

December 14, 2015

**OFFICE OF THE HEARING EXAMINER  
KING COUNTY, WASHINGTON**

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**REPORT AND RECOMMENDATION TO THE  
METROPOLITAN KING COUNTY COUNCIL**

**SUBJECT:** King County Council file no. **2015-0343**  
Proposed ordinance no. **2015-0343**

**LAKE GENEVA MANAGEMENT DISTRICT**

Lake Management District

**Location:** Lake Geneva (located east of Federal Way, between approximately S 344th Street and S 388th Street, and between 38th Avenue S and 45th Avenue S) and properties adjacent to the Lake

**OVERVIEW:**

The Council adopted a resolution of intention to form the Lake Geneva Management District, tasking the Examiner with holding the public hearing on the matter. We held a well-attended public hearing in the neighborhood, took testimony and exhibits, and later reopened the record to allow supplemental submissions. Based on the evidence, we recommend that the Council approve the District's formation and submit the issue to a vote of the property owners.

**EXAMINER PROCEEDINGS:**

Hearing Opened and Closed: November 4, 2015  
Hearing Record Closed: December 4, 2015

Participants at the public hearing and the exhibits offered and entered are listed in the attached minutes. A verbatim recording of the hearing is available in the Hearing Examiner's Office.

**FINDINGS, CONCLUSIONS AND RECOMMENDATION:** Having reviewed the record in this matter, the Examiner now makes and enters the following:

## FINDINGS AND CONCLUSIONS:

### Framework

1. This matter involves the potential formation of the Lake Geneva Lake Management District. We start with the general legal framework.
2. Chapter 36.61 RCW establishes a governmental mechanism for property owners to plan for and fund lake improvement and maintenance activities.<sup>1</sup> RCW 36.61.020. The process started with the Council adopting a resolution of intention to form a lake management district, setting forth the district's nature, extent, funding and duration, delegation to the Hearing Examiner, and time and place for the public hearing. RCW 36.61.030, .130. (The Council took that step on September 9. Ord. 18102.)
3. After publishing and mailing notice, the Examiner holds a public hearing (here, conducted on November 4), and makes a recommendation to Council (this report). RCW 36.61.040, .060. The Council next decides whether such a district is in the public interest to create and whether the financing is feasible; if so, the Council submits the question to property owners via mail ballot. RCW 36.61.060–.080. If the majority of votes cast favor creation, the Council shall (creation, at that point, becomes mandatory) adopt an ordinance creating the district. RCW 36.61.090, .100.
4. If the district is created, the County prepares a special assessment roll. The Council or Examiner sets and give notice of a public hearing where the Examiner hears any objections to the roll. RCW 36.61.120, .130. The Examiner then recommends to the Council modifications (if any) to the roll. The Council then approves (with or without modifications) the roll or rejects and remands to the Examiner for follow-up. RCW 36.61.130. If approved, the county treasurer begins collecting the assessments. RCW 36.61.190.

### Background

5. Lake Geneva and its watershed sit within urban unincorporated King County, between Federal Way and Auburn. The lakeshore is ringed by approximately 42 single-family residences, 11 vacant homesite lots, a pair of County-owned park parcels on the northeast shore, and a Washington State Department of Fish and Wildlife (WDFW) boat launch on the southwest shore.
6. Lake Geneva has several state-listed aquatic noxious weeds, high water episodes due to lake outlet maintenance issues, and recent declines in water clarity from increased phosphorus input and algae growth. To address these issues, the Lake Geneva Property Owners' Association (Association) received a grant from the King County Flood Control District's Flood Reduction Fund to create a lake management plan, with the goal of forming a lake management district (District).

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<sup>1</sup> Chapter 36.61 RCW is broad, for example covering beach management districts, storm water controls, initiation by formal landowner petition, and financing bonds, none of which are in play here. We only discuss those elements of the statute relevant to the current proposal.

7. This culminated in the production of a lengthy Lake Geneva Lake Management District Plan (Plan), which provides for: managing waterfowl (such as Canada geese); surveying invasive aquatic plants; controlling or eliminating invasive aquatic plant species (including but not limited to purple loosestrife, yellowflag iris, cattails, fragrant water lily and root mats and pondweeds); distributing education materials to residents about events and best management practices; preparing and distributing an annual newsletter; holding biannual public meetings with property owners, and County management of the District (including reporting and administrative costs). The District would fund these activities by assessing \$14,500 per year for ten years, for a total assessment of \$145,000.
8. The Council referenced the Plan in its resolution of intention to form the District. Ord. 18102. Council published—and the Examiner mailed to all lakeshore property owners slated to be assessed a fee, including County Parks and WDFW—notice of a public hearing on the District’s creation. Prior to the hearing, Council staff mailed out a Staff Report.<sup>2</sup> On November 4, we held the public hearing. Dozens of members of the community, Council staff, and County Parks attended, but WDFW did not. Over a dozen people testified, each subject to questioning by the Examiner and by anyone else in the room.

### Analysis

9. We assess whether creating this District is in the public interest and whether the financing is feasible. RCW 36.61.070. There is little question on this first point; we address the public interest component briefly. And there is little question on whether the financing is feasible; the related and main source of contention is how to apportion the bill.
10. As to the need for a District, historically, Lake Geneva has been relatively healthy. Exs. 3 and 9. Several witnesses described some of the lake management activities owners—either informally or through the Association—have performed in the past. But a few witnesses noted that the aging population of lakeshore owners has slowed down such activities, and only about half the lakefront owners are members of and pay dues to the Association. *See, e.g.,* Miller, Perry, Saunders testimony.
11. As a result, Lake Geneva is now in “desperate need of protection.” Ex. 9. Competitive swimmer Lynn Gross noted that the last two years water quality has exceedingly and quickly worsened; he described the terrible “swimmers itch” he received from swimming and the weed infestation that clogged electric boat motors. Ex. 10. Colleen Short testified that this summer it was “absolutely heartbreaking” not to be able to swim because of the weed load, the worst she had ever seen. Joe Moss testified that weeds had historically not been much of a problem, but now it looks like a “blanket” just under the surface; people have quit coming to his house to swim, a situation he described as “very sad.”
12. The worsening state of the Lake argues strongly for a change of course. Larry Gross expressed his greatest fear was the neighbors doing nothing, as “nothing is not working.” Volunteers cannot always be counted on, while a District will be more sustainable. Saunders testimony. A District will also be more equitable: all lakeshore owners benefit from a healthy, attractive, swimmable, boatable lake, whether they contribute or not to its

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<sup>2</sup> Ex. 7. Except as modified herein, the facts set forth in the Staff Report and staff testimony at the November 4, 2015, public hearing are correct and incorporated herein by reference.

- upkeep. A District, with its assessment on all lakeshore owners, curbs the free rider problem and provides a financed Plan for the Lake's maintenance and enhancement.
13. As to the scope of the Plan (*i.e.*, what lake protection/enhancement activities the District would undertake), the one significant concern expressed at the hearing involved managing the Lake's outlet channel. Gross and Galland testimony. The Plan discusses outlet channel maintenance, but notes that the County can do such work at no cost to the District; the Plan does not include a schedule for the District, at the District's expense, to undertake such work, instead leaving this to the County. Ex. 3 at 21, 22, 30. Amending the plan to increase the District's assessment to cover such activities is not an option at this stage; such an increase would require starting all over again with another Council resolution of intention, more notice, and another public hearing. RCW 36.61.050. And no one pointed to any other activity that should be sacrificed in favor of outlet management.<sup>3</sup> The scope of the Plan is acceptable.
  14. In terms of financial feasibility, a previous version from January 2015 proposed to raise \$11,211 annually. Ex. 7 at 6; Ex. 23. This was deemed insufficient, and the total was boosted to \$14,500 annually. Ex. 7, att. 2. The current Plan seems financially feasible to cover what the District needs to cover. It is also in keeping with two lake management districts in the abutting City of Federal Way that were cited as comparable. Steel Lake, for example assessed \$14,593, while North Lake assessed \$13,540. Ex. 21 at 1, 12; Ex. 22 at 2, 16.
  15. The main source of contention was how to divvy up the bill.
  16. The January 2015 version of the Plan would have assessed developed, single family homes at \$99, vacant properties at \$33, County Parks at \$2,790, and WDFW at \$3,900. Ex. 23. This was amended not only to up the total to \$14,500, but to adjust the contribution ratios, pushing developed, single family home assessments up 46 percent (\$145 from \$99), vacant properties up 36 percent (\$45 from \$33), and County Parks up 28 percent (\$3,570 from \$2,790), while increasing WDFW's share by 11 percent (\$4,345 from \$3,900). Ex. 7, att. 2; Ex. 23.
  17. The morning of the hearing, WDFW wrote in support of creating a reliable funding source for improving and maintaining the Lake, but it expressed concern that the assessment rate criteria was not consistently and equitably applied. Ex. 8. In addition, we received a related, post-hearing submission from Jerry Galland. Ex. 11. As discussed at hearing, if the Council sends District formation to a vote, property owners get one vote per dollar of estimated assessment. RCW 36.61.090. Under the current Plan, WDFW would control 30 percent of the vote, County Parks almost 25 percent, and private owners about 45 percent. Mr. Galland proposed increasing private charges to give the combined Parks/WDFW less than 50 percent of the vote. See Ex. 11.
  18. We reopened the hearing record to allow more input on the proportionate share issue. We received additional input from WDFW, Mr. Galland, the Association, and several other property owners. We then re-closed the record.

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<sup>3</sup> For example, if someone had argued, "Take the moneys the Plan accords to water lily management and devote this instead to channel outlet management," we would have considered it and, if we deemed such a modification necessary, had the authority to so modify the Plan. Ex. 3 at Table 12; RCW 36.61.050. But no one offered up what activities might be jettisoned to shift District moneys to outlet management, and we make no such unilateral attempt.

19. Mr. Galland's objection that the District should not be decided solely on the government's votes has some intuitive appeal. Under the current apportionment, if WDFW and County Parks vote the same way, none of the private votes would matter; the District would either be formed or not formed based on only the government's votes. However, ultimately that is not a sufficient rationale for reconfiguring the proposed allocation methodology.
20. First, while his amended ratio would mean that (if WDFW and County Parks voted the same way), at least one private vote would need to be counted to determine formation, a single resident voting in the same direction as WDFW/County Parks would be sufficient.<sup>4</sup> It is extremely unlikely that all 53 private ownerships will vote the same direction. So having private owners theoretically control District formation (*i.e.*, at least one private vote would need to be counted) would make a nice political statement, but his proposal would not functionally change the outcome.
21. Second, the idea that residential property owners should have control is, at its core, a political rationale. It has some appeal, but it is not related to the controlling legal standard, discussed below, which turns on property-related impacts instead of who owns those properties.
22. At hearing, Council staff explained the current apportionment as follows. The proposed ratio is based on the impact various properties have on the Lake, the benefit properties would receive from the District's operation, and, in the case of County parkland, a comparison of the County lot size to the average single family residence lot size. Approximately 46 percent of the District's funding is earmarked for controlling five invasive species, including plant surveys and actual control or elimination of such invasives. WDFW's boat launch is the "primary" avenue that invasive species enter the Lake, and WDFW is slated to carry 30 percent of the assessment. County Parks would pay 25 times the rate for a single family residence, which is commensurate with how many times larger the Park is than the average single family plot. Vacant residential lots would pay a third of the cost of occupied single family homes. Other lake districts located in the abutting City of Federal Way (identified as Steel Lake and North Lake) have applied the same process for figuring ratios. Erin Auzin testimony.
23. That is at least a theoretically sound way to divvy up the assessment. It seems consistent with RCW 36.61.160's standard that

Special assessments may be measured by front footage, acreage, the extent of improvements on the property, or any other factors that are deemed to fairly reflect special benefits, including those authorized under RCW 35.51.030.<sup>5</sup> Special assessments may be calculated by using more than one factor,

consistent with the bedrock principle in the land development context that taxes, fees, and charges must be tied to a development's direct impacts, RCW 82.02.020, and consistent

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<sup>4</sup> Mr. Galland proposed raising the single family residences from \$145 to \$160 and vacant properties from \$45 to \$53. With 42 residences and 11 vacant parcels, this would increase the private share of the \$14,500 to \$7303, only 53 more than the 7,250 votes needed for control.

<sup>5</sup> This is also consistent with RCW 35.51.030, which includes factors such as "square footage of the property" and "existing facilities."

with the even more bedrock constitutional principle of “rough proportionality” between the impact of development and what a property owner is being required to dedicate, *Dolan v. City of Tigard*, 512 U.S. 374, 391(1994). The question is whether the facts show that the framework is fairly applied here.

24. At the hearing, the facts (per the neighbors testimony) seemed to match the theory. Some time ago the Lake went electric, meaning the homeowners’ boats are electric pontoons that do not leave the Lake and travel in other waters, where they could pick up invasive species. WDFW’s boat launch creates perhaps 90 percent of the boat traffic on the lake and has a very disproportionate impact in terms of importing invasive flora. No one has ever seen a WDFW public-launched boat being cleaned prior to launch.
25. Mr. Galland’s and WDFW’s post-hearing submissions questioned how much boat traffic is attributable to the WDFW. Mr. Galland submitted boat counts that somewhat rebutted the hearing testimony about the large number of foreign boats (meaning not attributable to lakeshore owners). That, however, does not directly impact the methodology. As noted above, the reasoning behind WDFW’s current share is that the public boat launch is the primary source of invasive vegetation, and invasive controls represent 46 percent of the District’s budget. No one has questioned the testimony that native boats (meaning those owned by lakeshore owners) do not travel in other waters (where they could pick up invasives). So the number of foreign boats and the ratio of foreign boats to native boats and not decisive.
26. The total number of foreign boats could be relevant, if there were other established vectors for aquatic invasives to reach the Lake. The Plan seems to hint at this, noting that the Lake is vulnerable to future noxious infestations “due to its location and boat access,” perhaps indicating another vector beyond boats. Ex. 3 at 19. But none is actually identified. The Plan contains a mention that geese droppings bring the parasites that cause swimmer’s itch, but not a reference to geese importing invasive vegetation. Ex. 3 at 32. There was no testimony at hearing about other sources of invasives. The only direct mention we find (buried in the Plan’s appendices) is that, at least for Eurasian milfoil, “the primary mode of spread is by the boat trailer. As contaminated lakes are in close proximity to reclaimed lakes, it normally does not take long before a reintroduction occurs.”<sup>6</sup> Thus the reference to “due to its location and boat access” in the main text may simply mean that because the Lake is near other lakes foreign boats operate on, the Lake may be more attractive to such boaters.
27. The record contains only one potential source of invasives other than WDFW’s boat launch. WDFW’s post-hearing submission points the finger at County Parks. According to WDFW, foreign boats such as kayaks and canoes can be hand-carried from the County parking lot. Ex. 18.<sup>7</sup> One resident responded that, “It is probable that some lake users hand-carry kayaks 500 feet down a steep and sometimes slippery slope from the King County Park’s parking lot. However, it is generally accepted that kayaks and canoes impact the lake far less than fishing boats launched from trailers behind motor vehicles.” Ex. 19.

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<sup>6</sup> Ex. 3, Appendix B, “Regional Eurasian Milfoil Control Plan for King County” (December 2002) at 2.

<sup>7</sup> WDFW’s letter also contained useful information about toilet facilities, a comparison of linear feet, and swimming, which might impact water quality. Ex. 19. But as noted above, WDFW’s proposed cost share was based on invasive species, not other uses or impacts, and the record shows nothing pointing to any non-foreign boat vectors for invasive vegetation to enter the Lake.

28. King County Parks participated at the public hearing, and testified, subject to cross examination by everyone present.<sup>8</sup> No one asked Parks about boat use, nor did the topic come up elsewhere at hearing. Absent better information in the record, or an assertion that other invasive aquatic vegetation is introduced in a different manner than Eurasian milfoil, we rely on the expert report that “the primary mode of spread is by the boat trailer.”<sup>9</sup> And there is no evidence in the record that boat trailers touch the Lake aside from WDFW’s boat launch.
29. Moreover, invasives will consume approximately 46 percent of the District budget, while WDFW would contribute 30 percent of the total assessment. We assume there is a non-WDFW boat launch vector for invasives—the current proposal was based on the boat launch being the “primary” source of invasives, not the sole source. Auzin testimony. WDFW is being asked to shoulder 65 percent of the cost for dealing with invasives (30 divided by 46). Even if County Parks, private residences, or exogenous sources were vectors for invasives, there is certainly no evidence in the record that more than 35 percent of Lake Geneva’s invasives are attributable to non-WDFW boat dock sources. The proposal appears equitable.
30. There is one external source of data raised at the hearing and then discussed in some of the post-hearing submissions, namely the two approved lake management districts on which those who worked on the Lake Geneva modeled the District’s apportionment—Federal Way’s Steel Lake and North Lake districts. Auzin testimony; Exs. 17 and 18. On paper, at least, those two are very comparable. Steel Lake assessed \$14,593.22, while North Lake assessed \$13,540.84, each within seven percent of Lake Geneva’s \$14,500 assessment.<sup>10</sup>
31. Those provide some external evidence that the proposed Lake Geneva scheme is fair. As to the WDFW versus private apportionment (Mr. Galland’s point), Lake Geneva would assess WDFW’s boat launch at 30 times the rate of a single family home.<sup>11</sup> By comparison, for North Lake WDFW’s boat launch pays 40 times the single family home rate,<sup>12</sup> while for Steel Lake WDFW’s boat launch pays over 41 times the single family home rate.<sup>13</sup> As to WDFW versus County Parks apportionment (WDFW’s point), at Steel Lake the local government (Federal Way) also maintains a park. While Lake Geneva would apportion 25 percent of the total assessment to the County, Steel Lake only apportions 15 percent of the total to the City, meaning County Parks is already slated to pay two-thirds more (proportion wise) than its Steel Lake counterpart.<sup>14</sup>

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<sup>8</sup> Although the Examiner’s Rules of Procedure give only *parties* a right to cross-examination, the Examiner may, allow other interested persons to conduct cross examination when the Examiner concludes it will substantially assist in creating a complete record. Rule XI.B.6.c. Here, we allowed everyone in the room to question any witness.

<sup>9</sup> Ex. 3, Appendix B, “Regional Eurasian Milfoil Control Plan for King County” (December 2002) at 2.

<sup>10</sup> Steel Lake and North Lake are more comparable than the Hicks Lake, a district Mr. Galland cited as evidence of a different assessment scheme. Ex. 11. Hicks Lake is a much larger affair, raising \$51,000 for the first year, escalating that up to \$107,100 per year, and assessing for thirty years, three times the length of Geneva, Steel, and North.

<sup>11</sup> Ex. 7, att. 2 (\$4,354 WDFW versus \$145 for single family).

<sup>12</sup> Ex. 22 at 16 (\$4,290.90 WDFW versus \$107.27 for single family).

<sup>13</sup> Ex. 21 at 12 versus (\$3,739.76 for WDFW versus \$90.82 single family).

<sup>14</sup> Ex. 21 at 12 (\$2,188.30 of \$14,593.32 total—15 percent—apportioned to Federal Way park). Ex. 7, att. 2 (\$3,570 of \$14,500 total—25 percent—apportioned to King County park). And 25 is 67 percent more than 15.

32. We do not unduly rely on Steel or North lakes' districts. There may be other explanations for those ratios.<sup>15</sup> And of course, the question is whether the Lake Geneva apportionment meets the legal standard, not whether Steel or North lakes themselves got it right. But they do provide two data points in favor of the current proposal.
33. Finally, while we strongly consider WDFW's recommendation, its request for "a more equitable allocation between the public landowners that more accurately reflects the potential impacts," Ex. 18, does not leave us with much. There is no explanation of what re-calculation would be more equitable; we have no competing proposal to assess.<sup>16</sup> Mr. Galland did offer a concrete proposal in terms of a dollar adjustment, but (as discussed above) that was pegged to obtaining private control, not to meeting the applicable legal standard. Without a concrete approach to rival the specific, well-supported current methodology, it would border on arbitrary for us to create and then apply a different methodology. We recommend the Council adopt the apportionment presented at hearing.

RECOMMENDATION:

1. The Examiner recommends that the Council find it in the public interest to create the Lake Geneva Management District (No. 2), and find the financing feasible.
2. The Examiner recommends that, after considering the Examiner's recommendation, as contemplated in RCW 36.61.060, the Council submit the question of District formation to a vote of the landowners, as set forth in RCW 36.61.070.

ORDERED December 14, 2015.



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David Spohr  
King County Hearing Examiner

MINUTES OF THE NOVEMBER 4, 2015, HEARING ON THE APPEAL OF LAKE GENEVA MANAGEMENT DISTRICT, KING COUNTY COUNCIL FILE NO. 2015-0343.

David Spohr was the Hearing Examiner in this matter. Participating in the hearing were Erin Auzins, Chris Knutson, David Saunders, James Miller, Nancy Saunders, Larry Gross, Joan Mussa, Charles Holmes, Jerry Galland, Ingrid Lundin, Julia Perry, Colleen Short and Joe Moss.

The following exhibits were offered and entered into the record:

Exhibit no. 1                      King County ordinance 18102

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<sup>15</sup> WDFW asserts that North and Steel lakes were based on public parking spaces or linear feet of shoreline, Ex. 18, but we have not seen any document that confirms or refutes that.

<sup>16</sup> WDFW did provide contact information for a WDFW employee, Ex. 18, which would normally be helpful, except that for a Hearing Examiner that would amount to a prohibited *ex parte* communication.



- Exhibit no. 2 Vicinity map
- Exhibit no. 3 Lake Geneva Management District Plan 2016-2025
- Exhibit no. 4 Notice of November 4, 2015, public hearing on lake management district formation
- Exhibit no. 5 Advertisement of November 4, 2015, public hearing
- Exhibit no. 6 Lake Geneva Property Owners Association letter
- Exhibit no. 7 King County Council Staff Report, dated November 4, 2015
- Exhibit no. 8 State of Washington Department of Fish and Wildlife letter, dated November 4, 2015
- Exhibit no. 9 Letter from Rob Zisette, Herrera, dated November 4, 2015
- Exhibit no. 10 Letters to the Hearing Examiner from Lynn Gross, Mike and Chris Tarling, Kenneth and Sheryll Ziemer, Stan and Thelma VanderPol, Donna Rogers, Bart and Laurie Farrar, David and Mary Osborn, and David and Donna Kludsikofsky

The following exhibits were entered into the record on December 4, 2015:

- Exhibit no. 11 Jerry Galland comment, received November 11, 2015
  - a. Hicks Lake Management District-related materials
- Exhibit no. 12 Sheryll Ziemer comment, received November 19, 2015
- Exhibit no. 13 Jerry Galland comment, received November 19, 2015
  - a. Email Lake Geneva Property Owners Association, dated June 5, 2015
  - b. Email string regarding Lake Geneva Property Owners Association, last email dated June 7, 2015
  - c. Lake activity log
  - d. Lake activity log with totals
  - e. November 20, 2015 email retracting a portion of his November 19 comment
- Exhibit no. 14 Chris Tarling comment, received November 20, 2015
- Exhibit no. 15 Jim and Donna Miller comment, received November 21, 2015
- Exhibit no. 16 Jerry Garland comment, received November 22, 2015
- Exhibit no. 17 Nancy Saunders comment, received November 22, 2015
- Exhibit no. 18 Clay Sprague comment, received November 23, 2015
- Exhibit no. 19 David Saunders comment, received December 2, 2015
- Exhibit no. 20 Joan Mussa comment, received December 3, 2015
- Exhibit no. 21 Steel Lake Management District 2013 Report
- Exhibit no. 22 North Lake Management District 2014 Report
- Exhibit no. 23 January 31, 2015, excel spreadsheet for individual assessments

DWS/vsm

December 14, 2015

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**CERTIFICATE OF SERVICE**

SUBJECT: King County Council file no. **2015-0343**  
Proposed ordinance no. **2015-0343**

**LAKE GENEVA MANAGEMENT DISTRICT**  
Lake Management District

I, Vonetta Mangaoang, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **REPORT AND RECOMMENDATION TO THE METROPOLITAN KING COUNTY COUNCIL** to those listed on the attached page as follows:

- EMAILED to all County staff listed as parties of record/interested persons and primary parties with e-mail addresses on record.
- caused to be placed with the United States Postal Service, with sufficient postage, as **FIRST CLASS MAIL** in an envelope addressed to the non-County employee parties of record/interested persons at the addresses indicated on the list attached to the original Certificate of Service.

DATED December 14, 2015.



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Vonetta S. Mangaoang  
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