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DIVISION II  
STATE OF WASHINGTON

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**MASON CONSERVATION DISTRICT,**  
**APPELLANT,**

v.

**JAMES R. CARY**, individually, and **MARY ALICE CARY**, individually  
and the marital community comprised thereof; **JOHN E. DIEHL**,  
individually and **WILLIAM D. FOX, SR.**, individually

RESPONDENTS

v.

**MASON COUNTY, DEFENDANT.**

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DIVISION II  
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STATE OF WASHINGTON  
DEPUTY

**MASON CONSERVATION DISTRICT'S ANSWER TO  
PETITION FOR REVIEW**

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## I. INTRODUCTION

The Mason Conservation District submits this response to the Petition for Review. The Court should deny the Petition for Review. This case does not present issues of sufficient import to warrant Supreme Court review. The Court of Appeals correctly determined that the means by which the Legislature has long provided for county executive authorities to fund conservation districts is constitutional.

## II. COUNTER-STATEMENT OF FACTS

### A. Statutory Background

The Washington State Legislature first enacted legislation that provided for the formation of conservation districts in 1949. The Legislature has authorized such districts to be formed for the purpose of improving water quality by both preventing and remedying the effects of pollution and soil erosion. RCW 89.08.101. The Legislature has granted such districts a broad range of powers, including, but not limited to, the power to enter into contracts with other governmental entities for the efficient provision of

services which conservation districts are statutorily empowered to provide.<sup>1</sup>  
RCW 89.08.220; 341.

Conservation districts, however, have not been given the authority to tax. Instead, the Legislature has authorized the local county legislative authority to levy assessments for the benefit of the conservation district. RCW 89.08.400.

Under the statutory procedure, a conservation district may propose an assessment for the benefit of the conservation district. RCW 89.08.400(2).

The Legislature has provided:

An annual assessment rate shall be stated as either uniform annual per acre amount, or an annual flat rate per parcel plus a uniform annual rate per acre amount, for each classification of land. The maximum annual per acre special assessment rate shall not exceed ten cents per acre. The maximum annual per parcel rate shall not exceed five dollars.

*Id.*

The proposed assessment is then forwarded to the local legislative authority, which has the right to review and change it. RCW 89.08.400(3). In order to impose the assessment, the local legislative authority must find both

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<sup>1</sup> Indeed, the Legislature has specifically encouraged conservation districts to enter into such contracts with local governmental entities where doing so permits the most efficient delivery of conservation district services. See e.g., Laws of 1992, Ch. 100.

that the public interest will be served by the assessment and that the assessment to be imposed on any land will not exceed the benefit that the land receives or will receive from the activities of the conservation district. *Id.* The Legislature has provided that the local legislative authority's decision shall be "final and conclusive." RCW 89.08.400(2).

Once approved by the local legislative authority, the assessment is to be added to and collected along with property taxes. RCW 89.08.400(4). The county assessor is to retain sufficient funds to recover the costs it incurs in implementing and collecting the assessment, and is to forward the remaining revenues to the conservation district. *Id.*

The statute does not provide that the commissioners' decision to levy an assessment is subject to judicial review. Instead, the Legislature has provided property owners dissatisfied with the assessment with a non-judicial form of relief. Upon presentation of a petition signed by a total of 20 percent of the property owners affected by an assessment, the county assessor is required to cease collecting the assessment. RCW 89.08.400(5).

B. The Mason County Board of County Commissioners imposes an assessment for the benefit of the Conservation District.

In July 2002, the Mason Conservation District sent a letter to the Mason County Board of County Commissioners outlining its requested assessment, and the reasons therefore. CP 59-60. The District requested that the Board levy an assessment of \$5.00 per parcel, plus \$0.07 per acre for all parcels one acre or larger. *Id.*

The Board held a public hearing at which they considered the District's request. At the hearing, County staff recommended that the Board approve the assessment with one significant modification. CP 61-63. Because it would take many years to recover the cost associated with having the assessor implement a \$0.07 per acre assessment, staff recommended that the Board reduce the requested \$0.07 per acre assessment to \$0.00 per acre. CP 63.

The Board approved the assessment at the rate recommended by County staff. The Commissioners entered findings of fact in support of its decision, including findings that the district would use the funds to improve water quality. CP 64-65. The Board then concluded that the proposed assessment would serve the public interest, and that the assessment would not

exceed the special benefit the lands being assessed would receive from activities funded by the assessment. CP 65.

In 2003, well after the assessments were imposed, Mason County and the Conservation District entered into an inter-local agreement, as specifically authorized by RCW 89.08.220(4) and RCW 89.08.341. CP 101-107. Pursuant to this agreement, the District agreed to hire Mason County Health Department personnel to carry out certain conservation activities on behalf of the Conservation District, for the cost of which services the County was to bill the District. *Id.* See also CP 57-58.

C. The Lawsuit.

On March 10, 2003, the Claimants James R. Cary, Mary Alice Cary, John E Diehl, and William D. Fox, Sr. filed this lawsuit. CP 152-154.

On July 8, 2004, the trial court granted Mason County's motion to dismiss on the grounds that the Claimants had not timely filed their complaint. The Claimants appealed the trial court's decision to the Court of Appeals.

The Court of Appeals reversed. *Cary v. Mason County*, 132 Wn. App. 495, 132 P.3d 157 (2006). Focusing exclusively upon the Claimants' constitutional claims, the Court of Appeals held that these were most

analogous to a suit for a refund of the tax, and that because Claimants had filed their lawsuit within the time period applicable to such suits, their claim was timely. 132 Wn. App. at 504). The Court remanded the matter for further proceedings. *Id.*

After remand, the trial court entered summary judgment. CP 24-29. The trial court held that the assessment was a tax, and held it had been improperly imposed because the Mason Conservation District did not have the authority to impose a tax. *Id.*<sup>2</sup> The trial court entered an order enjoining future collection of the assessment. *Id.*

The Court of Appeals accepted review. The Court of Appeals found the assessment to be a regulatory fee, rather than a tax. *Mason Conservation District v. Cary, et al.*, 152 Wn. App. \_\_\_, ¶ 10-13, 219 P.3d at 955. Applying the three part *Covell* test, the Court of Appeals found that (1) the Claimants themselves had conceded that the District used the funds “mainly to improve water quality in Mason County.” 152 Wn. App. at \_\_\_, ¶ 10, 219 P.3<sup>rd</sup> at 955; (2) that the District used the funds generated only for water

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<sup>2</sup> In other words, the trial court failed to grasp that, following the statutory procedure, the Mason County Board of County Commissioners had levied the assessment, not the Mason Conservation District. Significantly, not even the Claimants defend the grounds on which the trial court purported to rule in this case.

management, stormwater maintenance programs, and education, 152 Wn. App. at \_\_\_, ¶ 11; 219 P.3d at 955; and (3) that the funds generated were expended for stormwater control, thereby benefiting the affected property. 152 Wn. App. at \_\_\_, ¶ 13, 219 P.3d at 955-56.

With respect to the Claimant's statutory claims, the Court of Appeals held that the claims were subject to judicial review, and that the claims were timely. 152 Wn. App. at \_\_\_, ¶¶ 16-19, 213 P.3d at 956-957. However, the Court of Appeals held that the Mason County Board of County Commissioners' order in fact complied with statutory requirements because it stated the assessment both in terms of a dollar amount per parcel plus a dollar amount per acre, and imposed an assessment at rates less than the maximums specified by the Legislature. 152 Wn. App. at \_\_\_, ¶¶ 20-21.

### III. ARGUMENT

A. Claimants' statutory claims do not warrant Supreme Court review.

The Petitioners purport to describe three statutory issues presented by this case, but fail to provide any argument why these issues were wrongly decided or warrant Supreme Court review.

The Claimants first argue, based on the statutory language requiring the assessment “be stated as” both an amount per parcel and an amount per acre, that the Court should imply a substantive requirement that the amount charged per acre must be greater than \$0.00.

If the Legislature had intended to require that a minimum per-acre amount be include in an assessment, it would have said so in direct and plain words. At a minimum, the Legislature would have used words at least as direct and plain as those imposing the limitation which the Legislature set on the maximum amounts to be charged. The Legislature set no such minimum amounts.

Moreover, the Claimants do not explain why torturing the statutory language in this manner makes sense. Why would the Legislature want to require a minimum charge? Especially where, as here, the cost of implementing a minimum charge would exceed the revenues thereby generated?

The Claimants have no answer. They have not shown error, or presented an issue warranting review.

Second, the Claimants assert that the assessment violates RCW 89.08.400(2) because “the funds generated ‘primarily benefit the county that approve[d] the levy.’” Petition for Review at p. 2. But, as specifically required by the statute, all of the net revenues generated by the assessment were in fact paid to the Conservation District and placed in a segregated account. CP 55.

The Claimants also argue that the District’s *subsequent* decision to enter into a interlocal agreement with the County for the purpose of ensuring the efficient provision of Conservation District services to Mason County property owners somehow invalidates the assessment. But, the validity of the assessment must be determined based solely upon the facts existing at the time the assessment is imposed. *American Legion Post No. 32 v. The City of Walla Walla*, 132 Wn.2d 7, 802 P.2d 784 (1991). The county did not purport to, and lacked the substantive power to, condition the granting of the assessments upon the District’s entering any such subsequent agreement. AGO 2006 No. 8 at p. 5. And in making the subsequent decision to enter into an interlocal agreement for the efficient provision of conservation district services to district property owners, the Districts acted in precisely the manner which the

Legislature has both empowered (RCW 89.08.220(4); RCW 89.08.341), and encouraged, see e.g., Laws of 1992, Ch. 100, the District to act.

As their third statutory claim, the Claimants assert that the Board enacted an assessment that did not “suitably classify” the property being assessed. Petition for Review, at p. 2. However, the determination of what classifications are “suitable” is a decision to be made by the local legislative authority acting in its legislative capacity. RCW 89.08.400. Therefore, even if this aspect of the Board’s decision were subject to judicial review (and it is not), the Claimants would have had to carry the “heavy burden of proof” of establishing that the classification adopted by the Board was willful and unreasoning, and that there were not *any* state of facts that could be imagined which might justify it. *Teter v. Clark County*, 104 Wn.2d 227, 234, 704 P.2d 1171 (1985).

Here, the Board was entitled, in the exercise of their legislative discretion, to conclude that the cost of developing a more particularized system of assessment outweighed the benefit that would flow therefrom. The Claimants never came close to showing that the Board exercised the

legislative authority specifically vested in it by the Legislature in an arbitrary, capricious, and willful and unreasoning manner.

In sum, there simply is no question of substantial public interest underlying any of the Petitioner's statutory claims. The Court of Appeals correctly determined that the assessment had been enacted in strict compliance with the procedure specified by the Legislature. Therefore, this Court should decline to review these statutory issues.

However, in the event that this Court should choose to accept review of any of these issues, it should also accept review of the claims raised by the district that (1) the statute simply does not provide for *any* judicial review, because it states that the Board's findings are "final and conclusive," and because the Legislature has expressly provided disaffected assessment payers with a non-judicial remedy. See *Washington Federal of State Employees v. State Personnel Board*, 23 Wn. App. 142, 594 P.2d 1375 (1979) (a statute which provides that specified legislative decision is to be "final" held to preclude *any* judicial review); and (2) that the Claimants' statutory claims, which were expressly governed by RCW 36.32.330, were not timely asserted.

If this Court accepts review of any of the Claimants' statutory claims, it should review these issues as well. But none of these issues in fact warrant Supreme Court review.

B. Claimants' constitutional claims do not warrant Supreme Court review.

The Claimants' do at least devote argument to the two constitutional issues which they attempt to raise in their Petition for Review. But, once again, Claimants fail to show either that these issues warrant Supreme Court review, or make even a prima facie claim that the Court of Appeals wrongly decided them.

The Claimants' first argue that because the statute, enacted in 1949, describes the charge which a local legislative authority is authorized to impose for the benefit of a conservation district as a "special assessment," the charge must satisfy the criteria for these "special assessments" authorized by Wash. Const. Art. VIII, Sec. 9. The Claimants did not make this claim below. Therefore, the Court should not consider it in connection with this Petition for Review.

In any event, it is hardly surprising that the Legislature described this charge as a special assessment. In 1949, at the time that the Legislature

originally enacted this statute, Washington courts simply had not yet distinguished or constitutional purposes between “special assessments” and “regulatory fees.”

And, in any event, it is well settled law that the validity of a governmental charge must be determined by its “incidents,” i.e. the function it actually performs, not by what it is called. *Washington Public Ports Ass’n v. State, Dept. of Revenue*, 148 Wn.2d 637, 650, 62 P.3d 462 (2003). Here, the assessment serves what prior courts have consistently recognized to be the legitimate regulatory purpose of improving water quality. Therefore, the Court of Appeals properly analyzed the constitutional validity of this assessment utilizing the test applicable to regulatory fees.

The Claimants at least did present their second constitutional issue to both the trial court and the Court of Appeals. That issue is whether the assessment which the Legislature has, since 1949, specifically authorized local legislative authorities to impose for the benefit of conservation districts constitutes a valid “regulatory fee” under the criteria set forth by this Court in *Covell v. City of Seattle*, 127 Wn.2d 875, 905 P.2d 324 (1995). Following a

long and well-established line of precedent, the Court of Appeals correctly found that the assessment constitutes a valid regulatory fee.

Pursuant to *Covell*, a court should consider the following factors in distinguishing between fees and taxes:

- Is “the primary purpose . . . to accomplish desired public benefits which cost money, or [is] the primary purpose . . . to regulate”?
- Is “the money collected allocated . . . only to the authorized . . . purpose”?
- Is there “a direct relationship between the fee charged and the service received by those who pay the fee or between the fee charged and the burden produced by the fee payer”?

*Covell*, 127 Wn.2d at 879). Under the first factor, if the fundamental legislative impetus is to “regulate” the fee payers—by providing them with a targeted service or alleviating a burden to which they contribute—that suggests the charge is a fee rather than a tax. *Samis Land Co. v. City of Soap Lake*, 143 Wn.2d 798, 807, 23 P.3d 477 (2001). Under the third factor, the governmental entity is NOT required to individualize the fee according to the benefit available to or the burden produced by the fee payer. *Covell v. Seattle*, 127 Wn.2d at 879).

As the Court of Appeals squarely recognized, Washington courts have, on multiple occasions, applied the *Covell* test to uphold assessments very similar to the assessment imposed by the Mason County Board of County Commissioners for the benefit of the Conservation District in this case. See, e.g., *Storedahl Properties, LLC v. Clark County*, 143 Wn. App. 489, 178 P.3d 377 (2008) (charge imposed by county to pay for cost of taking water quality improvement actions held to constitute valid regulatory fee); *Tukwila Sch. Dist. No. 406 v. City of Tukwila*, 140 Wn. App. 735, 749, 167 P.3d 1167 (2007) (charge imposed in order to deal with storm and surface water runoff held to be a regulatory fee because “it rains everywhere and all parcels would definitely benefit from a system that manages the quantity and quality of storm and surface water runoff to prevent flooding, erosion, sedimentation, pollution, and danger to life and property). See also *Teter v. Clark County*, 104 Wn.2d 227, 704 P.2d 1171 (1981); *Thurston County Rental Owners Association v. Thurston County*, 85 Wn. App. 171, 931 P.2d 208 (1997); *Smith v. Spokane County*, 89 Wn. App. 340, 348-349, 948 P.2d 1301 (1997); *Holmes Harbor Sewer District v. Frontier Bank*, 123 Wn. App. 45, 96 P.3d 442 (2004), reversed on other grounds, 155 Wn.2d 858, 123 P.2d 823 (2005).

Here, just like in each of the cases cited above, the assessment imposed by the Board of County Commissioners for the benefit of the Conservation District met the *Covell* criteria for regulatory fees. First, the assessment was imposed for a regulatory purpose. As the Court of Appeals noted, the Claimants themselves conceded this by acknowledging that the assessment has in fact been used for the regulatory purpose of improving water quality.” 152 Wn. App. at \_\_\_\_, ¶10, 219 P.3d at 955, citing CP at 95.

Second, the Conservation District maintains the funds received from the assessment in a segregated account. CP 55. The District uses these funds only for the limited and specific purposes for which the District was created—i.e., to control the threat of erosion, sedimentation and pollution associated with stormwater runoff. *Id.* Therefore, the assessment is allocated only to the purpose of preventing/addressing the public burdens associated with stormwater runoff, making the charge regulatory under the second *Covell* test. Compare *Storedahl Properties*, 143 Wn.2d at 502-503.

Finally, there is a “direct relationship.” The Conservation District makes its services available to all assessed property owners on a nondiscriminatory basis. CP 54. And, as a practical matter, “it rains

everywhere and all parcels . . . benefit [from efforts to address] storm and surface water runoff to prevent flooding, erosion, sedimentation, pollution, and danger to life and property.” *Storedahl*, 143 Wn. App. at 502-03 (emphasis added). Indeed, that is why the Legislature has specifically authorized the county legislative authority to authorize assessments only on a per-parcel and per-acre basis. RCW 89.08.400(2).

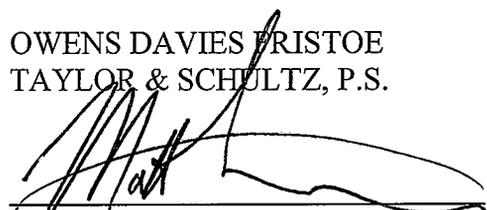
In sum, the Court of Appeals, applying a long line of Washington cases, all of which squarely hold that a charge imposed for the purpose of generating funds to improve water quality/address the impact of the surface water running off from assessed properties constitutes a valid regulatory fee. The Claimants have not shown that the Court of Appeals straightforward application of this well-settled precedent to the facts of this case warrants Supreme Court review, or make even a prima facie case that the Court of Appeals decision is in error. The Court should deny the Claimants’ Petition for Review to the extent it is directed at the constitutional issues which the Claimants attempt to raise.

#### IV. CONCLUSION

The Court of Appeals' decision engages in a straightforward analysis, based solidly on a well established line of existing precedent, to dispose of these pro se Claimants' arguments in this case. The procedure which the Legislature adopted in 1949 to permit local legislative authorities to generate funds for conservation districts is valid. The Claimants have not shown that any of the issues which they raise warrants Supreme Court review, or make a genuine showing that the Court of Appeals erred in its disposition of those issues. Therefore, the Petition for Review should be denied.

DATED this 17<sup>th</sup> day of January, 2010.

OWENS DAVIES FRISTOE  
TAYLOR & SCHULTZ, P.S.

  
Matthew B. Edwards, WSBA #18332

## APPENDIX A

89.08.005 Short title. This chapter shall be known and cited as the conservation districts law. [1973 1st ex.s. c 184 § 1; 1961 c 240 § 1; 1939 c 187 § 1; RRS § 10726-1.]

89.08.010 Preamble. It is hereby declared, as a matter of legislative determination:

(1) That the lands of the state of Washington are among the basic assets of the state and that the preservation of these lands is necessary to protect and promote the health, safety, and general welfare of its people; that improper land-use practices have caused and have contributed to, and are now causing and contributing to, a progressively more serious erosion of the lands of this state by wind and water; that the breaking of natural grass, plant and forest cover have interfered with the natural factors of soil stabilization, causing loosening of soil and exhaustion of humus, and developing a soil condition that favors erosion; that the topsoil is being blown and washed off of lands; that there has been an accel-

erated washing of sloping lands; that these processes of erosion by wind and water speed up with removal of absorptive topsoil, causing exposure of less absorptive and less protective but more erosive subsoil; that failure by any land occupier to conserve the soil and control erosion upon his lands may cause a washing and blowing of soil from his lands onto other lands and makes the conservation of soil and control of erosion on such other lands difficult or impossible, and that extensive denuding of land for development creates critical erosion areas that are difficult to effectively regenerate and the resulting sediment causes extensive pollution of streams, ponds, lakes and other waters.

(2) That the consequences of such soil erosion in the form of soil blowing and soil washing are the silting and sedimentation of stream channels, reservoirs, dams, ditches, and harbors, and loading the air with soil particles; the loss of fertile soil material in dust storms; the piling up of soil on lower slopes and its deposit over alluvial plains; the reduction in productivity or outright ruin of rich bottom lands by overwash of poor subsoil material, sand, and gravel swept out of the hills; deterioration of soil and its fertility, deterioration of crops grown thereon, and declining acre yields despite development of scientific processes for increasing such yields; loss of soil and water which causes destruction of food and cover for wildlife; a blowing and washing of soil into streams which silts over spawning beds, and destroys water plants, diminishing the food supply of fish; a diminishing of the underground water reserve, which causes water shortages, intensifies periods of drought, and causes crop failures; an increase in the speed and volume of rainfall run-off, causing severe and increasing floods, which bring suffering, disease, and death; impoverishment of families attempting to farm eroding and eroded lands; damage to roads, highways, railways, buildings, and other property from floods and from dust storms; and losses in navigation, hydroelectric power, municipal water supply, irrigation developments, farming and grazing.

(3) That to conserve soil resources and control and prevent soil erosion and prevent flood water and sediment damages, and further agricultural and nonagricultural phases of the conservation, development, utilization, and disposal of water, it is necessary that land-use practices contributing to soil wastage and soil erosion be discouraged and discontinued, and appropriate soil-conserving land-use practices, and works of improvement for flood prevention of agricultural and nonagricultural phases of the conservation, development, utilization, and disposal of water be adopted and carried out; that among the procedures necessary for widespread adoption, are the carrying on of engineering operations such as the construction of terraces, terrace outlets, check-dams, desilting basins, flood water retarding structures, channel floodways, dikes, ponds, ditches, and the like; the utilization of strip cropping, contour cultivating, and contour furrowing; land irrigation; seeding and planting of waste, sloping, abandoned, or eroded lands to water-conserving and erosion-preventing plants, trees, and grasses; forestation and reforestation; rotation of crops; soil stabilizations with trees, grasses, legumes, and other thick-growing, soil-holding crops, retardation of run-off by increasing absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded.

(4) Whereas, there is a pressing need for the conservation of renewable resources in all areas of the state, whether urban, suburban, or rural, and that the benefits of resource practices, programs, and projects, as carried out by the state conservation commission and by the conservation districts, should be available to all such areas; therefore, it is hereby declared to be the policy of the legislature to provide for the conservation of the renewable resources of this state, and for the control and prevention of soil erosion, and for the prevention of flood water and sediment damages, and for furthering agricultural and nonagricultural phases of conservation, development, utilization, and disposal of water, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this state. To this end all incorporated cities and towns heretofore excluded from the boundaries of a conservation district established pursuant to the provisions of the state conservation district law, as amended, may be approved by the conservation commission as being included in and deemed a part of the district upon receiving a petition for annexation signed by the governing authority of the city or town and the conservation district within the exterior boundaries of which it lies in whole or in part or to which it lies closest. [1973 1st ex.s. c 184 § 2; 1939 c 187 § 2; RRS § 10726-2.]

**89.08.020 Definitions.** Unless the context clearly indicates otherwise, as used in this chapter:

"Commission" and "state conservation commission" means the agency created hereunder. All former references to "state soil and water conservation committee", "state committee" or "committee" shall be deemed to be references to the "state conservation commission";

"District", or "conservation district" means a governmental subdivision of this state and a public body corporate and politic, organized in accordance with the provisions of chapter 184, Laws of 1973 1st ex. sess., for the purposes, with the powers, and subject to the restrictions set forth in this chapter. All districts created under chapter 184, Laws of 1973 1st ex. sess. shall be known as conservation districts and shall have all the powers and duties set out in chapter 184, Laws of 1973 1st ex. sess. All references in chapter 184, Laws of 1973 1st ex. sess. to "districts", or "soil and water conservation districts" shall be deemed to be reference to "conservation districts";

"Board" and "supervisors" mean the board of supervisors of a conservation district;

"Land occupier" or "occupier of land" includes any person, firm, political subdivision, government agency, municipality, public or private corporation, copartnership, association, or any other entity whatsoever which holds title to, or is in possession of, any lands lying within a district organized under the provisions of chapter 184, Laws of 1973 1st ex. sess., whether as owner, lessee, renter, tenant, or otherwise;

"District elector" or "voter" means a registered voter in the county where the district is located who resides within the district boundary or in the area affected by a petition;

"Due notice" means a notice published at least twice, with at least six days between publications, in a publication

of general circulation within the affected area, or if there is no such publication, by posting at a reasonable number of public places within the area, where it is customary to post notices concerning county and municipal affairs. Any hearing held pursuant to due notice may be postponed from time to time without a new notice;

"Renewable natural resources", "natural resources" or "resources" includes land, air, water, vegetation, fish, wildlife, wild rivers, wilderness, natural beauty, scenery and open space;

"Conservation" includes conservation, development, improvement, maintenance, preservation, protection and use, and alleviation of floodwater and sediment damages, and the disposal of excess surface waters.

"Farm and agricultural land" means either (a) land in any contiguous ownership of twenty or more acres devoted primarily to agricultural uses; (b) any parcel of land five acres or more but less than twenty acres devoted primarily to agricultural uses, which has produced a gross income from agricultural uses equivalent to one hundred dollars or more per acre per year for three of the five calendar years preceding the date of application for classification under this chapter; or (c) any parcel of land of less than five acres devoted primarily to agricultural uses which has produced a gross income of one thousand dollars or more per year for three of the five calendar years preceding the date of application for classification under this chapter. Agricultural lands shall also include farm woodlots of less than twenty and more than five acres and the land on which appurtenances necessary to production, preparation or sale of the agricultural products exist in conjunction with the lands producing such products. Agricultural lands shall also include any parcel of land of one to five acres, which is not contiguous, but which otherwise constitutes an integral part of farming operations being conducted on land qualifying under this section as "farm and agricultural lands". [1999 c 305 § 1; 1973 1st ex.s. c 184 § 3; 1961 c 240 § 2; 1955 c 304 § 1; 1939 c 187 § 3; RRS § 10726-3.]

such necessary rights interests in such lands as may be required;

(4) To cooperate or enter into agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to any agency, governmental or otherwise, or any occupier of lands within the district in the carrying on of preventive and control measures and works of improvement for the conservation of renewable natural resources within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of chapter 184, Laws of 1973 1st ex. sess. For purposes of this subsection only, land occupiers who are also district supervisors are not subject to the provisions of RCW 42.23.030;

(5) To obtain options upon and to acquire in any manner, except by condemnation, by purchase, exchange, lease, gift, bequest, devise, or otherwise, any property, real or personal, or rights or interests therein; to maintain, administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of chapter 184, Laws of 1973 1st ex. sess.; and to sell, lease, or otherwise dispose of any of its property or interests therein in furtherance of the purposes and the provisions of chapter 184, Laws of 1973 1st ex. sess.;

(6) To make available, on such terms, as it shall prescribe, to land occupiers within the district, agricultural and engineering machinery and equipment, fertilizer, seeds, seedlings, and such other equipment and material as will assist them to carry on operations upon their lands for the conservation of renewable natural resources;

(7) To prepare and keep current a comprehensive long-range program recommending the conservation of all the renewable natural resources of the district. Such programs shall be directed toward the best use of renewable natural resources and in a manner that will best meet the needs of the district and the state, taking into consideration, where appropriate, such uses as farming, grazing, timber supply, forest, parks, outdoor recreation, potable water supplies for urban and rural areas, water for agriculture, minimal flow, and industrial uses, watershed stabilization, control of soil erosion, retardation of water run-off, flood prevention and control, reservoirs and other water storage, restriction of developments of floodplains, protection of open space and scenery, preservation of natural beauty, protection of fish and wildlife, preservation of wilderness areas and wild rivers, the prevention or reduction of sedimentation and other pollution in rivers and other waters, and such location of highways, schools, housing developments, industries, airports and other facilities and structures as will fit the needs of the state and be consistent with the best uses of the renewable natural resources of the state. The program shall include an inventory of all renewable natural resources in the district, a compilation of current resource needs, projections of future resource requirements, priorities for various resource activities, projected timetables, descriptions of available alternatives, and provisions for coordination with other resource programs.

The district shall also prepare an annual work plan, which shall describe the action programs, services, facilities, materials, working arrangements and estimated funds needed to carry out the parts of the long-range programs that are of the highest priorities.

**89.08.220 Corporate status and powers of district.** A conservation district organized under the provisions of chapter 184, Laws of 1973 1st ex. sess. shall constitute a governmental subdivision of this state, and a public body corporate and politic exercising public powers, but shall not levy taxes or issue bonds and such district, and the supervisors thereof, shall have the following powers, in addition to others granted in other sections of chapter 184, Laws of 1973 1st ex. sess.:

(1) To conduct surveys, investigations, and research relating to the conservation of renewable natural resources and the preventive and control measures and works of improvement needed, to publish the results of such surveys, investigations, or research, and to disseminate information concerning such preventive and control measures and works of improvement: PROVIDED, That in order to avoid duplication of research activities, no district shall initiate any research program except in cooperation with the government of this state or any of its agencies, or with the United States or any of its agencies;

(2) To conduct educational and demonstrational projects on any lands within the district upon obtaining the consent of the occupier of such lands and such necessary rights or interests in such lands as may be required in order to demonstrate by example the means, methods, measures, and works of improvement by which the conservation of renewable natural resources may be carried out;

(3) To carry out preventative and control measures and works of improvement for the conservation of renewable natural resources, within the district including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of lands, and the measures listed in RCW 89.08.010, on any lands within the district upon obtaining the consent of the occupier of such lands and

The districts shall hold public hearings at appropriate times in connection with the preparation of programs and plans, shall give careful consideration to the views expressed and problems revealed in hearings, and shall keep the public informed concerning their programs, plans, and activities. Occupiers of land shall be invited to submit proposals for consideration to such hearings. The districts may supplement such hearings with meetings, referenda and other suitable means to determine the wishes of interested parties and the general public in regard to current and proposed plans and programs of a district. They shall confer with public and private agencies, individually and in groups, to give and obtain information and understanding of the impact of district operations upon agriculture, forestry, water supply and quality, flood control, particular industries, commercial concerns and other public and private interests, both rural and urban.

Each district shall submit to the commission its proposed long-range program and annual work plans for review and comment.

The long-range renewable natural resource program, together with the supplemental annual work plans, developed by each district under the foregoing procedures shall have official status as the authorized program of the district, and it shall be published by the districts as its "renewable resources program". Copies shall be made available by the districts to the appropriate counties, municipalities, special purpose districts and state agencies, and shall be made available in convenient places for examination by public land occupier or private interest concerned. Summaries of the program and selected material therefrom shall be distributed as widely as feasible for public information;

(8) To administer any project or program concerned with the conservation of renewable natural resources located within its boundaries undertaken by any federal, state, or other public agency by entering into a contract or other appropriate administrative arrangement with any agency administering such project or program;

(9) Cooperate with other districts organized under chapter 184, Laws of 1973 1st ex. sess. in the exercise of any of its powers;

(10) To accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, from this state or any of its agencies, or from any other source, and to use or expend such moneys, services, materials, or any contributions in carrying out the purposes of chapter 184, Laws 1973 1st ex. sess.;

(11) To sue and be sued in the name of the district; to have a seal which shall be judicially noticed; have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments, necessary or convenient to the exercise of its powers; to borrow money and to pledge, mortgage and assign the income of the district and its real or personal property therefor; and to make, amend rules and regulations not inconsistent with chapter 184, Laws of 1973 1st ex. sess. and to carry into effect its purposes;

(12) Any two or more districts may engage in joint activities by agreement between or among them in planning, financing, constructing, operating, maintaining, and administering any program or project concerned with the conservation of renewable natural resources. The districts concerned may make available for purposes of the agreement any funds,

property, personnel, equipment, or services available to them under chapter 184, Laws of 1973 1st ex. sess.;

Any district may enter into such agreements with a district or districts in adjoining states to carry out such purposes if the law in such other states permits the districts in such states to enter into such agreements.

The commission shall have authority to propose, guide, and facilitate the establishment and carrying out of any such agreement;

(13) Every district shall, through public hearings, annual meetings, publications, or other means, keep the general public, agencies and occupiers of land within the district, informed of the works and activities planned and administered by the district, of the purposes these will serve, of the income and expenditures of the district, of the funds borrowed by the district and the purposes for which such funds are expended, and of the results achieved annually by the district; and

(14) The supervisors of conservation districts may designate an area, state, and national association of conservation districts as a coordinating agency in the execution of the duties imposed by this chapter, and to make gifts in the form of dues, quotas, or otherwise to such associations for costs of services rendered, and may support and attend such meetings as may be required to promote and perfect the organization and to effect its purposes. [1999 c 305 § 8; 1973 1st ex.s. c 184 § 23; 1963 c 110 § 1; 1961 c 240 § 13; 1955 c 304 § 23. Prior: (i) 1939 c 187 § 8; RRS § 10726-8. (ii) 1939 c 187 § 13; RRS § 10726-13.]

**89.08.341 Intergovernmental cooperation.—**Authority. Any agency of the government of this state and any local political subdivision of this state is hereby authorized to make such arrangements with any district, through contract, regulation or other appropriate means, wherever it believes that such arrangements will promote administrative efficiency or economy.

In connection with any such arrangements, any state or local agency or political subdivision of this state is authorized, within the limits of funds available to it; to contribute funds, equipment, property or services to any district; and to collaborate with a district in jointly planning, constructing, financing or operating any work or activity provided for in such arrangements and in the joint acquisition, maintenance and operation of equipment or facilities in connection therewith.

State agencies, the districts, and other local agencies are authorized to make available to each other maps, reports and data in their possession that are useful in the preparation of their respective programs and plans for resource conservation. The districts shall keep the state and local agencies fully informed concerning the status and progress of the preparation of their resource conservation programs and plans.

The state conservation commission and the counties of the state may provide respective conservation districts such administrative funds as will be necessary to carry out the purpose of chapter 184, Laws of 1973 1st ex. sess. [1973 1st ex.s. c 184 § 24.]

**89.08.400 Special assessments for natural resource conservation.** (1) Special assessments are authorized to be imposed for conservation districts as provided in this section. Activities and programs to conserve natural resources, including soil and water, are declared to be of special benefit to lands and may be used as the basis upon which special assessments are imposed.

(2) Special assessments to finance the activities of a conservation district may be imposed by the county legislative authority of the county in which the conservation district is located for a period or periods each not to exceed ten years in duration.

The supervisors of a conservation district shall hold a public hearing on a proposed system of assessments prior to the first day of August in the year prior to which it is proposed that the initial special assessments be collected. At that public hearing, the supervisors shall gather information and shall alter the proposed system of assessments when appropriate, including the number of years during which it is proposed that the special assessments be imposed.

On or before the first day of August in that year, the supervisors of a conservation district shall file the proposed system of assessments, indicating the years during which it is proposed that the special assessments shall be imposed, and a proposed budget for the succeeding year with the county legislative authority of the county within which the conservation district is located. The county legislative authority shall hold a public hearing on the proposed system of assessments. After the hearing, the county legislative authority may accept, or modify and accept, the proposed system of assessments, including the number of years during which the special assessments shall be imposed, if it finds that both the public interest will be served by the imposition of the special assessments and that the special assessments to be imposed on any land will not exceed the special benefit that the land receives or will receive from the activities of the conservation district. The findings of the county legislative authority shall be final and conclusive. Special assessments may be altered during this period on individual parcels in accordance with the system of assessments if land is divided or land uses or other factors change.

Notice of the public hearings held by the supervisors and the county legislative authority shall be posted conspicuously in at least five places throughout the conservation district, and published once a week for two consecutive weeks in a newspaper in general circulation throughout the conservation district, with the date of the last publication at least five days prior to the public hearing.

(3) A system of assessments shall classify lands in the conservation district into suitable classifications according to benefits conferred or to be conferred by the activities of the conservation district; determine an annual per acre rate of assessment for each classification of land, and indicate the total amount of special assessments proposed to be obtained from each classification of lands. Lands deemed not to receive benefit from the activities of the conservation district shall be placed into a separate classification and shall not be subject to the special assessments. An annual assessment rate shall be stated as either uniform annual per acre amount, or an annual flat rate per parcel plus a uniform annual rate per acre amount, for each classification of land. The maximum

annual per acre special assessment rate shall not exceed ten cents per acre. The maximum annual per parcel rate shall not exceed five dollars, except that for counties with a population of over one million five hundred thousand persons, the maximum annual per parcel rate shall not exceed ten dollars.

Public land, including lands owned or held by the state, shall be subject to special assessments to the same extent as privately owned lands. The procedures provided in chapter 79.44 RCW shall be followed if lands owned or held by the state are subject to the special assessments of a conservation district.

Forest lands used solely for the planting, growing, or harvesting of trees may be subject to special assessments if such lands benefit from the activities of the conservation district, but the per acre rate of special assessment on benefited forest lands shall not exceed one-tenth of the weighted average per acre assessment on all other lands within the conservation district that are subject to its special assessments. The calculation of the weighted average per acre special assessment shall be a ratio calculated as follows: (a) The numerator shall be the total amount of money estimated to be derived from the imposition of per acre special assessments on the nonforest lands in the conservation district; and (b) the denominator shall be the total number of nonforest land acres in the conservation district that receive benefit from the activities of the conservation district and which are subject to the special assessments of the conservation district. No more than ten thousand acres of such forest lands that is both owned by the same person or entity and is located in the same conservation district may be subject to the special assessments that are imposed for that conservation district in any year. Per parcel charges shall not be imposed on forest land parcels. However, in lieu of a per parcel charge, a charge of up to three dollars per forest landowner may be imposed on each owner of forest lands whose forest lands are subject to a per acre rate of assessment.

(4) A conservation district shall prepare an assessment roll that implements the system of assessments approved by the county legislative authority. The special assessments from the assessment roll shall be spread by the county assessor as a separate item on the tax rolls and shall be collected and accounted for with property taxes by the county treasurer. The amount of a special assessment shall constitute a lien against the land that shall be subject to the same conditions as a tax lien, collected by the treasurer in the same manner as delinquent real property taxes, and subject to the same interest rate and penalty as for delinquent property taxes. The county treasurer shall deduct an amount from the collected special assessments, as established by the county legislative authority, to cover the costs incurred by the county assessor and county treasurer in spreading and collecting the special assessments, but not to exceed the actual costs of such work. All remaining funds collected under this section shall be transferred to the conservation district and used by the conservation district in accordance with this section.

(5) The special assessments for a conservation district shall not be spread on the tax rolls and shall not be collected with property tax collections in the following year if, after the system of assessments has been approved by the county legislative authority but prior to the fifteenth day of December in that year, a petition has been filed with the county legislative authority objecting to the imposition of such special assessments, which petition has been signed by at least twenty percent of the owners of land that would be subject to the special assessments to be imposed for a conservation district. [2005 c 466 § 1; 1992 c 70 § 1; 1989 c 18 § 1.]

EXPEDITE  
 Hearing is set:  
 Date: January 28, 2008  
 Time: 9:00 A.M.  
 Judge/Calendar: Hon. Leonard W. Costello

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MASON CO. WA.  
PAT SWARTOS, CO. CLERK

BY \_\_\_\_\_ DEPUTY

**SUPERIOR COURT OF WASHINGTON  
FOR MASON COUNTY**

**JAMES R. CARY, MARY ALICE CARY, JOHN  
E. HIEHL, and WILLIAM D. FOX, SR.,**

Plaintiffs,

vs.

**MASON COUNTY and MASON  
CONSERVATION DISTRICT,**

Defendants.

NO. 03-2-00196-5

**DECLARATION OF JOHN  
BOLENDER**

1. My name is John Bolender. I am the District Manager for the Mason Conservation District. I have held that position since September 2005. Prior to that, I served on the district Board of Supervisors.

2. The Mason Conservation District is a special use district formed pursuant to Chapter 89.08 RCW for the purpose of carrying out the works and projects described in that chapter, i.e., to prevent and/or address erosion, sedimentation and pollution caused by storm water runoff from assessed properties located within the District.

3. Every assessed property in the District has storm water fall on it and run off, so that every assessed property contributes to the problem of storm water runoff. The area of storm water and storm water runoff is an area subject to fairly extensive governmental regulation.

4. The District uses the assessments voted by the Mason County Board of County Commissioners to assist and facilitate property owners' compliance with these regulations.

DECLARATION OF JOHN BOLENDER- 1

OWENS DAVIES, P.S.  
1115 West Bay Drive, Suite 302  
Olympia, Washington 98502  
Phone: (360) 943-8320  
Facsimile: (360) 943-6150

1 Because it helps to provide for the control of storm water, the services which the Conservation  
2 District provides are of a utility to the residents of the District.

3 5. The Mason Conservation District is one of 47 conservation districts that have  
4 been formed in this state. The Conservation District was formed in the manner described by  
5 state statute in 1956. The formation of the District was approved by a vote of the majority of the  
6 voters within the District.

7 6. The mission of the Mason Conservation District is to promote the sustainable use,  
8 conservation and restoration of natural resources in our community. The Mason Conservation  
9 District provides technical assistance to landowners for the implementation of Best Management  
10 Practices to control erosion, sedimentation and pollution associated with storm water. The  
11 District carries out measures to protect and conserve natural resources from storm water runoff.  
12 And the District conducts educational and demonstration conservation projects to this end.

13 7. The Mason Conservation District often enters into cooperative agreements with  
14 governmental and other entities to carry out these activities for the conservation of renewable  
15 natural resources within the district.

16 8. The Conservation District makes its services available to all property owners  
17 whose properties are assessed on a nondiscriminatory basis, and all assessed property owners  
18 have the right to avail themselves of the Conservation District's services. However, the  
19 Conservation District is not required to, and does not, make services paid for using assessment  
20 funds available to persons or entities owning property that is not assessed, or which is located  
21 outside the Conservation District.

22 9. The assessments at issue in this case were approved in 2002. Specifically, in  
23 July 2002, the Mason Conservation District sent a letter to the Mason County Board of County  
24 Commissioners outlining the assessment requested by the Conservation District. A true copy of  
25 this letter is attached to this Declaration as Exhibit A.

26 10. On August 27, 2002, the Mason County Board of County Commissioners held a  
27 hearing at which they considered the District's request. At the hearing, County staff submitted a  
28 report in which staff recommended that the Commissioners approve the assessment requested by

**DECLARATION OF JOHN BOLENDER- 2**

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B-2 000054

1 the Conservation District with one significant modification. Because it would take several years  
2 to recover the administrative costs associated with having the Assessor implement a \$0.07-per-  
3 acre assessment, the staff recommended that the Board reduce the requested \$0.07-per-acre  
4 assessment to \$0.00 per acre. A true copy of the Health Department's report is attached to this  
5 Declaration as Exhibit B.

6 11. The Mason County Board of County Commissioners approved the assessment as  
7 modified on August 27, 2002. A true copy of their findings of fact adopted in support of the  
8 assessment are attached hereto as Exhibit C.

9 12. The County began collecting the assessment in 2003. The County Treasurer has  
10 collected the following amounts for the benefit of the Conservation District since that time.

11 Summary of Assessment Collections

12	2003	\$205,459.63
13	2004	\$233,514.23
14	2005	\$218,419.32
15	2006	\$225,615.00
16	2007	<u>\$229,632.50</u>
		\$1,112,640.68

17 13. The assessments are used by the district for the purposes for which the  
18 Conservation District is authorized to expend funds under state law, in particular, to assist  
19 assessed property owners dealing with storm water running onto and off of their property, and/or  
20 to address the effects of such storm water.

21 14. The District carefully segregates the funds it has received on account of the  
22 assessments. All of the funds received as a result of the assessments are kept in a separate  
23 account, and used to pay: (1) the fee charged by the county assessor for the cost that the county  
24 incurs in spreading the assessment on the tax rolls and collecting the funds, as specifically  
25 authorized by RCW 89.08.400(4); (2) for expenditures made by the District in connection with  
26 the providing of conservation services to or for the benefit of assessed property owners within  
27 the Conservation District.

28

B -3 000055

1           15.     The Claimants allege that the Conservation District has failed to segregate or  
2 "mingled" funds which the Conservation District has received from the assessment with grant  
3 funds the District has received.   See Claimant's Motion for Summary Judgment, p. 7,  
4 line 31-p. 8, line 4; p. 11, lines 11-20. This is false. As stated above, funds derived from the  
5 assessment are kept by the District are segregated in a separate account, and are used only for  
6 those limited purposes for which the Legislature has authorized the Conservation District to  
7 expend assessed funds.

8           16.     In their brief, the Claimants allege that the District uses assessed funds for the  
9 purpose of "improving water quality in Hood Canal and parts of Puget Sound." Motion for  
10 Summary Judgment, p. 11, lines 15-16. The District does use some funds for this purpose.  
11 Sediment and pollution-laden storm water runs off of the properties owned by property owners  
12 located within the District. This storm water makes its way into Puget Sound, degrading water  
13 quality in the Sound. By acting to improve water quality within Puget Sound in the area affected  
14 by sediment and pollution-laden storm water running off of assessed properties, the District is  
15 addressing the "public burden" that is caused or contributed to by storm water that runs off of  
16 assessed properties. By doing so, the District also provides a corresponding benefit to the  
17 property owners, storm water runoff from whose properties is contributing to this common  
18 public burden.

19           17.     In their brief, the Claimants assert that the District spends 82 percent of its funds  
20 for "administration." See Motion for Summary Judgment, p. 12, line 14 at seq. This is  
21 completely false. This claim is apparently based on the Claimants' misunderstanding of the  
22 records that have been produced by the District and how the District's accounting system  
23 captures and categorizes human resource charges.

24           18.     In particular, attached to John Diehl's Declaration as Exhibit G are a number of  
25 payment vouchers that were produced by the Conservation District at discovery in this matter.  
26 Contrary to what the Claimants allege, all of the personnel charges noted on the vouchers are for  
27 time spent directly providing services or projects or directly to district residents, not for  
28 administrative overhead costs.

DECLARATION OF JOHN BOLENDER- 4

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1           19.    The only overhead costs billed by the District and shown on the vouchers are  
2 identified under the heading "Project Specific Overhead." These are billed at a rate of 10 percent  
3 of the total direct costs.

4           20.    The District takes great care to apply very minimal administrative charges to any  
5 work or project funded by funds generated from the assessment. The percentage overhead  
6 charge by the District is below the standard overhead rate usually and customarily applied in the  
7 industry.

8           21.    In their brief, the Claimants also attack the District's decision to enter into an  
9 inter-local agreement with Mason County. See, e.g., Claimant's Motion for Summary Judgment,  
10 p. 2, lines 9-12.

11           22.    State law specifically provides the District with authority to enter into such inter-  
12 local agreements. RCW 89.08.200(4); RCW 89.08.341.

13           23.    Although the Mason County Board of County Commissioners has the authority to  
14 authorize and approve assessments for the benefit of the Conservation District, the Mason  
15 County Board of County Commissioners has no legal right or authority to dictate or direct how  
16 the Conservation District spends its funds. RCW 89.08.400(4). Therefore, the Conservation  
17 District was not legally obligated to furnish Mason County any money, or enter into any kind of  
18 inter-local agreement with Mason County, as a condition of receiving the assessment.

19           24.    In fact, the Conservation District entered into the inter-local agreement simply to  
20 enable the District to more cost-efficiently provide conservation services to property owners, by  
21 utilizing the capacity, technical expertise and knowledge of the Mason County Department of  
22 Public Health staff in areas where Public Health staff were better suited to provide such services.  
23 The Conservation District entered into the inter-local agreement because that was the way the  
24 Conservation District believed it could most cost-efficiently provide the conservation services it  
25 is statutorily empowered and directed to deliver.

26           25.    Moreover, under the inter-local agreement, the County bills the Conservation  
27 District for the services it renders to the District only if and as those conservation services have  
28 been provided.

1           26.    In other words, the Conservation District has, by the inter-local agreement, simply  
2 "hired" Mason County staff to deliver the conservation services the Conservation District is  
3 authorized to deliver in a manner similar to which the Conservation District might hire a  
4 contractor or an employee.

5           I declare under penalty of perjury under the laws of the State of Washington that the  
6 foregoing is true and correct.

7           DATED this 16<sup>th</sup> day of January, 2008 at Olympia, Washington.

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John Bolender



Mason Conservation District  
S.E. 1051 Highway 3 • Suite G • Shelton, WA 98584  
Phone: (360) 427-9436 • FAX: (360) 427-4396

July 29, 2002

Mason County Commissioners  
411 North Fifth Street  
Shelton, WA 98584

Dear Commissioners:

As provided by RCW 89.08.400, the Mason Conservation District Board of Supervisors strongly recommends that the Mason County Board of Commissioners establish a special assessment to provide basic funding for the Mason County Department of Health Services and the Mason Conservation District. This assessment will create a fund dedicated to addressing water resource protection issues within Mason County.

The assessment level will be \$5 per parcel, plus .07 cents per acre for all parcels one acre or larger. We recommend that county officials and staff review potential exemptions based upon legality and cost benefit analysis.

The assessment shall be billed to the taxpayer, by the County Treasurer, on February 15 of the collection year, or on the date of billing of property taxes as determined by the Treasurer. Assessment payments shall be due on the same date as property taxes, first half due on April 30 and the second half due on October 31.

We recommend that penalties be assessed for late payments in accordance with the current county policy regarding late payment of taxes.

For parcels, which are combined after billing, the original amount will still be carried as a receivable and collected. For parcels segregated after billing, the original amount will stay with the parent parcel, or if a parent parcel does not exist, the assessment will be ratably distributed. Cancellations and supplementals that occur after the final roll has been submitted will be considered in the succeeding year.

The Mason Conservation District special assessment will be levied starting in the 2003 collection year and continue for ten years (2012).

Money generated by the assessment will provide funding for the Mason County Department of Health Services to be used for the protection of water quality through the expansion of the Threatened Area Response (TARS) program, community concern response, the identification of potential sources of pollution throughout the county, the implementation of low interest loans (State Revolving Fund) and as match for future grant opportunities.

EXHIBIT   A  

**B-7** 000059

The Conservation District will utilize their portion of the funds to increase their capability to provide technical assistance to landowners for the implementation of Best Management Practices addressing the potential for non-point pollution arising from animal waste, pesticides and fertilizers and as match for future grants addressing non-point pollution issues within Mason County. The goal is to be able to provide assistance to the residents of Mason County unilaterally rather than selectively as dictated by historical grant funding.

The Mason Conservation District and the Mason County Department of Health Services will present before the Commissioners both a semi-annual interim report of activities and an annual fiscal and operational report.

Attached please find a "System of Assessments" as outlined in RCW 89.08.400.

Respectfully Submitted,



Jim Sims  
Chair

## Introduction to Hearing on Conservation District Special Assessment for Natural Resource Protection

Part of the reason many people choose to live in Mason County is because of the many natural resources the area has to offer. We enjoy taking advantage of the recreational opportunities afforded to us such as the camping, hiking, fishing, swimming, shellfish harvesting, and boating. Many of us farm our land, whether it's for profit or pleasure, ranging from Christmas trees to herbs or from livestock to aquaculture. We expect that when we turn on a faucet, clean safe drinking water comes out. When we swim, fish, or otherwise use our water we expect to swim without getting sick, and we expect that the fish and shellfish we harvest are safe to eat. The economic impact that water resources have on our county is enormous. In a 1991 Department of Ecology report it was estimated that the revenues lost due to the closure of the recreational shellfish beach at Belfair State Park was at least 1.2 Million dollars/year. The aquaculture industry plays a very important role in the economic well being of the county. I believe that members of the industry are here to speak to that importance, so I will defer to them for comment on this important issue.

Pollution of water can come from many sources. Industrial waste and pollution can be a big contributor along with point and non-point source pollution. Point source pollution comes from a known source. An example of one source in this county would be the outfall of the sewage treatment plant in Shelton. This outfall and other potential point sources of pollution are regulated and monitored by Department of Ecology as part of their permit. Non-point sources of pollution are those that come from a geographical area and may have many contributors (ex. pet and farm waste, septic systems, property runoff that contains fertilizers and chemicals). The Mason County Department of Health Services and the Mason Conservation District have a long history of working together to assist property owners in planning for and reducing non-point source pollution. The Mason Conservation District works with property owners to assist them on land use and implementation of best management practices that help prevent and reduce non-point source pollution. The Mason County Department of Health Services works with homeowners to ensure that septic systems are designed, installed and operated to protect ground and surface water from contamination by fecal coliform bacteria. In geographic areas of high levels of fecal coliform contamination the mission of Mason County Department of Health Services is to identify and remediate individual septic systems that are contributing to pollution. According to RCW 70.05 the commissioners, acting as the Board of Health, have the duty to clean up water pollution, and the local Health Officer through Mason County Department of Health Services has the legal duty to investigate and meaningfully attempt to remedy known water pollution problems.

In 1993, water pollution in the saltwater used for shellfish growing areas had become degraded so significantly that Mason County was required to respond with a plan to clean up the waters. Mason County Department of Health Services was one of the departments tasked in this plan. Between 1993 and 1996 the Department and community groups joined together to plan for addressing water quality issues in their communities. As a part of that plan large funding, large grants and donations were secured and work began in two watersheds, Totten Little Skookum and Lower Hood Canal. Due to a lack a funding, a smaller amount of work was done in North Bay Case Inlet. The Mason Conservation District had grants to assist in the land usage issues in Totten Little Skookum and Lower Hood Canal watersheds, but no grant source of funding to assist in North Bay Case Inlet. These combined efforts led to an improvement in water quality that allowed 500 acres of shellfish beds in Lower Hood Canal to be reopened. At the end of 1996, the Water Quality Department was disbanded because of the inability to secure sufficient funding through grants or sustained funding from the county. The Oakland Bay watershed was the next watershed where surveys were scheduled to begin to identify pollution sources, but no significant work was conducted before the team was disbanded. The State Department of Health has now designated Annas Bay, portions of Oakland Bay, Lower

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Hood Canal, and North Bay in Case Inlet as threatened due to increasing levels of fecal coliform pollution. Any further pollution will create degradation of water quality in these areas that could result in these areas being declared prohibited to shellfish harvest.

Approximately two years ago Mason County Department of Health Services recognized that water quality problems were increasing and approached the Commissioners about dedicating one staff member to full time water resource protection issues. They responded then and have continued to support this focused intervention. As this one staff has continued to work on pollution source identification projects she has been investigating numerous areas of threatened water quality throughout the county. Many times she has been forced to prioritize significant problem areas to the bottom of the list, and it became apparent to us that one staff person was unable to keep pace with the workload, and citizens of the county were not receiving the services they need and deserve. In recent months newly threatened areas in the north end of Oakland Bay and North Bay in Case Inlet also were identified. The Mason Conservation District has no grant funding that allows them to assist us in identifying and remediating non-point source pollution in these areas. When the seriousness of these threatened areas and the need for additional resources were discussed with the Commissioners they challenged us to identify funding opportunities to support this work. We approached the Mason Conservation District regarding the RCW that allowed them to request an assessment to support natural resource protection. They were willing to partner with us on their assessment and share the revenues to enable us both to have dedicated resources available to respond to the need for natural resource protection in all areas of the county, not just those where grant funds were available for special projects.

The Mason County Department of Health Services and the Mason Conservation District have historically relied on grants to fund special projects due to lack of funding to maintain programs. A grant is awarded only to address an identified severe and significant problem. Grants are awarded for projects, not for the funding of programs. In the grant process proposed projects compete against one another for funding. The current trend shows grant funds drying up and opportunities disappearing as monies are shifted into other areas of the state budget. When staff are funded by a grant, they have to respond to the areas outlined in the grant and work under the guidelines of the grant. In the grant project situation the departments cannot have people in place to respond to where the needs are, unless those needs correspond to an area receiving grant funding. If this assessment is approved it would give both departments the ability to have dedicated staff to work on projects important to the health and safety of the citizens in all areas of the county on a regular basis. This funding would provide the sustainable, long term funding required to have staff working to protect natural resources throughout Mason County.

The Mason County Department of Health Services would add 2 staff, dedicated to water resource protection, as funds became available. Although this level of staffing is not adequate to fully protect our water resources, the 2 new dedicated staff would be able to provide ongoing sustained effort. The Mason County Department of Health Services was recently awarded a one time grant which is being used as an interim measure to hire one staff person dedicated to water quality in the threatened areas including our on-going efforts in North Bay/ Case Inlet and Oakland Bay. This small grant should provide the start up funding to allow staff to work in the threatened areas until assessment revenues would become available if the assessment is passed. The Department of Health Services will continue to write grants to enhance our on-going water resource protection projects and use some of the assessment money as cash match for the 25% match many grants require. We would add additional staff to work on specific projects for the duration of the grant. The Mason Conservation District would dedicate one technical staff to work on projects countywide and have money available to also provide matching funds for grant work.

This partnership between the Mason Conservation District and the Mason County Department of Health Services would be unique in the state. The informal partnership of these two departments in the past has worked well for the citizens of Mason County. The Natural Resource Protection Assessment would make this partnership formal and could be a template for other Health Departments and Conservation Districts throughout the state. One of our goals is to have clean and plentiful water for the citizens of and visitors to Mason County. Our marine water, lakes and rivers will be fishable, swimmable and support healthy ecosystems. Ground water will be a clean source of water so every person will have safe drinking water. All Mason County residents are linked to each of our area's natural resources. We drink our water, eat our fish and shellfish, build houses from our timber, garden and farm in our soil, and enjoy the diversity of our wildlife. The long-term stability of our area's economy, value of our property and preservation of Mason County's character depend on the conservation of what now seems plentiful.

The evaluation of assessment project costs done by Dixie Smith, Mason County Assessor, Lisa Frazer, Mason County Treasurer, and their staff demonstrated that it would cost almost as much or more to do the customized, individualized billing and to collect the 7 cents per acre than the assessment would collect from the proposed per acre fee. The assumptions for these calculations are that each parcel is one acre in size.

1. All non forrested lands assessed at 7 cents/acre would bring an approximate assessment of \$6,500. This estimate is on the high side because of our assumption.
2. Forrested lands would bring in an approximate assessment of \$1,994.

The costs involved are estimated to be as follows.

1. To reprint the tax statements - \$400-600
2. To reprogram the computer system by Compuserve
  - a. For the \$5 assessment, we have most of the system in place.
  - b. To program the computer to take into account the 7 cents per acre, it would take a 1-time cost of \$8-10,000.
3. It would cost the treasurer \$1,344 annually to perform the additional billings for those per acre assessments

The recommendation is made to the Mason County Board of County Commissioners that the assessment be a flat five dollars on every parcel. We respectfully request that the Mason County Board of Commissioners consider the recommendation from the Mason Conservation District Board of Supervisors to establish a dedicated source of funding for the District and Department as provided by RCW 89.08.400. We recommend the assessment be set at five dollars per parcel with no additional acreage fee assessed.

**Mason County Board of County Commissioners**  
**Public Hearing – August 27, 2002**

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**Finding of Fact:**      **Proposed Special Assessment for Natural Resource Conservation;**  
                                 **RCW 89.08.400**

- I.      This is a request for adoption of a special assessment for natural resource conservation as defined by RCW 89.08.400.
- II.     RCW 89.08.400 states in part, “the county legislative authority may accept, or modify and accept, the proposed system of assessments, including the number of years during which the special assessment shall be imposed, if it finds that both the public interest will be served by the imposition of the special assessments and that the special assessments to be imposed on any land will not exceed the special benefit that the land receives or will receive from the activities of the conservation district. The findings of the county legislative authority shall be final and conclusive.” The findings are as follows:
1.    The Board of Commissioners has a responsibility to the residents of Mason County to provide for the prevention, control and abatement of nuisances detrimental to public health. This assessment and the partnership proposed would secure a constant source of funding for these services.
  2.    The assessment will provide increased protection of drinking water from non-point pollution sources.
  3.    By providing a constant source of funding the assessment will enable both Mason Conservation District and Mason County Department of Health Services to provide increased response to citizen concerns in all areas of the county.
  4.    Public interest will be served by protection of recreational opportunities, which include: swimming, fishing, shellfish harvesting, and boating.
  5.    The proposed programs would provide the community with increased awareness of their role as individuals in protection and conservation of natural resources in our county.
  6.    The public interest of Mason County property owners, residents and visitors is served by protection of water resources. Maintaining clean water for drinking, recreation, and commercial activities works to build a healthy community and economy.
  7.    Property values are enhanced when there is greater confidence in safe drinking water and surface water.
  8.    The Board of Commissioners acknowledges that grants are one source of revenue to fund water quality projects. However, grant funding is not sustainable, predictable, or free. It is, therefore in the public interest to create a sustainable source of funding for water quality issues.

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**EXHIBIT**     C    

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STATE OF WASHINGTON

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CERTIFICATE OF SERVICE

I hereby certify that I deposited a complete copy of the Appellant  
Mason Conservation District's Answer to Petition for Review , including this  
Certificate of Service, in the United States Mail, first class postage prepaid,  
addressed to the following this 11<sup>th</sup> day of January, 2010.

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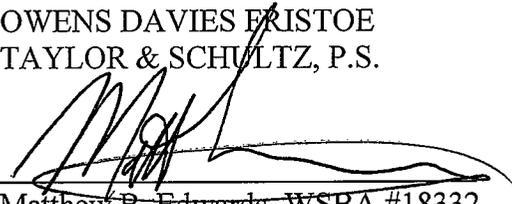
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DATED this 11<sup>th</sup> day of January, 2010.

OWENS DAVIES ERISTOE  
TAYLOR & SCHULTZ, P.S.



Matthew B. Edwards, WSBA #18332