



**TABLE OF CONTENTS**

- I. INTRODUCTION.....1
- II. IDENTITY AND INTEREST OF AMICUS .....2
- III. SPECIFIC ISSUES ADDRESSED BY AMICUS CURIAE .....3
- IV. ARGUMENT .....3
  - A. Special Assessments Authorized Under  
RCW 89.08.400(3) Must Charge A Per Acre Amount  
Greater Than Zero To Be Valid .....3
    - 1. The Plain Language Of RCW 89.08.400(3) Does Not  
Permit A Per Acre Charge Of Zero .....4
    - 2. Special Assessments That Fail To Charge A Per  
Acre Amount Are An Invalid Exercise Of Local  
Government Authority.....7
  - B. Contrary To The Assertions By The Parties, Finding The  
Ordinance Is Not A Valid Special Assessment Does Not  
Result In Its Being A Tax, Valid Or Invalid.....9
  - C. RCW 89.08.400 Is An Appropriate Authorization For  
Imposing Special Assessments .....11
    - 1. Legislative Enactments Are Presumed  
Constitutionally Valid, Placing The Burden Upon  
The Challengers To Prove Otherwise.....12
    - 2. RCW 89.08.400 Meets The Two Criteria Required  
For A Valid Special Assessment .....13
      - a. RCW 89.08.400 Supports Public Improvements .....14
      - b. Conservation District Services Confer “Special  
Benefits” .....15

i.	The Washington Legislature Has Determined That Conservation District Actions Constitute Special Benefits.....	15
ii.	The Creation Of Some “General Benefits” Does Not Preclude The Creation Of “Special Benefits” .....	16
iii.	A “Benefit” Need Not Be A Physical Improvement; The Opportunity To Receive Services Can Support An Assessment .....	17
V.	CONCLUSION .....	19

TABLE OF AUTHORITIES

Cases

*Abbenhaus v. Yakima*,  
89 Wn.2d 855, 576 P.2d 888 (1978)..... 6

*Ankeny v. Spokane*,  
92 Wash. 549, 159 P. 806 (1916) ..... 14, 18

*Appeals of Jones*,  
52 Wn.2d 143, 324 P.2d 259 (1958)..... 18, 19

*Berglund v. Tacoma*,  
70 Wn.2d 475 (1967)..... 9

*Burton v. Lehman*,  
153 Wn.2d 416, 103 P.3d 1230 (2005)..... 5

*City of Seattle v. Kelleher*,  
195 U.S. 351, 25 S.Ct. 44 (1904)..... 12

*City of Tacoma v. Taxpayers of City of Tacoma*,  
108 Wn.2d 679, 743 P.2d 793 (1987)..... 8

*Edmonds Land Co. v. City of Edmonds*,  
66 Wash. 201 (1911)..... 8

*Foster v. Com'rs of Cowlitz County*,  
100 Wash. 502 (1918)..... 12

*Franks & Son, Inc. v. State*,  
136 Wn.2d 737, 966 P.2d 1232 (1998)..... 11

*Hansen v. Hammer*,  
15 Wash. 315 (1896)..... 12

*Heavens v. King Cy. Rural Library Dist.*,  
66 Wn.2d 558, 404 P.2d 453 (1965)..... 9, 16

<i>High Tide Seafoods v. State</i> , 106 Wn.2d 695, 725 P.2d 411 (1986).....	12
<i>Hillis Homes, Inc. v. Public Utility District No. 1 of Snohomish County</i> , 97 Wn.2d 804, 650 P.2d 193 (1982).....	9, 11
<i>In re Aurora Ave.</i> , 180 Wash 523, 41 P.2d 143 (1935) .....	17
<i>In re Elliot Ave.</i> , 74 Wash. 184, 133 P. 8 (1913) .....	16
<i>In re Harrison Street</i> , 74 Wash. 187 (1913).....	10
<i>In re Local Improvement District No. 1</i> , 195 Wash. 439 (1938).....	12
<i>In re Westlake Ave.</i> , 40 Wash. 144, 82 P. 279 (1905) .....	12, 16
<i>Isla Verde Int'l Holdings, Inc. v. City of Camas</i> , 146 Wn.2d 740, 49 P.3d 867 (2002).....	8
<i>McMillan v. Tacoma</i> , 26 Wash. 358 (1901).....	10
<i>Medcalf v. Dep't of Licensing</i> , 133 Wn.2d 290, 944 P.2d 1014 (1997).....	6
<i>Port of Seattle v. Pollution Control Hearings Bd.</i> , 151 Wn.2d 568, 90 P.3d 659 (2004).....	7
<i>Rental Owners Ass'n v. Thurston County</i> , 85 Wn. App. 171, 931 P.2d 208, review denied, 132 Wn.2d 1010 (1997).....	13
<i>Roberts v. Richland Irr. Dist.</i> , 289 U.S. 71, 53 S.Ct. 519 (1933).....	12

<i>Samis Land Co. v. City of Soap Lake</i> , 143 Wn.2d 798, 23 P.3d 477 (2001).....	11
<i>Seattle v. Rogers Clothing</i> , 114 Wn.2d 213, 787 P.2d 39 (1990).....	<i>passim</i>
<i>State ex rel. Frese v. City of Normandy Park</i> , 64 Wn.2d 411 (1964).....	9
<i>State v. Roggenkamp</i> , 153 Wn.2d 614, 106 P.3d 196 (2005).....	5
<i>State v. Speaks</i> , 119 Wn.2d 204, 829 P.2d 1096 (1992).....	9
<i>State v. Stannard</i> , 109 Wn.2d 29, 742 P.2d 1244 (1987).....	5
<i>State v. Wagner</i> , 97 Wn. App. 344, 984 P.2d 425 (1999).....	6
<i>Tiffany Family Trust v. City of Kent</i> , 155 Wn.2d 225, 119 P.3d 325 (2005).....	8
<i>Village of Norwood v. Baker</i> , 172 U.S. 269, 19 S.Ct. 187 (1898).....	13, 15
<i>Weber v. Kenai Peninsula Borough</i> , 990 P.2d 611 (Alaska 1999) .....	19

**Statutes**

RCW 89.08 .....	1, 2
RCW 89.08.010 .....	2
RCW 89.08.070 .....	2
RCW 89.08.220 .....	11
RCW 89.08.400 .....	<i>passim</i>

RCW 89.08.400(1).....	15, 19
RCW 89.08.400(2).....	10, 14, 16, 19
RCW 89.08.400(3).....	<i>passim</i>
RCW 89.08.400(4).....	10
RCW 89.08.590 .....	17
RCW 90.03.500 .....	7

**Other Authorities**

14 <i>McQuillin Mun. Corp.</i> § 38:3 (3 <sup>rd</sup> ed.).....	15
14 <i>McQuillin Mun. Corp.</i> § 38:37 (3 <sup>rd</sup> ed.).....	8, 15
14 <i>McQuillin Mun. Corp.</i> § 38:39 (3 <sup>rd</sup> ed.).....	19
14 <i>McQuillin Mun. Corp.</i> § 38:9 (3 <sup>rd</sup> ed.).....	13
1A Kelly Kunsch, <i>Washington Practice: Methods of Practice</i> § 60.21 (4 <sup>th</sup> ed 1997).....	17
Hugh D. Spitzer, <i>Taxes vs. Fees: A Curious Confusion</i> , 38:2 <i>Gonz.</i> <i>L. Rev.</i> 335 (2002-2003).....	9
Philip A. Trautman, <i>Assessments in Washington</i> , 40 <i>Wash. L. Rev.</i> 100, 102 (1965).....	10, 12, 14
Thomas M. Cooley, <i>The Law of Taxation</i> § 31 (Clark A. Nichols ed., 4 <sup>th</sup> ed. 1924) at 106–107 .....	10
Webster’s Encyclopedic Unabridged Dictionary 1490 (1996).....	5

**Regulations**

WAC 135-100.....	2, 13
WAC 135-100-080.....	7

**Constitutional Provisions**

Washington Constitution Article VII, § 9..... 2, 12

## I. INTRODUCTION

The Washington State Conservation Commission (Commission) assists and oversees local conservation districts established under chapter 89.08 RCW. The Commission also has the authority to promulgate rules interpreting chapter 89.08 RCW.

The Commission offers this amicus curiae brief to address three issues of interest to the Commission. First, the Commission presents its view that a special assessment must include a per acre charge (at an amount greater than “zero”) in order to comply with RCW 89.08.400(3). Consequently, the Commission agrees with the trial court’s conclusion that the Mason County ordinance fails to satisfy the requirements of RCW 89.08.400(3) by imposing only a flat \$5.00 per parcel charge and not including a statutorily-mandated annual per acre assessment.

Second, the Commission presents its view that, contrary to the arguments of the Mason County Conservation District, special assessments under RCW 89.08.400 are not “taxes.” Mason County apparently relied upon RCW 89.08.400 as authority for its actions, but this statute does not authorize imposition of a tax. To the extent the Mason County Conservation District argues that RCW 89.08.400 provides taxing authority, the Commission disagrees.

Finally, the Commission presents its view that contrary to the arguments of Respondents/Cross Appellants, special assessments under RCW 89.08.400 are constitutionally valid. Special assessments under RCW 89.08.400 support a public improvement, and they confer a special benefit on subject properties beyond that conferred to the general public. As such, they are valid under Washington Constitution Article VII, § 9.

## II. IDENTITY AND INTEREST OF AMICUS

The Commission is charged by statute with facilitating various natural resource protection programs, including programs aimed at soil conservation and floodwater protection. *See generally*, RCW 89.08.010; RCW 89.08.070. Specifically, the Commission is charged with assisting and overseeing local conservation districts established under RCW 89.08 and with serving as a conduit between these districts and federal agencies with related missions, such as the United States Department of Agriculture. RCW 89.08.070. Consistent with this legislative charge, the Commission has promulgated an interpretive rule identifying its understanding of the assessment process in RCW 89.08.400. WAC 135-100 (Appendix A to this Brief). While the rule post-dates the actions subject to this appeal, the decision of the court in this matter may bear on the rule and on the Commission's work. As such, the Commission has an interest in this case.

Additionally, special assessments under RCW 89.08.400 are an important funding source for several conservation districts, providing significant funding for programs that the Commission, in partnership with the districts, is tasked with promoting. A ruling that affects the ability of Districts to effectively utilize this funding tool could not only impact the conservation work of the districts, but also that of the Commission.

### **III. SPECIFIC ISSUES ADDRESSED BY AMICUS CURIAE**

1. Whether a special assessment that identifies “zero” as a per acre amount pursuant to RCW 89.08.400(3) is invalid as contrary to the authorizing statute.

2. Whether a special assessment imposed pursuant to RCW 89.08.400 is a “tax.”

3. Whether RCW 89.08.400 is a constitutionally valid grant of legislative authority authorizing the imposition of special assessments.

### **IV. ARGUMENT**

#### **A. Special Assessments Authorized Under RCW 89.08.400(3) Must Charge A Per Acre Amount Greater Than Zero To Be Valid**

RCW 89.08.400(3) authorizes the imposition of a special assessment only upon those lands that receive a special benefit. For those categories of lands receiving a benefit, the rate of assessment “shall be stated as either *uniform annual per acre amount*, or an annual flat rate per

parcel *plus a uniform annual rate per acre amount*, for each classification of land.” RCW 89.08.400(3) (emphasis added). Under either approach for setting the rate of the assessment, the statute requires a per acre charge of greater than zero.<sup>1</sup> Because the Mason County ordinance at issue imposed only a flat \$5.00 per parcel charge and did not include any annual per acre assessment, the ordinance fails to comply with RCW 89.08.400(3) and is an invalid special assessment.

**1. The Plain Language Of RCW 89.08.400(3) Does Not Permit A Per Acre Charge Of Zero**

The record in this matter is clear: Mason County’s ordinance assesses a flat rate per parcel, with no uniform annual per acre quantity. *See, e.g.*, Appellant Mason Conservation District’s Opening Brief (Appellant Brief) at 33–35; Ruling Granting Review at 2, *Cary v. Mason County*, No. 37981-3-II (Sept. 19, 2008). The Appellant/Cross Respondent would like this court to overturn the trial court’s plain reading of the statute and instead rationalize that “zero” can be a uniform annual rate per acre added to the flat rate per parcel. Consistent with the rules of statutory construction, however, the plain language of RCW 89.08.400(3) does not permit special assessments to assess an annual per acre charge of zero.

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<sup>1</sup> The trial court reached the same conclusion: the ordinance adopted by Mason County was invalid for failure to provide a per acre quantity. Letter Ruling at 3, *Cary v. Mason County*, No. 03-2-00196-5 (Mason County Superior Court March 11, 2008).

Courts interpret and construe statutes to give effect to all the language used, with no portions of the statute devoid of meaning or superfluous. *State v. Roggenkamp*, 153 Wn.2d 614, 624, 106 P.3d 196 (2005). In undertaking a plain language analysis, the court must remain careful to avoid “unlikely, absurd or strained” results. *Burton v. Lehman*, 153 Wn.2d 416, 423, 103 P.3d 1230 (2005) (quoting *State v. Stannard*, 109 Wn.2d 29, 36, 742 P.2d 1244 (1987)).

Here, the plain language of RCW 89.08.400(3) provides for an annual flat rate per parcel, “plus” a uniform annual rate per acre amount. RCW 89.08.400(3). The common meaning of “plus” is “more by the addition of; increased by.” Webster’s Encyclopedic Unabridged Dictionary 1490 (1996). An annual per acre amount of zero does not “increase” nor make an assessment “more.” Had the legislature intended for “zero” to be an acceptable per acre amount, there would have been no need for the word “plus” in the statute. Ruling as requested by Appellant/Cross Respondent effectively authorizes an annual flat rate per parcel with no additional per acre amount, rendering meaningless the word “plus” in the statute.

Furthermore, holding that “zero” may be an acceptable per acre amount would lead to an absurd result. Again, RCW 89.08.400(3) provides for *either* a uniform annual per acre amount *or* an annual flat rate

per parcel plus a uniform annual rate per acre amount. RCW 89.08.400(3). The first use of the phrase “uniform annual per acre amount” in RCW 89.08.400(3) cannot mean “zero” because if that were true, there would be no assessment whatsoever. When the legislature uses the same word or phrase in different parts of the same statute, a presumption arises that they are intended to have the same meaning. *State v. Wagner*, 97 Wn. App. 344, 347–348, 984 P.2d 425 (1999); *Medcalf v. Dep’t of Licensing*, 133 Wn.2d 290, 300–01, 944 P.2d 1014 (1997). Thus, neither can the second use of the phrase “uniform annual per acre amount” mean zero.

Finally, interpreting RCW 89.08.400(3) to require a per acre assessment amount greater than zero is consistent with the policy behind the statute and the Commission’s recent interpretive rule. In part, a per acre amount is one means to make the assessed quantity commensurate with the benefit: a landowner with more acres will have more land subject to resource conservation benefits and will also pay a higher total assessment than a neighbor with fewer acres. *See, e.g., Abbenhaus v. Yakima*, 89 Wn.2d 855, 576 P.2d 888 (1978). The Appellant/Cross Respondent’s interpretation would eliminate this proportionality.

Furthermore, the Conservation Commission has interpreted RCW 89.08.400(3) to mean that a “uniform per-acre amount must be

greater than zero cents per acre . . . .” WAC 135-100-080. An implementing agency’s interpretation of the statute is entitled to deference. *Port of Seattle v. Pollution Control Hearings Bd.*, 151 Wn.2d 568, 594, 90 P.3d 659 (2004). While the Commission’s rule post-dates the ordinance at issue, it nevertheless reflects the Commission’s interpretation presently and at the time of the assessment and should be considered by the Court. See the October 1992 Assessment Guide Update, attached in pertinent part as Appendix B.

The plain language of RCW 89.08.400(3) requires special assessments to include an annual per acre assessment amount greater than zero. Mason County’s ordinance fails to meet this statutory requirement.

**2. Special Assessments That Fail To Charge A Per Acre Amount Are An Invalid Exercise Of Local Government Authority**

The District relies entirely upon RCW 89.08.400 as the statutory authority for the ordinance at issue and cites to no alternative authority.<sup>2</sup> Because Mason County’s ordinance includes no annual per acre amount, assessments under the ordinance are invalid.

Municipal corporations have limited authority, making the “threshold issue . . . whether the . . . ordinance violated or exceeded the

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<sup>2</sup> Mason County has not submitted briefing to this court so it is impossible to know whether the County would have an alternative authority to support its actions, such as RCW 90.03.500, using its police power to regulate stormwater.

State's statutory grant of authority." *Seattle v. Rogers Clothing*, 114 Wn.2d 213, 221,787 P.2d 39 (1990); *see also Edmonds Land Co. v. City of Edmonds*, 66 Wash. 201 (1911); *City of Tacoma v. Taxpayers of City of Tacoma*, 108 Wn.2d 679, 692, 743 P.2d 793 (1987) *recons. denied*, (Nov. 6, 1987). Failure to abide by the requirements in a statutory grant of authority renders the subsequent effort invalid as outside the scope of the local government's authority. *See, e.g., 14 McQuillin Mun. Corp.* § 38:37 (3rd ed.); *Tiffany Family Trust v. City of Kent*, 155 Wn.2d 225, 119 P.3d 325 (2005).

The lack of a per acre charge in Mason County's ordinance provides sufficient grounds to find the ordinance invalid. The Court need look no further for a basis to resolve this matter. The Court should affirm the lower court's ruling that interprets RCW 89.08.400(3) as requiring some positive, per acre amount for any assessment imposed under its authority and invalidate the ordinance as contrary to statute.

There is thus no need for the Court to reach beyond the per acre amount issue to examine other issues raised by the parties, including the constitutional validity of the assessment and its authority. It is well established that if a case can be decided on non-constitutional grounds, a court should decline to consider the constitutional issues. *See Isla Verde Int'l Holdings, Inc. v. City of Camas*, 146 Wn.2d 740, 49 P.3d 867, 874

(2002); *State v. Speaks*, 119 Wn.2d 204, 207, 829 P.2d 1096 (1992). However, if this Court chooses to reach beyond the per acre amount issue to examine other issues, the Commission provides the analysis below for consideration.

**B. Contrary To The Assertions By The Parties, Finding The Ordinance Is Not A Valid Special Assessment Does Not Result In Its Being A Tax, Valid Or Invalid**

Appellant/Cross Respondent Mason Conservation District has argued in the alternative that the actions of Mason County, pursuant to RCW 89.08.400, constitute a valid tax. Appellant Brief at 26. *See also* Respondents'/Cross-Appellants' Response Brief (Respondent Brief) at 25. However, in order to impose a tax in Washington, statutory authorization is required. *See* Hugh D. Spitzer, *Taxes vs. Fees: A Curious Confusion*, 38:2 Gonz. L. Rev. 335 (2002-2003) at 340 citing *Hillis Homes, Inc. v. Public Utility District No. 1 of Snohomish County*, 97 Wn.2d 804, 809, 650 P.2d 193 (1982). RCW 89.08.400 cannot be deemed such authority. The statute explicitly authorizes imposition of special assessments, and the two terms of art ("tax" and "special assessment") refer to very different impositions upon land owners. *See, e.g., Berghund v. Tacoma*, 70 Wn.2d 475, 477 (1967) (citing *Heavens v. King Cy. Rural Library Dist.*, 66 Wn.2d 558, 563, 404 P.2d 453 (1965)); *State ex rel. Frese v. City of*

*Normandy Park*, 64 Wn.2d 411 (1964); *In re Harrison Street*, 74 Wash. 187 (1913).

There are at least four distinctions between taxes and special assessments:

The differences between a special assessment and a tax are that (1) a special assessment can be levied only on land; (2) a special assessment cannot . . . be made a personal liability of the person assessed; (3) a special assessment is based wholly on benefits; and (4) a special assessment is exceptional both as to time and locality.

Thomas M. Cooley, *The Law of Taxation* § 31 (Clark A. Nichols ed., 4<sup>th</sup> ed. 1924) at 106–107; *see also* Philip A. Trautman, *Assessments in Washington*, 40 Wash. L. Rev. 100, 102 (1965); *McMillan v. Tacoma*, 26 Wash. 358, 361–362 (1901)<sup>3</sup>. On its face, an assessment under RCW 89.08.400 meets the character of a special assessment as described above: it is levied only on land, RCW 89.08.400(3), (4); if unpaid, it constitutes a lien against the land, RCW 89.08.400(4); it is to be based on benefits, with lands classified accordingly, RCW 89.08.400(3); and it is limited in both geographic scope and duration, RCW 89.08.400(2). RCW 89.08.400 authorizes only a special assessment, not a tax.

The distinctions among governmentally-imposed charges are not academic. Different bases for governmentally-imposed financial burdens

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<sup>3</sup> Washington law has subsequently changed with regard to the ad valorem requirement for real property taxes.

have different constitutional implications and analyses. *See, e.g., Samis Land Co. v. City of Soap Lake*, 143 Wn.2d 798, 23 P.3d 477 (2001); *Hillis Homes*, 105 Wn.2d 300-301; *Franks & Son, Inc. v. State*, 136 Wn.2d 737, 966 P.2d 1232 (1998), *cert. denied* 526 U.S. 1066, 119 S.Ct. 1458 (1999). Furthermore, as specifically related to this case, not only are Conservation Districts without statutory authorization to tax, but they have an express statutory prohibition against taxing in RCW 89.08.220 (“A conservation district . . . shall constitute a governmental subdivision of this state, and a public body corporate and politic exercising public powers, but shall not levy taxes.”)

RCW 89.08.400 is a proper delegation of legislative authority to local governments authorizing a special assessment, not a tax. In order for the Court to find that the ordinance subject to this appeal constitutes a tax, an authority other than RCW 89.08.400 must support its imposition.

**C. RCW 89.08.400 Is An Appropriate Authorization For Imposing Special Assessments**

Respondents/Cross Appellants argue that the special assessment adopted by Mason County is invalid for a number of reasons, including that it fails to confer special benefits to most of the assessed parcels. Effectively, this challenges the validity of RCW 89.08.400 because the

statute explicitly authorizes assessments based upon the provision of conservation district services.

The legislative branch of the state government has constitutional authority to make provisions for assessing real property for benefits conferred; i.e., to authorize special assessments. Wash. Const. art. VII, § 9; *Foster v. Com'rs of Cowlitz County*, 100 Wash. 502, 510-511 (1918); *In re Westlake Ave.*, 40 Wash. 144, 148, 82 P. 279 (1905); *City of Seattle v. Kelleher*, 195 U.S. 351, 358, 25 S. Ct. 44 (1904); *Hansen v. Hammer*, 15 Wash. 315, 318-19 (1896); Trautman, 40 Wash. L. Rev. at 100. In this instance, the state legislature has exercised that power through enactment of RCW 89.08.400. RCW 89.08.400 is a valid exercise of the legislature's special assessment authority.

**1. Legislative Enactments Are Presumed Constitutionally Valid, Placing The Burden Upon The Challengers To Prove Otherwise**

“Statutes are presumed constitutional and a party challenging a statute has the burden of establishing its invalidity beyond a reasonable doubt, as well as rebutting the presumption that all legally necessary facts exist. A statute, if possible, should be construed to be constitutional.” *High Tide Seafoods v. State*, 106 Wn.2d 695, 698, 725 P.2d 411 (1986) (citations omitted). *See also In re Local Improvement District No. 1*, 195 Wash. 439, 441 (1938); *Roberts v. Richland Irr. Dist.*, 289 U.S. 71, 74-75,

53 S. Ct. 519 (1933). As a consequence, the burden of proof is upon those challenging the legislative actions, in this case Respondents/Cross Appellants. *Rogers Clothing*, 114 Wn.2d at 229; *see also Rental Owners Ass'n v. Thurston County*, 85 Wn. App. 171, 180, 931 P.2d 208, *review denied*, 132 Wn.2d 1010 (1997); 14 *McQuillin Mun. Corp.* § 38:9 (3<sup>rd</sup> ed.). This burden has not been met with regard to RCW 89.08.400 as interpreted by the Commission's rules, WAC 135-100.

**2. RCW 89.08.400 Meets The Two Criteria Required For A Valid Special Assessment**

A special assessment recovers the benefit, beyond that provided to the general public, of a public action provided to the property being charged for the assessment. As such, "the owners do not, in fact, pay anything in excess of what they receive by reason of such improvement." *Village of Norwood v. Baker*, 172 U.S. 269, 278–279, 19 S. Ct. 187 (1898) (emphasis added). However, the relationship between the cost of an assessment and the special benefits received need not be exact; "*exact equality of taxation is not always attainable*; and for that reason the excess of cost over special benefits, unless it be of a material character, ought not to be regarded by a court of equity when its aid is invoked to restrain the enforcement of a special assessment." *Village of Norwood*, 172 U.S. at

279 (assessment is not a taking unless assessment amount is in ‘substantial excess’ of special benefits accrued) (emphasis added).

In Washington, special assessments must meet two criteria: first, the assessment must support a public improvement, and next, the assessment must confer a special benefit on the subject property beyond that conferred generally within the municipality. *See Ankeny v. Spokane*, 92 Wash. 549, 552, 159 P. 806 (1916); Trautman, 40 Wash. L. Rev. at 101; *see also* RCW 89.08.400(2). RCW 89.08.400 meets these two criteria.

**a. RCW 89.08.400 Supports Public Improvements**

Respondents/Cross Appellants assert that public advantages associated with the Mason County ordinance invalidate the assessment. *See* Respondent Brief at 3 (“[P]rograms were intended primarily to improve water quality, particularly in parts of Puget Sound and Hood Canal, thus providing a public benefit”). (“While achieving such a goal [healthy water resources] would be in the public interest, members of the public at large benefit if this goal is achieved, regardless of whether they own any land or, if land owners, have property subject to the assessment”). *Id.* at 23. Contrary to invalidating the assessment, however, these advantages go to prove that the first criterion of the *Ankeny* test is met: the assessment supports a public improvement.

**b. Conservation District Services Confer “Special Benefits”**

Respondents/Cross Appellants claim that the services offered by a conservation district, and forming the basis of any special assessment under RCW 89.08.400, do not constitute a “special benefit” as required to support the imposition of a special assessment. However, Washington case law allows for a broader understanding of what may constitute a special benefit than argued by Respondents/Cross Appellants.

**i. The Washington Legislature Has Determined That Conservation District Actions Constitute Special Benefits**

As a threshold matter, whether or not a particular activity constitutes a special beneficial improvement is generally a legislative determination. *Rogers Clothing*, 114 Wn.2d at 224; *Village of Norwood*, 172 U.S. at 278; *see also* 14 *McQuillin Mun. Corp.* § 38:37 (3<sup>rd</sup> ed.) and 14 *McQuillin Mun. Corp.* § 38:3 (3<sup>rd</sup> ed.). Here, the Washington State Legislature has made such a determination in RCW 89.08.400. The legislature has decreed that “[a]ctivities and programs to conserve natural resources, including soil and water, *are declared to be of special benefit to lands* and may be used as the basis upon which special assessments are imposed.” RCW 89.08.400(1) (emphasis added). RCW 89.08.400 further provides that “[t]he findings of the county legislative authority shall be

final and conclusive.” RCW 89.08.400(2). In *Heavens v. King County Library District* such a legislative finding was notably absent. *Heavens*, 66 Wn.2d at 560. See also *In re Westlake Ave.*, 40 Wash. at 152; *In re Elliot Ave.*, 74 Wash. 184, 133 P. 8 (1913); *Rogers Clothing*, 114 Wn.2d at 224–225. Consequently, this Court should defer to the determination by the state legislature and find that based on RCW 89.08.400, services offered by conservation districts constitute a “special benefit” to assessed lands.

**ii. The Creation Of Some “General Benefits” Does Not Preclude The Creation Of “Special Benefits”**

The Respondents/Cross Appellants suggest that because special assessments under RCW 89.08.400 may benefit the general public (e.g., by promoting a healthier Puget Sound), the assessments therefore cannot convey “special benefits” to those assessed. See, e.g., Respondent Brief at 23.

However, the services conservation districts can provide are confined to a geographically distinct area under a special assessment. To use Respondents/Cross Appellants’ example of Puget Sound, there is no indication that the Mason Conservation District intends to provide services such as farm plan assistance or the inspection of septic tanks to properties in and near Olympia, Tacoma, or Seattle, which also undoubtedly affect

the health of Puget Sound. Thus, while it is true that resource protection efforts do benefit the public at large; it is also true that under a special assessment a conservation district's services are not offered to the general public in Washington State but are geographically confined to the area assessed. The fact that the services may create a broader benefit does not preclude them from being a "special benefit." See *In re Aurora Ave.*, 180 Wash. 523, 41 P.2d 143 (1935) (finding that the creation of some general benefits does not necessarily preclude creation of special benefits and the consequent justification for a special assessment); 1A Kelly Kunsch, *Washington Practice: Methods of Practice* § 60.21 (4<sup>th</sup> ed 1997).

**iii. A "Benefit" Need Not Be A Physical Improvement; The Opportunity To Receive Services Can Support An Assessment**

Finally, Respondents/Cross Appellants argue that the opportunity to receive services, such as provision of a farm plan<sup>4</sup> or inspection of a septic tank, "confer[] no indentifiable, tangible special benefits directly to the properties charged." Respondent Brief at 23. Rather, Respondents/Cross Appellants argue that the activity supported by a special assessment must be a physical improvement. Respondents/Cross

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<sup>4</sup> Respondents/Cross Appellants argue that farm plans can only be provided to certain types of parcels, apparently based upon an understanding of what constitutes a "farm." Respondent Brief at 15. See to the contrary the definition of farm plan in RCW 89.08.590.

Appellants cite to *Heavens, supra* for the proposition that a benefit must be “actual, physical and material.” Respondent Brief at 27.

While permanent activities may well confer a special benefit and some states may require permanency, “Washington long ago declined to add this requirement.” *Rogers Clothing*, 114 Wn.2d at 224 (citing *Ankeny*, 92 Wash. at 552). *See also Ankeny*, 92 Wash. at 559–560. Washington courts have upheld as “special benefits” the simple *opportunity* to partake in a benefit, including the benefit of services rather than physical improvements.

In *Rogers Clothing*, the court upheld services provided to a downtown business district. The services included cleaning, security, and advertising, among others. The court went on to specifically address the argument that an “opportunity to benefit” was insufficient to support an assessment. To the contrary, “[i]nherent in this concept of benefit . . . is the idea that ‘benefit’ includes the ‘opportunity to benefit’ from the improvement [in the future] so long as the opportunity is not merely speculative.” *Rogers Clothing*, 114 Wn.2d at 231. One need not actually partake of the benefit for which the property is assessed. In particular, the present uses of the property are not determinative when deciding whether an improvement constitutes a benefit. *See, e.g., Appeals of Jones*, 52 Wn.2d 143, 146, 324 P.2d 259 (1958) (“property cannot be relieved from

the burden of a local improvement district assessment simply because its owner has seen fit to devote it to a *use* which may not be specifically benefited by the local improvement”<sup>5</sup>); *Weber v. Kenai Peninsula Borough*, 990 P.2d 611 (Alaska 1999) (“special benefit” is derived from creating a utility special assessment district when a property has access to a gas line, even though the property owner indicated he might decide not to access the gas line); 14 *McQuillin Mun. Corp.* § 38:39 (3<sup>rd</sup> ed.).

The legislature has determined that conservation district services convey “special benefits” to those properties subject to special assessments. RCW 89.08.400(1), (2). The Respondents/Cross Appellants’ arguments that the benefits created by such assessments are not “special” are addressed by case law. The second criterion of the *Ankeny* test is met: the assessment confers a special benefit on subject properties beyond that conferred generally. The Respondents/Cross Appellants’ constitutional challenge to RCW 89.08.400 should be rejected.

## V. CONCLUSION

The Washington State Conservation Commission requests that this Court uphold the trial court on the narrow issue of non-compliance with

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<sup>5</sup> *Appeals of Jones* actually found no special benefit from an improvement (a water main) “for the simple reason that [residents] now enjoy from the city the identical services (provision of residential water) for which the local improvement assessment has been made. *Appeals of Jones*, 52 Wn.2d at 147.

RCW 89.08.400(3) and decline to embark on unnecessary analysis of the parties' other issues. Should the Court opt to consider these other issues, the Washington State Conservation Commission urges this Court to hold that RCW 89.08.400 does not authorize imposition of a tax and that it is a valid grant of authority to local governments to impose special assessments.

RESPECTFULLY SUBMITTED this 10 day of September, 2009.

ROBERT M. MCKENNA  
Attorney General



SHARONNE E. O'SHEA, WSBA # 28796  
Assistant Attorney General  
(360) 586-3589

Attorneys for Washington State,  
Conservation Commission Amicus Curiae

# Chapter 135-100 WAC

## SPECIAL ASSESSMENTS FOR NATURAL RESOURCE CONSERVATION

### WAC

135-100-010	Purpose of this rule.
135-100-020	Definitions.
135-100-030	Purpose and use of assessments.
135-100-040	County has authority to impose assessment.
135-100-050	System of assessments.
135-100-060	Term of assessment.
135-100-070	Public lands may be assessed.
135-100-080	Assessment rates.
135-100-090	Forest lands may be assessed at special rates.
135-100-100	Special notice requirements for public hearings.
135-100-110	Conservation district public hearing before August 1.
135-100-120	Conservation district proposal and budget filed with county.
135-100-130	County public hearing after receiving proposal.
135-100-140	County may modify proposed system after public hearing.
135-100-150	County imposes system of assessments.
135-100-160	Conservation district may withdraw assessment.
135-100-170	Conservation district may alter assessment on parcels.
135-100-180	Conservation district prepares assessment roll.
135-100-190	County assessor applies assessment to tax rolls.
135-100-200	County treasurer collects assessments.
135-100-210	County can recover actual costs.
135-100-220	Conservation district to receive all remaining funds.
135-100-230	Conservation district to inform landowners.
135-100-240	Landowners may petition the county to object.
135-100-250	Renewal of assessment.

**WAC 135-100-010 Purpose of this rule.** It is the intent of the conservation commission to interpret and clarify RCW 89.08.400 in this rule in order to assist conservation districts and county legislative authorities in their efforts to develop and impose a system of assessments for the conservation of renewable natural resources.

[Statutory Authority: RCW 89.08.040 and [89.08.]070. 07-10-071, § 135-100-010, filed 5/1/07, effective 6/1/07.]

**WAC 135-100-020 Definitions.** "Authorized conservation program" and "conservation program" mean the renewable resources program defined in RCW 89.08.220(7) which includes a comprehensive long-range plan and a supplemental annual work plan.

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

"Special benefits to lands" means tangible improvements to renewable natural resources. "Special benefits to lands" can also mean intangible improvements to renewable natural resources from conservation programs and activities, including, but not limited to, education and outreach activities and programs that result, directly or indirectly, in improvements to renewable natural resources, or other intangible benefits that accrue to lands. "Special benefits to lands" does not necessarily mean that appraised property values are improved or altered as a result of the activities and programs funded by the special assessment.

"System of assessments" means:

(1) A classification or categorization of lands according to the benefits conferred, or to be conferred, by the conservation district's authorized conservation program;

(2) An annual rate of assessment for each land classification;

(3) A total amount of assessments that will be collected from each land classification; and

(4) The duration of the assessment.

The system of assessments does not include a budget or intended allocation of funds to be derived from the special assessment.

[Statutory Authority: RCW 89.08.040 and [89.08.]070. 07-10-071, § 135-100-020, filed 5/1/07, effective 6/1/07.]

### **WAC 135-100-030 Purpose and use of assessments.**

The purpose of conservation district special assessments is to help conservation districts implement their authorized conservation program, which includes a comprehensive long-range plan and a supplemental annual work plan.

Funds generated by special assessments for natural resource conservation must be used to benefit lands assessed.

[Statutory Authority: RCW 89.08.040 and [89.08.]070. 07-10-071, § 135-100-030, filed 5/1/07, effective 6/1/07.]

**WAC 135-100-040 County has authority to impose assessment.** The county legislative authority has sole authority to impose a special assessment for natural resource conservation on lands within the conservation district and within the boundaries of the county.

When more than one conservation district occurs in a county, special assessments for natural resource conservation need not be imposed for all of the conservation districts in the county.

When one conservation district exists in more than one county, special assessments for natural resource conservation need not be imposed by all counties.

[Statutory Authority: RCW 89.08.040 and [89.08.]070. 07-10-071, § 135-100-040, filed 5/1/07, effective 6/1/07.]

**WAC 135-100-050 System of assessments.** The conservation district develops a system of assessments that classifies all lands in the conservation district into classifications or categories according to benefits conferred, or to be conferred, through the authorized conservation program of the conservation district.

The conservation district must also classify lands which will not benefit from the authorized conservation program.

The system of assessments cannot exempt lands based on taxpayer characteristics such as age or income level.

[Statutory Authority: RCW 89.08.040 and [89.08.]070. 07-10-071, § 135-100-050, filed 5/1/07, effective 6/1/07.]

**WAC 135-100-060 Term of assessment.** The minimum term of a special assessment for natural resource conservation is one year. The maximum term is ten years. Conservation district special assessments can be renewed subject to WAC 135-100-250. The term length must be found to adequately serve the public interest as determined by the county legislative authority as required by WAC 135-100-150.

[Statutory Authority: RCW 89.08.040 and [89.08.]070. 07-10-071, § 135-100-060, filed 5/1/07, effective 6/1/07.]

**WAC 135-100-070 Public lands may be assessed.** Two kinds of public lands are subject to the special assessment: Lands owned by local governments, and lands owned by the state.

Public lands owned by local governmental entities are subject to the special assessment if such lands will receive special benefits from the district's authorized conservation program.

Public lands owned by state governmental entities are subject to the special assessment if such lands will receive special benefits from the district's authorized conservation program. In addition, the county legislative authority must follow the requirements described in chapter 79.44 RCW when assessing such lands. The conservation district may provide such assistance as needed for the county legislative authority to comply with chapter 79.44 RCW.

If public lands will not benefit from the conservation district's conservation program, they must be identified in the system of assessments as a class of land not receiving special benefits.

[Statutory Authority: RCW 89.08.040 and [89.08.]070. 07-10-071, § 135-100-070, filed 5/1/07, effective 6/1/07.]

**WAC 135-100-080 Assessment rates.** Assessment rates must be based on the special benefits to be conferred to natural resources by the district's authorized conservation program.

The conservation district must determine an annual per-acre rate of assessment for each class of land. The conservation district must calculate the total amount of special assessments proposed to be collected for each class of lands.

Lands not benefited by the conservation district's conservation program must be classified separately and must not be subject to the special assessment.

For each classification of land to receive special benefits, the annual assessment rate must be either:

- (1) A uniform per-acre amount; or
- (2) A uniform per-acre amount plus an annual flat rate per parcel.

The uniform per-acre amount must be greater than zero cents per acre and cannot exceed ten cents per acre.

The maximum annual per-parcel rate is five dollars, except for counties with a population of over one million five hundred thousand persons where the maximum annual per-parcel rate cannot exceed ten dollars.

[Statutory Authority: RCW 89.08.040 and [89.08.]070. 07-10-071, § 135-100-080, filed 5/1/07, effective 6/1/07.]

**WAC 135-100-090 Forest lands may be assessed at special rates.** Some forest lands, referred to as qualified forest lands, may be subject to a special rate of assessment.

Qualified forest lands are parcels used only for the planting, growing, or harvesting of trees. Such lands qualify for special rates of assessment.

Forest lands used for purposes other than, or in addition to, the planting, growing, or harvesting of trees do not qualify for special rates of assessment.

For qualified forest lands, no per-parcel assessment shall be charged. In lieu of a per-parcel charge, each owner of more than one parcel of qualified forest lands may be charged up to three dollars a year if their forest lands will benefit from the conservation district's conservation program.

The per-acre rate of special assessments for qualified forest lands may not exceed one-tenth the weighted average per-acre assessment of all other assessed lands in the district. The weighted average is calculated by dividing the total assessment to be collected from all lands except qualified forest lands by the total acreage of all lands except qualified forest lands.

Only the first ten thousand acres of qualified forest lands owned by the same person or entity may be assessed. Additional acres beyond the first ten thousand acres must be identified in the system of assessments as a class of land exempt from assessment.

[Statutory Authority: RCW 89.08.040 and [89.08.]070. 07-10-071, § 135-100-090, filed 5/1/07, effective 6/1/07.]

**WAC 135-100-100 Special notice requirements for public hearings.** RCW 89.08.400(2) imposes additional public notice requirements for special assessment public hearings. In addition to notice requirements imposed by the Open Public Meetings Act, the conservation district and county legislative authority must also comply with notice requirements for public hearings described in RCW 89.08.400(2).

[Statutory Authority: RCW 89.08.040 and [89.08.]070. 07-10-071, § 135-100-100, filed 5/1/07, effective 6/1/07.]

**WAC 135-100-110 Conservation district public hearing before August 1.** The supervisors of a conservation district must hold at least one public hearing on the system of assessments being proposed by the district. The hearing or hearings must occur before the first day of August in the calendar year prior to the year the proposed assessments will be collected.

Public hearings may be held as part of regular or special meetings of the conservation district board of supervisors. Such hearings must have a specified start and end time for the board to receive public comment.

The conservation district should make reasonable efforts to educate affected landowners about the costs and benefits of the special assessment well in advance of the conservation district formal public hearing(s).

[Statutory Authority: RCW 89.08.040 and [89.08.]070. 07-10-071, § 135-100-110, filed 5/1/07, effective 6/1/07.]

**WAC 135-100-120 Conservation district proposal and budget filed with county.** On or before the first day of August in the calendar year before the assessment will be collected, the conservation district must file the proposed system of assessments with the county legislative authority. The conservation district must also provide to the county legisla-

tive authority a proposed budget for the first year the assessment will be collected.

Filing means the county legislative authority, or its authorized representative such as the county auditor or clerk, has physically received the proposed system of assessments and the proposed budget by the close of business on or before the first day of August. Along with the proposed system of assessments and proposed budget, a copy of the resolution passed by the conservation district board of supervisors is to be provided to the county asking the county legislative authority to impose a special assessment for natural resource conservation consistent with RCW 89.08.400 and this rule.

[Statutory Authority: RCW 89.08.040 and [89.08.]070. 07-10-071, § 135-100-120, filed 5/1/07, effective 6/1/07.]

**WAC 135-100-130 County public hearing after receiving proposal.** After the county legislative authority has received the proposed system of assessments and proposed budget from the conservation district, the county must hold at least one public hearing on the proposed system of assessments as filed by the conservation district with the county legislative authority.

[Statutory Authority: RCW 89.08.040 and [89.08.]070. 07-10-071, § 135-100-130, filed 5/1/07, effective 6/1/07.]

**WAC 135-100-140 County may modify proposed system after public hearing.** After the county's public hearing, and before the county legislative authority takes final action on the conservation district request to impose a special assessment, the county legislative authority may modify or amend the proposed system of assessments. The conservation district may provide such assistance as needed for the county legislative authority to modify or amend the proposed system of assessments. The county legislative authority may not modify a conservation district's proposed budget or alter the intended allocation of special assessment funds.

[Statutory Authority: RCW 89.08.040 and [89.08.]070. 07-10-071, § 135-100-140, filed 5/1/07, effective 6/1/07.]

**WAC 135-100-150 County imposes system of assessments.** To impose the proposed or modified system of assessments, the county legislative authority must find:

- (1) That the proposed system will serve the public interest; and
- (2) That the special benefits to lands provided by the assessment will meet or exceed the amount to be assessed.

This does not necessarily mean appraised property values are improved or altered through the authorized conservation program of the district.

[Statutory Authority: RCW 89.08.040 and [89.08.]070. 07-10-071, § 135-100-150, filed 5/1/07, effective 6/1/07.]

**WAC 135-100-160 Conservation district may withdraw assessment.** The conservation district, through official action of the conservation district board of supervisors, may withdraw the proposed system of assessments at any time before a county legislative authority takes final action on the proposed system of assessments.

[Statutory Authority: RCW 89.08.040 and [89.08.]070. 07-10-071, § 135-100-160, filed 5/1/07, effective 6/1/07.]

(5/1/07)

**WAC 135-100-170 Conservation district may alter assessment on parcels.** The conservation district may alter assessments on individual parcels at any time if land uses change that would affect the classification of such parcels. The conservation district must notify the county assessor of any changes that affect the classification of parcels to be assessed.

If the county assessor seeks to change the classification of individual parcels, the conservation district must approve such changes before collecting the assessment for such parcels.

[Statutory Authority: RCW 89.08.040 and [89.08.]070. 07-10-071, § 135-100-170, filed 5/1/07, effective 6/1/07.]

**WAC 135-100-180 Conservation district prepares assessment roll.** After the county legislative authority authorizes special assessments for natural resource conservation, the conservation district must prepare an assessment roll to implement the approved system of assessments. The conservation district should seek assistance from the county assessor in preparing the assessment roll.

[Statutory Authority: RCW 89.08.040 and [89.08.]070. 07-10-071, § 135-100-180, filed 5/1/07, effective 6/1/07.]

**WAC 135-100-190 County assessor applies assessment to tax rolls.** The county assessor will apply the classifications and rates in the conservation district's system of assessments to lands to be assessed.

[Statutory Authority: RCW 89.08.040 and [89.08.]070. 07-10-071, § 135-100-190, filed 5/1/07, effective 6/1/07.]

**WAC 135-100-200 County treasurer collects assessments.** Special assessments will be collected by the county treasurer and accounted for with property taxes. Collection of special assessments starts in the calendar year following the county legislative authority's action approving the special assessment.

[Statutory Authority: RCW 89.08.040 and [89.08.]070. 07-10-071, § 135-100-200, filed 5/1/07, effective 6/1/07.]

**WAC 135-100-210 County can recover actual costs.** The county treasurer may recover the actual costs incurred by the county assessor and county treasurer in spreading and collecting the special assessments. Upon request, the county treasurer must explain the basis for cost recovery charges made against the assessment.

[Statutory Authority: RCW 89.08.040 and [89.08.]070. 07-10-071, § 135-100-210, filed 5/1/07, effective 6/1/07.]

**WAC 135-100-220 Conservation district to receive all remaining funds.** All funds collected, minus the actual cost of spreading and collecting the assessment, must be promptly transferred to the conservation district. For conservation districts that use the county treasurer as the district treasurer per RCW 89.08.215, assessment funds collected (minus actual costs) must be accounted for separately.

[Statutory Authority: RCW 89.08.040 and [89.08.]070. 07-10-071, § 135-100-220, filed 5/1/07, effective 6/1/07.]

**WAC 135-100-230 Conservation district to inform landowners.** The conservation district should make reasonable efforts to inform landowners with lands to be assessed how their assessment was calculated.

[Statutory Authority: RCW 89.08.040 and [89.08.]070. 07-10-071, § 135-100-230, filed 5/1/07, effective 6/1/07.]

**WAC 135-100-240 Landowners may petition the county to object.** Landowners with lands to be subject to the special assessments may object to the assessment by petitioning the county legislative authority. The petition must be signed by at least twenty percent of the owners of land that would be subject to the special assessments.

The petition must be filed with the county legislative authority on or before the close of business on the fourteenth day of December in the year the county approves the special assessment.

If a petition meeting these requirements is filed, the county may not spread or collect the assessment in the following year, and may not spread or collect the assessment until the county legislative authority acts upon the petition.

[Statutory Authority: RCW 89.08.040 and [89.08.]070. 07-10-071, § 135-100-240, filed 5/1/07, effective 6/1/07.]

**WAC 135-100-250 Renewal of assessment.** Renewal of a conservation district special assessment must meet the same requirements as for a newly proposed assessment.

[Statutory Authority: RCW 89.08.040 and [89.08.]070. 07-10-071, § 135-100-250, filed 5/1/07, effective 6/1/07.]

# ASSESSMENT GUIDE UPDATE

A year ago, Spokane County Conservation District was the only district to gain approval for collecting a special assessment to fund conservation work.

They blazed a trail for others to follow. This year two districts made it. Thurston Conservation District got a 10-year assessment and Grays Harbor got a two-year assessment.

Supervisors and district managers for these districts, along with those from King and Kitsap conservation districts can provide valuable tips and suggestions that will ensure more successes.

**Their suggestions are noted as italicized margin notes and boxed text.**

Call on the folks who are trying the special assessment route. They will remind you to have your ducks lined up months in advance of the required public hearing.

They will give you tips such as getting active in the political arena; being on a first name basis with commissioners, assessors and other county department heads; carrying out media relations at every opportunity; finding the political and economic opinion leaders in your county; and telling your story everywhere.

Those people have to know who you are.

These experiences will surely make the road to assessment funding a lot easier for other supervisors willing to commit themselves to a sustained effort to achieve it.

# Assessment Rates

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- Options
- Ceiling
- Forest Land
- Uniformity
- Public Opinion
- Total Per Classification

## Assessment Rates

### Options

Conservation districts have two options for setting assessment rates:

1. an annual per acre amount, or
2. a per parcel *plus* an annual per acre amount

Districts wishing to set their assessment rate based on parcels alone cannot do so the way the law is presently written. However, under Option 2, the assessment rates may be structured so that they amount to a per parcel assessment. This may be done by setting the per parcel rate based on the district's funding goal, and then setting the per acre rate so low it is inconsequential. For example, if the per parcel rate was set at \$4.99 and the per acre rate was set at one-tenth of a cent per acre, the result would be virtually the same as a \$5.00 per parcel assessment.

### Ceiling

There is a ceiling for the assessment rate on both parcels and acres. The law stipulates that the maximum per parcel rate is \$5.00. The ceiling for the annual per acre rate is \$0.10.

### Forest Land

*Tell how forest lands are defined.*

Forest lands, if they receive a benefit by conservation district activities, are assessed at a lesser rate. The rate for forest land is one-tenth of the per-acre assessment on all other land assessed in the district.

*Talk to your county treasurer and assessor to determine how the billing will be accomplished.*

Landowner Charge Option - On forest lands, the law allows a \$3-per-landowner charge in lieu of a per parcel charge. The Commission recommends that districts assess the \$3 per landowner charge only once per forestland parcel, no matter how many landowners appear on the deed. If each owner were charged separately, the district would lose more by creating ill will than it would gain in the relatively small amount of extra revenue.

# Assessment Rates

## Uniformity

*You can say all lands benefit equally.*

*Make sure support heavily outweighs opposition.*

## Public Opinion and Rate Setting

*Establish rate based on budget needed to deliver services. Don't pull a figure out the air.*

*Hire a recording secretary to transcribe testimony. Present it as evidence of support for your proposal.*



## Total

**DO THIS. SHOULD BE ONE OF YOUR STRONGEST TOOLS.**

Assessment rates could vary according to the benefit received by the land. But it could be a flat rate, if there is only one type of land use and it all receives the same benefit.

Conservation districts should look at the various types of land and perhaps set a lowest common demoninator rate of assessment. Keep in mind benefits to the land.

Districts should consider what stakeholders will support and how much heat county elected officials are willing to take when approving a new tax.

The groundwork laid by informally polling opinion leaders and other stakeholders, combined with establishing a rapport with county commissioners will help supervisors establish a viable rate.

At the public hearing hosted by the conservation district, keep a record of oral and written testimony. You can use this record to adjust the proposed rate and illustrate support for the assessment at the final public hearing held by the county commissioners.

The law stipulates that testimony at the public hearing may be incorporated into the proposal when appropriate.

The proposal must indicate the total amount of assessment proposed to be collected from each classification.

NO. 37981-3-II

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**COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

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

Respondents/Cross Appellants,

v.

MASON CONSERVATION DISTRICT,

Appellant/Cross Respondent

v.

MASON COUNTY,

Defendant.

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**CERTIFICATE OF SERVICE OF WASHINGTON STATE  
CONSERVATION COMMISSION'S MOTION TO FILE AMICUS  
CURIAE BRIEF**

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ROBERT M. MCKENNA  
Attorney General

SHARONNE E. O'SHEA  
Assistant Attorney General  
WSBA # 28796  
2425 Bristol Court SW, MS: 40117  
Olympia, WA 98504  
(360) 586-3589

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DIVISION II

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CERTIFICATE OF SERVICE

I hereby certify that I deposited a complete copy ~~STATE OF WASHINGTON~~  
Washington State Conservation Commission's Motion to File Amicus ~~BY \_\_\_\_\_~~  
Curiae Brief, Amicus Curiae Brief of Washington State Conservation  
Commission, and this Certificate of Service, in the United States Mail,  
first class postage prepaid, addressed to the following on this 10th day of  
September, 2009: DEPUTY

James Cary  
636 Pointes Drive West  
Shelton WA 98584

Alice Cary  
636 Pointes Drive West  
Shelton WA 98584

John Diehl  
679 Pointes Drive West  
Shelton WA 98584

William D. Fox, Sr.  
50 W. Sentry Drive  
Shelton WA 98584

Mason County Board of County  
Commissioners  
c/o Monty Cobb  
Mason County Prosecutors Office  
P.O. Box 639  
Shelton WA 98584

Mason Conservation District  
c/o Mathew D. Edwards  
Owens Davies Fristoe Taylor  
& Schultz, PS  
1115 W. Bay Drive, Suite 302  
P.O. Box 187  
Olympia, WA 98507

DATED this 10th day of September, 2009.

ROBERT M. MCKENNA  
Attorney General



SHARONNE E. O'SHEA, WSBA # 28796  
Assistant Attorney General  
(360) 586-3589

Attorneys for Washington State  
Conservation Commission Amicus Curiae