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SUPREME COURT  
STATE OF WASHINGTON  
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No. 86870-1

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SUPREME COURT  
OF THE STATE OF WASHINGTON

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ROSS WILKINSON and CINDY WILKINSON, *et al.*,

Respondents,

v.

CHIWAWA COMMUNITIES ASSOCIATION,  
a Washington Non-Profit corporation,

Appellant.

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CHIWAWA COMMUNITIES ASSOCIATION'S ANSWER TO  
THE AMICUS CURIAE MEMORANDUM OF  
GOLD BEACH COMMUNITY CLUB  
SUPPORTING DIRECT REVIEW

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ORIGINAL

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A. INTRODUCTION

Appellant Chiwawa Communities Association (“Association”) seeks direct review under RAP 4.2(a)(3)-(4) of the trial court order granting summary judgment to the respondent rental businesses and declining to uphold covenant amendments adopted by a majority of the Association’s members in 2011. That order is contrary to decisions of this Court such as *Mains Farm Homeowners Ass’n v. Worthington*, 121 Wn.2d 810, 815, 854 P.2d 1072 (1993) and *Metzner v. Wojdyla*, 125 Wn.2d 445, 451-53, 886 P.2d 154 (1994), which prohibit *any* commercial or business use of a property subject to a single-family residential use restriction. It is similarly contrary to decisions of the Court of Appeals enforcing covenants that forbid commercial activity in a single-family residential neighborhood. Thus, review is appropriate under RAP 4.2(a)(3). The Association also asserted in its statement of grounds for direct review that this is a case of significant public importance under RAP 4.2(a)(4).

Amicus curiae Gold Beach Community Club (“Gold Beach”) has filed a memorandum on direct review under RAP 4.2(a)(3)-(4). Gold Beach’s arguments confirm the broad public impact that this case will have in Washington. As Gold Beach demonstrates, this case implicates public interests far beyond those at stake in Chiwawa. It involves the continuing influence of long-standing precedents from this Court and the

authority of a homeowners' association to democratically govern for the common good of its members.

B. RESPONSE TO GOLD BEACH'S ARGUMENT

The rental businesses suggested in their answer to the statement of grounds for direct review that direct review is not appropriate at least in part because there are no larger public concerns at stake in this case. Ans. at 10-11. In particular, they claimed that there is no evidence that any other subdivision in Washington has the same set of covenants the meaning of which requires a "prompt and ultimate determination." *Id.* at 11. The rental businesses miss the point. That another homeowners' association does not have the *identical* covenants does not mean that the case will only impact the parties in this case. Gold Beach has covenants similar to those in Chiwawa. Gold Beach's amicus brief confirms that direct review of this case is appropriate under RAP 4.2(a)(4) because its outcome will have far-reaching effects on other homeowners' associations in Washington.

Gold Beach's arguments emphasize that the issues in this case reach far beyond the interests of the homeowners in Chiwawa. The issues will impact every homeowners association in Washington confronting, or about to confront, short-term vacation rentals in residential communities governed by covenants prohibiting *any* commercial or business use of a

property in the community subject to a single-family residential use restriction.<sup>1</sup> Gold Beach and Chiwawa iterate a unified theme: that this Court should accept review to provide guidance to homeowners and homeowners associations across the state.

As the Association argued, and Gold Beach has now demonstrated, accepting review is not simply about weighing the Association's concerns against the rental businesses' interests. It is about protecting the interests of all Washington homeowners and homeowners associations in their residential, non-commercial communities.

### C. CONCLUSION

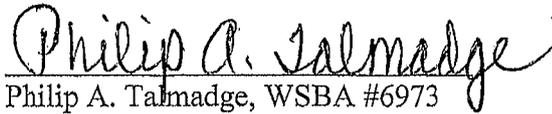
Gold Beach demonstrates that this case implicates broad public concerns. The issues presented here will re-surface throughout Washington as Chiwawa and Gold Beach, and likely many other homeowners' associations, confront the efforts of a minority of owners to disrupt non-commercial, single-family residential subdivisions with short-term transient vacation rentals. Direct review is therefore appropriate under RAP 4.2(a)(4).

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<sup>1</sup> A recent search of the term "homeowner association" in the Washington Secretary of State's corporations database returned 6,320 results. <http://www.sos.wa.gov/corps>. This figure includes single-family homeowners' associations and condominium associations.

DATED this 14~~th~~ day of August, 2012.

Respectfully submitted,



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Chiwawa Communities Association

DECLARATION OF SERVICE

On the date below, I deposited with the U.S. Postal Service a true and accurate copy of: Chiwawa Communities Association's Answer to the Amicus Curiae Memorandum of Gold Beach Community Club Supporting Direct Review in Supreme Court Cause No. 86870-1 to the following parties:

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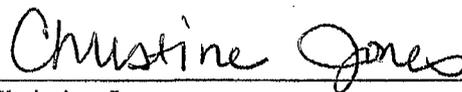
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Original efiled with:

Clerk's Office  
Washington Supreme Court

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

Dated this 14th day of August, 2012, at Tukwila, Washington.

  
\_\_\_\_\_  
Christine Jones  
Talmadge/Fitzpatrick

## OFFICE RECEPTIONIST, CLERK

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**To:** Christine Jones  
**Subject:** RE: Chiwawa Comms. Answer to Amicus

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Please note that any pleading filed as an attachment to e-mail will be treated as the original. Therefore, if a filing is by e-mail attachment, it is not necessary to mail to the court the original of the document.

**From:** Christine Jones [<mailto:christine@tal-fitzlaw.com>]

**Sent:** Tuesday, August 14, 2012 9:20 AM

**To:** OFFICE RECEPTIONIST, CLERK

**Subject:** Chiwawa Comms. Answer to Amicus

Clerk:

Attached for today's filing in Supreme Court No. 86870-1, *Wilkinson v. Chiwawa Comms. Assoc.*, is Chiwawa's Answer to Amicus Curiae Memo of Gold Beach.

Thank you,

Christine.

Christine Jones  
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