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SUPREME COURT  
OF THE STATE OF WASHINGTON

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PUGET SOUND ENERGY, INC.,

Appellant/Cross-Respondent,

v.

EAST BELLEVUE COMMUNITY COUNCIL,

Respondent/Cross-Appellant, and

CITY OF BELLEVUE,

Respondents.

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RESPONDENT CITY OF BELLEVUE'S ANSWER  
TO PETITION FOR REVIEW

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Appendix A:           House Bill (HB) 2610 Analysis

Appendix B:           EBCC and Houghton Community Council  
Jurisdiction Maps

## I. INTRODUCTION

The East Bellevue Community Council's petition for review should be denied. The Court of Appeals' unpublished opinion correctly applied established law and does not conflict with any opinion of this Court. Additionally, the East Bellevue Community Council (EBCC) is one of only two remaining community municipal corporations in Washington State. Consequently, the EBCC cannot demonstrate that there is any issue of substantial public interest that should be resolved by this Court.

The underlying litigation concerns Puget Sound Energy's (PSE) proposal to link two electrical substations in the City of Bellevue (City) in order to improve electrical service and meet future demands (the Project). After four years of regulatory permit analysis, the City approved the Project with mitigations in May 2015.

Because a portion of the Project is located within the EBCC's jurisdiction, City approval was not final until the EBCC considered the effect of the Project within this limited geographic area. Unfortunately, the EBCC's consideration of the Project focused exclusively on its own unsupported parochial concerns, and the EBCC disapproved of the Project, including disapproval of the conditional use permit and shoreline conditional use permit the City granted to PSE.

After PSE challenged the EBCC's disapproval of the Project, the Court of Appeals correctly ruled that the EBCC's decision to deny the conditional use permit was not supported by substantial evidence. Additionally, the Court of Appeals held that based on a plain reading of RCW 35.14.040(3), the EBCC does not have jurisdiction to review shoreline conditional use permits. These holdings do not involve any issue of substantial public importance and do not conflict with any decision of this Court. Therefore, the EBCC's Petition for Review (Petition) should be denied.

## **II. RESTATEMENT OF ISSUES PRESENTED FOR REVIEW**

1. Does the Court of Appeals' holding that the EBCC lacked jurisdiction to disapprove of the shoreline conditional use permit granted by the City to PSE involve any issue of substantial public interest under RAP 13.4(b)(4)?

2. Does the Court of Appeals' decision conflict with any decision of this Court under RAP 13.4(b)(1)?

## **III. STATEMENT OF THE CASE**

The EBCC is a community municipal corporation created under chapter 35.14 RCW that was established in 1969 when the City annexed the EBCC area. The EBCC and the Houghton Community Council in the

City of Kirkland are the only two community municipal corporations (also known as “community councils”) that remain in Washington State. Appendix A (House Bill (HB) 2610 Analysis) at 1.<sup>1</sup> These community councils’ jurisdictions are virtually contiguous, separated by a 2.8 mile stretch across north Bellevue. Appendix B (EBCC and Houghton Community Council Jurisdiction Maps).<sup>2</sup>

The Project seeks to improve electrical service reliability and meet future demands in the City by looping an overhead transmission line in PSE’s Lake Hills substation with the Phantom Lake substation. Administrative Record (AR) 780-82; AR 2168 at ¶ 3; AR 2176 at ¶ 27.

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<sup>1</sup> The HB 2610 Analysis included as Appendix A is publicly-available at [https://app.leg.wa.gov/CMD/Handler.ashx?MethodName=getdocumentcontent&documentId=Q\\_3xQTOCDmQ&att=false](https://app.leg.wa.gov/CMD/Handler.ashx?MethodName=getdocumentcontent&documentId=Q_3xQTOCDmQ&att=false)

The EBCC and the Houghton Community Council are incorporated as community municipal corporations under RCW ch. 35.14, but they are colloquially referred to as “community councils.” Although the EBCC and the Houghton Community Council will be referred to as “community councils” herein, these two remaining community municipal corporations are not to be confused with the many neighborhood groups that also call themselves “neighborhood councils” or “community councils.” *See, e.g.*, Madison Park Community Council (<http://www.madisonparkcouncil.org/>); Westwood-Roxhill-Arbor Heights Community Council (<https://wwrhah.wordpress.com/>).

<sup>2</sup> The EBCC and Houghton Community Council Jurisdiction Maps included as Appendix B are publicly-available on the official Bellevue and Kirkland websites at [http://www.ci.bellevue.wa.us/pdf/Clerk/EastBellCommCounc\\_A.pdf](http://www.ci.bellevue.wa.us/pdf/Clerk/EastBellCommCounc_A.pdf) and <http://www.kirklandwa.gov/Assets/Planning/Planning+PDFs/HCCMap2.pdf>

The proposed transmission line covers 2.89 miles in the City, a portion of which is partially within the EBCC's area. AR 2172 at ¶ 9.

After four years of regulatory permit analysis, Comprehensive Plan Policy Analysis, public hearings, and the Hearing Examiner's recommendation of approval, the City approved PSE's application for a conditional use permit and shoreline conditional use permit, with mitigation requirements. AR 236-45; AR 2158-93; AR 2629-40. However, in June 2015, the EBCC passed Resolution No. 550, which disapproved of the Project within the EBCC's area and disapproved of the conditional use permit and shoreline conditional use permit the City issued to PSE. AR 3016-21. The EBCC Resolution included 16 numbered paragraphs of "findings and conclusions" in support of its disapproval of the Project. *Id.*

As a result of the EBCC's disapproval, PSE commenced the underlying Land Use Petition Act (LUPA) appeal and challenged Resolution No. 550. The Court of Appeals ultimately ruled in an unpublished opinion that (1) substantial evidence does not support EBCC Resolution No. 550, and (2) the plain language of RCW 35.14.040(3) does not give the EBCC jurisdiction to approve or disapprove of the shoreline conditional use permit the City granted to PSE. *Puget Sound Energy v.*



*East Bellevue Comm'ty. Council*, No. 74464-0-I, at 2, 6-19, 22-26 (Wash. App. Jan. 30, 2017) (Opinion); Appendix A to Petition.

#### IV. ARGUMENT

Discretionary review under RAP 13.4(b) is available only in limited circumstances. Here, the EBCC argues two grounds for review: (1) the Court of Appeals' holding that the EBCC lacked authority to approve or disapprove of the shoreline conditional use permit involves an issue of substantial public interest (RAP 13.4(b)(4)); and (2) the Court of Appeals' decision conflicts with this Court's decision in *City of Bellevue v. East Bellevue Comm'ty Council*, 138 Wn.2d 937, 983 P.2d 602 (1999) (RAP 13.4(b)(1)). Petition at 12-20. For the reasons described below, neither argument has merit, and discretionary review should be denied.

##### **A. The Court of Appeals' Decision Does Not Involve An Issue of Substantial Public Interest Under RAP 13.4(b)(4).**

The EBCC first argues that review of the Court of Appeals' opinion is warranted under RAP 13.4(b)(4). Petition at 12-15. Specifically, the EBCC believes the court's holding that the EBCC lacked authority to disapprove of the shoreline conditional use permit involves an issue of substantial public importance. *Id.* This argument ignores both the substance and effect of the court's opinion and should be rejected.

The Court of Appeals' opinion, along with the analysis contained therein, is incredibly straightforward. In considering the EBCC's authorizing statute, RCW 35.14.040, the court simply applied basic rules of statutory construction and held the plain words of RCW 35.14.040(3) do not authorize the EBCC to approve or disapprove shoreline conditional use permits. Opinion at 22-26. The court declined to add words ("shoreline conditional use permits") to the statute that the legislature omitted, and distinguished chapter 90.58 RCW, which governs shoreline conditional use permits, from chapter 35.63 RCW, which governs conditional use permits. *Id.* at 23-26. The plain words of RCW 35.14.040 did not support the EBCC's argument that shoreline conditional use permits are merely a subset of "conditional use permits," and there is nothing in the court's relatively uncontroversial holding that would elicit substantial public interest or warrant review by this Court under RAP 13.4(b)(4).

Further, the holding that the EBCC lacks jurisdiction to approve or disapprove shoreline conditional use permits will impact *only* the EBCC and the Houghton Community Council. This ruling has no application or importance separate from the narrow question of the scope of authority granted to municipal community councils by their authorizing statute, RCW 35.14.040. Because the EBCC and Houghton Community Council

are the only two community councils that exist in Washington State, the Court of Appeals' decision would, at most, impact only the authority of these two community councils. Appendix A (HB 2610 Analysis) at 1. Even this impact would be limited to the narrow issue of the community councils' jurisdiction to approve or disapprove shoreline conditional use permits.

Similarly, the opinion affects a limited number of people in an extremely limited geographic area. The specific holding that the EBCC lacks authority to disapprove of the shoreline conditional use permit at issue would impact only local residents living within the limited jurisdiction of the EBCC. *See* Appendix B (EBCC Map). To the extent the decision also applies to the Houghton Community Council authority over shoreline conditional use permits, it would only affect residents living within the limited jurisdiction of the Houghton Community Council. *Id.* The EBCC and Houghton Community Council are both located within the same area of King County. In fact, their respective jurisdictions are virtually contiguous, separated by a mere 2.8 mile stretch across north Bellevue. *Id.* As a result, the decision would be of interest to a limited number of people, living in the same geographic area, with zero impact or interest to members of the public outside the EBCC and Houghton

Community Council jurisdictions.<sup>3</sup> This Court should deny discretionary review under RAP 13.4(b)(4) on this basis as well.

To the extent the EBCC argues that the “public importance in preserving shorelines” supports discretionary review, this argument again ignores the substance of the Court of Appeals’ opinion. *See, e.g.*, Petition at 15. The court considered and rejected the EBCC’s argument that it had jurisdiction to review shoreline conditional use permits and refused to rewrite RCW 35.14.040 to add words the legislature omitted. Opinion at 22-26. As part of its analysis, the court acknowledged the rigorous requirements governing shoreline conditional use permits in chapter 90.58 RCW and recognized the primacy of state interests over local interests with respect to Washington’s shorelines. *Id.* at 25.

Contrary to the EBCC’s Petition, the opinion does not question or denigrate Washington’s shoreline protection policy when considering the narrow issue of the EBCC’s jurisdiction to disapprove of a shoreline conditional use permit not mentioned in its authorizing statute. *Id.* at 22-26. The larger public’s interest in protecting shorelines was not an issue before the court, and the vast majority of the public, who live outside the limited jurisdiction of any area potentially impacted by this decision, have

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<sup>3</sup> Notably, just as any other citizen residents within the EBCC or Houghton Community Council jurisdictions still have the ability to be heard regarding a shoreline conditional use permit through the regular permitting and appeal process.

little-to-no interest in the limits of EBCC authority under RCW 35.14.040. For all of these reasons, further review by this Court is not warranted under RAP 13.4(b)(4).

**B. The Court of Appeals' Decision Does Not Conflict With Any Decision of This Court.**

The EBCC next argues that review is warranted under RAP 13.4(b)(1) because the opinion is contrary to this Court's decision in *City of Bellevue*, 138 Wn.2d 937, 983 P.2d 602. The EBCC's argument focuses on this Court's holding that, when authorized by RCW 35.14.040, community councils have final decision-making authority over land use approvals and disapprovals within their geographic jurisdiction. *City of Bellevue*, 138 Wn.2d at 943-47, 983 P.2d at 605-07. The EBCC then argues the Court of Appeals' opinion conflicts with the community council decision-making authority discussed in *City of Bellevue*. Petition at 14-20.

First, and contrary to the EBCC's argument, the Court of Appeals' opinion recognized "RCW 35.14.040 provides the EBCC authority to affect whether land use ordinances approved by [the City] become effective within the EBCC area." Opinion at 2. The court also quoted, at length, the relevant portion of *City of Bellevue* and stated, "[u]nder RCW 35.14.040(3), the EBCC has the authority to approve or disapprove

conditional use permits approved by [the City] to the extent of property within the EBCC's area.” *Id.* at 19-20. Thus, consistent with *City of Bellevue*, the Court of Appeals acknowledged the scope of the EBCC’s final decision-making authority over subjects listed in RCW 35.14.040. *See Sammamish Comm’ty Council v. City of Bellevue*, 108 Wn. App. 46, 55, 29 P.3d 728, 732 (2001) (“In [*City of Bellevue*], the Supreme Court recognized that RCW 35.14.040 gave community councils final decision-making authority over subjects listed in RCW 35.14.040 applying to land, buildings, or structures within their geographic jurisdictions.”).

Second, although the Court of Appeals recognized the EBCC’s final decision-making authority over certain land use subjects, the court nonetheless concluded the EBCC committed a fatal error when exercising this authority because PSE established that substantial evidence did not support the EBCC’s adoption of Resolution No. 550. Opinion at 6-19. In contrast to *City of Bellevue*, this holding was not based on the EBCC’s authorizing statute, RCW 35.14.040, but instead applied RCW 36.70C.130(1)(c), which permits judicial relief from land use decisions not supported by substantial evidence. *Id.* at 5 (citing *Lauer v. Pierce County*, 173 Wn.2d 242, 252-53, 267 P.3d 988, 992 (2011)).

In applying the substantial evidence standard of review to the EBCC’s findings and conclusions, the Court of Appeals’ opinion contains

a lengthy discussion of why the EBCC failed to provide substantial evidence to support Resolution No. 550 when viewed in light of the whole record before the court. *Id.* at 6-19. No portion of the court's application of the substantial evidence standard under RCW 36.70C.130(1)(C) or its attendant holding that the EBCC failed to meet this controlling standard conflicts with, or even touches on, this Court's decision in *City of Bellevue*. *Id.* at 6-19.

Third, the court's secondary holding that the plain language of RCW 35.14.040(3) does not grant the EBCC jurisdiction to disapprove shoreline conditional use permits does not conflict with *City of Bellevue*. *See id.* at 22-26. *City of Bellevue* did not hold that the EBCC's final decision-making authority extends to shoreline conditional use permits or any other matters not listed under RCW 35.14.040. Quite the contrary—the land use subjects at issue in *City of Bellevue* were the comprehensive plan and a zoning ordinance, which are expressly listed in subsections (1) and (2) of RCW 35.14.040. *City of Bellevue*, 138 Wn.2d at 943-47, 983 P.2d at 605-07. Although the EBCC may disagree with the Court of Appeals' holding that its jurisdiction is limited by the plain language of the statute, this does not create a conflict with Supreme Court precedent or otherwise warrant review under RAP 13.4(b).

Fourth, and importantly, *City of Bellevue* concerned the validity of a legislative decision of the EBCC, and this Court reviewed the legislative decision at issue for illegal acts or arbitrary and capricious conduct. *Id.* at 943 n. 1, 983 P.2d at 605. In fact, the Court confirmed at the outset of its *City of Bellevue* opinion that when the EBCC considered the zoning ordinance at issue in the case, “[the EBCC] was not exercising a judicial or quasi-judicial function.” *Id.*

Conversely, the EBCC’s disapproval of the Project and disapproval of the permits the City issued to PSE is adjudicatory in nature, and the Court of Appeals reviewed this quasi-judicial decision in order to determine whether the EBCC’s decision was supported by substantial evidence, rather than under the illegal acts and arbitrary and capricious standard of review employed by this Court in *City of Bellevue*. See *Sunderland Family Treatment Servs. v. City of Pasco*, 127 Wn.2d 782, 788, 903 P.2d 986, 990 (1995) (citing *Pentagram Corp. v. City of Seattle*, 28 Wn. App. 219, 227, 622 P.2d 892 (1981)) (“The grant or denial of a special use permit by local government is adjudicatory in nature.”). This Court’s evaluation of the EBCC’s legislative decision in *City of Bellevue* has no bearing on the Court of Appeal’s evaluation of the EBCC’s quasi-judicial decision here, and this distinction provides yet another reason why review is not warranted under RAP 13.4(b)(1).



In sum, although *City of Bellevue* did recognize that the EBCC has final decision-making authority over subjects listed in RCW 35.14.040, this Court did not hold the EBCC’s jurisdiction extends beyond the plain language of the authorizing statute or that the EBCC’s exercise of this authority is immune from a LUPA challenge when PSE shows the EBCC’s decision was not supported by substantial evidence. *See* RCW 36.70C.130(1)(c). The Court of Appeals’ consideration and holdings regarding these issues were incredibly straightforward, relatively uncontroversial, and did not conflict with *City of Bellevue*. As a result, discretionary review under RAP 13.4(b) should be denied.

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## V. CONCLUSION

The City respectfully requests that the Court deny the EBCC's Petition because the Court of Appeals' opinion does not involve any issue of substantial public importance and does not conflict with *City of Bellevue* or any other decision of this Court. Therefore, Supreme Court review is not available under RAP 13.4(b)(4) or RAP 13.4(b)(1).

Dated this 31<sup>st</sup> day of March, 2017.

Respectfully submitted,

CITY OF BELLEVUE  
OFFICE OF THE CITY ATTORNEY  
Lori M. Riordan, City Attorney



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Assistant City Attorney  
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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies under penalty of perjury of the laws of the State of Washington that he/she caused to be served in the manner indicated below a true correct copy of the RESPONDENT CITY OF BELLEVUE’S ANSWER TO PETITION FOR REVIEW on the party or parties below stated:

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Dated this Thursday, March 31, 2017, at Bellevue, WA.

/s/ Jason W. Banks  
Jason W. Banks, Legal Assistant

**APPENDIX A**  
House Bill (HB) 2610 Analysis

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## Local Government Committee

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### HB 2610

**Brief Description:** Repealing provisions governing community municipal corporations.

**Sponsors:** Representatives Springer, Eddy, Goodman, Stanford, Moscoso and Kagi.

#### Brief Summary of Bill

- Provides that community municipal corporations for cities and towns may not be organized after January 1, 2012.
- Expires provisions governing existing municipal corporations on January 6, 2014.

**Hearing Date:** 1/24/12

**Staff:** Ann Koepke (786-7291), Ethan Moreno (786-7386).

#### Background:

Community municipal corporations (corporations) may be organized when unincorporated territory is annexed by a city or town using certain annexation provisions if the service area: (1) would be otherwise eligible for incorporation as a city or town; (2) has at least 300 inhabitants and 10 percent of the population of the annexing city or town; or (3) has at least 1,000 inhabitants. Corporations may also be organized when two or more cities are consolidated pursuant to specific statutory requirements. Two community municipal corporations currently exist in Washington state: the East Bellevue Community Council and the Houghton Community Council.

No territory may be included within the service area of two or more corporations. After initial organization, the ongoing existence of corporations must be ratified by qualified voters within the service area of the corporation every four years.

Corporations are governed by a community council composed of five members serving four-year terms. Community council members are elected at the same elections authorizing the continued existence of the corporation. Community councils are staffed by a deputy to the appropriate city

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

clerk. The city is required to provide the council with clerical and technical assistance and a properly equipped office. The necessary expenses of the community council must be budgeted and paid by the city.

Corporations have specific land use powers and duties prescribed in statute. The adoption, approval, enactment, amendment, granting, or authorization by the city council or commission of an ordinance or resolution applying to land, buildings, or structures within a corporation becomes effective upon either approval by the community council, or by failure of the community council to disapprove the ordinance or resolution within 60 days. Such authority applies to specified land use controls, including comprehensive plans, zoning ordinances, and subdivision plats.

In addition to powers and duties relating to the approval of zoning regulations and restrictions, a corporation acting through its community council may:

- make recommendations concerning a proposed comprehensive plan or other proposal that directly or indirectly affects the use of property or land within the service area;
- provide a forum for the consideration of the conservation, improvement, or development of property or land within the service area; and
- advise, consult, and cooperate with the legislative authority of the city on local matters directly or indirectly affecting the service area.

**Summary of Bill:**

The statutory authority providing for the initial organization of community municipal corporations for cities and towns expires June 7, 2012. Provisions regarding the governance and operations of community municipal corporations expire January 6, 2014.

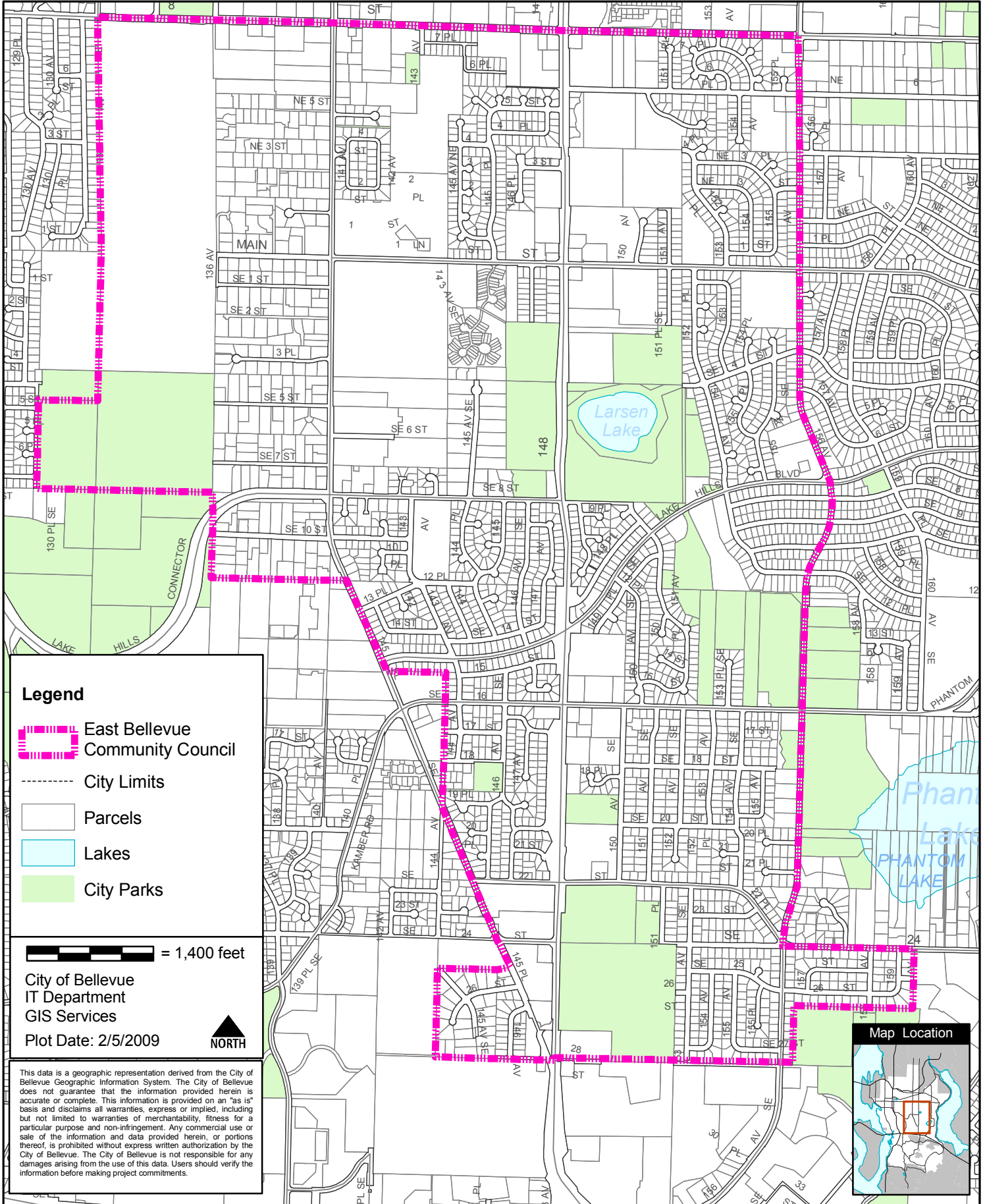
**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**APPENDIX B**  
EBCC and HCC Jurisdiction Maps

# East Bellevue Community Council



**Legend**

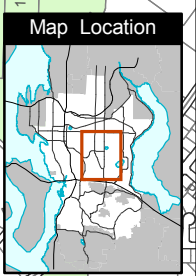
- East Bellevue Community Council
- City Limits
- Parcels
- Lakes
- City Parks

= 1,400 feet

City of Bellevue  
IT Department  
GIS Services  
Plot Date: 2/5/2009

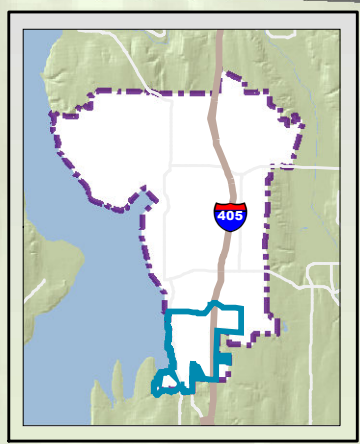
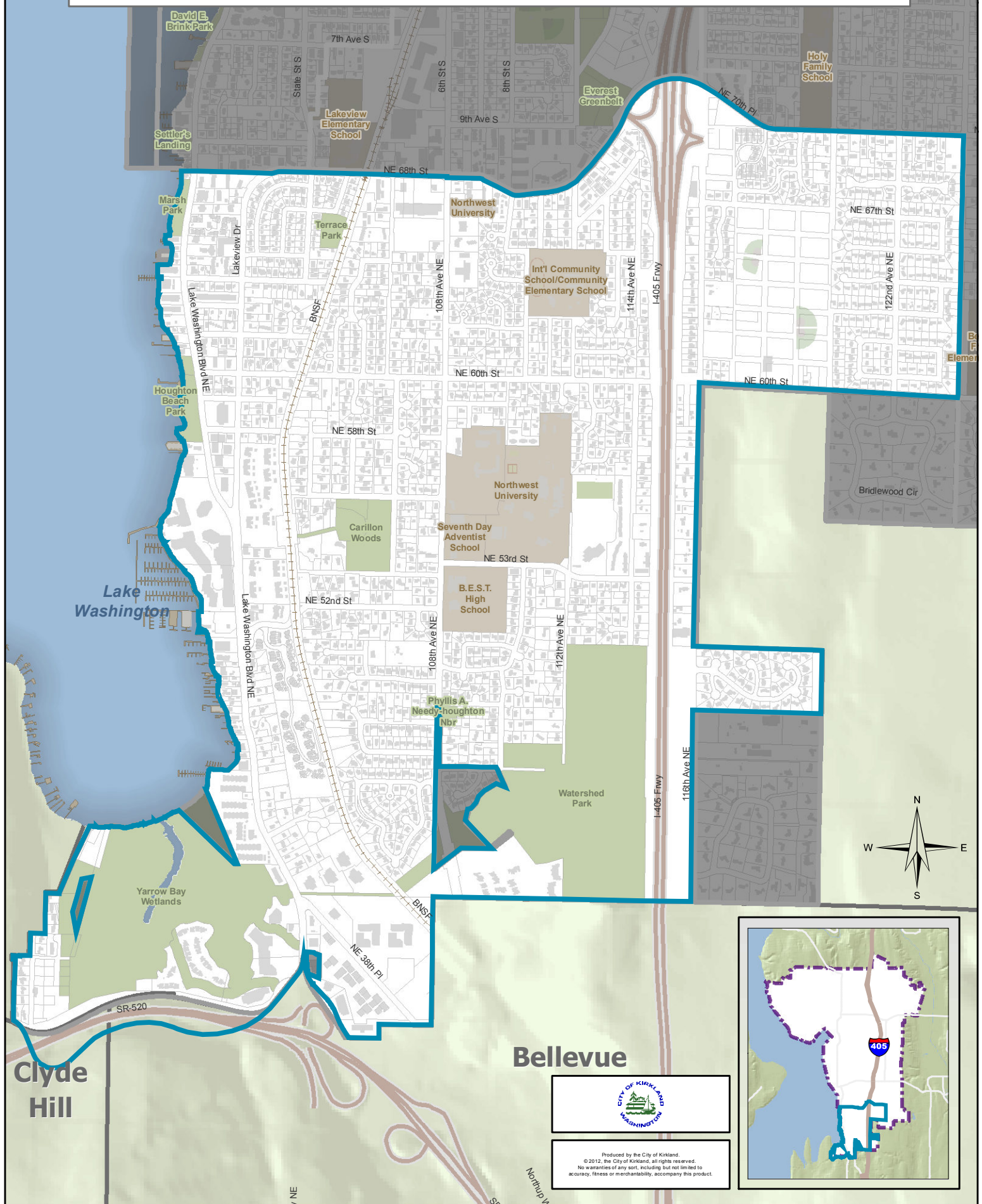
NORTH

This data is a geographic representation derived from the City of Bellevue Geographic Information System. The City of Bellevue does not guarantee that the information provided herein is accurate or complete. This information is provided on an "as is" basis and disclaims all warranties, express or implied, including but not limited to warranties of merchantability, fitness for a particular purpose and non-infringement. Any commercial use or sale of the information and data provided herein, or portions thereof, is prohibited without express written authorization by the City of Bellevue. The City of Bellevue is not responsible for any damages arising from the use of this data. Users should verify the information before making project commitments.





# Houghton Community Council Jurisdiction



Clyde Hill

Bellevue



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