Forest Practice Application 2817112 History

Nielsen Brothers Logging filed a new Forest Practice Application (FPA) to log Frailey Mountain with the Department of Natural Resources (DNR) on July 30, 2019. The 70 page document was challenged by our legal team but DNR granted Nielsen Brothers Logging the right to log. To view the complete FPA : [www.lakecavanaughtrust.com](http://www.lakecavanaughtrust.com)

The proposed area to be logged: from 33047 South Shore Drive to 34003 South Shore Drive (lakeside addresses) and look towards the mountain. Plan is to clear cut from the South Shore back lots’ property lines up the mountain.

On October 3, 2019 our lawyer filed an appeal with the Pollution Control Hearing Board (PCHB) challenging the DNR’s ruling focusing on the areas steep slopes, slide potential, and wetlands. The appeal trial is April 21-23, 2020 in Bellingham. We are now in the discovery period with a deadline of January 27 to prepare evidence to substantiate our claims that this logging application should be classified as a Class IV Special, which would require Nielsen Brothers do a State Environmental Policy Act (SEPA) on the proposed logging area. PCHB will decide at the appeal trial if there is enough evidence to warrant a SEPA. SEPA’s require an in-depth analysis of the proposed logging area. Information learned through the review process can be used to: change a proposal to reduce likely impacts and/or apply conditions to or deny a proposal when adverse environmental impacts are identified.

It will then be up to Nielsen Brothers to conduct a SEPA. We are convinced a SEPA will severely affect Nielsen’s logging plans in our favor by limiting the logging area dramatically.

The Trust has hired two expert witnesses: a geologist and a wetlands/biologist. Each will walk the proposed timber cut areas, do their analysis and write a summary of their collected data. All of this must be done before January 27th. The cost of their expertise is based on hour & mileage fees.

Bob McCullough has been working on another court case against Skagit County and Nielsen Brothers Logging. A Real Estate Holding Company affiliated with Nielsen Brothers acquired a back lot in Lake Cavanaugh Subdivision No. 3, 33242 South Shore Drive (Parcel P66954), which it intends to use for commercial access to a portion of the area they want to log on Frailey Mountain.

A lawsuit was filed against Skagit County and Nielsen Brothers challenging Nielsen Brothers’ intention to use the property for commercial logging access. Bob researched the original subdivisions for Lake Cavanaugh, and the plat clearly states that no lots shall be used for commercial business and that nothing is permitted on lots that will create an annoyance for others. We believe that Nielsen Brothers decision to use the lot for commercial logging access violates the following two (2) of the three (3) restrictions of the subdivision:

RESTRICTIONS

1. No noxious or offensive trade shall be carried on upon any lot nor shall anything be done thereon which may be or become an annoyance to the neighborhood.
2. No lots shall be used for commercial business or manufacturing purposes.

These restrictions were in place when we, or our families, purchased our lots. To change the restrictions of the subdivision would take agreement from all property owners.

There are two independent actions that share the common goal of preventing Nielsen Brothers from using the south shore back lot for commercial logging access.  The first is the Land Use Petition Act (LUPA) Petition which seeks to reverse the permit that Nielsen Brothers received from the County and the second is a general civil cause of action alleging that Nielsen Brothers’ use of the property for commercial logging access breaches the covenants in the Lake Cavanaugh Subdivision No. 3.   These two actions have separate procedural tracts, trials. LUPA is currently in hearing and the property right use is scheduled for February 2020. If the court rules in our favor on the property right use, Nielsen Brothers has no access to Unit 2 (largest timber cut) of the FPA 2817112.

The Trust’s lawsuit is challenging the decision of DNR granting Nielsen Brothers the right to log Frailey Mountain. This trial is with the Department of Natural Resources and the Pollution Control Hearing Board and is decided by the laws established by the state of Washington with regards to Forest Practices.

Bob McCullough’s lawsuit is challenging Skagit County’s land use permit and a general civil cause of action by Nielsen Brothers’ in a breach of Lake Cavanaugh Subdivision 3 covenants.