

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

RAYMOND SLATE and KWANG  
SLATE, husband and wife,

Plaintiffs,

v.

PIERCE COUNTY and its OFFICE OF  
PUBLIC WORKS AND UTILITIES;  
SUMMIT BROOKFIELD, LLC, a  
Washington limited liability company;  
BROOKFIELD FARMS LLC, a  
Washington limited liability company;  
BROOKFIELD FARMS 2, LLC, a  
Washington limited liability company,

Defendants.

CASE NO. C 14-5161 KLS

ORDER GRANTING BROOKFIELD  
FARMS MOTION FOR SUMMARY  
JUDGMENT

Brookfield Farms, LLC and Brookfield Farms 2, LLC (“Brookfield Farms”) seek  
dismissal of Plaintiffs’ claims against it pursuant to Fed. R. Civ. P. 56 based on the statute of  
limitations. Dkt. 40. For the reasons set forth below, the Court GRANTS the motion.

1 Procedurally, the Court notes that the Plaintiffs initially filed their complaint in Pierce  
2 County Superior Court on January 15, 2014. Plaintiffs' counsel subsequently withdrew and they  
3 now represent themselves pro se.

4 Brookfield Farms filed its summary judgment motion on November 5, 2015 with a noting  
5 date of November 27, 2015. The Plaintiffs have not filed any opposition to the motion. The  
6 Court also notes that Plaintiffs' First Amended Complaint was not verified by either of the  
7 Plaintiffs. Therefore, the only evidence before the Court as it relates to the summary judgment  
8 motion is that which has been filed by Brookfield Farms.

### 9 **BACKGROUND**

10 The Plaintiffs allege that actions of Brookfield Farms caused flooding on their property  
11 which resulted in their two lots becoming unbuildable. They first became aware of the flooding  
12 of their property in 2006. Plaintiffs attribute the flooding of their property to the stormwater  
13 retention pond associated with Phase 1 as well as actions of the named defendants. By prior  
14 Order this Court granted the summary judgment motion of Summit Brookfield and all claims  
15 against Summit Brookfield have been dismissed.

16 The property that is the subject of this litigation was first deeded to Brookfield Farms,  
17 LLC on March 21, 2002. Over the course of three and one-half years Brookfield Farms did site  
18 development work on Phase I of the development, which included the construction of a storm  
19 water detention pond, which is located along the west boundary of Phase 1 and adjacent to a  
20 designated wetlands. No building is permitted in the wetlands area. Plaintiffs' north property  
21 line abuts the south property line of the wetlands area. The storm water detention pond was  
22 complete as of August 3, 2005. On November 7, 2005 Brookfield Farms, LLC deeded the  
23 entirety of Phase 1 to Carbon River BRC, LLC. After this date, Brookfield Farms, LLC had no  
24 further ownership of Phase 1 or the storm water detention pond.

1 On May 29, 2009 Phases 2 and 3 were deeded from Brookfield Farms, LLC to  
2 Brookfield Holdings, LLC, which is not a party to this action. Phase 4, currently owned by  
3 Summit Brookfield, was deeded in lieu of foreclosure from Brookfield Farms 2, LLC to its  
4 lender Plaza Bank on March 29, 2012.

5 The Plaintiffs obtained ownership of their two lots in 1994 (Lot 11) and 1998 (Lot 10).  
6 Raymond Slate intended to get the lots to perc so a septic system could be permitted and the lots  
7 sold to developers. Because the lots have no access to a municipal sewer system, no house can  
8 be built on a lot unless the lot passes a perc test. As of the date of Mr. Slate's deposition,  
9 September 30, 2015, he had not had a perc test conducted on either of his two lots.

10 With regard to flooding on Plaintiffs' property, the only evidence presented to the Court  
11 was with regard to a flooding incident that occurred in 2006. While Mr. Slate was not certain  
12 when he became aware of the flooding it was no later than November 7, 2006. It also appears to  
13 the Court that for purposes of this motion it is fair to conclude that the source of this flooding  
14 was the stormwater detention pond constructed as part of the development of Phase 1. There is  
15 no competent evidence that there was flooding originating from water artificially channeled, or  
16 otherwise, from Phases 2, 3 or 4.

### 17 **PLAINTIFFS' CLAIMS**

18 In their First Amended Complaint, the Plaintiffs asserted the following claims: (1)  
19 channel and discharge; (2) trespass and waste; (3) nuisance; (4) negligence and (5) inverse  
20 condemnation (which claim appears to be asserted only against Pierce County).

### 21 **SUMMARY JUDGMENT**

22 Summary judgment is proper "if the movant shows that there is no genuine dispute as to  
23 any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P.  
24 56(a). The Court must draw all reasonable inferences in favor of the non-moving party. *See*



1 The statute of limitations for negligent injury to real property is two years. RCW  
2 4.16.130. In this case, the Plaintiffs knew of injury to their property as of November 7, 2006.  
3 They had until November 6, 2008. The claim was first filed in Pierce County Superior Court on  
4 January 15, 2014, substantially more than two years after the Plaintiffs became aware of injury to  
5 their property.

6 The Plaintiffs' claims based on negligence are barred by the two year statute of  
7 limitations.

## 8 **2. Statute of Limitations – Trespass, Waste and Nuisance.**

9 The statute of limitations for claims of waste and trespass upon real property is three  
10 years. RCW 4.16.080(1). With regard to nuisance claims, there is a two year statute of  
11 limitations. RCW 4.16.130.

12 Assuming that the Plaintiffs presented sufficient evidence to support their claims of  
13 waste, intentional trespass or nuisance, which they did not, they would have had three years from  
14 the date of invasion to bring their action for intentional trespass and waste or two years from the  
15 date of invasion to bring their action for nuisance. They did not file within these time limits.

16 In a cause of action for continuing trespass, the statute of limitations is applied  
17 retrospectively to allow recovery for damages sustained within three years of filing of the  
18 Complaint. *Woldson v. Woodhead*, 159 Wn.2d 215, 223, 149 P.3d 361 (2006). “A cause of  
19 action for a continuing intentional trespass, as opposed to a permanent trespass, arises when an  
20 intrusive substance remains on a person’s land, causes actual and substantial harm to that  
21 person’s property, and is abatable.” *Wallace v. Lewis County*, 134 Wn.App. 1, 15, 137 P.3d 101  
22 (2006). In this situation, the “trespasser” is under a continuing duty to remove the intrusive  
23 substance or condition. Assuming that the Plaintiffs presented evidence to support a claim of  
24 continuing intentional trespass, which they did not, Brookfield Farms had no ownership interest

1 in Phase 1 as of November 7, 2005 and it had no ownership interest in Phase 2 and 3 as of 2009.  
2 Brookfield Farms does not have the ability to “remove the intrusive substance or condition.” If  
3 the Plaintiffs’ have a claim for a continuing intentional trespass it is against others who are not a  
4 party to this litigation and not against Brookfield Farms.

5 If a nuisance is continuing, the statute of limitations limits the period for which the  
6 plaintiff may collect damages to two years prior to the date the Complaint is filed. *Wallace*, 134  
7 Wn.App. at 19. “The possessor of property is liable for a continuing nuisance, regardless of  
8 whether that person created or maintained the nuisance; such continuation constitutes a new,  
9 actionable nuisance.” *Wallace*, 134 Wn.App. at 19. Brookfield Farms was not the possessor of  
10 the property for the three years prior to the Plaintiffs’ filing their Complaint.

11 For the above stated reasons, the Plaintiffs’ claims of trespass, waste and nuisance are  
12 barred by the statute of limitations.

13 **CONCLUSION**

14 Brookfield Farms motion to dismiss all of the Plaintiffs’ claims against it is GRANTED.

15 The clerk is directed to mail a copy of this order to the Plaintiffs.

16 DATED this 14<sup>th</sup> day of December, 2015.

17  
18 

19 Karen L. Strombom  
20 United States Magistrate Judge  
21  
22  
23  
24