NO. 44404-6-II

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

WOODS VIEW II, LLC and DARLENE PIPER,

Appellants/Cross-Respondents,

v.

KITSAP COUNTY,

Respondent/Cross-Appellant,

REPLY BRIEF OF RESPONDENT/CROSS-APPELLANT

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and

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A. Kitsap County Owed No Duty to Darlene Piper as to Her Investment Decisions.

Plaintiffs concede that Darlene Piper did not apply to Kitsap County for any permits and she was not the owner of the property which Woods View II, L.L.C. was seeking to develop. Instead, she was a member of the LLC, signed as guarantor on some of its loan applications, and paid off some of its obligations. Because she was not the permit applicant, Kitsap County owed no "special duty" to Ms. Piper and therefore she has no standing to bring an action against Kitsap County arising from the County's actions relative to Woods View's land use applications.

Kitsap County did not enter into a contractual relationship with Ms. Piper (or with Norpac Construction, the company she formed long after Woods View received its County permits), nor offer investment advice to her, nor recommend that she provide guarantees to Woods View II, L.L.C. The fact that she suffered personal financial losses does not create standing, because the County's actions were all in relation to *Woods View's* application. Sparling v. Hoffman Constr. Co., 864 F.2d 635, 640 (9th Cir. 1988); U.S. v. Stonehill, 83 F.3d 1156, 1160-61 (9th Cir. 1996); Gustafson v. Gustafson, 47 Wn. App. 272, 276, 784 P.2d 949 (1987).

Woods View's reliance on Sabey v. Howard Johnson & Co., 101 Wn. App. 575, 5 P.3d 730 (2000) is misplaced. In that case, Mr. Sabey as

an individual had a direct relationship with the defendant which created a personal duty, and negligent misrepresentations were made to Sabey that arguably gave rise to personal liability. 101 Wn. App. at 586-87. Here, Darlene Piper had no independent applications for permits nor an independent relationship with the County which resulted in her damages. Rather, her damages were derivative of the losses suffered by the LLC which she formed (Woods View).

Plaintiffs' reliance on Coto Settlement v. Eisenberg, 593 F.3d 1031 (9th Cir. 2009) is also misplaced. Coto involved a shareholder who was pursuing a claim on behalf of a corporation which had dissolved. Here, Woods View has not been dissolved, and it is pursuing its own claim in this appeal. Ms. Piper has no standing to assert a derivative claim against Kitsap County for her own indirect damages.

Ms. Piper asserts that she has an "independent" claim because she "personally paid expenses for the development for which she will never be reimbursed and could guarantee liability. . . ." Appellants' Brief for Opposition, p. 32. She states that she personally guaranteed debts incurred by Norpac Construction, the company which she formed to perform construction on the site. But again, this misses the point.[1] Neither Ms. Piper nor Norpac applied for any permits to Kitsap County, and entered into no contractual or personal relationship with the County.

[1] As Ms. Piper concedes, she has been discharged in a personal bankruptcy, and therefore creditors' claims against her have been extinguished in any event. (See Appellant's Opening Brief, p. 20).

Ms. Piper's damages (if any) are entirely derivative of the financial failure of Woods View II, L.L.C. Kitsap County did not instruct Ms. Piper to make any particular investments or guarantees, and cannot be liable if her personal investment decisions proved to be unsuccessful.

In the companion federal case, Judge Settle carefully analyzed the caselaw regarding standing and dismissed Ms. Piper's claims. The factual underpinnings of Judge Settle's standing decision are the same in this case. Plaintiffs mistakenly cite Lee v. American National Ins. Co., 260 F.3d 997 (9th Cir. 2008) for the proposition that a determination on standing in federal court can have no preclusive effect in another court. But that is not what Lee says. Instead, the Lee Court simply noted that the plaintiff could not pursue in federal court a purely statutory claim under California law as a "private attorney general," where federal law does not recognize such a claim absent actual injury. Id. at 1001-1002. In this case, on the other hand, the facts supporting Judge Settle's order relative to Piper's standing are the same under both federal and state law. That order must be given collateral estoppel effect.

Plaintiffs cite no case which has ever allowed a shareholder or guarantor to assert an individual claim based on alleged inappropriate government action on a *corporation's* permit applications. All caselaw is to the contrary. U.S. v. Stonehill, supra. Judge Settle properly dismissed Darlene Piper's claim, based on absence of standing (in addition to the

other grounds reflected in his opinion). A similar ruling should be made here.[2]

B. Failure to Comply with LUPA is a Bar to Claims Based on the County's Permit Process.

The Washington courts have uniformly held that a failure of a party to appeal a land use permitting action under LUPA is a bar to a subsequent damages action arising from alleged improprieties in the substance or procedure of the permitting decision. James v. Kitsap County, 154 Wn.2d 574, 115 P.2d 286 (2005). In its Response Brief, Kitsap County cited numerous cases supporting this proposition. In response, plaintiffs rely primarily on Lakey v. Puget Sound Energy, 176 Wn.2d 909, 296 P.3d 860 (2013). But Lakey actually provides further support for the County's position.

Lakey was an action for a physical "taking," where fault of the city was not at issue. Importantly, Lakey did not attack, criticize or otherwise challenge any procedural or substantive permit decision by the city. Id. at 926. Because Lakey's action was for a physical "taking," he was not required to show – and did not allege – that the city had acted inappropriately in connection with processing or granting the variance to PSE.[3] Because the appropriateness of the city's permit actions was not in

[2] In addition to absence of standing, Ms. Piper's claims were also subject to dismissal based on all of the other defenses which apply to both Woods View and to her.

[3] There is no need to show tortious activity or "fault" on the part of government in a takings action. When the government takes property for a public use, it is neither a tortfeasor nor a trespasser. Pepper v. King County, 61 Wn. App. 339, 347, 810 P.2d 527 (1999).

question, the Supreme Court held that Lakey's "takings" claim was not barred by his failure to pursue an appeal under LUPA (but it was barred by the principle that a municipality cannot be liable under a takings theory for merely approving private development).

Importantly, the Supreme Court in Lakey cited and distinguished four (4) cases where the Supreme Court and the Court of Appeals had properly held that damages claims were barred by the exclusive remedy provisions of LUPA, because the damages claims depended on a showing that the city or county had imposed invalid conditions, or acted inappropriately in connection with processing the permit application. (James v. Kitsap County, supra; Asche v. Bloomquist, 132 Wn. App. 784 (2006); Mercer Island Citizens v. Tent City, 156 Wn. App. 393 (2010) and Shaw v. City of Des Moines, 109 Wn. App. 896) (2002).)

The Supreme Court in Lakey did not overrule or criticize any of those cases in which LUPA was held to be a bar. Instead, the Lakey court distinguished those cases because Mr. Lakey was not claiming that any decision or permitting action by the city was invalid, illegal or improper. The Court noted that in James, the plaintiff needed to show that the imposition of the impacting conditions was improper. Therefore, his damages action was barred by failure to pursue a LUPA appeal. With respect to the Asche decision, the Supreme Court noted that the damage claim "depended on a determination that the County had improperly applied the zoning code," 132 Wn. App. at 799. And the Supreme Court

in Lakey noted that in Shaw, " the court reasoned that *if the City of Des Moines had acted properly, Shaw would not have damages claims.*" Lakey, 176 Wn.2d at 926-27 (fn. 11) (emphasis added). In other words, if a plaintiff's damages claim depends on an assertion that the local jurisdiction acted improperly in the permit approval process, compliance with LUPA is mandatory.

In this case, to the extent that Woods View is arguing that Kitsap County acted inappropriately in processing its SDAP application, its failure to appeal any permit decision – or any interpretive decisions under LUPA – is a bar to recovery.

LUPA's "exclusive remedy" provision applies to virtually all land use actions, not only formal quasi-judicial decisions. Nykreim v. Chelan County, 146 Wn.2d 904, 925-26 (2002). It applies specifically to interpretations by local governments as to the application of statutes and ordinances to a particular property owner's land. The definition of "land use decision" in RCW 36.70C.020 is very broad and includes not only actions on project permits but also interpretations regarding the application of regulations to projects:

> "Land use decision" means a final determination by a local jurisdiction's body or officer with the highest level of authority to make the determination including those with authority to hear appeals, on:
>
> (a) an application for a project permit or other governmental approval . . .;

> (b) an interpretive or declaratory decision regarding the application to a specific property of zoning or other ordinances or rules regulating the improvement, development, modification, maintenance or use of real property; . . .

RCW 36.70C.020(2)(b). In Asche v. Bloomquist, supra, the Washington Court of Appeals confirmed that a challenge to a county's interpretation regarding the application of an ordinance to a permit must be made through a timely LUPA appeal, or the determination will be deemed valid and cannot be subsequently challenged:

> . . . it does not matter whether the Asches are challenging the validity of the permit or the interpretation of the county zoning ordinance as applied to the piece of property. LUPA covers both.

Id. at 793. Thus, if Woods View believed that Kitsap County was wrongfully applying the Growth Management Act or local regulations to its permit applications, it was obligated to timely challenge the County's decisions and/or interpretations under LUPA. Woods View is foreclosed from doing so in the context of this collateral damages lawsuit. Failure to challenge the County's permitting actions under LUPA is fatal to any claims alleging impropriety in the County's SDAP process.

C. The Public Duty Doctrine is a Bar to Woods View's Negligence Claim.

1. The "Failure to Enforce" Exception Does Not Apply.

As explained in Kitsap County's Response Brief, all claims against the County based on a negligence theory are barred by the Public Duty

Doctrine. Woods View's response reflects a misunderstanding of the Public Duty Doctrine and the narrow scope of its limited exceptions.

Woods View argues that the "failure to enforce" exception to the Public Duty Doctrine may apply. The argument is unfounded. The "failure to enforce" exception is narrowly construed. In the context of permits, the exception applies only where a building official has approved a project with actual knowledge of a code violation by the applicant which created an "inherently hazardous and dangerous condition," and only where the municipality had a specific mandatory *enforcement* obligation. Smith v. Kelso, 112 Wn. App. 277, 282 (2002), rev. den., 148 Wn.2d 1012; Zimbelman v. Chaussee Corp., 55 Wn. App. 278 (1989), rev. denied, 114 Wn.2d 1007 (1990). "Actual knowledge of inherently dangerous and hazard conditions created by the contractor is required." Pepper v. J.J. Welcome Construction, 73 Wn. App. 523, 534, 871 P.2d 601 (1994).

In its Opposition to Respondent's Cross-Appeal, Woods View acknowledges that "no reported cases appear to have applied the failure to enforce exception where a municipality has failed to timely process a permit application. . . ." Brief, p. 7. The reason is simple. The failure to enforce exception has nothing whatsoever to do with the timeliness of processing an application. Instead, it applies only where a county has knowingly approved a dangerous construction condition despite a statute

requiring a mandatory safety enforcement action. Garibay v. State, 131 Wn. App. 454, 462, 128 P.3d 621 (2005).

The courts have repeatedly insisted that the failure to enforce exception is strictly construed.

> The plaintiff has the burden of establishing each element of the exception. In addition, we construe this exception narrowly. To do otherwise would effectively overrule Taylor and eviscerate the policy considerations therein identified.

Atherton Condominium Association v. Blume Development Co., 115 Wn.2d 506, 531, 799 P.2d 250 (1990).

In this case, none of the mandatory elements of the failure to enforce exception are present. No one contends that Kitsap County knowingly approved an "inherently hazardous and dangerous condition." Pepper v. J.J. Welcome Construction Co., supra, 73 Wn. App. at 533-34. Furthermore, the failure to enforce exception cannot apply absent a statutory mandate to take specific enforcement action based on the condition that the government official observed. Smith v. City of Kelso, supra, 112 Wn. App. at 286.

Simply stated, the failure to enforce exception to the common enemy rule of nonliability is wholly inapplicable to the facts of this case.

2. The "Special Relationship" Exception Does Not Apply.

In addition to the "failure to enforce" exception, Woods View also argues that the "special relationship" exception to the Public Duty Doctrine may apply. But here again, Woods View's argument

misconstrues this narrow exception. In the context of a building permit case, the special relationship exception applies only where the plaintiff made a *specific* enquiry as to code compliance; and where a governmental official responded with *a factually inaccurate* "express assurance" of code compliance on which the plaintiff relied to his detriment. In other words, the "special relationship" exception arises only where a local government official has *mistakenly approved* a non-code-compliant project, and in the process has given specific inaccurate information that a building was compliant with code. Taylor v. Stevens County, 111 Wn.2d 159, 171, 759 P.2d 447 (1988).

Woods View meets none of the elements of this exception, other than "direct contact." Woods View does not identify any "specific inquiry" as to code compliance. Nor does it identify any "express assurance" of code compliance by the County. Instead, Woods View merely argues that the County assured it that the project would receive SDAP approval (and the project did in fact receive SDAP approval). But further, this kind of general statement of assurance can never give rise to the "special relationship" exception to the Public Duty Doctrine. A governmental duty cannot be based upon mere issuance of a permit, nor upon silence, nor upon general approvals. Pierce v. Yakima County, 111 Wn. App. 791, 802-803, 251 P.3d 270 (2011), rev. denied, 172 Wn.2d 1017; Williams v. Thurston County, 100 Wn. App. 330, 997 P.2d 377 (2000).

In this case, Woods View did not make any specific inquiries to a County inspector regarding code compliance, and there is no allegation that the County falsely represented that an otherwise noncompliant structure was built to code. Woods View does not contend in this case that the County *wrongfully approved* its project, but rather that it was not sufficiently supportive of the project. There is no case which has ever held the "special relationship" exception applicable in such a context.

Recognizing that Washington caselaw regarding the "special relationship" exception in the permit context does not support its application here, Woods View cites a line of cases involving the "911 call" situation, where the "special relationship" exception is applied in a different way. In the context of emergency calls, the courts have held that where a person in jeopardy calls for assistance from police or "first providers," liability may arise when negligent assurances of protection or safety are given to the person in jeopardy. See, e.g., Babcock v. Mason County Fire District No. 6, 144 Wn.2d 774, 786, 30 P.3d 1261 (2001); Chambers-Castanes v. King County, 100 Wn.2d 275, 286, 669 P.2d 451 (1983). Those cases have no relevance to the instant controversy, which arises in the land use permit context, and not from a "911 call." The general public duty rule of nonliability applies under the undisputed facts of this case.

D. There is No Basis for a Tortious Interference Claim.

Woods View's tortious interference claim was properly dismissed based on settled Washington caselaw, and based on Judge Settle's ruling that the County's actions were "rationally related to the governmental interest in public health as it relates to permitting a LOSS . . ." (CP 114). That ruling refutes any suggestion that the County's statements could rise to the level of intentional interference.

In the Brief of Respondent, Kitsap County cited extensive caselaw explaining the strict requirements for a claim of tortious interference. In response, the plaintiffs rely almost entirely on Westmark Development Corp., 140 Wn. App. 540, 166 P.3d 813 (2007), a case which is easily distinguishable. In Westmark, the City of Burien failed to take action on Westmark's permit applications pending before the City for a period of more than 10 years and breached a binding settlement agreement with Westmark. The tortious interference action arose from Burien's refusal to take the appropriate action on a permit application before the City. It took more than six years for Burien to issue a decision on Westmark's SEPA application (from 1990 to 1996) and the decision was a "DS" (requiring an Environmental Impact Statement). Significantly, in Westmark, the plaintiff argued that the SEPA decision should have been issued by 1993 (within three years after its original application, and one year after its modified application). Id. at 544-45.

In contrast, in this case the County *approved* the only applications before the County in 2007 (the year after the applications were submitted). There was no extraordinary delay which could conceivably support a tortious interference claim. Indeed, Woods View's prior attorney Bill Lynn emphasized in his argument to the Hearing Examiner on March 20, 2008 that Kitsap County had appropriately dealt with the complex issues inherent in Woods Views' application in a thorough and professional manner, and granted project approvals despite extensive community opposition:

> You've heard a lot of complaints – it's always interesting to me that people complain if projects change during the course of their review and approval. That's exactly what is supposed to happen. The fact that there were three submittals of the storm drainage analysis does not mean someone was trying to pull a fast one on the County; it meant that the County was doing a good and careful job and required, as it often does, that new information be provided. . . . That's exactly what is supposed to happen. There is a submission of information; there are responses to that and hopefully the project that evolves in the end is one that is better as a result of that.
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> The County always does a thorough job when they review these projects but when they do it under the kind of scrutiny that they have had here, where the governor's office has been called and state legislators and every county commissioner and all these state agencies, that makes my job easier because it means that this project has been through every kind of scrutiny imaginable and nobody, at the staff level or otherwise, has done anything like shirking their responsibilities.

(CP 1361-1362). In view of the comments by Woods View's prior attorney in a public hearing, it is almost comical to read the characterizations by its current counsel of these same County actions.

The Court should note that in Westmark, there was evidence that the city intentionally delayed the permitting process for a decade as a political favor to a powerful state legislator, who lived nearby. (140 Wn. App. at 560). Here, the *only* basis for Kitsap County's communications as to the LOSS proposal was concern over whether the proposal was in violation of the GMA and the County's Comprehensive Plan. (CP 1432-1442; CP 150-154).

Until recently the plaintiffs had focused their "tortious interference" claim on the September 2009 conversation between County employees and the Legacy Group. But the Declaration of Legacy principal Brent Eley effectively refuted the tortious interference claim arising from that discussion. At most, Eley stated that the County's comments were "unenthusiastic" and/or "non-committal." But that is not tortious interference. No court has ever held that a party must be "enthusiastic" about another's business plans to avoid tort liability. Eley went on to expressly contradict any suggestion of tortious interference by the County. (CP 124-125).

Recognizing that the Eley Declaration disproves its tortious interference claim, Woods View now argues that the County interfered

with its "contractual relationships" with Karcher Creek Sewer District and with DOH. Those claims are groundless.

The County's communications with Karcher Creek occurred in June 2007. (CP 152-153). It is preposterous to suggest that these communications regarding legal issues constitute tortious interference or that they caused a termination of the relationship. As plaintiff Darlene Piper acknowledged in her letter to DOH on December 1, 2006, Karcher Creek, Kitsap County and Woods View all understood that Karcher Creek might not have legal authority to act as the owner and operator of a LOSS outside of a UGA. Therefore, Woods View decided in the *fall of 2006* to move forward with a private management entity:

> I wanted to update you on the Woods View residential project. We have had several meetings with Karcher Creek Sewer District and with Kitsap County. There appears to be some conflict within the statutory framework for sewer districts having authority to own and/or maintain large onsite systems outside of Urban Growth Areas. It appears to be simpler to move forward with using a DOH approved private management entity.

(CP 135).[4] It is important to note that Ms. Piper's letter to DOH expressly acknowledged that Kitsap County's position regarding legal impediments to a public sewer district managing a LOSS outside of a UGA was "an

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[4] See also, letter from Woods View attorney William Broughton, where he advised Kitsap County on November 15, 2006 that Woods View had not entered into an agreement with Karcher Creek, and did not intend to do so: "As you apparently are unaware, my client has not concluded a maintenance agreement with Karcher Creek and at this point does not intend to do so." (CP 139).

The above exhibits also refute the suggestion by plaintiffs' counsel that the County's legal position--that the GMA prohibited a public entity from operating a LOSS

arguable interpretation of law." Therefore, it cannot conceivably be the basis for a tortious interference claim. Leingang v. Pierce County Medical Bureau, 131 Wn.2d 133, 157, 938 P.2d 227 (1997).[5] Moreover, Woods View cannot be allowed to make the business decision in 2006 to go with a private operator based on admitted legal uncertainties, and then file a "tortious interference" claim against the County many years later!

And it is nonsensical to suggest that Woods View had a "contractual relationship" or "business expectancy" with the Washington Department of Health. DOH was the *decision maker* to whom the application for the LOSS system was submitted. No court has held that an applicant for a land use permit has a contractual relationship or business expectancy with a governmental agency to whom an application is submitted.

Nor would the County's communications with Karcher Creek and DOH be actionable as tortious interference in any event. The County's concerns with regard to the LOSS system arose from its belief that allowing such a system outside of a UGA would violate the GMA. The County had previously been held non-compliant by the Western Washington Growth Management Hearings Board for allowing dense development and urban facilities outside of UGAs. (CP 83-84). As Judge

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outside of an Urban Growth Area--was "secret." Woods View was aware of the County's concerns from the very beginning (2006).

[5] As the Declaration of Shelley Kneip explains, the County is required by statute to review a sewer district's general comprehensive plan. (CP 152-154). The conversation with Karcher Creek was entirely appropriate.

Settle held, it was reasonable for the County to interpret the state's directives as forbidding the kind of LOSS proposal submitted by Woods View. Because the County was simply asserting a reasonable legal interpretation, it cannot be liable for tortious interference. Leingang.

Further, exercising one's own legal interests is not interference. Id. And, as the Washington Court of Appeals held in Schmerer v. Darcy, 80 Wn. App. 499, 506, 910 P.2d 498 (1996) a statement by a party expressing a view as to what the likely outcome of a legal matter would be is not tortious interference. The tortious interference claim against Kitsap County was unfounded and subject to summary dismissal.

E. The Takings Claim Was Properly Dismissed Based on Res Judicata and Absence of the Elements of a Taking.

In response to Kitsap County's argument on the takings claim, Woods View contends that the doctrine of res judicata should not apply to the federal court's dismissal of the takings claim, because the Washington Constitution's Taking Clause is different than the U.S. Constitution's Takings Clause. But the argument misses the point. While the courts have identified certain aspects of the federal takings clause which are different from the takings clause of the Washington Constitution, no court has held that there is a difference with respect to liability for inverse condemnation arising from land use regulation (a "regulatory taking"). The case relied upon by Woods View, Manufactured Housing Communities v. State, 142 Wn.2d 347, 13 P.3d 183 (2000) is not on point.

In that case, it was held that the Mobile Home Park Act violated the state Constitution by requiring that tenants be given a "right of first refusal" to purchase a mobile home park. The Washington Supreme Court held that the Washington Constitution has a stronger prohibition than the federal Constitution on taking private property *for private use*. Id. at 357, 374.

Here, there is no issue of taking private property for private use. And no court has held that the Washington Constitution has a different standard for liability for a regulatory taking. Therefore, Judge Settle's dismissal of the takings claim should be given res judicata/collateral estoppel effect in state court.

Further, it is difficult to understand how Woods View could even purport to characterize any action by Kitsap County as a "taking." There are two kinds of takings claims recognized against a governmental agency: (1) a claim for a physical taking (e.g., building a road through or flooding a plaintiff's property); and (2) a regulatory taking. American Pelagic Fishing Co. v. U.S., 379 F.3d 1363, 1371 (Fed. Cir. 2004), cert. denied, 545 U.S. 1139. This case does not involve a physical taking, and Woods View has conceded that it is not contending that a Kitsap County regulation constituted a regulatory taking. (CP 1468-69).

Woods View's curious argument that a local government can effect a "taking" by offering comments to a state decision maker (DOH) on a pending application is supported by no caselaw in Washington or any other jurisdiction. Apparently recognizing the incongruity of asserting a

takings claim against one who has merely made comments to a different decision making agency, Woods View argues that Kitsap County effected a taking "by resorting to a set of guerilla tactics." (Appellant's Brief for Opposition to Respondent's Cross-Appeal, p. 29). Woods View cites no legal authority in support of its novel argument that comments to a state agency can constitute a condemnation of property.

In response to the County's argument on the absence of loss of all economically viable use, Woods View cites two cases which are entirely inapposite, Borden v. Olympia, 113 Wn. App. 359, 43 P.3d 1020 (2002) and Lambier v. Kennewick, 56 Wn. App. 275, 783 P.2d 596 (1989). Woods View argues that these cases support a "taking" even where the value of the property has not been totally destroyed. But Borden and Lambier each involved a *physical* taking, not a regulatory taking. (Borden involved flood damage caused by a county drainage system, and Lambier involved physical damage caused by a poorly designed highway). Those cases have nothing whatsoever to do with the requirements for inverse condemnation arising from permitting action by a local government.

Nor is there any basis for a taking based on an alleged delay in issuing the SDAP permit. A delay in obtaining a permit is generally not a taking but a non-compensable incident of ownership. Agins v. City of Tiburon, 447 U.S. 255, 263, 100 S. Ct. 2138, 2143 (1980). A temporary taking will be recognized only in extreme cases involving extraordinary delays which deny the owner all use of the property. Tahoe-Sierra

Preservation Council, Inc. v. Tahoe Regional Planning Agency, 216 F.3d 764, 782 (9th Cir. 2001), aff'd, 122 S. Ct. 1465 (no taking despite denial of all economic use for 32 months). Here, there was no extraordinary delay which could rise to the level of a regulatory taking by Kitsap County.

II. CONCLUSION

Kitsap County respectfully asks this Court to affirm the dismissal of the state law claims herein.

DATED this 3rd day of January, 2014.

KARR TUTTLE CAMPBELL

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AFFIDAVIT OF SERVICE

STATE OF WASHINGTON)
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COUNTY OF KING)

The undersigned, being first duly sworn upon oath, deposes and says:

I am a citizen of the United States of America; State of Washington, employed at Karr Tuttle Campbell, 701 Fifth Avenue, Suite 3300, Seattle, WA 98104. I am over the age of 18 years and am not a party to this action. I certify under penalty of perjury under the laws of the State of Washington that on January 3, 2014, a true copy of Reply Brief of Respondent/Cross Appellant was served to the following by Legal Messenger:

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Nancy Randall

Nancy Randall

SUBSCRIBED TO AND SWORN before me this 2nd day of January, 2014

RONDI MOREAU
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
JULY 19, 2016

Rondi Moreau

Rondi Moreau
NOTARY PUBLIC in and for the State of Washington, residing in Kent WA
My Commission Expires: July 19, 2016