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Washington State's
Chamber of Commerce

February 26, 2007

The Honorable
Washington State Senator
PO Box
Olympia, WA

Re: SB 5507 – Changing Washington's Vesting Laws

Dear Senator:

We, the undersigned, are writing in strong opposition to SB 5507 which would significantly change Washington's real property development vesting laws. This bill was heard in the Senate Government Operations & Elections committee on February 6, 2007 and passed out of committee on February 22, 2007.

We'd like to take this opportunity to share four (4) specific concerns with you. Those concerns are as follows:

1. **SB 5507 addresses Washington's vested rights law in isolation, as if the GMA and SEPA did not exist.**

While many other states provide for later vesting points, those states do not have Washington's Growth Management Act (GMA) or State Environmental Policy Act (SEPA). SEPA authorizes government to condition and even deny projects that otherwise comply with development regulations, based upon the specific adverse environmental impacts of each project. (Only a minority of states have state environmental policy acts, and none of those other state Acts, so far as we know, provides the kind of sweeping substantive authority to mitigate impacts that Washington's Act does). When Washington's vested rights law is looked at in the context of substantive SEPA, it is not particularly protective of development rights. To extinguish the vested rights doctrine, as this bill would do, would be to remove *all* certainty and predictability from the process. Both public and private projects require a reasonable level of certainty and predictability.

2. **SB 5507 would result in tremendous economic waste for both private and public projects alike.**

This bill will result in tremendous economic waste, particularly for developers of large public and private projects, and thus will have a dampening effect on the economy. If a private landowner's or public works project's development rights don't vest until after construction starts or until after issuance of a building permit, private developers and public facilities will both be at risk of losing hundreds of thousands or even millions of dollars invested in obtaining land use approvals and building permits under the existing codes.

In addition, for private development projects, our state is currently benefited by a nearly \$2 billion budget surplus, due in large part to the Real Estate Excise Tax (REET). The REET may be collected by state and local governments at three potential points in time: (1) when a landowner sells his or her land to a developer; (2) when a developer sells individual lots to a builder; and (3) when the builder sells the completed project to a buyer. This bill would stifle development and significantly reduce monies generated by the REET.

This bill would significantly undermine current affordable housing goals as well. Affordable housing projects often inspire neighborhood opposition, which would often lead to changes in regulations after the permitting process has begun, which would at a minimum make specific projects more expensive, if not preclude them altogether.

3. **SB 5507 would undo years of regulatory reform and is inconsistent with other land use laws including the Growth Management Act (GMA).**

If local governments can stop a project by changing codes every time they decide they don't like a project that complies with existing codes, this will undermine the fundamental principles upon which the GMA and years of regulatory reform legislation, such as Chapter 36.70B RCW, are constructed. It has been the consistent policy of this state since the early 1990s to try to make the development process more predictable and fair, not less so.

Unlike other states that set later vesting dates, Washington State requires thoughtful planning at the front end of the development process through the GMA, SEPA and the Shoreline Management Act (SMA). Everyone, including the proponents of new projects, should be able to rely upon the enormous investment in thoughtful planning that this state has undertaken.

4. **Washington's Vested Rights Doctrine is based on a long history of judge and legislatively created law and not the result of a legal "loophole" as proponents of the bill claim.**

Washington's Vested Rights Doctrine has a long history in our state law, going back to at least 1954 in *State ex rel. Ogden v. Bellevue*, 45 Wn.2d 492 (1954). The doctrine was originally developed by the courts, and the state Supreme Court in *West Main Associates v. Bellevue*, 106 Wn.2d 47 (1986) determined that the doctrine is based on the constitution, in particular on our state's substantive due process doctrine.

The judge-made doctrine was codified by the state legislature in 1987: RCW 19.27.095 for building permits; RCW 58.17.033 for subdivisions. An important aspect of the doctrine also is codified in the GMA: RCW 36.70A.302, which protects vested rights against determinations by the Growth Management Hearings Board that regulations are not in compliance with the GMA.

In conclusion, Washington's existing vested rights doctrine strikes a very appropriate balance between the authority of local governments to change regulations and the rights of individuals and public entities to plan projects with reasonable certainty about what will be permitted by those local governments.

SB 5507 would result in tremendous economic waste and remove all certainty and predictability from the land development process. It would not only adversely affect landowner's development rights, but also cost many jobs and hinder current affordable housing goals.

We, therefore, urge your opposition to SB 5507.

Thank you for your time and consideration of this important issue.

Sincerely,

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