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IN THE SUPREME COURT OF
THE STATE OF WASHINGTON

POTALA VILLAGE KIRKLAND, LLC, a Washington limited liability company, and LOBSANG POTALA VILLAGE and TAMARA AGASSI POTALA VILLAGE, a married couple,

Plaintiffs/Appellants,

vs.

CITY OF KIRKLAND, a Washington municipal corporation,

Defendant/Respondent.

CITY'S RESPONSE TO PETITION FOR REVIEW TO THE SUPREME COURT

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TABLE OF CONTENTS

I. INTRODUCTION 1

II. STATEMENT OF FACTS 3

III. AUTHORITY 9

- A. **Division I's decision is consistent with this Court's rulings** 10
- B. **Division I's decision is consistent with other decisions from the Courts of Appeals** 11
- C. **Division I's decision respects constitutional rights.** 16
- D. **Because it merely affirms this Court's prior holdings, Division I's decision raises no issue of substantial public interest.** 19

IV. CONCLUSION 20

TABLE OF AUTHORITIES

DECISION ON REVIEW

Potala Village Kirkland, LLC v. City of Kirkland,
_ Wn. App. _ WL 4187807
(Aug. 25, 2014) 7, 8, 9, 10, 12, 13, 14, 20

CASES

Abbey Road Group v. Bonney Lake,
167 Wn.2d 242, 218 P.3d 180 (2009)
.... 1, 2, 3, 9, 10, 11, 12, 13, 15, 18, 20

Beach v. Bd. of Adjustment,
73 Wn.2d 343 (1968) 8, 12

Ellensburg Cement v. Kittitas County,
179 Wn.2d 737, 317 P.3d 1037 (2014) 14

Erickson v. McLerran,
123 Wn.2d 864, 872 P.2d 1090 (1994) 2, 3, 9, 10, 11, 12, 15, 20

Ford v. B'ham-Whatcom Cty.,
16 Wn. App. 709 (1977) 8

Juanita Bay v. Kirkland,
9 Wn. App. 59 (1973) 8, 12

Noble Manor v. Pierce Cy.,
133 Wn.2d 269 (1997) 10

Odgen v. Bellevue,
45 Wn.2d 492, 275 P.2d 899 (1954) 8

Phillips v. King County,
136 Wn.2d 946, 968 P.2d 871 (1998) 13

Talbot v. Gray,
11 Wn. App. 807 (1974) 8, 12

Thurston Cty. Rental Owners v. Thurston Cty.,
85 Wn. App. 171 (1997) 8

Valley View v. Redmond,
107 Wn.2d 621, 733 P.2d 182 (1987) 16, 17

Victoria Tower P'ship v. Seattle,
49 Wn. App. 755, 745 P.2d 1328 (1987) 11, 13, 15

West Main Assoc. v. Bellevue,
106 Wn.2d 47, 720 P.2d 782 (1986) 16, 17, 18

Weyerhaeuser v. Pierce County,
95 Wn. App. 883, 976 P.2d 1279 (1999) 12, 13

Woodson v. State,
95 Wn.2d 257, 623 P.2d 683 (1980) 14

Woodway v. Snohomish Cty.,
180 Wn.2d 165, 322 P.3d 1219 (2014) 2, 9, 10, 12, 20

STATUTES

KZC Chapters 83 and 141 4

RCW 19.27.095 .... 2, 15

RCW 19.270.095(1) 3, 9, 11, 13, 19, 20

RCW 58.17.033(1) 2, 14, 15

RCW Ch. 90.58 4

RULES

RAP 13.4(b) 9

I. INTRODUCTION

Respondent City of Kirkland respectfully requests that the Supreme Court deny review in this action. The vested rights issue presented here is a matter of settled law and does not merit review. The precise issue is whether the filing of a shoreline substantial development permit application alone triggers the vested rights doctrine; or whether vesting can only be triggered by filing a building permit application. Division I properly held that while the vested rights doctrine originated at common law, it is now statutory; and vested rights in Washington are triggered only by the filing of a complete building permit application. Further, Division I confirmed prior authority of this Court and declined to *extend* the vested rights doctrine to shoreline applications, as expanding the vested rights doctrine is a job for the legislature, not the courts.

Nothing about Division I's decision merits review. It is consistent with *Abbey Road v. Bonney Lake*, 167 Wn.2d 242, 252-254, 218 P.3d 180 (2009), where this Court held that as long as the local jurisdiction allows a developer to file a building permit application at any time in the permitting process, then only the building permit application – and no other permit application – freezes the land use laws for the rest of the project. *Abbey Road* noted that the common law vested rights doctrine entitled developers to have a land development proposal processed under the regulations in

effect at the time a building permit application was filed. *Id.* at 250. The judicially-created vested rights doctrine was then codified in 1987 and, pursuant to statute, vested rights can now be triggered in only two instances: (1) upon the filing of a complete building permit application, *RCW 19.27.095;* and (2) upon the filing of a subdivision application.[1] *Abbey Road* also reaffirmed *Erickson v. McLerran*, 123 Wn.2d 864, 872 P.2d 1090 (1994), where this Court declined to extend the vested rights doctrine to an application other than a building permit. "For the same reasons we rejected the invitation to extend the vesting doctrine in *Erickson*, we refuse to expand it in this case." *Abbey Road*, 167 Wn.2d at 253. Division I's decision is also consistent with the clear statement issued by this Court in *Woodway v. Snohomish Cty*, 180 Wn.2d 165, 322 P.3d 1219 (2014): "While it originated at common law, [Washington's] vested rights doctrine is now statutory."

Here, the Court of Appeals issued a decision in accord with *Abbey Road*, *Erickson* and *Woodway*. Thus, this case does not call for review.

Further, Division I properly found that the City's development processes and procedures do not violate Petitioner's constitutional rights. *Abbey Road* held that so long as a city allows a developer to file a building permit application at any time in the permitting process, then only a

[1] This case does not implicate the subdivision vesting statute, RCW 58.17.033(1).

building permit application triggers vested rights. *Abbey Road*, 167 Wn.2d at 254-60. Here, Kirkland allows developers to file a building permit application at any time in the development process. Had Potala Village filed a building permit application before the moratorium was enacted, it would have triggered vested rights. It chose not to file a building permit based on its own personal business strategies and financial concerns.

In its Petition for Review, Potala Village relies solely on case law that is distinguishable or predates the legislature's 1987 enactment of the building permit vesting statute, RCW 19.27.095(1), and this Court's decisions in *Erickson* and *Abbey Road*. Potala Village does not establish that Division I's decision is in conflict with any decision of this Court. Nor does it demonstrate that Division I's decision is in conflict with any post-*Abbey Road* decisions from the Courts of Appeals. Finally, the case does not present any constitutional issue. Thus, review should be denied.

II. STATEMENT OF FACTS

Potala Village sought to construct a mixed-use project (residential, retail and commercial) in the Neighborhood Business (BN) zone in Kirkland. *CP 92*. When Potala Village first contacted Kirkland about this proposed development, the BN zone where the site was located did not contain any cap or limit on residential density. *CP 92*. Potala Village was ultimately seeking approval of 143 residential units. *CP 94*.

Potala Village had two pre-application meetings with the City, resulting in a determination that the project would require multiple permits. *CP 85-93.* As a small portion of the project was located within the shorelines area, Potala Village was required to file an application for a shoreline substantial development permit.[2] *CP 86, 90, 94.*

On February 23, 2011, Potala Village filed an application for a shoreline substantial development permit with the City. *CP 94, 109-111.* The City informed Potala Village several times, both verbally and in writing, that it could also apply for a <u>building permit</u> at any time. *CP 86-87, 90, 95.* The City's code does not prohibit a developer from applying for a building permit at the same time as a shoreline permit. *CP 86-87, 95-99, 799, 802-803, 805.* Despite this, for reasons then-unknown to the City, Potala Village did not file a building permit application. *CP 94, 109-111.*

On May 11, 2011, Potala Village's shoreline application was deemed complete and a Letter of Completeness was issued. *CP 95, 113.* Contrary to Petitioner's assertions, this letter did not state that the shoreline application triggered vested rights. All it indicated was that the shoreline application was "complete" for processing.[3] Also contrary to

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[2] *See, Shorelines Management Act, RCW Ch. 90.58; and Kirkland's Shoreline Master Program, Kirkland Zoning Code (KZC), Chs. 83 and 141.*

[3] The City generally has 120 days from the date it receives a complete application to issue a decision. There are limited exceptions that will stop the clock from running and permits are lawfully put "on hold" during those times.

Petitioner's claim, the City never made any representation to Potala that its shoreline application vested its project in the City's entire zoning code.

In early November, 2011, the City's Senior Planner placed a call to Potala Village and informed it that the City Council was going to implement a zoning change that would adversely affect the residential density of its project. *CP 97-98.* The City's planner told Petitioner that its project was not "vested," but that it could obtain vested rights by filing an application for a building permit. *CP 98-99.*

On November 15, 2011, the City Council enacted an ordinance imposing a development moratorium (the "Moratorium")[4] on the BN zones, which temporarily prevented Potala Village from filing a building permit application. *CP 100, 139-140.* Shortly thereafter, Potala Village's owner, Mr. Dargey, and his attorney, met with the City. *CP 73.* Dargey admitted he purposely chose not to file a building permit application before the Moratorium was enacted due to how expensive it would be to prepare; in addition to future expenses he could incur due to changes to the permit that could be required as a result of environmental or shoreline review. *CP 73-74.* It was not until October 16, 2012, that Potala Village first attempted to file a building permit application. *CP 78.* The City, however, could not accept it because of the Moratorium. *CP 78-79, 82.*

[4] The Moratorium was not challenged or appealed by Petitioner and is not at issue here.

On December 11, 2012, while the Moratorium was still in effect, the City Council amended its zoning and development codes in a number of ways. *CP 103-104.* Significantly, the amendments placed a limit, or cap, on the residential density in the BN zones. With regard to Potala Village, the maximum number of residential units now allowed for its project is about 60, versus the 143 units originally proposed. *CP 104.*

The City approved Potala Village's shoreline permit on January 17, 2013. *CP 106, 246-265.* Contrary to assertions made by Potala Village, shoreline approval does not encompass its "entire" project. Instead, a shoreline permit only approves development within the shoreline area, *i.e.*, property within 200 feet of the ordinary high water line of Lake Washington. *CP 794-795.* Only a small portion of Petitioner's property (53-feet) lies within the shoreline area. *CP 795, 797.* Thus, the City's shoreline approval is only applicable to this 53-feet of property.

Furthermore, shoreline approvals are based solely on the City's shoreline regulations as set forth in its Shorelines Master Program, not the entire zoning code. *CP 796, 798.* Petitioner's assertions to the contrary are without factual or legal support.

On May 24, 2012, Potala Village filed a Complaint against the City, seeking a declaratory judgment and injunction. *CP 1-11, 102.* On November 6, 2012, several weeks after the City declined to accept its

building permit application, Potala Village filed an Amended Complaint, adding a request for issuance of a Writ of Mandamus. *CP 12-27.*

The parties filed cross-motions for summary judgment. *CP 38-71, 347-370.* The trial court granted summary judgment to Potala Village, holding that the vested rights doctrine applied to shoreline permits. The trial court also issued a writ of mandamus ordering the City to accept Potala Village's building permit application and process it under the pre-Moratorium zoning code. *CP 992-995.*

The City appealed to Division I of the Court of Appeals. On August 23, 2014, Division I issued a decision reversing the trial court order *Potala Village Kirkland, LLC v. City of Kirkland*, _ Wn. App. _ WL 4187807 (Aug. 25, 2014). Division I held that Washington's vested rights doctrine does not apply to shoreline permit applications:

> [W]e hold that the filing of the application for the shoreline substantial development permit, without filing an application for a building permit, did not vest rights to zoning or other land use control ordinances.

Potala Village, Slip Op. at 12. Division I went on to state that although the vested rights doctrine originated at common law, it is now statutory; and under RCW 19.27.095(1), it is triggered only by the filing of a "valid and fully complete building permit application." Slip Op. at 1.

Division I analyzed the history of the vested rights doctrine in Washington, noting that this Court first adopted the common law vested rights doctrine in *Odgen v. Bellevue*, 45 Wn.2d 492, 275 P.2d 899 (1954). Slip Op. at 6. *Odgen* held that the right to construct in accordance with the zoning ordinances and building codes in force at the time accrues when an applicant applies for a building permit. *Ogden*, 45 Wn.2d at 496. Division I noted that in some early cases following *Odgen*, the courts appear to have expanded the vested rights doctrine to applications other than building permits.[5] Slip Op. at 6. But then, in 1987, the legislature codified the common law vested rights doctrine at RCW 19.27.095(1), making it applicable only upon the filing of a "valid and fully complete building permit application." Division I also noted that the legislature expanded the vested rights doctrine, for the first time, to subdivision applications at RCW 58.17.033(1). Slip Op. at 7-8. No other permit applications, however, were included by the legislature in the statutory codification of the vested rights doctrine.

Division I then reviewed and analyzed Supreme Court cases addressing the vested rights doctrine after the 1987 legislative enactments:

[5] Division I noted the following cases: *Beach v. Bd. of Adjustment*, 73 Wn.2d 343, 347 (1968) (conditional use permits); *Juanita Bay v. Kirkland*, 9 Wn. App. 59, 84 (1973) (grading permits); *Talbot v. Gray*, 11 Wn. App. 807, 811 (1974) (shoreline permits); *and Ford v. B'ham-Whatcom Cty.*, 16 Wn. App. 709, 715 (1977) (septic permit); *Thurston Cty. Rental Owners v. Thurston Cty.*, 85 Wn. App. 171, 182 (1997) (septic permit).

Erickson v. McLerran, 123 Wn.2d 864 (1994) (vested rights apply only to building permit applications and not to master use permit applications), *Abbey Road v. Bonney Lake*, 167 Wn.2d 242 (2009) (vested rights apply only to building permit applications and not to site plan applications), and *Town of Woodway v. Snohomish Cty*, 180 Wn.2d 165 (2014) (while the vested rights doctrine originated at common law, it is now statutory).

Division I recounted the statutory history of the legislature's 1987 codification of the vested rights doctrine, and concluded it was intended to apply only upon the filing of a building permit application. Slip Op. at 13-15. Div. I went on to look at its own 1974 shoreline case, *Talbot v. Gray*, 11 Wn. App. 807, 525 P.2d 801 (1974), which Petitioner cites for the proposition that the vested rights doctrine applies to shoreline applications. Slip Op. at 15-18. Division I concluded that even if *Talbot* could be read as having expanded the vested rights doctrine to shoreline permits in 1974, the case has been superseded by RCW 19.27.095(1), and *Erickson* and *Abbey Road*. Slip Op. at 17-18. Finally, Div. I went through all of Petitioner's other arguments and properly disposed of each one.

III. AUTHORITY

This case presents none of the factors favoring Supreme Court review. RAP 13.4(b). Division I merely echoed this Court's constant message: Washington's vested rights doctrine has been purely statutory

since 1987 and applies only upon the filing of a complete building permit application (and subdivisions, which are not at issue here); earlier case law extending the doctrine beyond its statutory bounds must yield to the legislature's 1987 codification. This Court need not accept review and repeat its clear message yet again, especially where Petitioner has not demonstrated that Division I's decision is in conflict with any Supreme Court decision; or any decision from the Courts of Appeals.

A. Division I's decision is consistent with this Court's rulings.

As Division I stated, its decision adheres to this Court's decisions in *Erickson, Abbey Road,* and *Town of Woodway.* Slip Op. at 12, 18-20. In both *Erickson* and *Abbey Road,* this Court held that although the vested rights doctrine originated in the common law, it was codified by the legislature in 1987 and is now statutory. Then, as this Court confirmed in *Town of Woodway,* 180 Wn.2d at 173: "While it originated at common law, the vested rights doctrine is now statutory."

Petitioner contends the vested rights doctrine is found in both the common law and statutory law. *Petition, at* 7-8. But Petitioner did not cite any authority in support of this proposition.[6] Petitioner merely asserts

[6] Curiously, Petitioner cited to a case analyzing the subdivision vesting statute, RCW 58.17.033, which is not at issue here. *Noble Manor v. Pierce Cy.*, 133 Wn.2d 269 (1997). Further, this citation does not support Petitioner's claim that "... the Court explained that vested rights are now found in *both* common and statutory law." *Pet.*, p. 7. *Noble Manor* did not address that issue at all, much less "explain" that the common law vested rights

that pre-1987 case law that purportedly expanded the vested rights doctrine to permit applications other than building permits is still applicable. This argument, however, is contrary to the Supreme Court's treatment of vested rights since they were codified in 1987. For instance, *Abbey Road* rejected a similar argument, *i.e.*, that vested rights had been judicially extended to master use permit applications by Div. I in *Victoria Tower v. Seattle*, 49 Wn. App. 755, 745 P.2d 1328 (1987): "Even if *Victoria Tower* can be read to expand the common law vesting doctrine to MUP applications, it has been superseded by RCW 19.27.095(1) and our analysis in *Erickson*." *Abbey Road*, 167 Wn.2d at 254 (emphasis added).

Pursuant to *Erickson* and *Abbey Road*, the vested rights doctrine allows developers to have a land development proposal processed under the zoning and other land use regulations in effect at the time a complete building permit application is filed. Here, Division I issued a decision in full compliance with *Erickson* and *Abbey Road*. There is simply no reason for the Supreme Court to grant review in this case.

B. Division I's decision is consistent with other decisions from the Courts of Appeals.

Petitioner argues that Division I's decision is in conflict with other (mostly pre-1987) cases from the Courts of Appeals. Petitioner claims the

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cases were still effective post the 1987 legislative enactment that limited vested rights to only two applications: building permits and subdivision permits.

vested rights doctrine was specifically extended to shoreline substantial development permit applications by Division I itself in *Talbot v. Gray* (1974). But Division I disagreed and aptly distinguished *Talbot* on two bases: First, by noting that the plaintiffs in *Talbot* had actually filed a building permit application to construct their residential dock; and, second, by finding that even if *Talbot* could be read to have judicially expanded the common law vested rights doctrine to shoreline permits in 1974, it is no longer valid because "it directly contradicts the development of the law in *Erickson, Abbey Road*, and *Town of Woodway*." Slip Op. at 18. In other words, even if *Talbot* can be read to have expanded common law vesting to shoreline permits in 1974, it has been superseded by the 1987 vesting statute and the Supreme Court's decisions in *Erickson* (1994) and *Abbey Road* (2009).

Petitioner's argument with regard to several other Courts of Appeals cases is similarly unpersuasive, because those cases were also decided before the 1987 codification of the vested rights doctrine and this Court's decisions in *Erickson* and *Abbey Road*: *see, e.g., Beach v. Board of Adjustment*, 73 Wn.2d 343, 438 P.2d 617 (1968) (conditional use permit)[7]; and *Juanita Bay Valley Comm. Ass'n v. Kirkland*, 9 Wn. App.

[7] Petitioner also cites to *Weyerhaeuser v. Pierce County*, 95 Wn. App. 883, 976 P.2d 1279 (1999), where Division II mistakenly relied only on *Beach v. Board of Adjustment* in holding that a conditional use permit had vested rights; failing to acknowledge – or

59, 510 P.2d 1140 (1973) (grading permit); *Victoria Tower P'ship v. Seattle*, 49 Wn. App. 755, 745 P.2d 1328 (1987) (master use permit).

Petitioner's argument with regard to additional Courts of Appeal cases is also of no value as those cases were decided before this Court's 2009 decision in *Abbey Road*: *see, e.g., Weyerhaeuser v. Pierce County, supra; Phillips v. King County*, 136 Wn.2d 946, 968 P.2d 871 (1998) (stormwater drainage ordinance).

Petitioner also tries to argue that the legislature's 1987 decision to codify the vested rights doctrine with regard to building permits, and expand the doctrine to subdivision applications, somehow proves that the legislature intended the vesting statute as a "supplement" to common law doctrine. *Petition,* at 7-8. This argument does not make sense. First, it is contrary to the legislative history of the 1987 amendments, summarized by Div. I at pages 12-15 of its decision. Second, it is contrary to the basic rules of statutory construction, also analyzed by Div. I at pages 13-14:

> <u>[T]he plain words of the statute include 'building permits' but *do not include shoreline substantial development permits*</u>. We must presume the legislature was aware of the then-existing common law regarding the vested rights doctrine when it passed this legislation.

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even mention –RCW 19.27.095(1) or this Court's 1994 decision in *Erickson*. <u>Also, this Court has already commented on *Weyerhaeuser* with disfavor in *Abbey Road*, noting that it employed arguments the Court has already "considered and rejected." *Abbey Road*, 167 Wn.2d 253 n. 8.</u>

Slip Op. at 13 (emphasis added).[8] Division I went on to state:

> [T]he legislature only codified the vested rights doctrine to the extent of building permits in this section of the session laws. Thus, we further conclude from the exclusion of shoreline substantial development permits that *the legislature intended* that the vested rights doctrine would *not* extend to such permits.

Slip Op. at p. 13 (emphasis added).[9]

Finally, Division I noted that in addition to building permit applications, the legislature chose to expand the vested rights doctrine in only one other instance, and that was with regard to subdivision applications. *See* RCW 58.17.033(1). In accord with this Court's decision in *Abbey Road,* Division I noted as follows:

> We conclude from this that the legislature considered a wider scope of permit types to which the doctrine might apply beyond building permits. Yet, **the legislature chose not to include applications for shoreline substantial development permits** within its 1987 codification of the vested rights doctrine.

Slip Op. at pp. 14-15 (emphasis added). Petitioner's argument to the contrary, *i.e.,* that the legislature intended to expand the vested rights doctrine to all permits recognized by the common law because they

[8] *Citing Woodson v. State*, 95 Wn.2d 257, 262, 623 P.2d 683 (1980) ("[T]he legislature is presumed to know the existing state of the case law in those areas in which it is legislating.").

[9] *Citing Ellensburg Cement v. Kittitas County*, 179 Wn.2d 737, 750, 317 P.3d 1037 (2014) (where a statute specifically includes some things upon which it operates, and omits others, an inference arises that the omitted items were intentionally excluded under the maxim *expressio unius est exclusion alterius*).

expanded it to one (and only one) additional permit – subdivision permits – is strained and implausible.

Potala Village next argues that no court has ever "rescinded or abolished applications of the vested rights doctrine as already recognized under common law." *Petition,* at 9. Potala Village concedes, as it must, that since the legislative adoption of RCW 19.27.095 and RCW 58.17.033(1), Washington Courts have refused to expand the vested rights doctrine to any additional types of applications. But Potala Village claims in the case at bar, Division I "acted in direct contradiction to the consistent precedent of preserving common law vested rights in ruling for the *first time* the vested rights doctrine is only available on a statutory basis." *Id.* (Emphasis added.) This is incorrect. *Abbey Road* plainly rejected the argument that the courts should continue to follow *Victoria Tower v. Seattle*, *supra*, a case which extended the common law vested rights doctrine to a master use permit application: "Even if *Victoria Tower* can be read to expand the common law vesting doctrine to MUP applications, it has been superseded by RCW 19.27.095(1) and our analysis in *Erickson*." *Abbey Road*, 167 Wn.2d at 254 (emphasis added).[10]

[10] At pg. 11 of their *Petition*, Potala Village claims that *Abbey Road* "never retracted the vested rights doctrine from prior applications under common law." Not true. There is no other way to read *Abbey Road's* statement above than as a retraction of the common law vested rights doctrine as it was applied to MUPs in *Victoria Tower v. Seattle*.

C. Division I's decision respects constitutional rights.

This case does not implicate any constitutional issues. *Abbey Road* held that the only constitutional prohibition to the vested rights doctrine would occur if a city were to actively thwart an applicant's right to file a building permit, as the City of Bellevue did in *West Main v. Bellevue, infra.* Potala Village claims the City violated due process by interfering with its ability to obtain vested rights because (according to Petitioner) even if it had filed a building permit application at the same time as its shoreline application, the City reserved the right to require it to submit a new building permit application if environmental or shoreline review warranted modifications to the project. *Petition,* at 13-14. Potala Village then goes on to speculate that the City could have changed the project's vesting date to the date of the new/amended building permit application – which would have stripped it of its vested rights. Thus, Potala Village claims that just like Bellevue's process in *West Main Assoc. v. Bellevue*, 106 Wn.2d 47, 720 P.2d 782 (1986), and Redmond's practices in *Valley View v. Redmond*, 107 Wn.2d 621, 733 P.2d 182 (1987), Kirkland's procedures here also violate due process and unconstitutionally frustrate the vested rights doctrine.

There is no factual support for Potala Village's due process allegation. It is based on nothing more than speculation and an erroneous

interpretation of the City's permit processing procedures. Washington's vested rights doctrine acknowledges that a developer must often obtain many different land use permits from a local jurisdiction before undertaking a new project; such as a shoreline permit or a conditional use permit. Eventual construction may require even more technical land use approvals, such as grading, septic, and building permits. But under Washington's vested rights law, no matter how many permits a developer ultimately needs, so long as the jurisdiction allows him to file an application for a building permit at any time in the development process, and thereby vest the land use laws and regulations applicable to his project, there is no constitutional violation. Here, the City has a clear, understandable, and unobstructive process to submit building permit applications at any time, and Potala Village does not claim otherwise. Potala Village could have filed a building permit application and triggered the statutory vested rights doctrine before the Moratorium was enacted, so this case is nothing like *West Main*. Nor is this case anything like *Valley View*, where the developer had indeed filed five building permits, but the City refused to honor them, claiming, principally, that they had expired. Here, it is undisputed that Potala Village had been informed that the Moratorium was going to be enacted, yet purposely chose not to file a building permit application beforehand. Because it failed to actually file

an application for a building permit, Potala Village is left claiming it would have been futile for it to do so. Despite Petitioner's speculations, there is absolutely nothing in the City code that would require a developer to lose vested rights simply because shoreline or SEPA review requires changes to the developer's building permit. In fact, testimony in the record shows that in such instances, the City would not consider a developer to lose vested rights. *CP 968.*

Petitioner cannot frame a constitutional issue based on conjecture and its own erroneous interpretation of the City's permitting procedures. The situation is similar to *Abbey Road*, where the developer claimed the City of Bonney Lake's code required it to obtain site plan approval before being allowed to apply for a building permit. *Abbey Road,* 167 Wn.2d at 259-60. The Court rejected the developer's due process claim, noting that it was based upon the developer's erroneous interpretation of the code:

> [N]othing in the City's municipal code or in its application procedures conditions the submission of a complete building permit application on prior approval of a site plan application. Abbey Road's own erroneous interpretation of the building permit application form is not a basis for finding the City's vesting procedures unconstitutional under the *West Main* standard.

Abbey Road at 259-260 (emphasis added).

Here, Potala Village knew it could have filed a building permit application when it filed a shoreline permit application, but chose not to

because of the perceived cost. One of the main expenses it calculated into its decision was the expense of making changes to the permit based on shoreline or SEPA review. But the fact that Potala Village might have had to amend its permit, or submit a new permit, does not mean it would have lost vested rights as to the "valid and fully complete permit" it would have previously filed. Again, the record shows that Potala Village would not have lost vested rights (*CP 968*), and the developer's own erroneous interpretation of the City's code does not support a due process violation.

D. Because it merely affirms this Court's prior holdings, Division I's decision raises no issue of substantial public interest.

Division I's decision merely confirms what this Court has previously held: while the vested rights doctrine originated at common law, it is now statutory. And under RCW 19.27.095(1), vesting occurs upon the filing of a "valid and fully complete building permit application." So long as a local jurisdiction allows a developer to file a building permit application at any time in the development process, then only the building permit application – and no other permit application – can freeze the land use laws for the rest of the project. The vested rights doctrine does not apply to shoreline substantial development permit applications alone; or to any permit application other than as provided by statute.

While the City agrees that vesting is an important issue to developers and local jurisdictions, there is nothing about this case that raises a new issue or an issue of substantial importance. Instead, Division I simply issued a decision that confirms what the legislature said in 1987, and what this Court has already said three times – in *Erickson, Abbey Road,* and *Woodway.* Accordingly, the City respectfully requests that review of this matter be declined.

IV. CONCLUSION

Division I followed the law of this state regarding the vested rights doctrine, as set forth by the legislature in RCW 19.27.095(1) (the building permit vesting statute) and as affirmed by this Court in *Erickson, Abbey Road*, and *Woodway.* The vested rights doctrine in Washington has been codified by the legislature and now applies only upon the filing of a "valid and fully complete building permit application." Prior common law cases attempting to expand the vested rights doctrine to other permits have been superseded by the 1987 legislative vested rights enactments and are no longer of any effect, as this Court clearly held in *Erickson* and *Abbey Road.* Restating that holding yet again is inefficient and unnecessary. Therefore, the City respectfully asks the Court not to accept review of the decision by Division I in *Potala Village v. Kirkland.*

Respectfully submitted this 24th day of October, 2014.

KEATING, BUCKLIN & MCCORMACK, INC., P.S.

By: Stephanie Croll
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CITY OF KIRKLAND

By: William Evans (per email approval)
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Attorneys for City of Kirkland

DECLARATION OF SERVICE

I declare that on October 24, 2014, a true and correct copy of the foregoing document was sent to the following parties of record via method indicated:

Attorneys for Plaintiffs Potala Village, Lobsang Potala Village

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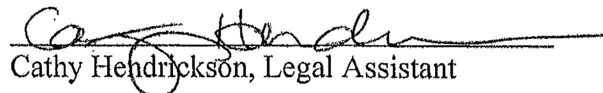
DATED this 24th day of October, 2014.



Cathy Hendrickson, Legal Assistant

OFFICE RECEPTIONIST, CLERK

To: Cathy Hendrickson
Cc: kolouskova@jmmlaw.com; Stephanie E. Croll; Deanna Nylund; Evanna Charlot; RJenkinson@kirklandwa.gov; Leta Santangelo
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Attached for filing in *Potala Village Kirkland, LLC, Lobsang Dargey, et al.*, Washington Supreme Court No. 90819-2, is *City's Response to Petition for Review to the Supreme Court*, submitted by:

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