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SNOHOMISH COUNTY HEARING EXAMINER

BSRE POINT WELLS, LP ,)	
)	NO. 11-101457 LU
Appellant)	
)	PRE-HEARING BRIEF OF BSRE
v.)	POINT WELLS, LP
)	
SNOHOMISH COUNTY PLANNING AND)	
DEVELOPMENT SERVICES,)	
)	
Respondent.)	
)	
)	

BSRE POINT WELLS, LP (“BSRE”) hereby submits this Pre-Hearing Brief in advance of the Hearing Examiner proceeding commencing on May 16, 2018.

I. Description of the Project.

The Snohomish County Council in 2009 and 2010 revised its comprehensive plan, adopted Chapter 30.34A SCC (the “Urban Center Code”) and designated the land owned by BSRE (“Point Wells”) as an Urban Center. These combined actions satisfied, at least in part, the County’s obligation pursuant to the Growth Management Act to plan for the accommodation of future population growth within unincorporated portions of the County. The designation of Point Wells as an Urban Center largely satisfied the County’s density allocation obligation.

Following the Council’s action, BSRE’s predecessor submitted a complete Urban Center Development Application (and other related supporting applications) for the development of a

1 mixed use Urban Center including approximately 3,000 residential units, approximately 100,000
2 square feet of commercial space and a large public access beach.

3
4 **II. BSRE’s Development and Permit Activities.**

5 BSRE has been working with Snohomish County (the “County”) on submitting and
6 revising its applications to develop Point Wells since 2011. Throughout the pendency of the
7 permitting process, BSRE has spent approximately seven years and more than \$10 million in
8 pursuing approval of the application. Despite the significant progress that has been made, and
9 statements by the County that projects typically go through seven or eight iterations, the County
10 suddenly and unexpectedly now seeks to have that application terminated.

11 The County argues that seven years is too long for an application to be pending. The County
12 ignores the magnitude and complexity of the project in determining an arbitrary cut off for the life
13 of the application. The County further ignores the fact that a significant chunk of that seven-year
14 time frame was consumed by litigation involving the legal sufficiency of the County’s actions in
15 revising its comprehensive plan to create urban centers and in adopting Chapter 30.34A SCC (the
16 “Urban Center Code”). BSRE spent a substantial amount of time working with the County in
17 litigating challenges to the Urban Center designation and the County’s Urban Center Code in
18 general. This dispute was litigated all the way to and through the Washington State Supreme
19 Court. In addition, BSRE assisted the County in complying with the Growth Management
20 Hearings Board’s Rezone Order.

21 Once those issues were resolved, BSRE had to spend significant time addressing the traffic
22 issues raised by the City of Shoreline. Nearly all of the traffic generated by the Project will impact
23 roads within the City of Shoreline. BSRE worked to negotiate an agreement with Shoreline
24 regarding the manner by which those impacts would be studied, and how those impacts might be
25 managed. Successfully mitigating traffic is essential to successful development and approval of
26 the Project, and the County agreed this work should proceed and, further, that the final results
27 would form the basis of the traffic section of the draft environmental impact statement (the

1 “DEIS”). This process alone consumed over 18 months. Since that time, BSRE has either been
2 waiting to receive comments from the County or working to correct and address issues raised by
3 the County regarding defects in the application which would significantly affect the DEIS for this
4 Project.

5 **III. History of BSRE’s Urban Center Development Application.**

6 On October 6, 2017, the County submitted a 389-page letter to BSRE, which stated
7 “Snohomish County has completed its review of the Point Wells application materials submitted
8 on April 17, 2017. This letter transmits our review comments.”¹ Immediately upon receipt of this
9 letter (the “October 2017 Letter”), BSRE and its consultants began reviewing, analyzing, and
10 developing scopes of work for BSRE’s consultants to address the County’s concerns. BSRE
11 budgeted (and has spent) approximately \$1,000,000 in addressing the comments raised in the
12 October 2017 Letter.

13 On November 13, 2017, BSRE, its consultants, and its attorneys met with Planning and
14 Development Services (“PDS”) staff, its department management and a member of the prosecuting
15 attorney’s office to discuss BSRE’s anticipated response to the October 2017 Letter. At that
16 meeting, PDS explicitly stated that the January 8 date included in the October 2017 Letter for
17 BSRE’s resubmittal was merely a “target” and not a statutorily prescribed deadline. When BSRE
18 and its consultants informed the County that the required work could not conceivably be completed
19 by January 8, PDS advised BSRE to submit a letter stating that it could not meet that target. BSRE
20 was also asked to provide PDS with a date by which the revised submittal would be provided.
21 BSRE informed PDS that the revised submittal would be made by April 30, 2018. In addition,
22 PDS clearly and unequivocally stated in the November 13 meeting that there was no reason to
23 suspect that an additional extension request might not be approved.

24 However, despite the statement on November 13, 2017, and prior similar statements made
25 by PDS, suddenly on January 9, 2018, the County abruptly changed its position and actively began
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27 ¹ Exhibit K-31.

1 working to terminate BSRE's application. PDS's decision to deny the very same extension request
2 it represented would be forthcoming, and to instead seek a complete termination of the application
3 understandably surprised BSRE, its attorneys and its consultants. BSRE has yet to receive an
4 explanation for PDS's abrupt change in position.

5 PDS's termination decision was first conveyed by correspondence dated January 9, 2018
6 from Principal Planner/Project Manager Paul MacCready to BSRE's land use counsel Gary Huff.²
7 This letter completely ignored the representations made by PDS staff at the November 13, 2017
8 meeting.

9 BSRE complied with the direction it received at the November 13, 2017 meeting by
10 providing the County with a letter stating it would not meet the January 8 target, that it would
11 submit revised materials by April 30, 2018, and then by submitting its revised materials on April
12 27, 2018. However, despite BSRE's actions, and despite the considerable amount of time and
13 money that BSRE has spent on the current iteration of the project, PDS has nonetheless continued
14 to seek termination of BSRE's application.

15 As reflected in Mr. MacCready's January 9, 2018 letter, PDS determined, despite its prior
16 representations to the contrary, that *as of the date of that letter*, BSRE's application *as it then*
17 *existed* could not be approved under County Code. PDS therefore began the process outlined in
18 SCC 30.61.220 to terminate BSRE's application without completing the DEIS. PDS informed
19 BSRE that PDS *would not consider* BSRE's forthcoming revised submittals while continuing with
20 its termination efforts. Nonetheless, PDS in effect invited BSRE to continue to work on its plan
21 revisions and submit them to the Hearing Examiner for consideration.

22 As earlier promised, BSRE nonetheless completed its further analyses, revised its plans
23 and fully responded to each and every matter raised in the County's October 6, 2017 Review Letter.
24 For ease of review, BSRE reproduced the Review Letter and inserted its responsive materials
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² Exhibit K-33.

1 immediately following each PDS request throughout the Review Letter.³ Following the April 27,
2 2018 submittals (the “April 2018 Revisions”)⁴, the County issued a Supplemental Staff
3 Recommendation on May 9, 2018 (the “May Recommendation”), which was based on an
4 incomplete review of the April 2018 Revisions and identified a new comment not previously
5 included in any prior comments made by PDS.

6 **IV. The Limited Purpose and Potential Outcomes of this Hearing.**

7 BSRE asserts the purpose of this hearing is to determine whether the Hearing Examiner
8 should grant an extension of the permit termination to allow the environmental review process to
9 proceed, provide PDS with adequate time to evaluate and comment on all the material recently
10 submitted, and allow BSRE reasonable time to respond to these comments. PDS originally
11 scheduled this hearing in its continuing effort to terminate BSRE’s application, again as it existed
12 as of January 9. That application is no longer relevant in that it has been supplemented and
13 superseded by the April 2018 Revisions. The facts upon which PDS relied in seeking termination
14 no longer exist. The May Recommendation is moot because (1) it is based on an incomplete
15 review of the documents submitted on April 27, 2018, and (2) to the extent any issues were not
16 satisfactorily addressed in the April 2018 Revisions, those issues will be fully addressed by the
17 start of the hearing.

18 BSRE will grant, for the sake of this discussion only, that PDS might conceivably have
19 concluded that BSRE’s prior plans were not yet in approvable form. Even if true, however, that is
20 no longer the case. The April 2018 Revisions and the revisions to be submitted prior to the start of
21 the hearing have and will fully respond to the County’s perceived shortcomings. BSRE has
22 demonstrated it has an approvable project, for which an extension should be granted and the DEIS
23 process should proceed.

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³ See Exhibit G-14.

27 ⁴ See Exhibits A-28—A-35; B-7—B-9; C-23—C-33; G-12—C-15; G-21.

1 The original purpose of this hearing is no longer relevant. Based on the record *as it*
2 *currently exists*, PDS's attempt at termination should be summarily rejected. Having now fully
3 addressed the County's concerns, and having shown significant progress, BSRE should be granted
4 an extension of the termination date of its applications and PDS should be directed to recommence
5 the environmental review process in earnest and in good faith.

6 **V. Hearing Testimony Should be Limited to the Adequacy of the April 2018**
7 **Revisions and Subsequent Revisions.**

8 Public interest in BSRE's application is obviously great. Many members of the public will
9 likely seek to testify on the merits of the overall project, not understanding the limited purpose of
10 this proceeding. The appropriate time for public comment on the merits of the proposal as a whole
11 is at an open record hearing to be held on the project *after* the completion of the SEPA review
12 process. Thus, BSRE requests that the Examiner advise the public that testimony at this
13 proceeding should be limited to the question of whether the current iteration of BSRE's application
14 is sufficiently complete to justify an extension of the life of the application.

15 The testimony of PDS's witnesses should similarly be limited to matters responsive to the
16 current iteration of the project, based on the April 2018 Revisions and subsequent revisions, and
17 to those items upon which the County has stated it will rely in its May Recommendations. No
18 purpose will be served by extensive testimony regarding the adequacy of the prior submittal since
19 that application has now been superseded.

20 **VI. Response to PDS's Five Major Areas of Conflict.**

21 In its May Recommendation, PDS lists what it labels as the remaining five major
22 deficiencies in BSRE's April 2018 Revisions. As stated elsewhere, PDS's recommendation is
23 based on an incomplete review of the documents provided on April 27, 2018, and fails to consider
24 the supplemental documents provided to the County after April 27, 2018, which fully resolve all
25 of the issues raised in the May Recommendation. The May Recommendation is also of grave
26 concern in that it raises an entirely new issue not previously raised in County comments and
27

1 reflects a selective memory of the many conversations and agreements regarding how different
2 aspects of the application should and would be handled. Nonetheless, BSRE's application has been
3 or will be updated and revised to address the objections made.

4 In their upcoming testimony in this proceeding, BSRE's consultants will fully respond to
5 each matter raised and will demonstrate how each concern has been addressed. Each of PDS's
6 remaining five concerns are listed below, with a summary of relevant history and a description of
7 how the application has been revised.

8 A. Failure to Document Feasibility and Code Compliance of Second Access Road.

9 The May Recommendation fails to describe the ever-evolving County position regarding
10 the need for a secondary access road. In initial discussions, BSRE was informed that so long as
11 acceptable means of egress from the site were available in emergency situations, then a second
12 access road would not be necessary. Later, BSRE was informed that so long as the lanes of the
13 railway line overpasses were separated so as to allow emergency vehicles to travel either direction
14 on each overpass, then a second access road would not be required. The County's position then
15 changed to require a second access for *emergency use only*. Finally, a full second access road for
16 use by the public was required.

17 BSRE continued to redesign the project with each increasing demand of the County, and
18 has now redesigned the project to provide the full access secondary access road. The road is along
19 property owned by BSRE. However, it is located entirely within the Town of Woodway. Initially
20 PDS agreed that approval of the road was within Woodway's jurisdiction and that the plans
21 submitted to the County would show the road but note that it was not subject to the County's
22 review authority. The May Recommendation reflects the fact that PDS continues to demand more
23 and more information regarding the road as if it was within its own jurisdiction. The April 2018
24 Revision nonetheless satisfies the County's overly broad demands.

25 The road has been designed to be in compliance with SCC 30.53A.512, as required by the
26 County, and BSRE agreed to have the approval of the Project be conditioned on having a full
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1 access secondary access road. To the extent that the May Recommendation requires some
2 additional information about the feasibility of constructing the secondary access road, sufficient
3 information will be provided no later than May 16, 2018 (the “May 2018 Revisions”).

4
5 B. Failure to Provide Appropriate Building Setbacks for Tall Buildings from Lower
6 Density Zones and Failure to Document Evidence of Access to High Capacity Transit
7 for Buildings Over 90 Feet.

8 The proposed tall buildings are designed to be largely located along the back or easterly
9 boundary of the project, due to the fact that the site sits immediately west of a 220-foot bluff. Thus,
10 tall buildings can be placed at the foot of the slope without significant view impacts on the
11 surrounding community. A view analysis depicting these minimal impacts has been prepared for
12 eventual inclusion in the project EIS.

13 BSRE recognizes that SCC 30.34A.040(1) and (2) limit building heights in certain
14 described situations. SCC 30.34A.040(1) limits building heights to 90 feet *except* where the
15 additional height is documented as being desirable; when the project is located near a high capacity
16 route or station; and when an EIS is prepared which addresses certain enumerated items.

17 The project EIS will address the desirability of increased height and the other items
18 required for EIS analysis. The required view analysis to be included in the project EIS has already
19 been completed.

20 The adjacency requirement to a high occupancy line or station is addressed in detail in
21 BSRE’s Response #34 to PDS’s October 6, 2017 Review Letter.⁵ As demonstrated therein, Sound
22 Transit has confirmed its willingness to allow a commuter rail station at Point Wells if BSRE
23 commits to finance its construction.

24 Further, the requirement related to a high capacity transit specifically allows for an increase
25 in height “when the project is located near a high capacity *route or station . . .*” SCC
26 30.34A.040(1) (2010) (emphasis added). BSRE has committed to providing a high capacity station
27 at Point Wells. However, even if no such station is present, there is no question that the Project

⁵ Exhibit G-14.

1 will be located “near a high capacity route.” The County has specifically agreed that “Sound
2 Transit operates a commuter rail service on the lines owned by Burlington Northern Santa Fe
3 (BNSF) that run through the Point Wells site . . .”⁶ Therefore, even if BSRE did not provide a
4 high capacity station at Point Wells, the proximity to the high capacity route alone would satisfy
5 this criterion under SCC 30.34A.040(1) (2010).

6 Further still, BSRE proposes to operate a water taxi to transport residents from the dock to
7 the Edmonds light rail station. Water taxis are specifically included in the definition of high
8 capacity transit at SCC 30.91H.108. Thus, high capacity transit will be available in any event,
9 satisfying the requirement of SCC 30.34A.040.

10 SCC 30.34A.040(2) limits building heights where the location is adjacent to certain
11 residentially zoned properties. In its October 2017 Letter, PDS states, for the first time: “While
12 SCC 30.34A.040 (2010) is silent on the matter of zoning in incorporated areas, Snohomish County
13 finds that it is appropriate to treat the Town of Woodway areas with R-14,500 or UR zoning as
14 equivalent to the lower density zones listed in (2)(a).” This was the first time PDS expressed such
15 an opinion.

16 In response to this new issue, BSRE submitted a variance request which demonstrates that
17 the site’s characteristics dictate the location of tall structures at the rear of the site and which
18 requests a variance from the height limits of SCC 30.34A.040(2). In addition, BSRE included in
19 the April 2018 Revisions an alternative (undesirable) plan which strictly complies with the limits
20 imposed by SCC 30.34A.040(2). BSRE has considered the comprehensive plans of the Town of
21 Woodway and the City of Shoreline and believes that the variance is in alignment with these plans.
22 To the extent that additional information is necessary for PDS to fully consider the variance
23 request, BSRE will revise this variance request and submit it promptly. Such a revision is expected
24 to be submitted prior to the start of the hearing.⁷

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26 ⁶ Exhibit N-2, p. 10.

27 ⁷ Various aspects of the County code are illogical. Should it so desire, BSRE could elect to convert its application to one proposing the development of an Urban Village under Chapter 30.41A SCC. In that development

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2 C. Failure to Provide Adequate Parking.

3 The revised drawings (with included tables) submitted as part of BSRE's April 2018
4 Revisions fully address PDS's concerns in this area. The requisite number of parking spaces and
5 the sufficient information regarding accessible parking are included in the plans. Despite PDS's
6 voiced concern regarding the definition of "Retirement Housing", BSRE is committed to
7 complying with the definition of "Retirement Housing" such that the parking ratios used to
8 calculate the amount of required parking are accurate. Adopting the definition of Retirement
9 Housing moots the County's concerns regarding prior use of the definition of Senior Housing used
10 in ITE Trip Generation Manuals and results in complete compliance with code-required parking.
11

12 Further, despite PDS's concerns to the contrary, BSRE meets all requirements with respect
13 to accessible parking. The garages are designed with sufficient overhead clearance and the van
14 parking spaces have been designed such that they are at least eleven feet wide with five-foot access
15 aisles, which satisfies 2009 ICC A117.1.
16

17 D. Failure to Furnish Shoreline Management Regulations.

18 For the first time, in the May Recommendation, PDS states that BSRE must use the
19 "Ordinary High Water Mark (OHWM) for determining the landward extend [sic] of Shoreline
20 jurisdiction."⁸ This is a new comment made by the County which was not included in the County's
21 prior comments. BSRE can and will make this change based on the extent to which the OHWM
22 is determinable. Because the OHWM can be difficult to discern, BSRE intends to seek
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26 scenario, BSRE could construct buildings to 125 to 140 feet without the requirement of adjacency to high occupancy
transit.

27 ⁸ See Exhibit N-2, p. 19.

1 confirmation from the agencies, including the Washington Department of Ecology, prior to making
2 any changes based on the OHWM.

3 The remainder of the comments on the Shoreline Management regulations are fully
4 resolved by BSRE's April 2018 Revisions. To the extent that they have not been fully resolved
5 by the April 2018 Revisions, BSRE intends to supplement its revisions and submit such revisions
6 no later than May 16, 2018. With the May 2018 Revisions, BSRE will provide a draft of the
7 Critical Area Site Plan and will show that the designated pier uses are permitted under the
8 Conservancy Environment Regulations, that the residential development is not dependent on
9 shoreline protection measures, and that BSRE has analyzed the applicable Shoreline Master
10 Program regulations. Should the County require additional information after the May 2018
11 Revisions are submitted, BSRE remains committed to promptly providing that information.
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14 E. Failure to Comply with Code Provisions Regarding Critical Areas, Including
15 Geological Hazardous Areas, Wetlands, and Fish and Wildlife Conservation Areas, and
Critical Aquifer Recharge Areas.

16 The current Point Wells site is a contaminated property which does not permit any public
17 access to the beach. In addition, toward the Upper Bluff, there is a significant amount of space
18 which has been designated as landslide hazard areas. The Point Wells development will resolve
19 all of these issues. The site will be cleaned up prior to beginning construction on the urban center,
20 the design includes a large public beach, and BSRE will provide significant slope stabilization,
21 increasing the safety of the overall site. BSRE's April 2018 Revisions fully address compliance
22 with the County's code provisions regarding critical areas, including geological hazardous areas,
23 wetlands, and fish and wildlife conservation areas, and critical aquifer recharge areas. The April
24 2018 Revisions clearly identified which wetland and stream buffers would be altered and by how
25 much. In its May 2018 Revisions, BSRE will provide additional information related to geological
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1 hazardous areas and the landslide variance request to resolve the remaining issues identified by
2 PDS in its May Recommendation.

3 **VII. BSRE’s Commitment to Further Supplement Its Application if Necessary.**

4 BSRE and its consultants are confident that they have revised the application and
5 supporting analyses to fully address every issue raised by PDS in its October 6, 2017 Review
6 Letter. In the unlikely event that PDS should determine that further revision is necessary, BSRE
7 commits to fully and timely responding to any such additional concerns which might be raised so
8 as to continue the progress and momentum reflected in the April 2018 Revisions.

9
10 **VIII. PDS Fails to Recognize that a Project Can be Approved Conditionally.**

11 PDS’s position that every possible issue must be resolved prior to proceeding with the EIS
12 process is contrary to the general rule that an application can be approved conditionally. There are
13 numerous aspects of Title 30 SSC which allow a development to be approved subject to
14 “preconditions” to approval.⁹ In fact, the Hearing Examiner Rules of Procedure specifically
15 address this:
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17 Rule 8.1: Applicability. Certain provisions of Title 30 SSC require
18 an Applicant to take certain actions before a land use permit or
19 approval can be approved. . . . These actions are known as
20 “preconditions” to approval. This rule applies to any Hearing
21 Examiner decision where the decision cannot become effective until
22 the applicant has completed one or more preconditions. . . .

23 Rule 8.2: Effect of Precondition on Decision. A decision subject to
24 one or more precondition(s) is binding but will not become legally
25 effective until the stated precondition(s) have been fulfilled and such
26 fulfillment is certified by the Director on a full copy of the decision.
27 Failure to timely fulfill the precondition(s), or to timely request and
receive an extension of time for fulfillment as provided in Rule
8.4[sic], shall render the Hearing Examiner decision null and void.

⁹ See, e.g., SCC 30.66B.440, SCC 30.65.130; SCC 30.66B.540.

1 Rule 8.3 states that the deadline for fulfillment of the preconditions is to be set by the
2 Examiner based on “a realistic estimate of the amount of time necessary for a prudent and
3 reasonable person to complete the required action(s).” To the extent that BSRE has not taken a
4 step that PDS deems a necessary precondition to the development at Point Wells, the approval of
5 the project should be conditioned on those preconditions being satisfied.
6

7 **IX. PDS’s Calculation of the Termination Date of BSRE’s Application is in Error and
8 No Further Extension Should Be Necessary.**

9 BSRE contends that the County’s calculation of a June 30 termination date for the
10 application is in error. BSRE so notified the County in correspondence dated February 15, 2018.¹⁰
11 Neither PDS nor the Prosecuting Attorney’s Office responded to the argument contained in that
12 letter. As a result, BSRE has submitted a Code Interpretation Request, asking for a determination
13 that the term of BSRE’s applications was automatically extended to April 1, 2019 as a result of the
14 adoption of the revised provisions of SCC 30.70.140.¹¹

15 This matter is not now before the Hearing Examiner but the parties may well return in an
16 appeal of the outcome of this code interpretation request.

17 **X. The Inappropriate Purpose That May Be Behind PDS’s Refusal to Grant an
18 Extension.**

19 In her letter of January 24, 2018 rejecting BSRE’s request for an extension, Director Barb
20 Mock appears to have inadvertently disclosed what may be the reason why PDS so dramatically
21 changed position regarding the availability of an extension.¹² After litigation which proceeded all
22 the way to the Washington State Supreme Court¹³, BSRE’s application was confirmed as being
23 vested under the land use regulations in place on the date of its application. Subsequent changes

24 ¹⁰ See Exhibit G-22.

25 ¹¹ See Exhibit G-21.

26 ¹² Exhibit K-40.

27 ¹³ These legal challenges alone consumed nearly half of the time during which BSRE’s application has been pending. This includes time during which PDS was enjoined from processing BSRE’s application. PDS ignores the import of these legal challenges while determining that BSRE’s application has been pending for too long.

1 to the County’s comprehensive plan and Urban Center regulations would preclude a reapplication
2 of BSRE’s current vested application as Director Mock apparently prefers.

3 In her denial letter, Ms. Mock stated: “. . . BSRE’s request also must be weighed against
4 the public’s interest in having an application evaluated against regulations *that currently are in*
5 *effect.*”¹⁴ This language implies that BSRE’s vested application should be terminated and BSRE
6 should thereafter reapply under current zoning regulations. Those regulations would no longer
7 allow an application for Urban Center development approval. This position is not only contrary
8 to well established vesting doctrine, but it also is directly contrary to the County’s prior position
9 with respect to BSRE’s application.

10 Under Washington’s vested rights doctrine, “developers who file a timely and complete . .
11 . application obtain a vested right to have their application processed according to the zoning and
12 building ordinances in effect at the time of the application.” *W. Main Assocs. v. Bellevue*, 106
13 Wn.2d 47, 50-51 (1986). Once a developer submits a permit application that is sufficiently
14 complete, complies with the existing zoning ordinances, and is filed during the effective period of
15 the zoning ordinances under which the developer seeks to develop, a jurisdiction “cannot frustrate
16 the development by enacting new zoning regulations.” *Id.* To the extent that PDS’s actions have
17 been taken to frustrate the vested rights doctrine, such actions should not be permitted.

18 The County’s goal to force BSRE to lose its vesting status is directly contrary to the
19 position the County took in *Snohomish County v. Woodway*, Case No. 68049-8-I (Div. 1, Jan. 19,
20 2012). There, in its opening brief, the County stated “BSRE had filed complete permit applications
21 fully vesting its development rights under the County’s Urban Centers plan provisions and
22 development regulations.”¹⁵ The County further argued that because BSRE’s permit applications
23 were filed prior to changes to the code made by the Growth Management Hearings Board, they
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26 ¹⁴ Exhibit K-40 (emphasis added).

27 ¹⁵ Exhibit M-29.

1 were vested to the County's urban center ordinances. *Id.* The County is therefore estopped from
2 making any contrary argument now.

3 It is not the County's place to undermine the Supreme Court's ruling or to ignore the long-
4 established vesting doctrine, thereby forcing BSRE to reapply for an Urban Village development.

5 **XI. Conclusion.**

6 The attempt by PDS to bring about the termination of an outdated project proposal should
7 be rejected. The proposal which PDS seeks to terminate is no longer relevant. BSRE has addressed
8 every issue raised by the County with the April 2018 Revisions and will further address them with
9 the May 2018 Revisions. Therefore, the May Recommendation prepared by PDS supporting its
10 proposed termination will be outdated by the time of the hearing.

11 PDS now has before it a fully revised application with supporting documentation which
12 fully addresses each and every issue raised by PDS in its October 2017 Letter. BSRE has provided
13 more than sufficient information to proceed with SEPA review.

14 That October 2017 Letter was finally produced *half a year* following the April 17, 2017
15 submittal of BSRE's first revised application. Even though it appears that PDS attempted to review
16 BSRE's April 2018 Revisions prior to providing its May Recommendation, it is unreasonable to
17 expect PDS's review was complete or thorough.

18 The only logical course is for the Examiner to extend the termination date of the application
19 to enable PDS to complete its review and proceed with SEPA review and the remaining steps in
20 the overall review process. Only in that manner can the current revised proposal undergo public
21 scrutiny. And only in that manner can the County analyze the current proposal and undertake the
22 required open record review of these revised plans.

23 For all of the reasons stated above, BSRE requests that an extension be granted, this hearing
24 be continued until the SEPA process has been completed and all parties have had a sufficient time
25 to analyze the Project after the EIS has been completed, and the County be ordered to proceed with
26 the SEPA process in good faith.

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DATED this 14th day of May, 2018.

/s/ *Jacque E. St. Romain*
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