, 2008. Attached as **Exhibit B** is a  
22  
23

24 PETITIONER'S RESPONSE TO MOTION  
25 TO DIMISS AND OBJECTION TO  
JOINDER OF FIRE RIDGE LLC - 3

1 copy of the Business Registry, Business Entity Data online form, from the Oregon Secretary of  
2 State, which indicates Fire Ridge LLC did not exist until May 20, 2008.

3 The Hearing Examiner expressly included various documents as Exhibits in his decision,  
4 documents that list Deluxe by name and address as the project applicant and proponent.  
5 Specifically, the following documents were made part of the Hearing Examiner's written  
6 decision:

- 7 1. The SEPA Notice of Threshold Determination (the decision appealed to the Hearing  
8 Examiner) identifies Deluxe Recycling and Disposal, LLC as the "Proponent", and gives  
9 its Ferndale, Washington address. Attached as **Exhibit C**.
- 10 2. The SEPA Checklist dated November 29, 2007 identifies Deluxe Recycling and  
11 Disposal, LLC as the "Applicant" and the "proposed project." Attached as **Exhibit D** is a  
12 copy of the first three pages of the Checklist.
- 13 3. The building permit application, which is attached to the motions to dismiss, identifies  
14 the "Applicant/Contact" as Deluxe Recycling and Disposal, LLC and gives its Ferndale,  
15 Washington address. See **Exhibit E**, the first section of the Commercial Building Permit  
16 Application. It is significant that in this document filed with the City, Deluxe has written  
17 the word "SAME" as the identification of the applicant. In other words, Deluxe  
18 represented to the City that Deluxe was the owner of the real property.
- 19 4. The Notice of Application And SEPA Comment Period published by the City on January  
20 21 16, 2008 identifies Deluxe Recycling and Disposal as the "Proponent" and gives its  
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24 PETITIONER'S RESPONSE TO MOTION  
25 TO DIMISS AND OBJECTION TO  
JOINDER OF FIRE RIDGE LLC - 4

1 Ferndale, Washington address. Attached as **Exhibit F**.

2 Each of the foregoing documents incorporated in the Hearing Examiner's written  
3 decision identifies Deluxe as the Applicant / Proponent. The record is clear that the only party in  
4 interest at the time the Hearing Examiner's decision was Deluxe, the proponent and applicant for  
5 the permit from the City. Deluxe represented to the City it was the owner of the property. There  
6 was no landowner identified apart from Deluxe.

7  
8 **III. PURCHASE OF PROPERTY AFTER THE QUASI-JUDICIAL DECISION DOES NOT  
REQUIRE DISMISSAL OF APPEAL FOR FAILURE TO OBTAIN TITLE REPORT**

9 The Hearing Examiner's Decision was made on May 22, 2008, and all the parties to the  
10 action were identified in the record. Pursuant to RCW 36.70C.040, Appellant was required to  
11 file and serve the appeal within 21 days.<sup>2</sup> The appeal was timely filed on June 12, 2008.

12 After the May 22, 2008 written decision (but before this action was filed), the property  
13 was transferred to Fire Ridge LLC on May 30, 2008. Deluxe and the City argue that the  
14 Petitioner's case should be dismissed because the property was transferred to a newly-formed  
15 Oregon company eight days after the Hearing Examiner's decision, and nine (9) court days after  
16 that, the Appellant (in filing her Petition) should have known that the property was now in  
17 different hands.<sup>3</sup> There is simply no law supporting the Respondents' position. Appellant had  
18 the right to rely on the record made by the Hearing Examiner. Moreover, this is a closed-record  
19

20  
21 <sup>2</sup> The actual determination of when the 21 days commences is further explained in the statute and is not an issue in  
deciding this motion.

22 <sup>3</sup> "Different hands" remains a question in substantial doubt. Based on information and belief, Fire Ridge LLC was  
23 formed by an investor associated with the Deluxe project.

24 PETITIONER'S RESPONSE TO MOTION  
25 TO DIMISS AND OBJECTION TO  
JOINDER OF FIRE RIDGE LLC - 5

1 appeal and this Court is obligated to rely on the record created by the Hearing Examiner, and the  
2 records in place at the time the Hearing Examiner's decision is rendered.

3 **IV. BURDEN IS ON DELUXE TO CORRECTLY NOTIFY THE CITY AND THIS**  
4 **COURT OF PROPER IDENTITY OF PROPERTY OWNER**

5 Pursuant to RCW 36.70C.050, Petitioner Janicki has joined Fire Ridge LLC as a party to  
6 this action by Notice of Joinder filed on June 30, 2008. See **Exhibit G** attached. One day later,  
7 the City and Deluxe filed the present motions to dismiss, and Deluxe objected to the Joinder of  
8 Fire Ridge LLC. It should be noted that the Declaration of Steve Seeger supporting the Deluxe  
9 motion was signed the week prior, meaning that Deluxe has been sitting on the fact that Fire  
10 Ridge LLC is the property owner for some time.

11 As the applicant, the burden is on Deluxe to accurately identify the true property owner  
12 and join that owner as a party. Deluxe, having failed in that responsibility, now objects to the  
13 joinder filed by Petitioner Janicki. The statute is quite explicit about this process and reads, in it  
14 its entirety, as follows:

15  
16 If the applicant for the land use approval is not the owner of the real property at  
17 issue, and if the owner is not accurately identified in the records referred to in  
18 RCW 36.70C.040(2) (b) and (c), **the applicant shall be responsible for**  
19 **promptly securing the joinder of the owners.** In addition, within fourteen days  
20 after service each party initially named by the petitioner shall disclose to the other  
21 parties the name and address of any person whom such party knows may be  
22 needed for just adjudication of the petition, and the petitioner shall promptly name  
23 and serve any such person whom the petitioner agrees may be needed for just  
24 adjudication. **If such a person is named and served before the initial hearing,**  
25 **leave of court for the joinder is not required,** and the petitioner shall provide  
the newly joined party with copies of the pleadings filed before the party's  
joinder. Failure by the petitioner to name or serve, within the time required by  
RCW 36.70C.040(3), persons who are needed for just adjudication but who are

24 PETITIONER'S RESPONSE TO MOTION  
25 TO DIMISS AND OBJECTION TO  
JOINDER OF FIRE RIDGE LLC - 6

1 not identified in the records referred to in RCW 36.70C.040(2)(b), or in RCW  
2 36.70C.040(2)(c) if applicable, **shall not deprive the court of jurisdiction to**  
3 **hear the land use petition.**<sup>4</sup>

4 The applicant, Deluxe, having violated the first sentence of the statute and having  
5 misidentified the original property owner, and having failed to identify the later property  
6 transfer, now wishes to profit from its own failure to follow the law. Deluxe's statutory  
7 violations are as follows:

- 8 1) Deluxe failed to advise the City and the public that Deluxe was not the owner of the  
9 property, and that the true owner should be joined. The first sentence of the statute  
10 requires the applicant (Deluxe) to "be responsible for promptly securing the joinder of the  
11 owner."<sup>5</sup>
- 12 2) The second failure by Deluxe was in not advising this Court within fourteen (14) days  
13 after service of the LUPA Petition that the true owner should be named as a party. The  
14 second sentence obligated Deluxe to "disclose to the other parties the name and address  
15 of any person whom such party knows may be needed for such adjudication of the  
16 petition, . . ." Deluxe made no such disclosure. Instead, Deluxe waited beyond the  
17 fourteen (14) days and then objects to the Notice Of Joinder filed by Petitioner. Since  
18 Deluxe failed to identify either the old or new owner of the property, Janicki filed the  
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21  
22 <sup>4</sup> Bolding added.

23 <sup>5</sup> For the purposes of RCW 36.70C, the "applicant" is clearly the party who is the proponent of the land use decision  
24 below. See, e.g., RCW 36.70C.060.

1 Notice Of Joinder in compliance with the statute once it was determined that Fire Ridge  
2 LLC was the new owner.

3 The Court should not allow Deluxe to benefit from its misrepresentation as the original  
4 property owner and its subsequent serial violations of the LUPA statute.

5 **V. FAILURE TO JOIN PROPERTY OWNER IN ORIGINAL PETITION DOES NOT**  
6 **DEPRIVE THE COURT OF JURISDICTION TO HEAR THE APPEAL**

7 Both the City and Deluxe ask the Court to dismiss arguing that the LUPA Petition is  
8 barred and the Court cannot hear the appeal. This is not the law. RCW 36.70C.050 states that  
9 failure to name the property owner who is not identified in the record below does not deprive the  
10 Court of jurisdiction to hear the matter: "Failure by the petitioner to name or serve, within the  
11 time required by RCW 36.70C.040(3), persons who are needed for just adjudication but who are  
12 not identified in the records referred to in RCW 36.70C.040(2)(b), or in RCW 36.70C.040(2)(c)  
13 if applicable, shall not deprive the court of jurisdiction to hear the land use petition." The true  
14 original property owner was not identified in the record below, and was not identified in the  
15 assessor's records at the time the Hearing Examiner's decision was rendered.

16 The City admits that the written decision below does not contain the identity of the  
17 property owner, but the City incorrectly quotes the statute that applies. The City says to the  
18 Court, "If such a person is not identified in the written decision, as the owner was not identified  
19 here, the petition must be served on each person identified as a taxpayer for the property at issue  
20 in the records of the county assessor based upon the description of the property in the  
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24 PETITIONER'S RESPONSE TO MOTION  
25 TO DIMISS AND OBJECTION TO  
JOINDER OF FIRE RIDGE LLC - 8

1 application.<sup>6</sup> The City is correct about the written decision being silent about the property  
2 owner, but the City misstates the statute. RCW 36.70C.040(2)(b) states in its entirety, who must  
3 be served in order to invoke the Court's jurisdiction in a LUPA matter:

4 (b) Each of the following persons if the person is not the petitioner:

5 (i) Each person identified by name and address in the local  
6 jurisdiction's written decision as an applicant for the permit or  
7 approval at issue; and

8 (ii) Each person identified by name and address in the local  
9 jurisdiction's written decision as an owner of the property at issue;

10 Janicki named and served all such "persons" correctly and fully complied with this  
11 section of the statute. The persons identified in the Hearing Examiner's decision did not include  
12 the former landowner, or the post-decisional landowner Fire Ridge LLC. It is THIS subsection  
13 of the statute that is linked to RCW 36.70C.050, above. It is THIS subsection of the statute that  
14 allows later joinder of the landowner after prompt disclosure by the *applicant*, i.e., Deluxe. The  
15 misstatement of the law by the City is subtle, but very important as it is central to this motion.

16 **VI. CITY AND DELUXE MISQUOTE THE APPLICABLE STATUTES TO SUPPORT  
17 THEIR MOTIONS TO DISMISS**

18 The next subsection of the LUPA statute upon which the City and Deluxe rely is RCW  
19 36.70C.040(c), which states, in its entirety, as follows:

20 (c) If no person is identified in a written decision as provided in (b) of this  
21 subsection, each person identified by name and address as a taxpayer for the

22 <sup>6</sup> City's Motion To Dismiss, page 3, line 8.

1 property at issue in the records of the county assessor, based upon the description  
2 of the property in the application; and

3 The first three words of the statute are important, yet the City subtly morphs the actual  
4 language of the statute once again to fit its purpose (without furnishing an exact quote). The City  
5 claims in its memorandum supporting this motion that “**If such a person** is not identified” then  
6 the petitioner must look to the county assessor’s records.<sup>7</sup> By twisting the language of the statute  
7 ever so slightly, the Respondents apparently hope this Court will construe the statute as imposing  
8 broader requirements than the statute in its actual wording actually involves. But the City’s and  
9 Deluxe’s characterization of the statute does not reflect the actual language in the statute, i.e., the  
10 language quoted above.

11 In reality, the first three words of the statute says “**If no person**” is identified. In other  
12 words, if the Hearing Examiner failed to identify any proponent at all on whom process can be  
13 served, then the Petitioner must look to the county assessor records in order to find someone to  
14 serve. In the present case, RCW 37.70C.020(c) does not apply in the first place because the  
15 Hearing Examiner *did* identify various parties that are the project’s proponents, and, moreover,  
16 because Fire Ridge LLC would not have appeared in the assessor records at the time the Hearing  
17 Examiner’s decision was entered. The Hearing Examiner identified all parties in the record:  
18 Janicki, Sedro-Woolley and Deluxe. Accordingly, subsection RCW 36.70C.040(c) does not  
19 apply.  
20

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21  
22 <sup>7</sup> See City’s Motion To Dismiss, page 3, line 7.  
23

1           Petitioner's interpretation of the statute is that the project proponent and/or property  
2 owner must be served with the LUPA Petition if they can be identified by looking at the Hearing  
3 Examiner's decision (as is the case here with respect to the project proponent). In the rare and  
4 unlikely instance that neither can be identified in the record, the landowner appearing in the  
5 county assessor's records must be served. But since Fire Ridge LLC was made the landowner  
6 more than a week after the hearing examiner's decision, a requirement to serve them would  
7 require the absurd conclusion that a project proponent can avoid LUPA review by quit claiming  
8 the property to a new shell company the day before the appeal deadline. The Court should avoid  
9 a statutory interpretation that would lead to an absurd result, as would be the case were the Court  
10 to accept the City/Deluxe view of the LUPA statute's service of process requirements.

11           Finally, Deluxe makes yet another subtle misquote of the applicable statute in asserting  
12 that "[t]he only instance where the Court will allow joinder of a landowner after the 21 days has  
13 elapsed is in the event that the land owner is **not accurately identified in the Assessor's**  
14 **records.** RCW 36.70C.050.<sup>8</sup>" This is a misstatement of the law. The "records" that RCW  
15 36.70C.050 has in mind are "the records referred to in RCW 36.70C.040(2) (b) and (c)." RCW  
16 36.70C.050. These two subsections have to do with the records in the decision below – not  
17 simply "the Assessor's records." And Deluxe's analysis of what courts do seems to be based solely  
18 on its own mischaracterization of RCW 36.70C.050, since our review indicates that there are no  
19 published decisions interpreting RCW 36.70C.050. Deluxe's attempt to graft new limitations on  
20 joinder that are not found in any legal authority should be rejected.

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21  
22 <sup>8</sup> See Deluxe's Memorandum of Law, page 6, line 19 (emphasis added to original).

1                   **VII. JANICKI APPEAL TO HEARING EXAMINER WAS TIMELY AND FILED**  
2                   **PURSUANT TO THE NOTICE PUBLISHED BY THE CITY**

3                   Deluxe also argues that the appeal to the Hearing Examiner was untimely. Deluxe argues  
4 in its Memorandum that the appeal of the MDNS was untimely. This issue was raised by Deluxe  
5 at the hearing before the Hearing Examiner, and not supported by the City. The Hearing  
6 Examiner denied the motion saying that:

7                   “The Applicant’s [Deluxe] want the controlling date to be the date it was signed  
8 (March 7), which would have rendered the Appellant’s [Janicki] submission on  
9 March 26, 2008 as untimely and invalid. This Examiner disagreed, noting that the  
10 general public must rely on the published date (in this case March 12) to be  
11 informed an appeal was an option; and this being public process, the published  
12 date must be the controlling date. Note also that City set the MDNS appeal  
13 deadline at March 26, 2008. The Appellants submitted on that date, therefore their  
14 Appeal was timely.”

15                   The published MDNS is attached hereto as **Exhibit C**. The date of publication of the  
16 notice was March 12, 2008 and it clearly states that appeals must be submitted by March 26,  
17 2008. The Hearing Examiner correctly determined that the public has the right to rely on the  
18 published date for filing appeal. Any other decision means that the public can be easily  
19 manipulated by the City in the decision-making process by simply waiting several days after  
20 decisions are made to give any notice so that most if not all of the appeal deadline is exhausted  
21 and there is no meaningful chance for an appeal. The City understood that it was bound by its  
22 duty to publish notice of SEPA determinations and that the effective date for filing an appeal  
23 started from the date of publication and not the date that a piece of paper is signed and put in a  
24 file. As the Hearing Examiner correctly observed in his decision rejecting this argument below,  
25 it makes no sense that an appeal period would begin to run before anyone knows about the

PETITIONER’S RESPONSE TO MOTION  
TO DIMISS AND OBJECTION TO  
JOINDER OF FIRE RIDGE LLC - 12

1 decision.

2 Petitioner filed a response to the motion to dismiss before the Hearing Examiner and that  
3 submittal is attached as **Exhibit H** and incorporated by this reference.

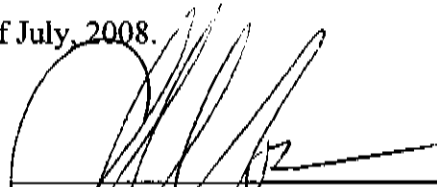
4 **VIII. CONCLUSION**

5 LUPA requires that parties serve applicants and landowners identified in the decision  
6 below. If no project proponent is identified on whom service can be accomplished, then the  
7 notice requirements are satisfied by serving the taxpayer identified in the county assessor's  
8 records. These requirements are jurisdictional, and the Court should not lightly expand them to  
9 accommodate clever legal ruses by sophisticated project applicants intended to deprive  
10 legitimately aggrieved parties of any opportunity to be heard.

11 Deluxe is attempting to profit from its initial misrepresentation of property ownership to  
12 the City and its subsequent lack of candor with the City and this Court by failing to join the new  
13 property owner when it knew that such disclosure would become an issue in this LUPA appeal.

14 The motions to dismiss must be denied.

15 Dated this 18th day of July, 2008.

16   
17 \_\_\_\_\_  
18 C. Thomas Moser, WSBA # 7287  
19 Attorney for Petitioner

20  
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22  
23  
24 PETITIONER'S RESPONSE TO MOTION  
25 TO DIMISS AND OBJECTION TO  
JOINDER OF FIRE RIDGE LLC - 13

**PARTIES TO THE APPEAL:**

Thomas Moser & Annie Janicki  
411 Main Street  
Mount Vernon, WA 98273  
Robert A. Carmichael  
Zander Thurston, P.S.  
1700 D Street  
Bellingham, WA 98227

Sedro-Woolley Planning Department

Phil Serka  
Adelstein, Sharpe & Serka, LLP  
400 North Commercial Street  
Bellingham, WA 98227-5158

## Business Registry Business Name Search

[New Search](#)

## Business Entity Data

07-08-2008  
07:41

Registry Nbr	Entity Type	Entity Status	Jurisdiction	Registry Date	Duration Date	Renewal Date
521633-92	DLLC	ACT	OREGON	05-20-2008		
<b>Entity Name</b> FIRE RIDGE LLC						
<b>Foreign Name</b>						

[New Search](#)

## Associated Names

*Please click here for general information about registered agents and service of process.*

Type	AGT	REGISTERED AGENT	Start Date	05-20-2008	Resign Date	
<b>Name</b>	STEVEN	SCOTT	SEEGER			
<b>Addr 1</b>	2105 8TH STREET					
<b>Addr 2</b>						
<b>CSZ</b>	COLUMBIA CITY	OR	97018	<b>Country</b>	UNITED STATES OF AMERICA	

Type	MAL	MAILING ADDRESS		
<b>Addr 1</b>	2105 8TH STREET			
<b>Addr 2</b>				
<b>CSZ</b>	COLUMBIA CITY	OR	97018	<b>Country</b> UNITED STATES OF AMERICA

[New Search](#)

## Name History

Business Entity Name	Name Type	Name Status	Start Date	End Date
FIRE RIDGE LLC	EN	CUR	05-20-2008	

Please read before ordering Copies.

[New Search](#)

## Summary History

Image Date	Action	Transaction Date	Effective Date	Status	Name/Agent Change	Dissolved By
05-20-2008	ARTICLES OF ORGANIZATION	05-20-2008		FI	Agent	

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EXHIBIT     B

## SEPA Notice of Threshold Determination Mitigated Determination of Non-significance (MDNS)

**Project Description:** The proposal is to construct and operate a recycling and solid waste handling facility on a 12.84 acre former lumber mill site in Sedro-Woolley. The facility would also process construction debris and offer a public self-service drop-off area for recyclables. The site will include a new 30,000 square foot processing facility with a below-grade compactor and new freight scales. The proposed processing facility is closed on three sides with the fourth side open for trucks to unload and will include an automated conveyor to sort recyclable materials from other solid waste. Two existing structures on site will be used for office and shop space. The materials will be sorted and bundled, and either sold to a recycling center or processed on site for direct resale. On site processing will primarily include grinding up wood products to make "hog fuel" to be sold on site. The remaining solid waste would be compacted into self-contained, covered waste units to be transported to an approved land fill. The application was determined to be complete on December 18, 2007. File # BP-111-07

**Proponent:** Deluxe Recycling and Disposal, LLC.  
4916 LaBounty Place  
Ferndale, WA 98248

**Contact:** Skagit Surveyors & Engineering  
c/o: Marianne Manville-Atiles, AICP  
806 Metcalf Street  
Sedro-Woolley, WA 98284

**Location of Project, Including Street Address, if any:** The project is located on Assessor's parcels P75932, P75933, P75935, P75936 and P37648 at 109 Jameson Street, Sedro-Woolley, WA.

**Other project permits:** City of Sedro-Woolley Building Permit and ROW Permit.

**Lead Agency, City of Sedro-Woolley:** The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(e). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request. This determination is based upon the following mitigation being provided by the applicant:

1. Hours of construction shall be limited to 7:00 a.m. to 9:00 p.m. weekdays and 8:00 a.m. to 9:00 p.m. weekends as required in SWMC 9.46.020;
2. Comply with Northwest Clean Air Agency regulations;
3. Construction and operation of the proposed facility shall comply with all local, state and federal regulations, including Sedro-Woolley Municipal Code Title 13.36 Stormwater Management Standards; Title 13.40 Stormwater Facilities Maintenance; Title 15.40 Public Works Construction Standards; Title 17 Zoning; Sedro-Woolley Public Works Design Standards and the Sedro-Woolley Comprehensive Plan;
4. Lighting from the site shall be directed and/or shielded so as to not shine directly at the neighboring residential properties;
5. Impact Fees and General Facilities charges shall be assessed and collected at the rate adopted by ordinance at the time of building permit issuance;
6. Obtain and comply with conditions of a NPDES stormwater general permit from the Department of Ecology as may be required;
7. All construction traffic shall use an approved temporary construction access with a 100' geotextile and quarry spall construction entrance;
8. Comply with the landscape and site design plans as approved by the Planning Department;
9. Reconstruction of Jameson Street along the frontage of the property will be required, including, but not limited to, curbs, sidewalks and planter strips on the south side of the street;
10. Jameson Street shall be reestablished as direct access to State Route 9 through the old Weyerhaeuser site prior to commencement of operation of the proposed facility. Intersection improvements at the new Jameson Street/State Route 9 intersection shall also be in place prior to commencement of operation of the proposed facility;
11. Further off-site road improvements shall include an approach/turning lane on the eastbound side of Jameson Street, west of the entrance to the proposed facility. The turn lane is to accommodate vehicles waiting to enter the facility and prevent said vehicles from blocking the travel lane on Jameson Street;

EXHIBIT     C    

EXHIBIT     A

12. Truck traffic generated by the proposed facility shall not use Jameson Street to the east of the proposed entrance. To achieve this directive, the entrance/exit to the site shall be designed to restrict westbound traffic from entering the site and restrict traffic from exiting to eastbound Jameson Street. The entrance design shall use a combination of curbs and other physical deterrents as well as signage to achieve the required directive;
13. Primary access to the site shall be from Jameson Street. Access to any other right-of-way shall be for emergency and maintenance purposes only;
14. Any structures within the 100 year flood plain (as defined in the Flood Insurance Rate Map (FIRM), revised December 5, 1989) shall comply with Chapter 17.66 SWMC and any applicable FEMA regulations/requirements;
15. To better contain noise, odors and debris, the design of the transfer building shall have four sides, not three as originally proposed. Access to the interior of the building shall be through doors large enough to allow large-vehicle access and the doors must be capable of closing;
16. Use of a tub-grinder or other outdoor grinding machinery shall be limited to the hours of 9:00 AM and 5:00 PM. Any grinding equipment shall be shielded so as to prevent debris from leaving the site;
17. Decibel level limitations will be defined by the city and will be based on the maximum environmental noise levels defined in Chapter 173-60 of the Washington Administrative Code;
18. No hazardous waste, including household hazardous waste, shall be collected or stored at the proposed facility without obtaining a conditional use permit and showing that the facility complies with the state hazardous waste-citing standards. Additional SEPA review will be necessary for any proposed hazardous waste handling at the proposed facility. However, a hazardous waste spill/response plan shall be in place prior to commencement of operation of the proposed facility in the case that hazardous waste should inadvertently be delivered to the facility;
19. A radiation detector shall be placed in the off-loading area and operational at all times;
20. Discharge to the city sanitary sewer system shall be for domestic effluent only. Industrial discharge shall not be allowed unless adequate testing is provided to the city to show that the effluent will meet city standards or an approved effluent management/pre-treatment mechanism is installed. All drainage from where solid waste is loaded, unloaded, stored, sorted as well as areas where solid waste can be tracked by vehicles or other equipment shall be directed to holding tanks. The tanks shall be pumped when necessary and the waste shall be delivered to an approved disposal facility;
21. Materials stored at the site shall be secured or located to prevent displacement during a flood event;
22. Additional SEPA traffic impact fees may be imposed if necessary per the completion of a city approved traffic impact analysis;
23. Contribute voluntary police impact fees as per the commercial development calculation in the Capital Facilities Element of the City of Sedro-Woolley Comprehensive Plan;
24. Municipal solid waste is not approved to be stored on-site. Time limits for keeping municipal solid waste containers on-site may be imposed by the city;
25. On-site composting is not included with this SEPA review process and shall not be allowed without further SEPA review;
26. Odor and dust control for outdoor storage of materials shall be coordinated with the city. Regular sweeping of paved areas shall be required and watering of dust producing items may also be required. Runoff from outdoor storage must also be managed per a city approved plan; and
27. Approved street lighting shall be installed along the Jameson Street frontage;

The lead agency previously issued a comment period for this proposal under the optional DNS process in WAC 197-11-355. There is no further comment period on this threshold determination. Per SWMC 2.88.170, you may appeal this threshold determination in writing to the City of Sedro-Woolley Planning Department within 14 days from date of publication. Written appeals must be submitted by 4:30 p.m. Wednesday, March 26, 2008 to the Associate Planner, City of Sedro-Woolley, 325 Metcalf Street, Sedro-Woolley, Washington, 98284 or electronically to [jcoleman@ci.sedro-woolley.wa.us](mailto:jcoleman@ci.sedro-woolley.wa.us).

**Responsible SEPA Official:** Planning Director – City of Sedro-Woolley  
**Contact Person:** John Coleman, Associate Planner

**Address:** 325 Metcalf Street, Sedro-Woolley, WA. 98284

**Date of Issue:** Friday, March 7, 2008    **Date of publication:** Wednesday, March 12, 2008

**Signature:**   
 Jack Moore, Planning Director

**DELUXE RECYCLING SOLID WASTE  
PROCESSING FACILITY  
SEDRO-WOOLLEY, WASHINGTON**

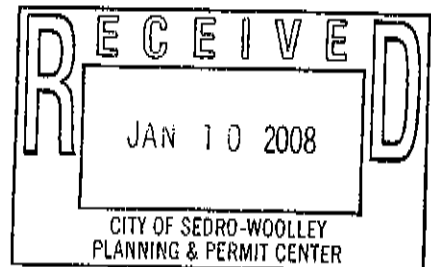
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**SEPA CHECKLIST**

**Prepared for:**

Deluxe Recycling & Disposal  
4916 LaBounty Place  
Ferndale, WA 98248

**November 29, 2007**



*Skagit Surveyors & Engineers*  
SURVEYING ♦ CIVIL ENGINEERING ♦ SUBDIVISIONS ♦ LAND USE PLANNING ♦ ELEVATIONS  
806 Metcalf St., Sedro-Woolley, WA 98284 Phone (360) 855-2121 Fax (360) 855-1658

EXHIBIT   D

## ENVIRONMENTAL CHECKLIST

### **Purpose of Checklist:**

The State Environmental Policy Act (SEPA), chapter 43.21C RCW, requires all governmental agencies to consider the environmental impacts of a proposal before making decisions. An environmental impact statement (EIS) must be prepared for all proposals with probable significant adverse impacts on the quality of the environment. The purpose of this checklist is to provide information to help you and the agency identify impacts from your proposal (and to reduce or avoid impacts from the proposal, if it can be done) and to help the agency decide whether an EIS is required.

### **Instructions for Applicants:**

This environmental checklist asks you to describe some basic information about our proposal. Governmental agencies use this checklist to determine whether the environmental impacts of your proposal are significant, requiring preparation of an EIS. Answer the questions briefly, with the most precise information known, or give the best description you can.

You must answer each question accurately and carefully, to the best of your knowledge. In most cases, you should be able to answer the questions from your own observations or project plans without the need to hire experts. If you really do not know the answer, or if a question does not apply to your proposal, write "do not know" or "does not apply". Complete answers to the questions now may avoid unnecessary delays later.

Some questions ask about governmental regulations, such as zoning, shoreline, and landmark designations. Answer these questions if you can. If you have problems, the governmental agencies can assist you.

The checklist questions apply to all parts of your proposal, even if you plan to do them over a period of time or on different parcels of land. Attach any additional information that will help describe your proposal or its environmental effects. The agency to which you submit this checklist may ask you to explain your answers or provide additional information reasonably related to determining if there may be significant adverse impact.

### **Use of checklist for non-project proposals:**

Complete this checklist for non-project proposals, even though questions may be answered "does not apply." In addition, complete the Supplemental Sheet for Non-project Actions (part D).

For non-project actions, the references in the checklist to the words "project," "applicant," and "property or site" should be read as "proposal," "proposer," and "affected geographic area," respectively.

## A. BACKGROUND

### 1. Name of proposed project, if applicable:

*Deluxe Recycling & Disposal Collection and Transfer Facility*

### 2. Name of applicant:

*Deluxe Recycling & Disposal*

### 3. Address and phone number of applicant and contact person:

#### **Applicant:**

*Deluxe Recycling & Disposal  
4916 LaBounty Place  
Ferndale, WA 98248*

#### **Contact:**

*Marianne Manville-Ailles, AICP  
Skagit Surveyors and Engineers  
806 Metcalf St.  
Sedro-Woolley, WA 98284  
(360) 855-2121*

### 4. Date checklist prepared:

*November 29, 2007*

### 5. Agency requesting checklist:

*Sedro-Woolley Planning Department*

### 6. Proposed timing or schedule (including phasing, if applicable):

*Construction of required improvements is anticipated to begin as soon as feasible after obtaining appropriate approvals.*

### 7. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain.

*There are no plans at this time for additions or expansion of the project as proposed.*

### 8. List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal.

*The Department of Ecology has issued a No Further Action Determination letter for this property under WAC 173-340-515 (5). A copy of the determination dated April 5, 2007 is attached.*

*A critical areas reconnaissance was conducted by Wetlands, Inc. and no critical areas were identified on the project area. A copy of the resulting letter report dated September 14, 2007 is attached. A drainage memo was prepared by Skagit Surveyors & Engineers. A copy dated September 6, 2007 is attached. A geotechnical site investigation was conducted by Geotest to determine potential environmental conditions on the site. A copy of the resulting letter dated July 9, 2007 is attached. A traffic study was prepared by Gibson Traffic Consultants. A copy dated October 10, 2007 is attached.*



# COMMERCIAL BUILDING PERMIT APPLICATION

## SECTION I - PROPERTY AND BUILDING INFORMATION

Fill out completely. Attach legal descriptions and supporting documents as necessary. Please be sure to complete Sections II-III. Failure to complete all sections will result in an incomplete application and will not be accepted by City staff.

APPLICANT/CONTACT	OWNER (if different from applicant)	CONTRACTOR
Name: <u>DEWUXE RECYCLING AND DISPOSAL LLC</u> Address: <u>4916 LAPOUNTY PL.</u> City: <u>FERNDALE</u> Zip Code: <u>98248</u> Day Phone: <u>425-765-9182</u> Cell Phone: <u>206-953-2580</u> Fax: <u>360-384-0873</u>	Name: _____ Address: _____ City: _____ Zip Code: _____ Day Phone: _____ Cell Phone: _____ Fax: _____	Company: <u>PRINTERS CHOICE</u> Contact: <u>ROB SIMPSON</u> Address: <u>PO BOX 1378</u> City: <u>RONALD</u> Zip: <u>98940</u> Day Phone: <u>509-859-4798</u> Cell: <u>253-677-3112</u> Fax: <u>509-619-3191</u> Contractor #: <u>PRINT 077JB</u> Expiration Date: <u>7-12-09</u> City License #: _____

### PROJECT SITE IDENTIFICATION

Site Address: 109 Jambon Street Lot/Block#: 55, 56, 57 Lot Size: 12.84 acres/sq-ft  
 Parcel I.D. #: P75932, 33, 34, 35, 36, 37, 37618 Section # 25 Township 35N Range: 4 E. W. M.  
 (VARIOUS)

NEW CONSTRUCTION	CHANGE OF USE	TENANT IMPROVEMENT
Project Description: <u>RECYCLING CENTER</u> Occupancy Type/Use: <u>F-1</u> Construction Type: <u>STEEL</u> Square Feet: <u>30450</u> Project Value: \$ <u>2,580,300</u> Heated? <input checked="" type="checkbox"/> N Sprinklers? <input checked="" type="checkbox"/> N	Proposed Use: _____ Previous Use: _____ Bldg Square Feet: _____ Project Value: \$ _____ Currently Sprinkled? Y/N Heated? Y/N Other bldgs within 30 ft? YES/NO	Project Description: _____ Occupancy Type/Use: _____ Construction Type: _____ Square Feet: _____ Uses Adjacent to this Space: _____ Project Value: \$ _____ Currently Sprinkled? Y/N Heated? Y/N

PROJECT SITE INFORMATION	GRADING	IMPERVIOUS SURFACES
Current zoning: <u>INDUSTRIAL</u> Are there any existing structures on the property? <input checked="" type="checkbox"/> Yes/No Will it be necessary to clear any trees or vegetation for this project? <input checked="" type="checkbox"/> Yes/No Do you own adjoining pieces of land? <input checked="" type="checkbox"/> Yes/No Is the property within 200 feet of a Critical Area? <input checked="" type="checkbox"/> Yes/No	Cuts <u>20,600</u> cy Fill <u>22,600</u> cy Total <u>43,200</u> cy	Bldg <u>30450</u> sq. ft. Drive/Parking <u>25279</u> sq. ft. Sidewalk(s) <u>1600</u> sq. ft. Other <u>26829</u> sq. ft. Total Impervious <u>559310</u> sq. ft.
Total Percentage of Lot Coverage: <u>100</u> %		

**CITY OF SEDRO-WOOLLEY**  
**NOTICE OF APPLICATION AND SEPA COMMENT PERIOD**

**Description of proposal/application:** The proposal is to construct and operate a recycling and solid waste handling facility on a 12.84 acre former lumber mill site in Sedro-Woolley. The facility would also process construction debris and offer a public self-service drop-off area for recyclables. The site will include a new 30,000 square foot processing facility with a below-grade compactor and new freight scales. The proposed processing facility is closed on three sides with the fourth side open for trucks to unload and will include an automated conveyor to sort recyclable materials from other solid waste. Two existing structures on site will be used for office and shop space. The materials will be sorted and bundled, and either sold to a recycling center or processed on site for direct resale. On site processing will primarily include grinding up wood products to make "hog fuel" to be sold on site. The remaining solid waste would be compacted into self-contained, covered waste units to be transported to an approved land fill. The application was determined to be complete on December 18, 2007. File # BP-111-07

**Proponent:** Deluxe Recycling and Disposal  
4916 LaBounty Place  
Ferndale, WA 98284

**Contact:** Skagit Surveyors & Engineering  
c/o Marianne Manville-Ailles, AICP  
806 Metcalf Street  
Sedro-Woolley, WA 98284

**Location of project, including street address if any:** The project is located on Assessor's parcels P75932, P75933, P75935, P75936 and P37648 at 109 Jameson Street, Sedro-Woolley, WA.

**Environmental Review:** The City of Sedro-Woolley has reviewed the proposed project for probable adverse environmental impacts and expects to issue a mitigated determination of non-significance (MDNS) for this project. The optional DNS process in WAC 197-11-355 is being used. Agencies, tribes, and the public are encouraged to review and comment on the proposed project and its probable environmental impacts.

**Documents are available for review at:** The City of Sedro-Woolley Planning Department, 720 Murdock Street, Sedro-Woolley, WA 98284, Monday through Friday, 8:00 a.m. to 5:00 p.m. Environmental documents available include a wetlands reconnaissance, a stormwater report, a traffic study, a geotechnical site investigation and a SEPA checklist. For more information, contact John Coleman at the Sedro-Woolley Planning Department at (360) 855-0771.

**Public Comment Period:** The lead agency for this proposal has NOT yet made a threshold determination of whether or not the proposed project has a probable significant adverse impact on the environment. Interested persons may comment on the application and/or the SEPA determination, receive notice, participate in any hearings and request a copy of the decision.

**Public comments must be received by 4:30 p.m. January 30, 2008** and should be submitted to the City of Sedro-Woolley Planning Department, 720 Murdock Street, Sedro-Woolley, WA 98284. Comments may be mailed or personally delivered and should be as specific as possible. **This may be your only opportunity to comment on the environmental impacts of the proposed project.**

John Coleman, Associate Planner  
City of Sedro-Woolley Planning Department

Published in Courier Times on January 16, 2008.

EXHIBIT     F

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SKAGIT COUNTY, WA

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SKAGIT

ANNIE JANICKI,

Petitioner,

vs.

CITY OF SEDRO-WOOLLEY, a municipal  
corporation, and DELUXE RECYCLING  
AND DISPOSAL LLC, a Washington  
Corporation, and FIRE RIDGE LLC, an  
Oregon Limited Liability Company,

Respondents.

No. 08-2-01130-8

**NOTICE OF JOINDER**

TO: Superior Court Clerk; and  
TO: City of Sedro-Woolley; and  
TO: Deluxe Recycling and Disposal LLC; and  
TO: Skagit County, proposed Intervenor

**COMES NOW** Petitioner, by and through her attorney, C. Thomas Moser, and does now  
give notice that FIRE RIDGE LLC is joined as a party to this matter. This notice is pursuant to  
RCW 36.70C.050 and upon Petitioner's understanding that FIRE RIDGE LLC is the new owner  
of the subject property.

NOTICE OF JOINDER - 1


 **MOSER**  
LAW OFFICE  
C. Thomas Moser, WSBA # 7287  
411 Math Street, Mount Vernon, WA 98273  
Tel: 360-428-7900 FAX: 360-336-3488

EXHIBIT     6    

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Dated: this 30 day of June, 2008.



---

C. Thomas Moser, WSBA # 7287  
Attorney for Petitioner

NOTICE OF JOINDER - 2

 **MOSER**  
LAW OFFICE  
C. Thomas Moser, WSBA # 7287  
411 Main Street, Mount Vernon, WA 98273  
Tel: 360-428-7900 FAX: 360-336-3488

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BEFORE THE HEARING EXAMINER OF  
THE CITY OF SEDRO-WOOLLEY, WASHINGTON

APPEAL OF MDNS IN RE: )  
 )  
DELUXE RECYCLING AND DISPOSAL, )  
LLC. ) No: BP-111-07  
 )  
ANNIE JANICKI, ) **APPELLANT'S RESPONSE TO**  
 ) **APPLICANT'S MOTION TO DISMISS**  
 )  
Appellant. )

COMES NOW APPELLANT, by and through her attorney C. Thomas Moser, and does now respond to the Applicant's Motion To Dismiss the SEPA appeal. This response is limited to the motion and is not a reply to the Response portion of the Applicant's submittal.

**Motions Are Inconsistent Theories:**

Applicant argues two inconsistent theories: The appeal is untimely; the appeal is premature. Both arguments are an attack on the City's MDNS. The MDNS clearly advises the public of when the appeal must be filed. The published MDNS is the only notice the public receives of the action by the City. Without the publication of the MDNS it becomes nothing more than a piece of paper tucked away in a file in the planning department. For the MDNS to have any meaning to anyone other than the author and the Applicant it must be published. That publication date becomes the relevant date, not the day it was signed and put in a file.

**APPELLANT'S RESPONSE TO  
APPLICANT'S MOTION TO DISMISS - 1**

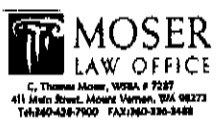


EXHIBIT     H

1 The MDNS states (in bold type and underlined) that appeals must be filed by March 26,  
2 2008. Now Deluxe has waited until just two court days before the public hearing on the Appeal  
3 to attack the MDNS by stating that this published notice was wrong. At the same time Deluxe is  
4 arguing that the MDNS is wrong because it should have had no date for an appeal. The second  
5 argument is based on the theory that the SEPA appeal should have been made in conjunction  
6 with the underlying permit issuance by the City.

### 7 **No Authority Cited For An Appeal of A Building Permit:**

8  
9 One problem with the second argument by Deluxe is that there is no authority cited to  
10 support the theory that a building permit can be appealed by the public. The other problem is that  
11 the City picked the decision and the date for appeal of that decision, not the Appellant. If the  
12 MDNS is not appealable, it is a problem created by the City. The City's position is that there will  
13 only be one public hearing and no opportunity to appeal any action related to the Deluxe  
14 proposal. The only appeal is the one filed by Annie Janicki.

### 15 **City Code Amended During Process:**

16 The City changed the SWMC after the Applicant filed its permit application and after the  
17 date of vesting as determined by the City. The old code on SEPA appeals stated as follows:

#### 18 **2.88.170 Appeals.**

19 A. Any person may appeal the issuance of:

- 20 1. A determination of nonsignificance; and  
21 2. A final environmental impact statement.

22 B. **An appeal must be filed in writing with the responsible official within**  
23 **fifteen calendar days of the date the decision becomes final.** The appeal shall  
24 identify the decision, contain a summary of the grounds for the appeal and be  
25 accompanied by an appeal fee in an amount established by resolution of the city  
council. Following receipt of the appeal and the fee, the responsible official shall  
transmit a copy of the appeal to the hearing body for a Type III application open  
record hearing pursuant to SWMC Ch. 2.90. Any party with standing may file a

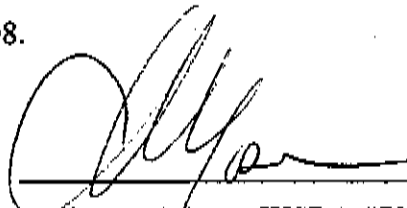
1 closed record appeal from the decision of the hearing body to the city council for  
2 a Type III application appeal pursuant to SWMC Ch. 2.90.

3 The change in the new City code is cited by Deluxe and is quoted in part. The difference  
4 is that the appeal period was shortened to 14 days and the words "becomes final" were removed  
5 in the revisions to the SWMC. The only meaning that can be attached to the words "becomes  
6 final" is that it means publication for the SEPA notice.

7 **Conclusion:**

8 The motion should be denied and the appeal should be decided by the Hearing Examiner  
9 on the merits.

10  
11 DATED this 1 day of May, 2008.

12  
13   
14 \_\_\_\_\_  
15 C. Thomas Moser, WSBA #7287  
16 Attorney for Appellant