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9 **BEFORE THE SKAGIT COUNTY HEARING EXAMINER**

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11 **ERIC BATTLES AND EMILY**
12 **MCLAUGHLIN**, a married man and woman,
and their marital community,

13 Appellants,

14 v.

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

16 Defendant.
17

NO. APL 206-0002

**REQUEST / DEMAND TO STAY
ADMINISTRATIVE APPEAL
PROCEEDING**

18 COMES NOW, Jane Koler and Callan Johns, Land Use & Property Law, PLLC,
19 representing Appellants Eric Battle and Emily McLaughlin, and requests that this matter
20 must be stayed to protect Appellants' constitutional right to a jury trial conferred by the
21 Washington State Constitution.

22 The Washington State Constitution, Article 1 § 21, states that "the right of trial by
23 jury shall remain inviolate."
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1 Further, this is essentially an inverse condemnation action. The County has
2 demanded that the Appellants tear down their home to promote the County policy of
3 enlarging flood plains and allowing flood plains to naturalize.

4 Article 1 § 16 of the Washington Constitution that relates to eminent domain
5 specifies that **property may not be taken through eminent domain until**
6 **compensation has been ascertained by a jury.**

7 This is a jury-less tribunal. It does not have the authority to address Appellants'
8 constitutional defenses. This tribunal must stay this matter to allow an independent
9 court, free of County influence, to empanel a jury to address Appellants' constitutional
10 claims.

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12 **A. The US Supreme Court and Other Courts Recognize that the Constitutional**
13 **Right to a Jury Trial Trumps the Right of a Government Agency to Litigate a**
Penalty/Restoration Action.

14 In *Tull v. United States*, 481 U.S. 412 (1987), the United States Supreme Court
15 held that the federal government's claim for civil penalties arising out of violations of the
16 Clean Water Act was analogous to the common law action for debt for which a jury is
17 required. 481 U.S. at 422-25. It reversed a lower court holding that the parties had no
18 right to a jury trial. See *United States of America, v. Neil T. Nordbrock*, 941 F.2d 947,
19 949 (9th Cir. 1991) (The Seventh Amendment guarantees a jury trial to determine
20 liability in a government action seeking civil penalties.).

21 Similarly, in *Acushnet River & New Bedford Harbor Proceedings RE: Alleged*
22 *PCB Pollution*, the Court held that Massachusetts's "claims for natural resource
23 damages and recovery of public nuisance abatement expenses under both state and
24 federal statutes present legal issues which must be tried to a jury as a matter of right."
25 712 F. Supp. 994, 1004 (D.Mass 1989).

1 The County might argue that Battles and McLaughlin s' demand for a jury trial is
2 trumped by the County Commissioner's decision to direct review of county decisions to
3 the County Hearing Examiner. It is well established that legislative enactments cannot
4 trump the Constitution. "Long usage may neither repeal nor justify the violation of such
5 mandatory, constitutional provisions and disobedience or evasion is not permissible..."
6 *State ex. rel. Billington v. Sinclair*, 28 Wn.2d 575, 581-82, 183 P.2d 813 (1947).

7 The framers of the Washington Constitution sought to protect citizens from
8 arbitrary government tribunals. States with identical jury trial guarantees have similarly
9 found that jury trials are required in these circumstances. Rhode Island's Constitution,
10 like that of Washington State, provides that "the right to a jury trial shall remain
11 inviolate." In *Bendick v. Cambio*, the Rhode Island Supreme Court held that Rhode
12 Island's Constitution gave the owner entitlement to a jury trial when the State's
13 Department of Environmental Management sued for injunctive relief and civil penalties.
14 *Bendick v. Cambio*, 558 A.2d 941, 945-46 (R.I. 1989).

15 **B. The Framers of the Washington Constitution Disapproved of Government**
16 **Agencies.**

17 Richard Sanders, a retired Washington Supreme Court Justice, filed an amicus
18 brief in *King v. State of Washington, Dep't of Ecology*, Superior Court Grant County,
19 Cause No. 26-00263-13. The Pacific Legal Foundation, the foundation involved with
20 landmark United States Supreme Court cases vindicating the constitutional rights of
21 property owners, representing the Kings, is claiming in the Grant County Superior Court
22 that Kings' state constitutionally protected right to a jury trial trumps the right of the State
23 Pollution Control Hearings Board to adjudicate a penalty/restoration order enforcement
24 proceeding.

25 Justice Sanders's amicus brief explains that the framers of Washington's State
Constitution were suspicious of administrative tribunals:

Demand to Stay Administrative Appeal Proceeding - 3

LAND USE & PROPERTY LAW, PLLC
6659 Kimball Drive, Suite B-201
Gig Harbor, WA 98335
(253) 853-1806
Jane Koler

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2 The framers of Washington's Constitution went further however – in a way
3 that's revealing for this case because it reflects the framers' hostility
4 towards what in today's parlance would be called "administrative
5 hearings." Specifically, art. 1 section 16 which relates to eminent domain,
6 specifies that property may not be taken through eminent domain until
7 after compensation has been ascertained by a jury... The framers chose
8 this wording which originated in Ohio, ... because during the nineteenth
9 century some states had employed some commissioners (i.e.
10 administrative experts) instead of juries to ascertain just compensation in
11 eminent domain cases.

12 ...

13 But the commissioner system proved extremely unpopular in some states
14 as railroad construction boomed and more and more land was taken
15 through eminent domain. See attached Appendix 1, Grant County
16 Superior Court Case No. 26-2-00263-13, Corrected Brief Amicus Curiae in
17 Support of Plaintiffs and In Support of Plaintiffs' Motion for Summary
18 Judgment, page 6.

19 The right to a jury trial "shall remain inviolate." See WASH. CONST. art 1 § 21.
20 The "term inviolate connotes deserving of the highest protection." *Sofie v. Fibreboard*
21 *Corp.*, 112 Wn.2d 636, 656, 771 P.2d 711 (1989). Courts have held that even in close
22 cases they must err on the side of preserving the right to a jury trial. *Bain v. Wallace*,
23 167 Wash. 583, 586, 10 P.2d 226 (1932); *Furnstahl v. Barr*, 197 Wn. App. 168, 175,
24 389 P.3d 635 (2016). Further, art. 1 section 1 of the Washington Constitution is a
25 mandatory clause. See *id.* art. 1 section 21 of the Washington Constitution is a
"mandatory clause." ("The provisions of this Constitution are mandatory, unless by
express words they are declared to be otherwise.") Timothy Sandefur, The "Mandatory"
Clauses of State Constitutions, 60 Gonz. L. Rev. 159 (2025)

Retired Justice Sanders explains in his amicus brief that in situations like this
one, courts reason "by analogy to the common law tort actions that existed in 1898."
See attached Appendix 1, Grant County Superior Court Case No. 26-2-00263-13,

1 Corrected Brief Amicus Curiae in Support of Plaintiffs and In Support of Plaintiffs'
2 Motion for Summary Judgment, page. 2. In other words, they look at “the heart of the...
3 cause of action” to ask whether it is of the same nature as a common law charge triable
4 to a jury. *Id.* 649.

5 Here, the County’s demand that Battles and McLaughlin demolish their home to
6 increase flood plain storage and to facilitate revegetation/naturalization of such areas is
7 akin to a common law nuisance claim. Retired Justice Sanders observes that the public
8 nuisance offense originated as a common law crime and, therefore, naturally a matter
9 for a jury. See attached Appendix 1, Grant County Superior Court Case No. 26-2-
10 00263-13, Corrected Brief Amicus Curiae in Support of Plaintiffs and In Support of
11 Plaintiffs’ Motion for Summary Judgment, page 10; *citing Coffey v. Territory*, 1 Wash.
12 325, 329-30 (1890). The existence of a public nuisance offence remains a question of
13 fact for the jury today. *Greenwood v. Olympic Inc.*, 51 Wn.2d 18, 22-23, 315 P.2d 295
14 (1957). Retired Justice Sanders observes that “not long after statehood the Washington
15 Supreme Court held in a pollution case that the existence of a nuisance is for the jury to
16 determine.” *Lavner v. Independent Light & Water Co.*, 74 Wash. 373, 374, 133 P. 592
17 (1913) This case is exactly similar to *Tull*, where the United State Supreme Court
18 concluded that a property owner was entitled to a jury trial under the Seventh
19 Amendment where the government accused him of violating the Clean Water Act and
20 sought civil penalties. *Tull*, 481 US 412, 422-25, 427. At the time of Statehood, inverse
21 condemnation/ eminent domain actions were decided by juries.

22 Last year, the United States Supreme Court in *SEC v. Jarkesy*, 603 US 109, 122
23 (2025) held that one is entitled to a jury trial under the Seventh Amendment if the claim
24 at issue is legal. To determine whether a claim is legal in nature, courts consider the
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1 cause of action and the remedy it provides. The remedy is the most crucial
2 consideration.

3 This tribunal should refrain from issuing any further decisions in this matter. It
4 should do so to allow Battles and McLaughlin to exercise their inviolate constitutional
5 right to a jury trial; Skagit County has already impaired Battles and McLaughlin's
6 constitutional entitlement to a jury trial.

7 Further, this tribunal does not have any jurisdiction over Battles and McLaughlins'
8 constitutional defenses against the count's demolition directive.

9 It would be appropriate for a superior court jury to determine what compensation
10 is due to Mr. Battles and Ms. McLaughlin upon complying with the County's demand to
11 demolish their home.

12 This tribunal should refrain from ruling on this dispute and refuse to commit
13 further violations of Battles and McLaughlins' constitutional rights.

14 DATED this 30th day of April 2026.

15 LAND USE & PROPERTY LAW, PLLC

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17 Jane Koler, WSBA No. 13541
18 Callan Johns, WSBA No. 60985
19 Attorneys for Battles and McLaughlin
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1 **CERTIFICATE OF SERVICE**

2 I, Callan Johns, hereby state that I am over the age of 18 years, competent to testify,
3 and certify to the following based on my own knowledge and belief. On the date below stated,
4 I caused the Motion to Stay Adjudication of this Matter to be sent in the manner noted to the
5 following parties:

6 Hearing Examiner
7 ☐ Via U.S. Mail, postage prepaid
8 ☐ Via Hand Delivery
9 ☒ Via E-Mail to:
10 HEhearings@co.skagit.wa.us

11 Jason D'Avignon
12 ☐ Via U.S. Mail, postage prepaid
13 ☐ Via Hand Delivery
14 ☒ Via E-Mail to:
15 jasond@co.skagit.wa.us

16 Pamela C. Herman
17 ☐ Via U.S. Mail, postage prepaid
18 ☐ Via Hand Delivery
19 ☒ Via E-Mail to:
20 pberman@co.skagit.wa.us

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

23 DATED this 30th day of April 2026 at Gig Harbor, Washington.

24 **/s/ Callan Johns**
25 Callan Johns