

FILED  
SUPREME COURT  
STATE OF WASHINGTON  
11/21/2017 9:40 AM  
BY SUSAN L. CARLSON  
CLERK

No. 97599-0  
No. ~~946377~~

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SUPREME COURT  
OF THE STATE OF WASHINGTON

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OLYMPIC VIEW WATER AND  
SEWER DISTRICT, a Washington municipal corporation; and TOWN  
OF WOODWAY, a Washington municipal corporation,

Appellants,

v.

RONALD WASTEWATER DISTRICT, a Washington municipal  
corporation,

Respondent,

and

SNOHOMISH COUNTY, a Washington municipal corporation; KING  
COUNTY, a Washington municipal corporation; CITY OF SHORELINE,  
a Washington municipal corporation,

Defendants.

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OLYMPIC VIEW WATER & SEWER DISTRICT'S  
BRIEF OF APPELLANT

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## A. INTRODUCTION

This action ostensibly involves a dispute between two special purpose districts, the Ronald Wastewater District (“Ronald”) and the Olympic View Water & Sewer District (“Olympic View”), that provide sewer services. At issue here is which district is responsible to plan for and provide sanitary sewer service in an area located in the southwest corner of Snohomish County (the “County”) adjacent to the King-Snohomish county line commonly known as “Point Wells.” A 1985 order of the King County Superior Court (“Transfer Order”) may have created overlapping district boundaries; that order purportedly authorized Ronald’s annexation of Point Wells, an area already entirely within Olympic View’s corporate boundaries at the time, and the Briggs subdivision which was entirely within the corporate limits of the Town of Woodway (“Woodway”) and Olympic View.

Functionally, Ronald no longer exists except as a façade to advance the interests of the City of Shoreline (“Shoreline”).<sup>1</sup> Ronald is being assumed by Shoreline as contemplated in RCW 35.13A. Under the assumption agreement, it was to be dissolved by October 23, 2017. The

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<sup>1</sup> Below, Shoreline, Ronald, and King County teamed together to support Ronald’s claim that Point Wells and other Snohomish County territory was annexed into Ronald by the Transfer Order. Accordingly, those three entities collectively are referred to as the “King County Plaintiffs” or “KCPs.” Conversely, Olympic View, Woodway, and Snohomish County are collectively referred to as the “Snohomish County Defendants” or “SCDs.”

agreement has been extended, and formal assumption/dissolution deferred. In the meantime, Shoreline has absorbed Ronald's former employees, and it now operates the utility and controls its finances. Ronald is a shell, still formally in existence with a board paying itself to do Shoreline's legal bidding.

The real dispute here is about Shoreline's annexation aims in Point Wells. BSRE Point Wells, LLP ("BSRE") has proposed the construction of a mixed-use urban center development that would add more than 3,000 residential units and associated commercial development in the lower portion of Point Wells. Both Shoreline and Woodway have designated the area for annexation. The County, as the planning authority, has designated the area to be annexed by Woodway. Having the area at issue within Ronald's corporate boundaries would assist Shoreline's annexation plans. Presently, the County's planning policies require an interlocal agreement by a city with no territory in the County before any annexation. Shoreline does not have one. Thus, having it determined that Ronald has territory in the County by the Transfer Order and then formally assuming Ronald, Shoreline could then claim it had territory.

Moreover, the cost of sewer service to the future residents of Point Wells is significant. Sewage treatment will occur at the City of Edmonds' ("Edmonds") plant. However, if Ronald/Shoreline provide the service,

these future residents will be tagged with millions more in expense because the sewage would go into King County's sewer system, requiring substantial hook-up and ongoing charges. Olympic View can transmit the sewage directly to Edmonds, avoiding those unnecessary charges. Edmonds intervened below and supports the position of the SCDs.

Legally, this case turns on the validity and binding effect on the SCDs of the 1985 Transfer Order. The Transfer Order derives from specific legislation King County wrote and obtained to allow it to transfer its retail sewer operations (here the Richmond Beach Sewer System or "RBSS") to special purpose districts (here Ronald). The statutes relied upon for the judicially-created annexation process that resulted in the Transfer Order do not allow the annexation of territory in another county. The statutes only allowed intra-county transfer and annexation. Here, the cross county border annexation created overlapping districts where no overlap previously existed. The Transfer Order therefore affects the rights and interests of the SCDs. Yet, none of them were joined in the lawsuit, given notice of it except for one classified ad published once in a Seattle newspaper that never revealed the proposed annexation, and there was no opportunity to be heard. As discussed below, the Transfer Order does not withstand statutory or constitutional scrutiny.

#### B. ASSIGNMENT OF ERROR

(1) Assignment of Error

1. The trial court erred in entering its May 9, 2017 order granting Ronald's motion for partial summary judgment and denying Woodway's and Snohomish County's motions for summary judgment.

(2) Issues Pertaining to Assignment of Error

1. Was the annexation of territory in Snohomish County into Ronald by the Transfer Order statutorily authorized? (Assignment of Error Number 1)

2. Did the trial court lack jurisdiction to annex territory in Snohomish County into Ronald? (Assignment of Error Number 1)

3. Is the Transfer Order a final "in rem" judgment binding upon the SCDs? (Assignment of Error Number 1)

4. Were the procedural due process rights of the SCDs, particularly Woodway and Olympic View who were operating sewer utility businesses in a proprietary function in the area being annexed, violated by the proceeding that resulted in the Transfer Order so that the Transfer Order is not binding upon them? (Assignment of Error Number 1)

5. Was the legislation that created the process that resulted in the Transfer Order and RCW 57.02.001 that the KCPs claim retroactively legalizes the Transfer Order "special legislation" violating the Washington Constitution? (Assignment of Error Number 1)

C. STATEMENT OF THE CASE

(1) Background Relative to Special Purpose Districts, Overlaps, the Boundary Review Board Process and the SCDs and Point Wells

(a) The Boundary Review Board Process

While this case has immense implications for the future development of Snohomish County, the core of this case is whether the Transfer Order created an overlapping district by purporting to allow Ronald to annex territory that was already within the corporate boundaries of Olympic View and Woodway. The KCPs assert that the Legislature enacted legislation at the specific behest of King County that created a new judicial annexation process allowing it to create overlapping special purpose districts in Snohomish County with no need to specifically notify or join any Snohomish County governmental entity whose rights would be affected by that judicial proceeding.

As a threshold matter, it is useful to understand legislative intent in regard to annexations and creating overlapping districts before and after the Transfer Order. It is contained in the Boundary Review Board (“BRB”) process.

The BRB process was created by the Legislature in 1967. Snohomish County established a BRB shortly thereafter, and a Board was in place in 1985. The BRB process, contained in RCW 36.93 et seq., allows property owners in the area or affected units of local government to obtain Board review of a proposed change in a variety of situations specified in RCW 36.93.090. In creating the BRB process, the Legislature

intended to have a forum for those affected by boundary changes to have their interests heard and considered pursuant to the criteria specified in RCW 36.93.170 and .180. The Legislature was clear as to its intent. It spells it out in RCW 36.93.010. *See Appendix.* It created the process specifically *to avoid overlapping districts and haphazard special purpose expansion and competition among them.*

RCW 36.93.090 in 1985 specified that in addition to other specified matters, the following “shall” be filed with the BRB in any county, like Snohomish County, in which a board was established:

- (1) The: (a) Creation, incorporation, or *change in the boundary*, other than a consolidation *of any city, town, or special purpose district.*
- (5) The extension of *permanent water or sewer service outside of its existing corporate boundaries by a city, town, or special purpose district.*

(Emphasis added.)

It is undisputed that neither King County nor Ronald ever followed the BRB process at any time. CP 3377.

(b) Olympic View and Woodway

Olympic View is a water-sewer district under Title 57. Originally it was a water district created in 1937. CP 3342. It expanded its corporate boundaries and the entirety of Point Wells and southwest Snohomish County were annexed into Point Wells in 1946, *id.*, essentially four

decades before the Transfer Order. Olympic View begun providing water to the petroleum plant (originally owned by “Standard Oil” and also referred to as “Chevron”) in Point Wells in the 1940s. *Id.*; CP 913-14. After it was authorized to do so legislatively, Olympic View added sewer service in 1966, about twenty years before the Transfer Order. *Id.* Originally, Olympic View’s service was in the eastern portion of the District. Woodway was incorporated long before Shoreline which only incorporated in 1995. Woodway provided sewer service to its citizens, CP 3342-43, with the exception of the Briggs subdivision discussed below. In 2004, Woodway conveyed its sewer system to Olympic View and contractually agreed that Olympic View would be the exclusive sewer provider for its citizens. Woodway’s comprehensive plan reflects that agreement. CP 3343.

(c) Point Wells

The southwestern corner of unincorporated Snohomish County is generally known as Point Wells. Point Wells has two differing topographical areas as depicted in the Appendix. There is a lower area along Puget Sound where the petroleum plant and King County Brightwater sewer outfall building are located. Those are the only two facilities that have sewer infrastructure or service in Point Wells. The lower portion, generally bounded by the railroad tracks to the east is where

the BSRE development will occur. Just east of the tracks, the topography rises to the area known as the upper bluff.

Snohomish County holds the planning authority for its unincorporated lands and under the Growth Management Act, RCW 36.70C (“GMA”). It has always recognized that the Point Wells area is within the Woodway’s GMA Municipal Urban Growth Area (“MUGA”), meaning that Woodway is the city to ultimately annex it. Woodway recently just completed the annexation of the upper bluff portion of Point Wells. CP 639-44. Here, Ronald claims that areas within Woodway are within its corporate boundaries and it has the exclusive right to serve that area, even though it has no approved sewer plan for Woodway. The area Ronald claims was annexed into its corporate boundaries is depicted in the Appendix which includes the upper bluff recently annexed into Woodway and the Briggs subdivision discussed below. Ronald has six total customers in Snohomish County, who are depicted in the Appendix.

(2) Background to the Issuance of the 1985 Transfer Order (1939-1985)

(a) Construction of the RBSS, Formation of KCSD #3, and Operation of the Richmond Beach System by King County

The RBSS was built in 1939 and 1940, and King County Sewerage District # 3 (“KCSD #3”) was formed around that same time to operate the

system. CP 802. *See also*, CP 817-27. KCSD #3 was originally established as a sewerage district under the authority of Chapter RCW 85.08. Although ostensibly a separate entity, called the “Richmond Beach Sewer District,” (“RBSD”), it was not legally separate from King County.<sup>2</sup>

In 1945, King County assumed direct responsibility over the RBSS, administering the system as KCSD #3 and delegating authority for operating the system to its Department of Public Works.<sup>3</sup> The northern boundary for the sewer district was always described as the King-Snohomish County line.

(b) Formation of Ronald Wastewater District, Construction of Its Sewer System

Ronald was formed as a sewer district in 1951. CP 853, 860-63.<sup>4</sup> Ronald constructed its first sewers in 1960. CP 802, 817-27, 861. Ronald’s corporate boundary and service area were initially limited to King County. Its corporate boundary never changed in the north from the

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<sup>2</sup> Districts formed under Title 85 were not municipal or quasi-municipal corporations separate from the County. *Roth v. Drainage Improvement Dist. No. 5 of Clark Cty.*, 64 Wn.2d 586, 392 P.2d 1 (1964).

<sup>3</sup> CP 802, 817-27, 831-32 (citing RCW 85.08.300 (“When a district contains not more than five hundred acres, or when a petition is presented to the county legislative authority signed by the owners of fifty percent of the acreage of the district praying for such action, the county engineer shall act as the sole supervisor of the district; and in such case the allowance of all claims against the district shall be by the county legislative authority.”)). *See also*, CP 833-41.

<sup>4</sup> Ronald was initially formed in 1951 as the “Ronald Sewer District.” CP 853, 860-61. In 1991, the District changed its name to the “Shoreline Wastewater Management District.” *Id.* In 2001, the District adopted its current name: the “Ronald Wastewater District.” *Id.*

King-Snohomish County line. In the late 1960s and early 1970s, Ronald and Olympic View entered into a series of contracts (wheeling agreements) under which they agreed to serve certain property in the respective districts because their respective infrastructure facilitated sewer service. CP 884-94, 895-99. However, those customers remained in their geographical districts for billing and voting. Ronald has never contended those wheeling agreements for the mutual benefit of districts and their customers changes corporate boundaries or that they allow one district to provide service in another without consent.

(c) Expansion of the RBSS into Snohomish County

Before the 1970s, the RBSS was likewise limited to King County. CP 802. In the early 1970s, however, KCSD #3 expanded the RBSS into Snohomish County when it extended sewer service to the petroleum plant in the Point Wells Service Area. In 1970 and 1971, KCSD #3 entered into two developer expansion agreements with Chevron to provide sewer service to its petroleum plant. CP 900-02, 903-08. Pursuant to these agreements between KCSD #3 and Chevron (the “Standard Oil Agreements”), Chevron constructed a lift station, now known as “Lift Station #13,” and then conveyed an easement and ownership of Lift Station #13 to KCSD #3. Chevron owned significant acreage in Point Wells. With the exception of the plant, none of the other property

received sewer service. The contracts provided only for specific contract rights.<sup>5</sup>

Olympic View was never asked to, nor did it, consent to KCSD #3's extension of sewer service into Point Wells. In a 1971 letter, the Olympic View commissioners stated they had no objections to permitting King County's Department of Public Works to maintain and service the lift station located "within our service area." CP 909-12.

One other property owner in Snohomish County also entered into a contract with KCSD #3 for contract sewer service. Daniel Briggs owned a large lot within Woodway's boundaries. His property was not connected to the Woodway sewer system. After Lift Station #13 was constructed, Briggs sought to connect his property to it since it was close by and he entered into a contract with KCSD #3 to do so. There is no record of Woodway consenting to this. It is known that after Ronald began operating the system, Briggs subdivided his property for three more lots for a total of four lots. Woodway agreed to only "interim" service to those lots by Ronald until the property would be served by Woodway. Woodway specifically rejected Ronald providing permanent service to the Briggs subdivision, a position Ronald agreed or acquiesced to at the time.

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<sup>5</sup> For instance, the easement for Lift Station #13 by contract "is personal to the District" and cannot be assigned without Chevron's consent. CP 2248. Chevron had the right to terminate its agreements for any violation by KCSD #3. *Id.*

CP 712. These four lots from the Briggs subdivision, the petroleum plant, and the outfall building are the *six total customers* Ronald has in Snohomish County. The only residents and voters are in the four homes in the Briggs subdivision in Woodway.

(d) King County Studies Sewer Divestment and Decides to Seek Legislation to Accomplish the Divestment

In 1981, King County began to study the possibility of discontinuing sewer operations. CP 933-83, 984-86. The County issued a report on the subject in June 1982. CP 938, 987-90. In January 1983, the King County Council passed a motion directing the Executive to start negotiations with appropriate agencies regarding the potential transfer of County operated systems. CP 987-90.

In March 1983, the County sent a request for proposals to Ronald and nine other agencies that “might be interested in assuming responsibility for King County’s five sewer utilities.” CP 948. Neither Olympic View nor Woodway was approached. Neither was ever directly informed that sewer operations within their boundaries would be transferred. In June 1983, Ronald’s commissioners passed a resolution authorizing Ronald’s Manager to transmit Ronald’s proposal to acquire the RBSS. CP 1033-40. *See also*, CP 1002-05. In July 1983, King County informed Ronald that the divestment process would be delayed

while the County pursued an amendment to the County Services Act, Chapter 36.94 RCW, that would help expedite the County's efforts to complete all of the potential sewer transfers. CP 1006-08. This began King County's effort to obtain specific legislation intended to specially benefit it and its divestment plans.

In November 1983, the County issued a "Sewer Divestment Implementation Report" (the "1983 Divestment Report"). The 1983 Divestment Report stated that Ronald's proposal was acceptable and explained that the transfer to Ronald could be accomplished "through existing statutes," but it went on to evaluate a potential amendment to the County Services Act that would address statutory limitations affecting some of the other desired sewer system transfers. CP 942, 945-48. In other words, the transfer to Ronald could have been made without affecting the rights of any of the SCDs.

(e) King County and Ronald Lobby for the Passage of SHB 1127

On January 3, 1984, the King County Council passed a motion that approved the recommendations of the 1983 Divestment Report, directed the County's Department of Public Works to seek appropriate amendments to the County Services Act, and initiated the transfer of the RBSS to Ronald. CP 1041-45. King County moved quickly. It drafted

legislation, had it introduced, and it began to lobby for passage of the desired amendments. By January 9, 1984, the County had already helped initiate the introduction of Substitute House Bill 1127 (SHB 1127), a bill that would facilitate the divestment process by authorizing an expedited process for King County to transfer its sewer systems. CP 1865-1908. *See also*, CP 1046-47, 1623-25.

In obtaining the legislation, King County represented to both the House and the Senate that the transfer from the County to the sewer districts was going to be *exactly the same as existing law provided* for transfers from municipal corporations providing sewer or water to counties. CP 1866. So did Ronald. CP 2389. Existing law then, and now, for transfers to counties, requires the system being transferred to be entirely within one county. In addition to now taking the position that the special legislation for its benefit goes well beyond what the Legislature was told at the time, King County also told the Governor that the legislation “provides thorough opportunity for citizen participation in the transfer process.” CP 2392.<sup>6</sup> SHB 1127 was passed by the Legislature in February 1984 and subsequently signed by the Governor. CP 1862-1908.

(f) King County and Ronald Prepare for the Transfer of the RBSS

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<sup>6</sup> Here, King County asserts that there was no requirement to notify Snohomish County governments about the transfer process and allow them to participate to protect their own interests and the thousands of citizens they represent.

In March 1984, as part of the County’s sewer divestment program, the King County Council passed Ordinance 6708, which adopted a Sewerage General Plan for the RBSS on behalf of KCSD #3. CP 1048-50, 915-32. The 1984 plan recognized that KCSD #3 provided sewer service in Snohomish County on “a contract basis to the petroleum plant in Point Wells just north of the King-Snohomish border.” *Id.* That plan also specifically states that the northern border of the district was the county line. Ronald’s commissioners later incorporated the same Sewerage General Plan into Ronald’s own sewer plan. CP 1014-18, 1051-52. In April 1984, King County sought and obtained consent from Chevron for the proposed transfer of the RBSS. CP 1053-54, 1055-56. In June 1984, King County held a public hearing on the proposed sewer system transfers. CP 1076-77. Notice of the hearing on the proposed transfer to Ronald was mailed to the ratepayers of KCSD #3 and Ronald. CP 1009-13, 828-30. No notice was mailed to Olympic View, Woodway, or the County. If any ratepayers in Snohomish County received a notice, it would be two: Chevron and Daniel Briggs.

(g) KCSD #3 Transfers the RBSS to King County, and King County Transfers the RBSS to Ronald

A two-step process was used for RBSS’s transfer to Ronald. First, KCSD #3 formally transferred the sewer system to the County, and KCSD

#3 was dissolved. In other words, the County transferred the system to itself.<sup>7</sup> Then, after that transfer, the County could transfer the sewer system to Ronald following the process authorized by SHB 1127.

In June 1984, King County filed a petition in the King County Superior Court seeking approval of the proposed transfer pursuant from KCSD #3 to King County. CP 1121. In July 1984, that court issued an order, approving RBSS's transfer from KCSD #3 to King County. CP 1112-48.

On July 1, 1985, Ronald's commissioners voted to approve an agreement setting forth the terms and conditions for RBSS's transfer from King County to Ronald (the "1985 Transfer Agreement"). CP 1019-22, 1149-50. The Transfer Agreement noted the only service in Snohomish County was by contract. CP 1091-92, 1094, 1098, 1099-1102. It further stated that "the area served by the System shall be deemed annexed to and part of the District" upon completion of the transfer." CP 1091 (emphasis added). It identified the "area served" by reference to a long legal description attached in an addendum to the Agreement.<sup>8</sup> The Transfer

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<sup>7</sup> Below, Ronald claimed this transfer was consistent with RCW 36.94.310-.340. If so, then the transfer could not have followed the law which limited such transfer within one county. *See* CP 1799-1802 (Engrossed Substitute Senate Bill 2737 (1975) (ESSB 2737)), §§ 7-11, codified at RCW 36.94.310-.350. ESSB 2737 is further discussed below.

<sup>8</sup> It is difficult to discern that territory in Snohomish County is covered unless the lengthy legal description is reviewed to its end. King County and Ronald decided to

Agreement also assigned to Ronald King County's rights and obligations under the Chevron agreements. CP 1076-77.

In September 1985, the King County Council held a public hearing on a proposed ordinance approving the proposed transfer to Ronald. CP 1023-24. The County provided notice of the hearing by one classified ad in the *Seattle Times* and mailed notice to all ratepayers served by the RBSS. CP 1058-59. Again, no specific notice of what was being proposed was ever given to the SCDs.

In October 1985, the King County Council passed Ordinance 7370 approving the proposed transfer and authorizing the County Executive to go to Court to have it approved. In doing so, the Council specifically exercised its ostensible police powers and declared what was in the public interest in *Snohomish County*. CP 1151-52. Also in October 1985, Ronald's commissioners passed a resolution authorizing Ronald's manager to execute the petition prepared by King County for filing with the court. CP 1026-32.

King County then filed its petition with the superior court requesting approval of the 1985 Transfer Agreement (the "1985 Petition"). CP 1088. The court issued an order setting a hearing on the 1985 Petition, and notice of the hearing was published once in a classified ad in the

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designate as the "area served" large swaths of land in Snohomish County with no sewer service or infrastructure. CP 1096.

Seattle *Times*. CP 1086. An agreed order was given to the court. There is no record of any “hearing.” The court simply signed the Transfer Order. CP 1082.

The 1985 Transfer Order stated that the 1985 Transfer Agreement was “legally correct” and “is approved”; that the transfer of the RBSS “is to be accomplished in accordance with” the 1985 Transfer Agreement “effective as of January 1, 1986”; and that “the area served by the System shall be annexed to and become a part of the District on the effective date of the transfer.” *Id.* After that order was entered, the two parties to the collusive lawsuit, Ronald and King County, did nothing further. No judgment or judgment summary was ever filed. The court dismissed the case without prejudice in 1987 for want of further prosecution. CP 1079.<sup>9</sup>

(3) Events Leading up to the 1996 Law (1986-1996)

(a) The Legislature Adopts Substitute Senate Bill 6091

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<sup>9</sup> In April 1986, a representative of the King County Records and Election Division sent a letter to Snohomish County’s Superintendent of Elections stating that the transfer of the RBSS had “extended the boundaries of Ronald Sewer District *into Snohomish County*.” CP 1155-56 (emphasis added). However, the letter would have been meaningless at the time since there were no voters and years later it was discovered that the voters in the four houses in the Briggs subdivision erroneously voted in King County, not Snohomish County, because they had a Shoreline address. CP 2854.

In 2007, questions arose about the Woodway voters residing in King County. The Snohomish County Prosecutor’s Office issued a legal opinion stating that “by virtue of the [1985 Annexation Order], the portion of Snohomish County in question was annexed into the Ronald Sewer District as of January 1, 1986.” CP 1473. However, the opinion made no analysis of the validity of the Transfer Order.

The purported annexation of territory in Snohomish County took on greater legal significance in 1996, when the Legislature adopted Substitute Senate Bill 6091 (“SSB 6091”) merging the separate sewer (Title 56) and water (Title 57). Title 57 then became applicable to both water and sewer districts and districts that provided both services.<sup>10</sup> SSB 6091 addressed the issue of overlapping sewer district corporate boundaries by granting “first in time” service area rights to districts that first provided service in an overlapping corporate boundary area or planned to make service available in the overlapping area.<sup>11</sup> SSB 6091 also included a provision, codified at RCW 57.02.001, that validated and ratified all prior acts of water-sewer districts.<sup>12</sup> Ronald claims by this enactment that Olympic View has been divested of any ability to serve Point Wells within its corporate boundaries.<sup>13</sup> Olympic View’s sewer service is a proprietary function. Thus, its business rights, and those of its predecessor Woodway, have been impaired and divested based upon a judicial annexation process to which neither was given notice or hearing.

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<sup>10</sup> CP 1914-16 (SSB 6091, Laws of 1996, ch. 230), §§ 302, 313.

<sup>11</sup> CP 1914-16. *See also*, CP 1805 (SHB 352, Laws of 1981, ch. 45) § 1.

<sup>12</sup> CP 1913 (SSB 6091, Laws of 1996, ch. 230) § 1.

<sup>13</sup> This provision does not apply to cities, which is another reason Shoreline wants to maintain the fiction that Ronald really exists so it can claim exclusive service rights that disappear upon assumption.

(b) Ronald Does Not Assert There Was Any Annexation for Two Decades

Ronald now attempts to claim it has been the sole and historic provider of sewer service to Point Wells, investing in infrastructure, and maintaining it was within Ronald's corporate boundaries. But the undisputed factual record is to the contrary. It never installed the sewer infrastructure – the area is essentially unsewered. Its six Snohomish County customers are served by the existing infrastructure from the 1970s built by developers who contracted with KCSD #3. Ronald's existing infrastructure cannot support any contemplated development. CP 3344-45, 3376-77. Ronald did upgrade Lift Station #13 primarily to provide service to its customers in Shoreline. CP 795.<sup>14</sup>

Ronald regularly stated that the area in Snohomish County was outside its boundaries. It took that position in all its comprehensive plans into the 2000s. CP 740-51, 782-85. It was not until the major development at Point Wells was announced and Shoreline was pressing for assumption that Ronald for the first time *in 2010* claimed the area was in the District and it had a plan for its development. CP 3375. The "plan" is two pages of a schematic saying that it would upgrade pipes. It had no meaningful cost data or franchises to go with it. Tellingly, the Plan did

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<sup>14</sup> It did so with money from the Public Works Trust Fund paid back years ago. CP 788. Tellingly, when it borrowed for the project it said it was located outside Ronald's boundaries. CP 795.

not really reveal the proposed assumption by Shoreline, making only a cursory reference to the assumption agreement with Shoreline. CP 3377-78. That was the state of the plan when it was submitted to Snohomish County for approval.

(c) Assumption by Shoreline

Ronald and Shoreline entered into a contract for the assumption of Ronald in 2002. CP 3348-59. Shoreline agreed not to assume Ronald for 15 years as it received ever increasing payments for allowing Ronald to continue to use Shoreline streets for its existing sewer lines, streets that had been built before Shoreline incorporated. In 2013, Ronald's commissioners doubted the legality of the agreement for assumption entered into more than a decade before and filed a declaratory judgment action as to it. (King County Cause No. 13-2-24208-7 SEA). Shoreline officials then ran candidates in favor of the assumption against incumbent Ronald board members, gaining control of the Ronald board, which then dismissed the declaratory judgment action. Both Ronald and Shoreline then proceeded with the assumption. Under the agreement, Shoreline was to assume Ronald on October 23, 2017, Ronald would cease doing business, and it would be dissolved. CP 736-38. Ronald gave Shoreline a power of attorney to dissolve Ronald. CP 3355. Ronald and Shoreline have now agreed that Shoreline will operate the utility, essentially taking

all the money, employees, etc., but the Ronald board will remain, collecting salaries. Shoreline is now being paid close to \$1 million a year to do exactly what it was going to do under the assumption agreement with no cost to Ronald ratepayers. [http://www.shorelinewa.gov/services/search? q=Ronald%20 wastewater](http://www.shorelinewa.gov/services/search?q=Ronald%20wastewater); <http://www.shorelinewa.gov/government/council-meetings>; <http://ronaldwastewater.org/boardminutes.html>.

(d) The Assumption Is Rejected in Snohomish County

Shoreline pressed its assumption of Ronald by filing notices of intent (“NOI”) with the BRBs for both King and Snohomish Counties. Without objection, King County approved the BRB. CP 6698-6718. The Snohomish County BRB denied the assumption in 2014. Shoreline and Ronald appealed to Snohomish County Superior Court. (Snohomish County Cause No. 14-2-06647-1). They waited two years and then dismissed their appeals with prejudice as the court hearing approached. Shoreline then filed another NOI with the Snohomish County BRB in 2017. Again, the assumption was denied. Shoreline then appealed that decision to the King County Superior Court. (King County Cause No. 17-2-20821-3 SEA). A change of venue to Snohomish County was denied.<sup>15</sup>

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<sup>15</sup> That denial is now being appealed by Woodway seeking discretionary review by the Court of Appeals and is joined in by Olympic View. (Court of Appeals Cause No. 77449-2-I). The BRB case in the trial court is presently stayed.

After the Snohomish County BRB denied the assumption in 2014, Olympic View prepared an amendment to its comprehensive plan (Amendment #2) to plan for sewer infrastructure in Point Wells and the upper bluff in Woodway. It received all required approvals. Ronald and Shoreline then challenged the County's approval of that change to the Growth Management Hearings Board claiming it was a *de facto* amendment to the Snohomish County Comprehensive Plan. (GMHB Cause No. 16-3-0004c). The GMHB agreed. Olympic View appealed that decision to the Snohomish County Superior Court where it is pending (Snohomish County Cause No. 17-2-01636-31), along with another appeal of the GMHB's decision that Snohomish County must repeal its approval of Amendment #2. (Snohomish County Cause No. 17-2-11183-31).

(e) Proceedings Below

This matter came before the trial court as a product of cross-motions for summary judgment. Ronald filed a motion for partial summary judgment on the validity of the Transfer Agreement. CP 1746-76. Shoreline and King County supported Ronald's motion. CP 3441-42, 5017-48. Woodway and the County filed cross-motions for summary judgment in which Olympic View joined. CP 506-30, 1637-63. The trial court granted Ronald's motion and denied the Woodway and County

motions. CP 8022-45. The trial court then certified this matter for appeal and stayed further proceedings. CP 8147-75.

D. SUMMARY OF ARGUMENT

The statutory authority relied upon by King County and Ronald that gave rise to the Transfer Order does not authorize Ronald's annexation of any territory in Snohomish County. RCW 36.94.410-.440 requires the proposed transfer to meet the requirements of RCW 36.94.310. That provision only allows transfers within one county. As a result, as a matter of law, the transfer and annexation were not "legally correct," a predicate required before the King County Superior Court could approve annexation in 1985. Nor was the transfer "legally correct" factually because the "area served" was not in fact served by sewer service. Vast tracts had no sewer service then or now. Without statutory authority, the trial court lacked subject matter jurisdiction to allow Ronald to annex territory in Snohomish County.

The court also did not have personal jurisdiction over the SCDs because they were never joined in the lawsuit. This proceeding is not one *in rem* adjudicating rights to specific property. Even if it was, due process requirements apply to *in rem* proceedings, requiring notice reasonably calculated under the circumstances to a person whose rights would be affected. There was no specific notice to any of the SCDs, and their due

process rights were violated, particularly for Olympic View and Woodway that operated in their proprietary capacity competing sewer utilities within their boundaries and in the area purportedly annexed by Ronald.

If this Court determines that there was statutory authority for the process and annexation giving rise to the Transfer Order, the statutes are invalid under the Washington Constitution as special legislation. Similarly, if it rules that RCW 57.02.001 retroactively made legal what was an illegal annexation, that application of that statute is also prohibited special legislation.

E. ARGUMENT

(1) The 1985 Transfer Order Annexing Portions of Snohomish County Was Not Legally Authorized

The 1985 Transfer Order is not valid and binding on the SCDs, and the trial court erred in concluding it was. There are several reasons why the Transfer Order is not valid and binding. As a threshold matter, King County never had the right to operate a sewer system in Snohomish County in the first place. Its very limited service in that county arises from contracts by former KCSD #3, one with Chevron the other with Daniel Briggs. KCSD #3 was not a special purpose district, but a sewerage district organized under former provision of Title 85. A review of the statutes authorizing such districts reveals *no authority for a*

*sewerage district to operate in another county.* Then, in 1984, King County abolished KCSD #3 and began to operate the RBSS directly. Without County consent, which it did not have, King County had no authority to operate a sewer system in Snohomish County. Its ability to operate a sewer system is limited by RCW 36.94.020 which states in relevant part:

The construction, operation, and maintenance of a system of sewerage and/or water is a county purpose. Subject to the provisions of this chapter, every county has the power, individually or in conjunction with another county or counties to ... maintain a system ... and facilities and services necessary for sewerage treatment and disposal ...*within all or a portion of the county.*

(Emphasis added.) Thus, King County was limited to sewer operations within King County. Nor does any other provision of chapter 36.94 grant to a county a general extraterritorial power to own and operate a sewerage system outside its boundaries. RCW 36.94.190 does provide for a limited ability to contract for such services with a city or town “within or without the county.” However, that is not a blanket authorization for contracts with other entities outside county borders. But even if it was, it would only provide for limited contract service, not the right to be an unlimited service provider outside established county borders.

But the most significant legal deficiency relating to the 1985 Transfer Order stems from the fact that the statutes relied upon for it never

authorized any annexation outside of county borders. The Transfer Order is derived from RCW 36.94.410–.440. As discussed more fully below, this legislation was written by King County for that county’s exclusive benefit. Its sole purpose was to allow King County to divest itself of direct sewer service obligations for five areas of King County. Prior to that time, there were legal provisions that allowed a special purpose district to transfer to a county water or sewer operation. Those provisions were contained in RCW 36.94.310–.340. However, the converse, allowing a transfer from a county to a special purpose district, was not allowed. King County’s efforts to obtain that legal authorization from the Legislature was successful with the enactment of RCW 36.94.410–.440 which was used here to obtain the Transfer Order. However, in obtaining that legislation, King County affirmatively represented to the Legislature that the process to be used transferring from the county was going to be exactly the same as transferring to the county. “Existing law establishes a process by which various municipal corporations may transfer systems of water and sewerage, or combined water and sewerage systems, to counties...This transfer [allowed by the bill] is accomplished in the same manner of such transfers from municipal corporations to counties.” CP 1866. But the statutory safeguards were not followed here.

RBSS's transfer had to be accomplished by a Transfer Agreement under the authority of RCW 36.94.410 which provides in relevant part:

*A system or sewerage, system of water or combined water and sewerage system, operated by a county under the authority of this chapter may be transferred from that county to a water-sewer district in the same manner as is provided for the transfer of those function from a water-sewer district to a county in RCW 36.94.310 through 36.94.340.*

(Emphasis added.) Accordingly, the authority of King County to transfer the RBSS was limited to the same criteria as if the RBSS was being transferred by a sewer district to King County. Such a transfer is allowed under the law only if the sewer system to be transferred is entirely within the county to which it is being transferred. RCW 36.94.310 states:

*Subject to the provision of RCW 36.94.310 through 36.94.350 a municipal corporation may transfer to the county within which all of its territory lies all or part of the property constituting its system of sewerage, system of water or combined water and sewerage system...*

(Emphasis added.) Since the system being transferred was not entirely within King County, it had no authority to allow Ronald to annex territory in Snohomish County. Rather, at most, King County could transfer and assign to Ronald only those contractual rights to provide sewer service outside King County's borders that it actually held. Nothing more. It could not convey what it did not have or was legally precluded from doing.

The King County/Ronald Transfer Agreement purported to allow Ronald to annex large parts of Snohomish County not served by the limited contract service to the petroleum plant and Briggs subdivision. The areas to be annexed in Point Wells were within Olympic View's corporate boundaries; the Briggs subdivision was within Woodway's corporate boundaries.

King County's Ordinance 7370 approving the Transfer Agreement, ostensibly followed RCW 36.94.420:

If so provided in the transfer agreement, the area served by the system shall upon completion of the transfer, be deemed annexed to and become a part of the water-sewer district acquiring the system. The county shall provide notice of the hearing by the county legislative authority on the ordinance executing the transfer agreement under RCW 36.94.330 as follows: (1) By mailed notice to all ratepayers served by the system at least fifteen days prior to the hearing; and (2) by notice in a newspaper of general circulation once at least fifteen days prior to the hearing.

However, this provision is still governed by the limiting principle contained in the immediately preceding statutory provision of RCW 36.94.410 that the transfer is to be limited to within the County.

In enacting Ordinance 7370, the King County Council *legislated in Snohomish County*. Ordinance 7370 (CP 3899-3900) provides in applicable part:

Preamble:

The Council of King County finds that the transfer of the Richmond Beach sewer system owned and operated by King County to the Ronald Sewer District pursuant to the attached agreement *is in the public interest and is conducive to the public health, safety, welfare, and convenience.*

Section 3. The council chairman is hereby authorized to petition the Superior Court for a decree approving and directing that said sanitary sewer system be transferred according to the terms and conditions of the proposed agreement.

(Emphasis added.)

Based upon the express language of the Ordinance, the King County Council exercised its police powers in Snohomish County and arrogated to itself the decision as to what constitutes the public interest not only in another county, but in a city, Woodway, and in another special purpose district, Olympic View, both of which are located entirely outside of King County. It did this while giving none of those parties any specific notice of what was being proposed, just one classified ad published once in a Seattle newspaper that did not even disclose an annexation in Snohomish County was being pursued.

The Washington Constitution prohibits King County's actions.

Art. XI, § 11 "Police and Sanitary Regulations" states:

Any county, city, town or township may make and enforce *within its limits* all such local police, sanitary, and other regulations as are not in conflict with general laws.

(Emphasis added). This constitutional principle precludes local governments from exercising police powers outside their borders. In *Brown v. City of Cle Elum*, 145 Wash. 588, 589, 261 P. 112 (1927) this Court invalidated a municipal ordinance prohibiting swimming, fishing, or boating in Lake Cle Elum, outside the city boundaries, even though it was the source of the city's water supply base upon this constitutional provision.

Additionally, the process resulting in the Transfer Order was defective because it was structured so that Snohomish County governmental entities who could speak for their citizens and whose rights were affected were excluded from any real participation.

In order to properly approve the Transfer Agreement and the annexation, the court had to meet the requirements of RCW 36.94.440:

If the superior court finds that the transfer agreement authorized by RCW 36.94.410 is legally correct and the interests of the owners of indebtedness are protected, then the court by decree shall direct that the transfer be accomplished in accordance with the agreement.

Obviously the Transfer Agreement was not "correct," legally or factually. Factually, there is no dispute that well over 90 percent of what Ronald ostensibly annexed was not an "area served" by the RBSS. What was actually served was the petroleum plant and Daniel Briggs' house. Although those property owners may have owned more land, none of that

additional property had sewer infrastructure or sewer service in 1985 when the Transfer Order was entered. King County and Ronald on their own decided to craft their own version of a service area by including in a legal description of the RBSS attached to the Transfer Agreement lands in Snohomish County with no sewer service and which had never before been considered within the boundaries of former KCSD #3.

(2) The King County Superior Court Lacked Jurisdiction to Approve the Transfer Agreement and Annex Snohomish County Territory into Ronald

Annexation is not ordinarily within the power of the judiciary. It is an action authorized by the Legislature and is ordinarily conducted by an executive process often with a vote of the people. Annexation is not a constitutional power of the judiciary under the Washington Constitution, art. IV, § 6 or § 12. Thus, the only way a superior court could have subject matter jurisdiction to approval the transfer and effectuate any annexation would be if the Legislature provided it. The Legislature did so through RCW 36.94.410–.440. But as discussed above, the Legislature limited such transfer to *within the same county*. They were required to meet the same process and criteria as RCW 36.94.310 which limits the transfers to within the same county. The exemption of these types of transfers from the BRB process of RCW 36.93 reinforces the concept that the transfers were to be within the same county. The BRB process was

instituted by the Legislature to provide a quasi-judicial public process to protect the interests of affected governments and parties. Annexations to special purpose districts were required then, as now, to go before a BRB. It only makes sense to exclude county to special purpose district transfers if they were within the same county because the legislative authority of the county that has planning authority is making the transfer and appropriately decides if it makes sense to increase the size of a special purpose district. Lacking statutory authority for cross-border annexations, the court lacked subject matter jurisdiction for this aspect of the Transfer Order.

Not only is subject matter jurisdiction missing, so is personal jurisdiction relative to the SCDs. It is undisputed they were not given specific notice, served, or joined as parties in the lawsuit. Since their substantive rights were affected, they were necessary and indispensable parties under CR 19. Having failed to join them, the court had no personal jurisdiction over them. Accordingly, to the extent King County asked the court to approve Ronald's annexation of territory located outside of King County in Snohomish County, this was action void *ab initio*. See *Marley v. Dept. of Labor & Indus.*, 125 Wn.2d 533, 539, 886 P.2d 189 (1994) (“a void judgment exists whenever the issuing court lacks personal jurisdiction over the party or subject matter jurisdiction over the claim.”). Jurisdiction was not conferred because King County and Ronald agreed to

it. Jurisdiction cannot be acquired by agreement or stipulation. A court either has it or it does not. If it does not have it, any judgment is void ab initio and it is in effect, as if no judgment was ever entered. *Accord, Wesley v. Schneckloth*, 55 Wn.2d 90, 93-94, 346 P.2d 658 (1959).

(3) The SCDs Are Not Bound by Res Judicata or In Rem Jurisdiction

Below, the KCPs claimed the Transfer Order is “conclusive” and “binding” on the SCDs. The court file, CP 2402-56, demonstrates it was a friendly, collusive lawsuit. The only parties were Ronald and King County. The only possible notice to the SCDs was a classified ad published once in the *Seattle Times* that did not state anything about an annexation in Snohomish County. CP 2403-04. An agreed order was given to the Court to sign on an *ex parte* basis. There is no evidence that the annexation of lands in another county was pointed out or discussed. The only way Ronald’s annexation of Snohomish County territory could be discovered is by examining the end of a lengthy legal description contained in an addendum to the Transfer Agreement. After the order was signed, the parties to the case did nothing more. No final judgment was entered. The case was dismissed *without prejudice* for want of prosecution. On these facts, the KCPs claim the Transfer Order has a

preclusive effect on entities that were not parties to the lawsuit. They are wrong.

In order to have a preclusive effect, the doctrine of *res judicata* would have to apply. Usually that requires a final judgment, something not present here. Karl B. Tegland, 14A *Washington Practice, Judgments* § 35.23; *Emeson v. Dep't of Corrections*, 194 Wn. App. 617, 626, 376 P.3d 430 (2016). The Transfer Order was not a requisite final adjudication on the merits.<sup>16</sup>

Even if the Transfer Order is a final determination, *res judicata* does not bind the SCDs. *Res judicata* has four required factors to be present: There must be a concurrence in identity in: (1) subject matter; (2) cause of action; (3) persons and parties; and (4) quality of the persons for or against whom the claim is made. *Emeson*, 194 Wn.2d at 627. None of these factors are present here. The 1985 lawsuit did not decide on the merits the ability to annex land to a special purpose district in another county and whether the annexation could avoid the BRB process. Obviously, the parties were not the same, and privity is not present.

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<sup>16</sup> Below, the KCPs asserted that any order that is the final determination of the rights of the parties in the action from which an appeal could lie is sufficient. CP 1769. It is absurd to assert that an appeal could lie by entities who were not parties to the lawsuit. RAP 3.1 requires an appellant to be an “aggrieved party” in the proceedings below. Certainly none of the SCDs were parties below or in privity with King County or Ronald.

To obviate the total failure to meet the criteria that would make a judicial determination binding, the KCPs claim the 1985 lawsuit was an “*in rem* proceeding” and the Transfer Order is valid “against the world.” They are wrong.

“Actions against property or those that are brought to adjudicate rights in the “res” (thing) itself are called “in rem” proceedings. The subject of such actions is the property itself.” Karl B. Tegland, 14 *Washington Practice, In Rem Jurisdiction* § 5:1. A quiet title action typifies an *in rem* proceeding. “Proceedings normally classified as *in rem* include admiralty, probate, eminent domain, proceedings to divide or determine title to property, bankruptcy, escheat, and proceedings to establish ownership of corporate shares.” *Id.* Obviously an agreed order to transfer a sewer system is none of those things. You cannot adjudicate rights to a “res” if the parties who have an established legal right to provide sewer service in the area, Olympic View and Woodway, are not given notice or joined.

But even if the 1985 lawsuit was an *in rem* proceeding, it cannot have preclusive effect because of the denial of the rights of the SCDs to have their interests considered. “In a very narrowly defined range of circumstances, a court lacking personal jurisdiction over a defendant may properly take action affecting the defendant pursuant to its *in rem*

powers.” Karl B. Tegland and Douglas J. Ende, *Washington Handbook on Civil Procedure*, § 11.1. However, there is no reason to invoke *in rem* jurisdiction and adjudicate a person’s rights without notice or an opportunity to be heard when the court would have personal jurisdiction over the person whose rights are being adjudicated. Here, the trial court had personal jurisdiction over the SCDs if they were joined in the action. CR 19 *required* them to be joined.

It is anticipated that the KCPs will claim that there was no need to give the SCDs notice, join them in the lawsuit, or give them a meaningful opportunity to be heard because the Legislature created this type of judicial proceeding and specified to whom notice had to be given and that procedure was followed. That might be a persuasive argument if annexations were limited to one county. In such a scenario all ratepayers get specific notice, they can vote for the officials making the decisions, and they can effectively represent their own interests before the governing bodies of the county, the district, and in court because they know what is being considered. But as this case demonstrates, none of that is true for other governments in a cross-county line annexation.

The fact that the Legislature created this process and it was followed is not dispositive. The Legislature’s power in regard to annexations is not unlimited or plenary. It chose to create a process and

lodge it in the judicial branch, a separate co-equal branch of government. In so doing, the Legislature does not have the power to make inapplicable judicial rules and procedures, such as the requirements of CR 19.

If the activity of one branch of government threatens the independence or integrity or invades the prerogatives of another branch of government, separation of powers is violated. Some fundamental functions are within the inherent power of the judicial branch, including the power to promulgate its own rules and practice. If a statute conflicts with a court rule, the courts will try to harmonize them, but if they cannot be harmonized the court rule will prevail in procedural matters. *Putnam v. Wenatchee Valley Medical Center*, 166 Wn.2d 974, 980-982, 216 P.3d 374 (2009). In *Putnam*, this Court struck down on a separation of powers analysis the requirement of a certificate of merit before a medical malpractice lawsuit could be brought, finding it violated the notice pleading and discovery provisions of the Civil Rules. Here the requirement of joinder of necessary and indispensable parties under CR 19 was violated by a process that failed to give them meaningful notice to effectuate a right to be heard affecting their rights as required by CR 3, 4, and 19.

Nor should this process be deemed a “special proceeding” exempt from court rules under CR 81. While it is true that the judicial annexation

process was uniquely created by the Legislature and annexation is not an historical judicial function, the prohibition against the deprivation of property without due process of law is fundamental to the Constitutions of the United States and Washington. U.S. Const., 14<sup>th</sup> Amend.; Wash. Const., art. I, § 3. Protection of those due process rights is fundamental to and within the inherent power and jurisdiction of the judiciary. Under separation of powers principles, the Legislature is prohibited from creating a process within the judicial branch that violates due process protections guaranteed by the inherent power and rules of the judicial branch.

(4) If the Court had In Rem Jurisdiction, the Due Process Rights of Olympic View and Woodway Were Violated Invalidating the Transfer Order Annexation

But even if the 1985 lawsuit was an *in rem* proceeding, the failure to give the SCDs adequate notice and the opportunity to be heard fails because it violates procedural due process requirements.

Due process requirements apply to *in rem* proceedings. The United States Supreme Court has held that due process requirements apply regardless of whether the jurisdiction being sought is classified as *in personam* or *in rem*. Karl B. Tegland, 14 *Washington Practice, In Rem Jurisdiction* § 5.2; *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 70 S. Ct. 652, 94 L. Ed. 865 (1950).

Due process requires that the notice be “reasonably calculated under all the circumstances to reach the intended person.” Service by publication can sometimes be used regarding in rem proceedings, but not here where the identification and address of the SCDs were known. Actual notice to the defendant must be given for in rem proceedings or rigorous compliance with service by publication must be met. Karl B. Tegland, 14 *Washington Practice, In Rem Jurisdiction* § 5.9. Obviously the requirements for service by publication required under RCW 4.28.100 were not met. That statute only allows service by publication if the defendant is not in the state or with diligent search cannot be located. It also requires the complaint to be mailed to the defendant. The petition in the underlying lawsuit does not even make clear that rights of SCDs are even involved in the lawsuit. Publishing one classified ad once in a Seattle newspaper regarding the hearing date relating to the transfer of the RBSS hardly constitutes the legally required notice “reasonably calculated, under all the circumstance” to reach the SCDs.

There can be no doubt that Olympic View and Woodway had specific property interests and expectancies that devolved from their sewer operations. Woodway had the exclusive right to provide sewer services within its municipality. So did Olympic View within its district boundaries. The provision of sewer services is a propriety function of

government. RP 130. Each had a property interest in being able to operate without competition within their territory and obtain future customers and revenue. Property interests protected by procedural due process extends well beyond specific ownership of property or money. *Board of Regents of State College v. Roth*, 408 U.S. 564, 571, 92 S. Ct. 2701, 33 L. Ed. 548 (1972). A protected property interest protected by procedural due process includes a legitimate claim of entitlement, including a business expectation. *Id.* at 576. Washington law is in accord. Due process protects a property interest if there is a legitimate claim of entitlement. *Manna Funding, LLC v. Kittitas County*, 173 Wn. App. 879, 894-95, 295 P.3d 1197, *review denied*, 178 Wn.2d 1007 (2013). A business expectancy includes any prospective contractual or business relationship that would have pecuniary value, as revenue from future sewer customers would be. *Id.* at 897. Property interests are created by reasonable expectations of entitlement derived from independent sources such as state law. *Mission Springs, Inc. v. City of Spokane*, 134 Wn.2d 947, 962, 954 P.2d 250 (1998). Olympic View and Woodway would have reasonable expectations they would be allowed to provide service within their territory and that no other district could invade that territory without going through the BRB process in which their due process rights would be protected.

In addition, if the 1985 lawsuit was an *in rem* proceeding affecting title to property, the lack of a final judgment demonstrates why the Transfer Order should not be given any preclusive effect. Judgment summaries are required by law, and were in 1985. RCW 4.64.030. Currently the statute requires a legal description of property be placed in the judgment summary if it relates to the status of real property. It also provides that a judgment does not take effect until the judgment summary has been filed. These provision make explicit what was previously implicit in the earlier version of the statute. Judgments also have the effect of creating a lien on real property. RCW 4.56.190. Judgments are used by title companies to determine title and anything affecting them. They give public notice to how property has been affected by final court action. None of that happened here. What happened here is that Ronald and King County effectively stuffed the Transfer Order into some drawer and both, nevertheless, effectively represented for two and one half decades that Ronald had no territory in Snohomish County. CP 3345, 3374, 3376, 3406.

(5) If RCW 36.94.410-.440 Does Allow Cross-County Border Annexations, It and RCW 57.02.001 Are Special Legislation Prohibited by the Washington Constitution

As discussed above RCW 36.94.410-.440 does not allow cross-county annexations and exemption from the BRB process. But if it does,

it is barred by the Washington Constitution as special legislation to benefit only King County and Ronald. For similar reasons, the assertion that RCW 57.02.001 legalized an illegal act also fails.

Prior to 1996, as noted *supra*, there were separate provisions in Washington law for water districts and sewer districts. Water districts were covered by Title 57. Sewer districts were covered by Title 56. The Legislature then allowed districts to provide both services, as Olympic View now does. The Legislature decided in 1996 to merge the two titles together in Title 57, along with RCW 57.02.001. The statute only covers acts by the “districts or their respective officers,” including *district* proceedings. It does not apply to other persons or entities, or other proceedings conducted by someone else.

The purpose of RCW 57.02.001 is readily discernable. *See* Appendix. The Legislature ended the separate statutes for sewer districts by repealing Title 56. RCW 57.02.001 was meant merely to insure that sewer districts would not later face legal challenges, for instance, to a levy, by someone asserting that the statutory authorizing the prior act like imposing a levy had been repealed so what was done was no longer legal. In short, the statute insures that was legally done previously is still legal.

The KCPs will likely will urge this Court to find that the Transfer Order from the trial court that was invalid as to annexation was somehow

retroactively made legal by RCW 57.02.001. They want to pervert the purpose of the statute so that it makes *legal what was illegal*.

That interpretation does not square with either the language of the statute or the Washington Constitution. The statute applies to acts by the districts or its officers, not a superior court judge. What is being challenged here are the proceedings and actions of King County; its proceedings are not covered by the statute.

Moreover, if the statute actually has the effect of legalizing the illegal, it is prohibited by the Washington Constitution. Art. II, § 28 provides in applicable part:

The legislature is prohibited from enacting any private or special laws in the following cases:

6. For granting corporate powers or privileges.
9. From giving effect to invalid deeds, wills, or other instruments.
12. Legalizing, except as against the state, the unauthorized or invalid act of any officer.

This section of the Constitution bars legislation that favors one particular person, group, or area to the exclusion of others. *Municipality of Metropolitan Seattle v. City of Seattle*, 57 Wn.2d 446, 357 P.2d 863 (1960). Special legislation within the meaning of the constitutional prohibition is legislation that operates upon a single person or entity, while

general legislation operates upon all things or people within a class. *In re Metcalf*, 92 Wn. App. 165, 963 P.2d 911 (1998), *cert. denied*, 527 U.S. 104 (1999). Legislation that benefits only one county has been held to violate this constitutional provision. *Island County v. State*, 135 Wn.2d 141, 955 P.2d 377 (1998). It has been long held that corporate powers in subsection 6 applies to municipal corporations, as well as private corporations. *Terry v. King County*, 43 Wash. 61, 85 P. 210 (1906).

The only county divestiture of sewer operations to special purpose districts was by King County for King County. CP 2170-72. King County specifically wrote the legislation at issue here for its specific benefit. CP 1902. It was specifically interested in getting rid of five separate sewer systems it operated. It obtained legislative approval so it could transfer its sewer systems. The only sewer system operating by contract in another County was this one. King County admitted that it could transfer the RBSS to Ronald without special legislation and the annexation feature. The only known cross-border annexation is this one. This legislation was clearly for the special benefit of King County. There is no rational reason to uphold the validity of the cross-border annexation the KCPs claim is allowed by statute. The transfer could have been made without it; a simple transfer of service by contract would have sufficed.

The Legislature clearly expressed its desire to avoid haphazard special purpose district expansion and overlap. It said so when it created the BRB process. That process also provides for appropriate due process protections. The *only* way an exemption from the BRB process makes any sense is if the transfer is internal to one county. Being able to create an overlapping district in another county to the disadvantage of the SCDs without providing those whose interests are affected a right to be heard is clearly a “special corporate power or privilege” being afforded here *only* to King County and/or Ronald. Retroactively legalizing the Transfer Order is clearly giving effect to an instrument which the KCPs claim is an interest in land, like a deed. But most significantly, the drafters specifically wanted to avoid the exact proposition urged on the Court. It prohibits legalizing the unauthorized or invalid act of any officer. A superior court judge is a state officer and the Transfer Order was an unauthorized or invalid act.

Any argument by Ronald that it relied on the validity of the Transfer Order and acted on that basis is easily rejected. It is uncontested that for approximately 25 years Ronald never relied upon the order or made any assertion it had territory in Snohomish County. CP 3345, 3374-75, 3406. Ronald’s upgrading of Lift Station 13 in the 1990s is clearly no reliance. It got the money to do so from the Public Works Trust Fund and

specifically represented in doing so that the lift station was outside its actual corporate boundaries. CP 786-95. It can hardly claim that its 2010 Comprehensive Sewer Plan is significant. It is being assumed and eventually going out of business and will never build the sewer infrastructure for the development that is coming years in the future to Point Wells. CP 3348-59.

In sum, if the Transfer Order is valid, and it is not, it is the product of special legislation and is void.

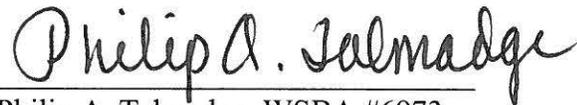
#### F. CONCLUSION

Millions of dollars in unnecessary sewer bills and the ability of Snohomish County governments to plan for their future are at issue here. Fundamental fairness dictates that the outcome should not hinge on the validity of an overly broad agreed order in a legal proceeding in which none of the SCDs were parties and of which they were not given meaningful notice. This Court can easily resolve this case by finding that RCW 36.94.410-.440 never authorized Ronald's annexation of territory in Snohomish County. By doing so, the constitutional issues can be avoided. If this Court finds the annexation in the Transfer Order was statutorily authorized, it should find the Transfer Order is not binding upon the SCDs because their due process rights were violated and it resulted from special legislation prohibited by the Washington Constitution.

This Court should reverse the order of partial summary judgment in favor of Ronald, and direct the entry of judgment in favor of Woodway and Snohomish County on their motions for summary judgment. The Transfer Order is invalid. Ronald could not annex any territory in Snohomish County. Olympic View serves Point Wells. Costs on appeal should be awarded to Olympic View.

DATED this 21st day of November, 2017.

Respectfully submitted,



Philip A. Talmadge, WSBA #6973  
Thomas M. Fitzpatrick, WSBA #8894  
Talmadge/Fitzpatrick/Tribe  
2775 Harbor Avenue SW  
Third Floor, Suite C  
Seattle, WA 98126  
(206) 574-6661  
Attorneys for Appellant  
Olympic View Water & Sewer District

# APPENDIX

RCW 36.93.010:

The legislature finds that in the metropolitan areas of this state, experiencing heavy population growth, increased problems arise from rapid proliferation of municipalities and haphazard extension of and competition to extend municipal boundaries. These problems affect adversely the quality and quantity and cost of municipal services furnished, the financial integrity of certain municipalities, the consistency of local regulations, and many other incidents of local government. Further, the competition among municipalities for unincorporated territory and the disorganizing effect thereof on land use, the preservation of property values and the desired objective of a consistent comprehensive land use plan for populated areas, makes it appropriate that the legislature provide a method of guiding and controlling the creation and growth of municipalities in metropolitan area so that such problems may be avoided and that residents and businesses in those areas may rely on §the logical growth of local government affecting them.

RCW 57.02.001:

Every sewer district and every water district previously created shall be reclassified and shall become a water-sewer district, and shall be known as the "...Water-Sewer District," or "Water-Sewer District No ...," or shall continue to be known as a "sewer district" or a "water district," with the existing name or number inserted as appropriate. As used in this title, "district" means a water-sewer district, a sewer district, or a water district. All debts, contracts, and obligations previously made or incurred by or in favor of any water district or sewer district, and all bonds or other obligations issued or executed by those districts, and all assessments or levies, and all other things and proceedings done or taken by those districts or by their respective officers, are declared legal and valid and of full force and effect.

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SUPERIOR COURT IN THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF KING

RONALD WASTEWATER DISTRICT, a  
Washington municipal corporation,  
Plaintiff,

No. 16-2-15331-3 SEA

v.

OLYMPIC VIEW WATER AND SEWER  
DISTRICT, a Washington municipal  
corporation; SNOHOMISH COUNTY, a  
Washington municipal corporation; KING  
COUNTY, a Washington municipal  
corporation; CITY OF SHORELINE, a  
Washington municipal corporation; and  
TOWN OF WOODWAY, a Washington  
municipal corporation,  
Defendants.

~~PROPOSED~~ ORDER AND  
JUDGMENT GRANTING RONALD  
WASTEWATER DISTRICT'S MOTION  
FOR PARTIAL SUMMARY  
JUDGMENT & DECLARATORY  
JUDGMENT AND DENYING  
SNOHOMISH COUNTY'S AND  
WOODWAY'S MOTIONS FOR  
SUMMARY JUDGMENT

HT

I. ORDER AND JUDGMENT

This matter came on before the Court on the Motion for Partial Summary Judgment and Declaratory Judgment filed by Plaintiff Ronald Wastewater District ("Ronald") and the cross-motions for summary judgment filed by Snohomish County and the Town of Woodway ("Woodway"). This Court having considered the pleadings in this case, and being fully advised herein, now, therefore IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that:

HT 25

~~PROPOSED~~ ORDER & JUDGMENT GRANTING RONALD'S  
MOTION FOR PARTIAL SUMMARY JUDGMENT & DECLARATORY  
JUDGMENT & DENYING SNOHOMISH COUNTY'S & WOODWAY'S  
MOTIONS FOR SUMMARY JUDGMENT - 1

Van Ness  
Feldman LLP

719 Second Avenue, Suite 1150  
Seattle, WA 98104  
(206) 629-6372

1           1. Ronald's Motion for Partial Summary Judgment and Declaratory Judgment  
2 ("Motion") is GRANTED as set forth below. There is no material dispute of fact  
3 regarding the issues raised in the Motion, and Ronald is entitled to judgment as a matter of  
4 law. The cross-motions filed by Snohomish County and Woodway are DENIED.

5           2. On November 20, 1985, this Court issued an Order Approving Transfer of  
6 Sewer System in King County Superior Court Case No. 85-2-17332-5 (the "1985 Transfer  
7 Order"). A copy of the 1985 Transfer Order is attached hereto as Exhibit A. The 1985  
8 Transfer Order approved an agreement between Ronald and King County setting forth the  
9 terms and conditions for the transfer of the Richmond Beach Sewer System from King  
10 County to Ronald (the "1985 Transfer Agreement"). A copy of the 1985 Transfer  
11 Agreement is attached hereto as Exhibit B. The geographic extent of the territory annexed  
12 to Ronald's corporate boundary, which is legally described in Addendum A, is referred to  
13 as the "Point Wells Service Area." *This transfer was pursuant to express statutory authority. HF*

14           3. As of January 1, 1986, the 1985 Transfer Order lawfully transferred the  
15 Richmond Beach Sewer System to Ronald and annexed the Point Wells Service Area to  
16 Ronald's corporate boundary. The arguments raised by Defendants Snohomish County,  
17 the Olympic View Water and Sewer District ("Olympic View"), Woodway, and the City  
18 of Edmonds ("Edmonds") (collectively the "Snohomish County Defendants") challenging  
19 the validity of the 1985 Transfer Order are without merit. *final*

20           4. As of January 1, 1986, the 1985 Transfer Order was a judgment "in rem"  
21 that was binding "against the world," including the Snohomish County Defendants.  
22 Therefore, the Snohomish County Defendants are barred by principles of res judicata from  
23 challenging the validity of the 1985 Transfer Order in any event. *CR 54(a)(1)*

*HH*

**[PROPOSED] ORDER & JUDGMENT GRANTING RONALD'S  
MOTION FOR PARTIAL SUMMARY JUDGMENT & DECLARATORY  
JUDGMENT & DENYING SNOHOMISH COUNTY'S & WOODWAY'S  
MOTIONS FOR SUMMARY JUDGMENT - 2**

**Van Ness  
Feldman**  
719 Second Avenue, Suite 1150  
Seattle, WA 98104  
(206) 823-9372

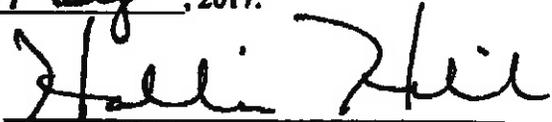
1 5. As of July 1, 1997, RCW 57.02.001 had the effect of validating and  
2 ratifying Ronald's annexation of the Point Wells Service Area, rendering moot any defect  
3 in the 1985 Transfer Order.

4 6. The Snohomish County Defendants are barred by equitable principles  
5 including the doctrines of estoppel, laches, and acquiescence, from challenging the  
6 validity and binding effect of the 1985 Transfer Order.

HH

7 7. The Court therefore grants partial summary judgment and declaratory  
8 judgment in favor of Ronald on its First Claim for Declaratory Judgment (Claim XI). The  
9 Court dismisses Olympic View's and Woodway's second counterclaims, which address  
10 the same issues raised in Ronald's Motion, with prejudice.

11 DATED this 9<sup>th</sup> day of May, 2017.

12   
13 \_\_\_\_\_  
14 JUDGE HOLLIS HILL

15 Presented by:

16 VAN NESS FELDMAN LLP

17 

18 \_\_\_\_\_  
19 Duncan M. Greene, WSBA #36718  
20 H. Ray Liaw, WSBA #40725  
21

22 //

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[PROPOSED] ORDER & JUDGMENT GRANTING RONALD'S  
MOTION FOR PARTIAL SUMMARY JUDGMENT & DECLARATORY  
JUDGMENT & DENYING SNOHOMISH COUNTY'S & WOODWAY'S  
MOTIONS FOR SUMMARY JUDGMENT - 3

HH  
**Van Ness  
Feldman**  
719 Second Avenue, Suite 1150  
Seattle, WA 98104  
(206) 823-8372

NOV 20 21 40 35

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

In Re the Transfer of the  
Richmond Beach Sewer System

NO. 85-2-17332-5

ORDER APPROVING SEWER  
SYSTEM TRANSFER

This matter came on for hearing upon joint petition of King County and the Ronald Sewer District (hereinafter the "District") to approve transfer of the Richmond Beach Sewer System (the "System") from King County to the District.

Based upon the record herein and the evidence received, the Court finds that petitioners have entered into an agreement which would transfer all ownership and maintenance authority regarding the System from King County to the District and that the governing body of the District and the legislative body of the County have approved this transfer agreement. The Court further finds that said transfer agreement is legally correct and that there are no owners of related indebtedness to be protected, now, therefore.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that:

1. The transfer agreement between the parties is approved.

Order Approving Sewer  
System Transfer - 1

**NORM MALENG**

Prosecuting Attorney  
CIVIL DIVISION  
E 880 King County Courthouse  
Seattle, Washington 98104  
(206) 883-4437

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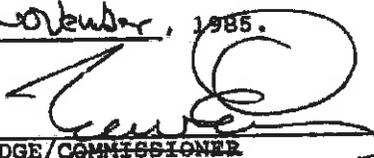
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2. The transfer of the System is to be accomplished in accordance with the transfer agreement effective as of

January 1, 1986.

3. As provided in the transfer agreement, the area served by the System shall be annexed to and become a part of the District on the effective date of the transfer.

DATED this 20<sup>th</sup> day of November, 1985.

  
\_\_\_\_\_  
JUDGE/COMMISSIONER

Presented by:

NORM MALENG  
King County Prosecuting Attorney

By   
\_\_\_\_\_  
JACK G. JOHNSON  
Deputy Prosecuting Attorney  
Attorneys for King County

Order Approving Sewer  
System Transfer - 2

**NORM MALENG**  
Prosecuting Attorney  
CIVIL DIVISION  
E 800 King County Courthouse  
Seattle, Washington 98104  
(206) 863-4437

AGREEMENT TRANSFERRING  
SANITARY SEWER SYSTEM

THIS AGREEMENT is made and entered into by and between King County, hereinafter called the "County" and Ronald Sewer District, hereinafter called the "District". The purpose of this agreement is to transfer a sanitary sewer system and operated by the County to the District for its ownership and operation. This agreement is based upon the following facts, recognized by both parties:

1. The County is a home-rule charter county under the laws of Washington. It is authorized to own and operate sanitary sewer systems, and to transfer such ownership and operation, under RCW 36.94.

2. The District is a sewer district organized pursuant to RCW Title 56 and authorized to accept transfer and to own and operate a sanitary sewer system.

3. The system which is the subject of this agreement is commonly known as the Richmond Beach sewer system (hereinafter called the "System"). At the time of this agreement, the System serves approximately 1,022 customers directly and serves others by developer extension agreements. For purposes of this agreement the "area served" by the System shall mean those parcels of property within the boundaries described in Addendum A, which is attached hereto and incorporated herein by this reference.

4. As part of the System, the County owns a combination of sanitary sewer lines, manholes, side sewers, lift stations and necessary appurtenances which have been installed within the boundaries of the System.

5. In addition to the integral components of the System described in paragraph 4, the County owns certain maintenance and

office equipment and supplies associated with the System, which are described in Addendum B, which is attached hereto and incorporated herein by this reference.

6. The County owns certain easements of record which permit it to construct and maintain the System's facilities on private property.

7. The County currently has a fund balance of approximately \$115,000 associated with the System. This fund is derived from all revenues, permit fees, and operation and maintenance charges generated by the System and is used only to pay the expenses of the System such as debt service and operation and maintenance costs.

8. The County has certain contractual rights and obligations in connection with the system. These rights and obligations arise under the agreements which are attached as Addenda C and D, and incorporated herein by this reference.

9. The District has submitted a proposal received June 22, 1983, to accept the transfer of the System from the County. A copy of this proposal is attached hereto as Addendum E, and incorporated herein by this reference.

10. The King County Council, by Ordinance No. 7370 has found that the transfer of the System to the District under the terms herein would be in the public interest and conducive to the public health, safety, welfare, and convenience.

11. The District by Resolution No. 83-21 has also found that such a transfer would be in the public interest and conducive to the public health, safety, welfare, and convenience.

NOW THEREFORE, the parties hereby agree as follows:

A. All sanitary sewer lines, manholes, side sewers, lift stations, and necessary appurtenances owned by the County in connection with the System shall hereby be transferred to and become the property of the District. For any such facilities which have been constructed on County road right-of-way, the District shall be permitted to continue to use that portion of right-of-way for the purpose of operating and maintaining the facilities.

B. All maintenance and office equipment and supplies described above shall hereby be transferred to and become the property of the District. The County shall also make available all records necessary for operation of the System, and shall make available to the District, for a period of two months, County personnel needed to assist in identifying, organizing and checking said records.

C. All rights to easements owned by the County in connection with the System shall be and are hereby conveyed, assigned, and transferred to the District.

D. The County will keep segregated and will transfer to the District any fund balance associated with the System at the time of the transfer, less an amount required to cover the County's costs of terminating its operation of the System. Such termination costs are estimated to be \$ 9200<sup>00</sup>. The County will also assign to the District all accounts receivable or other debts owed to the County in connection with the System, together with any security interests or liens securing payment of such debts.

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E. All the County's rights and obligations under the contracts above are hereby assigned and delegated to the District.

F. The District shall assume responsibility for providing the sanitary sewer services for the System, including the maintenance, operation, and all other administrative and financial duties associated with the System.

G. The District agrees to accept the System "as is," with no warranty from the County as to the physical condition, efficiency, capacities, freedom from defect, or fitness of any element of the System or of the System as a whole. Any necessary repairs, modifications, or improvements to the System will be the responsibility of the District.

H. The District shall not compel sewer connection or impose sewer charges without connection for any parcels with existing septic systems within the area served by the System but not now connected to the System. This paragraph shall not limit the District's authority to make assessments or require connections as part of the formation of a Utilities Local Improvement District, nor shall it limit the authority of the King County Health Department to compel sewer connection under conditions specified by its regulations.

I. The District shall abide by the terms of the proposal submitted as described above, except where it conflicts with the terms of this agreement, in which case this agreement shall control. In addition to the rate structure described in its proposal, the District shall ensure that for at least two years, senior citizens shall be charged rates no higher than those they are currently charged by the County, except to the extent of Metro rate increases.

J. The transfer provided for by this Agreement shall take effect January 1, 1986. The District recognizes, however, that the transfer of the System is part of an effort by the County to simultaneously transfer to other agencies all sewer facilities currently operated by the County. If any or all such other transfers are delayed, prevented or cancelled for any reason, the transfer provided for herein shall not be effective unless or until all such transfers occur.

K. The area served by the System shall be deemed annexed to and a part of the District as of the above-stated effective date.

KING COUNTY

DISTRICT

by: [Signature]

by: James E. Sinclair

its \_\_\_\_\_

Title

its Pres.

Title

Approved as to form:

[Signature]  
JACK B. JOHNSON  
Deputy Prosecuting Attorney

LEGAL DESCRIPTION  
Richmond Beach Sewer System

ALL that portion of Section 1, Township 26 North, Range 3 East, W.M. Tying Westerly of that area annexed to Ronald Sewer District by Resolution No. 28106.

TOGETHER WITH all that portion of Section 2, Township 26 North, Range 3 East, W.M. Tying Easterly of the Puget Sound shoreline EXCEPT those areas already annexed to Ronald Sewer District by Resolutions No. 909 and 83-53.

All being located in King County, Washington.

ALSO TOGETHER WITH all those portions of Section 35, Township 27 North, Range 3 East, W.M. Snohomish County, Washington described as follows:

That portion of the SW 1/4 of said Section 35 lying Westerly of the corporate limits of the City of Woodway as established February 26, 1958.

TOGETHER WITH, all that portion of said SW 1/4 of Section 35, described as follows: Beginning at a point at the intersection of the South line of said Section 35, with the Easterly right of way line of the Great Northern Railway Company; thence East along the South line of said Section 35, a distance of 366 feet; thence North 247.5 feet, more or less, to the North line of the E.L. Reber tract; thence West along the North line of said Reber tract to the Easterly right of way line of the Great Northern Railway Company; thence Southeasterly along the Easterly line of said right of way to the point of beginning, EXCEPT the North 20 feet thereof for road, LESS portion thereof as conveyed to Snohomish County, Washington in Volume 183 of Deeds on page 56 for road right of way and condemned in Superior Court Cause No. 40540; situated in the County of Snohomish, State of Washington.

ADDENDUM A

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INVENTORY -- RICHMOND BEACH

<u>K.C.</u> <u>TAG NO.</u>	<u>ITEM</u>	<u>COST</u>	<u>YEAR</u> <u>PURCHASED</u>	<u>APPROX.</u> <u>VALUE</u>
81657	Rodding Trailer	\$388.50	1970	\$800.00
81653	3" Diaphragm Pump	490.00	1973	200.00
87059	IBM Typewriter	886.10	1979	
	SN 6344482			

ADDENDUM B

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APR 16 1984

APR 20 1984



King County Executive  
Randy Revelle  
Department of Public Works  
Donald J. LaBelle, Director

April 12, 1984

Chevron U.S.A., Inc.  
P.O. Box 125  
Edmonds, WA 98020

Attention: Mr. Lloyd Heinz, Terminal Manager

Gentlemen:

In 1971, Chevron USA, Inc. and King County (Sewerage and Drainage Improvement District No. 3) signed the enclosed agreement regarding the installation, operation and maintenance of a sewage lift station on Standard Oil property at Point Wells. Page 2, paragraph 3 of this agreement states that the grant of right of way and easement to the District shall not be transferred by the District without written consent of Standard. This letter requests your consent to transfer this right of way and easement to another governmental agency.

King County has completed preliminary work on a proposal to divest County government of operation of its five sanitary sewer collection systems to other agencies. The Ronald Sewer District has submitted a proposal to acquire the Richmond Beach sewer system, which would include the lift station on your property.

There are still several steps to be completed, including public meetings, execution of transfer agreements, and action by the King County Council and the Superior Court approving the agreements. If all these processes are accomplished as planned, the systems would be transferred on January 1, 1985.

Because this transfer is being pursued and because of the importance of the lift station to the system's operation, we are asking for your consent to transfer the right of way and easement to Ronald Sewer District if the transfer of the system is completed. There would be no change in the use of the property and, of course, Ronald Sewer District would be subject to all the terms of the existing agreement.

If you approve of this transfer, please sign below and return this to me. We will notify you if, and when, the transfer is actually effected.

If you have any questions, please call me at 344-4050.

Sincerely,

*Sandra L. Adams*  
SANDRA L. ADAMS  
Utilities Administrator

SLA:mw

APPROVED, Consent Given

*J.R. Kaehler*  
Name  
Date 4-25-84

THIS AGREEMENT, dated the 11th day of October, 1971, by and between STANDARD OIL COMPANY OF CALIFORNIA, a corporation, hereinafter called "Standard", and SEWERAGE AND DRAINAGE IMPROVEMENT DISTRICT NO. 3 OF KING COUNTY, STATE OF WASHINGTON, hereinafter called the "District",

WITNESSETH:

WHEREAS, Standard and the District entered into an agreement dated September 17, 1970 involving the installation of a new sewage lift station on Standard's real property, near the southerly entrance of Standard's Marine Terminal at Point Wells, Snohomish County, Washington; and

WHEREAS, the installation of said lift station was completed by Standard on June 7, 1971; and

WHEREAS, on June 8, 1971, the District acquired title to said lift station and is to operate and maintain the same as set forth in said agreement dated September 17, 1970; and

WHEREAS, the parties hereto wish to enter into an agreement pertaining to the District's right to maintain said lift station on Standard's real property.

NOW, THEREFORE, in consideration of the premises, covenants and conditions hereinafter set forth, it is mutually agreed as follows:

1. Standard hereby grants to the District a non-exclusive right of way and easement to maintain, operate, repair, replace and remove said lift station on that certain portion of Standard's real property situate in Snohomish County, State of Washington, in the South Half ( $S\frac{1}{2}$ ) of the Southwest Quarter ( $SW\frac{1}{4}$ ) of Section Thirty Five (35), Township Twenty Seven (27) North, Range Three (3) East, and more particularly described as follows:

Beginning at the intersection of the east line of Heberlein County Road and a line parallel to and 257.50 feet north of the south line of Section 35, Township 27 North, Range 3 East, W.M., thence N  $6^{\circ} 56' 30''$  W, 23.00 feet, thence S  $83^{\circ} 03' 30''$  W, 12.00 feet, thence S  $6^{\circ} 56' 30''$  E, 21.44 feet, thence S  $89^{\circ} 30' 46''$  E, 12.10 feet to the point of beginning.

- 1 -

APPENDIX 7

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shall not interfere with or obstruct the use of said premises by Standard or injure or interfere with any person or property on or about said premises. No structures, facilities, or improvements shall be erected or placed by the District on or above the natural surface of the above-described property, with the exception of covered manholes.

3. This grant of right of way and easement is personal to the District and shall not be assigned or transferred by the District voluntarily, by operation of law, by merger or other corporate proceedings, or otherwise, in whole or in part, without the written consent of Standard first being had. No written consent of Standard hereunder shall be deemed a waiver by Standard of any of the provisions hereof, except to the extent of such consent.

4. Upon the violation by the District of any of the terms and conditions set forth herein and the failure to remedy the same within thirty (30) days after written notice from Standard so to do, then at the option of Standard this agreement and the rights herein given the District shall forthwith terminate.

5. Upon the termination of the rights herein given, the District shall at its own risk and expense remove said lift station and any other property placed by or for the District upon said premises hereunder, will promptly and properly refill all excavations, and restore said premises as nearly as possible to the same state and condition they were in prior to the installation of said lift station, but if the District should fail so to do within six (6) months after such termination, Standard may so do at the risk of the District, and all cost and expense of such removal and the restoration of said premises as aforesaid, together with interest thereon at the rate of ten per cent per annu, shall be paid by the District upon demand; and in case of a suit to enforce or collect the same, the District agrees to pay Standard in addition a reasonable attorney's fee to be fixed and allowed by the court.

6. Upon the termination of the rights herein given, the District shall execute and deliver to Standard within thirty (30) days after service of a written demand therefor a good and sufficient quitclaim deed to the rights herein given. Should the District fail or refuse to deliver to Standard a quitclaim deed, as aforesaid, a written notice by Standard reciting the failure or refusal of the District to execute and deliver said quitclaim deed as herein provided and

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and notice, be conclusive evidence against the District and all persons claiming under the District of the termination of the rights herein given.

7. The District shall pay, before the same become delinquent, all charges, taxes, rates and assessments upon or against said lift station and any other property or improvements placed by or for the District upon said premises hereunder, but Standard may at all times after any delinquency pay and discharge all of such delinquent charges, taxes, rates and assessments after reasonable verification thereof, and all such payments so made by Standard, with interest thereon at the rate of ten per cent per annum from the date of payment, shall be paid by the District upon demand. The amount of such payments and interest shall be a charge and lien against said lift station and other property placed by or for the District on said premises, and in case of a suit after such demand to enforce or collect the same, the District agrees to pay Standard in addition thereto a reasonable attorney's fee to be fixed and allowed by the court.

8. The District agrees to defend, indemnify and hold Standard, its officers and employees, and each of them, harmless from and against all liability or claims thereof for loss of or damage to property (to whomever belonging) or injury to or death of person proximately caused in whole or in part by any negligence of the District or its contractors, or by any acts for which the District or its contractors are liable without fault, in the exercise of the rights herein granted; save and except in those instances where such loss or damage or injury or death is proximately caused in whole or in part by any negligence of Standard or its contractors, or by any acts for which Standard or its contractors are liable without fault.

9. The District hereby recognizes Standard's title and interest in and to said premises and agrees never to assail or resist Standard's title or interest therein.

10. This agreement shall commence June 8, 1971 and shall continue thereafter until terminated by mutual agreement of the parties hereto; provided, however, Standard may, at its option, terminate this agreement upon any breach by the District of any provision of said Agreement dated September 17, 1970 and the failure of the District to remedy the same within thirty (30) days

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11. Any written notices to be given by the District to Standard hereunder shall, until further notice from Standard, be addressed to Standard at P. O. Box 125, Edmonds, Washington 98020. Any written notices to be given by Standard to the District hereunder shall, until further notice from the District, be addressed to the District at Department of Public Works, 900 County Administration Bldg., Seattle 98104. All such notices shall be delivered in person or deposited in the United States mail, properly addressed as aforesaid, postage fully prepaid, and shall be deemed given when so deposited.

12. Except as otherwise provided herein, the term and conditions of this agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

13. This grant is made subject to all valid and existing licenses, leases, grants, exceptions, reservations and conditions affecting said premises.

IN WITNESS WHEREOF, the parties hereto have executed this agreement in triplicate.

STANDARD OIL COMPANY OF CALIFORNIA

By [Signature]  
Contract Agent

By [Signature]  
Asst Secretary

SEWERAGE AND DRAINAGE IMPROVEMENT  
DISTRICT NO. 3 OF KING COUNTY,  
STATE OF WASHINGTON

By [Signature]  
J. L. DeSpain, P.E., Director  
Department of Public Works

RONALD SEWER DISTRICT  
Resolution No. 83-21

A Resolution of the Board of Commissioners  
Authorizing Transmission of Proposal for  
Acquisition of King County Sewer District No. 3

WHEREAS, King County operates King County Sewer District No. 3 adjacent to the Ronald Sewer District under the provisions of Title 85 RCW and has solicited a proposal from the District to divest the County of King County Sewer District No. 3; and

WHEREAS, the Board of Commissioners has made an investigation of the records of King County Sewer District No. 3 as supplied by King County and of the rates which would be necessary to maintain the King County Sewer District No. 3 facility in accordance with standards established by the policies of the District; and

WHEREAS, this Board of Commissioners finds that acquisition of King County Sewer District No. 3 will be of benefit to the District and King County Sewer District No. 3; now, therefore, it is hereby

RESOLVED that the Proposal for Acquisition of King County Sewer District No. 3 by the Ronald Sewer District, attached hereto as Exhibit A and by this reference incorporated herein, is hereby approved by the Board of Commissioners of the Ronald Sewer District; and it is

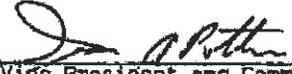
FURTHER RESOLVED by this Board of Commissioners that the Proposal for Acquisition of King County Sewer District No. 3 by the Ronald Sewer District shall be transmitted to King County.

ADOPTED by the Board of Commissioners of Ronald Sewer District this 20th day of June, 1983.

ATTEST:

  
\_\_\_\_\_  
President and Commissioner

\_\_\_\_\_  
Secretary and Commissioner

  
\_\_\_\_\_  
Vice President and Commissioner.

I, the undersigned Secretary of the Board of Commissioners of Ronald Sewer District, a municipal corporation of King County, Washington, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution No. 83-21 of said Board, duly adopted on June 20, 1983, at its regular meeting.

\_\_\_\_\_  
Secretary and Commissioner

1. RATE TO BE APPLIED

- a) Ronald's 1983 rate is \$2.65/MTH per residential C.E. except ULID 14 (surcharge \$1.00/MTH per C.E. for O & M of 6 pump stations). The 1984 District rate proposed is \$2.95 plus Metro.
- b) Rate of K.C. #3 will include a \$2.00 surcharge. A surcharge of \$2.00 per month will be levied and should raise approximately \$26,400 a year.

The following immediate actions will be required as a result of the take-over:

- One additional Maintenance Technician  
Salary plus fringe - \$32,905.60/yr.
- Conversion of Lift Station Telemetering equipment
- Conversion of Lift Stations for emergency generator operation
- Minimum upgrade, if necessary
- Field checking and setting up of administrative and maintenance records.

The longer range actions will be determined after a system analysis and evaluation is completed. This will be done in conjunction with our routine maintenance and includes the following:

- Location of Firdale line and eliminating excess flow
- Identifying potential problem lines
- Review of pump time records of all lift stations.

2. LEVEL OF SERVICE

- a) The minimum would be consistent with our current operation. However, review of Fact Findings response might indicate additional requirements.
- b) Routine activities include flushing, TVing, rodding, inspecting, manhole raising, pump station maintenance, investigating and responding to emergencies and complaints, root and rodent control and any and all other necessary functions.
- c) District makes use of outside consultants on "as needed" basis to avoid the top-heavy organization with financial burden on our rate payers.

3. MAINTENANCE STANDARDS AND FREQUENCY

- a) Entire system flushed every 1½ years.
- b) Pump stations checked and maintained three times a week.
- c) Telemetering tested once a month.
- d) All other work performed on "as needed" basis.
- e) Our standards include heavy emphasis on preventative maintenance and compliance with regulatory agencies.
- f) Written procedures are on file in our office and soon will be on word processing.

4. AGENCY'S QUALIFICATIONS TO CONDUCT SEWER SERVICE

Our agency serves a local area. The elected officials reside within our boundaries and are directly responsible to their constituents. We have very fast response time to emergencies as a result of our 24-hour "on call" and the fact that our equipment and personnel are located within 15 minutes' driving time to District. We also work cooperatively with adjacent agencies to provide greater manpower, if needed. A brief biography is attached; in addition, the following pertinent information:

- a) Maintenance Personnel
  - Required to be certified as Waste Water Operator
  - Flag and First Aid Cards mandatory
  - Attendance twice a month at in-house safety and training sessions
  - Voluntary outside educational programs reimbursed by District
- b) Elected Officials
  - Members of Washington State Association of Sewer District
  - Member of MWPAAC Committee
  - Member of Metro Sludge Committee
- c) Manager
  - Chairs Managers' meetings for Washington State Association of Sewer Districts
  - Member of Water Pollution Control Federation and recently participated as author for safety pamphlet to be released at National Conference in Atlanta
  - Member of American Public Works Association
  - Served on numerous King County committees as a member of the Policy Development Commission
  - Served on Citizens Water Quality Committee for Metro

- Served on two Rate Equity Committees for Metro
- Organized committee to write ordinances for confined spaces and developer extensions
- Organized a collection school held at the District Office in 1981 as an extension to Shoreline Community College

d) **Equipment and Facilities**

- Hi velocity flush truck
- TV equipment in trailer
- Portable rodder
- Two on-site emergency generators and one portable
- Numerous pumps and accessories for by-pass
- Smoke test apparatus
- Safety equipment
- Trucks and van with radio equipment
- Telemetering alarm system for all eight pump stations
- Miscellaneous shop equipment
- Maintenance facility at site of administrative building
- Other too numerous to mention

5. AGENCY COMPREHENSIVE PLAN

On file at King County as required by K.C. Ordinance No. 2638 and 1709.

6. BONDING CAPACITY FOR G.O. AND REVENUE BONDS

District has no G.O. Bonds and therefore bonding capacity not applicable. (1982 Financial Report Enclosed)

7. OBLIGATIONS OR CONDITIONS

All District revenue pledged to outstanding bonds and subject to Ronald's rules and regulations. Additional charges may be levied after evaluation of system, only if upgrade required. All King County #3 bonds will be paid off prior to transfer and balance of funds approximating \$85,000 will be transferred to Ronald.

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8. DATE OF ACCEPTANCE

January 1, 1984 or open to negotiations.

9. ANY OTHER PERTINENT FACTS

Geographic location allows quicker response to health and environmental threats and provides better and more direct access to elected officials and records pertaining to their system.



# Ronald Sewer District

A Municipal Corporation Established in 1951  
17505 Linden Ave. N. • P.O. Box 33490 • Seattle, WA 98133  
546-2494

April 3, 1984

Commissioners

IRVIN A. POTTER  
PHILIP J. MONTGOMERY  
JAMES E. SINCLAIR

Manager

SYDELL POLIN

Re: King County  
Sewer Divestment  
King County #3

Ms. Sandy Adams  
Utilities Administrator  
King County Dept. of Public Works  
900 King County Administration Building  
500 - Fourth Avenue  
Seattle, WA 98104

APR 4 1984

NOSEMALENG  
PROSECUTOR GENERAL  
CIVIL DIVISION

Dear Sandy:

The purposes of this letter are to (1) advise you of representative for June information meeting for King County #3 and (2) reaffirm our proposal for the above.

Commissioner Irvin A. Potter has agreed to represent the District at the informational meeting and I will be present as the staff person.

With regard to our proposal, we have no changes, but we were told by Rod Matsuno at the time we made the proposal that there would be approximately \$85,000 transferred to Ronald along with the District. We want to be sure that those funds remain with King County #3 and are not put in the general funds as a result of the proceedings to put this District under the County Services Act.

Thank you for all of your efforts.

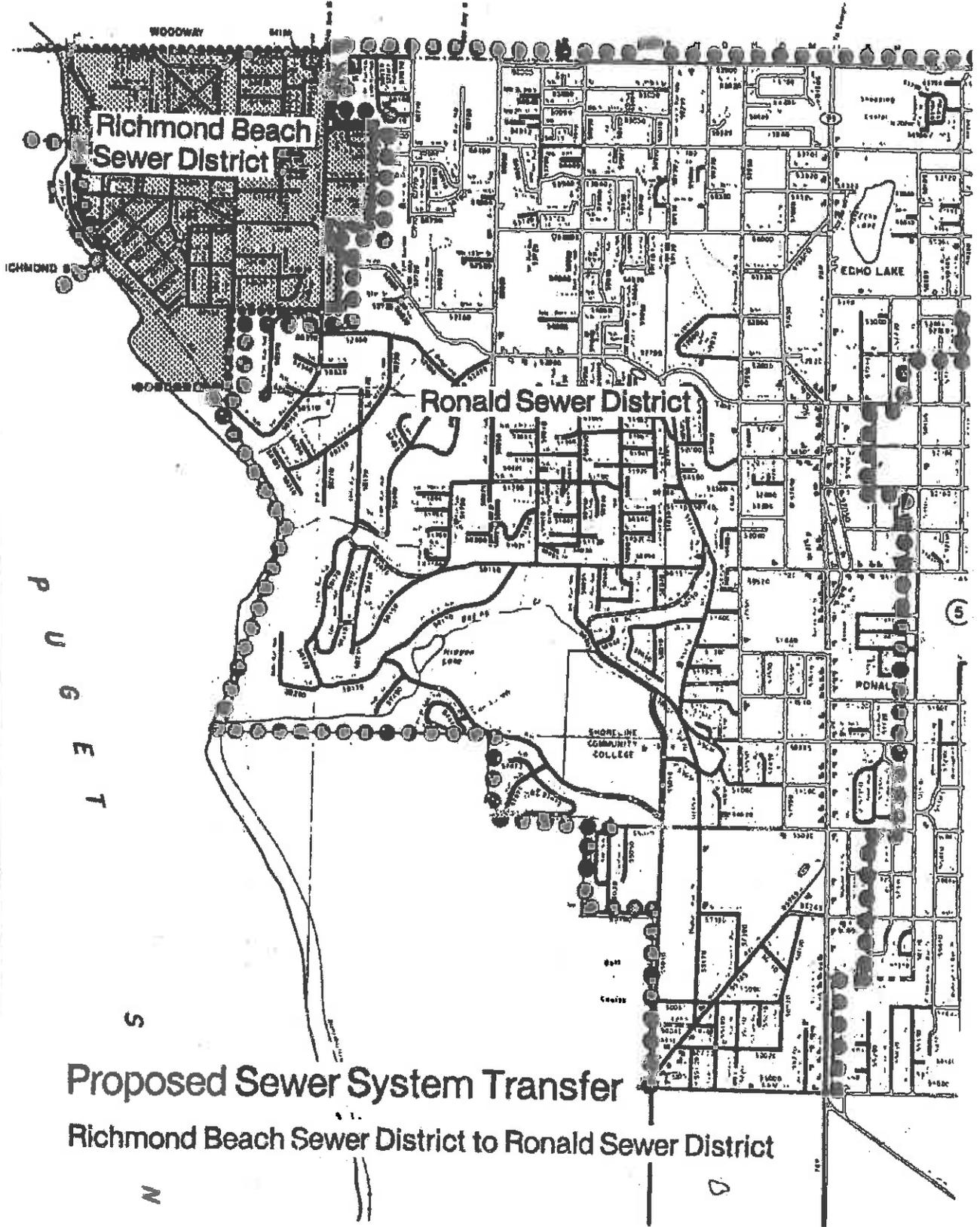
Sincerely,

Sydell Polin (Mrs.)  
Manager

SP:ps

cc: Harry Thomas, Deputy County Executive  
Bob Cowan, Director, Finance Office  
Donald J. LaBelle, Director, Department of Public Works  
Attn: Paul Tanaka, Deputy Director  
✓ Jack Johnson, Deputy Prosecuting Attorney  
Rita Elway, Acting Manager, Program Development  
Attn: Donna Gordon, Staff Assistant  
Audrey Gruger, King County Council  
Board of ENVIRONMENTAL PROTECTION  
Commissioners

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**Proposed Sewer System Transfer**  
**Richmond Beach Sewer District to Ronald Sewer District**

If the information on this frame is not as legible as this message, it is a poor quality original.

July 18, 1985

INTRODUCED BY: AIDREY CRUGER

PROPOSED NO. 85-374

ORDINANCE NO. 7370

AN ORDINANCE authorizing the transfer of a sewer system from King County to the Ronald Sewer District.

PREAMBLE:  
The Council of King County finds that the transfer of the Richmond Beach sewer system owned and operated by King County to the Ronald Sewer District pursuant to the attached agreement is in the public interest and is conducive to the public health, safety, welfare, and convenience.

BE IT ORDAINED BY THE COUNCIL OF KING COUNTY:

SECTION 1. The proposed transfer of ownership and operation of the Richmond Beach sanitary sewer system from King County to the Ronald Sewer District is hereby approved.

SECTION 2. The county executive is hereby authorized to execute the proposed agreement transferring said sanitary sewer system to the Ronald Sewer District.

SECTION 3. The council chairman is hereby authorized to petition the Superior Court for a decree approving and directing that said sanitary sewer system be transferred according to the terms and conditions of the proposed agreement.

INTRODUCED AND READ for the first time this 29th day of July, 1985.  
PASSED this 7th day of October, 1985.

KING COUNTY COUNCIL  
KING COUNTY, WASHINGTON

Gary Grant  
Chairman

ATTEST:

Dorothy M. Quinn  
Clerk of the Council

APPROVED this 14th day of October, 1985.

Randy Reveller  
King County Executive

-1-

EXHIBIT

RONALD SEWER DISTRICT  
Resolution Number 85-28

A Resolution of the Board of Commissioners  
of Ronald Sewer District Approving  
Agreement Transferring Sanitary Sewer System

WHEREAS, this Board of Commissioners has, by Resolution Number 83-21, found that a transfer of the Richmond Beach Sewer System, owned and operated by King County, to Ronald Sewer District would be of benefit to the District; and

WHEREAS, this Board of Commissioners and King County have, through negotiation, arrived at a form of agreement to effect the transfer of the Richmond Beach Sewer System to the District, a copy of which agreement is attached as Exhibit "A"; and

WHEREAS, upon execution of the agreement by this Board of Commissioners, approval of the agreement by the King County Council and the King County Superior Court, the transfer of the Richmond Beach Sewer System will be effective; and

WHEREAS, this Board of Commissioners finds that the form of the agreement transferring sanitary sewer system is acceptable and in the best interest of the District; now, therefore, it is

HEREBY RESOLVED by this Board of Commissioners that the agreement transferring sanitary sewer system is accepted, and it is

FURTHER RESOLVED by this Board of Commissioners that appropriate officers of the Board of Commissioners are authorized to execute same on behalf of the District.

ADOPTED by the Board of Commissioners of Ronald Sewer District on July 1, 1985.

ATTEST:

Philip J. McTernan  
Secretary and Commissioner

James E. Smith  
President and Commissioner

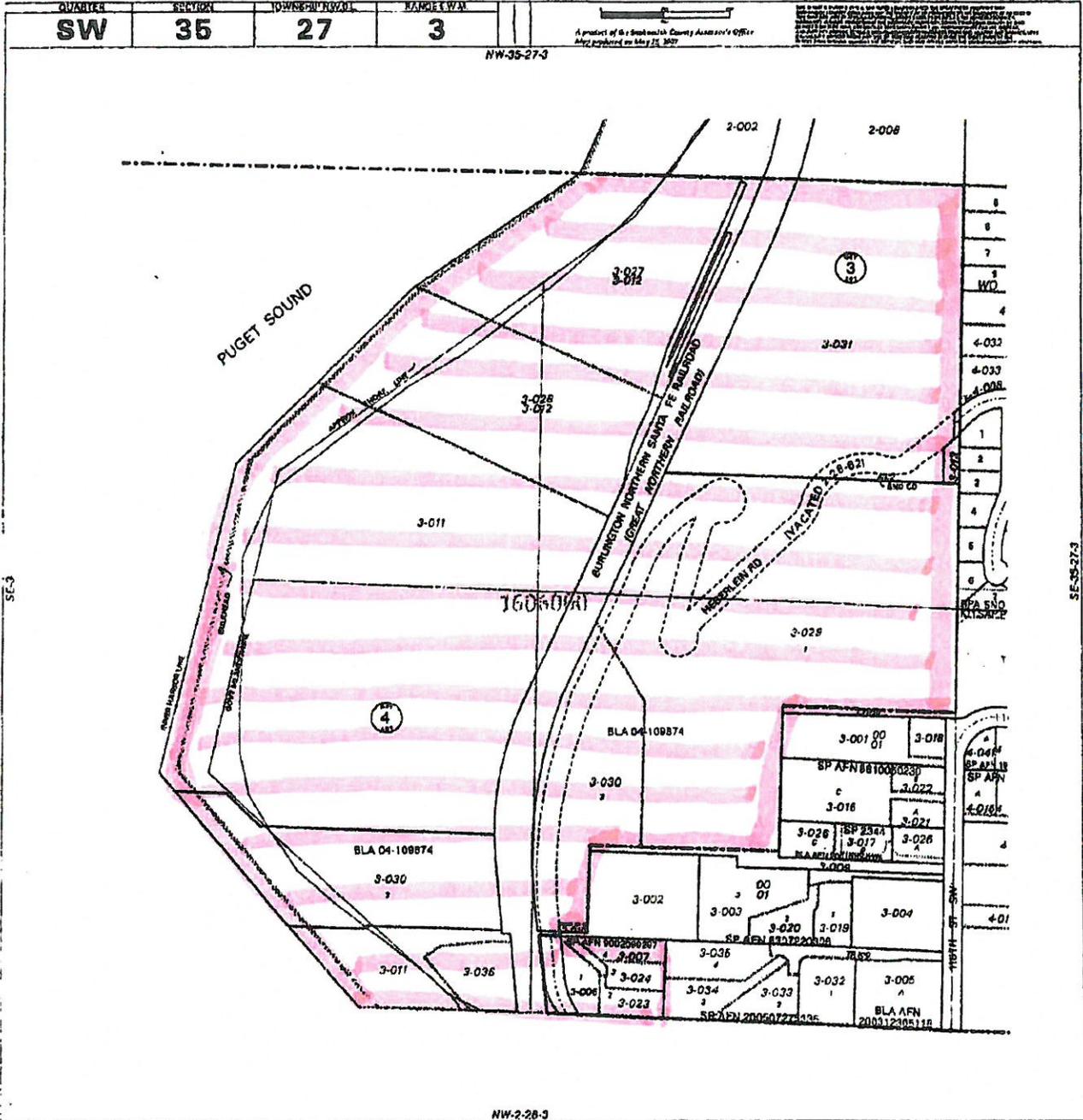
Donald Potter  
Vice President and Commissioner

I, the undersigned Secretary of the Board of Commissioners of Ronald Sewer District, a municipal corporation of King County, Washington, DO HEREBY CERTIFY that the foregoing is a true and correct copy of Resolution Number 85-28 of said Board, duly adopted on July 1, 1985, at its regular meeting.

Philip J. McTernan  
Secretary and Commissioner

Appendix 3

What Ronald Claims Was Annexed Into Its Corporate Boundaries With Annexation Order



Delineated In Pink



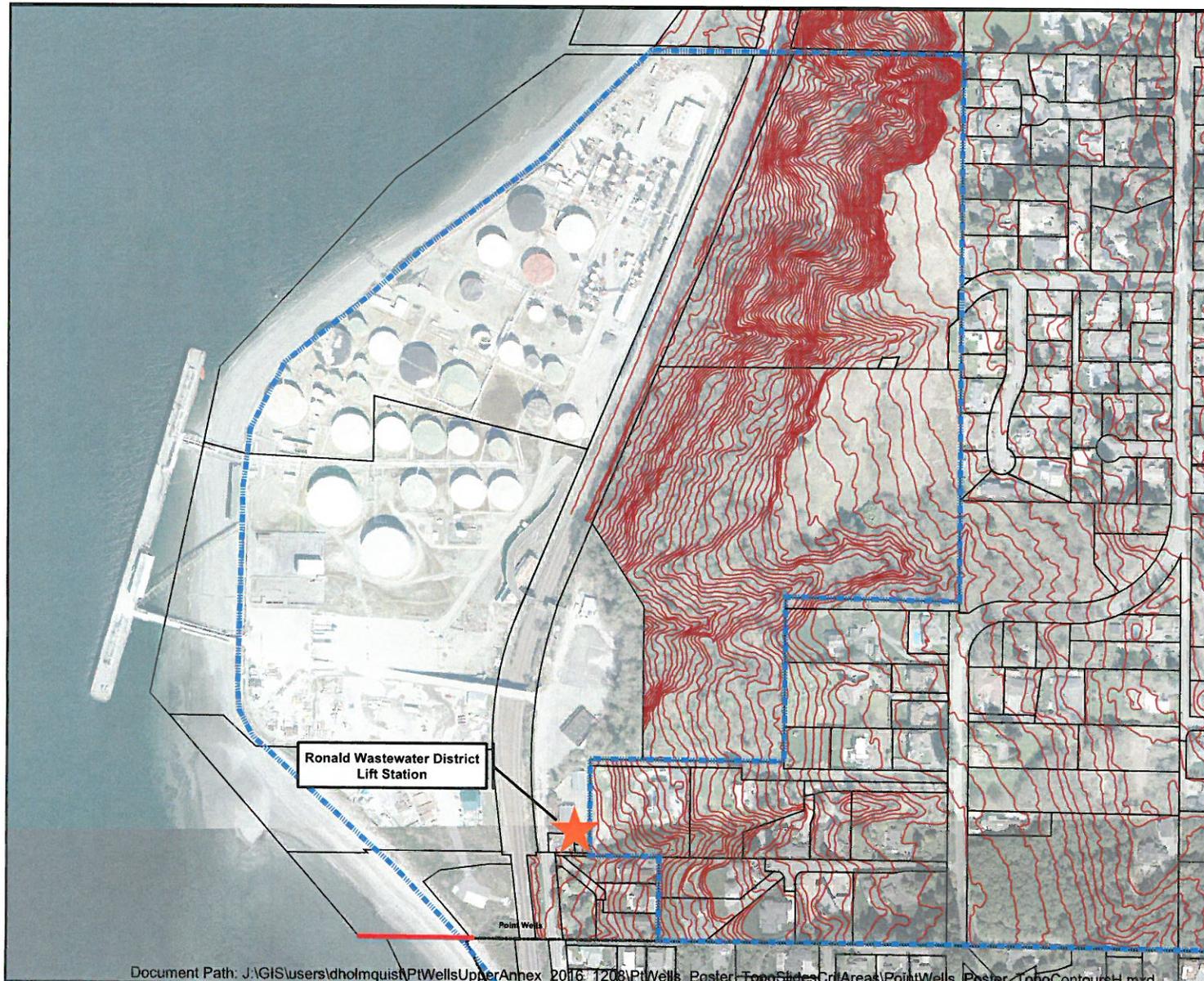
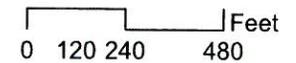
# APPENDIX A



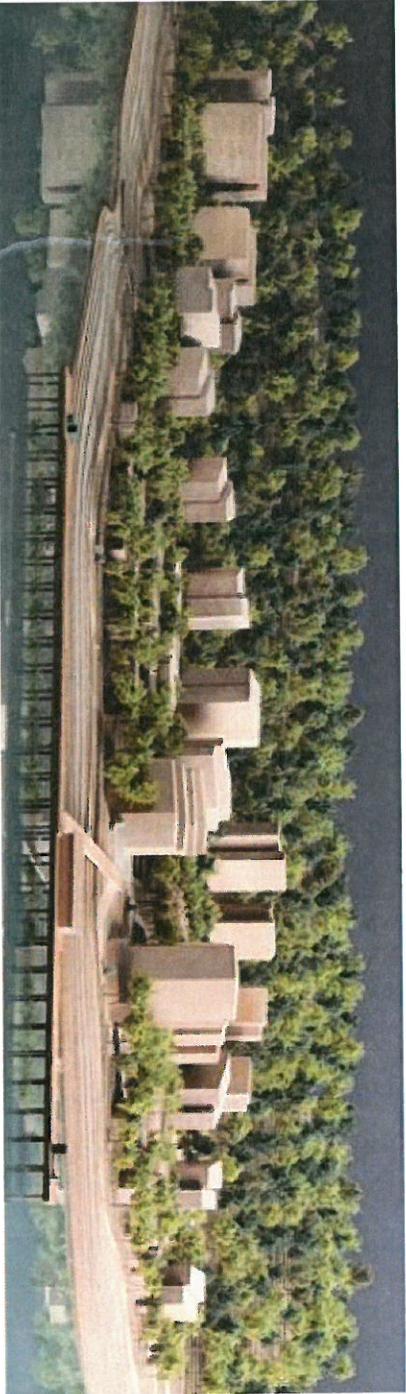
## Point Wells Topography

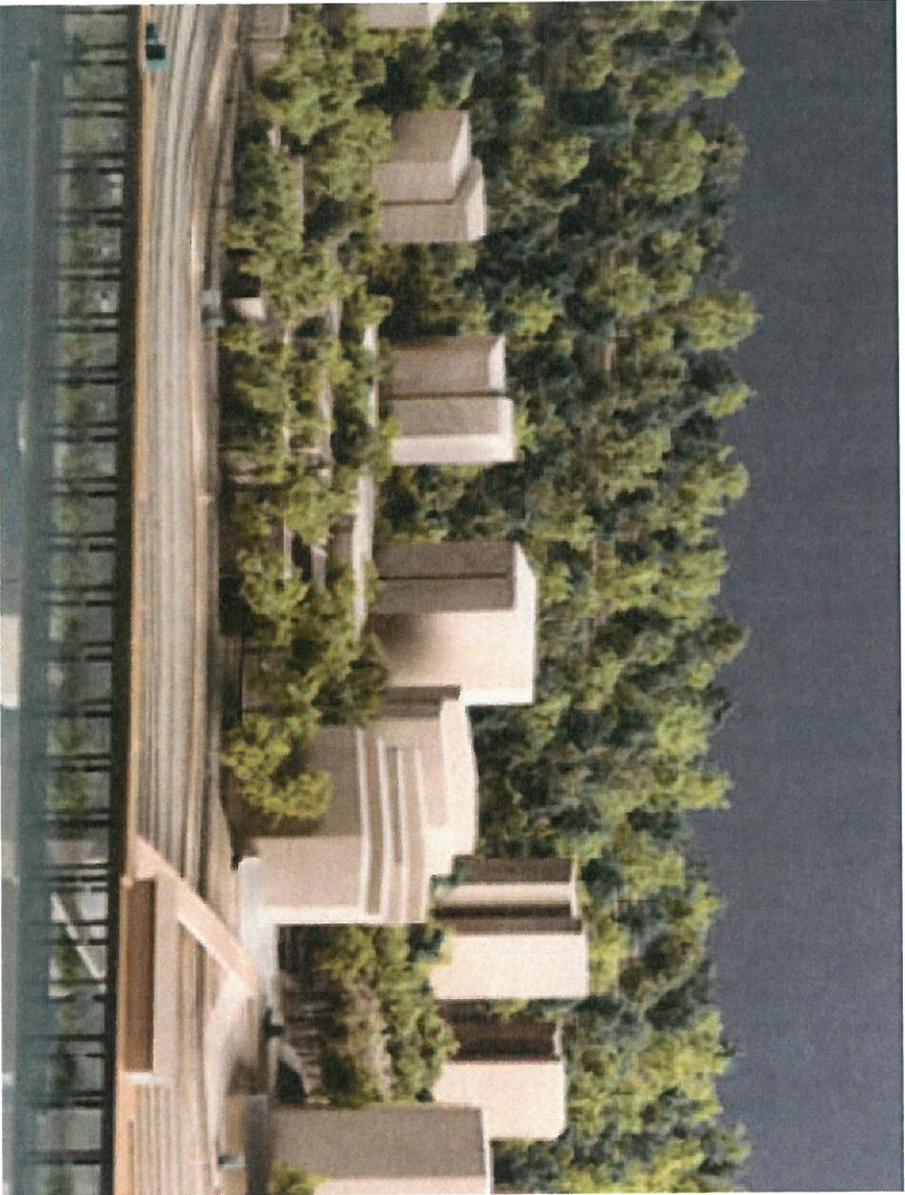
### Contours and Boundaries

-  Intervals (5 FT)
-  Ronald Wastewater District
-  Tax Parcels
-  RWD Lift Station # 13

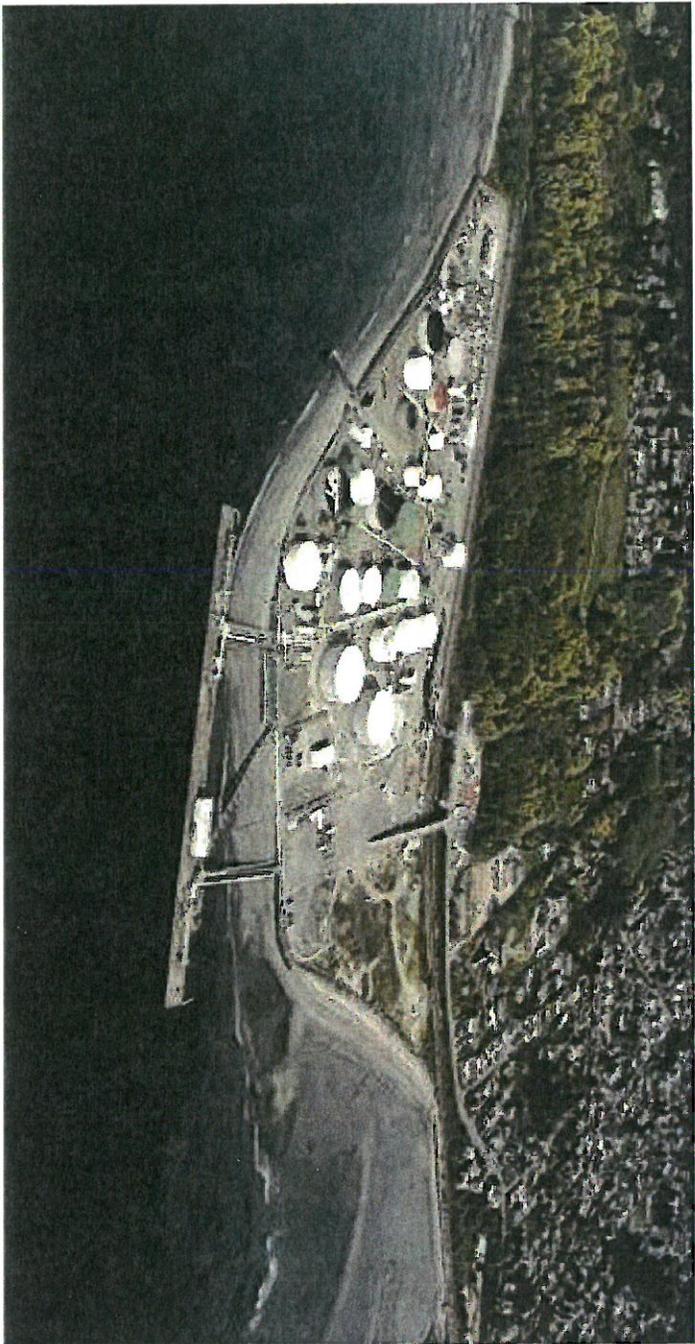














DECLARATION OF SERVICE

On said day below, I served a true and accurate copy of the *Olympic View Water & Sewer District's Brief of Appellant* in Supreme Court Cause No. 94633-7 to the following parties via the method indicated:

<p>Duncan Greene, WSBA #36718  H. Ray Liaw, WSBA #40725  Van Ness Feldman LLP  719 Second Avenue, Suite 1150  Seattle, WA 98104  <i>Attorneys for Plaintiff</i></p>	<p>SERVED VIA:  <input checked="" type="checkbox"/> E-Service  <input type="checkbox"/> Legal Messenger  <input type="checkbox"/> Express Mail  <input type="checkbox"/> E-mail  <input type="checkbox"/> U.S. Mail</p>
<p>Mark Stockdale, WSBA #17326  Verna Bromley, WSBA #24703  Jennifer Stacy, WSBA #30754  Darren Carnell, WSBA #25347  Senior Deputy Prosecuting Attorneys  900 King County Administration Bldg.  500 Fourth Avenue  Seattle, WA 98104  <i>Attorneys for King County</i></p>	<p>SERVED VIA:  <input checked="" type="checkbox"/> E-Service  <input type="checkbox"/> Messenger  <input type="checkbox"/> Express Mail  <input type="checkbox"/> E-mail  <input type="checkbox"/> U.S. Mail</p>
<p>Julie Ainsworth-Taylor, WSBA #36777  Margaret King, WSBA #34886  City of Shoreline  17500 Midvale Ave. North  Shoreline, WA 98133  <i>Attorneys for City of Shoreline</i></p>	<p>SERVED VIA:  <input checked="" type="checkbox"/> E-Service  <input type="checkbox"/> Messenger  <input type="checkbox"/> Express Mail  <input type="checkbox"/> E-mail  <input type="checkbox"/> U.S. Mail</p>
<p>Terrence Danysh, WSBA #14313  Dorsey &amp; Whitney LLP  701 Fifth Avenue, Suite 6100  Seattle, WA 98104-7043  Danysh.Terry@dorsey.com  Davison.zach@dorsey.com  Meditz.kerri@dorsey.com  <i>Co-Counsel for City of Shoreline</i></p>	<p>SERVED VIA:  <input checked="" type="checkbox"/> E-Service  <input type="checkbox"/> Messenger  <input type="checkbox"/> Express Mail  <input type="checkbox"/> E-mail  <input type="checkbox"/> U.S. Mail  <i>Email service</i></p>
<p>Greg Rubstello, WSBA #6271  Ogden Murphy Wallace PLLC  901 Fifth Avenue, Suite 3500  Seattle, WA 98164-2008  <i>Attorneys for Town of Woodway</i></p>	<p>SERVED VIA:  <input checked="" type="checkbox"/> E-Service  <input type="checkbox"/> Messenger  <input type="checkbox"/> Express Mail  <input type="checkbox"/> E-mail  <input type="checkbox"/> U.S. Mail</p>

Brian Dorsey, WSBA #18639 Jessica Kraft-Klehm, WSBA #49792 Snohomish County Prosecuting Attorney – Civil Division 3000 Rockefeller Ave. Everett, WA 98201-4060 <i>Attorneys for Defendant Snohomish County</i>	SERVED VIA: <input checked="" type="checkbox"/> E-Service <input type="checkbox"/> Messenger <input type="checkbox"/> Express Mail <input type="checkbox"/> E-mail <input type="checkbox"/> U.S. Mail
Sharon Cates, WSBA #29723 Jeffrey B. Taraday, WSBA #28182 Beth Ford, WSBA #44208 Lighthouse Law Group PLLC 1100 Dexter Avenue N., Suite 100 Seattle, WA 98109 <i>Attorneys for Defendant City of Edmonds</i>	SERVED VIA: <input checked="" type="checkbox"/> E-Service <input type="checkbox"/> Messenger <input type="checkbox"/> Express Mail <input type="checkbox"/> E-mail <input type="checkbox"/> U.S. Mail

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 21, 2017 at Seattle, Washington.

---

Matt J. Albers, Paralegal  
 Talmadge/Fitzpatrick/Tribe

# TALMADGE/FITZPATRICK/TRIBE

November 21, 2017 - 9:40 AM

## Transmittal Information

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 94633-7  
**Appellate Court Case Title:** Ronald Wastewater District v. Olympic View and Sewer District, et al.  
**Superior Court Case Number:** 16-2-15331-3

### The following documents have been uploaded:

- 946337\_Briefs\_20171121093724SC701046\_0172.pdf  
This File Contains:  
Briefs - Appellants  
*The Original File Name was Olympic View Brief of Appellant.pdf*
- 946337\_Motion\_20171121093724SC701046\_6668.pdf  
This File Contains:  
Motion 1 - Other  
*The Original File Name was Motion to Include Extrarecord Materials in Appendix.pdf*

### A copy of the uploaded files will be sent to:

- Cynthia.ryden@co.snohomish.wa.us
- ack@vnf.com
- bdorsey@snoco.org
- beth@lighthouselawgroup.com
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- danysh.terry@dorsey.com
- darren.carnell@kingcounty.gov
- dmg@vnf.com
- grubstello@omwlaw.com
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- mark.stockdale@kingcounty.gov
- mary.livermore@kingcounty.gov
- matt@tal-fitzlaw.com
- mking@shorelinewa.gov
- paoappellateunitmail@kingcounty.gov
- sharon@lighthouselawgroup.com
- tom@tal-fitzlaw.com
- verna.bromley@kingcounty.gov

### Comments:

(1) RAP 10.3(a)(8) Motion to Include Extrarecord Materials in Appendix (2) Olympic View Water & Sewer District's Brief of Appellant

---

Sender Name: Matt Albers - Email: matt@tal-fitzlaw.com

**Filing on Behalf of:** Philip Albert Talmadge - Email: phil@tal-fitzlaw.com (Alternate Email: matt@tal-fitzlaw.com)

Address:

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Third Floor Ste C

Seattle, WA, 98126

Phone: (206) 574-6661

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