ity, however, abandons this solid precedent and uses common law to expand the availability of attorney fees. We have consistently left such decisions to the Legislature, and until the Legislature acts to change the current rule, I would adhere to the long-established precedent that attorney fees are not recoverable in a slander of title action. Therefore, I dissent.

ANDERSEN, C.J., and MADSEN, J., concur with DOLLIVER, J.

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[No. 60623-4. En Banc. May 19, 1994.]

ERICKSON & ASSOCIATES, INC., ET AL, *Petitioners*, v. DENNIS J. MCLERRAN, ET AL, *Respondents*.

[1] **Statutes — Validity — Presumption — Burden of Proof — Degree of Proof.** A legislative enactment challenged on constitutional grounds is presumed to be constitutional and the challenger has the burden of proving its unconstitutionality beyond a reasonable doubt.

[2] **Building Regulations — Land Use Regulations — Due Process — Vesting Doctrine.** An ordinance under which a development "vests" with respect to existing land use regulations not later than the date the developer submits a complete building permit application satisfies constitutional due process requirements.

[3] **Building Regulations — Vesting Doctrine — Local Ordinances — Test.** Municipalities may enact their own vesting schemes to suit their particular local needs so long as the schemes remain within the parameters set by RCW 19.27.095(1) and the common law vesting doctrine.

**Nature of Action:** A developer sought judicial review of the application of a critical areas ordinance to a development project for which the developer had earlier submitted a master use permit application.



**Superior Court:** The Superior Court for King County, No. 90-2-25053-9, Ann Schindler, J., on April 14, 1992, denied the developer's motion for summary judgment.

**Court of Appeals:** The court at 69 Wn. App. 564 *affirmed* the denial of the summary judgment, holding that the developer's right to a master use permit did not vest before the critical areas ordinance was enacted.

**Supreme Court:** Holding that a local ordinance defining the time at which a development vests is constitutional and satisfies common law and statutory requirements and that the development did not vest upon application for a master use permit, the court *affirms* the decision of the Court of Appeals.

*Oles, Morrison & Rinker*, by *David H. Karlen*, for petitioners.

*Mark H. Sidran, City Attorney*, and *Patrick J. Schneider* and *Robert D. Tobin, Assistants*, for respondents.

*Stephen M. Rummage, Thomas A. Goeltz*, and *Marco de Sa e Silva* on behalf of Building Industry Association of Washington, amicus curiae for petitioners.

*Patrick D. Sutherland, Prosecuting Attorney for Thurston County*, and *Thomas R. Bjorgen, Senior Deputy*, on behalf of the Association of Washington Cities, Washington Association of Prosecuting Attorneys, and Washington Association of Counties, amici curiae for respondents.

*David A. Bricklin* and *Michael W. Gendler* on behalf of Washington Environmental Council, amicus curiae for respondents.

JOHNSON, J. — This appeal involves the application of Washington's vested rights doctrine to master use permit applications. Petitioners, Erickson & Associates and Ron Danz (Erickson), challenge a City of Seattle ordinance that sets the vesting date for development projects. Under the city ordinance, Seattle Municipal Code (SMC) 23.76.026, a

development project vests (1) when the developer submits a complete building permit application, or (2) when the City earlier issues a master use permit without a building permit application. Erickson contends the ordinance is unconstitutional, arguing Washington's vested rights doctrine requires the City to vest development rights when a master use permit application is submitted rather than when it is issued. The trial court denied Erickson's summary judgment motion on this issue and the Court of Appeals affirmed. We agree.

I

Master Use Permits (MUP's) are site plan approval permits employed by the City of Seattle to streamline the regulatory review process. MUP's are "umbrella" or "master" permits, which actually represent a number of independent regulatory components, including environmental impact review, comprehensive plan review, and other *use* inquiries. MUP's are mandatory for development in Seattle; however, MUP review is an iterative process. Developers may have general concepts in mind for development of property, and want to explore various scenarios with the municipality. In response to municipal feedback, project plans change and evolve. As plans develop, the specific requirements of a particular MUP may change. The MUP process makes it easier for developers and citizens to get through the land use regulatory review process by having one employee designated as the applicant's "contact" person.

On July 5, 1990, Erickson submitted a MUP application to the City of Seattle's Department of Construction and Land Use (DCLU). Erickson sought "use approval" for a commercial and residential project it proposed to build in the city. The proposed project consisted of residential units, approximately 4,500 square feet of commercial space, and 43 parking stalls. Erickson did not submit a building permit application for this project.

During the permitting process, the Seattle City Council passed an interim ordinance, SMC 25.09, in response to the



Growth Management Act's requirement that local governments adopt critical areas ordinances. RCW 36.70A.060(2). The ordinance applies to properties with steep slopes or other sensitive features such as wetlands, and prohibits more than 40 percent of applicable properties to be covered with impermeable surfaces such as parking lots, driveways, or roofs. SMC 25.09.

During the review of Erickson's MUP application, DCLU determined part of Erickson's project was located on slopes steep enough to qualify as a "critical area" under the new ordinance. After finding Erickson proposed to cover approximately 80 percent of the property with impervious surfaces, DCLU sent written notice that Erickson would have to revise the project, conform it to the ordinance, or obtain a reasonable use exception from the requirements of the ordinance.

Instead, Erickson filed a petition for a writ of certiorari to challenge the application of the critical areas ordinance to its project. Erickson claimed that, like a building permit, the MUP application vested on the date it was filed. The trial court quashed the writ of review because Erickson did not first seek a reasonable use exception. Erickson then sought and was denied the exception.

Having exhausted administrative remedies, Erickson moved for partial summary judgment on the vested rights issue. The trial court denied Erickson's summary judgment motion. Erickson appealed to Division One of the Court of Appeals. The Court of Appeals affirmed the trial court, upholding the constitutionality of SMC 23.76.026. *Erickson & Assocs., Inc. v. McLerran*, 69 Wn. App. 564, 570, 849 P.2d 688 (1993). Erickson now appeals that judgment.

II

At issue in this case is whether Washington's vested rights doctrine applies to the filing of a completed MUP application as it does to the filing of a building permit application.

Washington's doctrine of vested rights entitles developers to have a land development proposal processed under the

regulations in effect at the time a complete building permit application is filed, regardless of subsequent changes in zoning or other land use regulations. *West Main Assocs. v. Bellevue*, 106 Wn.2d 47, 720 P.2d 782 (1986); *Hull v. Hunt*, 53 Wn.2d 125, 331 P.2d 856 (1958); *State ex rel. Ogden v. Bellevue*, 45 Wn.2d 492, 275 P.2d 899 (1954); Richard L. Settle, *Washington Land Use and Environmental Law and Practice* § 2.7 (1983). The building permit application must (1) be sufficiently complete, (2) comply with existing zoning ordinances and building codes, and (3) be filed during the effective period of the zoning ordinances under which the developer seeks to develop. *Valley View Indus. Park v. Redmond*, 107 Wn.2d 621, 638, 733 P.2d 182 (1987).

In 1987, the Legislature codified these principles. Laws of 1987, ch. 104, pp. 317-18 (codified at RCW 19.27.095(1)). RCW 19.27.095(1) provides:

> A valid and fully complete building permit application for a structure, that is permitted under the zoning or other land use control ordinances in effect on the date of the application shall be considered under the building permit ordinance in effect at the time of application, and the zoning or other land use control ordinances in effect on the date of application.

Washington's vesting rule runs counter to the overwhelming majority rule that "development is not immune from subsequently adopted regulations until a building permit has been obtained and substantial development has occurred in reliance on the permit." Settle, *supra* at 40. This court rejected the reliance-based majority rule, instead embracing a vesting principle which places great emphasis on certainty and predictability in land use regulations. *West Main Assocs.*, 106 Wn.2d at 51. "The purpose of the vesting doctrine is to allow developers to determine, or 'fix,' the rules that will govern their land development." *West Main Assocs.*, 106 Wn.2d at 51.

At issue here is an ordinance that regulates the vesting date for Seattle master use permits. Seattle Municipal Code 23.76.026, "Vesting of development rights", reads in pertinent part:



> Applications for all master use permit components except subdivisions and short subdivisions shall be considered under the Land Use Code and other land use control ordinances in effect on the date a fully complete building permit application, meeting the requirements of Section 302 of the Seattle Building Code, is filed. Until a complete building permit application is filed, such Master Use Permit applications shall be reviewed subject to any zoning or other land use control ordinances that become effective prior to the date that notice of the Director's decision on the application is published, if the decision can be appealed to the Hearing Examiner, or prior to the date of the Director's decision if no Hearing Examiner appeal is available.

(Footnote omitted.) SMC 23.76.026. Under the Seattle ordinance, vesting occurs either (1) when a developer files a complete building permit application at any point in the MUP permitting process (known as a "combined MUP"), or (2) when the MUP is issued by the City, even if no building permit has been submitted (known as a straight MUP).

Erickson challenges the constitutionality of SMC 23.76-.026, arguing the ordinance infringes upon development interests and violates Erickson's due process right to be treated in a fair manner by the City. Erickson contends the vested rights doctrine is not limited to building permit applications and the doctrine requires the City to process MUP applications according to the land use regulations in effect at the time a MUP is filed. Erickson further argues land development in Washington has become increasingly complex, discretionary, and expensive and the vested rights doctrine will afford property owners little protection if its scope is limited to building permit applications.

## III

[1] Erickson first argues SMC 23.76.026 is constitutionally defective. When reviewing a constitutional challenge to a legislative enactment we presume the enactment is constitutional, and the party challenging the enactment bears the burden of proving it unconstitutional beyond a reasonable doubt. *State v. Brayman*, 110 Wn.2d 183, 193, 751 P.2d 294 (1988); *Tekoa Constr., Inc. v. Seattle*, 56 Wn. App. 28, 34, 781 P.2d 1324 (1989), *review denied*, 114 Wn.2d 1005 (1990).

[2] Erickson correctly asserts our vesting doctrine is rooted in constitutional principles of fundamental fairness. The doctrine reflects a recognition that development rights represent a valuable and protectable property right. *West Main Assocs.*, 106 Wn.2d at 50 (citing *Louthan v. King Cy.*, 94 Wn.2d 422, 428, 617 P.2d 977 (1980)). By promoting a date certain vesting point, our doctrine insures "that new land-use ordinances do not unduly oppress development rights, thereby denying a property owner's right to due process under the law." *Valley View Indus. Park*, 107 Wn.2d at 637. Our vested rights cases thus establish the constitutional minimum: a "date certain" standard that satisfies due process requirements. *Hull*, 53 Wn.2d at 130.

Seattle contends its vesting ordinance complies with the minimum requirements set forth by this court and by statute. We agree. Under SMC 23.76.026 the vesting point for a MUP application is controllable by a developer, and, in all instances, vesting occurs no later than the building permit application stage. At any point in the MUP review process a developer can file a complete building permit application. The developer's rights then vest and the City must process the proposed project under the then existing land use and construction ordinances.

Because its ordinance complies with the statutory and common law vesting requirements, Seattle argues it should not be required to vest development rights earlier, at the outset of the MUP review stage. Erickson contends, however, the constitutional principles underlying the vested rights doctrine require Seattle to apply the rules applicable to vesting in the building permit context to MUP applications. Seattle's failure to do so, Erickson argues, ignores the constitutional underpinnings of the vested rights doctrine and ignores the practicalities of modern property development.

Both parties agree MUP's are now a critical part of the development process. Therefore, Erickson argues, under Seattle's land use permitting scheme, the need for certainty is greatest at the use review stage and the vested rights



doctrine should protect development rights when a developer applies for a MUP. Erickson's arguments ignore that the City's ordinance does afford developers certainty and predictability required by due process. A developer controls the date of vesting by selecting the time at which he/she chooses to submit a completed building application. Here, Erickson opted for the straight MUP process, under which no vesting occurs until the MUP is approved. Under Seattle's ordinance, Erickson could have protected its rights by filing a building permit at the beginning or at any point in the process. Erickson failed to do so, even though "*[t]he MUP application met all requirements then in effect, and the MUP was just about to be issued*" when the Seattle City Council enacted the critical areas ordinance. Pet. for Review, at 2-3.

Erickson further argues Seattle's vesting ordinance gives the City limitless discretion to delay the issuance of a MUP, so as to bring a proposed project within the scope of new land use regulations. We disagree. This is not a case where the City has reserved for itself the sole discretion to determine the date of vesting. *See, e.g., West Main Assocs.*, 106 Wn.2d at 52-53 (court struck down a municipal ordinance requiring, along with the filing of a complete building permit, city approval of several additional permits before development rights vested); *see also Adams v. Thurston Cy.*, 70 Wn. App. 471, 855 P.2d 284 (1993). Erickson does not argue the City acted in bad faith with respect to Erickson's application. Even absent rigid deadlines, the City is still obligated to act in good faith when processing MUP applications.

Erickson next argues the vested rights doctrine is not limited to building permit applications, but instead applies to other land development permits. Erickson contends the Court of Appeals decision in this case conflicts with prior decisions applying the vested rights doctrine in other contexts. *See, e.g., Talbot v. Gray*, 11 Wn. App. 807, 811, 525 P.2d 801 (1974) (shoreline permit), *review denied*, 85 Wn.2d 1001 (1975); *Juanita Bay Vly. Comm'ty Ass'n v. Kirkland*, 9 Wn. App. 59, 83-84, 510 P.2d 1140 (grading permit), *review*

*denied*, 83 Wn.2d 1002 (1973); *Ford v. Bellingham-Whatcom Cy. Dist. Bd. of Health*, 16 Wn. App. 709, 715, 558 P.2d 821 (1977) (septic tank permit); *but see Norco Constr., Inc. v. King Cy.*, 97 Wn.2d 680, 649 P.2d 103 (1982) (court declined to extend the vested rights doctrine to preliminary plat applications). In support of this argument, Erickson relies on two cases in which courts have applied the vested rights doctrine to use permit applications. *See Victoria Tower Partnership v. Seattle*, 49 Wn. App. 755, 745 P.2d 1328 (1987), *appeal after remand*, 59 Wn. App. 592, 800 P.2d 380 (1990), *review denied*, 116 Wn.2d 1012 (1991); *Beach v. Board of Adj.*, 73 Wn.2d 343, 438 P.2d 617 (1968).

Erickson's argument is not persuasive. Neither *Beach* nor *Victoria Tower* controls the outcome of this case because neither case involved a vesting ordinance like the one at issue here. *Beach* involved a conditional use permit. The determinative issue was whether a verbatim record of proceedings was required to establish an adequate record for review. The court held a verbatim record of administrative proceedings was necessary to enable judicial review under a writ of review. Because no such record existed, the case was remanded for a new hearing on the developer's conditional use permit application. *Beach*, 73 Wn.2d at 347. The conditional use permit at issue in *Beach* does not support Erickson's argument regarding the MUP vesting scheme at issue here.

*Victoria Tower* is likewise inapplicable here. Like this case, *Victoria Tower* involved a Seattle MUP application. Appellants argued, and the Court of Appeals agreed, the City's application of newly adopted environmental policies to its MUP application violated Victoria Tower's vested rights. *Victoria Tower*, 49 Wn. App. at 763. However, the analysis in *Victoria Tower* is inapposite here because the vesting ordinance at issue in this case, SMC 23.76.026, was not adopted until 1985, approximately 5 years after the *Victoria Tower* appellant's application was filed.

[3] We agree with Erickson that our prior cases apply the vested rights doctrine in other contexts beside building permits. However, none of these cases prevent a municipality from developing a vesting scheme like the one in place in Seattle. Our vested rights doctrine is not a blanket rule requiring cities and towns to process all permit applications according to the rules in place at the outset of the permit review. Instead, the doctrine places limits on municipal discretion and permits landowners or developers "to plan their conduct with reasonable certainty of the legal consequences". *West Main Assocs.*, 106 Wn.2d at 51. Within the parameters of the doctrine established by statutory and case law, municipalities are free to develop vesting schemes best suited to the needs of a particular locality.



Erickson lastly argues the practicalities of modern property development require us to extend the vested rights doctrine to Seattle's MUP process to maintain the balance of private and public interests embodied in the doctrine. Both parties agree land development in Washington has become an increasingly complex, discretionary, and expensive process. Additionally, both parties agree the MUP review process is now a critical stage in Seattle property development. Land use, zoning, and environmental regulations all must be satisfied before a MUP will be issued. The parties disagree, however, on what impact these requirements should have on the vesting doctrine. Erickson asserts the increasingly onerous nature of land use review makes the use review (such as Seattle's MUP process), rather than building permit review, the critical stage in land use regulation and requires the application of the vested rights doctrine to MUP's. The City contends its ordinance responds to the increased burden on developers by creating a process where the developer can control and defer the costs associated with permitting.

Development interests and due process rights protected by the vested rights doctrine come at a cost to the public interest. The practical effect of recognizing a vested right is to sanction the creation of a new nonconforming use. A proposed development which does not conform to newly adopted laws is, by definition, inimical to the public interest

embodied in those laws. If a vested right is too easily granted, the public interest is subverted.

This court recognized the tension between public and private interests when it adopted Washington's vested rights doctrine. The court balanced the private property and due process rights against the public interest by selecting a vesting point which prevents "permit speculation", and which demonstrates substantial commitment by the developer, such that the good faith of the applicant is generally assured. The application for a building permit demonstrates the requisite level of commitment. In *Hull v. Hunt*, *supra*, this court explained, "the cost of preparing plans and meeting the requirements of most building departments is such that there will generally be a good faith expectation of acquiring title or possession for the purposes of building . . .". *Hull*, 53 Wn.2d at 130.

Erickson argues the cost of preparing and submitting a MUP likewise poses a significant burden on developers. The MUP process is sufficiently expensive, contends Erickson, so as to prevent permit speculation and to give the developer a stake in the process that should be protected.

We reject Erickson's argument for several reasons. First, Erickson's cost-based arguments fail because substantial dollar figures alone do not demonstrate a significant burden on developers. The cost of obtaining a MUP varies greatly depending on the complexity of the proposal. It is the relative cost of the application compared to the total project cost that should be considered in evaluating the deterrent effect of the MUP application's cost to speculation in development permits. Second, we reject a cost-based analysis that reintroduces the case-by-case review of a developer's reliance interest we rejected 40 years ago when we adopted the vested rights doctrine.

Third, unlike building permit applications, MUP applications may be submitted at the infancy of a proposed development project. Much of the cost associated with MUP applications may be incurred *after* the application is filed. If, as Erickson urges, vested rights apply to MUP applications,



developers can vest valuable development rights prior to any substantial commitment to a project. Thus, the necessary indicia of good faith and substantial commitment are lacking at the outset of the master use permitting process.

Finally, Erickson points to no cases from this state or any other jurisdiction that support expanding the vesting doctrine beyond its current limits. Erickson concedes our State's doctrine is already one of the most protective of developer's rights.

The City's vesting ordinance strikes a proper balance between developers' rights and public interest. As a project progresses through MUP review, its plans mature and grow increasingly concrete. At the same time the developer's interest matures. The City's vesting ordinance permits a developer to vest development rights, when, in the best judgment of the developer, it makes economic sense to do so. The developer, working with the City, is in the best position to make this determination, and, like the Court of Appeals, "[w]e see no good policy reasons to prevent local governments from providing this alternative to developers". *Erickson*, 69 Wn. App. at 569.

Erickson urges us to "modernize" the doctrine in light of the substantial increase in land use regulations adopted by the Legislature in recent years. We agree with Erickson that Washington has undergone a sea change with respect to land use regulation. However, from this observation we reach a different conclusion.

Underlying the dispute in this case is a newly enacted critical areas ordinance, adopted by the City of Seattle under the requirements of the Growth Management Act. RCW 36.70A. The Legislature's passage of both the Growth Management Act (Act) and the State Environmental Policy Act of 1971 (SEPA) reflects public recognition that the influences of population growth, industrialization, and urbanization require us to place greater emphasis on natural resource protection and urban planning. The Growth Management Act begins with the following legislative findings:

> The legislature finds that uncoordinated and unplanned growth, together with a lack of common goals expressing the public's interest in the conservation and the wise use of our lands, pose a threat to the environment, sustainable economic development, and the health, safety, and high quality of life enjoyed by residents of this state. It is in the public interest that citizens, communities, local governments, and the private sector cooperate and coordinate with one another in comprehensive land use planning. Further, the legislature finds that it is in the public interest that economic development programs be shared with communities experiencing insufficient economic growth.

RCW 36.70A.010. SEPA begins with similar findings. *See* RCW 43.21C.020.

The legislative findings in both SEPA and the Growth Management Act demonstrate the Legislature's understanding that greater regulation of property use is necessary to accomplish the goals set forth in both acts. Additionally, these findings reflect a legislative awareness that land is scarce, land use decisions are largely permanent, and, particularly in urban areas, land use decisions affect not only the individual property owner or developer, but entire communities.

The Growth Management Act imposed substantial new requirements on local governments. Under the Act, most counties and municipalities must establish comprehensive development plans, identify natural resources and critical areas, as well as develop a variety of regulations consistent with the Act and the local development plans. *See* RCW 36.70A.060.170. The Act further mandates that localities act quickly, placing strict compliance deadlines for each requirement. Here, the Growth Management Act required Seattle to have a critical areas ordinance in place by September 1, 1991. RCW 36.70A.060. Given the substantial legislative activity in land use law, we are unwilling to modify or expand the vested rights doctrine unless it is required to protect the constitutional interests at stake.

## IV

In sum, the MUP review procedures developed by the City promote review process efficiency and effective interaction between the permit applicant and the City and it maximizes developer flexibility and business judgment. Our vested rights doctrine does not require the City to process MUP applications under the regulations in place at the infancy of the review process. Nor are we persuaded that changes in land use law warrant an expansion of the doctrine. We hold SMC 23.76.026 is constitutional and satisfies the requirements of case and statutory law.

Accordingly, the decision of the Court of Appeals is affirmed.

ANDERSEN, C.J., and UTTER, BRACHTENBACH, DOLLIVER, DURHAM, SMITH, GUY, and MADSEN, JJ., concur.



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[No. 60715-0. En Banc. May 19, 1994.]

THE STATE OF WASHINGTON, *Respondent*, v. CHRISTOPHER NOEL THOMSON, *Petitioner*.

[1] **Criminal Law — Trial — Presence of Defendant — Right To Be Present — Waiver — Test.** The constitutional right to be present at trial may be waived if the waiver is voluntary and knowing.

[2] **Criminal Law — Trial — Presence of Defendant — Right To Be Present — Waiver — Voluntariness — Determination.** A criminal trial may continue in the defendant's absence under CrR 3.4(b) if the defendant's absence is voluntary. A voluntary absence operates as an implied waiver of the defendant's right to be present for the trial. Whether the defendant's absence is voluntary is determined by the totality of the circumstances.

[3] **Criminal Law — Trial — Presence of Defendant — Absence — Continuing With Trial — Review — Standard of Review.** A trial court's decision under CrR 3.4(b) to continue a criminal trial in the defendant's absence is reviewed under the abuse of discretion standard.

## 20.40.500 Vesting and expiration of vested status of land use permits and approvals.

A. Vesting for Permits and Approvals.

1. Permits and Approvals Other than Subdivisions and Short Subdivisions and Conditional Uses. Applications for all land use permits and approvals except subdivisions and short subdivisions and conditional uses shall be considered under the Land Use Code and other land use control ordinances in effect on the date that a fully complete Building Permit application, meeting the requirements of BCC 23.05.090.E and F, is filed. If a complete Building Permit application is not filed, the land use permit or approval shall become vested to the provisions of the Land Use Code upon the date of the City's final decision on the land use permit or approval.

2. Subdivisions and Short Subdivisions and Conditional Uses. An application for approval of a subdivision or short subdivision of land, as defined in LUC 20.50.046, or for a conditional use, as defined in LUC 20.50.014, shall be considered under the Land Use Code and other land use control ordinances in effect when a fully completed application is submitted for such approval which satisfies the submittal requirements of the Director specified pursuant to LUC 20.35.030.

B. Expiration of Vested Status of Land Use Permit or Approval.

1. The vested status of a land use permit or approval shall expire as provided in subsection B.2 of this section; provided, that:

a. Variances shall run with the land in perpetuity if recorded with King County Department of Records and Elections within 60 days following the City's final action; and

b. Critical Areas Land Use Permits shall expire as set forth in LUC 20.30P.150; and

c. Lots in a subdivision or short subdivision shall be vested against changes in the Land Use Code, except for changes that address a serious threat to the public health or safety as found by the City Council when such change is adopted, for a period of five years following the date of recording of the final plat or final short plat; and

d. The time period established pursuant to subsection B.2 of this section shall not include the time during which an activity was not actively pursued due to the pendency of litigation which may materially affect rights of the applicant for the permit or approval related to that permit or approval.

2. The vested status of a land use permit or approval shall expire two years from the date of the City's final decision, unless:

a. A complete Building Permit application is filed before the end of the two-year term. In such cases, the vested status of the land use permit or approval shall be automatically extended for the time period during which the Building Permit application is pending prior to issuance; provided, that if the Building Permit application expires or is canceled pursuant to BCC 23.05.100, the vested status of a land use permit or approval shall also expire or be

canceled. If a Building Permit is issued and subsequently renewed, the vested status of the land use permit or approval shall be automatically extended for the period of the renewal;

b. For projects which do not require a Building Permit, the use allowed by the permit or approval has been established prior to the expiration of the vested status of the land use permit or approval and is not terminated by abandonment or otherwise;

c. The vested status of a land use permit or approval is extended pursuant to subsection B.3 of this section; or

d. The vested status of a land use permit or approval is extended pursuant to:

i. LUC 20.25A.125 (Vesting and expiration of vested status of land use permits and approvals – Downtown projects);

ii. LUC 20.30V.190 (Extended vesting period for Master Development Plans and associated Design Review approval); or

iii. A development agreement authorized by the terms of this Land Use Code to extend vested status.

3. When a Building Permit is issued, the vested status of a land use permit or approval shall be automatically extended for the life of the Building Permit. If the Building Permit expires, or is revoked or canceled pursuant to BCC 23.05.100 or otherwise, then the vested status of a land use permit or approval shall also expire, or be revoked or canceled. (Ord. 6197, 11-17-14, §§ 31, 32; Ord. 6102, 2-27-13, § 10; Ord. 5683, 6-26-06, § 33; Ord. 4973, 3-3-97, § 874; Ord. 4816, 12-4-95, § 974)

### 20.40.510 Cancellation of land use applications.

Applications for land use permits and approvals may be canceled for inactivity if an applicant fails to respond to the Department's written request for revisions, corrections, or additional information within 60 days of the request. The Director may extend the response period beyond 60 days if within that time period the applicant provides and subsequently adheres to an approved schedule with specific target dates for submitting the full revisions, corrections, or other information needed by the Department. (Ord. 4973, 3-3-97, § 875; Ord. 4816, 12-4-95, § 975)

which may be considered during a preapplication meeting.

**B. SUBMITTAL OF FORMAL APPLICATION:**

Applications, except appeals of administrative or environmental determinations shall be filed with the Development Services Division.

**C. LETTER OF COMPLETENESS:**

**1. Timing:** Within twenty eight (28) days after receipt of an application, the Department of Community and Economic Development shall provide a written determination that the application is deemed complete or incomplete according to the submittal requirements as listed in RMC 4-8-120A, B or C, and any site-specific information identified after a site visit. In the absence of a written determination, the application shall be deemed complete.

**2. Applications Which are Not Complete:**

**a. Notice of Incomplete Application:** If an application is determined incomplete, the necessary materials for completion shall be specified in writing to the contact person and property owner.

**b. Notice of Complete Application or Request for Additional Information:** Within fourteen (14) days of submittal of the information specified as necessary to complete an application, the applicant will be notified whether the application is complete or what additional information is necessary. The maximum time for resubmittal shall be within ninety (90) days of written notice.

**c. Time Extensions:** In such circumstances where a project is complex or conditions exist that require additional time, the Community and Economic Development Administrator may allow the applicant, contact person and/or property owner additional time to provide the requested materials. When granted, extension approvals shall be provided in writing. (Ord. 5676, 12-3-2012)

**3. Additional Information May Be Requested:** A written determination of completeness does not preclude the Department of Community and Economic Development from requesting supplemental information or studies, if new information is required to complete review of an application or if significant changes in the permit application are proposed. The Department of Community and Economic Development may set deadlines for the submittal or supplemental information.

**4. Expiration of Complete Land Use Applications:** Any land use application type described in RMC 4-8-080 that has been inactive and an administrative decision has not been made or has not been reviewed by the Hearing Examiner in a public hearing shall become null and void six (6) months after a certified notice is mailed to the applicant, contact person and property owner, unless other time limits are prescribed elsewhere in the Renton Municipal Code or other codes adopted by reference.

**5. Extension of Complete Application:** A one-time, one-year extension may be granted if a written extension request is submitted prior to the expiration date identified in the certified notice and the applicant, contact person or property owner(s) has demonstrated due diligence and reasonable reliance towards project completion. In consideration of due diligence and reasonable reliance the Community and Economic Development Administrator shall consider the following:

a. Date of initial application;

b. Time period the applicant had to submit required studies;

c. Availability of necessary information;

d. Potential to provide necessary information within one (1) year;

e. Applicant's rationale or purpose for delay; and

f. Applicant's ability to show reliance together with an expectation that the application would not expire. (Ord. 4587, 3-18-1996; Ord. 4660, 3-17-1997; Ord. 5605, 6-6-2011; Ord. 5676, 12-3-2012)

**D. NOTICES TO APPLICANT:**

The applicant shall be advised of the date of acceptance of the application and of the environmental determination. The applicant shall be advised of the date of any public hearing at least ten (10) days prior to the public hearing. (Ord. 3454, 7-28-1980)

**E. REPORT BY DEVELOPMENT SERVICES:**

**1. Report Content:** When such application has been set for public hearing, if required, the Development Services Division shall coordinate and assemble the comments and recommendations of other City departments and government agencies having an interest in the subject application and shall prepare a report summarizing the factors involved and the Development Services Division findings and supportive recommendations.