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

RESPONSIBLE GROWTH *NE WASHINGTON; CITIZENS AGAINST NEWPORT SILICON SMELTER; THEODORE & PHYLLIS KARDOS; DENISE D. TEEPLES; GRETCHEN L. KOENIG; SHERYL L. MILLER; JAMES W. & ROSEMARY CHANDLER; and PAMELA BYERS LUBY, Petitioners-Plaintiffs, vs. PEND OREILLE PUBLIC UTILITY DISTRICT NO. 1; PEND OREILLE COUNTY; and HITEST SAND, INC., Respondents-Defendants.	Case No. **COMPLAINT FOR DECLARATORY JUDGMENT, WRIT OF PROHIBITION**

COME NOW Petitioners-Plaintiffs Responsible Growth *NE Washington, Citizens Against Newport Silicon Smelter, Theodore & Phyllis Kardos, Denise D. Teeples, Gretchen L. Koenig, Sheryl L. Miller, James W. & Rosemary Chandler, and Pamela Byers Luby (collectively,

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"Petitioners-Plaintiffs"), by and through their counsel of record, and as and for a cause of action state, allege, and complain as follows:

I. INTRODUCTION

1.1 In 2017, Respondent-Defendant Pend Oreille County sold to Respondent-Defendant Pend Oreille Public Utility District No. 1 ("PUD") real property identified as Parcel #19182 in a tax sale. Parcel #19182 is located south of Newport, Washington. The PUD bought this land for the sole purpose of selling it to Respondent-Defendant HiTest Sand, Inc., and did not buy this Parcel for any PUD operational purposes described in the *Revised Code of Washington* ("RCW"). PUD then sold Parcel #19182 to HiTest Sand, Inc., without any statutory authority. The purchase of Parcel #19182 was *Ultra Vires* in that the PUD did not and does not have statutory authority to purchase land per the RCW for non-PUD purposes. The sale of Parcel #19182 was packaged with three other Parcels (#17036, #19183, and #19193) and collectively sold to HiTest Sand, Inc. in one transaction for the purpose of facilitating HiTest's proposed Silicon Smelter. The PUD did not sell this property under the statutory authority provided by RCW, and thus this action was *Ultra Vires.*

II. PARTIES AND STANDING

2.1 Responsible Growth *NE Washington ("RG*NEW") is a Washington State–registered not-for-profit citizen group whose members reside in the boundaries of the Pend Oreille Public Utility District No. 1 and are served by the PUD. RG*NEW is a citizen group that works towards protecting the Pend Oreille regions' environment, economy, and culture.

2.2 Citizens Against Newport Silicon Smelter ("CANSS") is a not-for-profit citizen group with members who also reside within the boundaries of the Pend Oreille County Public

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Utility District No. 1 and are served by the PUD. The mission of CANSS is to prevent Hi-Test's proposed Silicon Smelter from being located in the Newport area.

2.3 Theodore and Phyllis Kardos are 54-year residents of Pend Oreille County and have been customers of the Pend Oreille County Public Utility District No. 1 for as long as the PUD provided service to the area.

2.4 Denise D. Teeples is a life-long, 54-year-old resident of Pend Oreille County and has been a customer of the PUD for as long as it has provided service to the area.

2.5 Gretchen L. Koenig has been a resident of Pend Oreille County since 1974 and a customer of the PUD for as long as it has provided service to the area.

2.6 Sheryl L. Miller has been a resident of Pend Oreille County and a customer of the PUD since 1993.

2.7 James W. and Rosemary Chandler have been residents of Pend Oreille County and customers of the PUD since 2001.

2.8 Pamela Byers Luby has been a resident of Pend Oreille County and a PUD customer since 1972.

2.9 Pend Oreille Public Utility District #1 is a municipal corporation, created and governed pursuant to Title 54 RCW.

2.10 Pend Oreille County is a county in the State of Washington, recognized under the laws of the State of Washington, and governed pursuant to Title 36 RCW.

2.11 HiTest Sand, Inc. is a Canadian company, registered to do business in the State of Washington.

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2.12 The actions of Respondents-Defendants have injured the rights of the Petitioners-Plaintiffs, and thus the Petitioners-Plaintiffs have standing to seek relief from this court.

III. JURISDICTION AND VENUE

3.1 Spokane County Superior Court has original jurisdiction of this action pursuant to its original jurisdiction to hear all cases at law for which jurisdiction has not been vested by law exclusively in some other court. Washington Constitution, Article IV, Section 6.

3.2 Venue is proper in Spokane County Superior Court pursuant to RCW 36.01.050 because an action against a county may be commenced in the superior court of either of the two nearest judicial districts.

IV. FACTS

4.1 Parcels #17036, #19183, and #19193 were purchased in 1996 by the PUD for a gas turbine power works, however, these plans were abandoned and the land was managed for timber.

4.2 On or about March 9, 2016, the PUD issued a public notice of intent to declare Parcels #17036, #19183, and #19193 "surplus."

4.3 On or about March 15, 2016, Parcels #17036, #19183, and #19193 were declared "surplus" by the PUD.

4.4 On or about August 31 and September 7, 2016, public notice of sale for Parcels #17036, #19183, and #19193, for fair market value, was published.

4.5 On or about April 18, 2017, HiTest Sand, Inc. requested electrical service from the PUD, along with providing a down payment to the PUD for four parcels of land (#17036, #19183, #19193, and #19182). The County owned Parcel #19182 at the time.

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4.6 On or about April 25, 2017, the PUD sent a Letter of Intent to purchase Parcel #19182 from Pend Oreille County, with the intent to sell the Parcel to HiTest Sand, Inc.

4.7 On or about April 25, 2017, the PUD, in the same Letter of Intent described in paragraph 4.6, above, declared its intent to sell all four parcels, #17036, #19183, #19193, and #19182, to HiTest Sand, Inc. for the purpose of building a Silicon Smelter on the property.

4.8 On or about June 16, 2017, the PUD sent an amended Letter of Intent which removed Parcel #19182 from the April 25, 2017 Letter of Intent.

4.9 On or about June 20, 2017, the Pend Oreille County Board of County Commissioners sent a Letter of Intent to the PUD for the sale of Parcel #19182.

4.10 On or about June 20, 2017, the Pend Oreille County Board of County Commissioners approved Resolution No. 2017-22, authorizing the sale of Parcel #19182 to the PUD.

4.11 On or about August 1, 2017, the PUD Board of Commissioners approved Resolution No. 1399 which granted PUD General Manager Colin Willenbrock authority to negotiate the sale of Parcels #17036, #19183, #19193, and #19182. The PUD had not yet completed the purchase of Parcel #19182 from Pend Oreille County.

4.12 On or about August 2, 2017, the PUD issued a check to Pend Oreille County for the purchase of Parcel #19182.

4.13 On or about August 10, 2017, HiTest Sand, Inc. deposited earnest money with the closing agent, Frontier Title & Escrow Co., Inc. for the purchase of the parcels from the PUD.

4.14 On or about August 21, 2017, the PUD entered into a Purchase and Sale Agreement for Parcels #17036, #19183, #19193, and #19182 to HiTest Sand, Inc.

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4.15 On or about September 1, 2017, the Purchase and Sale Agreement was executed by the PUD and HiTest Sand, Inc.

4.16 On or about September 18, 2017, a Special Warranty Deed from PUD to HiTest Sand, Inc. was recorded with the Pend Oreille County Auditor, Marianne Nichols, unifying the four Parcels into one deed.

4.17 The PUD did not declare Parcel #19182 "surplus" at any time prior to selling it to HiTest Sand, Inc. as part of the four-parcel package.

4.18 The PUD did not conduct an election of the voters of the PUD on the question of approval of the proposed sale of the four-parcel package, which included Parcel #19182.

V. CAUSES OF ACTION

A. FIRST CAUSE OF ACTION: UNIFORM DECLARATORY JUDGMENT ACT

5.1 All preceding paragraphs are incorporated by reference as though fully set forth herein.

5.2 All interested persons whose rights, status, or other legal relations are affected may request the court to determine the construction of the County and PUD actions, and obtain a declaration of rights, status, or other legal relations thereunder.

5.3 Petitioners-Plaintiffs and Respondents-Defendants are engaged in an actual, present, and existing dispute. *Diversified Indus. Dev. Corp. v. Ripley*, 82 Wn. 2d 811, 814–15, 514 P.2d 137, 139 (1973). Petitioners-Plaintiffs and Respondents-Defendants have genuine and opposing interests that are direct and substantial. *Id.* A judicial determination of the dispute will be final and conclusive. *Id.*

5.4 This action involves interests that are of a direct and substantial import. *Id.*

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5.5 Petitioners-Plaintiffs request that the Superior Court declare that the PUD operated outside of statutory authority prescribed under RCW 54.16.020 and thus acted *Ultra Vires* when it purchased Parcel #19182 from Pend Oreille County.

5.6 Petitioners-Plaintiffs request that the Superior Court declare that Pend Oreille County Resolution No. 2017-22 is void, to the extent that it purports to authorize the PUD to purchase Parcel #19182 from the County.

5.7 Petitioners-Plaintiffs request that the Superior Court declare that the PUD operated outside of statutory authority prescribed under RCW 54.16.180 and thus acted *Ultra Vires* when it approved Resolution 1399 authorizing the sale of Parcel #19182.

5.8 Petitioners-Plaintiffs request that the Superior Court declare that the PUD operated outside statutory authority prescribed under 54.16.180 and thus acted *Ultra Vires* when it conveyed Parcel #19182 to HiTest Sand, Inc. in a package with three other parcels (#17636, #19183, and #19193).

B. SECOND CAUSE OF ACTION: WRIT OF PROHIBITION

5.9 All preceding paragraphs are incorporated by reference as though fully set forth herein.

5.10 A writ must be issued in any case where there is not a "plain, speedy, and adequate remedy in the ordinary course of law." RCW 7.16.290. Further, the party subject to the writ must have a clear duty to act and the applicant for the writ must be "beneficially interested." RCW 7.16.160, 7.16.170.

5.11 Petitioners-Plaintiffs are "beneficially interested" because they have an interest in the actions beyond other citizens. *Retired Pub. Employees Council of Washing v. Charles*, 148

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Wn. 2d 602, 616, 62 P.3d 470, 478 (2003). As discussed in paragraphs 2.1 and 2.2, *supra*, RG*NEW's and CANSS's members include residents of Pend Oreille County, residing within the boundaries of the PUD, and who are served by the PUD, and thus have a unique interest in this action. The individual Petitioners-Plaintiffs are themselves County residents and PUD residents and customers, as discussed in paragraphs 2.3 through 2.8, *supra*.

5.12 A Superior Court may arrest the proceedings of the PUD when those proceedings entirely lack authority. RCW 7.16.290; *In re King County Hearing Examiner*, 135 Wn.App. 312, 319, 144 P.3d 345, 348 (Div 1, 2006).

5.13 Petitioners-Plaintiffs request that the Superior Court order the PUD to cease and terminate the purchase of Parcel #19182 from Pend Oreille County and further order that the parcel be returned to the County.

5.14 Petitioners-Plaintiffs request that the Superior Court order the PUD to cease and terminate the sale of Parcels #17036, #19183, #19193, #19182 to HiTest Sand, Inc. and further order that the parcels be returned to the PUD.

VI. PRAYER FOR RELIEF

WHEREFORE, Petitioners-Plaintiffs request that this Court grant the following relief:

6.1 Declare that the PUD operated outside its statutory authority when it purchased Parcel #19182 from Pend Oreille County, and thus the conveyance of Parcel #19182 from Pend Oreille County to the PUD is void.

6.2 Declare that the PUD operated outside its statutory authority when it approved Resolution No. 1399 and thus the Resolution is invalid.

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6.3 Declare that the PUD operated outside its statutory authority when it conveyed Parcels #17036, #19183, #19193, and #19182 to HiTest Sand, Inc., and thus the conveyance of Parcels #17036, #19183, #19193, and #19182 from the PUD to HiTest Sand, Inc. is void.

6.4 Issue a writ of prohibition barring the PUD from purchasing Parcel #19182 from Pend Oreille County, barring the PUD from selling Parcels #17036, #19183, #19193, and #19182 to HiTest Sand, Inc., and requiring that the parcels be returned to their previous governmental owners.

6.5 And for such other and further relief as the Court may deem appropriate.

DATED this 6th day of June, 2018.

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