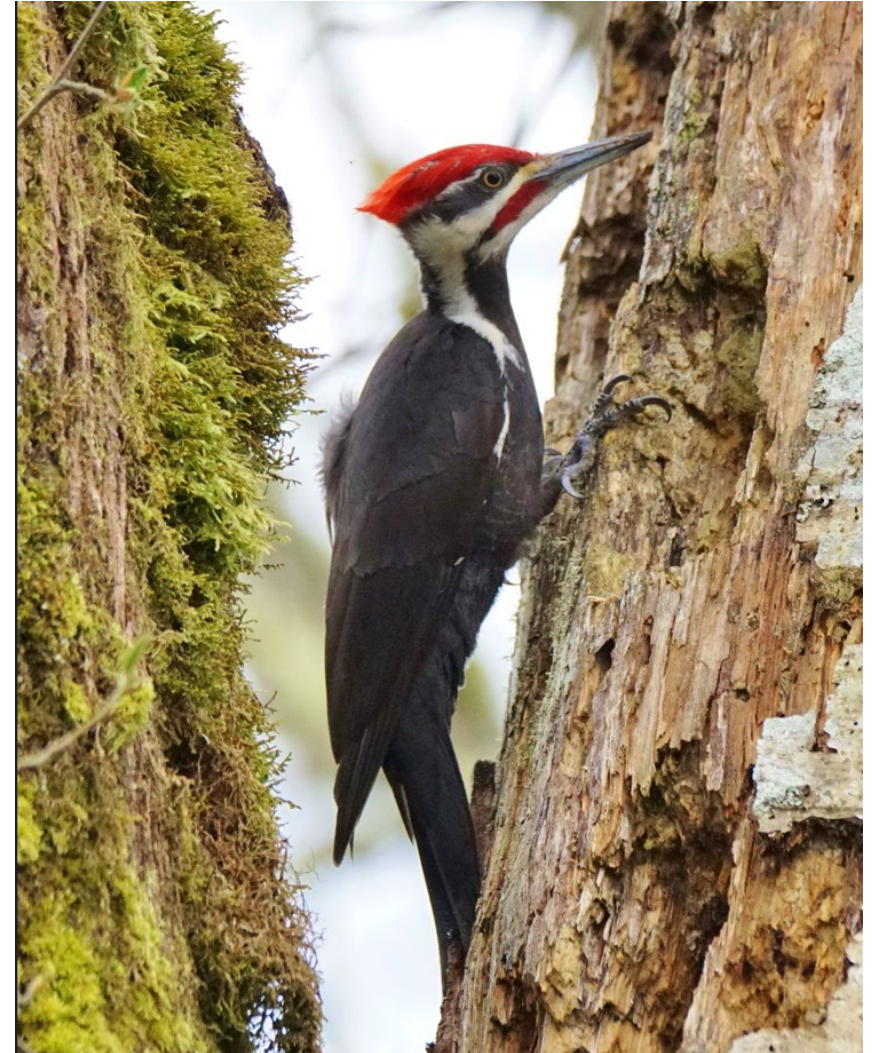




Variance and Reasonable Use Exception Code Amendments

- Clarification of
 - RUE vs Variances
 - RUE Consolidated Ownership Language
 - Demonstration of Min. Necessary
- Relaxation of Consolidated Ownership Language
- Allow Minor Variances/RUE's to be Processed Administratively



Variances and RUE's Purpose

- Variances are intended to relax dimensional standards to allow development due to site constraint.
 - Cannot be a self created hardship.
 - Can only grant similar rights as others in the same zone/area.
- RUE is a special kind of variance for critical area regulations
 - More difficult to get as there is higher value placed on science-based requirements
 - Allowed only to provide some economic use of property to avoid a taking.



RUE Applicability to Critical Areas

Streams:

- Buffers range from 150' to 250'
- 25% reduction can be requested – must show equal or better habitat protections

Wetlands:

- Buffers range from 50' - 250'
- Reductions up to 50% can be requested – must show equal or better habitat protections

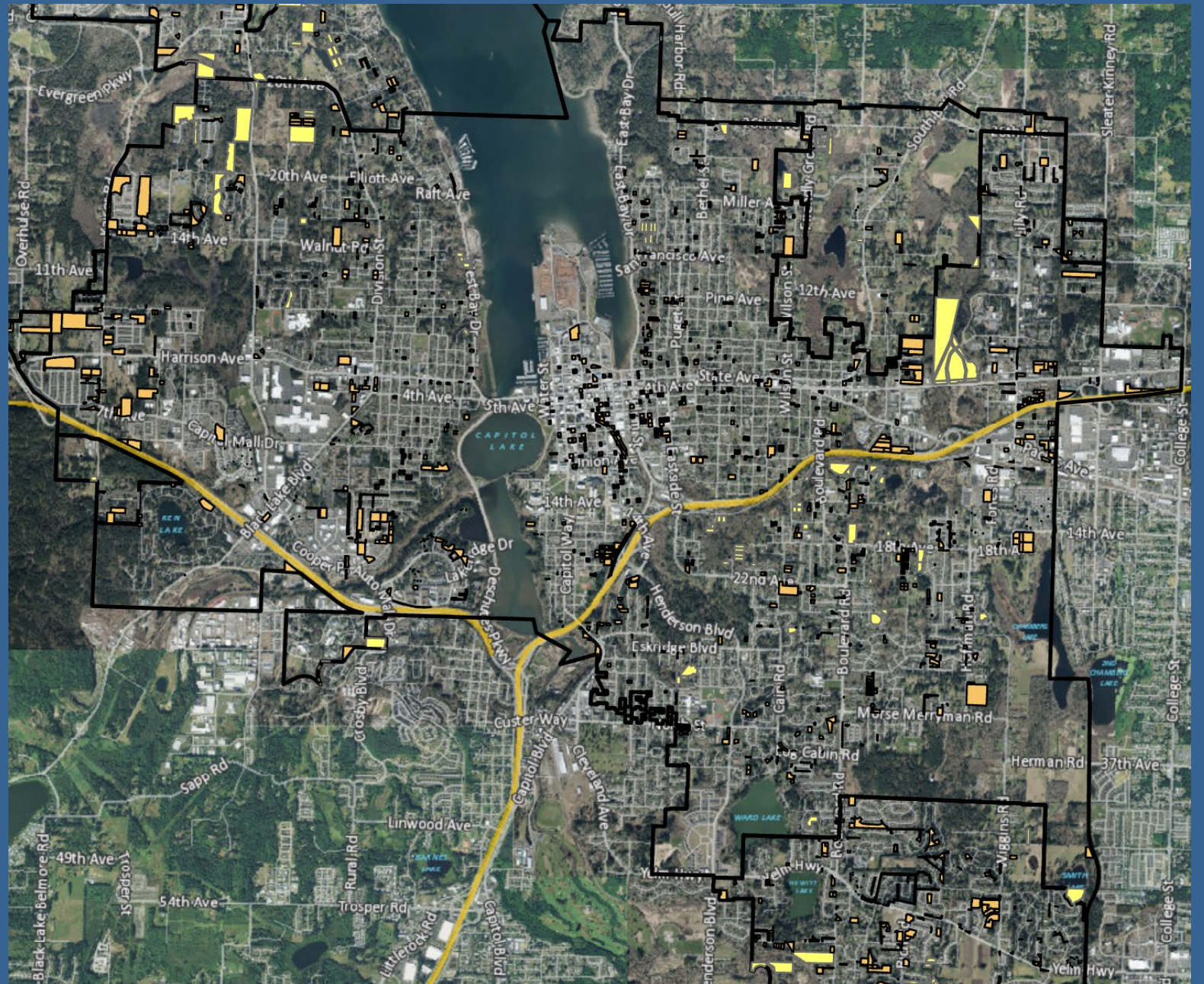
Anything beyond these reductions requires a RUE

Other Critical Areas:

- Important Habitat and Species, Geological Hazard Areas, Wellhead Protection Areas etc.



RUE Applicability Map



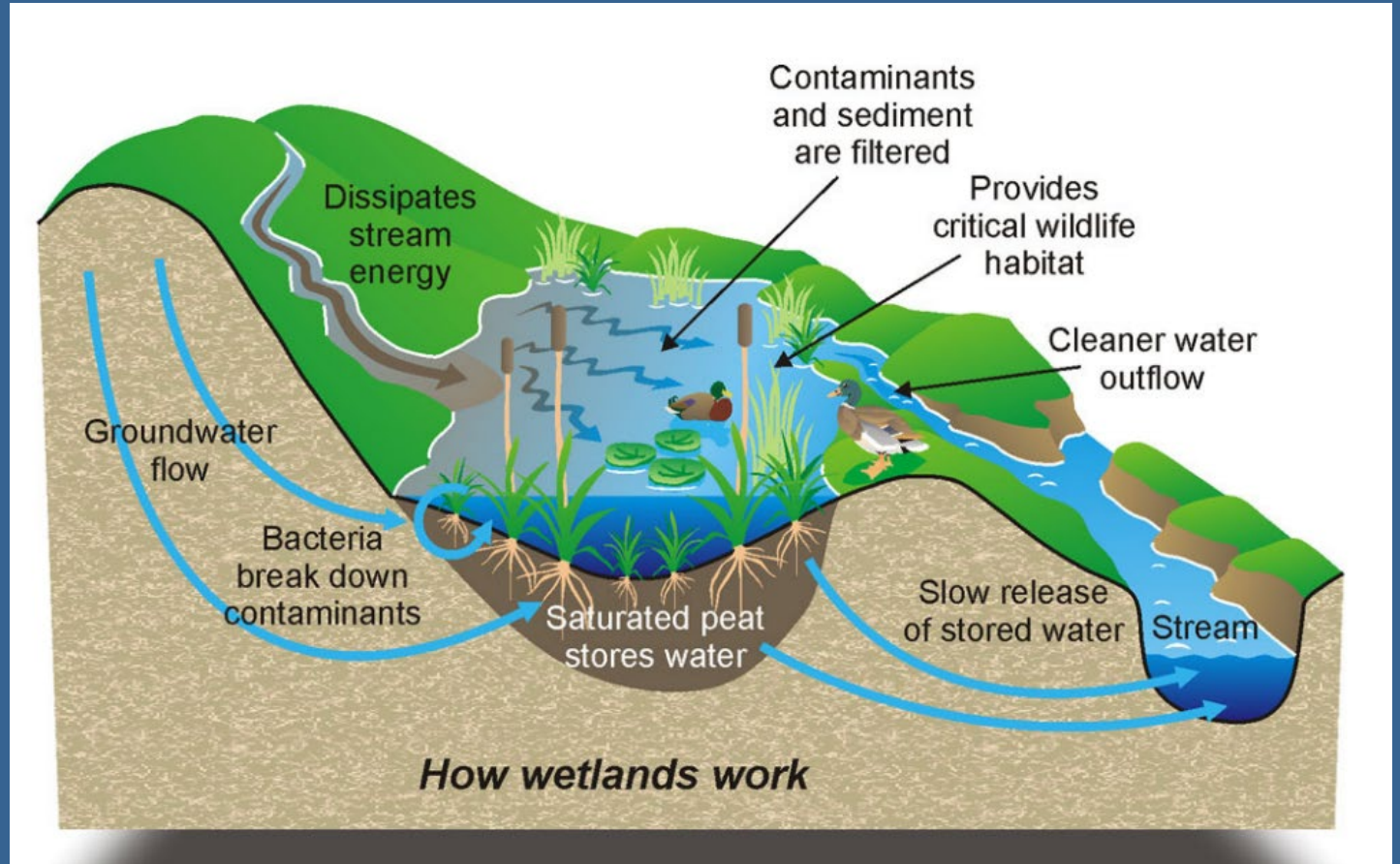
Process for RUE

- Must exhaust all code provisions to allow development.
 - Buffer reductions, modifications, site design alternatives:
 - Smaller house
 - Shared driveway
 - Setback variance
 - Minimum necessary for economic use.
 - Usually a small residence
 - Common confusion regarding economic viability and economic use.
 - Must show mitigation of environmental impacts:
 - Usually shown with buffer enhancements
 - Hearing Examiner process BEFORE building permit application.



What do Buffers Do?

- Buffers protect: Water quality, water supply storage, provide shade, protect native species (plants, birds, mammals),
 - Economic / community benefits.
- Size is based on Best Available Science
- Site specific analysis based on existing habitat / function



WA - Attorney Generals Memo

Best Practices to Avoid a Taking – 3 Pronged Test:

- 1) Does the regulation aim to achieve a legitimate public interest?
- 2) Is the method reasonably necessary to achieve the public purpose?
- 3) Is the regulation unduly oppressive on the landowner?

Buffers and Takings:

Maps are not 100% accurate but wetland and buffer would likely occupy all of both undeveloped parcels

Should they be allowed to develop? If so – to what extent?



RUE Example:

- Small
- No buffer
- Built in Wetland
- No yard



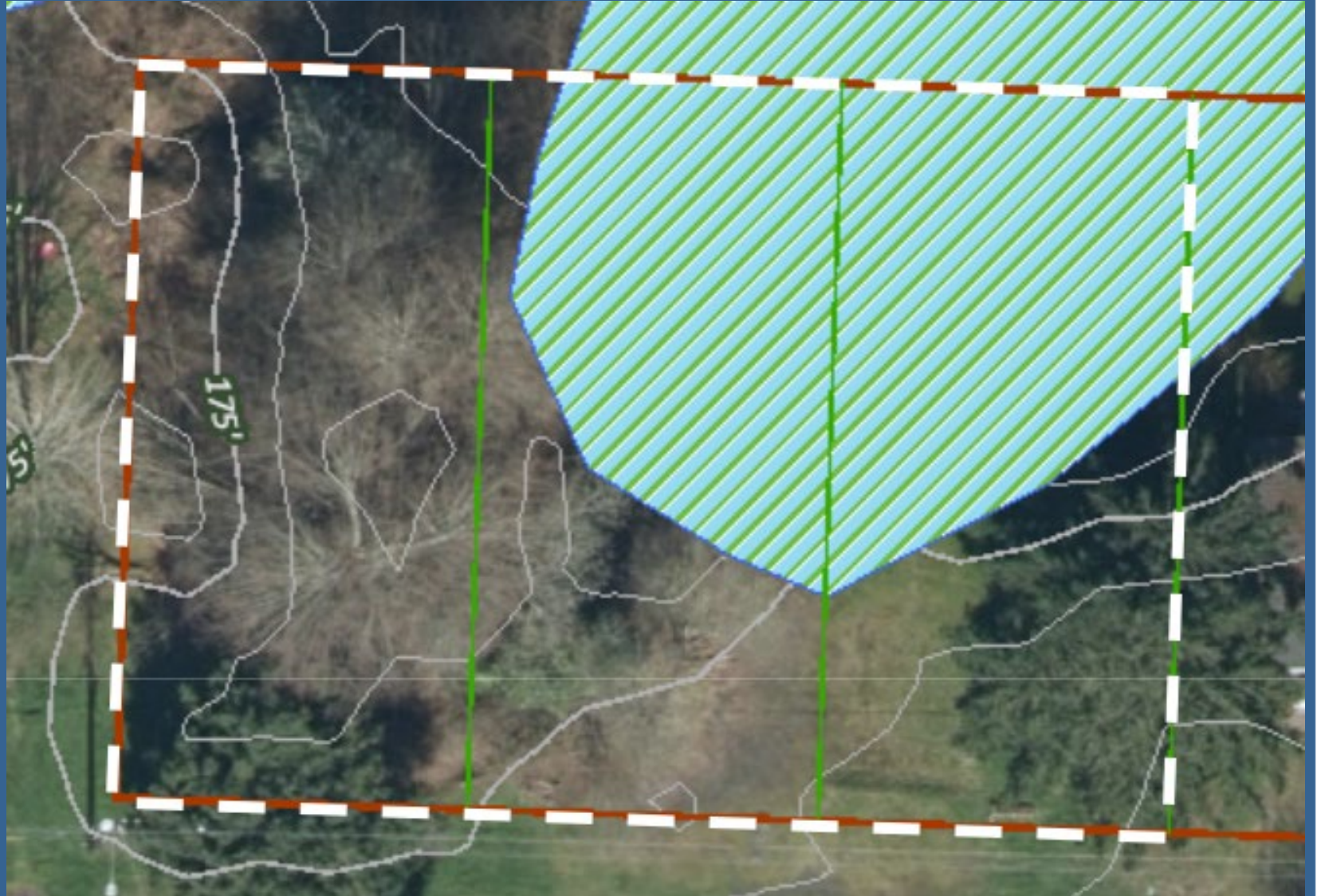
County Tax Parcels

- Two separate tax parcels, with two independent owners.
- Existing legal lots are different than “tax parcel”.
- Legal Lot vs Tax Lot



Legal Lots

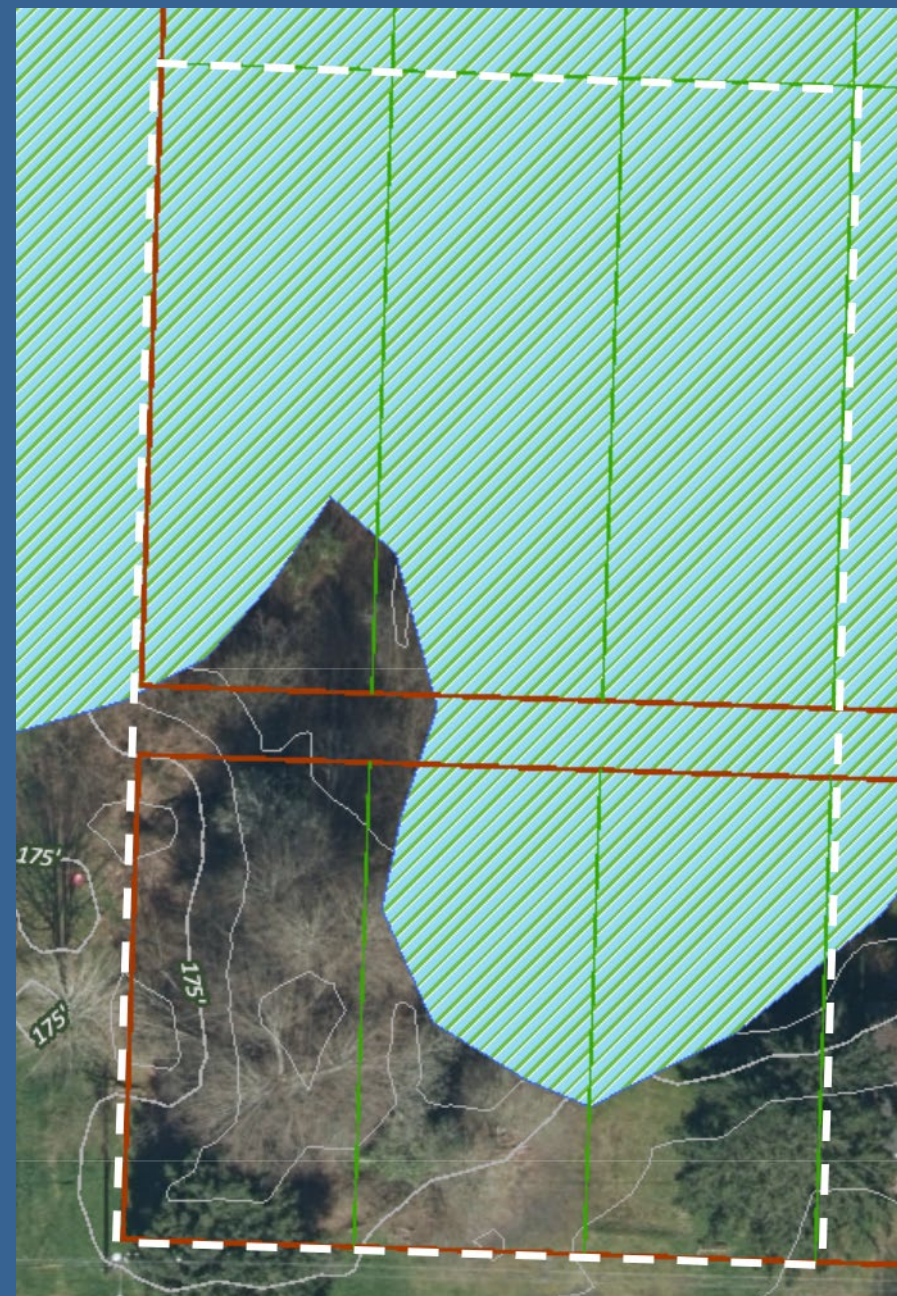
- Site has three legal lots.
- Middle lot is split between the two owners equally.
- Imagining if all three were independently owned – Would all be eligible for RUE?



Legal Lots

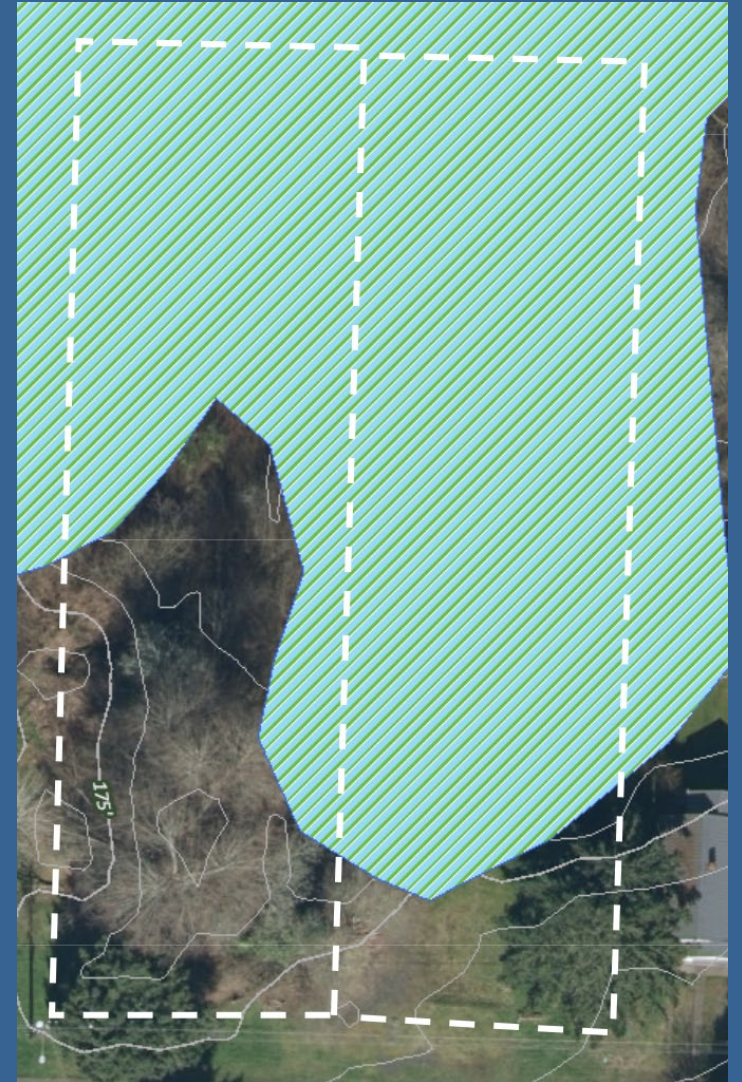
- Zooming out, there are six legal lots.
- Currently, three are owned by each of the two property owners.
- Separated by an unimproved alley.
- How many new homes represents reasonable economic use?
 - 1 per current ownership?
 - 2 new homes
 - 1 per legal lot?
 - 6 new homes

Balancing between constitutional property rights and environmental regulations.



Existing Ownership Language Intent

1. Single ownership since 1985 or
2. If common ownership – apply exception to the larger group of consolidated parcels held together.



Existing Code / Ownership

Before any reasonable use exception may be granted, the Hearing Examiner shall find that the following circumstances exist:

A. The property has been in a single ownership (i.e., not held in conjunction with any adjacent lot, tract or parcel) since January 10, 1985 or,

if the property was held in conjunction with any other adjacent lot, tract or parcel since January 10, 1985, the then-applicable provisions of this Chapter denied all reasonable economic use of the properties as combined;



Applying Consolidated Ownership Language

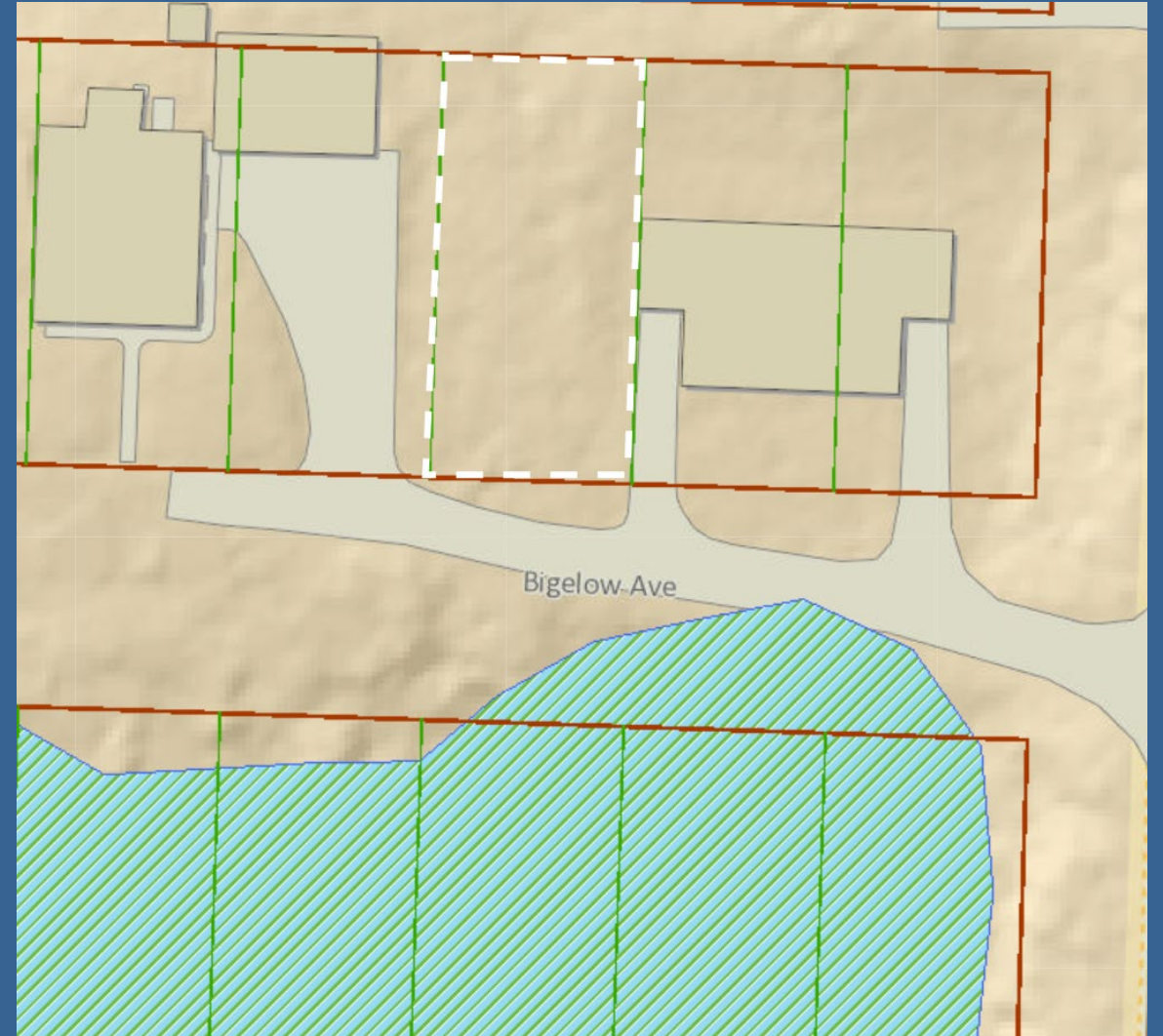
Platted Legal Lots

- 1985 – 2 owners of 3 lots each
- 1890's undeveloped alley...are they adjacent?
- Did the “then applicable” regulations deny reasonable economic use?
 - When is then?
- Legacy Lots – good for infill, but often neglect natural features.
 - Need to update subdivision codes to address these types of lots in the near future.
- Consolidated ownership language is useful, but poorly worded.

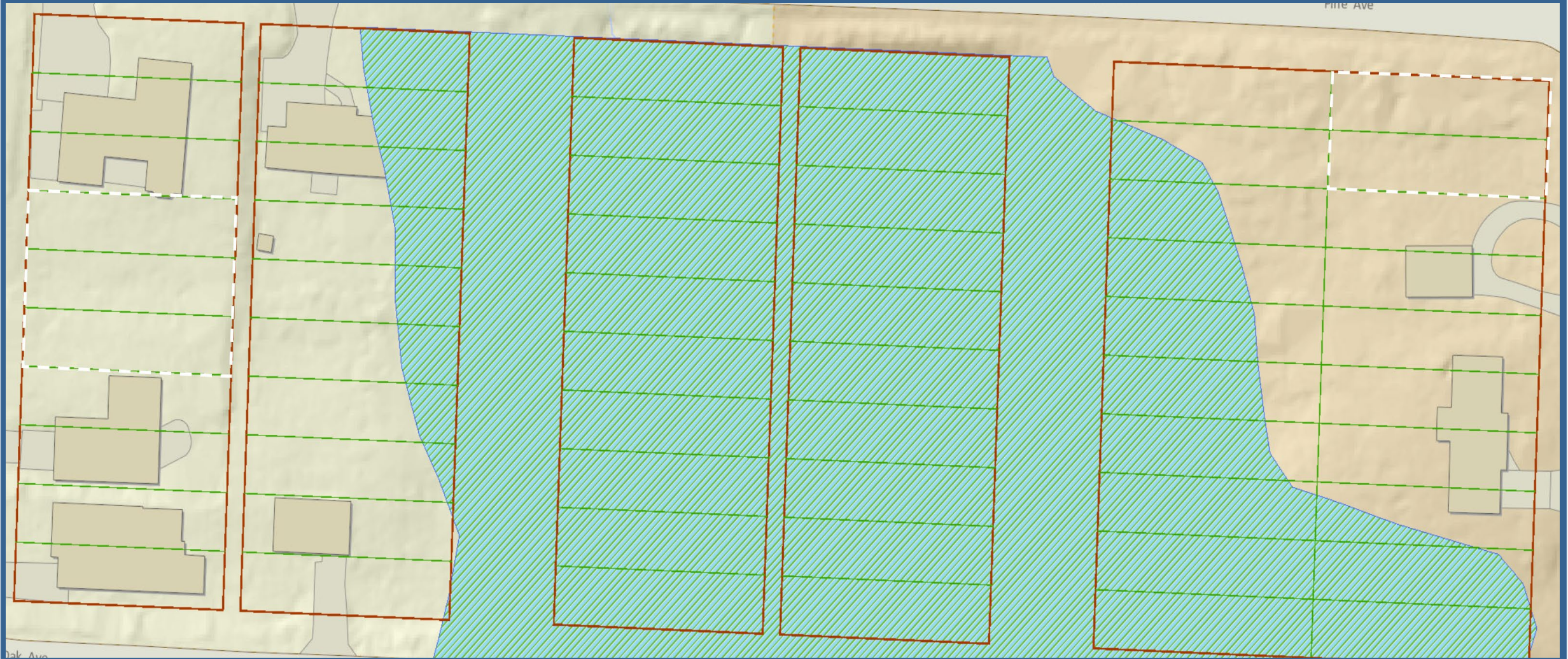


Proposed Language / Ownership

- Reduced Consolidated Ownership applicability to only those buffer reductions that would result in 75% or greater reduction.
 - Why? Better protection of constitutional rights without significant impact to environmental protections.
- Less than 75% buffer reduction:
 - RUE, but no consolidated ownership test
 - If RUE is for a single-family home = Option for Director Approval (no hearing)
- More than 75% reduction:
 - Consolidated ownership test applies
 - Hearing Examiner Approval (hearing)



Proposed Language / Ownership



Washington / Federal Supreme Court

To ascertain the “whole” parcel being regulated in assessing the impact of regulation, the United States Supreme Court established a three-part test in *Murr v. Wisconsin*, 137 S. Ct. 1933 (2017). This “objective” test evaluates whether a landowner would reasonably be expected to anticipate that her landholdings would be treated as a unitary whole rather than as separate parcels. The test considers “[1] the treatment of the land under state and local law;

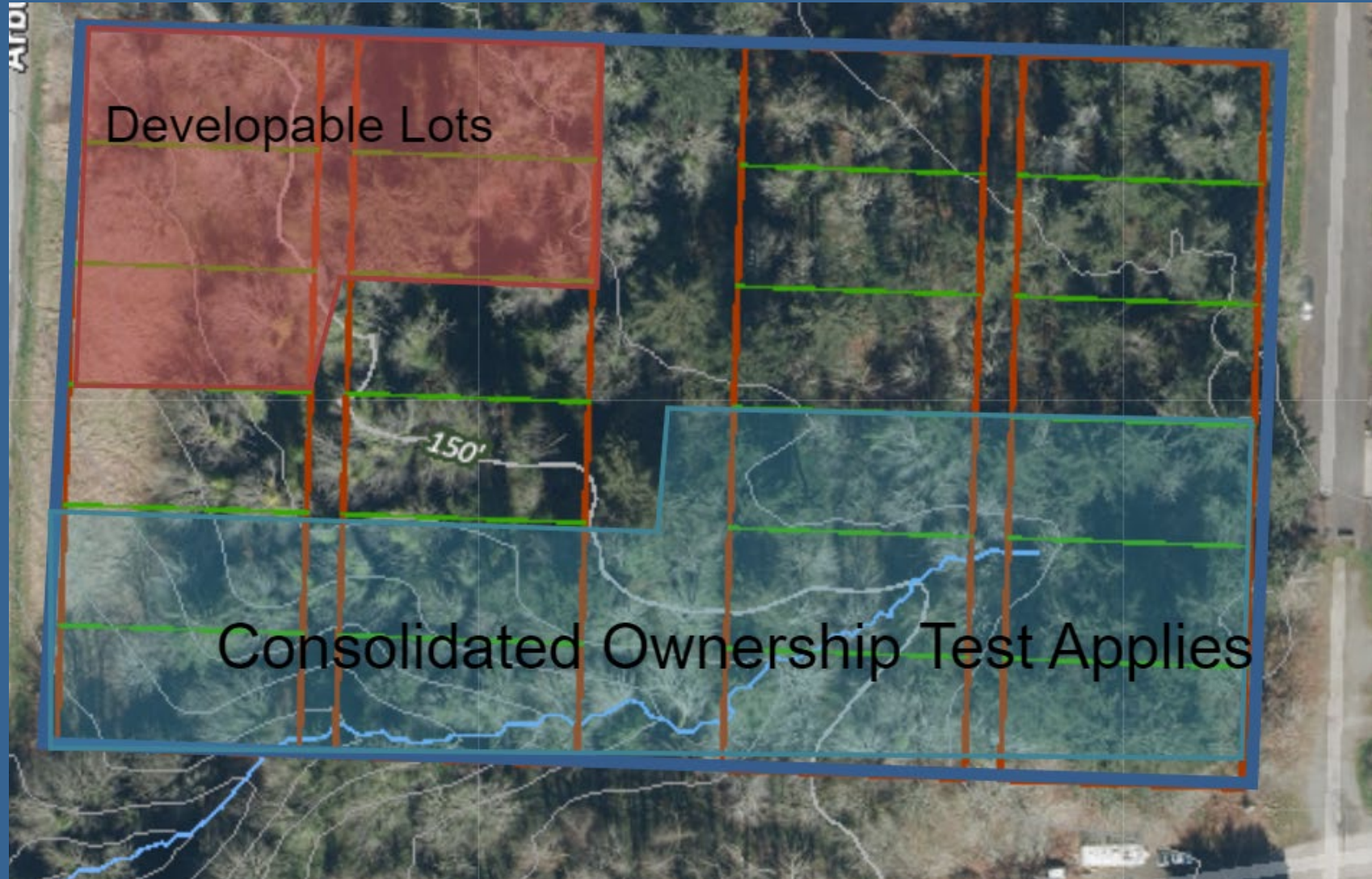
A regulation must be analyzed for its economic impact on the property as a whole, not just the portion being regulated.

Consolidated Ownership – Multiple Properties

- 28 parcels owned together in 1986.
- On-Site Stream with buffers range from 150'-250'
- 25% Reduction could allow 5 legacy lots to be developed.
- None of the other legal lots are developable under current regulations.



Proposed Modification to Code



Other Modifications

- Increased clarity regarding expectations for submittal:
 - Alternatives Analysis
 - Variance should be requested before RUE
 - Alternative site designs, uses, etc.
 - Mitigation sequencing through critical area reports must be provided.
 - Maximum impervious surface coverage of 2500sf
 - Use of 2005 Critical Area Code to match other sections in code.



Administrative Approval

- Proposal would allow administrative (no hearing) for:
 - Setback variance for single family residential
 - RUE for single family residential of less than 75% buffer reduction.
- Hearing Examiner Role:
 - Fact finding mission.
 - Value added when:
 - Code is subjective
 - High Likelihood for Appeal
 - Perception of Bias
- Balancing Process and Cost:
 - Time - Hearing adds about 3 months.
 - Cost - Applicant Pays for Hearing



Wrap - up

1. Proposal clarifies wording related to consolidated ownership
 - More than 75% buffer reduction = consolidated ownership applies
2. Clarifies submittal requirements
 - Exhaust all other options including variance.
3. Allows admin. Review for 50%-75% RUE applications.



Variance and Reasonable Use Exception Code Revisions.

Questions / Comments

Nicole Floyd, AICP
Principal Planner

360.570.3768

nfloyd@ci.Olympia.wa.us

