95260-4

No. _____

SUPREME COURT
OF THE STATE OF WASHINGTON

No. 75561-7

COURT OF APPEALS, DIVISION I
OF THE STATE OF WASHINGTON

JOHN R. FERLIN and MARY E. FERLIN, Trustees of the FERLIN FAMILY LIVING TRUST, J&M'S, LLC, BROOKS MANUFACTURING CO., and ROOSEVELT LAND COMPANY, LLC,

Petitioners,

vs.

CHUCKANUT COMMUNITY FOREST PARK DISTRICT, WHATCOM COUNTY, STEVEN OLIVER in his capacity as the Whatcom County Treasurer, THE CITY OF BELLINGHAM,

Respondents.

PETITION FOR REVIEW

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TABLE OF AUTHORITIES

A. Identity of Petitioners.

Petitioners John R. Ferlin and Mary E. Ferlin, J&M's, LLC, Brooks Manufacturing Co., and Roosevelt Land Co., LLC, were the plaintiffs in the trial court and the appellants in the Court of Appeals.

Petitioners own real property subject to a property tax levy imposed by Respondent Chuckanut Community Forest Park District. Petitioners paid the tax under protest and instituted suit to challenge the validity and legality of the Park District's formation, as well as the tax levy.

B. Court of Appeals Decision.

Petitioners seek review of the Court of Appeals' published decision of October 30, 2017. *Ferlin v. Chuckanut Community Forest Park District*, ___ Wn. App. ___, 404 P.3d 90 (2017). A copy of the Court of Appeals decision is attached hereto as Appendix A.

C. Issues Presented for Review.

1. Did the Court of Appeals err in holding that the Chuckanut Community Forest Park District was validly created "for the management, control, improvement, maintenance, and acquisition of parks, parkways, boulevards, and recreational facilities" under RCW 35.61.010[1] when the

[1] A copy of select portions of RCW Chapter 35.61 is attached hereto as Appendix B.

sole purpose of the Park District was to impose a property tax levy for the benefit of the City of Bellingham?

2. Did the Court of Appeals err in holding that the property tax levy imposed by the Chuckanut Community Forest Park District was statutorily authorized, because it was for a "legitimate park purpose," even though the revenue was not to be used "for the management, control, improvement, maintenance, and acquisition of parks, parkways, boulevards, and recreational facilities" as required by RCW 35.61.010?

3. Did the Court of Appeals err in holding that the property tax levy imposed by the Chuckanut Community Forest Park District satisfied the uniformity of taxation requirements of Article VII, Section 1 of the Washington Constitution when the Park District acted as a strawman to collect a tax on only a portion of the taxpayers of the City of Bellingham?

4. Did the Court of Appeals err in holding that the property tax levy imposed by the Chuckanut Community Forest Park District satisfied the object of taxation requirements of Article VII, Section 5 of the Washington Constitution by relying on the language in RCW 35.61.010 to establish the "object or purpose" of the property tax levy?

D. Statement of the Case.

The underlying facts are described in greater detail with citations to the record on appeal in Petitioner's Opening Brief filed in the Court of Appeals. *See*, Appellant's Opening Brief, at 3-19, attached hereto as Appendix C.

1. The City buys 82 acres using an Interfund Loan.

In August 2011, the City purchased 82 acres of land located in the City limits variously referred to as: "Chuckanut Community Forest," "Chuckanut Ridge," "Fairhaven Highlands," and/or "the 100-Acre Wood" (the "Property"). As far back as 2005, the Property had been slated for development into over 700 residential lots, which proposal had been opposed by those who had concerns over the environmental impact of such a development. The City purchased the Property with the intent of greatly limiting, or altogether stopping, development on it.

The City paid $8.2 million for the Property, using various internal sources of money, including park impact fees and Greenways levy funds. $3,232,021.60 of the purchase price was "borrowed" from the "Greenways Endowment Fund"— an internal transfer of money within the City coffers from one fund to another (the "Interfund Loan"). The Greenways Endowment Fund and the interest it earned was required to be used for maintenance of existing City parks.

The Interfund Loan had to be paid back. The City explored ways to repay the Interfund Loan. The mayor proposed carving off a piece of the Property and selling it to developers. The City Council disagreed, and rejected the mayor's proposal. As a result, the City was looking for alternative ways of repaying the Interfund Loan.

2. Creation of the Park District—to pay back the Interfund Loan.

The idea of forming a metropolitan park district to raise additional tax revenues for repaying the Interfund Loan started within the City. Ultimately, however, the Chuckanut Community Forest Park District's genesis arose via a citizen petition.[2]

The Petition for the formation of the Park District presented to the public for signature, states that: "the City of Bellingham purchased 82 of these acres in 2011 using Greenways funds, Park Impact Fees, and an inter-fund loan of $3,232,201.60 that requires repayment to ensure this entire property is permanently protected for the benefit of current and future generations."[3] The Petition also states that if formed, the purpose of the park district would be to impose a general property tax of "twenty-eight cents per thousand of assessed value" for no more than 10 years. Those

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[2] Metropolitan Park Districts can be formed either legislatively or by petition. *See*, RCW 35.61.020. The petition method was used here.

[3] The Petition is attached hereto as Appendix D.

signing the Petition were told the tax "would be sufficient to pay off the inter-fund loan, assuming that a minimum of 90 percent of the levy is used to repay the City of Bellingham inter-fund loan of $3,232,201.60 plus applicable interest, and assuming that no more than ten percent of the levy is to be used by the commissioners for administrative purposes and for stewardship of the Community Forest in cooperation with the City and Community." The Petition does not mention that the Park District would be created for any purpose other than paying back the Interfund Loan.

The Petition garnered enough signatures and was placed on the ballot in the February 12, 2013 special election in Whatcom County.[4] The "statement for" the Ballot Measure to form the Park District unequivocally announced the intended purpose of the Park District—e.g., to tax but not own, manage or control the Property:

> The singular purpose of this Park District is to repay the loan that enables the City's purchase of the Chuckanut Community Forest (aka Chuckanut Ridge), *thereby assuring its preservation as a park, forever* [emphasis added].
> . . . .

The Ballot Measure passed in the February 2013 election by a margin of 51.73%, amounting to a total of 129 more "yes" than "no" votes.[5]

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[4] The Ballot Measure is attached hereto as Appendix E.
[5] CP 153 at ¶ 11-12; CP 164.

In June 2013, the Park District adopted its mission statement, which included that the Park District was a "fiscal mechanism through which the district, via a tax levy, will repay the City of Bellingham for the Greenways Endowment Fund loan."[6]

Pursuant to the mission statement, on November 14, 2013, the Park District adopted Resolution No. 1 establishing a regular property tax levy of $.28 per $1000 of assessed value, estimated to generate $422,820.12 of revenue (the "Levy").[7] On that same day, the Park District adopted a budget dictating that $337,000 of the revenue from the Levy be given to the City as "Repayment of COB Greenways Fund."[8]

3. The Interlocal Agreement and Conservation Easement.

Almost two months after the Levy was adopted, the Park District and City entered into an interlocal agreement with the City ("Interlocal Agreement").[9] This agreement required the City to grant the Park District a conservation easement in "exchange for" repayment of the Interfund Loan (the "Conservation Easement").[10] In its October 30, 2017 decision, the Court of Appeals relies upon this sole after-the-fact transaction to justify the

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[6] CP 211 at ¶ 10.
[7] CP 212 at ¶12 and CP 269 (Exhibit I).
[8] *Id.*
[9] The Interlocal Agreement is attached hereto as Appendix F.
[10] The Conservation Easement is attached hereto as Appendix G.

validity of both the Park District and the Levy, holding that they serve a "legitimate park purpose" falling within the scope of RCW 35.61.010.

The Interlocal Agreement states that both the City Council and Park District desired to enter into the agreement "to define the terms and conditions under which the Park District will repay the City's Greenways Endowment Fund Loan in exchange for a conservation easement."[11] The Interlocal Agreement cites paying off the Interfund Loan and dissolving afterwards as the consideration for the Conservation Easement.[12] Under the Interlocal Agreement, the City retains control and ownership of the Property.[13] The Interlocal Agreement also dictates that the Conservation Easement terminates if the Park District violates any terms of the Interlocal Agreement including failing to dissolve after repayment of the Loan.[14]

As for establishment of a "park," the Interlocal Agreement only requires the City initiate the public process to establish a City Park on the Property within 10 years.[15] Lastly, after it has paid back the Loan, the Park District is required to assign *all* of its interest in the Conservation Easement to a "qualified" organization, and then dissolve.[16]

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[11] Interlocal Agreement, Pg 2.
[12] Interlocal Agreement at ¶ 3.a.
[13] Interlocal Agreement at ¶ 4.
[14] Interlocal Agreement at ¶ 3.b. If the Park District tries to remain active after the Interfund Loan is repaid, the Conservation Easement will be nullified.
[15] Interlocal Agreement at ¶ 4.
[16] Interlocal Agreement at ¶ 3.c.

The Conservation Easement was recorded on January 6, 2014. It gives the Park District the "right to enter the Property, to observe and monitor compliance with the terms of the Easement" as well as obtain injunctive relief to enforce the Conservation Easement.[17] The Conservation Easement limits the uses allowed on the Property, but does not require the Property to ever become a park.[18]

The Park District admits that it did not obtain an appraisal for the value of the Conservation Easement and, in fact, has "no knowledge" as to the value.[19] However, both the District and the City executed an excise tax affidavit, signed under oath by both the Mayor and the Chair of the Park District, declaring that the "gross selling price" of the Conservation Easement was $3,232,021.60—the exact amount of the Interfund Loan.[20]

4. Procedural Facts.

The case came before the trial court on cross-motions for summary judgment in May 2016. The trial court denied Petitioners' motion and granted summary judgment in favor of the Respondents. Petitioners timely appealed, and the Court of Appeals affirmed in its published opinion. This Petition for Review timely follows.

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[17] Conservation Easement at Section VI.1.
[18] Conservation Easement at Sections IV and V.
[19] CP 688-689 (Park District's Answer to Interrogatory Nos. 12 and 13).
[20] CP 701.

E. Argument Why Review Should Be Accepted.

1. Standard of Review.

The grounds upon which this Court accepts discretionary review of a decision terminating review is governed by RAP 13.4(b). Review should be granted in this case pursuant to RAP 13.4(b)(3) and (4). As outlined below, this case raises questions of substantial public interest, to-wit: the scope of authority of a metropolitan park district to levy taxes. It also involves the interpretation and application of a century-old statute that has had little to no judicial interpretation. Finally, this petition raises questions of a constitutional magnitude regarding taxation. For these reasons, discretionary review should be granted.

2. The Court of Appeals erroneously failed to engage in a meaningful analysis of the statutes enabling and authorizing Metropolitan Park Districts, RCW Chapter 35.61 *et seq.*

Petitioners argued below that the Park District, as a municipal corporation, was void *ab initio,* because it was created for a purpose outside the scope of the enabling statute. Petitioners also argued that even if the Park District was in fact validly formed, the Levy was invalid, because it was adopted for a purpose outside the authority of the enabling legislation. (These arguments correspond with the first and second issues presented for review above). The Court of Appeals dismissed the first argument outright,

and then acknowledged the second by stating "If a municipal corporation acts in excess of its statutory authority, its action may be challenged as ultra vires." (Slip. Op. at 6). The Court then held the Levy valid under the statute, finding the Park District acted within its statutory authority.

The Park District's authority to exist and levy taxes upon property owners within its boundaries arises from RCW Chapter 35.61 *et seq*. The trial court and the Court of Appeals were required to engage in statutory construction and apply the law to the facts of this case, which are undisputed.

The critical statutory language at issue is:

> "A metropolitan park district may be created for the management, control, improvement, maintenance, and acquisition of parks, parkways, boulevards, and recreational facilities." RCW 35.61.010

A fundamental objective of statutory construction is for the court to ascertain and carry out the intent of the legislature. *Rozner v. City of Bellevue*, 116 Wn.2d 342, 347, 804 P.2d 24 (1991). When interpreting RCW Chapter 35.61, the Court of Appeals was to first look to the plain language of the statute to determine this intent. *Id.* Where statutory language is plain and unambiguous, the statute's meaning must be derived from the wording of the statute itself—its common and ordinary meaning. *HomeStreet, Inc. v. State, Dep't of Revenue*, 166 Wn.2d 444, 451-52, 210

P.3d 297 (2009). If the term or terms at issue are undefined, the court may look to the dictionary. *Id.* A statute that is clear on its face is not subject to judicial interpretation. *Id.*

An additional level of judicial scrutiny is required here, because a tax levy is involved. "If there is any doubt about the meaning of a taxing statute it must be construed most strongly against the taxing authority and in favor of the taxpayer." *Shurgard Mini-Storage of Tumwater v. State Dep't of Revenue*, 40 Wn. App. 721, 727, 700 P.2d 1176 (1985). Statutes conferring the power to levy taxes will not be enlarged by an equitable construction. *Buckley v. Tacoma*, 54 Wn. 460, 464, 103 P. 807 (1909).

In its October 30th decision, the Court of Appeals failed to conduct a meaningful analysis of the statutory language in light of the legislative intent behind RCW Chapter 35.61. Rather than analyze what the words "management, control, improvement, maintenance, and acquisition of parks..." meant in the context of the whole statutory scheme, the Court simply held that "In exchange for agreeing to pass its tax revenues on to the city, the park district did not acquire a park, but it did acquire a conservation easement that runs with the property in perpetuity." (Slip Op. at 7). The Court then held that the Conservation Easement allowed the Park District to exert "substantial control" over the way the "forest will be used and managed." The Court then concluded that "the fact that the levy is being

used to pay off the city's loan does not mean the levy moneys are not being raised and spent for a *legitimate park purpose*." (Slip Op. at 7) (emphasis added).

The error in the Court of Appeals' analysis is that without looking to the plain meaning of the words in the statute with an eye toward evincing the legislative intent of the legislature, it held that the standard by which the Levy should be measured was whether it was for a "legitimate park purpose." These phrases, ("legitimate park purpose" and "substantial control")[21] appear nowhere in RCW Chapter 35.61, and the Court of Appeals fails to explain why it chose to use those phrases rather than the plain language of the statute.

The legislative history of RCW Chapter 35.61 is relevant. The statutes at issue here were first passed in the early 1900's. They have been modified infrequently, and little to no caselaw interpreting and applying them exists.

The authority that is available (other than the plain language of the statute) indicates that the type of "park" a metropolitan park district is intended to govern, is that of a more "traditional" type of park and

[21] It is worth noting that the facts on record demonstrating the "substantial control" exerted by the Park District are limited to the Park District observing and monitoring compliance with the Conservation Easement. The Park District itself has no authority to directly control or manage the property and is required to file a lawsuit (with an attorney fee shift to the prevailing party) if it wishes to enforce the Conservation Easement.

recreation.[22] The Court of Appeals' October 30th decision is wholly inconsistent with that intent. The Court of Appeals relied upon the Conservation Easement to justify the Park District's and Levy's legitimacy. However, a conservation easement is not a "more traditional" type of parks and recreation.

In its opinion, the Court of Appeals cited RCW 84.34.210 as justification that the Conservation Easement brings the Park District and Levy into compliance as furthering a "legitimate park purpose." (Slip Op. at 8). However, this argument ignores that the concept of "conservation easements" and "conservation futures" as evidenced in RCW 84.34.210 was only first adopted in 1971, almost 70 years after the metropolitan park district enabling legislation was adopted. Further, the words "metropolitan park district" were only added to the statute in 1993, for the purpose of

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[22] The MRSC is the Municipal Research and Services Center "a nonprofit organization that helps local governments across Washington State better serve their citizens by providing legal and policy guidance on any topic." *See*, http://mrsc.org/Home/About-MRSC.aspx (visited June 8, 2016). The MRSC website contains a Q&A section on metropolitan park districts. One question asks "May metropolitan park districts fund a human services program?" The answer: "No. Metropolitan park districts, as authorized by chapter 35.61 RCW, do not have authority to fund human services programs." The comment quotes RCW 35.61.010 and then states "More specific information regarding the authority of a metropolitan park district is set out in RCW 35.61.130. Neither RCW 35.61.010 nor RCW 35.61.130, however, provides sufficiently broad authority to allow for the operation of a human services component; each seems to be limited to **more traditional forms of parks and recreation**." (emphasis added). http://mrsc.org/Home/Research-Tools/Ask-MRSC-Archives/Parks-and-Recreation.aspx#May-metropolitan-park-districts-fund-a-human-servi. This comment by the MRSC acknowledges that even after the 2001 amendments to the original 1907 laws authorizing metropolitan park districts, "traditional forms of parks and recreation" are still the focus of the law under RCW 35.61.010 and RCW 35.61.130. Conservation easements are not traditional forms of parks and recreation.

clarifying that a metropolitan park district *could* legally acquire a conservation future.

The change in language to RCW 84.34.210 did not alter the meaning of the words in RCW 35.61.010; surely, the legislature could have amended that Chapter as well if they had so desired. The amendment to RCW 84.34.210 clarified that a metropolitan park district has the authority to acquire a conservation easement, but only if the terms of the transaction comply with RCW 35.61 *et seq*. The question presented here is not whether the Park District had the legal ability to obtain a conservation easement, but rather, whether obtaining the specific Conservation Easement at issue here, two months after the Levy was already adopted, is sufficient to bring the Park District within the edicts of the enabling statutes.

The record below conclusively establishes that the Park District and Levy do not exist for any of the specific purposes set forth in RCW 35.61.010. Even when considering the Interlocal Agreement and Conservation Easement, the only way the Court of Appeals could justify affirming the trial court was to interject language which judicially watered down the enabling statute, finding that the Levy was for a "legitimate park purpose," because it enabled the Park District to exert "substantial control."

This Court should accept review and reverse the Court of Appeals after conducting an appropriate analysis and explanation of the powers

delegated to metropolitan park districts and its commissioners in RCW Chapter 35.61. This analysis should take into consideration the history of the enabling legislation and the fact that it applies only to "more traditional" types of parks and recreation.

3. A court may invalidate the Park District.

The Court of Appeals dismissed without analysis of Petitioners' argument that the District itself was formed for an improper purpose and is thus void *ab initio*. In doing so, it referenced the lack of authority cited by Petitioners for this proposition. This, in and of itself, is not a basis to avoid the substantive arguments presented: Can a Metropolitan Park District be created for any conceivable reason?

Here, the Park District was created for a single purpose, as outlined in all of the materials supporting its creation. Once formed, the Park District then took the actions required to fulfill that singular purpose: adoption of the Levy and budgeting to pass 90 percent of the revenue on to the City, in exchange for nothing. Only later did the Park District execute the Conservation Easement and Interlocal Agreement, which requires that the Park District dissolve after it pays off the Interfund Loan.

This is an issue of first impression. It appears that no published case has arisen where a municipal corporation and/or special district was formed to perform a function that is facially outside the edicts of its enabling

legislation. This petition presents an opportunity for this Court to establish that a special district (which may be created by citizen petition and ballot measure) must be formed for a purpose that is within the scope of the enabling legislation.

4. The Levy is unconstitutional.

In both the trial court and Court of Appeals, Petitioners argued that the Levy was adopted in violation of Article VII, Section 1 and Section 5 of the Washington Constitution. Article VII, Section 1 requires that all real property taxes be uniform within the jurisdiction for which the tax is imposed. Article VII, Section 5 requires the Levy to "state distinctly the object of the same to which only it shall be applied." A tax in violation of either provision is void. *Harbour Village Apartments v. City of Mukilteo*, 139 Wn.2d 604, 608-09, 989 P.2d 542 (1999). The Court of Appeals erred in affirming the trial court on these issues.

a. Article VII, Section 1 - Uniformity of Taxation.

Here, the Park District is merely a shell to collect a tax which the City of Bellingham could not legally have imposed. Article VII, Section 1 prohibits the City from imposing a property tax on only a portion of its residents. The record below establishes the City's significant involvement and collaboration with the organizers of the Park District. After formation, the Park District passed the Levy and a budget committing to give the funds

to the City to repay the Loan. Only after this was already done, were the Interlocal Agreement and Conservation Easement adopted.

No Washington cases exist on this subject, but a similar taxing scheme was rejected in California in *Rider v. County of San Diego*. *Rider v. County of San Diego*, 1 Cal.4th 1; 820 P.2d 1000, 2 Cal.Rptr.2d 490 (1991). There, a special taxing district was created to circumvent supermajority voting requirements on new taxes imposed by Proposition 13. *Rider* pointed out the difficulty of such cases, and set forth factors to be examined in determining whether a special taxing district was created to circumvent legal limitations on taxing. The *Rider* Court adopted an "essential control" test focusing on the motives behind the special district and taxation. A framework similar to the test in *Rider* should be applied to the Levy here.

The Court of Appeals spent significant effort analyzing *Rider* and its progeny. (*See*, Slip Op. at 8-11). The Court acknowledged this Court's opinion in *Granite Falls Library Capital Facility Area v. Taxpayers of Granite Falls*, 134 Wn.2d 825, 836, 953 P.2d 1150 (1998): "[t]he court's analysis shows that Washington's constitutional requirement for uniformity in taxation reflects a concern, somewhat similar to the concern in *Rider*, to ensure that a special localized taxing district is not controlled by the city or county of which it is a part." (Slip Op. at 11). However, the Court of

Appeals erred when it relied upon the result in *Granite Falls* to declare the Levy constitutional.

In *Granite Falls*, this Court was answering the question of whether a quasi-municipal corporation had the power and authority to tax within its established boundaries. Here, assuming it was validly formed, the Park District has the authority to levy a property tax. Rather, the issue here is whether the Levy is a *de facto* tax by the City of Bellingham.

Had the City adopted a tax to repay the Interfund Loan, it would have applied city-wide. The Park District was created to circumvent this constitutional requirement. The Levy made it facially "legal" to raise revenue by taxing only a portion of the City—the entire Park District is located within the corporate limits of the City of Bellingham. The Levy is therefore unconstitutional, because it violates Article VII, Section 1 as a *de facto* tax imposed by the City of Bellingham.

b. Article VII, Section 5 – Object of the Tax.

The Court of Appeals erroneously relied upon *Hogue v. Port of Seattle*, 54 Wn.2d 799, 809, 341 P.2d 171 (1959) to reject Petitioners' arguments on this issue. (Slip Op. at 12). The Levy stated absolutely nothing about its purpose or "object" whatsoever. Instead, it simply stated "A regular property tax levy is hereby authorized for the levy to be collected

in the 2014 tax year...."[23] The Levy could have easily stated that it was for "general operations of the Park District and repaying the Loan" or something to that effect. *Hogue* and the proposition it stands for does not cure this defect, much less even address it.

Hogue was not a case where the sufficiency of levy language was actually being evaluated. The *Hogue* opinion glosses over the very issue at bar here, without engaging in any analysis. In fact, the language of the levy at issue in *Hogue* is not even in the opinion. Thus, while the *Hogue* Court relied upon the statutory framework to justify compliance with Article VII, Section 5, we have no idea what the actual levy in that case said.

Further, the Court of Appeals' reliance on the reasoning in *Hogue* to justify the propriety of the Levy is problematic, because it relies on a premise proven false above: that the Levy was authorized by the statute. That is, RCW Chapter 35.61 *et seq.* does not authorize a tax levy for the purpose of paying off the City's Interfund Loan. Thus, even if the statutory framework *could have* cured the constitutional defect of the Levy, it fails to do so because the Levy is not for any of the purposes authorized by the statute. The Levy therefore violates Article VII, Section 5 and is void.

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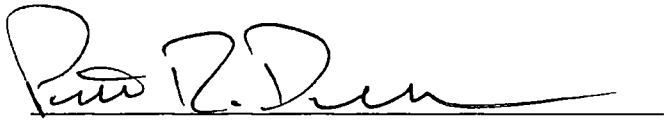
[23] CP 270.

F. Conclusion.

This Court should accept review, the decision of the Court of Appeals should be reversed, and this Court should remand for entry of Judgment in favor of Petitioners.

Respectfully submitted this 29TH day of November 2017.

BELCHER SWANSON LAW FIRM, PLLC



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DECLARATION OF SERVICE

On said day below, I hand delivered a true and correct copy of the Petition for Review to the following parties:

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

DATED November 29, 2017 at Bellingham, Washington.

MYLISSA BODE

APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

JOHN R. FERLIN and MARY E. FERLIN, trustees of the FERLIN FAMILY LIVING TRUST; J & M'S, LLC, a Washington limited liability company; BROOKS MANUFACTURING CO., a Washington corporation, and ROOSEVELT LAND COMPANY, LLC, a Washington limited liability company, Appellants, v. CHUCKANUT COMMUNITY FOREST PARK DISTRICT, a metropolitan park district; THE CITY OF BELLINGHAM, a Washington State municipal corporation, Respondents, and WHATCOM COUNTY, a Washington State municipal corporation; STEVEN OLIVER in his capacity as the Whatcom County Treasurer, Defendants.	No. 75561-7-I DIVISION ONE PUBLISHED OPINION FILED: October 30, 2017

BECKER, J. — The appellants own real property subject to a tax imposed by the new Chuckanut Community Forest Park District in south Bellingham.

Appellants claim the tax is illegal because the revenue is passed on to the city of Bellingham to pay off a loan needed by the city to buy the park property. The district retained an interest in the property through a conservation easement granted by the city, and its taxing authority exists independent of the city. We conclude the district's arrangement with the city does not exceed the district's statutory authority and it does not violate the constitutional requirement for uniformity in taxation. The trial court properly dismissed the taxpayers' suit on summary judgment.

FACTS

The material facts are not disputed. In 2011, the city of Bellingham purchased 82 acres of forested land located in south Bellingham. The property, locally known as the "Hundred Acre Wood," is adjacent to the north end of Chuckanut Drive and the Fairhaven neighborhood. It includes trails and wetlands and valuable habitat for a variety of plant and animal species.

The city purchased the forest for $8.2 million after the previous owner, a developer, went through foreclosure. To finance part of the purchase, the city used tax revenue and park impact fees. The remainder was made up by an interfund loan of $3.2 million from the Greenways Endowment Fund, which is earmarked for the payment of park maintenance costs. The city was obligated to find a source of funds to pay back the $3.2 million loan on a timely basis. One possibility was to carve off 25 acres to sell for development.

The idea of selling any part of the property was unpopular with a group of citizens who wanted the forest to remain intact. As an alternative, the citizens

proposed to create a park district as permitted by chapter 35.61 RCW. They proposed that the park district could use its power of taxation to raise $3.2 million. The district would then transfer the revenue to the city to enable the city to pay back the interfund loan.

A park district may be created either by local government resolution or by citizen petition. Either way, a ballot proposition must be submitted to the voters of the area to be included and the creation of the district must be approved by majority vote. RCW 35.61.020(1). In this case, the district was created by citizen petition. The proposal for the creation of a park district was submitted to voters in south Bellingham in a special election on February 12, 2013.

The ballot measure asked, "Shall the Chuckanut Community Park District with boundaries encompassing [13 named precincts within the City of Bellingham] be created?" According to the explanatory statement, the district would have all powers provided in chapter 35.61 RCW, including the power to levy a property tax. The intended property tax levy rate was 28 cents per $1,000 in assessed value. This rate would provide a dedicated funding source for repayment of the interfund loan in 10 years. The proposition passed by a majority vote of 51.73 percent of the electorate. The Chuckanut Community Forest Park District was "created as a municipal corporation effective immediately upon certification of the election results." RCW 35.61.040.

In November 2013, the park district board, made up of commissioners elected during the special election, passed a resolution authorizing collection of a property tax. The total assessed value of property in the district was

$1,510,071,867. Based on a tax rate of 28 cents per $1,000 in assessed value, the total amount to be collected under the levy was $422,820.12. This amount was included in the county's ordinance authorizing the levy of taxes for 2014.

By this time, the city had already agreed to consider rezoning the 82 acres along with 29 acres of adjacent city-owned property from multi-family residential to public open space. To provide additional protection for the forest in its natural state, the park district commissioners negotiated an interlocal agreement with the city under which the city granted a conservation easement to the district. The city granted the easement "in consideration for: (1) the Park District paying off the Loan, accrued interest on the Loan and future interest; and (2) the Park District formally dissolving in accordance with RCW 35.61.310 after the Loan, accrued interest and future interest are paid off by the Park District." The city retained control and ownership of the property, "subject to" the conservation easement. The interlocal agreement requires that if the property is rezoned, the city will initiate the requisite public process for establishment of a park on the property consistent with the intent of the conservation easement and, within 10 years, adopt a park master plan for the property. A separate document laid out the terms of the conservation easement. These agreements were finalized in January 2014.

The appellants are taxpayers who own property within the park district and were taxed in accordance with the 2014 levy. They paid the tax under protest, then filed this suit in July 2014. Their complaint asked the court to enjoin

collection of the tax. An injunction may be issued to prevent collection of a tax if the law under which the tax is imposed is void. RCW 84.68.010.

The case came before the trial court in May 2016 on cross motions for summary judgment. The park district and the city defended the validity of the park district and the levy. The trial court granted summary judgment in favor of the defendant municipalities. The taxpayers appeal from that order.

We review summary judgment orders de novo, engaging in the same inquiry as the trial court. Mahoney v. Shinpoch, 107 Wn.2d 679, 683, 732 P.2d 510 (1987). Summary judgment is proper when, viewing the evidence and available inferences in favor of the nonmoving party, there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. CR 56(c).

VALIDITY OF DISTRICT FORMATION

"A metropolitan park district may be created for the management, control, improvement, maintenance, and acquisition of parks, parkways, boulevards, and recreational facilities." RCW 35.61.010. The taxpayers contend the Chuckanut Community Forest Park District is not a legitimate park district and was void at its inception because it was not created for any of the itemized statutory purposes. In their view, the documented history of events and communications leading up to the vote is decisive evidence that the district was created for the sole purpose of raising revenue for the city. For example, the "Statement For" in the ballot measure said, "The singular purpose of this Park District is to repay the loan that enabled the City's purchase of the Chuckanut Community Forest (aka Chuckanut

Ridge), thereby assuring its preservation as a park, forever. The alternative is that an unknown portion of the land may be sold."

RCW 35.61.010 lists permissible purposes of *actions* a park district may take once it is created. An *action* taken by a municipal corporation may be subject to challenge on the basis that it exceeds powers expressly or implicitly granted by statute. See, e.g., City of Tacoma v. Taxpayers of City of Tacoma, 108 Wn.2d 679, 695, 743 P.2d 793 (1987) (challenge to city's energy conservation program); Okeson v. City of Seattle, 150 Wn.2d 540, 78 P.3d 1279 (2003) (challenge to city ordinance that shifted responsibility for costs of providing streetlights to ratepayers of the city-owned electrical utility). The taxpayers offer no authority for declaring a municipal corporation void ab initio on a theory that the individuals who voted to create it had improper purposes. We reject their argument that the park district was void at inception and turn to their argument that the tax levy—an *action* taken by the park district—is void because it does not serve any of the purposes of park districts identified in RCW 35.61.010.

VALIDITY OF THE LEVY

If a municipal corporation acts in excess of its statutory authority, its action may be challenged as ultra vires. "Ultra vires acts are those performed with no legal authority and are characterized as void on the basis that no power to act existed, even where proper procedural requirements are followed." S. Tacoma Way, LLC v. State, 169 Wn.2d 118, 123, 233 P.3d 871 (2010). If the park district levy is ultra vires, the levy—not the park district—will be ruled invalid.

The taxpayers contend the levy is invalid because the park district did not "acquire" a park and it does not "manage," "control," "improve" or "maintain" a park, the functions authorized by RCW 35.61.010. They say all these functions are performed by the city as the owner of the property and the district's only function is to collect revenue and pass it through to the city. Paying off the city's debt, they argue, is not a legitimate park purpose.

In exchange for agreeing to pass its tax revenues on to the city, the park district did not acquire a park, but it did acquire a conservation easement that runs with the property in perpetuity. When the park district dissolves, its interest in the conservation easement is to be assigned to a qualified third party organization. Through the terms of the conservation easement, the park district exerted substantial control over the way the forest will be used and managed in years to come. For instance, the easement virtually eliminates the city's ability to make residential, commercial, or industrial use of the property. With limited exceptions, the city may not build or place roads or buildings of any type on the property; may not operate motor vehicles on it; may not remove trees, excavate, or grade; and may not provide athletic facilities or ball fields of any kind. The park district retains the right to enter the property, to observe and monitor compliance with the terms of the easement, and to enjoin and abate any activity that violates the easement.

The fact that the levy is being used to pay off the city's loan does not mean the levy monies are not being raised and spent for a legitimate park purpose. Enabling the city to pay off the loan is a means of preserving the entire

property as a park, including acreage that most likely would not be otherwise protected from development. To act under the authority of RCW 35.61.010, a metropolitan park district need not own title to real property in fee simple. A metropolitan park district is specifically authorized to acquire any lesser interest, including an easement or other contractual right "necessary to protect, preserve, maintain, improve, restore, limit the future use of, or otherwise conserve, selected open space land" for public use or enjoyment. RCW 84.34.210.

We conclude the district did not exceed its statutory authority by adopting the levy.

UNIFORMITY OF TAXATION

Appellants contend the levy violates the uniformity requirement of article VII, section 1 of the Washington Constitution: "All taxes shall be uniform upon the same class of property within the territorial limits of the authority levying the tax." Because of this provision, the city of Bellingham cannot impose a tax on only a portion of its residents. The taxpayers claim the park district is a "shell" or "strawman" created to collect a tax for the city so the city can do indirectly what it may not do directly. According to their brief, "The Levy is a *de facto* ad valorem tax by the City of Bellingham, and as such it is unconstitutional because it is imposed on only a portion of the residents within the City's corporate boundaries."

To illustrate their theory, the taxpayers cite Rider v. County of San Diego, 1 Cal. 4th 1, 820 P.2d 1000, 2 Cal. Rptr. 2d 490 (1991). The case centered on California's constitutional requirement for two-thirds voter approval of special

taxes imposed by cities, counties, and "special districts." CAL. CONST. art. XIII A, § 4; Rider, 1 Cal. 4th at 5.

The supermajority provision was adopted into the state constitution by a tax-cutting initiative in 1978. In 1982, the California Supreme Court held that an agency was a "special district" subject to the requirement of two-thirds voter approval only if it had the power to impose a tax on real property. Los Angeles County Transp. Comm'n v. Richmond, 31 Cal. 3d 197, 201, 643 P.2d 941, 182 Cal. Rptr. 324 (1982). In a dissent that would become a majority opinion in Rider, Justice Richardson observed that the majority's analysis could be readily used to circumvent the supermajority vote requirement of section 4 "by the simple creation of a district which is geographically precisely coterminous with a county, but which lacks its real property taxing power." Richmond, 31 Cal. 3d at 213 (Richardson, J., dissenting).

> The majority has cut a hole in the financial fence which the people in their Constitution have erected around their government. Governmental entities may be expected, instinctively, to pour through the opening seeking the creation of similar revenue-generating entities in myriad forms which will be limited only by their ingenuity.

Richmond, 31 Cal. 3d at 213 (Richardson, J., dissenting); see Rider, 1 Cal. 4th at 8.

In 1985, San Diego County tried and failed to gain a two-thirds vote for a county sales tax increase for criminal justice facilities. Rider, 1 Cal. 4th at 9. In 1987, the Richmond decision inspired enactment of a statute allowing creation of the San Diego County Regional Justice Facility Financing Agency as a "limited purpose special district" with no power to impose a property tax. Rider, 1 Cal.

4th at 9. The new agency's territorial boundaries were the same as those of San Diego County. The agency directors proposed a special sales tax for the limited purpose of constructing and operating the county's justice facilities, obtained 50.8 percent voter approval, and began collecting the tax. Taxpayers challenged the tax in court.

The trial court found that the new facility financing agency was created solely for the purpose of avoiding the supermajority requirement and was a deliberate attempt to circumvent it. Rider, 1 Cal. 4th at 8. That finding was amply supported by the record on appeal, but the California Supreme Court was less concerned with the purpose for which the agency was formed and more concerned with the intent of the framers of the supermajority requirement and the voters who adopted it. Rider, 1 Cal. 4th at 11. The court saw that Justice Richardson's prediction had come to pass and concluded that the facility financing agency had to be deemed a "special district" despite its lack of power to levy a property tax. Richmond's limitation of the term "special district" to those districts possessing property tax power frustrated the voters' intent to restrict the ability of local governments to impose new taxes to replace property tax revenues lost under other provisions of the initiative. Rider, 1 Cal. 4th at 11. Under Rider, a "special district" includes "any local taxing agency created to raise funds for city or county purposes to replace revenues lost by reason of the restrictions of Proposition 13." Rider, 1 Cal. 4th at 11. The court devised a six-factor test to analyze whether a new taxing agency "is *essentially controlled* by

one or more cities or counties that otherwise would have had to comply with the supermajority provision of section 4." Rider, 1 Cal. 4th at 11-12.

The Washington case that most resembles Rider is Granite Falls Library Capital Facility Area v. Taxpayers of Granite Falls Library Capital Facility Area, 134 Wn.2d 825, 836, 953 P.2d 1150 (1998). There, a statute authorized the creation of special districts to finance the construction of libraries. Taxpayers invoked article VII, section 1 of the Washington Constitution to challenge the validity of a tax imposed in a portion of Snohomish County to pay for and retire bonds for local library facilities. They claimed that the Snohomish County Council was "the true taxing authority" and the tax violated the constitution because it would not be imposed uniformly throughout Snohomish County. Granite Falls, 134 Wn.2d at 833. The court rejected this argument and concluded the special district was "sufficiently independent to levy taxes." Granite Falls, 134 Wn.2d at 835. The court's analysis shows that Washington's constitutional requirement for uniformity in taxation reflects a concern, somewhat similar to the concern in Rider, to ensure that a special localized taxing district is not controlled by the city or county of which it is a part. But the court concluded that the plain language of the statute declared a library facility district to be an independent taxing authority and vested it with sufficient express and implied powers to carry out all of its essential functions without reliance upon other governmental entities. Granite Falls, 134 Wn.2d at 835.

The same is true here. A metropolitan park district may include territory located in portions or all of one or more cities or counties, or one or more cities

and counties. RCW 35.61.010. A metropolitan park district has specific statutory authority to levy property taxes. RCW 35.61.210. It is vested with sufficient express and implied powers to carry out all of its essential functions without reliance upon other governmental entities.

The Chuckanut Community Forest Park District came into being in compliance with a statute that has been in place for 100 years without any argument that it frustrates the intent of our constitution's uniformity requirement. The appellants concede that the district has authority to tax real property within its boundaries and the tax at issue here is uniformly imposed within the district. The park district's achievement of obtaining a conservation easement from the city shows that it is not a shell for the city. The district is statutorily and organizationally distinct from the city. We conclude the district can impose a tax within its boundaries without running afoul of the uniformity requirement.

OBJECT OF TAXATION

The taxpayers also claim the tax levy violates article VII, section 5 of the Washington Constitution: "No tax shall be levied except in pursuance of law; and every law imposing a tax shall state distinctly the object of the same to which only it shall be applied." The taxpayers argue the levy is unconstitutional because the park district's resolution establishing the levy, passed in November 2013, does not mention any object of the tax.

This argument lacks merit as it is virtually identical to an argument rejected in Hogue v. Port of Seattle, 54 Wn.2d 799, 809, 341 P.2d 171 (1959). The taxpayers in that case sought to enjoin, on numerous grounds, the collection

of a two-mill tax levied by the Port of Seattle under the authority of statutes enacted to facilitate harbor improvements and promote industrial development. One ground of argument was that the object of the tax was not definitely stated in the statute as allegedly required by the second clause of article VII, section 5 of the Washington Constitution. The court's analysis is contained in a single paragraph:

> There is no merit in this contention. It is questionable whether the constitutional provision even applies to a statute of this type. Rather than directly imposing a tax, the 1957 act merely authorizes a tax levy. In any event, the object or purposes of the tax are set forth in the 1955 act, and by reference are as much a part of the 1957 act as if they had been explicitly written therein. Pacific First Fed. Sav. & Loan Ass'n v. Pierce County, 27 Wn. (2d) 347, 178 P. (2d) 351 (1947), and cases cited.

Hogue, 54 Wn.2d at 809.

The park district had authority to levy a property tax under RCW 35.61.210(1). Thus, the levy was "in pursuance of law." WASH. CONST. art. VII, § 5. It is questionable whether the levy resolution is a "law imposing a tax" any more than the statute in Hogue was. "The law by which counties are authorized to levy a tax is not, strictly speaking, a law imposing a tax." Mason v. Purdy, 11 Wash. 591, 594, 40 P. 130 (1895). But in any event, under Hogue, the constitutional requirement is satisfied because the object or purposes of a park district levy are set forth in RCW 35.61.010. Should greater specificity be required, we observe that on the same date they passed the levy resolution for 2014, the park district commissioners adopted a budget detailing the expenses they anticipated for 2014, primarily the repayment of the city's loan from the

Greenways Endowment Fund. We find no violation of article VII, section 5 of the Washington Constitution.

Affirmed.

Becker, J.

WE CONCUR:

Mann, J.

Appelwick, J.

APPENDIX B

RCW 35.61.010

Creation—Territory included.

A metropolitan park district may be created for the management, control, improvement, maintenance, and acquisition of parks, parkways, boulevards, and recreational facilities. A metropolitan park district may include territory located in portions or all of one or more cities or counties, or one or more cities and counties, when created or enlarged as provided in this chapter.

[**2002 c 88 § 1; 1994 c 81 § 60; 1985 c 416 § 1; 1965 c 7 § 35.61.010.** Prior: **1959 c 45 § 1; 1943 c 264 § 1;** Rem. Supp. 1943 § 6741-1; prior: **1907 c 98 § 1;** RRS § 6720.]

NOTES:

Validating—1943 c 264: "Acts of Metropolitan Park District Commissioners, and of the officers, employees and agents of Metropolitan Park Districts heretofore performed in good faith in accordance with the statutes which are hereby reenacted, are hereby validated, and all assessments, levies and collections and all proceedings to assess, levy and collect as well as all debts, contracts and obligations heretofore made or incurred by or in favor of any Metropolitan Park District heretofore at any time existing and all bonds or other obligations thereof are hereby declared to be legal and valid and of full force and effect." [**1943 c 264 § 23.**]

RCW 35.61.020

Election—Resolution or petition—Area—Limitations.

(1) When proposed by citizen petition or by local government resolution as provided in this section, a ballot proposition authorizing the creation of a metropolitan park district must be submitted by resolution to the voters of the area proposed to be included in the district at any general election, or at any special election which may be called for that purpose.

(2) The ballot proposition must be submitted if the governing body of each city in which all or a portion of the proposed district is located, and the legislative authority of each county in which all or a portion of the proposed district is located within the unincorporated portion of the county, each adopts a resolution submitting the proposition to create a metropolitan park district.

(3) As an alternative to the method provided under subsection (2) of this section, the ballot proposition must be submitted if a petition proposing creation of a metropolitan park district is submitted to the county auditor of each county in which all or a portion of the proposed district is located that is signed by at least fifteen percent of the registered voters residing in the area to be included within the proposed district. Where the petition is for creation of a district in more than one county, the petition must be filed with the county auditor of the county having the greater area of the proposed district, and a copy filed with each other county auditor of the other counties covering the proposed district.

(4) Territory by virtue of its annexation to any city whose territory lies entirely within a park district are deemed to be within the limits of the metropolitan park district. Such an extension of a park district's boundaries is not subject to review by a boundary review board independent of the board's review of the city annexation of territory.

(5) A city, county, or contiguous group of cities or counties proposing or approving a petition regarding formation of a metropolitan park district may limit the purpose and may limit the taxing powers of such proposed metropolitan park district in its resolution in cases where the metropolitan park district is being formed for specifically identified facilities referenced in (a) of this subsection. The ballot proposition must reflect such limitations as follows:

(a) A city, county, or contiguous group of cities or counties may limit the proposed district's purposes to providing the funds necessary to acquire, construct, renovate, expand, operate, maintain, and provide programming for specifically identified public parks or recreational facilities that are otherwise authorized by law for metropolitan park districts. The ballot proposition must specifically identify those public parks or recreational facilities to be funded, which identification may be made by referencing a metropolitan park district plan that has been approved by the legislative authority of the city, county, or contiguous group of cities or counties proposing the formation of the district;

(b) A city, county, or contiguous group of cities or counties may limit the maximum levy rate that is available to such metropolitan park district to any levy rate that does not exceed the aggregate rate set forth under RCW **35.61.210**(1). The ballot proposition must state the maximum regular levy rate.

(6) Nothing herein prevents a city, county, or contiguous group of cities or counties from proposing formation of a metropolitan park district that is not limited under subsection (5) of this section.

[**2017 c 215 § 1; 2002 c 88 § 2; 1965 c 7 § 35.61.020.** Prior: 1943 c 264 § 2, part; Rem. Supp. 1943 § 6741-2, part; prior: **1909 c 131 § 1;** 1907 c 98 § 2, part; RRS § 6721, part.]

RCW 35.61.040

Election—Creation of district—Bridge loan, line of credit.

If a majority of the voters voting on the ballot proposition authorizing the creation of the metropolitan park district vote in favor of the formation of a metropolitan park district, the metropolitan park district must be created as a municipal corporation effective immediately upon certification of the election results and its name must be that designated in the ballot proposition. When an ex officio treasurer of a metropolitan park district is a city or county treasurer, the treasurer may provide a bridge loan or line of credit to the newly formed metropolitan park district until such time as the district has received sufficient levy proceeds to pay for the maintenance and operations of the metropolitan park district.

[**2017 c 215 § 6; 2002 c 88 § 4; 1965 c 7 § 35.61.040.** Prior: 1943 c 264 § 3, part; Rem. Supp. 1943 § 6741-3, part; prior: **1909 c 131 § 2**; 1907 c 98 § 3, part; RRS § 6722, part.]

RCW 35.61.130

Eminent domain—Park commissioners' authority, generally—Prospective staff screening.

(1) A metropolitan park district has the right of eminent domain, and may purchase, acquire and condemn lands lying within or without the boundaries of said park district, for public parks, parkways, boulevards, aviation landings and playgrounds, and may condemn such lands to widen, alter and extend streets, avenues, boulevards, parkways, aviation landings and playgrounds, to enlarge and extend existing parks, and to acquire lands for the establishment of new parks, boulevards, parkways, aviation landings and playgrounds. The right of eminent domain shall be exercised and instituted pursuant to resolution of the board of park commissioners and conducted in the same manner and under the same procedure as is or may be provided by law for the exercise of the power of eminent domain by incorporated cities and towns of the state of Washington in the acquisition of property rights: PROVIDED, HOWEVER, Funds to pay for condemnation allowed by this section shall be raised only as specified in this chapter.

(2) The board of park commissioners shall have power to employ counsel, and to regulate, manage and control the parks, parkways, boulevards, streets, avenues, aviation landings and playgrounds under its control, and to provide for park police, for a secretary of the board of park commissioners and for all necessary employees, to fix their salaries and duties.

(3) The board of park commissioners shall have power to improve, acquire, extend and maintain, open and lay out, parks, parkways, boulevards, avenues, aviation landings and playgrounds, within or without the park district, and to authorize, conduct and manage the letting of boats, or other amusement apparatus, the operation of bath houses, the purchase and sale of foodstuffs or other merchandise, the giving of vocal or instrumental concerts or other entertainments, the establishment and maintenance of aviation landings and playgrounds, and generally the management and conduct of such forms of recreation or business as it shall judge desirable or beneficial for the public, or for the production of revenue for expenditure for park purposes; and may pay out moneys for the maintenance and improvement of any such parks, parkways, boulevards, avenues, aviation landings and playgrounds as now exist, or may hereafter be acquired, within or without the limits of said city and for the purchase of lands within or without the limits of said city, whenever it deems the purchase to be for the benefit of the public and for the interest of the park district, and for the maintenance and improvement thereof and for all expenses incidental to its duties: PROVIDED, That all parks, boulevards, parkways, aviation landings and playgrounds shall be subject to the police regulations of the city within whose limits they lie.

(4)(a) For the purpose of receiving criminal history record information by metropolitan park districts, metropolitan park districts:

(i) Shall establish by resolution the requirements for a state and federal record check of park district employees, applicants for employment, volunteers, vendors, and independent contractors, who, in the course of their work or volunteer activity with the park district, may:

(A) Have unsupervised access to children, persons with developmental disabilities, or vulnerable adults; or

(B) Be responsible for collecting or disbursing cash or processing credit/debit card transactions; and

(ii) May require a criminal background check conducted through a private organization of park district employees, applicants for employment, volunteers, vendors, and independent contractors, who, in the course of their work or volunteer activity with the park district, may have unsupervised access to children, persons with developmental disabilities, or vulnerable adults. A background check conducted through a private organization under this subsection is not required in addition to the requirement under (a)(i) of this subsection.

(b) The investigation under (a)(i) of this subsection shall consist of a background check as allowed through the Washington state patrol criminal identification system under RCW **43.43.830** through **43.43.834**, the Washington state criminal records act under RCW **10.97.030** and **10.97.050**, and the federal bureau of investigation.

(c) The background checks conducted under (a)(i) of this subsection must be done through the Washington state patrol identification and criminal history section and may include a national check from the federal bureau of investigation, which shall be through the submission of fingerprints. The Washington state patrol shall serve as the sole source for receipt of fingerprint submissions and the responses to the submissions from the federal bureau of investigation, which must be disseminated to the metropolitan park district.

(d) The park district shall provide a copy of the record report to the employee, prospective employee, volunteer, vendor, or independent contractor.

(e) When necessary, as determined by the park district, prospective employees, volunteers, vendors, or independent contractors may be employed on a conditional basis pending completion of the investigation.

(f) If the employee, prospective employee, volunteer, vendor, or independent contractor has had a record check within the previous twelve months, the park district may waive the requirement upon receiving a copy of the record.

(g) For background checks conducted pursuant to (c) of this subsection, the metropolitan park district must transmit appropriate fees, as the Washington state patrol may require under RCW **10.97.100** and **43.43.838**, to the Washington state patrol, unless alternately arranged.

(h) The authority for background checks outlined in this section is in addition to any other authority for such checks provided by law.

[**2017 c 332 § 4; 2006 c 222 § 1; 1969 c 54 § 1; 1965 c 7 § 35.61.130.** Prior: (i) 1943 c 264 § 4, part; Rem. Supp. 1943 § 6741-4, part; prior: 1919 c 135 § 1, part; **1907 c 98 § 4;** RRS § 6723, part. (ii) **1943 c 264 § 14**; Rem. Supp. 1943 § 6741-14; prior: **1919 c 135 § 2; 1907 c 98 § 14**; RRS § 6733.]

NOTES:

*Outdoor recreation land acquisition or improvement under marine recreation land act: Chapter **79A.25** RCW.*

RCW 35.61.290

Transfer of property by city, county, or other municipal corporation—Emergency grant or loan of funds by city.

(1) Any city within or comprising any metropolitan park district may turn over to the park district any lands that it may own, or any street, avenue, or public place within the city for playground, park, or other purposes authorized for such district, and thereafter its control and management must vest in the board of park commissioners. However, the police regulations of such city apply to all such premises.

(2) At any time that any such metropolitan park district is unable, through lack of sufficient funds, to provide for the continuous operation, maintenance and improvement of the parks and playgrounds and other properties or facilities owned by it or under its control, and the legislative body of any city within or comprising such metropolitan park district must determine that an emergency exists requiring the financial aid of such city to be extended in order to provide for such continuous operation, maintenance and/or improvement of parks, playgrounds facilities, other properties, and programs of such park district within its limits, such city may grant or loan to such metropolitan park district such of its available funds, or such funds that it may lawfully procure and make available, as it finds necessary to provide for such continuous operation and maintenance and, pursuant thereto, any such city and the board of park commissioners of such district are authorized and empowered to enter into an agreement embodying such terms and conditions of any such grant or loan as may be mutually agreed upon.

(3) The board of metropolitan park commissioners may accept public streets of the city and grounds for public purposes when donated for park, playground, boulevard, and other park purposes authorized for such district.

(4) Counties, cities, and other municipal corporations, including but not limited to park and recreation districts operating under chapter **36.69** RCW, may enter into agreements with metropolitan park districts to transfer to one another, with or without consideration therefor, any lands, facilities, equipment, other interests in real or personal property, or interests under contracts, leases, or similar agreements. The board of metropolitan park commissioners may accept and may make, for metropolitan park district purposes, such transfers of lands, facilities, equipment, other interests in real or personal property, and interests under contracts, leases, or similar agreements.

[**2017 c 215 § 5; 2005 c 226 § 1; 1985 c 416 § 5; 1965 c 7 § 35.61.290.** Prior: **1953 c 194 § 1.** Formerly: (i) **1943 c 264 § 18**; Rem. Supp. 1943 § 6741-18; prior: **1907 c 98 § 16**; RRS § 6735. (ii) **1943 c 264 § 19**; Rem. Supp. 1943 § 6741-19; prior: **1907 c 98 § 19**; RRS § 6738.]

NOTES:

Application—2005 c 226: "Sections 1 through 3 of this act apply retroactively to metropolitan park district elections occurring on or after May 1, 2004." [**2005 c 226 § 4.**]

Effective date—2005 c 226: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 28, 2005]." [**2005 c 226 § 5.**]

RCW 35.61.300

Transfer of property by city, county, or other municipal corporation—Assumption of indebtedness—Issuance of refunding bonds.

(1) When any metropolitan park district is formed pursuant to this chapter and assumes control of the parks, parkways, boulevards, and park property of the city in which said park district is created, or the metropolitan park district accepts, pursuant to RCW **35.61.290**, any lands, facilities, equipment, other interests in real or personal property, or interests under contracts, leases, or similar agreements from a county or other municipal corporation (including but not limited to a park and recreation district operating under chapter **36.69** RCW), such metropolitan park district may assume all existing indebtedness, bonded or otherwise, incurred in relation to the transferred property or interest, in which case it shall arrange by taxation or issuing bonds, as herein provided, for the payment of such indebtedness, and shall relieve such city, county, or municipal corporation from such payment.

(2) A metropolitan park district is hereby given authority to issue refunding bonds when necessary, subject to chapters **39.36** and **39.53** RCW, in order to enable it to comply with this section.

(3)(a) In addition, refunding bonds issued under subsection (2) of this section for the purpose of assuming existing voter-approved indebtedness may be issued, by majority vote of the commissioners, as voter-approved indebtedness, if:

(i) The boundaries of the metropolitan park district are identical to the boundaries of the taxing district in which voter approval was originally obtained;

(ii) The governing body of the original taxing district has adopted a resolution declaring its intent to dissolve its operations and has named the metropolitan park district as its successor; and

(iii) The requisite number of voters of the original taxing district approved issuance of the indebtedness and the levy of excess taxes to pay and retire that indebtedness.

(b) A metropolitan park district acting under this subsection (3) is deemed the successor to the original taxing district and any refunding bonds issued under this subsection (3) constitute voter-approved indebtedness. The metropolitan park district shall levy and collect annual property taxes in excess of the district's regular property tax levy, in an amount sufficient to pay and retire the principal of and interest on those refunding bonds.

[**2005 c 226 § 2; 1985 c 416 § 6; 1965 c 7 § 35.61.300.** Prior: **1943 c 264 § 22**; Rem. Supp. 1943 § 6741-22; prior: **1907 c 98 § 22**; RRS § 6741.]

NOTES:

Application—Effective date—2005 c 226: See notes following RCW **35.61.290.**

APPENDIX C

because the Park District is effectively acting on behalf of the City to impose a tax the City would otherwise not legally be permitted to.

II. ASSIGNMENTS OF ERROR

1. The Trial Court erred when it denied Plaintiffs' Motion for Summary Judgment and granted Defendants' Motion for Summary Judgment.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Can a metropolitan park district be formed under RCW 35.61 *et seq* for the sole purpose of imposing a property tax for the benefit of the City of Bellingham?

2. Can a metropolitan park district impose a tax levy for the sole purpose of transferring virtually all collected funds to a City for repayment of the City's debt?

3. Is the tax levy imposed by the Park District a *de facto* ad valorem tax imposed on behalf of the City of Bellingham, in violation of Art VII, Section 1 of the State Constitution?

4. Is the tax levy adopted by the Park District in violation of Art VII, Section 5 of the State Constitution?

IV. STATEMENT OF THE CASE

In July 2014, the Plaintiffs filed a Complaint for Declaratory Judgment and Injunctive Relief, asking the Superior Court to declare the Park District as void, thereby invalidating all of its actions to date, and refund the property taxes paid by Plaintiffs

under protest.[2] The Complaint alternatively plead that even if the court found the Park District to be Valid, the Levy should be invalidated on both statutory and constitutional grounds.

A. PROCEDURAL HISTORY AND TAXPAYER STANDING.

Each of the named Plaintiffs own real property located within the boundaries of the Park District, and each of the Plaintiffs was assessed property tax pursuant to the Park District's Levy.[3] That portion of the taxes allocated to the Levy were paid under protest pursuant to RCW Chapter 84.68, which was formally acknowledged by the Whatcom County Treasurer.[4]

Whatcom County was named as a nominal but required party since it collects the tax at issue. The Park District of course passed the Levy, and the City of Bellingham receives the all of the revenue from it (minus administrative costs) per an interlocal agreement.

In late September 2014, both the Park District and City filed "Special Motions to Strike" based on RCW 4.24.525, also known as

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[2] CP 4 - 22 (Complaint). The Plaintiffs paid their property taxes under protest pursuant to RCW Chapter 84.68 *et seq.* and demanded refunds as the tax was unlawful.
[3] CP 314 at ¶ 7 (Declaration of John R. Ferlin).
[4] CP 314-316 (¶¶ 8.1-8.6) and CP 319-342 (Exhibits A through F).

Washington's "Anti-SLAPP" statute.[5] Declarations were filed in support of those motions; these declarations are part of the record on appeal because they were also relied upon in the summary judgment phase now on appeal.

In May 2016, the Plaintiffs, City and Park District filed cross-motions for summary judgment with accompanying supportive declarations. After responses and replies were filed, the trial court heard the motions on June 21, 2016 and orally denied Plaintiffs' motion for summary judgment and granted the City and Park Districts' motions for summary judgment.[6] An order reflecting this oral ruling was entered on July 13, 2016 whereby the Complaint was dismissed with prejudice.[7] Plaintiffs timely filed a Notice of Appeal on July 26, 2016.[8]

B. THE FORMATION OF THE PARK DISTRICT.

The City purchased the 82-acre Chuckanut Community Forest in 2011 for $8.2 million after a foreclosure on the previous owner, a developer who had proposed a large development on the

[5] The Anti-SLAPP litigation ended up on direct review to the Supreme Court, and thus there was no activity at the trial court level until after the mandate was issued in August 2015 (CP 382-384).
[6] CP 893-894.
[7] CP 895-899.
[8] CP 900.

Property.[9] The City came up with the funds by using Greenway funds, park impact fees "and an interfund loan of $3,232,021.60" from the Greenways Endowment Fund" (the "Interfund Loan").[10] Interest from the Greenways Endowment Fund is used for park maintenance in the City.[11]

As soon as the City Council had authorized the purchase of the Property in August 2011, and before it had decided to use the Interfund Loan, current City Councilmember Michael Lilliquist and former City Councilmember Jack Weiss were involved in discussions with citizens about how to finance the purchase of the Property.[12] By September 2011, it had become more clear that an interfund loan was going to be required to fill a gap in available funding.[13] How that Interfund Loan would be paid back was an issue being discussed by those supporting the purchase as well as several of the council members. In an email and draft speech from September 15, 2011, Jack Weiss indicated his belief that it would be "more fair" to assess the "closest 1000 households" for the

[9] CP 55-56 at ¶ 4-6.
[10] CP 56 at ¶ 6.
[11] CP 56 at ¶ 6.
[12] CP 737-739.
[13] CP 740-745.

additional expense of the Property, rather than the whole of the City of Bellingham "since their property values will increase."[14]

At the time the Interfund Loan was made, the City did not know how it was going to pay it back.[15] In September 2011, John Carter, then the City's Finance Director, sent an email to the Mayor, as well as City Council, including Michael Lilliquist, outlining the options for repaying the $3.2 million Interfund Loan, which list had come from "previous internal discussions."[16] In the attachment to the email, eleven different options are raised as a way to repay the loan. Number "6.b." entitled "Solicit other public funds" states "We also could consider setting up a Metropolitan Parks district which would provide some opportunities for additional tax receipts. I do not have much background on what it would take to set this up."[17]

During this time, several options on repayment were being considered, including selling a portion of the Property. The Mayor proposed rezoning 57 acres of the property as a park, and zoning the remaining 25 acres as multifamily residential, to be sold to a developer.[18] The City Council rejected this option but "made it

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[14] CP 740-745.
[15] CP 56 at ¶ 7.
[16] CP 746-748.
[17] CP 747.
[18] CP 56-57 at ¶ 9.

clear" to citizens that the public "either needed to come up with funding for retiring the Interfund Loan by 2016 or the City would sell a portion of the [Property] to help retire the Interfund Loan."[19] It was at this point that a group of citizens began in earnest, the process of forming a Metropolitan Park District to pay back the Interfund Loan.[20]

This group approached City Councilmember Michael Lilliquist about creating a Metropolitan Park District that could tax property owners within the District for the purpose of repaying the Interfund Loan.[21] The City Council was at some point asked to legislatively initiate the formation of a park district; but that option lacked sufficient support.[22] Instead, a citizen petition drive was started to place the question to the voters of whether a Metropolitan Park District should be formed; that petition was ultimately submitted to the County Auditor around June 18, 2012 (the "Petition").[23]

In March 2012, before the Petition was submitted to the Auditor, emails were exchanged between proponents of the Park

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[19] CP 179 at ¶ 9.
[20] CP 179 at ¶ 10-11.
[21] CP 57 at ¶ 10.
[22] *Id.*
[23] CP 151-152 at ¶ 2.

District and City Councilmembers Jack Weiss and Michael Lilliquist. One of the primary citizen supporters of the Park District, Robyn du Pre, emailed that "our team has been busy working on the proposed funding package for the Woods" and attached "for your review draft ballot text and an overview/FAQ document."[24] The email also says it will be forwarded to Parks Director James King and Mayor Linville. Both Michael Lilliquist and Jack Weiss responded, providing substantive comments and suggestions to the proposed ballot measure language.[25]

At some point between March 2012 when the above ballot language was bouncing around City Hall and June 2012, the City Council informally decided (not on the record) that they would not approve a citizen request for the City to form a park district by Council resolution.[26] Thus, in June 2012, Robyn du Pre emailed Lilliquist and Weiss, and suggested that Mayor Linville:

> "seems against [a metropolitan park district] partially because they can become perpetual—which not many of our team wants. We just want a funding mechanism and once the loan is repaid, we want to sunset the [metropolitan park district]. [Mayor Linville] keeps saying we should do an LID. It is our understanding that LID's can only be used for capital

[24] CP 752.
[25] CP 754 (Weiss) and CP 758 (Lilliquist).
[26] CP 57 at ¶ 10.

> improvements and infrastructure, not acquisition. We would love to be proven wrong.....
>
> Petition text should go to the auditor next week for formal approval![27]

About a month later, in July 2012, Robyn du Pre sent a broadcast email about the formation of the Park District, as an alternative to the Mayor's rezone being considered that same month. It stated "This would be a new metropolitan park district that would levy a small property tax ... on properties on the southside. The intent is that this would be sunsetted after 10 years, when adequate funds have been raised to retired[sic] the city's loan."[28]

On July 23, 2012, the City Council rejected the Mayor's re-zone proposal; there was no alternate plan in place to repay the Interfund Loan.[29] This is when the Petition to create the Park District became the sole method of financing the repayment of the Interfund Loan. The actual Petition for the formation of the Park District is attached to this Brief as Appendix A[30] and states, among other things, that "the City of Bellingham purchased 82 of these

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[27] CP 760.
[28] CP 761-763.
[29] CP 403 at ¶ 4.
[30] The Petition itself is at CP 154-155. The Petition was declared to have "met the statutory requirements as to petition format" and contained signatures of at least 15% of the registered voters residing in the area sought to be included in the proposed district. CP 152 at ¶ 3-6.

acres in 2011 using Greenways funds, Park Impact Fees, and an inter-fund loan of $3,232,201 that requires repayment to ensure this entire property is permanently protected for the benefit of current and future generations." The Petition further states that if formed, the purpose of the park district would be to impose a general property tax of "twenty-eight cents per thousand of assessed value" for no more than 10 years. Those signing the Petition were told the tax "would be sufficient to pay off the inter-fund loan, assuming that a minimum of 90 percent of the levy is used to repay the City of Bellingham inter-fund loan of $3,232,201, plus applicable interest, and assuming that no more than ten percent of the levy is to be used by the commissioners for administrative purposes and for stewardship of the Community Forest in cooperation with the City and Community." Nowhere in the Petition is there mention of the Park District existing for any purpose other than paying back the Interfund Loan.

The Petition garnered sufficient signatures and a ballot measure was scheduled for a February 12, 2013 special election ("Ballot Measure").[31] The Ballot Measure and explanatory statement for the voter's pamphlet were drafted by the proponents

[31] CP 152 at ¶ 5.

of the Park District.[32] The explanatory statement recites that the district would have "all the powers provided in Ch. 35.61 RCW" but it also stated that the proposed levy rate was for the sole purpose of repaying the Interfund Loan. Further, the "statement for" in the Ballot Measure unequivocally announces the intended purpose of the Park District—to tax but not manage or control the Property:

> The singular purpose of this Park District is to repay the loan that enables the City's purchase of the Chuckanut Community Forest (aka Chuckanut Ridge), *thereby assuring its preservation as a park, forever.*[33]
>
> . . . .
>
> As a park, the forest offers easy access to healthy outdoor recreation to five nearby Southside neighborhoods. . . .
>
> The commissioners, elected from among your neighbors, will assure its preservation leaving management to Bellingham Parks.

In rebuttal to the "statement against," the proponents reiterated the singular purpose of the Park District: "The CCFD is committed solely to repaying the loan by levying $28/$100,000 for 10 years; preserving the park forever" concluding with "We can buy into fear of park district power, or we can buy a park."

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[32] CP 152 at ¶ 7. A copy of the Ballot Measure is attached hereto as Appendix B and is found at CP 159.
[33] Emphasis Added.

City officials were also involved in informing and explaining to the public what the Park District Ballot Measure was all about. In one email string, a citizen asked Councilmember Lilliquist whether it is "fair" to put the burden of paying for the Property on only residents within the Park District's proposed boundaries rather than the entire city. Lilliquist responded:

> The second thing to keep in mind is that all of the people of Bellingham paid for $5 million of the $8.2 million dollar purchase, using Greenways and park impact fee revenue that is specifically intended for this kind of purchase. The difficulty is that there are other needs in other parts of the city. The other $3.2 million dollars was borrowed money that needs to be paid back sometime before 2017. The park district would create a way to pay that loan. Is if [sic] a good idea for the people who live close to the new public park to pay a higher share? In effect, to pay 50% more than the residents of other parts of town? That is for the voters to decide.
>
> If the voters say no, then the City will have to deal with the funding shortfall in other ways, which is likely to include looking to sell off some of the less environmentally-sensitive property. The picture will be clearer after the results of the vote.[34]

So, just as the Ballot Measure stated, the purpose of the Park District according even to Mr. Lilliquist was to impose a property tax on only the southside residents (rather than the entire City) to repay

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[34] CP 764-765.

the Interfund Loan. Confirming this oft-repeated explanation, Lilliquist drafted a resolution (never presented to council) explaining that "the sole stated purpose of the Chuckanut Community Forest park district is to levy taxes to provide funds to the City of Bellingham to repay the loan for the Chuckanut Ridge purpose, and then be disbanded."[35]

In November, Lilliquist responded (in his official capacity as a councilmember) to a constituent's queries about the Park District, again explaining in detail that the Park District would not be for any purpose other than to tax and give that money to the City:

> "Since the metropolitan park district does not exist yet, we must speculate again; but the answer is probably that the city would not be selling any real property. The city owns all of the land and would continue to own all of the land. The most likely scenario, in my view, is that the park district would provide $3.3 million to the city in exchange for a conservation easement over the entire area, not fee-simple ownership of a portion of the land. You need to remember that the goal of the park district is to secure the land and then disband; there is no intention of owning or managing real property; the park district proponents have no desire to take on the tasks of administration, upkeep, and maintenance, etc. In other words, the park district does not want to own any land, and the city probably does not want to sell any land....[36]

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[35] CP 767.
[36] CP 770 (emphasis added).

In December 2012, Michael Lilliquist met with Mayor Linville about these issues, and then emailed Parks Director James King. In that email, Lilliquist once again outlined that the City's intent was to support the Park District and its intended purpose, which was "only to pay off the outstanding load [sic] and then to retire."[37] Lilliquist then went on to state

> These conditions cannot be built into the ballot measure, but they may be memorialized in an enforceable fashion within a contractual agreement. In addition, both the City and proponents do not want the district to engage in any operational or management activities. Again, the ballot measure cannot make these restrictions, but they may be created voluntarily through an agreement after the district is formed. Finally, I think it is important for the public to know that, as currently envisioned, the City will not be giving up control or ownership of the property.[38]

C. THE PARK DISTRICT FOLLOWS ITS MANDATE.

At the February 2013 special election, Proposition No. 1 creating the Chuckanut Community Forest Park District passed by a margin of 51.73%, which equaled 3,721 voters in favor of creating the District—in other words, the Proposition passed by 129 votes.[39]

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[37] CP 774.
[38] CP 774.
[39] CP 153 at ¶ 11-12 and CP 164. Five individuals were elected as the inaugural Commissioners as well.

In June 2013, the Park District adopted its mission statement, which included that the Park District was a "fiscal mechanism through which the district, via a tax levy, will repay the City of Bellingham for the Greenways Endowment Fund loan."[40]

Pursuant to its mission, on November 14, 2013 the Park District adopted Resolution No. 1, establishing a regular property tax levy of $.28 per $1000 of assessed value, estimated to generate $422,820.12 of revenue in the first year (the "Levy").[41] The November 14th meeting minutes state the levy and rate were passed, because it was what "we were elected to do."[42] City Councilman Michael Lilliquist publicly thanked the Commissioners for "keeping the mission and purpose of the District narrowly focused and not expanding from preventing development in the Chuckanut Forest and respecting the tax levy cap."[43]

On that same day (November 14, 2014) the Park District Commissioners also adopted a budget dictating that $337,000 of the revenue generated from the Levy would be paid to the City as

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[40] CP 211 at ¶ 10.
[41] CP 212 at ¶ 12 and CP 269 (Exhibit I thereto). While not in the record on appeal, online documentation from the Park District reflects that the Levy has been re-adopted annually. https://www.chuckanutcommunityforest.com/
[42] CP 250 (Minutes from 11/14/13 Park District Meeting).
[43] CP 251.

"Repayment of COB Greenways Fund."[44] Thus, as of November 14, 2013, the Park District had done what its mission was—it had passed a tax levy at the rate stated in the Ballot Measure to "repay" the Interfund Loan, and it had adopted a budget to give those Levy funds to the City.

Despite already having committed to taxing a portion of the Citizens of Bellingham to repay a City debt, almost two months later, the Park District entered into an Interlocal Agreement with the City. This agreement required the City to grant the Park District a Conservation Easement in "exchange for" repayment of the Interfund Loan.[45] It is this transaction that the City and Park District now solely rely upon to legitimize the taxing scheme.

The Interlocal Agreement recites that both the City Council and Park District desired to enter into the agreement "to define the terms and conditions under which the Park District will repay the City's Greenways Endowment Fund Loan in exchange for a conservation easement."[46] The Agreement states the consideration for the conservation easement is: (1) the Park District paying off the

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[44] CP 212 at ¶ 12 and CP 269 (Exhibit I).
[45] The Interlocal Agreement and Conservation Easement are attached hereto as Appendix C and D, and are found at: CP 273-280 (Interlocal Agreement) CP 296-310 (Conservation Easement).
[46] CP 274 (Interlocal Agreement, Pg 2).

Loan...and, (2) the Park District formally dissolving after the Loan is paid off.[47] Under the Interlocal Agreement, the City retains control and ownership of the Property, subject only to the restrictions of the Conservation Easement.[48] The Interlocal Agreement also dictates that the Conservation Easement shall terminate if the Park District violates any terms of the Interlocal Agreement, including incurring any long-term debt without City approval, or failing to dissolve after repayment of the Loan.[49] As for establishment of a "Park" the Interlocal Agreement only commits that it shall initiate the requisite public process to establish a City Park on the Property within 10 years.[50] Lastly, the Park District is required to assign *all* of its interest in the Conservation Easement to a "qualified" organization at some point in the future.[51]

The Conservation Easement was recorded on January 6, 2014. It gives the Park District the "right to enter the Property, to observe and monitor compliance with the terms of the Easement"

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[47] CP 275 (Interlocal Agreement at ¶ 3.a).
[48] CP 276 (Interlocal Agreement at ¶ 4).
[49] CP 275-76 (Interlocal Agreement at ¶ 3.b). Thus, if the Park District tries to remain active after the Interfund Loan is repayed, the Conservation Easement will be nullified.
[50] CP 276 (Interlocal Agreement at ¶ 4).
[51] CP 276 (Interlocal Agreement at ¶ 3.c).

as well as obtain injunctive relief to enforce the Easement.[52] The Conservation Easement limits the uses allowed on the Property, but does not require the Property ever become a park.[53]

The Park District admits that it did not obtain an appraisal for the value of the Conservation Easement and in fact has "no knowledge" as to the value of it.[54] However, both the District and the City executed an excise tax affidavit, signed under oath by both the Mayor and the Chair of the Park District declaring that the "gross selling price" of the Conservation Easement was $3,232,021.60—the exact amount of the Interfund Loan.[55]

V. STANDARD OF REVIEW

Appeal of an order granting summary judgment is reviewed *de novo*, and this Court performs the same inquiry as did the trial court. *Lybbert v. Grant Cnty., State of Wash.*, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000). Summary judgment is appropriate only when the pleadings, affidavits, and depositions on file establish that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Id.*, *citing,* CR 56(c).

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[52] CP 302 (Conservation Easement at Section VI.1).
[53] CP 298-301 (Conservation Easement at Sections IV and V).
[54] CP 688-689 (Park District's Answer to Interrogatory Nos, 12 and 13).
[55] CP 701.

APPENDIX D

PETITION TO CREATE THE CHUCKANUT COMMUNITY FOREST PARK DISTRICT

Whereas the Chuckanut Community Forest and surrounding area supports a diversity of rich ecological habitat and active recreational open space with important educational and community value; and

Whereas, permanent protection of these lands has additional benefits to the surrounding human community including human and community health, functioning transportation services, and aesthetic value, and

Whereas the City of Bellingham purchased 82 of these acres in 2011 using Greenways funds, Park Impact Fees, and an inter-fund loan of $3,232,201 that requires repayment to ensure this entire property is permanently protected for the benefit of current and future generations; and

Whereas RCW 35.61.010 and 35.61.020, Sections 1 and 3, provide for creation of a metropolitan park district by the petition method and for boundaries of the park district as set forth in the petition; and

Whereas RCW 35.61.050, Sections 1 and 2, provide that five elected commissioner positions may be designated in the formation of a Park District; and

Whereas RCW 35.61.210 permits a Metropolitan Park District to levy a property tax not to exceed seventy five cents per thousand; and

Whereas a general tax on all property located in said Park District not to exceed twenty-eight cents per thousand of assessed value each year and not to exceed 10 years would be sufficient to pay off the inter-fund loan, assuming that a minimum of 90 percent of the levy is used to repay the City of Bellingham inter-fund loan of $3,232,201, plus applicable interest, and assuming that no more than ten percent of the levy is be used by the commissioners for administrative purposes and for stewardship of the Community Forest in cooperation with the City and community. NOW, THEREFORE

1. The Chuckanut Community Forest Park District should be hereby created. The district boundaries generally would include all of Southwest Bellingham west of Interstate Five and south of Western Washington University and, specifically, would include all of precincts 250, 251, 252, 256, 257, 258, 260, 261, 262, 263, 264 and 265 and the portion of precinct 259 west of Interstate Five. (The specific legal descriptions & Map of the proposed District are printed on the back of this petition.)
2. Pursuant to RCW 35.61.050, the District's board of commissioners shall be composed as follows: five elected Park Commissioners.
3. The petitioners encourage the County Auditor to place this measure on the ballot at the earliest possible opportunity. The following ballot measure should be presented to the voters:

   ☐ "For the formation of a metropolitan park district to be governed by five elected Park Commissioners"

   ☐ "Against the formation of a metropolitan park district."

Warning: Every person who signs this petition with any other than his or her true name or who knowingly signs more than one of these petitions, or signs a petition seeking an election when he or she is not a legal voter or signs a petition when he or she is otherwise unqualified to sign, or who makes herein any false statement shall be guilty of a misdemeanor.

Petition to the voters of the proposed Chuckanut Community Forest Park District

To Debbie Adelstein, Auditor of Whatcom County:

We, the undersigned citizens and legal voters of the proposed Chuckanut Community Forest Park District, respectfully direct that the proposed measure know as the Chuckanut Community Forest Park District, a true and correct copy of which is printed hereon, shall be submitted to the legal voters of the proposed Park District, and each of us as signors state:

I have personally signed this petition, I am a legal voter within the boundaries of the proposed District and my address is correctly stated on this petition.

	Petitioner's Signature (sign in ink)	*Print name for Positive Identification*	*Residence Address, Street and Number (if any) in Bellingham*	Zip	Date	Email (if available)
1.						
2.						
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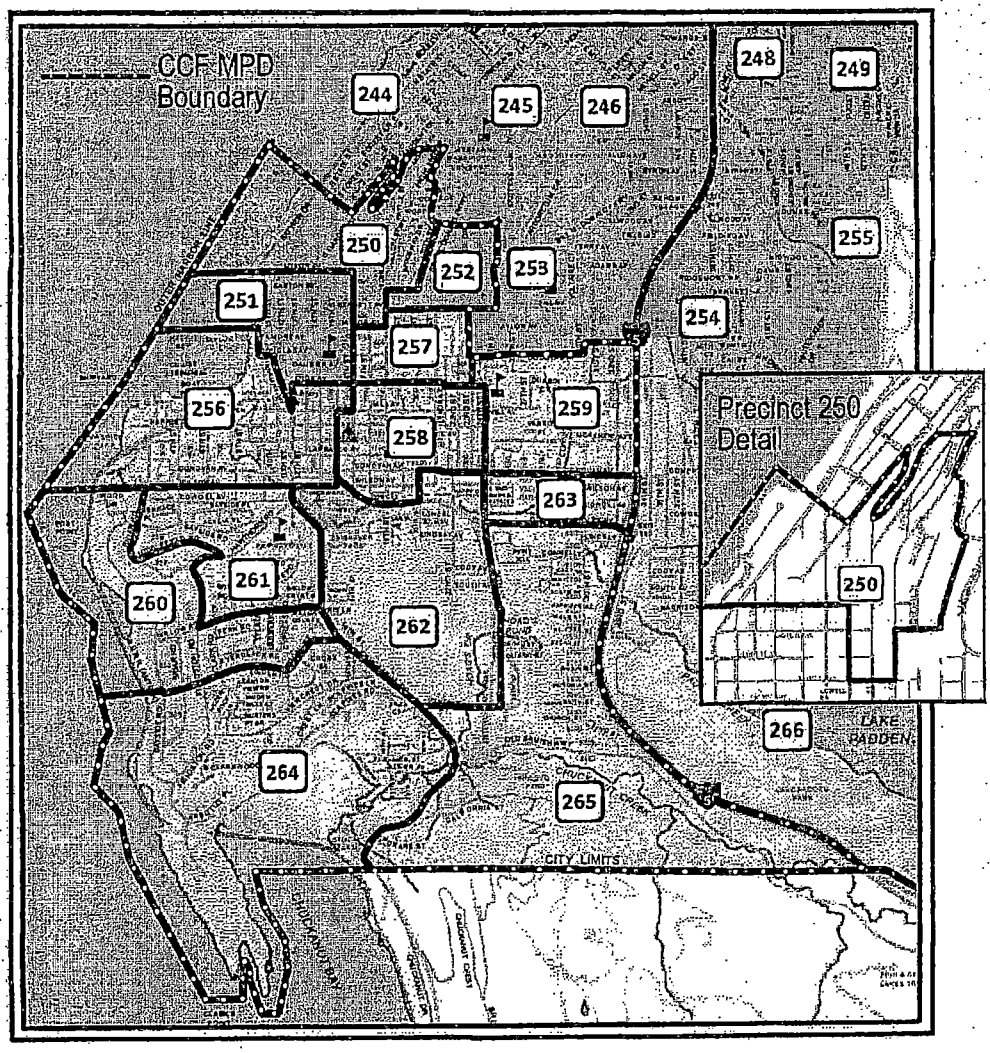
20.						

EXHIBIT A

Legal description of the boundaries of the Chuckanut Community Forest Park District

Beginning at the intersection of the extended shoreline of Bellingham Bay being the city limits of the City of Bellingham and the centerline of the extension of Olive Street; then southeasterly along said centerline of the extension of Olive Street and Olive Street to the intersection of the centerlines of Olive Street and South Garden Street; then northeasterly along the centerline of S Garden Street to the centerline of 17th Street; Then southerly along said centerline of 17th Street to its intersection with the centerline of S Garden Terrace; Then northeasterly along said centerline of S Garden Terrace to its intersection with the centerline of the extension of Consolidation Avenue; then east along said centerline of the extension of Consolidation Avenue to its intersection with the centerline of Highland Drive; Then southerly along said centerline of Highland Drive to its intersection with the centerline of W College Way; Then southeasterly and easterly along said centerline of W College Way and its continuation as E College way to its intersection with the centerline of the extension of 25th Street; then south along said extension of 25th Street and 25th Street to its intersection with the centerline of Bill McDonald Parkway; then west along said centerline of Bill McDonald Parkway to its intersection with the centerline of the extension of 23rd Street; then south along said centerline of the extension of 23rd Street and 23rd Street to its intersection with the centerline of Douglas Avenue; then east along said centerline of Douglas Avenue to its intersection with the centerline of 30th Street; then north along said centerline of 30th Street to its intersection with the centerline of Taylor Avenue; then east along said centerline of Taylor Avenue to its intersection with the centerline of Interstate 5; Then southerly and southeasterly along said centerline of Interstate 5 to its intersection with the city limits of the City of Bellingham; then westerly along the city limits of the City of Bellingham, then northerly along said city limits to the point of beginning.

Map of the boundaries of the Chuckanut Community Forest Park District



APPENDIX E

BALLOT MEASURE

Proposition No. 1
Formation of Chuckanut Community Forest Park District

Shall the Chuckanut Community Forest Park District with boundaries encompassing Precincts 250, 251, 252, 256, 257, 258, 260, 261, 262, 263, 264 and 265, and the portion of Precinct 259 west of Interstate 5, all within the City of Bellingham, be created?

Yes ____ No ____

EXPLANATORY STATEMENT

Voter approval will create a "Chuckanut Community Forest Park District" governed by the board of commissioners elected simultaneously. The District would have all the powers provided in Ch.35.61 RCW, including, but not limited to, maintaining, improving and acquiring parks and recreational facilities; issuing bonds; and levying general taxes to the limit spelled out in RCW 35.61.100 upon real property within the District. The intended property tax levy rate of twenty eight cents per thousand dollars of assessed value would, in ten years, repay the inter-fund loan made from the Greenways Endowment Fund for the purchase of the "Hundred Acre Wood" by providing a dedicated funding source.

STATEMENT FOR:

The singular purpose of this Park District is to repay the loan that enabled the City's purchase of the Chuckanut Community Forest (aka Chuckanut Ridge), thereby assuring its preservation as a park, forever. The alternative is that an unknown portion of the land may be sold. Greenways paid more than half of the purchase price. The rest is up to us Southsiders who will most benefit from the forest's preservation or be impacted by its sale. With its lush, forested wetlands nestled between two salmon-bearing streams, the property's ecological merits are beyond challenge. As a park, the forest offers easy access to healthy outdoor recreation to five nearby Southside neighborhoods, while reducing the need for an expensive expansion of the 12th Street bridge. The commissioners, elected from among your neighbors, will assure its preservation, leaving management to Bellingham Parks. Proven around the state, the Park District model has empowered communities to keep what they hold dear, and ensure a legacy for generations to come. This much-loved forest has been defended by you and your neighbors for over twenty years. Now is finally the time to secure it once and for all. Vote YES for our forest. Learn more at www.chuckanutcommunityforest.com.

Rebuttal of Statement Against:

The CCFD is committed solely to repaying the loan by levying $28/$100,000 for 10 years; preserving the park forever. Park Districts work successfully throughout the state. Other financing avenues were explored, none were feasible. Sale of "large", not "small portion" is needed to raise $3.2M. If sold, public will pay toward infrastructure. This is the last, best chance for preservation. We can buy into fear of park district power, or we can buy a park.

STATEMENT AGAINST:

A new park district (RCW 35.61) can 1) be independent of City government, 2) levy annual property taxes up to $75/$100,000 value, 3) operate parks, 4) pay District Commissioners' salary, and 5) condemn property "within or without" the District. These powers exceed the statements of the park district supporters. Our need is financial – repay City Council's $3.2 million loan to restore our Greenways Endowment. Our need is NOT to create a competing branch of government with vast powers inside our City limits.

First explore all solutions to repay the loan, such as: keep the land but sell the density rights to another location; sell a small portion of the site; include the loan in future Greenways levy. Or, a private capital campaign by Park supporters. Divide $3,200,000 among 1,600 park supporters equals $2,000 each. Each could sign a personal note to pay the City over 10 years, thereby erasing the need for a parks district. Other financial solutions deserve a thorough review before we create a district with no end to its life, new taxing power over our current taxes and the power to condemn property.

Get informed at www.protectbellinghamparks.com and VOTE NO on PROPOSITION 1.

Rebuttal of Statement For:

Proponents cannot guarantee the Park district's future. State law permits perpetual operations (no sunset), condemnation of land inside and outside its boundaries, taxes levied at over twice the proponents' suggestion. Existing annual City Greenways 3 taxes are $133/year on a $250,000 house. A new parks district adds $187.50/year on the same house. Apartments are also taxed; taxes will pass on to renters. Not a good deal.
Read www.protectbellinghamparks.com and VOTE NO on PROPOSITION 1.

Statement For prepared by: Chuckanut Community Forest District Steering Committee
Statement Against prepared by: Bill Geyer and George Munger
Statements For, Statements Against, and Rebuttals are the opinions of the authors and have not been checked for accuracy by any government agency.

EXHIBIT D

APPENDIX F

INTERLOCAL AGREEMENT
BETWEEN THE CITY OF BELLINGHAM AND THE CHUCKANUT COMMUNITY FOREST PARK DISTRICT FOR REPAYMENT OF THE GREENWAYS ENDOWMENT FUND LOAN USED TO PURCHASE THE CHUCKANUT COMMUNITY FOREST

THIS INTERLOCAL AGREEMENT (the "Agreement") between the City of Bellingham ("City"), a municipal corporation, and the Chuckanut Community Forest Park District ("Park District"), a metropolitan park district, is entered into pursuant to the Interlocal Cooperation Act, RCW 39.34.

WHEREAS, in August 2011, the City purchased the 82-acre Chuckanut Community Forest, also known as Chuckanut Ridge, Fairhaven Highlands, and the Hundred Acre Wood ("Property"); and

WHEREAS, the City purchased the Property from Washington Federal for $8.2 million using greenways funds, park impact fees, and a Greenways Endowment Fund Loan ("Loan") of $3,232,021.60; and

WHEREAS, interest generated by the Greenways Endowment Fund is used to pay for park maintenance; and

WHEREAS, when City Council approved the financing plan to purchase the Property, members agreed to explore a variety of options for paying back the Loan from the Greenways Endowment Fund; and

WHEREAS, on February 12, 2013, voters in a southern portion of the City approved a ballot measure to create the Chuckanut Community Forest Park District ("Park District") that will tax property owners within the Park District to repay the Loan from the Greenways Endowment Fund; and

WHEREAS, an election of Commissioners for the new Park District took place simultaneously with the ballot measure to create the Park District; and

WHEREAS, the mission of the Park District is to ensure the entirety of the Property is protected in perpetuity in public ownership, with respect for its ecological, recreational and educational functions, and to serve as a fiscal mechanism through which the District, via a tax levy, will repay the City's Greenways Endowment Fund Loan; and

WHEREAS, on July 15, 2013, the Bellingham City Council voted to docket a legislative rezone of the Property from Residential Multi, Planned to Public, Open Space as part of its 2014 Comprehensive Plan amendment docket; and

EXHIBIT J

WHEREAS, in addition to the 82-acre Chuckanut Community Forest Property, this proposed legislative rezone also includes an additional 29 acres ("Additional Acreage") owned by the City adjacent to the Property for a total rezone area of 111 acres; and

WHEREAS, the City and the Park District desire to enter into this Agreement to define the terms and conditions under which the Park District will repay the City's Greenways Endowment Fund Loan in exchange for a conservation easement; and

WHEREAS, both the City Council and the Park District Commission have reviewed and approved this Agreement;

NOW THEREFORE, the City and the Park District agree as follows:

1. Loan Repayment – The Park District shall begin making payments to the City to pay off the Loan of $3,232,021.60, accrued interest on the Loan through June 30, 2014 of $100,334.56, and future interest on the Loan after June 30, 2014 as set forth in Section 1.b herein.

   a. **Loan Payments.** The Park District shall make payment(s) to the City from receipt of tax revenues pursuant to an annual District levy, beginning not later than July 1, 2014. The Park District shall make its best effort to levy an amount equal to $.28 per $1,000 of assessed value so long as such rate is necessary to repay the Loan within ten (10) years or more from the date of this Agreement; provided further that said levy may be lower if sufficient to repay the Loan within one (1) year. Payment from the Park District to the City in Year 1 (July 1, 2014-June 30, 2015) shall be in an amount equivalent to fifty percent (50%) or more of the total amount of revenue collected from the Park District's tax levy during Year 1. Payment from the Park District to the City in Year 2 (July 1, 2015-June 30, 2016) shall be in an amount equivalent to eighty percent (80%) or more of the total amount of revenue collected from Park District's tax levy during Year 2. Thereafter, payment from the Park District to the City shall be in an amount equivalent to ninety percent (90%) or more of the total amount of revenue collected from the Park District's tax levy for each successive July 1- June 30 time period, until the debt hereunder is extinguished. The parties intend that if reasonably feasible, with the cooperation of the County Treasurer, said Loan payments shall be made directly from the Park District's account maintained by the County Treasurer to the City. The Park District shall execute reasonably necessary authorization required by the County Treasurer to allow for such direct payment to the City. The Park District will make its best effort to repay the Loan as soon as possible. There shall be no penalty for prepayment of the Loan and the Park District has the right to make payments at any time before they are due. The City shall apply all above-referenced proceeds received from the Park District to the Loan and interest thereon. The City shall calculate the Loan repayment schedule each year to reflect the principal and interest received from the Park District for the prior 12 months and shall provide same to the Park District. The City shall provide said repayment schedule to the Park District more frequently if required by law or recommended by the State Auditor's Office.

b. Future Interest. Future interest on the Loan shall begin to accrue on July 1, 2014 at an annual interest rate of 1%. Each year thereafter the annual interest rate on the Loan shall be reset on July 1 during the term of this Agreement at the current interfund loan rate established by the City at that time (currently approximately 1%); except that, said annual interest rate shall be capped at the following maximum rate during the term of this Agreement:

i.	Year 1 (2014-15)	1%
ii.	Year 2 (2015-16)	2%
iii.	Any year thereafter	3.0%

c. Payment Destination. Payments shall be received by the City's Finance Department located at 210 Lottie Street, Bellingham, WA 98225.

2. **Property Rezone** - The City shall consider a rezone of the Property and the Additional Acreage from Residential Multi, Planned to Public, Open Space as part of its 2014 Comprehensive Plan amendment docket. Nothing in this Agreement is intended to circumscribe or limit the legislative discretion of the City Council or interfere with the City's obligation to engage in the requisite public process in considering this rezone.

3. **Conservation Easement**.

a. Conservation Easement Grant and Park District Dissolution. The City shall grant the Park District a Conservation Easement on the Property in the form as shown in Exhibit A ("Conservation Easement") upon execution of this Interlocal Agreement. The City's grant of the Conservation Easement to the Park District is in consideration for: (1) the Park District paying off the Loan, accrued interest on the Loan and future interest; and (2) the Park District formally dissolving in accordance with RCW 35.61.310 after the Loan, accrued interest and future interest are paid off by the Park District (date of completion of Loan and interest repayment hereafter referred to as "Payoff Date"). The City shall file a petition for dissolution of the Park District pursuant to RCW 35.61.310 after the Payoff Date, subject to Section 4 herein. In no event shall the City file a petition for dissolution of the Park District before the Payoff Date or before completion of a park master plan as described in Section 4. When the City files a petition for dissolution of the Park District after the Payoff Date pursuant to RCW 35.61.310 (date the City files a petition for dissolution of the Park District after the Payoff Date hereafter referred to as "Petition Date") and the Park District dissolves pursuant to said petition, the City shall be entitled to assume all assets and liabilities of the District pursuant to RCW 35.61.310(1).

b. Potential Conservation Easement Termination. Subject to all terms of this Agreement, the City may elect to terminate the Conservation Easement following written notice if: (1) the Park District breaches the Interlocal Agreement by a failure to make its minimum payments as set forth in Section 1.a. herein and remains delinquent thereon for two consecutive years following a notice of deficiency in payment sent from the City to the Park District; (2) the Park District incurs long-term debt ("long-term debt" shall mean debt not repaid in one year or less; it shall not mean the Loan) through acquisition of an

interest in or leasing of any real property, funding a capital project, or entering into an employment agreement, without advance City approval; or (3) the Park District has not formally dissolved in accordance with RCW 35.61.310 within one year of the Petition Date. If any of the three conditions is met, upon receiving notice to terminate the Conservation Easement from the City, the Park District shall timely execute and record an appropriate deed reconveying the Conservation Easement to the City. If the Park District fails to take such action after notice from the City, the City may file an action in Whatcom County Superior Court to obtain a court order terminating the Conservation Easement, or in the alternative, requiring the Park District to dissolve in accordance with RCW 35.61.310. The provisions of this section shall be enforceable by the City by the remedy of specific performance. The prevailing party in any such action shall be entitled to an award of reasonable attorneys' fees and costs. If the City terminates the Conservation Easement in accordance with this paragraph, the Park District shall waive all interest in the payments made by the Park District on the Loan and accrued interest and shall not be entitled to a refund of such payments.

c. **Conservation Easement Assignment.** The Park District shall assign all its interest in the Conservation Easement to a "qualified" organization within the meaning of Section 170(h) of the Internal Revenue Code of 1954, as amended, and RCW 64.04.130 and RCW 84.34.250. The Park District shall meet with the City at least 30 days prior to executing and recording the assignment to inform the City of its intention to assign the Conservation Easement to a qualified third party.

4. **Control and Ownership of the Property** - The City shall retain control and ownership of the Property, subject to the Conservation Easement. Should the City rezone the Property and the Additional Acreage as described in Section 2, the City agrees to initiate the requisite public process for establishment of a park on the Property and complete a park master plan on the Property consistent with the intent of the Conservation Easement within ten years from the date of this Agreement. Before construction of new facilities or upgrades of existing facilities that go beyond maintenance can occur, the Grantor shall adopt a master plan for the Property. The City shall not file a petition for dissolution of the Park District pursuant to RCW 35.61.310 before said park master plan is completed. Any development of the Property as a park shall be in accordance City policy and procedures and a master plan adopted by City Council following a public process and recommendation of the Parks and Recreation Advisory Board. The Park District may participate in any master planning process that the City conducts for a future park on the Property.

5. **Indemnification.** The City shall indemnify, appear and defend, and hold harmless the Park District from all claims, lawsuits and liabilities of any kind, including attorney's fees and costs, arising from any act or omission of the City in connection with its ownership, management, maintenance, or administration of the Property, or in connection with public use of the Property, or for any negligent act or omission in connection with its performance under this Agreement; except to the extent such claim, lawsuit, or liability arises from the negligence of the Park District.

The Park District shall indemnify, appear and defend, and hold harmless the City from all claims, lawsuits and liabilities of any kind, including attorney's fees and costs, arising from any negligent act or omission of the Park District in connection with its performance under this Agreement; except to the extent such claim, lawsuit, or liability arises from the negligence of the City.

6. **Administrator.** This Agreement shall be administrated jointly by the City Parks Director and a Commissioner of the Park District Board appointed by the Board for such purpose.

7. **Modifications to this Agreement.** This Agreement shall not be modified or amended except in writing signed by the City and the Park District.

8. **Term of Agreement.** The term of this Agreement shall commence on the effective date listed below and expire one year after the dissolution of the Park District.

9. **Applicable Law.** This Agreement shall be governed by and be interpreted in accordance with the laws of the State of Washington.

10. **Severability.** If any provision of this Agreement is determined to be unenforceable or invalid by a court of law, then this Agreement shall thereafter be modified to implement the intent of the City and Park District to the maximum extent allowable under law. If this Agreement for any reason is determined to be invalid, the City shall refund the payments made by the Park District on the Loan and accrued interest, and the City and Park District shall terminate the Conservation Easement.

11. **Further Good Faith Cooperation.** The City and the Park District shall cooperate with the other in good faith to achieve the objectives of this Agreement. The parties shall not unreasonably withhold, condition or delay requests for information, approvals or consents provided for, or implicit, in this Agreement.

12. **Force Majeure.** Neither Party shall be liable for any failure to perform any part of this Agreement due to circumstances beyond a Party's reasonable control, including, but not limited to, acts of God, flood, fire, quarantine, war, sabotage, act of a public foreign or domestic enemy, earthquake, volcanic eruption, civil disturbance, and restraint by court order or other governmental authority. The obligations of a Party claiming force majeure condition(s) under this Agreement shall be suspended to such a degree and for such a period as is reasonable under the circumstances; provided that the Party asserting force majeure condition(s) works in good faith to remedy the condition(s) with all reasonable dispatch, to the extent within its control.

13. **No Presumption Against Drafter.** This Agreement has been reviewed and revised by legal counsel for both the City and the Park District and no presumption or rule that an ambiguity shall be construed against the party drafting the clause shall apply to the interpretation or enforcement of this Agreement.

14. **Notices**. All communications, notices, and demands of any kind which either the City or the Park District under this Agreement is required, or desires to give the other party, shall be in writing and be either (1) delivered personally, (2) sent by facsimile transmission with an additional copy mailed first class, or (3) deposited in the U.S. mail, postage prepaid, and addressed as follows:

City: City of Bellingham
Mayor of Bellingham
210 Lottie Street
Bellingham, WA 98225

Park District: Chuckanut Community Forest District
Clerk of Chuckanut Community Forest District
P.O. Box 4283
Bellingham, WA 98227

Notice by hand delivery or facsimile shall be effective upon receipt. If deposited in the mail, notice shall be deemed received 48 hours after deposit. Any party at any time by notice to the other party may designate a different address or person to which such notice shall be given.

15. **Waiver**. No failure by either the City or the Park District to insist upon the strict performance of any covenant, duty, agreement, or condition of this Agreement or to exercise any right or remedy consequent upon a breach thereof shall constitute a waiver of any such breach or any other covenant, agreement, term or condition. Either the City or the Park District, by notice, and only by notice as provided herein may, but shall be under no obligation to, waive any of its rights or any conditions to its obligations hereunder, or any duty, obligation or covenant of any other party hereto. No waiver shall affect or alter this Agreement, and each and every covenant, agreement, term and condition of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

16. **Dispute Resolution**. In the event of any dispute as to the interpretation or application of the terms or conditions of this Agreement, the City and the Park District, through their respective representatives, shall meet within ten (10) days after the receipt of a written request from the other party to make a good faith attempt to resolve the dispute. Such a meeting may be continued by mutual agreement to a date certain to include other persons or parties, or to obtain additional information. Representatives for either the City or the Park District may declare an impasse. Thereafter, the following procedure shall be utilized:

a. **Elevation to City Mayor and Park District Commission Chairperson.** The Mayor and the Park District Commission Chairperson shall meet and resolve the dispute. If either the Mayor or the Park District Commission Chairperson declares an impasse then:

b. **Mediation.** In the event of a Mayor/Park District Commission Chairperson impasse, and prior to commencing any litigation, except for a request for a temporary restraining order and preliminary injunction, the City and the Park District shall first attempt to mediate the dispute. The parties shall mutually agree upon a mediator to assist them in resolving their differences. If the parties are unable to agree upon a mediator, the parties shall request from the Seattle office of JAMS a list of mediators experienced in matters pertaining to this Agreement. Each party may strike one name from the list until one name remains. A flip of a coin shall determine which party strikes the first name. Any expenses of the mediator shall be borne equally by the parties. However, each side shall bear its own costs and attorney fees arising from participation in the mediation.

c. **Waiver of Jury Trial and Jurisdiction.** Both the City and the Park District waive any right to a trial by jury in any action or proceeding to enforce or defend any rights under or relating to this Agreement or any amendment, instrument or other document delivered in connection with this Agreement.

d. **No Third Party Beneficiaries.** There are no third party beneficiaries of this Agreement.

e. **Award of Reasonable Attorneys' Fees and Costs.** If either the City or Park District files a lawsuit to enforce the terms of this Agreement, the prevailing party shall be entitled to an award of reasonable attorneys' fees and costs.

17. **Entire Agreement.** This Agreement, including the recitals, definitions, and exhibits, represents the entire agreement of the City and the Park District with respect to the subject matter hereof. There are no other agreements, oral or written, except as expressly set forth herein. This Agreement supersedes all previous understandings or agreements between the City and the Park District concerning the subject matter of this Agreement.

IN WITNESS WHEREOF, the parties have signed this agreement, effective the 3 day of January, ~~2013~~ 2014

CITY OF BELLINGHAM

By: _____
Kelli Linville, Mayor

Date: December 19, 2013

CHUCKANUT COMMUNITY FOREST PARK DISTRICT

By: _____
Commission Chair

Date: 1-3-2014

Approved as to form:

By: _____
Office of the City Attorney

Approved as to form:

By: _____
Robert A. Carmichael
Attorney for Chuckanut Community
Forest Park District

Attest:

By: _____
City Finance Director

APPENDIX G

2140100259
Page: 1 of 15
1/06/2014 10:23 AM
EASE $86.00
Whatcom County, WA
Request of: ZENDER THURSTON P.S.

After Recording Return To:

Robert A. Carmichael
1700 D Street
Bellingham, WA 98229

DOCUMENT TITLE:
CHUCKANUT COMMUNITY FOREST CONSERVATION EASEMENT

GRANTOR:
CITY OF BELLINGHAM

GRANTEE:
CHUCKANUT COMMUNITY FOREST PARK DISTRICT

ABBREVIATED LEGAL DESCRIPTION:
Ptn of S ½ SW ¼ Sec 12 TWP 37 N Rge 3 E
Lot B, as delineated on Chuckanut Trust Lot Line Adjustment
Lots 1-24, Block 1, Map of Diffenbachers Addition to Fairhaven
Full legal description at page 14

ASSESSOR'S TAX PARCEL NUMBERS:
370212 359328 0000
370212 364207 0000
370212 478165 0000
370212 447323 0000
370212 477313 0000

EXHIBIT K

CHUCKANUT COMMUNITY FOREST CONSERVATION EASEMENT

I. PARTIES.

This Grant of a Conservation Easement ("Conservation Easement" or "Easement") is made by the City of Bellingham, a municipal corporation organized under the laws of the State of Washington ("Grantor" or "City"), to the Chuckanut Community Forest Park District, a municipal corporation organized under the laws of the state of Washington ("Grantee" or "Park District").

II. FACTS, OBJECTIVES AND PURPOSES.

Grantor owns real property in Whatcom County, Washington, referred to hereafter as the "Property", the legal description of which is attached as Exhibit A. A sketch map of the Property is attached as Exhibit B.

The Grantee is a metropolitan park district organized pursuant to RCW 35.61 by public vote to ensure that the Property's ecological, recreational, and educational functions are protected in perpetuity.

The City purchased the Property from Washington Federal Savings Bank for $8.2 million using greenways funds, park impact fees, and a Greenways Endowment Fund Loan ("Loan") of $3,232,021.60. The City's grant of the Conservation Easement to the Park District is in consideration for: (1) the Park District paying off the Loan and accrued interest on the Loan; and (2) the Park District formally dissolving in accordance with RCW 35.61.310 effective no later than one year from the date the City petitions the Park District to dissolve. The City will file a petition for dissolution of the Park District pursuant to RCW 35.61.310 after the Loan is paid off, but not before that time, subject to the terms in the "Interlocal Agreement." The City and the Park District have entered into an "Interlocal Agreement" specifying the terms for the Park District's payment of the Loan.

The approximately eighty-two (82) acre Property is located on the south side of the City of Bellingham and is locally known as Chuckanut Ridge or the Hundred Acre Wood. The Property is mostly forested and contains wetlands, steep slopes, and a variety of plant species. The Property also provides wildlife habitat and habitat corridors for a number of species and was listed as one of the City's "significant habitats" in the City of Bellingham Wildlife and Habitat Assessment and Wildlife Habitat Plan, December 1995.

The intent of the Grantor and Grantee and the purpose of this Conservation Easement are to assure that the natural features, functions and values of the Property are protected in perpetuity including the existing wetlands, forest, wildlife habitat, wildlife habitat corridors, and other features of ecological significance; while also allowing for the

recreational, educational, and scientific uses named in Section IV. The uses allowed pursuant to Section IV shall be sited, designed, maintained, and operated so as to minimize the impact to the natural attributes of the Property.

III. GRANT OF CONSERVATION EASEMENT.

Grantor hereby conveys to Grantee, its successors and assigns, in perpetuity, a Conservation Easement ("Easement") pursuant to Revised Code of Washington RCW 84.34.210, over the Property. The Easement consists of mutual rights and obligations and is subject to the reservation of rights set forth below. Rights, obligations and reservations all operate as covenants running with the land in perpetuity.

IV. PERMITTED USES, PRACTICES AND RIGHTS RESERVED BY GRANTOR.

The Grantor shall have the right to do or permit the following on the Property:

1. Allow nature oriented, non-motorized public recreational, scientific, and educational uses and construction of appropriate facilities to enhance the nature oriented public recreational or educational/research uses such as:

    a. facilities for motor vehicle parking on the Property located, if possible, near perimeter boundaries;

    b. facilities and access for on-site education or research related to objectives and purposes of the Easement;

    c. trails (including, but not limited to, walking, mountain bike, forest overlook/view, natural wildlife/habitat interpretive, birdwatcher, and disabled-accessible trails), boardwalks, and bridges;

    d. benches;

    e. plaques for recognition, memorial, or educational purposes;

    f. restrooms, pavilions, and educational/interpretive buildings;

    g. directional, informational, or educational signs;

    h. "Tree House" forest canopy viewing stations similar to the Sehome Arboretum tower;

    i. Kid-friendly wildlife/habitat observation "Blinds";

j. Outdoor mature forested wetlands "Touch Tank" similar to the indoor tank at the Marine Life Center;

k. Mid-successional forest and wetlands "Native Flora/Fauna Gardens";

l. Dual-purpose "Eco Pod" and "Yurt" forest campsites/field research labs (safety-approved fire pits/grills possible);

m. 5k cross country running course similar to the unpaved Lake Padden trail (small portable concession stand for school/fundraising use possible on portion of parking area);

n. Off-leash dog trails with centralized, forested obstacle/exercise area;

o. An Urban Forested Wetlands Ecology Center;

p. Small multi-purpose outdoor seating arena similar to the one in Sehome Arboretum;

q. All-ages forested picnic areas with recycle station similar to the one at Boulevard Park;

r. Hike-in uplands "View Pavilion" (covered structure); and

s. Steep-slope hazard area education site designed with kid-friendly "Mud Slide" and other hands-on learning activity exhibits.

Provided that, such uses and facilities do not adversely impact the critical areas on the Property as defined by the City's Critical Areas Ordinance (Bellingham Municipal Code Chapter 16.55, "Critical Areas Ordinance") without adequate mitigation. Mitigation of any adverse impact to a critical area on the Property shall take place on the Property or on adjacent property if a qualified wetland biologist determines that offsite mitigation is environmentally preferable and if such off-site mitigation is allowed and approved under the Critical Areas Ordinance.

2. With reasonable prior written notice to Grantee, remove trees that are invasive, diseased or present a safety hazard to people or property. However, the Grantor may remove trees without prior notice to Grantee if the trees present an immediate safety hazard.

3. Make modest clearings to create viewpoints.

4. Plant native trees and vegetation and conduct other activity to enhance and protect water quality, critical areas, and wildlife habitat.

5. Control invasive, non-native species by means that do not harm water quality, critical areas or wildlife habitat.

6. Operate motor vehicles for the maintenance and development of the Property consistent with the permitted uses listed herein.

7. Maintain, repair, expand, improve, decommission, or retain trails on Property, consistent with the intent of this Easement and future City master plan.

8. Undertake other activities necessary to protect public health or safety on the Property, or that are actively required by any governmental agency with authority. Any such activity shall be conducted so that interference with the ecological values of the Property is avoided, or if avoidance is not possible, minimized to the maximum extent possible.

V. RESTRICTIONS ON USE.

Grantor may prohibit uses on the Property independent of this Easement. **Except as provided above**, the Grantor shall not on the Property do or permit any of the following:

1. Harvest, cut or remove trees or other vegetation except as allowed pursuant to Section IV, consistent with the purposes identified in this Conservation Easement.

2. Build or place roads or buildings of any type.

3. Explore for or extract minerals, hydrocarbons or other materials, except as expressly authorized pursuant to mineral, oil, or gas reservations or leases recorded prior to and continuing in existence on the date of this Easement.

4. Trapping or hunting of animals except to deal with a local public health emergency.

5. Excavate or grade the Property or otherwise materially alter the landscape or topography except as necessary for one of the permitted uses, practices and rights identified in Section IV above.

6. Subdivide the Property in any manner.

7. Make residential, commercial, or industrial use of the Property other than an apartment for a residential caretaker and de minimus use of the Property for commercial recreation.

8. Operate motor vehicles, except as is necessary for the development and management of the Property as allowed in Section IV; provided further that, an existing driveway serving a single family residence on an adjoining parcel pursuant to a License Agreement recorded at Whatcom County Auditor File No.893239 which may encroach on the southerly tip of Parcel C on Exhibit B and may continue so long as its use remains limited to providing ingress and egress to said single family residence only and so long as its width and length are not expanded.

9. Store derelict vehicles or waste of any kind.

10. Building or maintaining of fires except for purposes identified in this Conservation Easement.

11. Allow overnight camping except for purposes identified in this Conservation Easement.

12. Provide athletic facilities or ball fields of any kind.

13. Widen existing trails for bicycle use or build new trails for bicycle use except pursuant to an adopted master plan.

14. Grant other easements except for trails including those easements obtained through eminent domain.

15. Use or apply pesticides or herbicides on the Property including for activities allowed under Section IV; except if such use is the only reasonably feasible means to control invasive, non-native species and then only if such use can be accomplished without harming water quality or critical areas. Before any pesticide or herbicide use is allowed, the necessary risks from use shall be evaluated using best available science to determine if such use will cause adverse impacts to water quality or critical areas. Should the results of the evaluation reveal adverse impact, said use shall be minimized.

16. Use of the Property contrary to the purposes of this Easement.

VI. RIGHTS AND RESPONSIBILITIES OF GRANTEE.

Grantor grants and Grantee accepts the right and shared responsibility to preserve and protect in perpetuity the natural features, functions and values of the Property including the existing wetlands, forest, and wildlife habitat consistent with the terms of this Easement. In connection with such rights and responsibilities:

1. Grantor grants to Grantee the right to enter the Property, to observe and monitor compliance with the terms of this Easement.

2. Should Grantor, its successors or assigns, undertake any activity on the Property in violation of this Easement, or should Grantor permit an activity on the Property in violation of this Easement, Grantee shall have the right to enjoin and abate any such activity. In addition, Grantee shall have the right to recover damages from Grantor or to compel the restoration by Grantor of that portion of the Property affected by such activity to the condition that existed prior to the undertaking of such unauthorized activity. In the event Grantee commences a legal action against the Grantor or otherwise seeks to enforce the terms of this Easement against the Grantor, the prevailing party in any such matter shall be entitled to an award of damages, including, if applicable, costs of restoration, expenses and costs of suit, including attorneys' fees and expert witness fees.

3. Any forbearance by Grantor or Grantee to exercise any rights under this Easement in the event of a breach shall not be deemed to be a waiver of Grantor's or Grantee's rights hereunder.

4. Grantee shall indemnify, appear and defend, and hold harmless Grantor from all claims, lawsuits and liabilities of any kind, including attorney's fees and costs, arising from any negligent act or omission by Grantee in connection with its performance under this Agreement; except to the extent such claim, lawsuit, or liability arises from the negligence of the Grantor.

VII. BASELINE DATA.

In order to establish the present condition of the Property so as to be able to properly monitor future uses of the Property and assure compliance with the terms of this Agreement, Grantor and Grantee shall, prior to the adoption of the park master plan, prepare or cause to be prepared by a mutually agreed upon qualified person(s) with relevant scientific education, training, and experience, an inventory of the Property's relevant features and conditions, known as baseline data. The baseline data shall be used to establish the condition of the Property as of the date of this Easement and document

off-site references made for comparison in Section V. The Park District will pay up to $10,000 for gathering the baseline data.

VIII. GRANTOR'S RESPONSIBILITIES.

1. Grantor agrees to bear all costs of ownership, operation, improvements, administration, upkeep, management and maintenance of the Property and shall indemnify, appear and defend, and hold harmless the Grantee from all claims, lawsuits and liabilities of any kind, including attorney's fees and costs, arising from any act or omission of Grantor in connection with its ownership, management, maintenance, or administration of the Property, or in connection with public use of the Property, or for any negligent act or omission in connection with its performance of this Agreement; except to the extent such claim, lawsuit, or liability arises from the negligence of the Grantee.

2. Grantor shall pay all real property taxes and assessments levied on the Property.

3. Before construction of new facilities or upgrades of existing facilities that go beyond maintenance can occur, the Grantor shall adopt a master plan for the Property.

4. Facilities which are built and maintained on the Property shall be located, designed and constructed so as to avoid and where necessary minimize impact on critical areas and wildlife habitat.

5. Trail details such as decommissioning or upgrading existing trails, creating new trails, and maintaining trails will be determined in the master plan process.

6. Grantor shall take reasonable steps to direct and confine public access to defined and maintained trail surfaces and designated areas and to prevent damage to ground cover, understory vegetation and disturbance of wildlife from off-trail public use.

7. If dogs are allowed on the Property, Grantor shall require compliance with the City of Bellingham's animal leash laws except as provided in the park master plan and laws requiring immediate removal of animal waste on the Property.

IX. ASSIGNMENT OF GRANTEE'S INTERESTS.

The Grantee may assign its interests in this Easement to a "qualified" organization within the meaning of Section 170(h) of the Internal Revenue Code of 1954, as amended, and RCW 64.04.130 and RCW 84.34.250. Should the Grantee cease to exist, this Easement would be assigned to such an organization. Grantee shall give the Grantor 30-days

advance written notice of its intent to assign its interests in this Easement to a "qualified" organization, including the name of the organization.

X. TERM OF CONSERVATION EASEMENT.

This Easement shall run with the Property in perpetuity and shall bind the Grantor and Grantee, their successors and assigns forever. However, the City may elect to terminate the Easement if: (1) following a notice of deficiency, the Park District remains delinquent on its payments on the Loan for two consecutive years as provided in the Interlocal Agreement; (2) the Park District incurs long-term debt ("long-term debt" shall mean debt not repaid in one year or less; it shall not mean the Loan defined in the Interlocal Agreement) through acquisition of an interest in or leasing of any real property, funding a capital project, or entering into an employment agreement, without advance City approval; or (3) the Park District has not formally dissolved in accordance with RCW 35.61.310 within one year of the date the City's files a petition for dissolution of the Park District. If any of the three conditions is met, upon receiving notice to terminate the Conservation Easement from the City, the Park District shall timely execute and record an appropriate deed reconveying the Conservation Easement to the City. If the Park District fails to take such action after notice from the City, the City may file a quiet title action in Whatcom County Superior Court to establish that the Conservation Easement is terminated under the terms of the Conservation Easement and Interlocal Agreement. The prevailing party in any such quiet title action shall be entitled to an award of reasonable attorneys' fees and costs.

XI. PROPERTY INTEREST.

Grantor and Grantee agree that this Easement gives rise to a property right immediately vested in the Grantee, which right has a fair market value that is equal to the proportionate value that the Easement bears to the value of the Property as a whole, upon the date of the execution of the Easement.

If all the purposes of this Easement become impossible to accomplish because of a change of circumstances, this Easement can be extinguished only by judicial proceedings, and on subsequent disposal of the Property, the Grantee is entitled to a portion of the proceeds equal to the proportionate value of the Conservation Easement. In the event of condemnation of the Property in whole or in part, Grantee shall be entitled to compensation proportionate to the loss of conservation values caused by the condemnation.

XII. MISCELLANEOUS.

1. The terms Grantor and Grantee, wherever used in this Easement, shall include the above-named Grantor and its successors and assigns, and the above-named Grantee and its successors and assigns.

2. In the event that any of the provisions contained in this Easement are declared invalid or unenforceable in the future, all remaining provisions shall remain in effect.

3. Notice to Grantee shall be to the Clerk of Grantee, who until further notice shall be:

Vince Biciunas, Clerk
P.O. Box 4283
Bellingham, WA 98227

Copy to: Attorney for Park District
1700 "D" Street
Bellingham, WA 98225

Notice to Grantor shall be to the Director of Parks for Grantor, who until further notice shall be:

Bellingham Parks Director
3424 Meridian St.
Bellingham, WA 98225

Copy to: City Attorney
210 Lottie St.
Bellingham, WA 98225

4. This Easement, along with the Interlocal Agreement entered into between the parties of same date herewith, sets forth the entire agreement of the parties and supersedes all prior discussions, negotiations, understandings, or agreements relating to the Property. No alteration or variation of this instrument shall be valid or binding unless it is in writing and properly executed and acknowledged by both parties. The interpretation and the performance of this Easement shall be governed by the laws of the State of Washington.

5. This Easement shall be liberally construed in favor of the grant to effectuate the objectives and purposes of this Easement particularly as set forth in Section II and the policy and purpose of RCW 64.04.130 and Chapter 84.34 RCW. If any provision in this instrument is found to be ambiguous, an interpretation consistent

with the objectives and purposes of this Easement that would render the provision valid should be favored over any interpretation that would render it invalid.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Conservation Easement this 3rd day of January, 2014.

GRANTOR: THE CITY

CITY OF BELLINGHAM

Kelli Linville
Mayor

Department Approval:

James King
Department of Parks and Recreation

GRANTEE: THE DISTRICT

PARK DISTRICT

John Hymas
President

Approved as to Form:

Robert Carmichael
Attorney for Park District

Approved As To Form:

Alan Marriner
Office of City Attorney

Attest:

Brian Henshaw
Interim Finance Director

STATE OF WASHINGTON)
) ss:
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that Kelli Linville is the person who appeared before me, and said person acknowledged that she signed this instrument, on oath stated that she was authorized to execute the instrument, and acknowledged it as the Mayor of the City of Bellingham to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATE: 12/27/13

Tracy Lewis
NOTARY PUBLIC
Printed Name: Tracy Lewis
My Commission Expires: 10/20/14

STATE OF WASHINGTON)
) ss:
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that Brian Henshaw is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the Interim Finance Director of the City of Bellingham to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

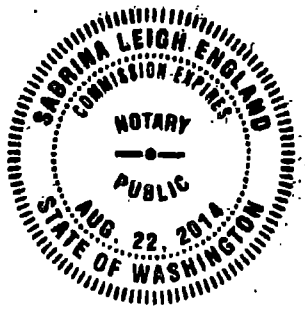
DATE: 12/20/2013

Linda D. Anderson
NOTARY PUBLIC
Printed Name: LINDA D. ANDERSON
My Commission Expires: 9/29/2014

STATE OF WASHINGTON)
) ss.
COUNTY OF WHATCOM)

I certify that I know or have satisfactory evidence that John Hymas is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument, and acknowledged it as the President of the CHUCKANUT COMMUNITY FOREST PARK DISTRICT to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATE: 1/3/2014



NOTARY PUBLIC
Print Name: Sabrina L. England
My Commission Expires: 8/22/14

EXHIBIT A

PARCEL A (370212 359328 0000):

The south half of the southwest quarter of the northeast quarter of Section 12, Township 37 North, Range 2 East of W.M., except that right-of-way lying along the easterly line thereof, commonly referred to as 20th Street.

PARCEL B (370212 364207 0000):

That part of the northwest quarter of the southeast quarter, and that part of the southwest quarter of the southeast quarter of Section 12, Township 37 North, Range 2 East of W.M., lying northerly of Chuckanut Drive.

PARCEL C (370212 478165 0000):

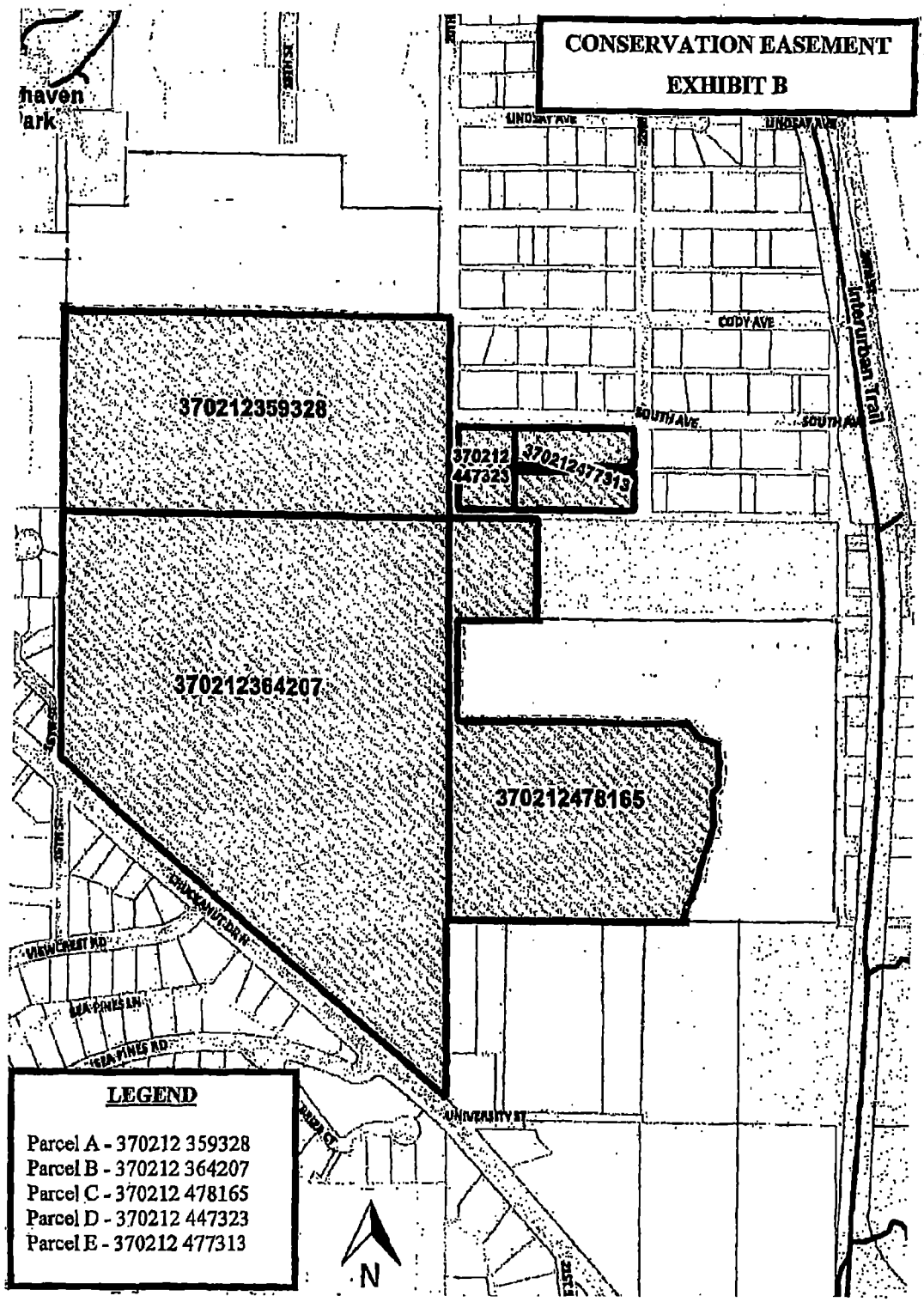
Lot B, as delineated on Chuckanut Trust Lot Line Adjustment, according to the plat thereof, recorded under Auditor's File No. 961219101, records of Whatcom County, Washington.

PARCEL D (370212 447323 0000):

Lots 1 through 4 and Lots 21 through 24, inclusive, Block 1, Map of Diffenbachers Addition to Fairhaven, now a part of the consolidated City of Bellingham, Whatcom County, Washington, according to the plat thereof, recorded in Volume 1 of Plats, Page 51, records of Whatcom County, Washington.

PARCEL E (370212 477313 0000):

Lots 5 through 20, inclusive, Block 1, Map of Diffenbachers Addition to Fairhaven, now a part of the consolidated City of Bellingham, Whatcom County, Washington, according to the plat thereof, recorded in Volume 1 of Plats, Page 51, records of Whatcom County, Washington.


CONSERVATION EASEMENT
EXHIBIT B
370212359328
370212364207
370212478165
370212 447323
370212477313
LINDSAY AVE
CODY AVE
SOUTH AVE
Interurban Trail
VIEW CREST RD
SEA PINES LN
SEA PINES RD
UNIVERSITY ST
LEGEND
Parcel A - 370212 359328
Parcel B - 370212 364207
Parcel C - 370212 478165
Parcel D - 370212 447323
Parcel E - 370212 477313
N

BELCHER SWANSON LAW FIRM PLLC

November 29, 2017 - 3:37 PM

Transmittal Information

Filed with Court:	Court of Appeals Division I
Appellate Court Case Number:	75561-7
Appellate Court Case Title:	John R. Ferlin, et al., Appellants v. Chuckanut Community Forest Park District, et al., Respondents
Superior Court Case Number:	14-2-01694-4

The following documents have been uploaded:

- 755617_Petition_for_Review_20171129153546D1231451_8093.pdf
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- bob@carmichaelclark.com
- jasteele@cob.org
- rbucking@co.whatcom.wa.us
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- sjain@carmichaelclark.com

Comments:

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