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

OLYMPIC VIEW WATER AND SEWER DISTRICT,

Appellant,

v.

RONALD WASTEWATER DISTRICT,

Respondent,

and

SNOHOMISH COUNTY, KING COUNTY, CITY OF SHORELINE, and
TOWN OF WOODWAY,

Defendants,

and

CITY OF EDMONDS,

Intervenor.

**CORRECTED BRIEF OF RESPONDENT
RONALD WASTEWATER DISTRICT**

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Tegland and Ende, 15A Washington Practice: Washington
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I. INTRODUCTION

Respondent Ronald Wastewater District (“Ronald”) files this brief in opposition to the appeals and briefs filed by Appellant Olympic View Water and Sewer District (“Olympic View”) and Appellant Town of Woodway (“Woodway”). This appeal centers around Ronald’s “Point Wells” sewer service area in southwest Snohomish County (the “Point Wells Service Area”).¹ As they admit in their briefs, Olympic View and Woodway seek to collaterally attack and overturn an order entered by the King County Superior Court in 1985, which annexed the Point Wells Service Area to Ronald’s corporate boundary (the “1985 Annexation Order”), more than three decades after that order was entered.

In the 2017 summary judgment order at issue in this appeal (the “2017 Summary Judgment Order”), the King County Superior Court correctly rejected these collateral attacks on the 1985 Annexation Order. The untimely arguments advanced by Olympic View and Woodway are barred by principles of res judicata, and by the doctrines of estoppel, laches, and acquiescence; and even if not barred, their arguments have no merit, as they ignore foundational aspects of the relevant legal framework and rely upon outdated notions about the meaning of county lines.

In short, it is too late for Olympic View and Woodway to challenge the 1985 Annexation Order, and in any event, their challenges to the 1985 Annexation Order are meritless. Therefore, the Court should deny their appeals and affirm the 2017 Summary Judgment Order.

¹ A series of maps depicting the Point Wells Service Area is included in [Appendix A](#).

II. STATEMENT OF THE ISSUES

1. Is the 1985 Annexation Order res judicata and conclusively binding on the Snohomish County parties² such that they may not collaterally attack that order, more than 30 years later, in this proceeding?³

2. Alternatively, are the Snohomish County parties' untimely collateral attacks on the 1985 Annexation Order barred by the doctrines of estoppel, laches, and acquiescence?⁴

3. If the Snohomish County parties' collateral attacks are not barred, should the Court reject their challenges to the 1985 Annexation Order for lack of merit?⁵

4. Did RCW 57.02.001 validate Ronald's annexation of the Point Wells Service Area, rendering moot any technical defect in the 1985 Annexation Order?⁶

III. STATEMENT OF THE CASE

A. Legislative history surrounding multi-county sewer districts.

The Legislature's view of multi-county sewer districts has evolved over the decades. Initially, the Legislature flatly prohibited sewer districts from including territory in more than one county. As explained below, however, the Legislature gradually moved away from this prohibition

² This term refers to Olympic View and Woodway, as well as Snohomish County, which filed a motion and submitted briefs opposing Ronald's position during the Superior Court proceedings as discussed below, and the City of Edmonds, which intervened in Ronald's declaratory judgment action but filed no briefs in the summary judgment process.

³ See Section IV.B, *infra*.

⁴ See Section IV.C, *infra*.

⁵ See Section IV.D, *infra*.

⁶ See Section IV.E, *infra*.

during the 1970s – first, by allowing sewer districts to be formed with territory in more than one county, and later, by allowing sewer districts to merge with districts in other counties and annex territory across county lines.

Then, after abandoning its prohibition on multi-county districts, the Legislature passed a bill in 1984 authorizing annexations of sewer territory in connection with sewer transfers from counties to districts, and in doing so, the Legislature, unsurprisingly, included no express geographic limitation.⁷ As explained below, King County and Ronald followed the process established in that 1984 bill in their effort to annex the Point Wells Service area to Ronald’s territory.

Finally, during the 1990s, the Legislature passed the Growth Management Act, linked local land use planning to the comprehensive sewer plans adopted by sewer districts, and granted first-in-time rights to sewer districts based on their adoption of comprehensive sewer plans that disclosed an intention to serve a particular area.

1. ESSB 542 (1971).

In 1971, the Legislature passed Engrossed Substitute Senate Bill 542 (ESSB 542), “AN ACT . . . providing that sewer districts may include within their boundaries parts of more than one county.”⁸ Section 1 of ESSB amended an existing statute to allow sewer districts to “include within their boundaries portions or all of one or more counties.”

⁷ Copies of the bills discussed below can be found in the record at CP 1780-1916.

⁸ CP 1780-91.

2. SB 2945 (1975).

In 1975, the Legislature passed Senate Bill 2945 (SB 2945), which amended existing law to eliminate a restriction that had formerly prohibited cross-county annexations, as follows:

*Two or more sewer districts, adjoining or in close proximity to ~~(and in the same county with)~~ each other, may be joined into one consolidated sewer district. The consolidation may be initiated in either of the following ways . . .*⁹

3. ESSB 2737 (1975).

Also in 1975, the Legislature passed Engrossed Substitute Senate Bill 2737 (ESSB 2737), which amended a variety of statutes related to sewer and water service by counties and districts.¹⁰ Sections 7-11 of ESSB 2737, codified at RCW 36.94.310 through 36.94.350, authorized sewer districts (and other municipal corporations) to transfer water and/or sewer systems to counties. Section 7 of ESSB 2737 limited such transfers to a transfer from a district “to the county within which all of its territory lies.”

4. SHB 352 (1981).

In 1981, the Legislature passed Substitute House Bill 352 (SHB 352), which established the principle that “the first in time is the first in right where districts overlap.”¹¹ This principle was intended to help “reduce the duplication of service and the conflict among jurisdictions.”

⁹ CP 1792-95.

¹⁰ CP 1796-1803.

¹¹ CP 1804-11.

SHB 352's "first in time" provisions did not prohibit annexations of territory that would result in overlapping district boundaries; instead, they were focused on the provision of service, prohibiting the second district from actually *providing service* without the consent of the first district.¹²

5. HB 1145 (1982).

In 1982, the Legislature passed House Bill 1145 (HB 1145), titled, "Multicounty Districts," which took several additional steps to authorize sewer districts with territory in more than one county.¹³ In Section 2 of HB 1145, the Legislature validated former boundary-related actions by sewer districts, as follows: "All actions taken in regard to the formation, annexation, consolidation, or merger of sewer districts prior to the effective date of this act but consistent with this title, as amended, are hereby approved and ratified and shall be legal for all purposes." In Section 3 of HB 1145, the Legislature amended existing law to eliminate a restriction that had formerly prohibited cross-county annexations:

*The territory adjoining or in close proximity to (~~and in the same county with~~) a district may be annexed to and become a part of the district in the following manner . . .*¹⁴

6. SHB 1127 (1984).

Two years later, in 1984, the Legislature adopted Substitute House Bill 1127 (SHB 1127).¹⁵ As further explained below, SHB 1127 is the legislation that authorized the King County Superior Court to enter the

¹² *See id.*

¹³ CP 1812-36. *See also* CP 1837-61 (legislative history).

¹⁴ *See id.*

¹⁵ CP 1862-64. *See also* CP 1865-1908 (legislative history).

1985 Annexation Order. SHB 1127, which is now codified at RCW 36.94.410 through 36.94.440, authorized counties to transfer sewer systems to sewer districts – without requiring a public vote or review by the Boundary Review Board (“BRB”).

Unlike ESSB 2737, which limited transfers to those from a district “to the county within which all of its territory lies,” SHB 1127 did not include any express geographic limitation on transfers or annexations. SHB 1127 stated that sewer systems “may be transferred from that county to a water-sewer district *in the same manner* as is provided for the transfer of those functions from a water-sewer district to a county in RCW 36.94.310 through 36.94.340” – in other words, following the process established in RCW 36.94.310 through 36.94.340. While Section 1 of SHB 1127 incorporated the process established by the Legislature in ESSB 2737 and codified in RCW 36.94.310 through 36.94.340, that section of SHB 1127 included no language suggesting that any *substantive restriction* from RCW 36.94.310 through 36.94.340 should be similarly incorporated into SHB 1127.

Also unlike ESSB 2737, which had merely authorized the transfer of a sewer system, SHB 1127 took the additional step of authorizing petitioning counties and districts to elect to have territory “deemed *annexed*” to a district as part of a judicially-approved sewer transfer from a county to a district.¹⁶ That section of SHB 1127, like Section 1, included

¹⁶ See CP 1863 (emphasis added).

no express geographic limitation. Section 5 of SHB 1127 provided that [a]nnexations of territory to a water or sewer district pursuant to sections 1 through 4 of this act shall not be reviewed by a boundary review board.”

7. Growth Management Act (1990-1991).

In 1990 and 1991, the Legislature passed two bills that collectively enacted the Growth Management Act (“GMA”), Chapter 36.70A RCW.¹⁷ The GMA, like SHB 352 (passed in 1981), represented an effort by the Legislature to reduce conflicts among jurisdictions and other inefficiencies that result from uncoordinated and unplanned growth.¹⁸ The GMA fundamentally restructured the way cities, counties, special purpose districts, and other entities must plan for future growth, forcing them to engage in coordinated planning, rather than continuing to engage in the types of parochial, Hatfield–McCoy battles over jurisdictional boundaries that prompted the Legislature to adopt laws such as SHB 351 and the GMA.

While this is not a GMA case, Title 57 RCW requires sewer districts to adopt comprehensive sewer plans that are consistent with the GMA plans of the counties and cities in which they provide sewer service.¹⁹ That is why, as further explained below, the Growth

¹⁷ See Richard L. Settle & Charles G. Gavigan, *The Growth Management Revolution in Washington: Past, Present, and Future*, 16 U. PUGET SOUND L. REV. 867, 871-71, n. 20-21 (1993).

¹⁸ See CP 1805, 1807-10; RCW 36.70A.010 (GMA’s legislative finding regarding “uncoordinated and unplanned growth”).

¹⁹ RCW 57.16.010(2), (7); RCW 57.02.040(3)-(4). Comprehensive sewer plans may not provide for the extension or location of facilities that are inconsistent with the GMA requirements of RCW 36.70A.110. RCW 57.16.010(7).

Management Hearings Board (“GMHB”) recently rejected Olympic View’s effort to add Ronald’s Point Wells Service Area to Olympic View’s sewer plan, which the GMHB held was inconsistent with Snohomish County’s GMA land use plan.²⁰

8. SSB 6091 (1996).

Thus, comprehensive sewer plans adopted by sewer districts took on greater legal significance during the 1990s, and that was particularly true after the Legislature adopted Substitute Senate Bill 6091 (SSB 6091) in 1996.²¹ 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.²² SSB 6091 also included a provision that validated and ratified all prior acts of water-sewer districts.²³ That validation provision, codified at RCW 57.02.001, stated that all prior acts of water-sewer districts were “legal and valid and of full force and effect.”

²⁰ See Section III.G, *infra*.

²¹ CP 1909-16.

²² CP 1914, 1916.

²³ CP 1913.

B. Events leading to the extension of sewer service to the Point Wells Service Area (1939-1983).²⁴

The Richmond Beach Sewer System was built in 1939 and 1940, and King County Sewer District No. 3 (“KCSD #3”) was formed around that same time to operate the system.²⁵ In 1945, King County assumed responsibility over the Richmond Beach Sewer System pursuant to RCW 85.08.300, administering it as KCSD #3 and delegating authority for operations to its Department of Public Works.²⁶

Before the 1970s, the Richmond Beach Sewer System was limited to serving properties in King County.²⁷ In the early 1970s, however, KCSD #3 extended sewer service to a petroleum plant in the Point Wells Service Area of Snohomish County.²⁸ In 1970 and 1971, KCSD #3 entered into two agreements with Standard Oil Company to provide sewer service to property owned by Standard Oil Company.²⁹ Pursuant to those agreements, Standard Oil Company constructed a lift station, now known as “Lift Station #13,” and then conveyed an easement and ownership of Lift Station #13 to KCSD #3.³⁰

²⁴ Ronald notes that Olympic View’s Statement of the Case includes headings and other language that was copied verbatim from the facts section of Ronald’s summary judgment motion, although the facts are interspersed with nonfactual commentary from Olympic View’s counsel that attempts to spin the facts to Olympic View’s advantage. *See* Olympic View Brief at i-ii, 8-23; *compare* CP 1745, 1751-61 (Ronald’s Motion for Summary Judgment). As explained herein, there is no merit to these efforts to spin the facts.

²⁵ CP 802, 817-30.

²⁶ CP 832 (citing RCW 85.08.300). *See also* CP 834.

²⁷ CP 802-03.

²⁸ CP 900-14. Olympic View admits that KCSD #3 began providing sewer service to the Point Wells Service Area in the 1970s. *See* CP 237; CP 63.

²⁹ CP 900-914. Standard Oil Company later became Chevron USA, Inc. (“Chevron”).

³⁰ *Id.*

As Olympic View’s counsel admits but attempts to spin, Olympic View’s elected officials consented to KCSD #3’s extension of sewer service to the Point Wells Service Area, confirming in a 1971 letter that “[t]he Commissioners of the Olympic View Water District have no objections to permitting the Department of Public Works, King County, to serve the lift station located approximately 180 feet north of the King County line on Richmond Beach Drive, within our [water] service area.”³¹ KCSD #3 continued to provide sewer service to the Point Wells Service Area through the mid-1980s, when King County divested itself from sewer collection operations.

C. Events leading to Ronald’s annexation of the Point Wells Service Area (1983-1986).

In 1983, King County entered into negotiations with Ronald regarding the potential transfer of the Richmond Beach Sewer System to Ronald, and the County also commenced negotiations with various municipalities regarding the potential transfer of other County-operated systems.³² As Olympic View admits, King County could have accomplished the transfer to Ronald “through existing statutes,” but ultimately the County decided to pursue an amendment to the County Services Act to address statutory limitations affecting some of the planned

³¹ CP 909-12. There is no merit to Olympic View’s attempt to spin these documents as somehow confirming that its Commissioners never consented to KCSD #3’s extension of sewer service into Point Wells. *See* Olympic View’s Brief at 11 (citing CP 909-12). Olympic View emphasizes the phrase “within our service area” but fails to mention that, at the time, Olympic View was a *water* district that had no *sewer* service area. *See id.*

³² CP 933-990, 996-1008, 1033-45.

sewer system transfers to other entities besides Ronald.³³

In 1984, King County helped initiate the Legislature's consideration of SHB 1127. As explained above, SHB 1127 authorized counties to transfer sewer systems to sewer districts, and annex territory to sewer districts, without a public vote or review by the BRB.³⁴

In preparation for the transfer of the Richmond Beach Sewer System to Ronald, King County and Ronald formally adopted sewer plans recognizing that KCSD #3 provided sewer service in Snohomish County to "a Chevron Petroleum plant on Point Wells just north of the King-Snohomish border."³⁵ King County sought and obtained written consent from Chevron for the proposed transfer of the Richmond Beach Sewer System.³⁶ King County held several public hearings on the proposed sewer system transfers, with notice mailed to the ratepayers of KCSD #3 and Ronald.³⁷

A two-step process was required for the transfer of the Richmond Beach Sewer System to Ronald. First, KCSD #3 was required to transfer the sewer system to the County, following the process established in Sections 7-11 of ESSB 2737 (codified at RCW 36.94.310 through 36.94.350), the 1975 law that authorized transfers of sewer systems from districts to counties.³⁸ Second, the County could then transfer the sewer

³³ Olympic View's Brief at 13 (citing CP 942, 945-48).

³⁴ See Section III.A.6, *supra*.

³⁵ CP 1048-50; CP 915-32; CP 1014-18; CP 1051-52.

³⁶ CP 1053-56.

³⁷ CP 1009-13; CP 828-30.

³⁸ See CP 1799-1802.

system to Ronald, following the process authorized by SHB 1127, the 1984 law that King County had sought to help expedite its sewer divestment program, which also authorized annexation of territory to sewer districts.

In June of 1984, KCSD #3 and King County initiated the first step in the transfer process when they filed a petition with the King County Superior Court seeking approval of the proposed district-to-county transfer pursuant to ESSB 2737.³⁹ In July of 1984, the Superior Court held a hearing and issued an order approving the transfer of the Richmond Beach Sewer System from KCSD #3 to King County.⁴⁰

In 1985, King County and Ronald then initiated the second step in the transfer process when they approved an agreement setting forth the terms and conditions for the transfer of the Richmond Beach Sewer System from the County to Ronald (the “1985 Transfer Agreement”).⁴¹ Pursuant to the express statutory authority provided in RCW 36.94.420, the 1985 Transfer Agreement stated that “*the area served* by the System shall be *deemed annexed* to and part of the District” upon completion of the transfer.⁴² As Olympic View admits, the 1985 Transfer Agreement identified the “area served” by reference to a legal description that included the entire Point Wells Service Area.⁴³

³⁹ CP 1112-1148.

⁴⁰ *Id.*

⁴¹ *Id.*; CP 1090-1111.

⁴² See CP 95 (emphasis added).

⁴³ See CP 1096. King County then held an additional public hearing, again providing notice to ratepayers served by the Richmond Beach Sewer System. CP 1023-24, 1058-59. The elected officials of Ronald and King County passed an ordinance and resolution

To complete the second step in the transfer process, King County and Ronald filed their petition seeking approval of the proposed transfer pursuant to SHB 1127 (the “1985 Petition”).⁴⁴ The Superior Court issued an order setting a hearing on the 1985 Petition, and notice of the hearing was published.⁴⁵ At the conclusion of the hearing, the court issued the 1985 Annexation Order.⁴⁶ The order stated that the transfer of the Richmond Beach Sewer System “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.”⁴⁷

As Olympic View admits, in 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 Richmond Beach Sewer System had “extended the boundaries of Ronald Sewer District *into Snohomish County*.”⁴⁸ Ronald has been the sole provider of sewer service to the Point Wells Service Area ever since.

authorizing the filing of a petition seeking the Superior Court’s approval of the 1985 Transfer Agreement. CP 1151-52; CP 1026-32.

⁴⁴ CP 1088-1111.

⁴⁵ CP 1086-87.

⁴⁶ CP 1082-83. Thus, the record includes an order setting the hearing and the published notice of the hearing, contradicting Olympic View’s assertion that “[t]here is no record of any ‘hearing,’ and that “[t]he court simply signed the Transfer Order.” See Olympic View Brief at 18 (citing CP 1082).

⁴⁷ *Id.*

⁴⁸ Olympic View Brief at 18, n. 9 (citing CP 1155-56) (emphasis added).

D. Ronald's planning for service to future development in the Point Wells Service Area (1986-2005).

In addition to serving existing development in the Point Wells Service Area,⁴⁹ Ronald also began formally planning for the potential redevelopment of the Chevron property and other future development in the Point Wells Service Area.⁵⁰ By 1990, Ronald had already adopted a sewer plan that discussed an upgrade to Ronald's Lift Station #13 "to provide sewer service for ultimate development of the [Point Wells] service area, including Woodway and Chevron."⁵¹ In 1995, Ronald upgraded Lift Station #13 at a cost of over \$500,000.⁵²

Following the Legislature's adoption of SSB 6091 in 1996, Ronald's provision of sewer service and its planning for future service to the Point Wells Service Area gave rise to "first in time" service area rights.⁵³ As explained above, SSB 6091 granted "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.⁵⁴ SSB 6091 also included a provision, codified at RCW

⁴⁹ In 1998 and 1991, Ronald entered into contracts to provide service to property in Woodway. CP 1157-69. The 1991 contract recognizes that Ronald owns and operates facilities "in an area known as Richmond Beach (previously a part of King County Sewerage District No. 3)." CP 1163. The 1991 contract was later assumed by Olympic View when it took over Woodway's sewer system. CP 1170-80. Olympic View admits that it became aware of Ronald's service to the Point Wells Service Area no later than 2003 or 2004, when it was negotiating the transfer of Woodway's sewer system. CP 1198.

⁵⁰ CP 1209-32.

⁵¹ CP 1222-32.

⁵² CP 1626-36.

⁵³ See Section III.A, *infra*.

⁵⁴ *Id.*

57.02.001, stating that all prior acts of water-sewer districts were “legal and valid and of full force and effect.”

After the passage of SSB 6091, Ronald continued to act as the only sewer district that *provided service* to the Point Wells Service Area, and Ronald continued to act as the only district investing in the adoption of formal comprehensive sewer plans that disclosed *plans to make sewer service available* to all existing and future development in the Point Wells Service Area.⁵⁵ Until 2015, Olympic View’s adopted sewer plan similarly recognized the Point Wells Service Area as *outside* of its own sewer service area, *inside* Ronald’s sewer service area, and “served by” Ronald.⁵⁶

In 2002, Ronald entered into an Interlocal Operating Agreement with the City of Shoreline (“Shoreline”) setting forth the terms of Shoreline’s future assumption of Ronald (the “2002 Operating Agreement”).⁵⁷ Ronald and Shoreline initially anticipated that this transition to city ownership would culminate in Shoreline’s exercise of its statutory authority under RCW 35.13A.030 to assume jurisdiction over Ronald by October of 2017, but as a result of Olympic View’s and Woodway’s attempts to thwart Shoreline’s assumption of the Point Wells

⁵⁵ CP 1250-1398; CP 842-883.

⁵⁶ CP 1414-64. Before transferring its sewer system to Olympic View, Woodway also adopted sewer plans that recognized the Point Wells Service Area was outside Woodway’s sewer service area. CP 1404-13. Olympic View’s 1987 plan had similarly recognized the Point Wells Service Area as outside Olympic View’s sewer service area. CP 1399-1403.

⁵⁷ CP 3348-59.

Service Area, Ronald and Shoreline have been forced to extend the assumption schedule.⁵⁸

E. Ronald's, Olympic View's, and Snohomish County's reaffirmation that the Point Wells Service Area is part of Ronald's corporate boundary (2005-07).

From 2005 through 2007, representatives of Ronald and Olympic View engaged in extensive discussions regarding future service to the Point Wells Service Area and other nearby areas, and they agreed that Ronald would continue to be the exclusive provider of sewer service to the Point Wells Service Area.⁵⁹

In 2007, Ronald, Olympic View, and Snohomish County all formally reaffirmed the inclusion of the Point Wells Service Area as part of Ronald's corporate boundary.⁶⁰ After a question arose regarding whether voters in Snohomish County could vote for Ronald's commissioners, Snohomish County issued a formal legal opinion confirming that Ronald's corporate boundary includes the Point Wells Service Area.⁶¹ In that opinion, Snohomish County's Deputy Prosecuting Attorney concluded that, "by virtue of the [1985 Annexation Order], the

⁵⁸ Ronald and Shoreline have agreed to extend the 2002 Operating Agreement to allow time for Shoreline to complete the assumption. See Olympic View's Brief at 2.

⁵⁹ CP 2992-3032.

⁶⁰ The Snohomish County parties attempt to distract the Court by pointing to a handful of situations before 2007 where, due to confusion and loss of institutional memory, certain documents incorrectly stated that the Point Wells Service Area was not part of Ronald's corporate boundary. See Olympic View's Brief at 20-21. As explained below, the statements in those documents are wholly irrelevant to the critical questions raised in this matter regarding whether the Point Wells Service Area was, as a matter of law, legally annexed to Ronald's boundary; and whether Ronald's most recent comprehensive plans, including its current plan, establish "first in time" rights as to the Point Wells Service Area.

⁶¹ CP 4338-55.

portion of Snohomish County in question was annexed into the Ronald Sewer District.”⁶²

Ronald’s Commissioners then passed a resolution reaffirming that Ronald’s corporate boundary includes the Point Wells Service Area in Snohomish County.⁶³ The resolution also approved a 2007 amendment to Ronald’s sewer plan that reaffirmed Ronald’s plans to make service available to future development in the Point Wells Service Area. In 2007, Olympic View adopted a similar sewer plan amendment recognizing the entire Point Wells Service Area as “served by Ronald Wastewater District.”⁶⁴ Snohomish County formally approved Ronald’s and Olympic View’s 2007 comprehensive sewer plans pursuant to Title 57 RCW, and those sewer plans were incorporated into the County’s GMA land use plans.⁶⁵

F. Ronald’s continued planning for the Point Wells Service Area (2007-2014).

From 2007 through 2014, Ronald continued to plan for future service to the Point Wells Service Area, and the Snohomish County parties all continued to recognize Ronald as the sole entity planning to serve future development in the area.

In 2009, the Snohomish County Council approved a request by BSRE Point Wells, LLP (“BSRE”), the owner of the former Chevron property comprising the waterfront portion of the Point Wells Service

⁶² *Id.*

⁶³ CP 1321-22.

⁶⁴ CP 1448.

⁶⁵ CP 1465-68, 1917-30.

Area, to re-designate the property from “Urban Industrial” to “Urban Centers.” BSRE proposed this re-designation as part of its plan to redevelop Point Wells into a mixed-use urban center development (the “Urban Center Development”).⁶⁶

In 2010, Ronald approved its 2010 sewer plan, which reflected Ronald’s most detailed effort to plan for future sewer service to Point Wells, and was, according to Snohomish County, based upon the “best available information” about the Urban Center Development.⁶⁷ Ronald’s 2010 sewer plan unambiguously designates the Point Wells Service Area as part of Ronald’s sewer service area, and it clearly discloses Ronald’s plans to make service available to the Urban Center Development and other future development in the service area.⁶⁸ The Snohomish County Council approved Ronald’s 2010 sewer plan, adopting findings stating that the 2010 Ronald Plan was consistent with the County’s Comprehensive Plan in general and with the Urban Center designation in particular,⁶⁹ and the County incorporated Ronald’s 2010 plan (along with Olympic View’s 2007 plan) into the County’s GMA land use plan.⁷⁰

⁶⁶ See CP 5888-5920, 5923-5936; *Town of Woodway v. Snohomish Cty.*, 180 Wn. 2d 165, 170, 322 P.3d 1219, 1221 (2014).

⁶⁷ CP 5935 (staff report recommending approval of the 2010 Ronald Plan and stating that the plan was based on “the best available information on the potential build-out of the Point Wells site under the new Urban Centers designation once it takes effect”).

⁶⁸ Ronald’s 2010 sewer plan includes a capital facilities plan with two alternative capital projects proposed by Ronald for the specific purpose of accommodating expected sewer demand from the Urban Center Development, with estimated costs of \$2.02 million and \$4.2 million and construction schedules to be “coordinated with development of the Point Wells area of the District.” CP 842-883.

⁶⁹ CP 5926-28.

⁷⁰ *Id.* No challenges to Ronald’s 2010 plan were filed.

In 2013, a then-majority of Ronald's Board of Commissioners briefly questioned the legality of the 2002 Operating Agreement with Shoreline. They hired Thomas Fitzpatrick, who is now counsel for Olympic View in this proceeding, to bring a declaratory judgment action against Shoreline.⁷¹ In that 2013 action, Mr. Fitzpatrick signed and filed a pleading stating that "[P]laintiffs admit that the 'Point Wells' area is within the [Ronald] District's service area."⁷² After a new majority of Ronald's Board of Commissioners was elected through the democratic process, they decided to dismiss the declaratory judgment action.⁷³

G. Events leading to this lawsuit and related proceedings (2014-2018).

In 2014, the Snohomish County parties suddenly reversed course and began to challenge Ronald's right to serve the Point Wells Service Area.⁷⁴ First, in 2014 proceedings before the Boundary Review Board (BRB) in which Shoreline sought to implement its long-established plans to assume Ronald as part of Shoreline, the Snohomish County parties questioned whether the Point Wells Service Area was legally included

⁷¹ CP 3162.

⁷² *Id.* Ronald later asked Mr. Fitzpatrick to withdraw from representing Olympic View in this matter, since he is now taking the opposite position – that Ronald's service area does *not* include the Point Wells Service Area – but he refused to do so, and he threatened to multiply the pleadings if Ronald filed a motion seeking to disqualify him.

⁷³ CP 3229-30.

⁷⁴ They did this after Ronald rejected Olympic View's efforts to buy Ronald's Lift Station #13, which serves the Point Wells Service Area, and Shoreline's purchase of the land underlying Lift Station #13, which thwarted Woodway's effort to condemn that property. *See* CP 3238-40.

within Ronald's corporate boundary.⁷⁵ Next, in 2015, Olympic View abruptly announced that it was proposing an amendment to its sewer plan under which Olympic View would invade Ronald's territory by building new infrastructure and providing competing sewer service within the Point Wells Service Area (the "Olympic View Amendment").⁷⁶ In 2016, over Ronald's objection, the Snohomish County Council passed Motion 16-135, which approved the Olympic View Amendment pursuant to Title 57 RCW.⁷⁷

Ronald then filed this action, which includes, among other claims, a challenge to Snohomish County's passage of Motion 16-135 under Title 57 RCW, the statute that authorizes judicial challenges to such motions.⁷⁸ Ronald also filed a petition for review with the GMHB challenging Motion 16-135, arguing that the County's approval of the Olympic View Amendment constituted a "de facto" GMA amendment that was inconsistent with the County's existing plans, which recognized Ronald as the sewer provider to the Point Wells Service Area," and the GMHB agreed.⁷⁹ On January 25, 2017, the GMHB issued an order ruling that the County's action was a "de facto" GMA amendment that created an "internal inconsistency between the Ronald's and Olympic View's sewer plans, which were incorporated into Snohomish County's 2015 Capital

⁷⁵ CP 5371-5463. As explained in Shoreline's brief, the Snohomish County BRB has twice denied Shoreline's request for approval of its proposed assumption of Ronald's Point Wells Service Area, and the BRB's most recent order is under appeal.

⁷⁶ CP 1494-1538.

⁷⁷ CP 1540-41.

⁷⁸ CP 81-83.

⁷⁹ CP 1542-78.

Facilities Plan.”⁸⁰ The parties then filed cross-motions for summary judgment in this action, leading to the 2017 Summary Judgment Order at issue in this appeal.

In the meantime, Snohomish County passed a motion that, in an effort to bring the County’s GMA plan back into compliance with the GMA, conditionally “suspended” (but did not rescind) the County’s approval of Olympic View’s plan to serve Point Wells.⁸¹ After a compliance hearing, the GMHB issued an order finding that the County’s motion had failed to resolve the issues identified in its first order and declaring the County to be in continuing noncompliance with the GMA.⁸² Both of the GMHB’s orders have been appealed.

IV. ARGUMENT

In its 2017 Summary Judgment Order, the Superior Court correctly rejected the Snohomish County parties’ collateral attacks on the 1985 Annexation Order. As explained below, these collateral attacks are conclusively barred by principles of res judicata, and they are also barred by the doctrines of estoppel, laches, and acquiescence.

Moreover, even if the Snohomish County parties’ collateral attacks were permissible, their arguments have no merit. SHB 1127 clearly authorized superior courts to conduct in rem transfer and annexation proceedings, giving the King County Superior Court ample authority to

⁸⁰ *Id.* Olympic View appealed the GMHB’s decision to Superior Court.

⁸¹ *See City of Shoreline et al. v. Snohomish County et al.*, CPSGMHB Case No. 16-3-0004c, Order Finding Continued Noncompliance, 2017 WL 4863674 (October 19, 2017).

⁸² *Id.*

issue the 1985 Annexation Order. As a judgment in rem, the 1985 Annexation Order is binding on the whole world, including the Snohomish County parties.

Further, even if there were some question about the validity or binding effect of the 1985 Annexation Order, the Legislature validated Ronald's annexation of the Point Wells Service Area when it adopted SSB 6091 in 1996. Finally, the Snohomish County parties' constitutional challenges to SHB 1127 and SSB 6091 are meritless.

For these reasons, which are explained below, this Court should reject the Snohomish County parties' untimely collateral attacks on the 1985 Annexation Order and affirm the 2017 Summary Judgment Order.

A. Legal framework for boundary changes to sewer districts.

It is well established that the Washington Legislature has broad "plenary power" over boundary changes to sewer districts and other municipal corporations.⁸³ Absent a specific constitutional limitation, the Legislature may "annex or authorize the annexation of contiguous or other territory without the consent and even against the remonstrance of the majority of persons in either the annexed territory or the corporation to which it is being joined."⁸⁴

For these reasons, Washington courts have repeatedly rejected constitutional challenges to municipal annexations and other boundary changes, holding that "[a] person does not have the constitutional right to

⁸³ *State ex rel. Bowen v. Kruegel*, 67 Wn.2d 673, 680, 409 P.2d 458, 462 (1965) (quoting *Wheeler School Dist. No. 152 etc. v. Hawley*, 18 Wn.2d 37, 43, 137 P.2d 1010 (1943)).

⁸⁴ *Id.*

notice, a hearing, or the right to object”; that “[t]he process due when a municipal corporation forms or expands is by the grace of the legislature, not by constitutional commandment”; and that constitutional due process requirements are satisfied “as long as the boundaries were set . . . in accordance with the pertinent statutes.”⁸⁵ As further explained below, because the Snohomish County parties disregard this legal reality, their arguments fail.

B. The 1985 Annexation Order is res judicata and conclusively binding on the Snohomish County parties.

1. The 1985 Annexation Order is a judgment “in rem” that is binding on the whole world.

The 1985 Annexation Order was a final judgment “in rem” that is binding against “the world,” not a judgment “in personam” whose binding effect would have been limited to the parties to the case. As the courts have explained: “A proceeding in rem is essentially *a proceeding to determine rights in a specific thing or in specific property, against all the world, equally binding on everyone . . . even in the absence of any personal jurisdiction.*”⁸⁶ In rem proceedings include, for example, quiet

⁸⁵ *Carlisle v. Columbia Irr. Dist.*, 168 Wn.2d 555, 574, 229 P.3d 761, 770–71 (2010) (citing *Port of Tacoma v. Parosa*, 52 Wn.2d 181, 193, 324 P.2d 438 (1958)).

⁸⁶ *Smale v. Noretap*, 150 Wn. App. 476, 479 n.4, 208 P.3d 1180, 1181 (2009) (emphasis added) (quoting 1 Am.Jur.2d Actions § 29 (2005)). See also *In re City of Lynnwood*, 118 Wn. App. 674, 679 n.2, 77 P.3d 378 (2003) (when courts exercise in rem jurisdiction, they have jurisdiction to enter judgment even if personal jurisdiction has not been obtained over the persons affected by the judgment) (citing Tegland, Karl B., Washington Practice Series, Civil Procedure, § 5.1); *Anderson & Middleton Lumber Co. v. Quinault Indian Nation*, 130 Wn.2d 862, 876-77, 929 P.2d 379, 387 (1996) (in rem state nature of proceedings made question of personal jurisdiction over parties irrelevant).

title actions, eminent domain actions, and probate actions.⁸⁷ “What these proceedings have in common is that they all involve an adjudication as to the status of, or interests in, or title to, property,” or, more generally, interests in a “thing” (or “res”)⁸⁸ – rather than “to establish a claim against *some particular persons*,” as in a proceeding in personam.⁸⁹

Here, the proceeding in King County Superior Court that led to the 1985 Annexation Order was clearly a proceeding in rem, not a proceeding in personam. The object of the 1985 proceeding was to determine the status of “a specific thing or in specific property” – the annexation of the Point Wells Service Area to Ronald’s corporate boundary – not to “establish a claim against some particular persons.”⁹⁰ Legislatures and courts in other states have recognized judicial proceedings related to annexations as “in rem” proceedings.⁹¹ Because Ronald’s annexation of the Point Wells Service Area was the result of such an “in rem” proceeding, the order confirming the annexation was “*equally binding on everyone . . . even in the absence of any personal jurisdiction*,”⁹² and in the

⁸⁷ *In re City of Lynnwood*, 118 Wn. App. at 679 n.2.

⁸⁸ Tegland and Ende, 15A Washington Practice: Washington Handbook on Civil Procedure § 11.1 (2009-2010 ed.).

⁸⁹ *Id.* (emphasis added) (quoting *Tyler v. Judges of the Court of Registration*, 175 Mass. 71, 55 N.E. 812 (1900)).

⁹⁰ See *Noretap*, 150 Wn. App. at 479 n.4; *Tyler*, 175 Mass. 71.

⁹¹ *Hills for Everyone v. Local Agency Formation Com.*, 105 Cal. App. 3d 461, 467, 164 Cal. Rptr. 420, 424 (Ct. App. 1980) (discussing judicial annexation validation proceeding as “in the nature of a proceeding in rem”).

⁹² See *Smale*, 150 Wn. App. at 479 n.4.

absence of the four factors normally required for such a binding res judicata effect.⁹³

There is no merit to the Snohomish County parties' attempts to deny the binding "in rem" nature of the proceedings that led to the 1985 Annexation Order.⁹⁴ Olympic View first argues, without citation to any evidence or legal authority, that "[y]ou 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."⁹⁵ This argument wrongly presumes that, at the time of the 1985 Annexation Order, Olympic View and Woodway had "an established legal right to provide sewer service" in the Point Wells Service Area that would have given them a basis to prevent Ronald from annexing the Point Wells Service Area. They did not. Since the Legislature has plenary authority over boundary changes to municipal corporations, Olympic View and Woodway had *no rights whatsoever* related to the Point Wells Service Area except those established by the Legislature.⁹⁶ And as explained above, as of 1985, the only right the Legislature had chosen to grant to Olympic View, as a sewer district whose boundaries ostensibly include the Point Wells Service Area, was the right to object to the *establishment of new sewer service* by another district in that area, which

⁹³ Olympic View concedes that in some circumstances, "a court lacking personal jurisdiction over a defendant may properly take action affecting the defendant pursuant to its *in rem* jurisdiction." See Olympic View's Brief at 36-37 (citing Karl B. Tegland and Douglas J. Ende, *Washington Handbook on Civil Procedure*, § 11.1).

⁹⁴ See Olympic View's Brief at 36-39.

⁹⁵ See *id.* at 36.

⁹⁶ *Carlisle*, 168 Wn.2d at 574.

was granted by SHB 352 (the initial “first in time” statute) in 1981. Because service to the Point Wells Service Area had already been established by KCSD #3 before the legislature passed SHB 352, and Olympic View had previously consented to that service, the requirement to obtain consent from Olympic View before providing service did not apply. Thus, Olympic View had no right to object to Ronald’s *continuation of pre-existing service*, much less the right to object to Ronald’s *annexation of territory*.

Next, Olympic View argues that annexation proceedings under SHB 1127 must follow the process outlined in Civil Rule (CR) 19 – despite the fact that the Legislature never referenced the civil rules in the text of SHB 1127 – because “the trial court had personal jurisdiction over the SCDs if they were joined in the action.”⁹⁷ Olympic View does not suggest that the Legislature actually *intended* such a process when it adopted SHB 1127.⁹⁸ Instead, Olympic View argues that, unless the CR 19 process is judicially grafted onto the process established by the

⁹⁷ See Olympic View’s Brief at 37.

⁹⁸ Such a suggestion would be patently absurd. It would require the Court to believe that the Legislature meticulously spelled out each required step in the judicial annexation process in the text of SHB 1127; did not mention the CR 19 process; but expected parties to guess that, if anyone other than the parties identified in SHB 1127 is to be bound by the outcome of the judicial annexation proceeding, the CR 19 process must also be followed, even though the Legislature knows how to expressly reference and incorporate the civil rules, and has done so in numerous other statutes *See, e.g.*, RCW 34.05.446(3) (referencing “the taking of depositions, the requesting of admissions, and all other procedures authorized by rules 26 through 36 of the superior court civil rules”); RCW 36.70C.030(2) (“The superior court civil rules govern procedural matters under this chapter to the extent that the rules are consistent with this chapter.”); RCW 59.18.365(2)(d) (authorizing service by several methods, including “[a]s otherwise authorized by the superior court civil rules”).

Legislature, SHB 1127 violates the separation of powers doctrine. This argument finds no support in the law.

To support its argument, Olympic View relies on a single case, *Putnam v. Wenatchee Valley Med. Ctr., P.S.*, a case that involved “in personam” jurisdiction over a common law tort claim, not “in rem” jurisdiction over a boundary change.⁹⁹ In *Putman*, the appellant sued Wenatchee Valley Medical Center and several of its employees, alleging that they negligently failed to diagnose her ovarian cancer.¹⁰⁰ The trial court dismissed Putman’s claims because she failed to file a certificate of merit as required by the state’s medical malpractice litigation statute, RCW 7.70.150.¹⁰¹ This Court reversed, holding that the certificate of merit requirement, which “essentially require[d] plaintiffs to submit evidence supporting their claims before they even have an opportunity to conduct discovery and obtain such evidence,” violated the separation of powers doctrine.¹⁰²

The *Putman* court recognized, however, that the separation of powers doctrine “does not depend on the branches of government being hermetically sealed off from one another, but ensures that the fundamental functions of each branch remain inviolate.”¹⁰³ In *Putman*, the

⁹⁹ See Olympic View’s Brief at 38 (citing *Putman v. Wenatchee Valley Med. Ctr., P.S.*, 166 Wn.2d 974, 980-92, 216 P.3d 374, 376 (2009)).

¹⁰⁰ *Putman*, 166 Wn.2d at 977.

¹⁰¹ *Id.*

¹⁰² *Id.* at 979-83.

¹⁰³ *Id.*, 166 Wn.2d at 980 (quoting *Hale v. Wellpinit Sch. Dist. No. 49*, 165 Wn.2d 494, 504, 198 P.3d 1021 (2009) and *Carrick v. Locke*, 125 Wn.2d 129, 135, 882 P.2d 173, 176 (1994) (internal quotation marks omitted)).

“fundamental function” at issue – the process by which a plaintiff may bring a common law tort claim – was inherently judicial, and the Court’s holding was based on the Legislature’s interference with that pre-existing judicial function. Here, by contrast, courts have no inherent authority to issue orders approving annexations of territory. Because the Legislature has plenary authority in that area, there is no interference with judicial authority – and therefore no violation of separation of powers – if the Legislature creates a self-contained judicial annexation process that operates outside of the civil rules. Thus, the *Putman* court’s holding regarding separation of powers is inapposite here.

The only aspect in *Putman* that is potentially relevant here is its discussion of CR 81(a), which refers to “special proceedings” that are exempt from the civil rules.¹⁰⁴ *Putman* defined “special proceedings” as “those proceedings created or completely transformed by the legislature,” including actions unknown to common law,” and explained that other states typically define “an ordinary action as one based in common law and a special proceeding as any other action.”¹⁰⁵ The judicial annexation process established in SHB 1127 falls squarely within these definitions for “special proceeding.” As Olympic View admits, “the judicial annexation process was uniquely created by the Legislature and annexation is not an

¹⁰⁴ *Putman*, 166 Wn.2d at 982

¹⁰⁵ *Id.*

historical judicial function.”¹⁰⁶ Thus, to the extent that *any* provision of the civil rules applies to the in rem annexation proceedings authorized by SHB 1127, CR 81(a) exempts those proceedings from complying with any other provision in the civil rules.

Olympic View goes on to suggest that the judicial annexation process should nevertheless *not* be considered a “special proceeding” because, according to their argument, “the prohibition against the deprivation of property without due process of law is fundamental to the Constitutions of the United States and Washington.”¹⁰⁷ Alternatively, Olympic View argues that if the judicial annexation process was a proceeding “in rem,” then the due process rights of Olympic View and Woodway were violated.¹⁰⁸ Once again, these arguments ignore the legal reality that the power to authorize annexations is a political function, resting solely in the legislative branch and not subject to due process requirements for notice. As this Court held in *Carlisle v. Columbia Irr. Dist.*, which rejected a due process challenge to an irrigation district’s expansion of its territory, “[t]he only process due was the procedures established by statute.”¹⁰⁹

Olympic View’s repeated assertion of some special right derived from the proprietary nature of sewer service is not supported by a single case involving boundary changes to special purpose districts, and Olympic

¹⁰⁶ See Olympic View’s Brief at 38-39.

¹⁰⁷ See *id.* at 39.

¹⁰⁸ See Olympic View’s Brief at 39-42.

¹⁰⁹ *Carlisle*, 168 Wn.2d at 574.

View fails to explain how the proprietary nature of sewer service somehow trumps the broad holding in *Carlisle* that such boundary changes *never* implicate due process rights. Olympic View also ignores the fact that *Carlisle* involved an irrigation district – an entity that also owns property and operates in a proprietary capacity¹¹⁰ – and yet, this Court in *Carlisle* never mentioned the governmental/proprietary distinction when it broadly held that the “only process due” in a district’s annexation process was “the procedures established by statute.”¹¹¹ Olympic View and Woodway simply did not have the due process rights that they repeatedly assert.¹¹²

2. The Snohomish County parties may not collaterally attack the 1985 Annexation Order in this proceeding.

Courts in Washington State and other states have long recognized the importance of finality of annexation decisions, with early Washington decisions holding that a challenge to an annexation proceeding “can be done only in a direct proceeding,” and “cannot be questioned in a

¹¹⁰ See *Cowden v. Kennewick Irr. Dist.*, 76 Wn. App. 844, 846, 888 P.2d 1225, 1226 (1995) (citing *In re Horse Heaven Irr. Dist.*, 11 Wn.2d 218, 230, 118 P.2d 972, 977 (1941)).

¹¹¹ *Carlisle*, 168 Wn.2d at 574.

¹¹² Olympic View’s due process argument depends on, among other things, the unsupported assertion that Olympic View and Woodway had “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.” See Olympic View’s Brief at 41 (citing *Mission Springs, Inc. v. City of Spokane*, 134 Wn.2d 947, 962, 954 P.2d 250, 257 (1998)). On the contrary, the record confirms that, at the time the 1985 Annexation Order was entered, Olympic View and Woodway did not have any such “reasonable expectations” that they would have the exclusive right to serve the Point Wells Service Area. Instead, as explained above, state law in 1985 gave Olympic View *no right to object to another district’s boundary changes*. See Section III.B.4, *supra*.

collateral proceeding.”¹¹³ Modern courts have recognized narrow circumstances in which an annexation may sometimes be collaterally attacked, but in evaluating whether a collateral attack should be allowed in a particular case, courts have been careful not to “allow the improper de novo review of findings in a collateral proceeding.”¹¹⁴

The parties have cited no Washington cases that address the question of whether collateral attacks on annexation proceedings should be allowed, but Ronald has identified an out-of-state decision that appears to be the only authority directly on point: *People ex rel. Graf v. Vill. of Lake Bluff*.¹¹⁵ In *Graf*, which involved a statutorily-authorized judicial annexation proceeding similar to SHB 1127, the Illinois Supreme Court rejected a collateral attack on a trial court’s finding that a parcel of land was “contiguous” to the annexing municipality, holding that “[t]here is no basis . . . to allow another court to revisit that same issue in a *quo warranto* proceeding when the correctness of the original ruling could have been challenged by direct appeal or by a timely petition for post-judgment relief.”¹¹⁶

Here, the Snohomish County parties’ challenge to the 1985 Annexation Order asks this Court to do precisely that – to allow improper

¹¹³ *Kuhn v. City of Port Townsend*, 12 Wn.605, 612–13, 41 P. 923, 925 (1895); *Frace v. City of Tacoma*, 16 Wn.69, 70, 47 P. 219, 220 (1896) (citing *Kuhn*, 12 Wn.605); *Griffin v. City of Roseburg*, 255 Or. 103, 108–09, 464 P.2d 691, 694 (1970) (holding that, “once the municipality exercises dominion over the annexed territory in a de facto capacity, the validity of the annexation cannot be attacked by a party other than the state”).

¹¹⁴ *People ex rel. Graf v. Vill. of Lake Bluff*, 206 Ill. 2d 541, 555–56, 795 N.E.2d 281, 289 (2003).

¹¹⁵ *Graf*, 206 Ill. 2d at 555–57.

¹¹⁶ *Id.*

review of the findings made by the Superior Court in a collateral proceeding. They admit that their challenge to the 1985 Annexation Order is premised upon a challenge to the Superior Court’s finding that the 1985 Transfer Agreement was “legally correct.”¹¹⁷ The trial court’s “contiguity” finding in *Graf* is closely analogous to the Superior Court’s finding that the 1985 Transfer Agreement was “legally correct.” Here, as in *Graf*, there is no basis to allow a collateral attack on such a finding.

The Snohomish County parties frame the issue as one of “statutory authority,”¹¹⁸ but their argument confuses and conflates a court’s specific authority to rule in a particular manner with its general subject matter jurisdiction—a common mistake that the Washington Supreme Court has cautioned against.¹¹⁹ As Division 1 has explained, this mistake must be avoided because “to misclassify an issue as ‘jurisdictional’ transforms it into one that may be raised belatedly and opens the way to making judgments vulnerable to delayed attack.”¹²⁰ Even assuming the King County Superior Court lacked the specific *statutory authority* to approve the transfer of the Richmond Beach Sewer System to Ronald or the annexation of the Point Wells Service Area to Ronald’s corporate boundary (which it did not, as explained below), the Court did not lack general *subject matter jurisdiction* over the proceedings that led to the

¹¹⁷ See Olympic View’s Brief at 24.

¹¹⁸ See Olympic View’s Brief at 24.

¹¹⁹ *Marley v. Dep’t of Labor & Indus. of State*, 125 Wn.2d 533, 539, 886 P.2d 189, 193 (1994).

¹²⁰ *Hous. Auth. of City of Seattle v. Bin*, 163 Wn. App. 367, 376, 260 P.3d 900, 904–05 (2011).

1985 Annexation Order.¹²¹

Thus, the 1985 Annexation Order is no longer subject to challenge. The challenges raised by the Snohomish County parties, which attack the *findings made by the Court during the 1985 annexation proceeding*, are foreclosed by the preclusive effect of the 1985 Annexation Order.¹²²

C. The Snohomish County parties' untimely collateral attacks on the 1985 Annexation Order are barred by the doctrines of estoppel, laches, and acquiescence.

Even if not barred by *res judicata*, the Snohomish County parties' claims are barred by the doctrines of estoppel, laches, and acquiescence. Appellate courts "may affirm summary judgment on any grounds supported by the record."¹²³ Here, the Superior Court considered briefing on the doctrines of estoppel, laches, and acquiescence, which Ronald pled as affirmative defenses, but the Superior Court declined to rule on those issues in its 2017 Summary Judgment Order. However, the record in this case provides ample support for this Court to rule that the Snohomish County's defendants' collateral attacks on the 1985 Annexation Order, more than 30 years later, are barred by those doctrines. The overwhelming evidence in the record shows that, since no later than 2007, the Snohomish County parties have been fully aware of Ronald's status as the sewer provider to all existing and planned future development in the

¹²¹ See *Marley*, 125 Wn.2d at 539.

¹²² See *Graf*, 206 Ill. 2d at 558.

¹²³ *Blue Diamond Grp., Inc. v. KB Seattle 1, Inc.*, 163 Wn. App. 449, 453, 266 P.3d 881, 883 (2011).

Point Wells Service Area. As explained below, that evidence supports each of Ronald's affirmative defenses.¹²⁴

"Laches is an implied waiver arising from knowledge of existing conditions and acquiescence in them."¹²⁵ As explained above, each element of laches¹²⁶ is met here: (1) since no later than 2007, the Snohomish County parties knew or could have reasonably discovered a cause of action against Ronald challenging the annexation of the Point Wells Service Area to Ronald's corporate boundary; (2) the Snohomish County parties unreasonably delayed commencing that cause of action; and (3) there is damage to Ronald resulting from the unreasonable delay.¹²⁷

"Equitable estoppel prevents a party from taking a position inconsistent with a previous one where inequitable consequences would result to a party who has justifiably and in good faith relied."¹²⁸ As explained above, each element of estoppel¹²⁹ is met here: (1) the

¹²⁴ Ronald anticipates that the Snohomish County parties may argue that equitable remedies such as laches and estoppel are unavailable in cases where the government action is ultra vires. That is only true, however, when the action is "substantively ultra vires," not when the action is merely procedurally irregular. See *S. Tacoma Way, LLC v. State*, 169 Wn.2d 118, 127, 233 P.3d 871, 876 (2010). As explained in Section IV.D.3, *infra*, none of the actions here were substantively ultra vires. Moreover, Ronald is unaware of any case law holding that the doctrine of acquiescence is similarly unavailable when an action is ultra vires.

¹²⁵ *Lopp v. Peninsula Sch. Dist. No. 401*, 90 Wn.2d 754, 759, 585 P.2d 801, 804 (1978) (quoting *Buell v. Bremerton*, 80 Wn.2d 518, 522, 495 P.2d 1358, 1361 (1972)).

¹²⁶ *Lopp*, 90 Wn.2d at 759.

¹²⁷ See Section III.D, *supra*.

¹²⁸ *Silverstreak, Inc. v. Washington State Dep't of Labor & Indus.*, 159 Wn.2d 868, 887, 154 P.3d 891, 901 (2007).

¹²⁹ *Silverstreak*, 159 Wn.2d at 887 (citing *Kramarevcky v. Dep't of Soc. & Health Servs.*, 122 Wn.2d 738, 743, 863 P.2d 535 (1993))

Snohomish County parties all made statements and took actions recognizing Ronald’s service to the Point Wells Service Area, and those statements and actions were inconsistent with their current challenges; (2) Ronald acted in reliance upon their statements and actions; (3) injury would result to Ronald if the Snohomish County parties were allowed to repudiate their prior statements and actions; (4) estoppel is “necessary to prevent a manifest injustice”—the injustice to Ronald, Shoreline, King County, and Ronald’s rate payers that will result if Ronald’s “first in time” rights are ignored and Olympic View is allowed to invade Ronald’s exclusive service area; and (5) estoppel will not impair governmental functions; on the contrary, estoppel will advance the proper functioning of the “first in time” framework the Legislature established to resolve conflicts between competing districts.

Finally, the doctrine of acquiescence applies where, “by custom, usage and the passage of time, disputed territory has been assumed by all interested persons to be beyond the boundaries of one entity of local government and within those of another, and where property owners or adjacent units of local government have relied to their detriment upon the inaction and passivity of a municipal corporation to which knowledge of the original boundaries at the time of incorporation may be imputed.”¹³⁰ “The doctrine of acquiescence is of particular importance in, and indeed,

¹³⁰ *Town of Ruston v. City of Tacoma*, 90 Wn. App. 75, 88, 951 P.2d 805, 812 (1998) (quoting *La Porto v. Village of Philmont*, 39 N.Y.2d 7, 11, 346 N.E.2d 503, 382 N.Y.S.2d 703 (1976)).

is predicated upon, the situation in which ‘personal, civil and political rights have become fixed according to the boundaries established by usage.’”¹³¹ That is precisely the case here. As explained above, since no later than 2007, the Point Wells Service Area has been assumed by all interested persons to be within Ronald’s corporate boundary and service area, and Ronald, Shoreline, and King County have relied to their detriment upon the inaction and passivity of the Snohomish County parties.¹³² Personal, civil, and political rights, including contract rights and voting rights, have become fixed as a result of the acquiescence by the Snohomish County parties.¹³³ Thus, under the doctrine of acquiescence, they may not challenge Ronald’s annexation of the Point Wells Service Area.

The Court should reject Olympic View’s cursory argument that Ronald did not rely on the validity of the 1985 Annexation Order.¹³⁴ It is undisputed that Ronald has now invested over \$1.3 million in the Point Wells Service Area and owns property in Snohomish County valued at over \$20 million, and Olympic View’s only response is to nitpick one particular upgrade to Lift Station #13, which represents a small fraction of the larger investment.¹³⁵ More importantly, Ronald’s 2007 and 2010 comprehensive sewer plans were adopted in *express* reliance on the 1985 Annexation Order, and also in reliance on Olympic View’s *express*

¹³¹ *La Porto*, 39 N.Y.2d at 10-11.

¹³² *See* Section III.E-F, *supra*.

¹³³ *See id.*

¹³⁴ *See* Olympic View’s Brief at 46-47.

¹³⁵ *See id.*; CP 6075.

agreement that the Point Wells Service Area is outside of its service area and within Ronald's service area (as reflected in Olympic View's 2007 sewer plan).¹³⁶ There is no support in the record or the law for Olympic View's suggestion that Ronald's anticipated assumption by Shoreline means that Ronald's 2007 and 2010 comprehensive sewer plans are somehow not "significant." On the contrary, Ronald's inclusion of the Point Wells Service Area in its 2007 and 2010 sewer plans, which confirmed Ronald's first-in-time right to serve that area under RCW 57.02.001, was the primary reason the GMHB rejected Olympic View's plan to serve the same area. Olympic View can hardly claim such a result is insignificant.

D. Even if the Snohomish County parties' collateral attacks on the 1985 Annexation Order were not barred, they are without merit.

Ronald incorporates Shoreline's arguments in opposition to the Snohomish County parties' position on the merits of their challenge to the 1985 Annexation Order. In addition, Ronald highlights the following key points.

1. The King County Superior Court had authority to enter the 1985 Annexation Order.

A fundamental premise of the position taken by the Snohomish County parties is the misguided notion that Section 1 in SHB 1127, which authorized counties to transfer sewer systems to districts "*in the same manner*" as is provided for the transfer of those functions from a water-

¹³⁶ See Section III.E-F, *supra*.

sewer district to a county in RCW 36.94.310 through 36.94.340,”¹³⁷ should be interpreted to mean that county-to-district transfers under SHB 1127 are *subject to substantive geographical limitations analogous to* the restrictions provided in RCW 36.94.310 through 36.94.340. This premise is contradicted by the only relevant authority cited to this Court and the Superior Court, which confirms that the phrase “in the same manner” has a well-understood meaning in legislation, and that meaning is not one of substantive restriction or limitation, but of *procedure*.¹³⁸

The Snohomish County parties cite no authority to support their substantive interpretation of the phrase “in the same manner,” which would require the Court to alter the plain language of the statute by *re-wording* the geographical restrictions that ESSB 2737 imposed upon district-to-county transfers so that they would make sense in the context of the county-to-district transfers authorized by SHB 1127. Such an interpretation would be contrary to rules of statutory construction.¹³⁹

There is no support for Olympic View’s assertion that SHB 1127’s express exemption from BRB review “only makes sense” for transfers between a special purpose district and a county that are located within the

¹³⁷ CP 1863.

¹³⁸ See Shoreline’s Response Brief at 37 (citing Webster’s Third New International Dictionary 1376 (2002); *Association of Irrigated Residents v. U.S. EPA*, 790 F.3d 934, 948-949 (9th Circuit, 2015); *Nat’l Federation of Independent Business v. Sebelius*, 567 US 519, 545, 183 L.Ed. 450 (2012); *Wilder’s S.S. Co. v. Low*, 112 F. 161, 164, 50 C.C.A. 473 (9th Circuit, 1901)). See also CP 2120 (Ronald’s Superior Court brief citing *Moore v. City Council of City of Los Angeles*, 58 Cal. App. 555, 558, 209 P. 64, 66 (1922) (interpreting “the manner” as procedural, not substantive)).

¹³⁹ See *State v. Arlene’s Flowers, Inc.*, 187 Wn.2d 804, 829, 389 P.3d 543, 555 (2017).

same county.”¹⁴⁰ This argument wrongly assumes the sole purpose of the BRB is to review actions that cross county lines. In fact, BRB review is required for many actions that *do not* cross county lines.¹⁴¹ Moreover, since SHB 352 was already in place at the time the Legislature adopted SHB 1127, the Legislature was able to rely on first-in-time principles rather than the BRB review process to resolve sewer service conflicts between overlapping districts. Because Ronald was the first district to serve the Point Wells Service Area, and was the first to adopt plans to serve the area, Ronald’s continued service there is consistent with the statutory scheme. It “makes sense.”

2. KCSD #3 and King County had authority to operate a sewer system in Snohomish County and to transfer the Richmond Beach Sewer System to Ronald.

The Snohomish County parties are wrong when they argue that KCSD #3 and King County lacked authority to operate a sewer system in Snohomish County. KCSD #3 was authorized by RCW 85.08.540 to make improvements “either within or without the district,” and King County was authorized by RCW 36.94.190 to contract with Standard Oil Company, as a “firm or corporation,” without regard to county boundaries. As used in RCW 36.94.190, the phrase “firm or corporation” is not geographically limited by the fact that, when the Legislature mentioned contracts with *cities and towns* earlier in the statute, it used the phrase “within or without the county.” The Legislature included that phrase

¹⁴⁰ See Olympic View’s Brief at 33.

¹⁴¹ See RCW 36.93.090.

because contracts with cities and towns raise unique issues related to corporate boundaries that are not raised by contracts with a “firm or corporation.”¹⁴² Notably, in the lead-up to the 2007 Legal Opinion, Snohomish County’s attorneys cited RCW 36.94.190 in internal discussions on the issue of when a county can “operate a sewer system outside its boundaries.”¹⁴³

There is no merit to Olympic View’s assertion that, when the King County Council adopted a finding as part of the judicial annexation process authorized by SHB 1127, the Council “exercised its police powers in Snohomish County.”¹⁴⁴ In the *Brown* case cited by Olympic View, this Court held that the City of Cle Elum’s extraterritorial exercise of police powers regulating swimming, fishing, and boating activities outside the city’s corporate limits was an unlawful exercise of police power.¹⁴⁵ Clearly, the King County Council’s action in *making a finding* that applied to some property in Snohomish County is distinguishable from Cle Elum’s act of regulating swimming, fishing, and boating activities outside city limits.¹⁴⁶

¹⁴² When King County provided sewer service in Snohomish County, it was exercising its proprietary power, not its governmental power, so it had broad discretion to operate within the statutory parameters. *See People for Pres. & Dev. of Five Mile Prairie v. City of Spokane*, 51 Wn. App. 816, 821, 755 P.2d 836, 839 (1988); *Burns v. City of Seattle*, 161 Wn.2d 129, 154, 164 P.3d 475, 488 (2007). *See also* Olympic View’s Brief at 4, 19, 24, 40 (asserting that Olympic View operates its sewer system in a “proprietary capacity”).

¹⁴³ CP 4338-4355.

¹⁴⁴ *See* Olympic View’s Brief at 30.

¹⁴⁵ *Id.* at 10-31 (citing *Brown v. City of Cle Elum*, 145 Wn.588, 261 P. 112 (1927)).

¹⁴⁶ *See Wilson v. City of Mountlake Terrace*, 69 Wn.2d 148, 153, 417 P.2d 632, 634 (1966) (distinguishing *Brown* on the basis that, when the City of Mountlake Terrace

Nor is there any merit to Olympic View's contention that the 1985 Transfer Agreement was not "legally correct" because the legal description of the Point Wells Service Area included some properties that were not yet physically connected to the Richmond Beach Sewer System.¹⁴⁷ SHB 1127, which authorized annexation of the "area served" by that sewer system, did not define the term "area served." Olympic View cites no authority suggesting this undefined term "area served" must be interpreted to mean only those properties physically connected to the system, and the record shows that such an interpretation would be unreasonable.

As confirmed by Olympic View's recognition in its own 2007 sewer plan that the entire Point Wells Service area was "*served by*" Ronald, even though the entire area was not physically connected to Ronald's system, the phrase "area served" is a term of art commonly used in the sewer service industry to mean property that is currently served or is planned to be served in the future.¹⁴⁸ Because KCSD #3 was contractually obligated to serve the entire Point Wells Service Area, it was eminently reasonable for King County and Ronald to treat that entire area as the "service area" or "area served by" the Richmond Beach Sewer System that was to be annexed to Ronald's boundary.¹⁴⁹

fluoridated water that was redelivered to customers outside city limits, the City was not exercising its *police power* outside the city limits).

¹⁴⁷ See Olympic View's Brief at 24.

¹⁴⁸ See CP 1448.

¹⁴⁹ See Section III.B.7, *infra*.

3. Even if the Superior Court, KCSD #3, and King County lacked statutory authority as alleged by the Snohomish County parties, that would still not invalidate Ronald's annexation of the Point Wells Service Area.

The Snohomish County parties' argument incorrectly presumes that, if they can find any requirement in any statute that was not met as part of any process that led to the 1985 Annexation Order, then the 1985 Annexation Order was necessarily "void ab initio." To support this argument, Olympic View relies solely on a selective quotation from *Marley v. Dep't of Labor & Indus. of State*.¹⁵⁰ Olympic View is wrong, and *Marley* actually supports Ronald's position, not Olympic View's. As explained above, the Snohomish County parties' argument regarding the Superior Court's jurisdiction conflates a court's specific authority to rule in a particular manner with its general subject matter jurisdiction—a common mistake that the *Marley* court cautioned against.

The Snohomish County parties fail to heed this warning, pointing solely to *non-jurisdictional* requirements that may have affected the court's authority to rule in a particular way, but did not affect the court's subject matter jurisdiction. "Subject matter jurisdiction is a particular type of jurisdiction, and it critically turns on the 'type of controversy.'"¹⁵¹ The only language in SHB 1127 that is conceivably jurisdictional is the language setting forth the requirements for filing a petition in this superior court—and it is uncontested that those filing requirements were met.

¹⁵⁰ See *id.* (citing *Marley*, 125 Wn.2d at 539 (quoting *In re Major*, 71 Wn. App. 531, 534–35, 859 P.2d 1262 (1993))).

¹⁵¹ *ZDI Gaming Inc. v. State ex rel. Washington State Gambling Comm'n*, 173 Wn.2d 608, 617, 268 P.3d 929, 933 (2012).

When interpreting a statutory grant of subject matter jurisdiction, courts look for unequivocal legislative language demonstrating “jurisdictional intent.”¹⁵² There is no such “jurisdictional intent” shown in any of the statutory provisions that the Snohomish County parties allege were violated. Thus, even if some requirement in those provisions had not been followed correctly, that fact would not render the 1985 Annexation Order “void ab initio.”

Similarly, even if KCSD #3 and King County had failed to meet one or more of the statutory requirements cited by the Snohomish County parties, they never explain how such a failure could have deprived the Superior Court of jurisdiction to enter the 1985 Annexation Order or otherwise render the order “void.” Indeed, they never even explain how such a failure could render those prior acts substantively “ultra vires.” As the Snohomish County parties admit, the transfer and annexation to Ronald could have been accomplished through other statutory processes—including processes that did not involve an interim transfer to King County. In such situations, when the challenged acts are “within the scope of the broad governmental powers conferred, granted or delegated, but . . .

¹⁵² *Weyerhaeuser Co. v. Bradshaw*, 82 Wn. App. 277, 283, 918 P.2d 933, 936 (1996). For example, in cases involving the Land Use Petition Act (LUPA), Chapter 36.70C RCW, the Supreme Court has held that LUPA’s requirement to timely file and serve a land use petition is jurisdictional because the statutory language includes the following express jurisdictional directive: “A land use petition is barred, and the court may not grant review, unless the petition is timely filed with the court and timely served.” See *Keep Watson Cutoff Rural v. Kittitas Cty.*, 145 Wn. App. 31, 38, 184 P.3d 1278, 1281 (2008). By contrast, LUPA’s requirement to note an initial hearing within seven days of serving the land use petition is not jurisdictional because the requirement is not couched in the same kind of jurisdictional language. See *Conom v. Snohomish Cty.*, 155 Wn.2d 154, 158, 118 P.3d 344, 346 (2005).

[such] powers have been exercised in an irregular manner or through unauthorized procedural means,” courts have not found the acts to be substantively “ultra vires”; instead, they are “merely irregular acts” that suffer from a procedural defect.¹⁵³ Actions that are “substantively ultra vires” involve situations where the government entity lacked any authority to take the action in question, while procedurally irregular actions involve situations where the entity “merely carried it out in an unauthorized procedural manner by failing to comply with statutory prerequisites.”¹⁵⁴

Here, KCSD #3 was undeniably authorized to transfer its sewer system to Ronald, and Ronald was undeniably authorized to annex territory to its corporate boundary (including territory in other counties), even if they were not authorized to do so using the particular process set forth in SHB 1127. Thus, the transfer and annexation were not “ultra vires.” At most, they were merely irregular acts, which are not treated as “ultra vires” and are “subject to different review” than substantively ultra vires acts.”¹⁵⁵

More fundamentally, even if all of the identified acts by KCSD #3, King County, and Ronald were somehow ultra vires, that would still not invalidate Ronald’s annexation of the Point Wells Service Area. As explained above, SHB 1127 authorized the annexation of the “area

¹⁵³ *S. Tacoma Way*, 169 Wn.2d at 122-23 (recognizing the “the long-held distinction between ultra vires and procedurally irregular” government actions) (quoting *Finch v. Matthews*, 74 Wn.2d 161, 172, 443 P.2d 833 (1968)).

¹⁵⁴ *Noel v. Cole*, 98 Wn. 2d 375, 382, 655 P.2d 245, 250 (1982).

¹⁵⁵ *S. Tacoma Way*, 169 Wn.2d at 23.

served” by the Richmond Beach Sewer System, and it did not limit such annexations to areas *lawfully annexed* to the transferring entities.¹⁵⁶

E. RCW 57.02.001 validated Ronald’s annexation of the Point Wells Service area, rendering moot any technical defect in the 1985 Annexation Order.

The Superior Court correctly ruled that, even if there were some technical question about the validity or binding effect of the 1985 Annexation Order, RCW 57.02.001 (adopted as part of SSB 6091) validated and ratified Ronald’s annexation of the Point Wells Service Area.

There is no merit to Olympic View’s suggestion that, in adopting RCW 57.02.001, the Legislature intended to validate only unilateral acts by Ronald that involved no other party.¹⁵⁷ On the contrary, the plain language of RCW 57.02.001 confirms that the Legislature intended to validate *all acts* of sewer districts, including acts that necessarily involve other parties: the validating language includes “debts, *contracts*, and obligations” as well as “assessments or levies” and “all other things and *proceedings done* or taken by those districts or by their respective officers” (emphasis added). This broad language validating “all acts” generally, when viewed in light of the Legislature’s previous validation of specific “actions taken in regard to the formation, annexation, consolidation, or merger of sewer districts,” clearly encompasses Ronald’s annexation of the Point Wells Service Area.

¹⁵⁶ See Section III.B.6, *supra*.

¹⁵⁷ See Olympic View’s Brief at 44.

F. SHB 1127 and SSB 6091 were not special legislation.

When a court reviews constitutional challenges to legislation like SHB 1127 and SSB 6091, the statutes are “presumed to be constitutional and the burden is on the party challenging the statute to prove its unconstitutionality beyond a reasonable doubt.”¹⁵⁸ The Snohomish County parties fail to meet this heavy burden.

Olympic View cites no authority to support its novel “as applied” theory of special legislation, and Ronald is aware of no case law recognizing such a theory.¹⁵⁹ Because SHB 1127 and SSB 6091 facially granted the same rights to all Title 57 sewer districts, not just Ronald, there is simply no basis to assert that those bills were “special legislation.” Olympic View’s displeasure with the outcome of Ronald’s exercise of its rights under SHB 1127, and with the Legislature’s validation under SSB 6091, does not transform them into “as applied” special legislation – a concept that, to counsel’s knowledge, has never been recognized by Washington courts. Instead, the courts have found violations of article II, § 28 only in situations where there was no “rational basis” for particular classifications in the statute, such as population-based classifications that excluded all but a single city or county.¹⁶⁰ In contrast, the courts have

¹⁵⁸ *Island Cty. v. State*, 135 Wn.2d 141, 146, 955 P.2d 377, 380 (1998) (finding that the community council act, which allowed the creation of “community councils” in counties made up entirely of islands with an unincorporated population of over 30,000 people, to be “special legislation”).

¹⁵⁹ See Olympic View’s Brief at 42-47.

¹⁶⁰ *Island Cty.*, 135 Wn. 2d at 151 (finding special legislation where statute excluded “all the counties which are not composed entirely of islands with at least 30,000 people in unincorporated areas,” which “excluded every county in the state with the exception of Island County.”); *City of Seattle v. State*, 103 Wn.2d 663, 667, 677, 694 P.2d 641, 650 (1985) (finding special legislation where statute applied “only to annexations by cities

repeatedly rejected arguments asserting that validating provisions similar to RCW 57.02.001 were unconstitutional “special legislation.”¹⁶¹ This Court should likewise reject Olympic View’s arguments.

V. CONCLUSION

For these reasons, the Court should reject the Snohomish County parties’ appeals, affirm the 2017 Summary Judgment Order, and allow Ronald to enjoy the finality the Legislature intended when it authorized judicial annexations under SHB 1127.

Respectfully submitted this 16th day of November, 2018.



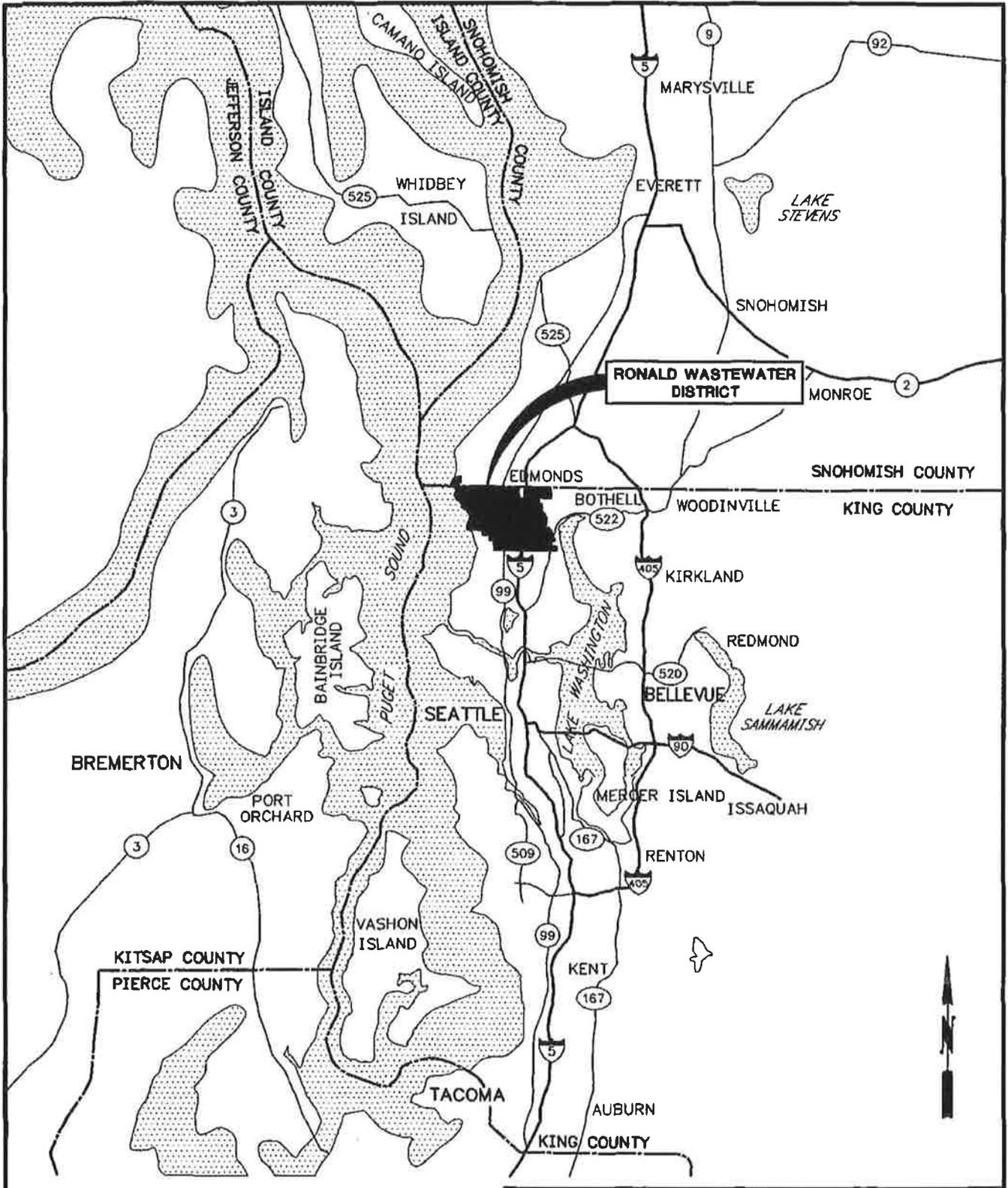
Duncan M. Greene, WSBA #36718
H. Ray Liaw, WSBA #40725
VAN NESS FELDMAN LLP
719 Second Avenue, Suite 1150
Seattle, WA 98104
Telephone: (206) 623-9372
Email: dmg@vnf.com; hrl@vnf.com

Attorneys for Respondent

with a population of over 400,000” and “Seattle is the only city in the state with a population of over 400,000”).

¹⁶¹ See, e.g., *State ex rel. Thompson v. Carroll*, 63 Wn.2d 261, 264, 387 P.2d 70, 72 (1963) (citing *City of Pullman v. Hungate*, 8 Wn. 519, 36 P. 483 (1894)) (holding that “[t]he *Pullman* reasoning is fully applicable to the curative statute involved in the present case, which, like that in *Pullman*, does not violate the constitutional prohibition against the incorporation of municipalities by special legislation.”); *Rood v. Water Dist. No. 24 of King Cty.*, 183 Wn. 258, 267, 48 P.2d 584, 588 (1935) (citing *Pullman* and rejecting challenge to validating act that declared “legal and valid” certain attempted incorporations by cities and towns and holding that “[t]here is no substance in the contention that the act is special legislation”).

APPENDIX A



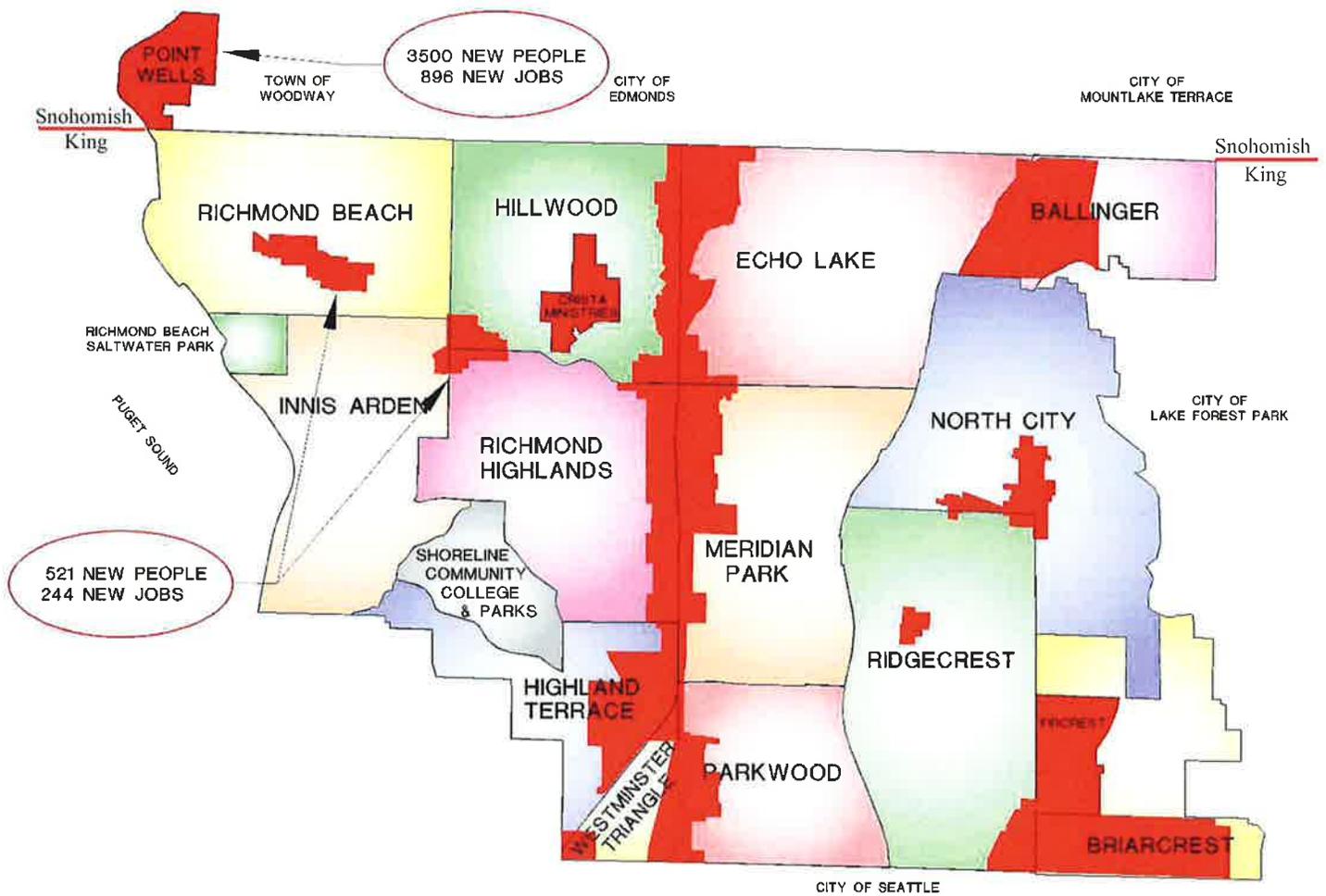
RONALD WASTEWATER DISTRICT

**RONALD WASTEWATER DISTRICT
COMPREHENSIVE SEWER PLAN**

**FIGURE 1.1
VICINITY MAP**

11/10/09 comp-FIG-1.1 1-4 10/1/09



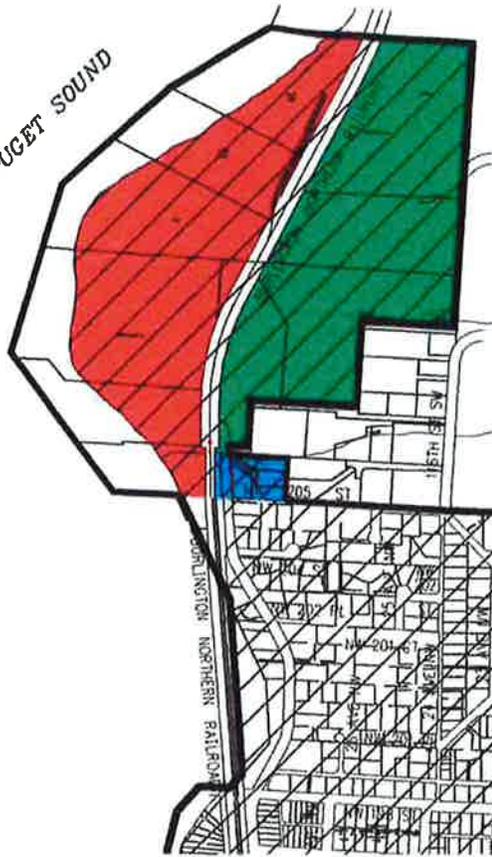


RONALD WASTEWATER DISTRICT DESIGNATED GROWTH AREAS

**RONALD WASTEWATER DISTRICT
CAPITAL IMPROVEMENT PROJECT DESCRIPTION**

PROJECT SUMMARY	
PROJECT NAME & NUMBER 7.4.11 Install New Collector Sewer Mains	ESTIMATED COST \$ 1,000,000
PROJECT DESCRIPTION Install approximately 2,520 feet of 8", 10" and 12" sewer main to provide sewer service in the RWD Snohomish County Area. (see attached)	
PROJECT BENEFIT/RATIONALE: To allow future residential and commercial development to occur in the RWD Snohomish County area.	
SCHEDULE: TO BE DETERMINED	
COST BREAKDOWN	
PROJECT COST:	
Engineering & Administration	\$ 236,000
Construction	\$ 676,000
Sales Tax	\$ 88,000
TOTAL	\$ 1,000,000

PUGET SOUND



OLYMPIC VIEW
WATER AND SEWER
DISTRICT

SCALE: 1"=1000'

-  R.W.D. DISTRICT
-  SEWER SERVICE PROVIDED BY
OLYMPIC VIEW WATER AND SEWER DISTRICT
-  UPLAND AREA
-  LOWLAND AREA
-  RESIDENTIAL DEVELOPED AREA

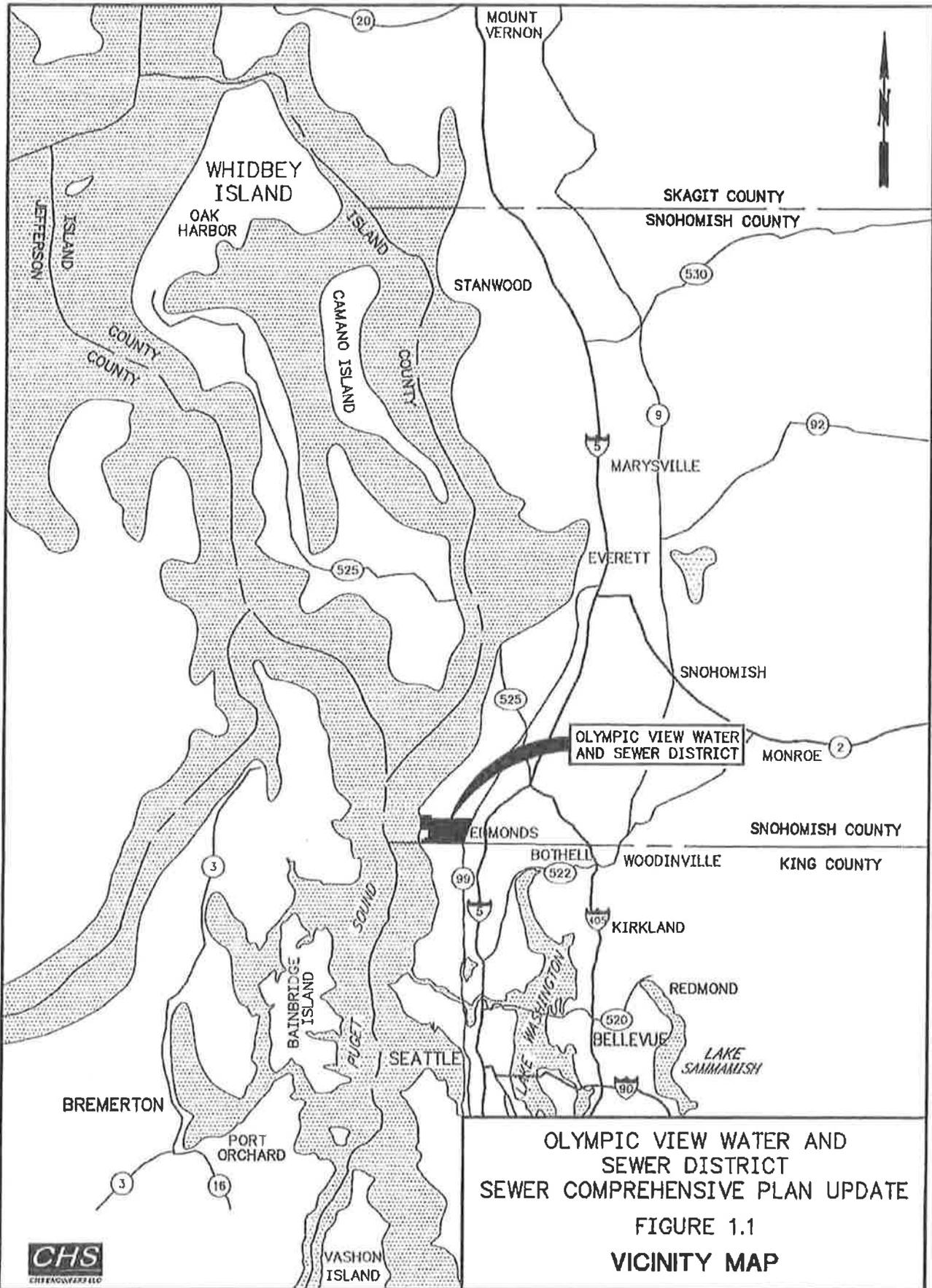


**RONALD WASTEWATER
DISTRICT**

**SNOHOMISH COUNTY SEWER
SERVICE AREA IN RWD**

FIGURE 14

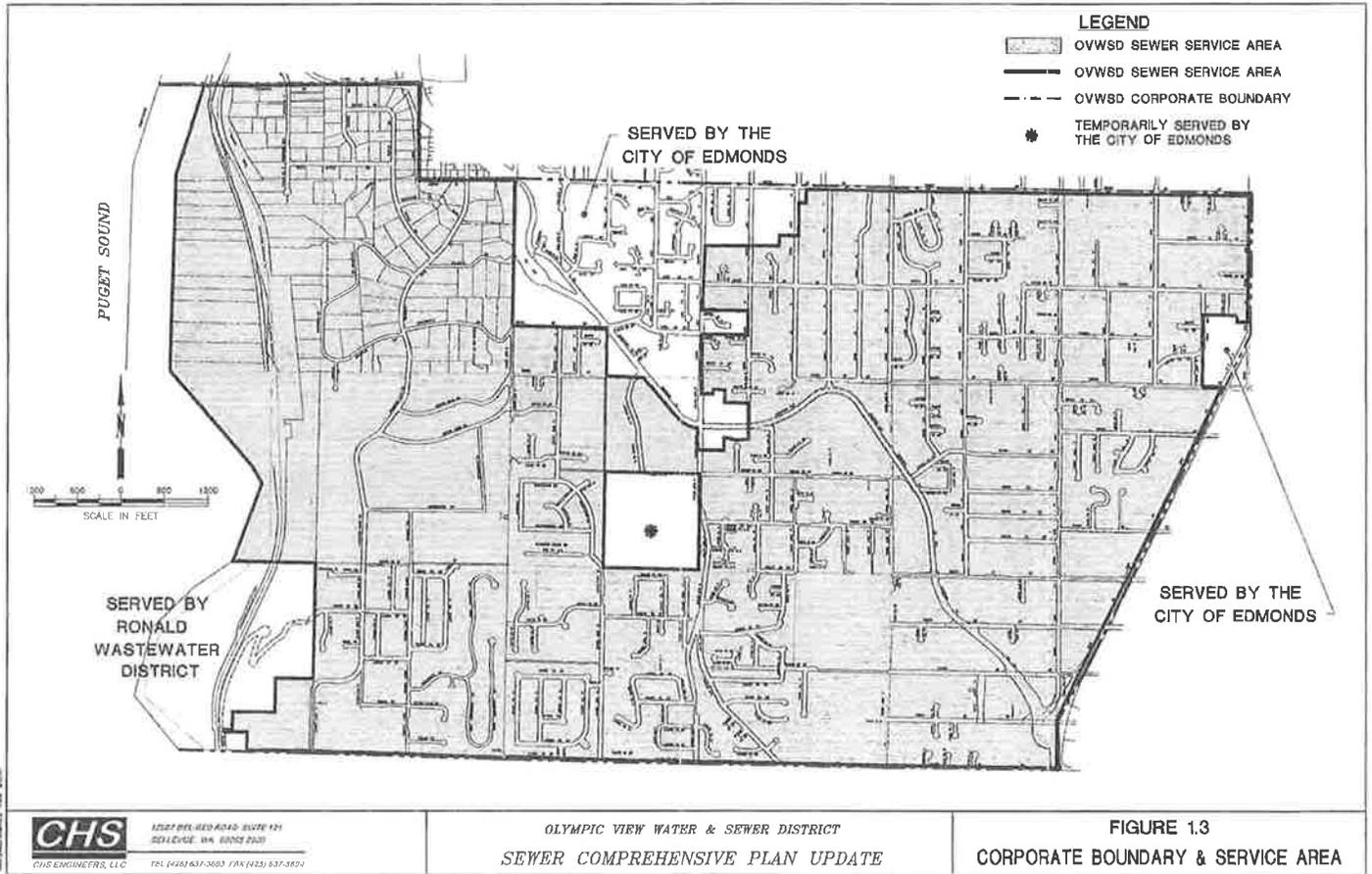


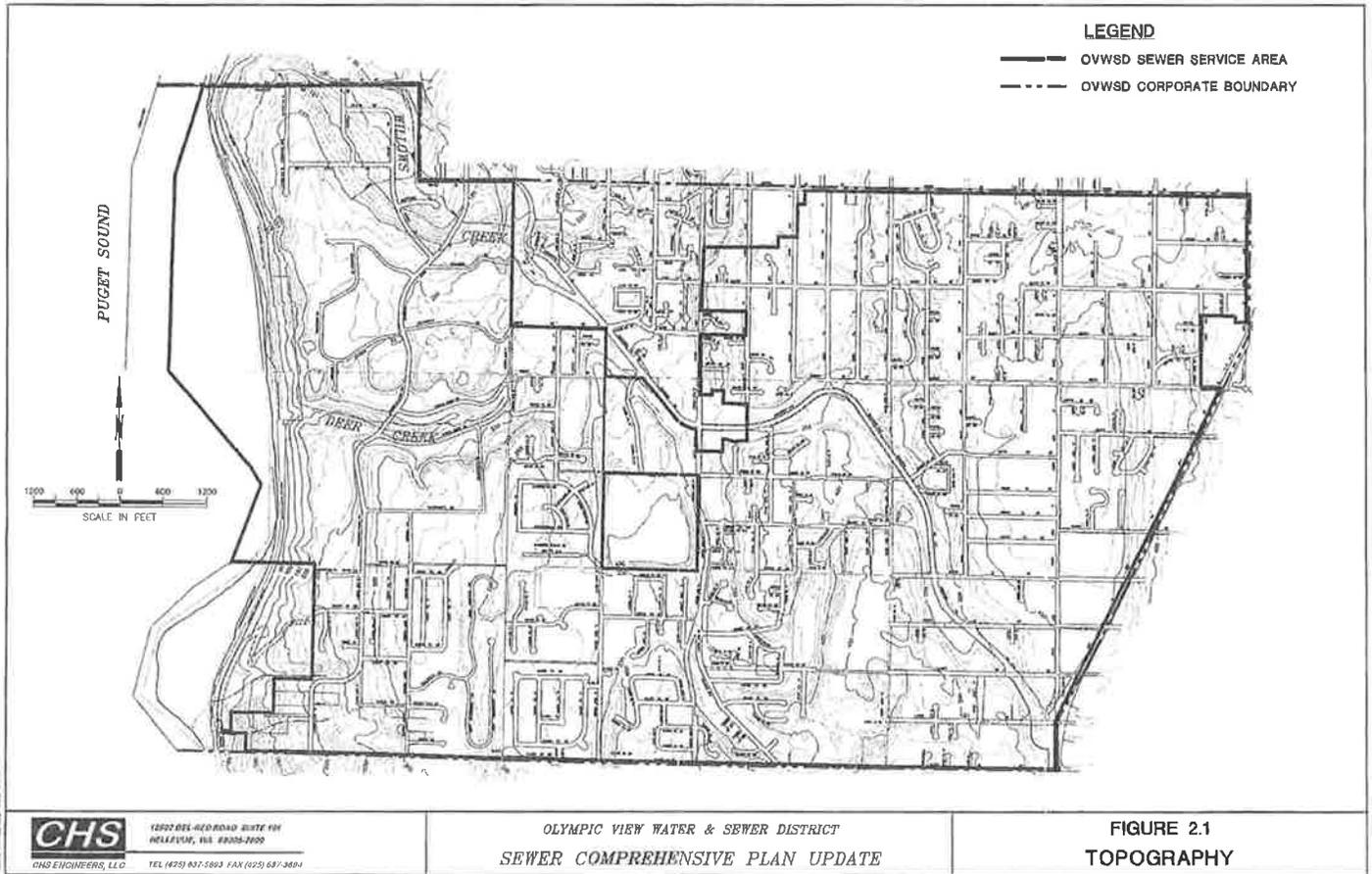


OLYMPIC VIEW WATER AND SEWER DISTRICT
SEWER COMPREHENSIVE PLAN UPDATE
FIGURE 1.1
VICINITY MAP

2008-01-10-VICMAP 1:1 2/10/08







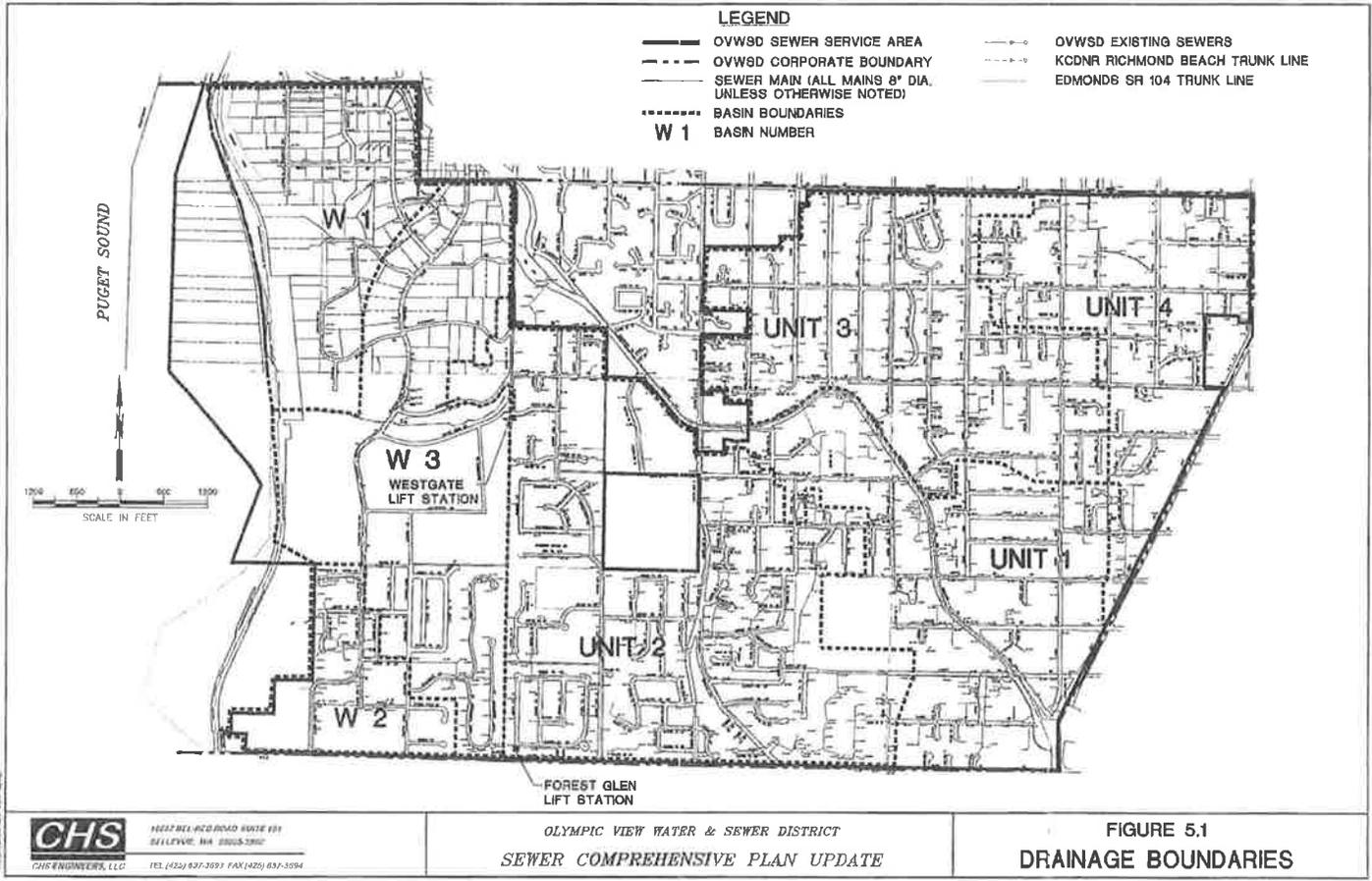
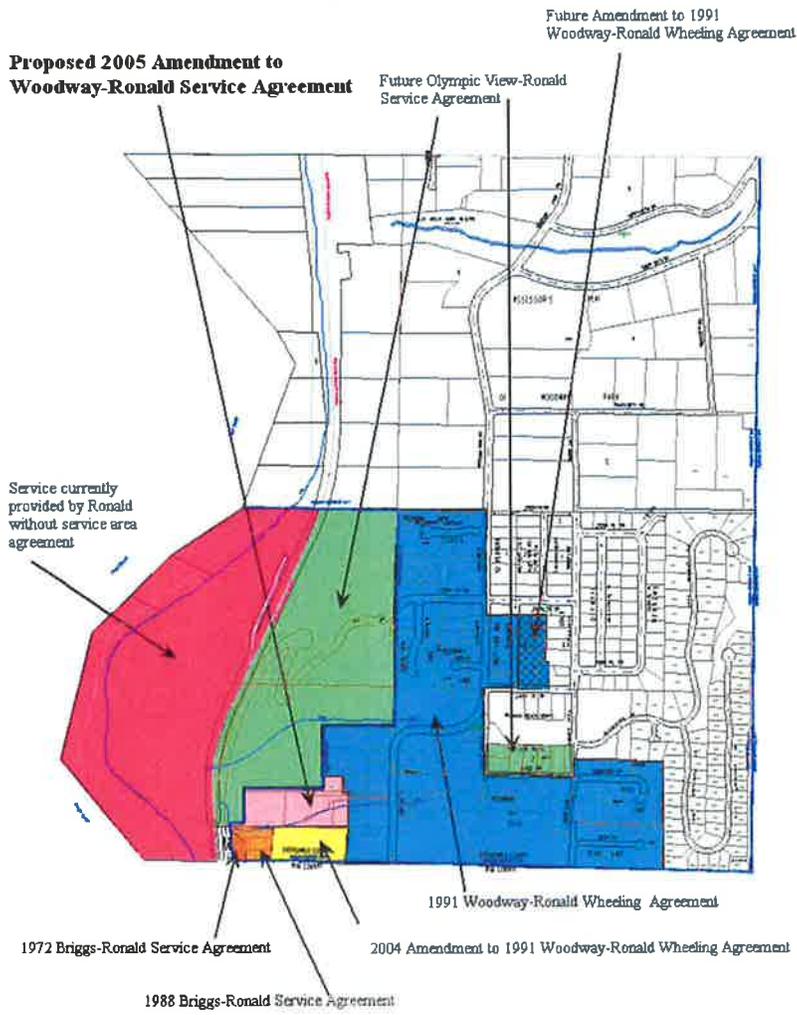


EXHIBIT A

EXHIBIT B

EXHIBIT



WD
What is the extent of RWD holdings? SC

Michael Derrick

From: Huyboom, Christoff <Christoff.Huyboom@co.snohomish.wa.us>
Sent: March 21, 2013 10:54 AM
To: Michael Derrick
Subject: RE: Ronald Wastewater District
Attachments: Ronald Wastewater District assessor.pdf; Ronald Wastewater District assessor 2.pdf; approx area of lift station.pdf; map enlarged of approx area of lift station.pdf

Michael,

Short answer is your district's Lift Station (according to the easements that you sent me) is located in Snohomish County, but not all the property is within your district's boundaries.

Your district's boundaries do not cover all the property within Snohomish County. I attached maps of your district's boundaries located in Snohomish County that the Assessor's Office has a record of.

The district's boundaries are located in two TCAs 02414 and 00857 within Snohomish County.

I hope this helps.

If you have any other questions let me know.

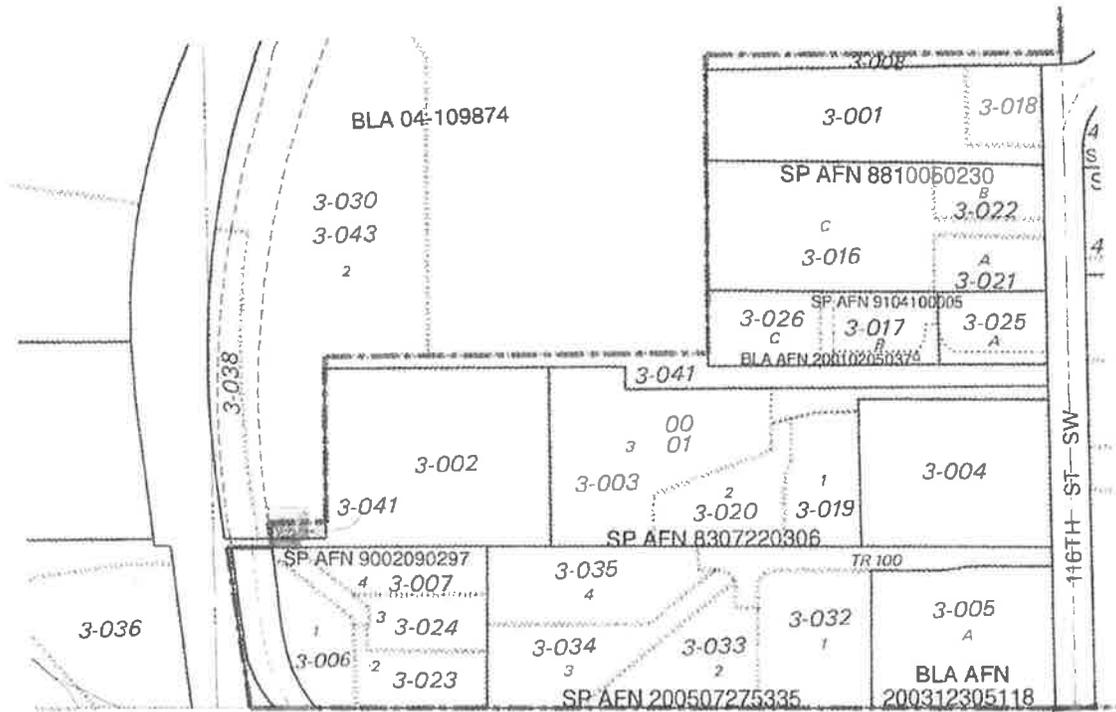
Regards,

Chris Huyboom
Levy Code Comptroller
Snohomish County Assessor's Office
3000 Rockefeller Ave, M/S 510
Everett, WA 98201
Phone: (425) 388-3646
Fax: (425) 388-3961
Christoff.Huyboom@sno.co.org

NOTICE: All emails, and attachments, sent to and from Snohomish County are public records and may be subject to disclosure pursuant to the Public Records Act (RCW 42.56)

From: Michael Derrick [mailto:mderrick@ronaldwastewater.org]
Sent: Thursday, March 21, 2013 9:29 AM
To: Huyboom, Christoff
Subject: RE: Ronald Wastewater District

Christoff:
Thanks for the response.
So, if I understand you correctly, the District's Lift Station 13 affects three parcels but is not wholly within SnoCo and is therefore not totally represented on the spreadsheet?
Yet, the easement states that the lift station is in SnoCo. I'm confused.
Can you send me drawings to verify the Assessor's belief.
This information may have implications on the Pt. Wells development issue and should be clarified.
Michael

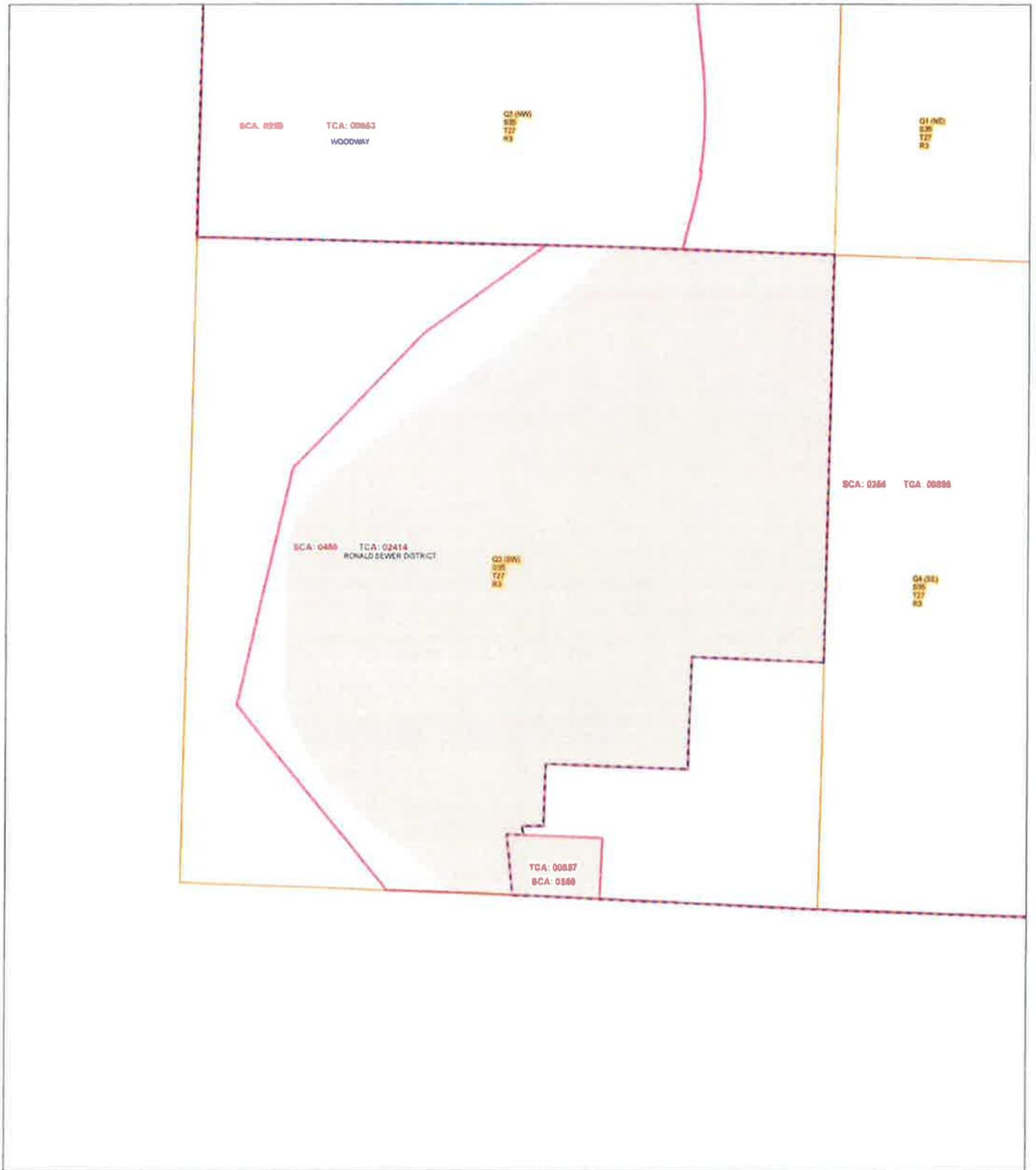


This is what we believe to be the approximate location of the lift station according to your easements legal description you provided.



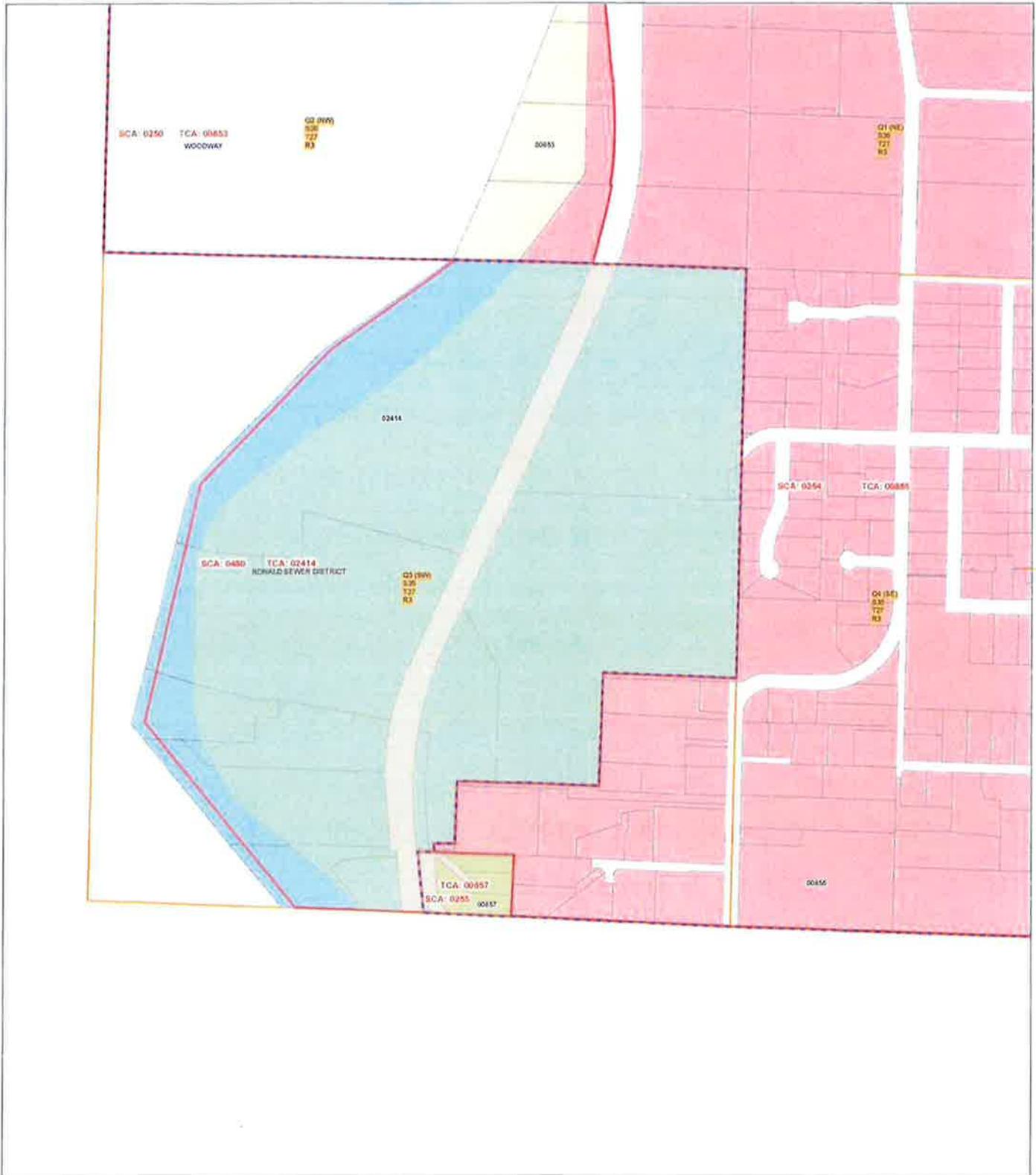
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No. 78516-8-I

COURT OF APPEALS
DIVISION I
OF THE STATE OF WASHINGTON

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.

CERTIFICATE OF SERVICE

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*Attorneys for Respondent Ronald
Wastewater District*

I, Amanda Kleiss, declare as follows:

That I am over the age of 18 years, not a party to this action, and competent to be a witness herein;

That I, as paralegal in the office of Van Ness Feldman LLP, caused true and correct copies of the following documents to be delivered as set forth below:

1. Corrected Brief of Respondent Ronald Wastewater District;
2. Certificate of Service;

and that on December 19, 2018, I caused the foregoing documents to be e-served electronically through Washington State Appellate Courts' Secure Portal as follows:

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

EXECUTED at Seattle, Washington on this 19th day of December, 2018.



Amanda Kleiss, Declarant

VAN NESS FELDMAN LLP

December 19, 2018 - 11:12 AM

Transmittal Information

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Comments:

The Court granted Respondent's Motion to File Corrected Brief on 12/18/18, therefore, the "Corrected Brief of Respondent Ronald Wastewater District" is filed herewith.

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