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8 **SKAGIT COUNTY HEARING EXAMINER**

9 **ERIC BATTLES AND EMILY**
10 **MCLAUGHLIN**, a married man and woman,
and their marital community,

11 Appellants,

12 v.

13 **SKAGIT COUNTY**, a Washington Municipal
14 Corporation

15 Defendant.
16

CAUSE NO. APL 2026-0002

RESPONSE TO MOTION TO DISMISS

17 **The County Erroneously Argues that The State Made A Final, Appealable**
18 **Decision to Disallow Appellants to Rebuild.**

19 The County erroneously argues that the Washington State Department of
20 “Ecology” made a final decision, appealable to the Pollution Control Hearings Board,
21 that Appellants had a substantially damaged home and could not rebuild it. That is not
22 the case. **Ecology made a recommendation to Skagit County about the degree of**
23 **damage to the Battles/McLaughlin home**, Skagit County made a final appealable
24 decision when it concurred with that recommendation.
25

The State Controls Floodways/Floodplains Through Local Government

Ordinances

RCW 86.16.020 explains that “statewide floodplain management regulation shall be exercised through “local governments” administration of the national flood insurance program requires.” RCW 18.16.020 states in relevant part:

Statewide floodplain management regulation shall be exercised through: (1) Local governments’ administration of the national flood insurance program regulation requirements, (2) the establishment of minimum state requirements for floodplain management that equal the minimum federal requirements for the national flood insurance program, and (3) the issuance of regulatory orders. This regulation shall be exercised over the planning, construction, operation, and maintenance of any works, structures and improvements, private or public, which might, if improperly planned, constructed, operated and maintained, adversely influence the regimen of a stream or body of water or might adversely affect the security of life, health, and property damage by flood water.

RCW 86.16.030 gives Ecology the authority to:

- (1) Review and approve county... flood plain management ordinances.
- (2) **Provide technical assistance** to local governments in the administration of their flood plain management ordinance.
- (3) **When requested**, provide assistance to local government in enforcement actions against any individual or individuals performing activities in the floodplain that are not in compliance with local, state or federal floodplain management requirements.

RCW 86.16.041 demands that the County “submit to the department of Ecology any new floodplain management ordinance or amendment to any existing floodplain management ordinance.” RCW 86.16.041 requires that **local governments** such as the County, develop ordinances that restrict land uses “within designated floodways **including the prohibition of construction or reconstruction, repair replacement of residential structures.**” RCW 86.16.041 demands that the County “adopt regulations prohibiting construction/reconstruction within floodways except for repairs unless the repair/reconstruction project does not “exceed 50 percent of the market value of the structure.”

1 RCW 86.16.041 (4) (a) specifies that “**at the request of the... county with land**
2 **use authority** over the structure” Ecology is authorized to assess the risk of harm to life
3 and property... based on scientific analysis and “**may exercise best professional**
4 **judgment in recommending to the permitting and authority** repair, replacement or
5 relocation of the substantially damaged structure.” RCW 86.16.041 allows Ecology to
6 make **a recommendation** to the local government about a substantially damaged
7 structure. Ecology simply makes a “recommendation” with respect to the repair of a
8 substantially damaged building. The local government has the authority to concur with
9 or reject Ecology’s recommendation. Ecology’s recommendations have no mandatory
10 effect. The local government must **concur** with Ecology’s recommendation. RCW
11 86.16.041 (4)(a) and (4)(b), each address **Ecology’s recommendation** which demands
12 local government concurrence. RCW 86.16.041 (4)(a) states in relevant part:

13 The effect of the Department’s recommendation with the...County’s concurrence,
14 to allow repair, replacement of a substantially damaged residential structure
within the floodway is a waiver of the floodway prohibition.

15 RCW 86.16.041 (4)(b) governs “projects that substantially improve structures in a
16 designated floodway for the primary purpose of reducing risk of flood damage.” **It gives**
17 **Ecology the authority “to recommend to the permitting authority whether the**
18 **project should proceed.”** Under 86.16.041 (b) Ecology solely make a recommendation
19 to the County **with which the County must concur**. RCW 86.16.041 (b) states in
20 relevant part:

21 **“The effect of the department’s recommendation with the...County’s**
22 **concurrence** to allow a project to proceed within the floodway is a waiver of the
floodway prohibition.”

23 Further, the County’s Flood Damage Prevention Ordinance, codified at SCC
24 14.34, makes the County the ultimate decision-maker with respect to substantially
25 damaged buildings located within the floodway. SCC 14.34.190 specifies that “the

1 Department of Ecology is authorized to assess the risk of harm to life and property.”
2 Further, 14.34.190 recognized that Ecology simply makes a recommendation to the
3 County about repair or replacement of a flood damaged residence. Without a doubt,
4 RCW 86.16.041 (a) and (b) demand that the County concur with Ecology’s
5 recommendation about rebuilding substantially damaged residences. The County
6 erroneously conflates a non-binding Ecology recommendation and a final, appealable
7 decision.

8 Here, the County was the final decision-maker about the Battles-McLaughlin
9 residential rebuild; the County’s Flood Damage Prevention Ordinance got enacted
10 pursuant to authority the State legislature delegated to it, pursuant to RCW 86.16.020 to
11 adopt a floodplain management regulation.

12 RCW 86.16.020 clearly specifies that “statewide floodplain regulation shall be
13 exercised through (1) local governments’ administration of national flood insurance
14 program requirements.” Ecology, pursuant to RCW 86.16.041 “reviewed the County’s
15 floodplain management ordinance—chapter 14.34 of the County Code. Under RCW
16 86.16.031 Ecology “provides” technical assistance to local governments... in the
17 administration of their flood management ordinances. Further, pursuant to RCW
18 86.16.041 Skagit County consulted with Ecology about the Battles/McLaughlin rebuild
19 project.

20 Here, **pursuant to RCW 86.16.041 and SCC 14.34.190 Ecology made a**
21 **recommendation to the County with which the County concurred.** RCW Chapter
22 86.16 is structured so that Ecology does not make final decisions, subject to appeals,
23 about substantially damaged buildings. **It simply makes recommendations to the**
24 **County** about substantially damaged buildings with which the County must concur.

1 Here, Ecology did not render a final, appealable decision. Skagit County officials
2 requested that Ecology make a recommendation about Plaintiff/Appellants substantially
3 damaged structure and the County concurred with it.

4 This tribunal should reject the County claim that Ecology's recommendation to
5 the County was a final appealable decision. It was simply a recommendation.
6 Significantly, RCW 86.16.071 states that the State's exercise of its authority to manage
7 floodplains through local ordinances (RCW 86.16.020) "does not imply or create any
8 liability for damages against the state." That is because, in the context of substantially
9 damaged buildings Ecology only makes recommendations with which the County has
10 the option of concurring.

11 **This Court Should Reject The County's Newly Minted Claim That Ecology's**
12 **Recommendation About Appellants Structure Was A Final, Appealable Decision.**

13 The County erroneously alleges that the Department of Ecology's
14 **recommendation to the County** that the Battles/McLaughlin home not be rebuilt was a
15 final, appealable decision to the Pollution Control Hearing Board. The County Site
16 Assessment/Flood Decision totally undermines the County claim that this case should
17 be dismissed because Appellant's failed to exhaust their state administrative remedies.

18 **The County decision characterizes its Site Assessment as a final appealable**
19 **decision; it states**

20 "This decision becomes final unless you file an appeal with the Skagit County
21 Hearing Examiner, with required fees within 14 days of this decision. Appeal
22 forms are available on the Skagit County website through the Civil Access Portal.
23 Appeals are processed as appeals Level I decisions under Skagit County Code
14.09.290 failure to appeal may constitute waiver of all rights to appeal the
decision."

24 The County Site Assessment Decision characterizes Ecology's decision as a
25 "recommendation" totally undermining its present claim that Appellants failed to exhaust
their administrative remedies.

1 The Local Project Review Statutes do not expose permit applicants to a
2 succession of different permitting processes and open record hearings. RCW
3 36.70B.110 demands that local governments consolidate permit processes and work
4 with other agencies to do so. The Local Project Review Statute allows only a single
5 open-record hearing.

6 The County claim that Plaintiffs had to appeal Ecology's recommendation to the
7 Pollution Control Hearings Board and then engage in a second appeal and open record
8 hearing in Skagit County runs afoul of regulatory reform policies demanding
9 consolidation of hearings, appeals and permitting processes.

10 The claim that Appellants need to engage in an appeal process before the
11 Pollution Control Hearings Board, and then, Skagit County is not supported by the
12 above-discussed state statutes which make the County the final decision-maker about
13 rebuilding substantially damaged homes in the floodplain. The County is grasping at
14 straws to support its position. It wants to make the state responsible for compensating
15 Appellants for its decision taking its property.

16 **This Jury-less Tribunal Should Dismiss This Case to Vindicate Appellants'**

17 **"Inviolate" Right To a Jury Trial.**

18 Plaintiff/Petitioner asks the Examiner to refuse to dismiss the Battles/McLaughlin
19 appeal based on the County's erroneous claim that Ecology made a final decision to
20 disallow them to rebuild their substantially damaged structure. Nevertheless, Appellants
21 ask the Examiner to dismiss or stay this appeal on an alternative basis—that this jury-
22 less tribunal lacks authority to adjudicate Appellants' inverse condemnation claim They
23 do not allege that the County lacks authority to prohibit them from rebuilding their home;
24 Battles/McLaughlin claim that the County decision prohibiting Battles/McLaughlin from
25 rebuilding their home is a decision which is a taking/damaging of their residential

1 property for a public purpose; to implement all of the public objectives articulated in the
2 County's Flood Damage Prevention Ordinance at SCC 14.34.030.

3 Article 1 Section 16 of the Washington State Constitution demands that the
4 County compensate Appellants for taking/damaging their property for a public purpose.
5 Further, Art. 1 Sec. 16 demands that a jury fix the compensation owed to Appellants.
6 This tribunal lacks jurisdiction over Appellants inverse condemnation claim and cannot
7 convene a jury to determine what compensation is due to Appellants.

8 This Tribunal should dismiss/stay this proceeding to allow Battles and
9 McLaughlin to litigate their inverse condemnation claim in the Snohomish County
10 Superior Court Cause No. 26-2-04814-31 before a jury. Refusing to dismiss/stay
11 Appellants' appeal violates their "inviolable" constitutional right to a jury trial. See
12 Appendix A for a copy of Complaint filed in the Snohomish County Superior Court. The
13 County, compelling Appellants to remain in this juryless tribunal where they cannot
14 litigate their constitutionally based defenses violates Battles and McLaughlin's
15 constitutional rights. This Tribunal should stay or dismiss this appeal to allow Appellants
16 to litigate their inverse condemnation claim. This case is akin to *SEC v. Jarkesy* 603
17 *U.S. 109* in which the United States Supreme Court held that the Securities and
18 Exchange Commission violated Jarkesy's constitutional rights by making him litigate his
19 securities fraud claim before a jury-less tribunal. That is the case here as well. This
20 Tribunal should dismiss Appellant's appeal to avoid further violation of their
21 constitutional rights.

22
23 DATED this 2nd day of July 2026.

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25 

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9 **SNOHOMISH COUNTY SUPERIOR COURT**
10 **FOR THE STATE OF WASHINGTON**

11 **ERIC BATTLES**, and **EMILY MCLAUGHLIN**,
12 a married couple and their marital
community,

13 Plaintiffs,

14 v.

15 **SKAGIT COUNTY**, a Washington Municipal
Corporation,

16 Defendant.
17

No.:

**COMPLAINT FOR CONSTITUTIONAL
VIOLATIONS.**

18 **I. PARTIES**

19 1.1 Plaintiffs Eric Battles and Emily McLaughlin, a married couple and their marital
20 community, reside at 41649 North Shoreline in unincorporated Skagit County along the
21 Shoreline of the Skagit River.

22 1.2 Skagit County is a municipal corporation formed under the laws of Washington
23 State.
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II. VENUE AND JURISDICTION

2.1 Based on RCW 36.01.050 addressing the venue of actions against a county, the action may be filed in either of the two closest judicial districts. The closest venues for action against Skagit County are Snohomish County or Island County. Plaintiffs in this action have elected to file their action against Skagit County in the Snohomish County Superior Court.

2.2 The Snohomish County Superior Court has jurisdiction over plaintiffs' damage claims.

III. FACTUAL BACKGROUND

3.1 Eric Battles and Emily McLaughlin own a home that was built along the shoreline of the Skagit River in 1964.

3.2 The Battles/McLaughlin home got built before Skagit County adopted an ordinance in 2007 allowing the county to order owners to tear down residences located in the floodplain that have experienced substantial damage by flooding.

3.3 The ordinance, codified at chapter 14,34 Skagit County Code recites numerous planning policy goals and purposes such as increasing floodway/floodplain storage capacity, allowing naturalization of floodway/floodplains and reducing public expenditures associated with flooding.

3.4 The County ordinance allows county officials to require the owners of a damaged home, located within the river floodway/floodplain to be torn down to increase floodway storage, reduce flood-induced public expenditures, and to restore the natural characteristics of the floodway/floodplain.

3.5 County officials, behind closed doors, determined that plaintiffs needed to demolish their flood-damaged home to further the county planning objectives.

3.6 The County ordinance authorizing such demolition of flood-damaged residences within the floodplain/floodway did not get enacted until 2000.

1 3.7 No state, federal or county regulations disallowed construction within floodways
2 when the Battles/McLaughlin home got built in 1964, it is accordingly a legal, non-conforming
3 use.

4 3.8 The County has ordered plaintiffs to demolish their home and assume all expenses
5 associated with clearing all domestic improvements off their waterfront lot.

6 3.9 Mr. Battles and Ms. McLaughlin have a substantial mortgage associated with their
7 1964 home. They will be liable for continuing their mortgage payments for 30 more years.

8 3.10 County officials have explained to plaintiffs that they will allow them to use their
9 waterfront property, once cleared of all domestic improvements, for picnics, kayaking or
10 swimming.

11 3.11 Although the County demands demolition of the Battles/McLaughlin home, to
12 further articulated planning aims and goals, it has not offered them the slightest compensation
13 for demolishing their home and maintaining a vacant waterfront property within the floodway.

14 3.12 The County failed to offer either battles nor their mortgage lien holder any
15 opportunity to defend the riverfront property from the county no rebuild order.

16 **IV. DECLARATORY JUDGEMENT; CONSTITUTIONAL VIOLATIONS**

17 4.1 This claim incorporates the above paragraphs as though fully set forth herein.

18 4.2 Clearly, the County no rebuild order affects the plaintiffs' property rights. In fact,
19 their residence is their most valuable asset.

20 4.3 The County, ignoring the need for due process protections, demanded by the
21 Washington State Constitution Article 1 Section 3 failed to offer the plaintiffs any due process
22 protections, before making a decision that adversely affected such rights.

23 4.4 Further, the County ignored its obligation under Article 1 Section 16 of the
24 Washington State Constitution demanding that the county compensate plaintiffs before taking or
25 damaging their property for a public purpose.

1 4.5 The County has failed to abide by the Washington State Constitution and did not
2 offer plaintiffs any compensation despite ordering Defendants to demolish their home in
3 furtherance of the County's aim to increase floodway/floodplain storage capacity and to promote
4 the naturalization of previously developed floodway/floodplain property.

5 4.6 This court should enter a judgement voiding the County's demolition/no repair
6 determination made pursuant to Skagit County Code 14.34.090 because it was made without
7 according the slightest due process protections to plaintiffs.

8 4.7 This court should enter an award of damages to compensate plaintiffs for
9 demolishing their home to further county planning objectives. Article 1 Section 16, Wash. Const
10 demands compensation upon taking or damaging property for a public purpose. The court
11 should declare that the County has violated plaintiffs' constitutional rights and require payments
12 of compensation to plaintiffs.

13 **V. DECLARATORY JUDGEMENT: NON CONFORMING STRUCTURE**

14 5.1 This paragraph incorporates paragraphs above as though fully set forth herein.

15 5.2 Washington's Declaratory Judgement statutes, codified at chapter 7.24 RCW
16 7.24.020 allows courts to declare the rights of individuals whose rights are affected by a
17 municipal ordinance such as SCC 14.34.190.

18 5.3 The County fails to recognize that plaintiffs own a structure that got built in 1964,
19 many decades before the County adopted its flood damage prevention ordinances in 2000. It
20 further fails to recognize that the County did not adopt any ordinance recognizing "special flood
21 hazard zones" until 2000 nor did the County deem the Battles/McLaughlin residence to be
22 located within a special flood hazard zone until after adoption of an ordinance recognizing that
23 zone in 2000, decades after the plaintiffs' home got built in 1964.

24 5.4 The Battles/McLaughlin home is a legal, non-conforming structure. Under
25 Washington law, a nonconforming right is a property right that has constitutional protection.

5.5 This court should declare that the Battles/McLaughlin home, constructed in 1964, before either the county, the state, or federal government had designated the plaintiffs' property as a floodway/floodplain within which residential construction is prohibited as well as reconstruction. This court should declare that plaintiffs' home is a nonconforming structure which Washington law recognizes as a constitutionally protected property right.

5.6 The essence of a nonconforming use/structure is that it is immune from retroactive application of new laws; as a matter of fundamental fairness, the vast majority of laws are only given prospective effect. Only under rare circumstances, does a legislature ask that retroactive effect be given to new legislation.

5.7 The County improperly retroactively applied SCC 14.34.090 to plaintiffs and demanded that they demolish their home. Mr. Battles and Ms. McLaughlin had not a scintilla of notice that their 1964 home would be deemed to occupy a “special flood hazard zone” or that they would have to demolish it to further the County objectives increasing floodplain storage and naturalizing the surface of the floodplain properties by eliminating residential structures and decreasing county expenditures on flood damage.

5.8 No notice recorded against the title to their now property notified plaintiff or their lender that they would be prohibited from rebuilding their home if it got substantially damaged.

5.9 This court should declare that the county's retroactive application of its code violates plaintiffs' right to due process.

5.10 This court should declare that plaintiffs home is a nonconforming structure and that in Washington, nonconforming structures are constitutionally protected property rights.

VI. ILLEGAL TAX

6.1 The County charged plaintiffs over \$2400 to file its appeal.

6.2 RCW 82.02.020 does not authorize government agencies to raise revenue through charging steep appeal fees.

1 6.3 The appeal fee imposed by the County exceeds that of any court.

2 6.4 This court should declare that the appeal fee imposed on plaintiffs is an illegal tax
3 not authorized by RCW 82.02.020.

4 **PRAYER FOR RELIEF**

5 NOW, THEREFORE, This court should declare that

- 6 1. The County violated plaintiffs' right to due process.
- 7 2. This court should declare that Article 1 Section 16 of the Washington Constitution
8 demands that the county compensate plaintiffs for taking/damaging their
9 residential property by refusing to allow them to rebuild their home.
- 10 3. This court should award compensation to plaintiffs for paying an illegal,
11 unauthorized appeal fee, it is an unauthorized tax.
- 12 4. This court should declare that plaintiffs nonconforming 1964 structure is
13 constitutionally protected; the right to maintain and prepare that home is a
14 property right.
- 15 5. The court should deem this complaint to be amended if the interests of justice
16 demand amendment.
- 17 6. This court should award any other relief which is just and equitable, including
18 attorney fees.

19 DATED this 4th day of May, 2026.

20 LAND USE & PROPERTY LAW, PLLC

21 

22 Jane Koler, WSBA #13541

23 Callan Johns, WSBA #60985

24 Attorneys for Plaintiffs Eric Battles and Emily
25 McLaughlin