

COPY

SUPERIOR COURT OF 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,

v.

PEND OREILLE PUBLIC UTILITY DISTRICT
NO. 1; PEND OREILLE COUNTY; and HITEST
SAND, INC.,

Respondents-Defendants.

No. 18202551-1

ANSWER AND AFFIRMATIVE
DEFENSES OF DEFENDANT PEND
OREILLE COUNTY

PEND OREILLE COUNTY (the "County"), by and through its attorneys of record
Nathan G. Smith and Brian E. Kistler of Kutak Rock LLP, appears and answers Plaintiffs'
Complaint for Declaratory Judgment, Writ of Prohibition as follows:

**I.
INTRODUCTION**

1.1 Answering paragraph 1.1 of Plaintiffs' Complaint, the County admits that it
sold real property identified as Pend Oreille County Assessor's Parcel No. 19182 to Public

ANSWER AND AFFIRMATIVE DEFENSES OF
DEFENDANT PEND OREILLE COUNTY - 1

KUTAK ROCK LLP
510 W. RIVERSIDE, STE. 800
SPOKANE, WA 99201-0405
509-747-4040

Utility District No. 1 of Pend Oreille County (the “PUD Property”) by a tax title property deed recorded August 2, 2017. The County denies all other allegations of paragraph 1.1 for lack of sufficient basis, information, knowledge and belief.

II. PARTIES AND STANDING

2.1 The County denies for lack of sufficient information, knowledge and belief the allegations set out in paragraph 2.1 of Plaintiffs’ Complaint.

2.2 The County denies for lack of sufficient information, knowledge and belief the allegations set out in paragraph 2.2 of Plaintiffs’ Complaint.

2.3 The County denies for lack of sufficient information, knowledge and belief the allegations set out in paragraph 2.3 of Plaintiffs’ Complaint.

2.4 The County denies for lack of sufficient information, knowledge and belief the allegations set out in paragraph 2.4 of Plaintiffs’ Complaint.

2.5 The County denies for lack of sufficient information, knowledge and belief the allegations set out in paragraph 2.5 of Plaintiffs’ Complaint.

2.6 The County denies for lack of sufficient information, knowledge and belief the allegations set out in paragraph 2.6 of Plaintiffs’ Complaint.

2.7 The County denies for lack of sufficient information, knowledge and belief the allegations set out in paragraph 2.7 of Plaintiffs’ Complaint.

2.8 The County denies for lack of sufficient information, knowledge and belief the allegations set out in paragraph 2.8 of Plaintiffs’ Complaint.

2.9 The County admits the allegations set forth in paragraph 2.9 of Plaintiffs’ Complaint.

1 2.10 The County admits the allegations set forth in paragraph 2.10 of Plaintiffs'
2 Complaint.

3 2.11 The County denies for lack of sufficient information, knowledge and belief the
4 allegations set out in paragraph 2.11 of Plaintiffs' Complaint.

5 2.12 The County denies for lack of sufficient information, knowledge and belief the
6 allegations set out in paragraph 2.12 of Plaintiffs' Complaint.

7
8 **III.**
9 **JURISDICTION AND VENUE**

10 3.1 Paragraph 3.1 asserts a conclusion of law rather than an allegation of fact to
11 which no response is required.

12 3.2 Paragraph 3.2 asserts a conclusion of law rather than an allegation of fact to
13 which no response is required.

14 **IV.**
15 **FACTS**

16 4.1 The County denies for lack of sufficient information, knowledge or belief the
17 allegations set out in paragraph 4.1 of Plaintiffs' Complaint.

18 4.2 The County denies for lack of sufficient information, knowledge or belief the
19 allegations set out in paragraph 4.2 of Plaintiffs' Complaint.

20 4.3 The County denies for lack of sufficient information, knowledge or belief the
21 allegations set out in paragraph 4.3 of Plaintiffs' Complaint.

22 4.4 The County denies for lack of sufficient information, knowledge or belief the
23 allegations set out in paragraph 4.4 of Plaintiffs' Complaint.

24 4.5 The County admits that it owned Parcel No. 19182 on April 18, 2017. The
25 County denies the remainder of paragraph 4.5 of Plaintiffs' Complaint.
26

1 4.6 The County denies for lack of sufficient information, knowledge or belief the
2 allegations set out in paragraph 4.6 of Plaintiffs' Complaint.

3 4.7 The County denies for lack of sufficient information, knowledge or belief the
4 allegations set out in paragraph 4.7 of Plaintiffs' Complaint.

5 4.8 The County denies for lack of sufficient information, knowledge or belief the
6 allegations set out in paragraph 4.8 of Plaintiffs' Complaint.

7 4.9 The County admits the allegations set forth in paragraph 4.9 of Plaintiffs'
8 Complaint.

9 4.10 The County admits the allegations set forth in paragraph 4.10 of Plaintiffs'
10 Complaint.

11 4.11 The County admits only that on or about August 1, 2017, Public Utility
12 District No. 1 of Pend Oreille County had not yet completed the purchase of Parcel No. 19182
13 from the County. The County denies the remainder of paragraph 4.11 of Plaintiffs'
14 Complaint.

15 4.12 The County admits the allegations set forth in paragraph 4.12 of Plaintiffs'
16 Complaint.

17 4.13 The County denies for lack of sufficient information, knowledge or belief the
18 allegations set out in paragraph 4.13 of Plaintiffs' Complaint.

19 4.14 The County denies for lack of sufficient information, knowledge or belief the
20 allegations set out in paragraph 4.14 of Plaintiffs' Complaint.

21 4.15 The County denies for lack of sufficient information, knowledge or belief the
22 allegations set out in paragraph 4.15 of Plaintiffs' Complaint.

4.16 The official records of the Pend Oreille County Auditor speak for themselves.

The County denies the remainder of paragraph 4.16 of Plaintiffs' Complaint.

4.17 The County denies for lack of sufficient information, knowledge or belief the allegations set out in paragraph 4.17 of Plaintiffs' Complaint.

4.18 The County denies for lack of sufficient information, knowledge or belief the allegations set out in paragraph 4.18 of Plaintiffs' Complaint.

V. CAUSES OF ACTION

A. FIRST CAUSE OF ACTION: UNIFORM DECLARATORY JUDGMENT ACT

5.1 Answering paragraph 5.1 of Plaintiffs' Complaint, the County incorporates all of its responses to Plaintiffs' allegations as set forth in paragraphs 1.1 through 4.18 of the County's Answer as if fully set forth herein.

5.2 The statements in paragraph 5.2 of Plaintiffs' Complaint reflect legal conclusions and arguments to which no response is required. To the extent these statements constitute factual allegations, the County denies them.

5.3 The statements in paragraph 5.3 of Plaintiffs' Complaint reflect legal conclusions and arguments to which no response is required. To the extent these statements constitute factual allegations, the County denies them.

5.4 The statements in paragraph 5.4 of Plaintiffs' Complaint reflect legal conclusions and arguments to which no response is required. To the extent these statements constitute factual allegations, the County denies them.

5.5 The statements in paragraph 5.5 of Plaintiffs' Complaint reflect legal conclusions and arguments to which no response is required. To the extent these statements

1 constitute factual allegations, the County denies them.

2 5.6 The statements in paragraph 5.6 of Plaintiffs' Complaint reflect legal
3 conclusions and arguments to which no response is required. To the extent these statements
4 constitute factual allegations, the County denies them.

5 5.7 The statements in paragraph 5.7 of Plaintiffs' Complaint reflect legal
6 conclusions and arguments to which no response is required. To the extent these statements
7 constitute factual allegations, the County denies them.

8 5.8 The statements in paragraph 5.8 of Plaintiffs' Complaint reflect legal
9 conclusions and arguments to which no response is required. To the extent these statements
10 constitute factual allegations, the County denies them.

11
12 **B. SECOND CAUSE OF ACTION: WRIT OF PROHIBITION**

13 5.9 Answering paragraph 5.9 of Plaintiffs' Complaint, the County incorporates all
14 of its responses to Plaintiffs' allegations as set forth in paragraphs 1.1 through 5.8 of the
15 County's Answer as if fully set forth herein.

16 5.10 The statements in paragraph 5.10 of Plaintiffs' Complaint reflect legal
17 conclusions and arguments to which no response is required. To the extent these statements
18 constitute factual allegations, the County denies them.

19 5.11 The statements in paragraph 5.11 of Plaintiffs' Complaint reflect legal
20 conclusions and arguments to which no response is required. To the extent these statements
21 constitute factual allegations, the County denies them.

22 5.12 The statements in paragraph 5.13 of Plaintiffs' Complaint reflect legal
23 conclusions and arguments to which no response is required. To the extent these statements
24
25

1 constitute factual allegations, the County denies them.

2 5.13 The statements in paragraph 5.13 of Plaintiffs' Complaint reflect legal
3 conclusions and arguments to which no response is required. To the extent these statements
4 constitute factual allegations, the County denies them.

5 5.14 The statements in paragraph 5.14 of Plaintiffs' Complaint reflect legal
6 conclusions and arguments to which no response is required. To the extent these statements
7 constitute factual allegations, the County denies them.
8

9 **VI.**
10 **PRAYER FOR RELIEF**

11 6.1 Paragraph 6.1 of Plaintiffs' Complaint states no claim for relief against the
12 County. The statements in paragraph 6.1 of Plaintiffs' Complaint reflect prayers for relief,
13 legal conclusions and arguments to which no response is required. To the extent these
14 statements constitute factual allegations, the County denies them.

15 6.2 Paragraph 6.2 of Plaintiffs' Complaint states no claim for relief against the
16 County. The statements in paragraph 6.2 of Plaintiffs' Complaint reflect prayers for relief,
17 legal conclusions and arguments to which no response is required. To the extent these
18 statements constitute factual allegations, the County denies them.
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20 6.3 Paragraph 6.3 of Plaintiffs' Complaint states no claim for relief against the
21 County. The statements in paragraph 6.3 of Plaintiffs' Complaint reflect prayers for relief,
22 legal conclusions and arguments to which no response is required. To the extent these
23 statements constitute factual allegations, the County denies them.

24 6.4 Paragraph 6.4 of Plaintiffs' Complaint states no claim for relief against the
25 County. The statements in paragraph 6.4 of Plaintiffs' Complaint reflect prayers for relief,
26

1 legal conclusions and arguments to which no response is required. To the extent these
2 statements constitute factual allegations, the County denies them.

3 6.5 Paragraph 6.5 of Plaintiffs' Complaint states no claim for relief against the
4 County. The statements in paragraph 6.5 of Plaintiffs' Complaint reflect prayers for relief,
5 legal conclusions and arguments to which no response is required. To the extent these
6 statements constitute factual allegations, the County denies them.
7

8 **AFFIRMATIVE DEFENSES**

9 To further answer Plaintiff's Complaint, and as affirmative defenses thereto, the
10 County asserts the following affirmative defenses:
11

- 12 1. Plaintiffs have failed to state a claim upon which relief can be granted.
- 13 2. Plaintiffs lack standing.
- 14 3. Plaintiffs' process was insufficient.
- 15 4. Plaintiffs' service of process was insufficient.
- 16 5. Plaintiffs' claims are barred by the applicable statute of limitations.
- 17 5. Petitioners failed to state a claim under the Uniform Declaratory Judgment
18 Act.
19
- 20 6. Plaintiffs' claims are barred by RCW 36.32.330.
- 21 7. The County's actions were within its constitutional and statutory authority.
- 22 8. The County reserves the right to make additional affirmative defenses to
23 Plaintiffs' Complaint as authorized by the Court or by law.
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REQUEST FOR RELIEF

WHEREFORE, the County requests the following relief be granted:

1. That the Court dismiss the Plaintiffs' claims with prejudice; and
2. Such further relief as the Court deems just and equitable.

DATED this 6th day of July, 2018.

KUTAK ROCK, LLP

By: 

Nathan G. Smith, WSBA No. 39699

Brian E. Kistler, WSBA No. 36811

Attorneys for Respondent Pend Oreille County

Kutak Rock, LLP

510 W. Riverside, Ste. 800

Spokane, Washington 99201

Phone: (509) 747-4040

1 **CERTIFICATE OF SERVICE**

2 I certify under penalty of perjury under the laws of the State of Washington that on the
3 6th day of July, 2018, I caused a copy of the foregoing ANSWER OF DEFENDANT PEND
4 OREILLE COUNTY to be served on the following by the method indicated:

5 Richard K. Eichstaedt
6 University Legal Assistance
7 721 N. Cincinnati St.
8 P.O. Box 3528
9 Spokane, WA 99220-3528

VIA US MAIL

10 Dylan A. Eaton
11 Norman M. Semanko
12 Parsons Behle & Latimer
13 800 W. Main St., Ste. 1300
14 Boise, ID 83702

VIA US MAIL

15 John Ray Nelson
16 Foster Pepper PLLC
17 618 W. Riverside, Ste. 300
18 Spokane, WA 99201-5102

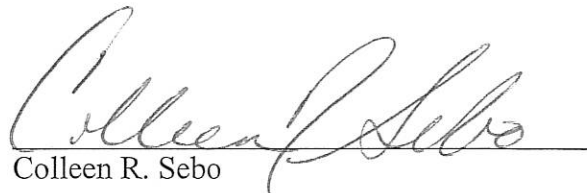
VIA US MAIL

19 Tyler R. Whitney
20 Public Utility District No. 1 of Pend Oreille County
21 P.O. Box 190
22 Newport, WA 99156

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23 Joseph A. Rehberger
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25 Cascadia Law Group PLLC
26 606 Columbia St., N.W., Ste. 212
27 Olympia, WA 98501

VIA US MAIL

28 
Colleen R. Sebo