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

ANNIE JANICKI,

Petitioner,

No. 08-2-01130-8

vs.

NOTE FOR:

CITY OF SEDRO-WOOLLEY, a municipal corporation, and DELUXE RECYCLING AND DISPOSAL, LLC, a Washington limited liability company,

Respondents.

Motion Docket (NTMTDK)  
Trial docket (NTTRDK)

(use separate sheet for each noting)

NOTE FOR MOTION DOCKET

Please take note that the issue in this case will be heard on the date set out in the margin and the clerk is requested to note the same in the motion docket for that day, subject to the confirmation rule.

Monday, July 21, 2008 at 1:30 pm  
**Date and Time of Initial Hearing**


Motion to Change Venue  
**Nature of Hearing**

Dated this 30<sup>th</sup> day of June 2008.


Names/Addresses of other attorneys or parties  
Pro Se:

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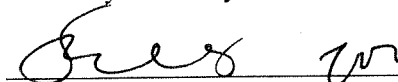
RESPONDENT CITY OF SEDRO-  
WOOLLEY'S MOTION TO CHANGE  
VENUE

COMES NOW Respondent City of Sedro-Woolley, by and through its attorneys, and moves this court for a change of venue for the above-entitled matter pursuant to RCW 4.12.030. This motion is based on Respondent City of Sedro-Woolley's Memorandum in Support of Motion to Change Venue, Declaration of Eron Berg in Support of Motion to Change Venue and in Opposition to County's Motion to Intervene, and the files and records contained herein.

Dated this 30th day of June, 2008.

**ZENDER THURSTON, P.S.**

Attorneys for City of Sedro-Woolley



**ROBERT A. CARMICHAEL, WSBA #14008**

Zender Thurston, PS

**ZENDER THURSTON, P.S.**

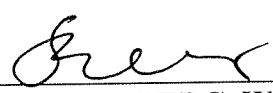
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Respondents.

RESPONDENT CITY OF SEDRO-  
WOOLLEY'S MEMORANDUM IN  
SUPPORT OF MOTION TO CHANGE  
VENUE

**I. INTRODUCTION**

The proposed project at the heart of this LUPA action is very controversial in Skagit County; prejudicial opinions about it abound. The respondents cannot obtain an impartial hearing in Skagit County; and the ends of justice would be furthered by a change of venue. The City requests this action be transferred to Whatcom County under RCW 4.12.030.

**II. STATEMENT OF FACTS**

Respondent Deluxe Recycling and Disposal LLC ("Deluxe") submitted a building permit application to the City for a solid waste handling facility within the City's jurisdiction. (Pet. 2-3.) During the permitting process, the City issued a Mitigated

1 Determination of Non-Significance (“MDNS”) under the State Environmental Policy Act.  
2 (Pet. 3.) That decision was appealed by Annie Janicki to a hearing examiner, and the  
3 hearing examiner affirmed the City’s MDNS after a hearing in which over 200 people  
4 attended and 44 letters in opposition to Deluxe’s project were received. (Pet., Ex. A.)  
5 Janicki then filed this LUPA petition challenging the hearing examiner’s decision.

6 Skagit County has moved to intervene as a party in this petition claiming it has  
7 interests to be protected in the outcome of the City’s MDNS decision. (Mot. to Intervene.)  
8 Also, Deluxe had previously filed a related lawsuit against Skagit County and various  
9 county officials regarding the county’s recently instituted moratorium on solid waste  
10 facilities. *Deluxe Recycling and Disposal LLC v. Skagit County*, No. 08-2-00532-4 (Skagit  
11 County Sup. Ct. filed March 19, 2008).<sup>1</sup> In that action all of the Skagit County Superior  
12 Court judges recused themselves. *Id.*

### 14 III. ISSUE

15 Whether the City’s change of venue request to Whatcom County should be granted  
16 where the project at issue in the LUPA petition is very controversial within Skagit County  
17 and where all Skagit County judges have been recused in a related case?

### 19 IV. AUTHORITY

20 A court may, on motion, change the venue of a case when it appears by affidavit or  
21 other satisfactory proof that (1) there is reason to believe that an impartial trial cannot be  
22 had therein or (2) the ends of justice would be forwarded by the change. RCW 4.12.030(2)

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24 <sup>1</sup> A settlement agreement in this lawsuit appears to have been signed by Deluxe, on June 24, 2008. *See*  
25 Declaration of Eron Berg, June 30, 2008.

1 and (3); *Cugini v. Apex Mercury Mining Co.*, 24 Wn.2d 401, 409, 165 P.2d 82 (1946). Due  
2 process requires that a trial court grant a motion to change venue when a probability of  
3 prejudice to the defendant is shown. *Unger v. Cauchon*, 118 Wn. App. 165, 170, 73 P.3d  
4 1005 (2003). Statutes granting the right to change venue are to be liberally construed in the  
5 furtherance of justice. *State ex rel. Wyman, Partridge & Co. v. Superior Court for Spokane*  
6 *County*, 40 Wn. 443, 446, 82 P. 875 (1905).

7  
8 **A. Change of Venue to Whatcom County is Proper Because An Impartial**  
9 **Trial Cannot be Had in Skagit County and the Ends of Justice Would be**  
10 **Served by the Change.**

11 The respondents cannot obtain an impartial hearing on this matter in Skagit County  
12 because the project at issue is very controversial within the county and the county judges  
13 have been recused in a related action. In *North Bend Lumber* the court held the change of  
14 venue was proper when there was evidence of prejudice in the county where the action was  
15 commenced because a great number of people in that county were predisposed to finding  
16 for one of the parties in the case. *N. Bend Lumber Co. v. City of Seattle*, 147 Wn. 330, 266  
17 P. 156 (1928). Likewise, there is evidence of prejudice against Deluxe's project here.

18 First, Deluxe's proposed solid waste facility is very controversial within Skagit  
19 County. Well over 200 people were in attendance at the mid-day hearing on the appeal of  
20 the MDNS before the hearing examiner. (Pet., Ex. A at 3.) In addition, 53 public comment  
21 letters and emails and 44 individual letters and signed petitions in opposition to Deluxe's  
22 project were submitted to the hearing examiner. (*Id.* at 12.) Given this large amount of  
23 public interest and outcry in Skagit County over the project, there is reason to believe an  
24 impartial hearing on the MDNS for Deluxe's project cannot be had in Skagit County.

1 Second, the conduct of all the Skagit County Superior Court judges in a related case  
2 evidences, at minimum, a concern about the potential for bias and prejudice. Skagit  
3 County has enacted a nine month moratorium on new solid waste contracts. Skagit County,  
4 Wash., Resolution 20080145 (March 11, 2008). Deluxe then filed a lawsuit against Skagit  
5 County, the Skagit County public works director, and the three Skagit County  
6 commissioners regarding the moratorium. *Deluxe Recycling and Disposal LLC v. Skagit*  
7 *County*, No. 08-2-00532-4 (Skagit County Sup. Ct. filed March 19, 2008). All Skagit  
8 county superior court judges recused themselves in that action. This land use petition  
9 involves some of the same parties (Deluxe as a respondent, and Skagit County as a  
10 potential intervener) and subject matter (Deluxe's proposed solid waste facility in Sedro  
11 Woolley) that were present in the related case. Therefore, the same prejudice or bias  
12 necessitating recusal in the case regarding the moratorium is present in this LUPA petition.

14 The controversial subject matter and recusal of all Skagit County Superior Court  
15 judges in a related case shows that an impartial hearing cannot be obtaining in this matter in  
16 Skagit County. Therefore, a change of venue to Whatcom County is appropriate.

17 **B. Change of Venue to Whatcom County will not Inconvenience Any Party.**

18 Transfer of this action to Whatcom County Superior Court would not be  
19 inconvenient; many of the participants in this case work or reside in Whatcom County.  
20 Respondent Deluxe is located in Whatcom County, and its counsel's office is there. (Pet.,  
21 Ex. A at 13.) Likewise, the City's special counsel maintains his office in Whatcom  
22 County. (*Id.*)

24 Additionally, if Skagit County is allowed to intervene in the action, the petition could  
25

1 have been brought in Whatcom County. Actions against a county can be commenced in  
2 that county or in one of the two nearest judicial districts, RCW 36.01.050(1), including land  
3 use petitions, *Ahmann-Yamane, L.L.C. v. Tabler*, 105 Wn. App. 103, 109, 19 P.3d 436  
4 (2001) (land use petition could have been filed in two nearest judicial districts). Pursuant  
5 to RCW 36.01.050(2), the Administrative Office of the Courts has determined that  
6 Whatcom County is one of the two nearest judicial districts to Skagit County. See Wash.  
7 Courts, *Filing Venue for Actions Against Counties*,  
8 [http://www.courts.wa.gov/court\\_dir/?fa=court\\_dir.filingvenue](http://www.courts.wa.gov/court_dir/?fa=court_dir.filingvenue) (last visited June 27, 2008).  
9 Whatcom County is the most convenient alternative forum for this action. Therefore,  
10 change of venue to Whatcom County should be granted.  
11


12 **V. CONCLUSION**

13 Based on the foregoing reasons, the City requests this action be transferred to  
14 Whatcom County Superior Court.

15 Dated this 30th day of June, 2008.

16 **ZENDER THURSTON, P.S.**

Attorneys for City of Sedro-Woolley

17 

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liability company,

Respondents.

ORDER GRANTING RESPONDENT  
CITY OF SEDRO-WOOLLEY'S  
MOTION TO CHANGE VENUE

THIS MATTER having come before the Court on the 21<sup>st</sup> day of July, 2008, on Respondent City of Sedro-Woolley=s Motion to Change Venue and the Court having heard argument from all parties and considered the written materials submitted, the Court finds as follows:

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Respondent=s Motion for a Change of Venue is hereby GRANTED and that the above-captioned matter should be transferred from Skagit County Superior Court to Whatcom County Superior Court, and the Clerk shall take appropriate action to effect the transfer.

\_\_\_\_\_  
JUDGE

PROPOSED  
ORDER GRANTING RESPONDENT CITY OF SEDRO-  
WOOLLEY'S MOTION TO CHANGE VENUE - 1

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