other has already done so. In other words, there is no reason in logic why land that could potentially be annexed by Shoreline could not also be potentially annexed by Woodway.

93 P.3d at 883.

Undoubtedly, the court is correct in its own logic. However, the court leaves us guessing as to what the legislature could have intended by requiring that such comprehensive plans be "coordinated with, and consistent with" one another. King County's comprehensive plan policy against overlapping PAAs has been undermined.

The court also ruled on Chevron's claim that notice of Woodway's comprehensive plan amendments was defective. Chevron is the sole owner of Point Wells, and argued that it was entitled to individualized notice of the comprehensive plan amendment, because the amendment dealt exclusively with Chevron's property. Chevron cited *Harris v. County of Riverside*, 904 F.2d 497 (9th Cir. 1990), in which the Ninth Circuit held that individualized notice was required for a comprehensive plan amendment that redesignated the owner's property and significantly changed the property values.

The court held that individualized notice was not required under either the public participation goals or the requirement that notice be "reasonably calculated" to apprise affected owners of the action. More importantly, using the same logic as above, the court refused to find injury, holding that the potential nature of the PAA designation did not prejudice Chevron's rights. As noted by the court, as the sole owner, Chevron could unilaterally prohibit Woodway's annexation of the property.

Keith Hirokawa

Chevron U.S.A., Inc. v. Cent. Puget Sound Growth Mgmt. Hearings Bd., 121 Wn. App. 1064, 93 P.3d 880 (2004).

Columbia River Gorge Commission

■ LOTS CREATED THROUGH PRIOR GOVERNMENTAL APPROVAL PRESUMED TO BE LEGALLY CREATED FOR SUBSEQUENT DEVELOPMENT APPLICATION, SAYS GORGE COMMISSION

In *Bacus v. Skamania County*, CRGC No. COA-S-04-01 (Aug. 10, 2004), the Columbia River Gorge Commission held that once a parcel of land has been created through a governmental approval process, that parcel is presumed to have been legally created, and that Skamania County was thus not required to review the substantive correctness of a prior short plat in reviewing a subsequent development application on the subject parcel. The Gorge Commission also found that any procedural errors that may have occurred in the application process did not prejudice the rights of the appellants. However, the Commission ultimately determined that the county had erred in approving the use of highway demolition spoils as fill for the applicant's driveway, and remanded the case to the county for reevaluation in light of its decision.

The Columbia River Gorge Commission is a bistate agency that administers the land use rules for the Columbia River Gorge National Scenic Area, a 300,000-acre region encompassing lands in Hood River, Multnomah, and Wasco counties in the state of Oregon, and Klickitat, Skamania, and Clark counties in the state of Washington. Congress created the National Scenic Area in 1986 to protect the scenic, cultural, recreational, and natural resources of the Columbia River Gorge, and to protect the economy of the area by encouraging growth to occur in urban areas and allowing economic development consistent with resource protection. *See generally* Columbia River Gorge National Scenic Area Act, 16 U.S.C. §§ 544–544p. The Gorge Commission is the appeals board for final county land use decisions in the Scenic Area. *Bacus* was the Gorge Commission's first quasi-judicial decision in more than two years.

This case involved a development application for approval of a single-family dwelling on a parcel of land created by a prior short plat. Appellants Joseph and Sandra Bacus argued that the county had failed to consider whether the parcel was legally created, an approval criterion for allowing a single-family dwelling under Skamania County's scenic area ordinance. Skamania County responded that the subject parcel was legally created because it was created by a short plat that was not appealed and thus became final.

The Gorge Commission agreed that the legality of a parcel must be evaluated in the approval process. Distinguishing between parcels created through a prior governmental approval and parcels created without governmental approval at a time when such approval was required, the Gorge Commission found that where, as here, a lot was created through a governmental approval, it is presumed that the lot was legally created. Thus, Skamania County was not required to explore the substantive correctness of the short plat creating the subject parcel. Although the Gorge Commission is not bound by state law, it noted that its decision is consistent with *McKay Creek Valley Association v. Washington County*, 118 Or App 543, 549, 848 P2d 624 (1993), in which the Oregon Court of Appeals upheld a LUBA decision finding that the existence of prior governmental approvals could be reexplored in connection with subsequent applications, while the substantive correctness of those decisions could not be.

The Commission further addressed several procedural arguments raised by the appellants. The Commission consolidated these issues into three broad categories: (1) whether the de novo hearing was adequate, (2) whether Skamania County had committed procedural errors, and (3) whether Skamania County should be defending its decision when the applicant had stated that he did not intend to build the approved dwelling.

The appellants argued that they had been denied an

opportunity for a de novo hearing because the Skamania County Board of Adjustment had not allowed them to present all of their legal arguments. The appellants based this assertion on two statements made by board members: first, that "it is not the Board's job to decide the legalities," and second, that the appellants must provide "extremely convincing evidence" to overturn the planning director's decision. Skamania County did not dispute that the statements had been made, but argued that they did not constitute procedural error. Though finding that both statements were technically incorrect, the Commission held that the statements were not procedural error. The Commission noted that the board had in fact decided the legal issue presented (whether the subject parcel was legally created), and that the board's final written order had not actually imposed a burden on the appellants to produce "extremely convincing evidence.'

The appellants argued that the county erred in issuing a notice of development review prior to receiving a complete application. Skamania County initially sent notice of the development application without first obtaining the required grading plan. However, after public comment revealed this error, the county required the applicant to submit a grading plan, after which the county sent a second notice of development review. Noting that the only missing information in the grading plan was the five-foot contour lines, the Gorge Commission found that the record demonstrated that Skamania County had reasonably believed that the grading plan was complete when it sent public notice of the development application the second time, and hence, no procedural error was committed.

Skamania County also sent notice of the development application without first obtaining the required exterior color sample(s). The applicant provided a color sample at the board of adjustment hearing. Though notice of the application should not have been sent until the applicant submitted a color sample, the Gorge Commission found that the appellants were not prejudiced, because the record revealed that they had not attempted to view the color sample prior to submitting comment, and no assignment of error was raised that the color chosen was inappropriate.

The appellants also challenged Skamania County's failure to consult with the Washington Department of Fish and Wildlife (WDFW). Skamania County's scenic area ordinance requires that proposed development within 1000 feet of a sensitive wildlife site must be reviewed by WDFW. "Sensitive wildlife site" is partially defined in the county's scenic area ordinance as "sites that are used by species that are . . . listed as endangered or threatened pursuant to federal or endangered species acts." The appellants argued that formal consultation with WDFW was required because the proposed development was within 1000 feet of the Columbia River, which contains sensitive wildlife resources. Skamania County responded that it was not required to consult because the resource inventory maps did not show a wildlife site within 1000 feet. The county also responded that even though it was not required to, it had discussed the application with WDFW.

The Gorge Commission agreed with the appellants that Skamania County was required to consult with WDFW. Citing the definition of "sensitive wildlife site," the Commission emphasized that these sites are not confined to the inventory maps, and that the definition recognizes that existing sites may expand, contract, or become totally inactive, and that new sites may become active. Because the development site was located within 1000 feet of the Columbia River, which is used by several species that are listed as threatened or endangered, the Commission found that Skamania County should have consulted with WDFW. However, the Commission held that Skamania County's informal discussion with WDFW, combined with WDFW not expressing any concern about the application, was sufficient.

The appellants also challenged Skamania County's standing, claiming that the county had exceeded its jurisdiction by defending its decision even after the applicant had stated that he no longer planned to construct the approved dwelling. The appellants maintained that this removed any case or controversy. The Gorge Commission found that the county had not erred in defending the appeal, because land use approvals for dwellings typically run with the land and are transferable. Thus, while the applicant may not have had any intention to construct the approved dwelling, he could market the property as approved for construction and sell it to someone who would construct a residence.

Finally, the Gorge Commission addressed the question of whether highway demolition spoils that had been placed on the property by the Washington Department of Transportation could be used to develop a driveway. The appellants argued that the spoils did not meet the definition of "fill" under the scenic area ordinance, which states that fill "means the placement, deposition, or stockpiling of sand, sediment or other earth materials to create new uplands or create an elevation above the existing surface." Skamania County maintained that neither the applicant nor the county staff had stated that the highway demolition spoils would be used.

The Gorge Commission disagreed with the county's contention, finding that the application did reference plans to make use of the spoils. The Commission held that because the spoils contained large pieces of asphalt, they could not be used as fill in developing the site. The Commission remanded the case to Skamania County for a reevaluation of the development application, with instructions to specifically disallow the use of the highway demolition spoils.

Lisa Knight Davies

Bacus v. Skamania County, CRGC No. COA-S-04-01 (Aug. 10, 2004).