

MEMORANDUM

TO: Washington County Board of Commissioners
FROM: True Pearce, Washington County Prosecuting Attorney
DATE: April 7, 2025

RE: INTERPRETATION OF WASHINGTON COUNTY CODE PROVISIONS
REGARDING A1 AGRICULTURAL LAND

I. BACKGROUND AND ISSUE(S) PRESENTED

This Memorandum addresses the interpretation of various provisions in the Washington County Code (“WCC” or “Code”) relating to A1 Agricultural (A1) parcels and, specifically, the construction of residential dwellings on such parcels. For many years, Washington County (“the County”) has interpreted the Code to mean that there are a limited number of already-existing building permits that run with original parcels. “Original parcels” are parcels that have been in existence prior to April 9, 1979. According to this interpretation, when a new parcel is created from an original parcel, a residential dwelling may not be built on the new parcel unless the new parcel has a building permit. A new parcel may be created with an already-existing building permit, or a building permit may be granted pursuant to WCC § 5-4-1(C).

On March 25, 2021, attorney Gary G. Allen, then a partner at Givens Pursley LLP, tendered a letter to the County Commissioners (the “Allen Letter” or “letter”). The Allen Letter was written on behalf of David and Mikal Smith, residents of the County who took issue with what the letter calls the “Subdivision Ordinance.” The letter does not expressly define the term “Subdivision Ordinance,” but it refers generally to the County’s historical practice regarding building permits and the division of A1 parcels. It also refers specifically to WCC §§ 5-4-1 and 6-2-2. In short, the Allen Letter alleges that the County’s practice may run afoul of the Local Land Use Planning Act (“LLUPA”), is inconsistent with the Code itself, and may deprive some property owners of all economically beneficial uses of their land.

On August 27, 2021, a different partner from Givens Pursley LLP, Christopher Meyer, tendered a “Memorandum of Law” to then Prosecuting Attorney Delton Walker (the “Meyer Memo” or “memo”). The Meyer Memo summarizes in detail the provisions of WCC § 5-4-1 and how they apply to the construction of residential dwellings on divided A1 parcels. The memo distinguishes between “dwelling splits” and “non-dwelling splits,” terms that do not appear in the Code but are used by Meyer to simplify his analysis. One of the key portions of the memo is its construction of WCC § 5-4-1(B)(2), which prohibits “residential subdivisions” in A1 zones.

More notably, however, the memo does not address the County’s historical practice regarding building permits and the division of A1 parcels.

This Memorandum analyzes the above issues by examining the meaning and application of key provisions in Titles 3, 5, and 6 of the Code. Section II (Legal Standard) provides a summary of the legal principles established by the Idaho Supreme Court regarding the interpretation of statutory law. Section III (Discussion) addresses the following subjects and questions in the following order:

- A. Building Permits (Title 3)
 - i. How are building permits issued?
 - ii. Do building permits exist before they are issued?
 - iii. Do building permits run with the land?
- B. The A1 Agricultural Zone (Title 5)
 - i. According to WCC §§ 5-4-1(B)(1) and 5-4-1(B)(3), are owners of A1 parcels that are larger than 20 acres permitted construct a residential dwelling on their land?
 - ii. What exactly does WCC § 5-4-1(B)(2) prohibit with respect to “residential subdivisions?”
 - iii. May parcels that are split from original parcels pursuant to WCC § 5-4-1(C) be larger than one acre?
- C. Subdivisions and the Problem of the “Residential Subdivision” (Title 6)
 - i. Does the Code require A1 Agricultural Land must be rezoned to A2 Agricultural Land before a subdivision may be permitted?
 - ii. Does Title 6 set out the process for rezoning A1 Agricultural Land to A2 Agricultural Land prior to the approval of a subdivision?

Section IV (Options for the Commission) presents the two simplest amendments to the Code that the Commission could make to resolve a conflict between the terms of WCC §§ 5-4-1(B)(1) and (3), and WCC § 5-4-1(B)(2). Those options are:

- 1. Remove the definition of “Residential Subdivision” from WCC §§ 5-2-1 and 6-2-2;
- 2. Eliminate WCC § 5-4-1(B)(2) in its entirety.

For the reasons set forth in Section IV, Counsel recommends that the County eliminate the definition of “residential subdivision” from WCC §§ 5-2-1 and 6-2-2, and otherwise follow the Code as it is currently written.

Section V (Conclusions and Advice of the Prosecuting Attorney) states the Prosecuting Attorney's formal legal opinion and advice regarding how the Code should be interpreted based upon the discussion presented in this Memorandum. It further advises the Board regarding the County's historical practice regarding building permits and A1 parcels.

II. LEGAL STANDARD

"Interpretation of an ordinance, like construction of a statute, is an issue of law[.]" *Friends of Farm to Market v. Valley County*, 137 Idaho 192, 196, 46 P.3d 9, 13. "It is well understood that statutory interpretation begins with the literal language of the statute." *State v. Osborn*, 165 Idaho 627, 630, 449 P.3d 419, 422 (2019) (internal citation omitted). "A statute must be considered as a whole, and words should be given their plain, usual, and ordinary meanings." *Id.* The Idaho Supreme Court has "consistently held that where statutory language is unambiguous, legislative history and other extrinsic evidence should not be consulted for the purpose of altering the clearly expressed intent of the legislature." *Verska v. Saint Alphonsus Regional Medical Center*, 151 Idaho 889, 893, 265 P.3d 502, 506 (2011) (internal quotations omitted).

"When the statutory language is unambiguous, the clearly expressed intent of the legislative body must be given effect." *Osborn*, 165 Idaho at 630 (internal quotations omitted). The Supreme Court "has never revised or voided an unambiguous statute on the grounds it was patently absurd, nor [does the Court] delve into statutory revisions to avoid uncomfortable results." *Id.* at 631 (citing *Verska* at 151 Idaho 895-96). Even if the court "were to conclude that an unambiguous statute was palpably absurd," the court would not construe the statute to mean something it does not say. *Verska* at 895. "Doing so would simply constitute revising the statute, but [the court does] not have the authority to do that." *Id.* "The wisdom, justice, policy, or expediency of a statute are questions for the legislature alone." *Id.* (internal quotations omitted).

Stated more simply, ordinances are like statutes when it comes to interpretation of the language of the law. As with statutes, ordinances should be interpreted beginning with their literal language. The ordinance must be considered as a whole, and words should be given their ordinary meanings. When the language is unambiguous, no consideration should be given to legislative history or other evidence outside the letter of the law. Rather, the language of the ordinance should be applied as the clearly expressed intent of the legislative body that passed it into law. If the language of the ordinance is unambiguous, courts will not revise the language even if it produces an absurd result. It is up to the legislative body to revise the ordinance because courts have no authority to do so. The legislative body alone determines the wisdom, justice, or expediency of the ordinance.

III. DISCUSSION

A. Building Permits (WCC § 3-1-3)

Title 3 of the Code sets forth the County’s building regulations. Chapter 1 of Title 3 adopts various international codes and establishes a building permit requirement. The building permit requirement is set forth in Section 3-1-3, which reads as follows:

Any owner or authorized agent who intends to construct, enlarge, alter, repair, move, demolish, or change the occupancy of a building or structure, or to cause any such work to be done, shall first make application to the planning and zoning administrator and/or building official, or other person designated by the board of county commissioners, and obtain the required permit. The permit shall be issued if the plans, specifications and completed project conform with the requirements of the zoning title [Note 1] and codes adopted in this chapter. A permit to construct sewer systems is also required by the state board of health and is necessary in order to obtain a building permit from the county. (Ord. 69, 11-5-2012)

The Washington County road supervisor must approve the culvert installation and the construction of the driveway approach onto a county road, prior to, and as a condition of, obtaining a building permit for a residential dwelling from the county. (Ord. 72, 3-24-2014)

Notes

1. See title 5 of this code.

The plain language of this section makes clear that the County’s historical practice regarding building permits is not consistent with the Code.

- i. *Building permits must be issued by the Planning and Zoning Administrator (or other designated official) when the applicant’s plans satisfy the requirements of the Code.*

Perhaps the most notable provision in WCC § 3-1-3 is that a building permit “**shall** be issued if the plans, specifications, and completed project conform with the requirements of the zoning title and codes adopted in this chapter” (emphasis added). In other words, if an applicant submits plans and specifications that comply with the zoning provisions of Title 5 and the various codes adopted in Title 3, Chapter 1, then the building permit **must** be issued. It is somewhat unusual that this provision refers to the “completed project” since building permits are

generally understood to be required prior to beginning construction. However, the language is unambiguously clear that the County does not have authority to deny a building permit when the applicant's plans comply with the Code.

ii. *Building permits do not exist until they are issued.*

The language of Section 3-1-3 also unambiguously establishes that building permits do not exist until they are issued by the planning and zoning administrator, or other designated official. Because a building permit must be issued when the applicant's plans comply with the Code, it is impossible that a building permit already exists before the applicant submits his plans. Therefore, the County's historical practice of conducting title searches to determine whether a certain parcel has a building permit is not consistent with the Code.

iii. *Nothing in the Code suggests that building permits run with the land.*

Relatedly, Section 3-1-3 does not suggest that building permits run with the land. There are restrictions in Title 5 regarding residential buildings on A1 Agricultural parcels, discussed below, but those restrictions also do not imply that building permits run with the land. Because building permits do not exist until they are issued, and because they are issued for specific projects when the applicant's plans are compliant, it is impossible that a building permit would run with a particular parcel of land.

B. The A1 Agricultural Zone (WCC § 5-4-1)

As noted at the outset regarding the Allen Letter and the Meyer Memo, the County's historical practice regarding building permits has been contested in relation to the issuance of building permits for dwellings on A1 Agricultural parcels. The relevant Code sections are 5-4-1(A), (B), and (C), which read as follows:

A. Description: Land zoned A1 is land for the growing, raising or production of agricultural, horticultural, viticultural and vegetable crops, poultry and poultry products, livestock (including equine), field grains, seeds, hay, apiary and dairy products.

B. Lot Area:

1. In zone A1 no dwelling shall be sold, transferred or built with less than twenty (20) acres of lot area except as provided in subsection C of this section.
2. No residential subdivisions shall be allowed in the A1 zone. (Ord. 51, 9-2-2003)

3. Only one single-family residence allowed per approved lot. (Ord. 70, 11-5-2012)

C. Exceptions: Original parcels that have been in existence prior to April 9, 1979, and have not been subsequently divided since that date may be eligible for up to three (3) 1-acre splits depending upon the size of the original parcel and the number of previous divisions of the parcel. Such one acre divisions shall be allowed on a formula of one division per five (5) acres of the total area of the original parcel not to exceed three (3) divisions of the original parcel creating no more than four (4) lots. If the original parcel has been divided under this allowance after April 9, 1979, and prior to the date of this title into more than one parcel, regardless of size, such division(s) already taken shall count as part of the maximum of three (3) splits allowed on that original parcel per five (5) acres of total area. The size of the one acre split may be increased only through the special use process. It is recommended where possible that splits be clustered and placed upon land considered marginal for agricultural use. (Ord. 51, 9-2-2003; amd. Ord. 70, 11-5-2012)

Subsection 5-4-1(F) also contains provisions regarding structures and dwellings on A1 parcels. It reads as follows:

F. Permitted Uses: The following uses shall be permitted in all A1 zones:
Cultivation, storage and sale of crops, vegetables, fruits, plants, flowers and nursery stock produced on the premises.
Farm and ranch houses, buildings and other structures.
Home business.
Livestock and poultry raising, feeding and sale, but not including CAFOs, kennels and veterinary or animal hospitals.
Single-family dwellings. (Ord. 51, 9-2-2003)

Reading the plain language of these Code sections leads to several unambiguous conclusions. It also leads to an absurd result due to the definition of the term “residential subdivision.” This term is defined in two different Code sections, 5-2-1 and 6-2-2. The definition is identical in each subsection: “Any division or subdivision of real property with a residence or residential use attached to, or associated with, any of the resulting parcels.” This is distinct from the definition of “subdivision,” which is also defined in Code sections 5-2-1 and 6-2-2. The definition of “subdivision” is different in section 5-2-1 than 6-2-2, but the definitions are generally consistent with each other and with state code. The definitions of “subdivision” are discussed in relation to Title 6, below. The purpose of the immediate discussion is to construe the provisions of section 5-4-1(A), (B), (C), and (F).

- i. *According to the plain language of WCC §§ 5-4-1(B)(1) and 5-4-1(B)(3), property owners may build one single-family residence on any A1 parcel that is 20 acres or larger. Section 5-4-1(F) permits the construction of additional structures.*

Section 5-4-1(B)(1) prohibits the sale, transfer, or building of dwellings on A1 lots that have less than twenty acres of lot area. This necessarily means that dwellings may be sold, transferred, or built on any A1 lot that has twenty or more acres of lot area. Section 5-4-1(B)(3) provides that one single-family residence is allowed per approved lot. The term “approved lot” is not defined, but the natural reading is that lots with more than twenty acres of lot area are “approved lots” for single-family residences. Section 5-4-1(B)(1) also provides that the only exception to the twenty-acre minimum lot size is set forth in section 5-4-1(C).

However, section 5-4-1(F) states that “farm and ranch houses, buildings and other structures,” as well as single-family dwellings **shall** be permitted in all A1 zones. This means that additional structures, including farm and ranch houses, may be built on A1 lots in addition to the single-family dwelling permitted under section 5-4-1(B). The twenty-acre minimum lot size for single-family residences established in section 5-4-1(B) does not conflict with section 5-4-1(F) because section 5-4-1(B) simply establishes the specific requirements for single-family residences, which are permitted by section 5-4-1(F). However, as discussed immediately below, section 5-4-1(B)(2) creates an internal conflict in the Code because it prohibits **any division** of A1 parcels if a resulting parcel has a residence or residential use.

- ii. *The plain language of WCC § 5-4-1(B)(2), as defined in § 5-2-1, states that “residential subdivisions” constitute any A1 parcel split when any of the resulting parcels has a residence or residential use.*

Section 5-4-1(B)(2) provides that “no residential subdivisions shall be allowed in the A1 zone.” At first blush, this seems like a simple provision that protects A1 land by prohibiting large-scale residential development. However, as previously noted above, “residential subdivision” means “**any division or subdivision** of real property with a residence or residential use attached to, or associated with, any of the resulting parcels.” WCC § 5-2-1 (emphasis added). In other words, section 5-4-1(B)(2) absolutely prohibits any division of A1 land if the resulting parcel has a residence or residential use attached to or associated with it. Construed literally, then, section 5-4-1(B)(2) renders sections 5-4-1(B)(1) and 5-4-1(B)(3) entirely moot. It also conflicts with section 5-4-1(F) because it states that splits of A1 land are prohibited if the resulting parcel has a residential use, even though single-family dwellings **shall** be permitted in all A1 zones pursuant to section 5-4-1(F). This is a palpably absurd result that only the Board can remedy.

The Meyer Memo interpreted section 5-4-1(B)(2) in this exact same way. However, the Meyer Memo attempted to avoid this absurd result by arguing that section 5-4-1(C) is an exception to section 5-4-1(B)(2). The problem with this interpretation is that it is clearly not what the Code says. As noted previously, section 5-4-1(B)(1) expressly states that section 5-4-1(C) is an exception to the twenty-acre lot size requirement, not an exception to the definition of “residential subdivision” in section 5-4-1(B)(2).

It is also important to note that applying section 5-4-1(B)(2) creates the same result even if the County continues its historical practice regarding building permits for A1 parcels. For example, if a building permit already exists in connection with a parcel, the owner would be prohibited from splitting the parcel because one of the resulting parcels would have a residential use. In sum, section 5-4-1(B)(2) contains a defined term that creates an absurd result when applied as defined.

iii. *Parcel splits that are allowed under WCC § 5-4-1(C) are limited to one acre, unless a special use permit is granted.*

As noted above, section 5-4-1(C) creates an exception to the twenty-acre lot size requirement, but only for original parcels and with specific limitations. There does not appear to be any confusion in the County about the requirements for the splits contemplated in section 5-4-1(C). However, it is worth noting that these splits may not exceed one acre unless the owner receives permission for a larger split through the special use process. Perhaps more importantly, it is also worth noting that section 5-4-1(B)(2), construed literally as discussed above, would prohibit the one-acre splits allowed by section 5-4-1(C). There is no question that section 5-4-1(C) was intended to allow residential splits on original parcels, which further demonstrates the absurdity of section 5-4-1(B)(2).

C. Subdivisions and the “Residential Subdivision” (WCC Title 6 and Idaho Code § 50-1301(18))

Title 6 of the Code sets forth the requirements for approval, design, and construction of subdivisions. It is not the purpose of this Memorandum to summarize these requirements, so this discussion focuses on the general application of Title 6 to the A1 Agricultural Zone. However, there are several definitions and provisions of law that are necessary for context. First, as noted previously, the Code defines “subdivision” in sections 5-2-1 and 6-2-2. Section 5-2-1 defines “subdivision” simply as “the result of an act of dividing an original lot, tract or parcel of land into more than four (4) parts for the purpose of transfer of ownership or development.” Section 6-2-2 is more detailed and reads as follows:

SUBDIVISION: The result of an act of dividing an original lot, tract or parcel of land into more than four (4) parts for the purpose of:

- A. Transfer of ownership or development.
- B. Dedication of a public street.
- C. The addition to or creation of a cemetery.

However, this title shall not apply to any of the following:

- A. An adjustment of lot lines as shown on a recorded plat which does not reduce the area, frontage, width, depth or building setback lines of each building site below the minimum zoning requirements and does not change the original number of lots in any block of the recorded plat.
- B. An allocation of land in the settlement of an estate of a decedent or a court decree for the distribution of property.
- C. The unwilling sale of land as a result of legal condemnation as defined and allowed in the Idaho Code, as amended.
- D. Widening of existing streets to conform to the comprehensive plan.
- E. The acquisition of street rights of way by a public agency in conformance with the comprehensive plan.
- F. The exchange of land which does not result in the change of the present land usage.
- G. The sale of land to a public agency.

One of the most important aspects of these definitions is that they are generally consistent with the definition of “subdivision” set forth in Idaho Code. Specifically, I.C. § 50-1301(18) defines “subdivision” and establishes protections for agricultural land:

Subdivision: A tract of land divided into five (5) or more lots, parcels, or sites for the purpose of sale or building development, whether immediate or future; provided that this definition shall not include a bona fide division or partition of agricultural land for agricultural purposes. A bona fide division or partition of agricultural land for agricultural purposes shall mean the division of land into lots, all of which are five (5) acres or larger and maintained as agricultural lands. Cities or counties may adopt their own definition of subdivision in lieu of this definition[.]

It is necessary to understand this statutory definition and how it applies to A1 land in the County. First, the County has adopted its own definition of “subdivision,” as permitted in the final clause of I.C. § 50-1301(18). However, the County is precluded from applying its definition of subdivision in a manner that would prohibit the “bona fide division or partition of agricultural land for agricultural purposes.” This is because the state code expressly authorizes and protects these bona fide divisions.

Additionally, this definition is significant in interpreting the Code because subsection A defines a subdivision by its purpose being for "development." This is critical because it distinguishes between land that is merely divided and land that is divided for the purpose of changing its use. Subsection F further clarifies that the subdivision title does not apply to land exchanges that do not result in a change to the present land usage.

This directly supports the conclusions in this Memorandum regarding A1 parcels. Under WCC § 5-4-1, a single-family residence is expressly allowed on parcels of 20 acres or more. The allowance of one residence does not convert agricultural land into residential land for zoning purposes, nor does it represent a change in the underlying land use designation. Therefore, splitting large A1 parcels (20 acres or more) and constructing a single-family residence on each does not constitute a subdivision under WCC § 6-2-2, because the intended and ongoing use of the land remains agricultural.

These types of splits are not for the purpose of residential development in the subdivision sense—they are consistent with the permitted agricultural use and do not trigger the subdivision regulations.. This reinforces the position that if A1 land is split, but continues to be used for agricultural purposes and no residential development occurs, the Code does not consider it a subdivision. This stands in contrast to other sections of the Code that incorrectly define any division of land as a subdivision, even where no development or change in use takes place. Thus, the definition in WCC § 6-2-2 provides a more precise and legally sound interpretation consistent with both Idaho Code and the purpose of protecting agricultural land use. which helps distinguish between purely agricultural activity and residential or commercial expansion.

Furthermore, subsection F states that the subdivision title does not apply to the exchange of land that does not result in a change of the present land usage. This implies that as long as agricultural land remains used for agricultural purposes—even if ownership is exchanged—it does not trigger subdivision requirements under Title 6.

At this juncture, it is helpful to recall the provisions of WCC § 5-4-1(A), (B), (C), and (F), which establish the requirements for single-family residences on A1 land. As discussed at length, section 5-4-1(B)(2) prohibits residential subdivisions on A1 land. Although the definition of “residential subdivision” creates an absurd result when applied literally, the general policy of the County is clear: A1 land is for agricultural use and is not to be developed into residential subdivisions. This is an important policy to bear in mind, because nothing in Idaho Code § 50-1301(18) requires the County to allow residences on parcels that are less than twenty acres. The statute only precludes the County from blocking bona fide agricultural divisions under the guise of its policy against allowing residential subdivisions on A1 land. Viewed in this light, the application of Title 6 to A1 land becomes clear.

- i. *The Code does not expressly require that A1 Agricultural Land must be rezoned to A2 Agricultural Land before a residential subdivision may be permitted, but the Code implies this requirement.*

The County's policy against allowing residential subdivisions on A1 land is clearly established in WCC § 5-4-1(B)(2). As will be discussed below, the absurd result created by the definition of "residential subdivision" can be easily remedied by eliminating that definition from Code sections 5-2-1 and 6-2-2. If the Commission chooses this option, then section 5-4-1(B)(2) would be construed using the plain meaning of "residential subdivision." In plain English, everyone understands that residential subdivisions are large-scale developments of homes. These large-scale developments generally convert agricultural land into suburban housing communities. The Code is clear that these types of developments are not permitted on A1 land. So, even though the Code does not contain any language that expressly requires a rezone of A1 to A2 before a subdivision may be approved, the policy of the Code does imply this requirement.

- ii. *The process of rezoning A1 Agricultural Land to A2 Agricultural Land prior to the approval of a residential subdivision is outside the scope of Title 6.*

Stated simply, Title 6 does not contain any provisions regarding the process for rezoning A1 land to A2 land prior to the approval of a subdivision. However, WCC § 5-4-1(H) sets forth the requirements for the rezoning of A1 land generally. The natural implication is that a developer who wishes to seek a rezone of A1 to A2 in order develop a residential subdivision, must follow the requirements of section 5-4-1(H). If the request for rezone does not meet the requirements, then the natural outcome is that the proposed residential subdivision may not be approved because residential subdivisions are not permitted on A1 land.

IV. OPTIONS FOR THE COMMISSION

1. Removing the definition of "Residential Subdivision" from WCC §§ 5-2-1 and 6-2-2 is the simplest, cleanest way to clarify the Code.

For the reasons noted above, eliminating the definition of "residential subdivision" from Code sections 5-2-1 and 6-2-2 would remove the absurd result created by section 5-4-1(B)(2). The term "residential subdivision" in section 5-4-1(B)(2) would then be construed by its plain and ordinary meaning. This would accomplish the obvious policy of the Code, which is to protect agricultural land from large-scale residential development.

2. Eliminating WCC § 5-4-1(B)(2) in its entirety would frustrate the goal of prohibiting actual residential subdivisions on A1 parcels.

Another option for remedying the absurd result created by WCC § 5-4-1(B)(2) would be to eliminate that section in its entirety. This would not be desirable because it would remove the language aimed at protecting A1 land from residential development. Eliminating the problematic definition of “residential subdivision” is a much better option.

V. CONCLUSIONS AND ADVICE OF THE PROSECUTING ATTORNEY

This Memorandum relays to the Board of Washington County Commissioners, the Washington County Prosecuting Attorney’s formal legal opinion regarding the correct interpretation of the provisions of Washington County Code discussed herein, as well as the meaning and application of Idaho Code § 50-1301(18). Based upon the discussion above, the Prosecuting Attorney hereby advises the Board that the following legal conclusions must be drawn from the plain language of the Washington County Code and Idaho Code:

1. Building permits do not exist before they are issued, they do not run with the land, and they must be issued to applicants whose plans satisfy the requirements of the Code. WCC § 3-1-3.
2. Owners of A1 parcels that have twenty or more acres of lot size are entitled to build one single-family residence, as well as farm and ranch houses and other structures. WCC § 5-4-1(A), (B), (C), and (F).
3. The County may prohibit residential subdivisions in the A1 zone. However, WCC § 5-4-1(B)(2), as currently defined, creates an absurd result because it conflicts with the plain language of WCC §§ 5-4-1(B)(1) and (3), and 5-4-1(F).
4. Even though the County may prohibit residential subdivision in the A1 zone, it may not rely on the subdivision provisions of Title 6 to prohibit “bona fide division or partition of agricultural land for agricultural purposes.” I.C. § 50-1301(18).

The related question is whether the County would be exposed to liability if a property owner challenges the County’s historical practice in litigation. As discussed extensively above, the biggest problem with the Code as currently written is that WCC § 5-4-1(B)(2) creates an absurd result if applied literally. So, in any litigation challenging the County’s building permit practices, the court would be required to address the conflict between section 5-4-1(B)(2) and sections 5-4-1(B)(1), (3), and 5-4-1(F). The court would necessarily conclude that it cannot apply

all of the sections, because applying 5-4-1(B)(2) would render the other provisions moot. This is effectively the definition of an absurd result.

As noted at the outset, the Supreme Court “has never revised or voided an unambiguous statute on the grounds it was patently absurd, nor [does the Court] delve into statutory revisions to avoid uncomfortable results.” *State v. Osborn*, 165 Idaho 627, 630, 449 P.3d 419, 422 (2019). Even if the court “were to conclude that an unambiguous statute was palpably absurd,” the court would not construe the statute to mean something it does not say. *Verska v. Saint Alphonsus Regional Medical Center*, 151 Idaho 889, 895, 265 P.3d 502, 508 (2011) (internal quotations omitted). “Doing so would simply constitute revising the statute, but [the court does] not have the authority to do that.” *Id.*

That is to say, the court would not revise the Washington County Code to eliminate the absurd result created by WCC § 5-4-1(B)(2). Rather, the court would be forced to acknowledge the conflict between provisions and determine which provision(s) to apply. There are well established principles of law when courts are faced with how to construe unclear or conflicting provisions of law. For example, “[w]hen it is a criminal statute that is at issue, the court must construe the statute strictly and in favor of the defendant. *State v. Culbreth*, 146 Idaho 322, 326, 193 P.3d 869, 873 (internal citations omitted). “In cases of ambiguous contract terms,” as another example, “the contract is to be construed in favor of the non-drafting party[.]” *Haener v. Ada County Highway Dist.*, 108 Idaho 170, 173, 697 P.2d 1184, 1187 (1985).

These principles of law lead to the almost certain outcome that a court would construe the provisions of WCC § 5-4-1 in favor of property owners. Therefore, the primary question addressed in this Memorandum is whether the County should continue its historical practice of (1) conducting title searches to determine whether a parcel has an already-existing building permit, and (2) denying building permits to applicants if the County determines that their parcel was divided or created without a building permit. For the reasons discussed, this practice is not consistent with the Code as written.

The Prosecuting Attorney hereby advises the Board that the County should immediately cease its historical practice(s) regarding building permits for A1 parcels and instead begin following the provisions of WCC § 3-1-3 and 5-4-1 as they are written. The County should also make sure to apply Title 6 in a manner consistent with I.C. § 50-1301(18).

THIS MEMORANDUM CONSTITUTES FORMAL LEGAL ADVICE RELAYED BY THE WASHINGTON COUNTY PROSECUTING ATTORNEY TO THE BOARD OF WASHINGTON COUNY COMMISSIONERS. THE ANALYSIS AND ADVICE CONTAINED HEREIN IS PROTECTED BY THE ATTORNEY-CLIENT PRIVILEGE AND THE WORK PRODUCT DOCTRINE. ONLY THE BOARD MAY WAIVE THE ATTORNEY-CLIENT PRIVILEGE.

SHOULD THE BOARD DISCLOSE THIS MEMORANDUM TO ANY THIRD PARTY AND THEREBY WAIVE THE ATTORNEY-CLIENT PRIVILEGE, SUCH DISCLOSURE SHALL NOT CONSTITUTE A WAIVER BY THE PROSECUTING ATTORNEY'S OFFICE OF ITS RIGHT TO RELY ON THE WORK PRODUCT DOCTRINE IN ANY LEGAL PROCEEDING.

THIS MEMORANDUM IS HEREBY TENDERED TO THE BOARD OF WASHINGTON COUNTY COMMISSIONERS BY THE WASHINGTON COUNTY PROSECUTING ATTORNEY ON THIS, THE 7TH DAY OF APRIL, 2025.

TRUE PEARCE
Washington County Prosecuting Attorney