

Gig Harbor City Council Meeting

**March 28, 2011
5:30 p.m.**



**AGENDA FOR
GIG HARBOR CITY COUNCIL MEETING
Monday, March 28, 2011 – 5:30 p.m.**

CALL TO ORDER:

PLEDGE OF ALLEGIANCE:

CONSENT AGENDA:

1. Approval of the Minutes of City Council Meeting of March 14, 2011.
2. Receive and File: a) Finance / Safety Committee Minutes February 22, 2011; b) Planning/Building Committee Minutes March 7, 2011.
3. Eddon Boat Property – Long Term Monitoring Plan Year 3/Consultant Services Contract/Anchor QEA LLC.
4. Approval of Payment of Bills for March 28, 2011: Checks #65998 through #66578* in the amount of \$712,257.00.

* Ck#65998 – 66009 Bank of America checks
Ck#66010 – 66500 Bank of America checks destroyed due to bank conversion
Ck#66501 – 66578 Columbia Bank checks

EXECUTIVE SESSION: For the purpose of discussing pending litigation per RCW 42.30.110(1)(i).

OLD BUSINESS: None.

NEW BUSINESS:

1. Public Hearing and Resolution Authorizing an Amendment to the Development Agreement for the Phased Development with McCormick Creek LLC.

STAFF REPORT:

PUBLIC COMMENT:

MAYOR'S REPORT / COUNCIL COMMENTS:

ANNOUNCEMENT OF OTHER MEETINGS:

1. Council Retreat – Fri. Apr. 22nd at 8:30 a.m.
2. Shoreline Master Program Public Hearing / Open House: March 31st at 4:00 p.m.
3. Planning / Building Committee: Mon. Apr. 4th at 5:15 p.m.

ADJOURN:

MINUTES OF GIG HARBOR CITY COUNCIL MEETING – March 14, 2011

PRESENT: Councilmembers Ekberg, Young, Franich, Malich, Payne, and Mayor Hunter. Councilmembers Conan and Kadzik were absent.

CALL TO ORDER: 5:32 p.m.

PLEDGE OF ALLEGIANCE:

CONSENT AGENDA:

1. Approval of the Minutes of City Council Meeting of Feb. 28, 2011.
2. Correspondence / Proclamations: AWC Retro Program Refund Letter.
3. Liquor License Action: a) Special Occasion: Kiwanis Club; b) Special Occasion: Paradise Theatre; c) Special Occasion: Quipunet at GH Yacht Club; d) Renewals: Gig Harbor Beach Bay B&B, St. Anthony Hospital, Gig Harbor Farmers Market Association, The Green Turtle, Happy at the Bay Teriyaki, Harbor Greens, Gig Harbor Farmers Market, Maritime Inn, and Greenhouse Restaurant; e) Discontinued: QFC #886.
4. Receive and File: a) Minutes of the Boards and Commissions Candidate Review Committee Feb. 28, 2011; b) Minutes of the Operations & Public Projects Committee Feb.17, 2011.
5. Hearing Examiner Contract.
6. Appointment to Parks Commission.
7. Appointments to the Gig Harbor Arts Commission.
8. Appointments to Lodging Tax Advisory Committee.
9. Appointment to Planning Commission.
10. Tacoma Pierce County Economic Development Board Payment for Economic Development Services.
11. Approval of Payment of Bills for March14, 2011: Checks #65889 through #65997 in the amount of \$861,954.31.
12. Approval of Payroll for the Month of February: Checks #5851 through #5870 in the amount of \$304,541.29.

MOTION: Move to approve the Consent Agenda as presented.
Ekberg / Malich - unanimously approved.

Mayor Hunter read the names of the re-appointed and appointed Commission members and asked those present to stand and be recognized.

EXECUTIVE SESSION: For the purpose of discussing pending litigation per RCW 42.30.110(1)(i).

MOTION: Move to go into Executive Session at 5:35 p.m. for approximately 20 minutes to discuss pending litigation per RCW 42.30.110(1)(i).
Franich / Malich – unanimously approved.

Councilmember Ekberg recused himself from the Executive Session citing a conflict in interest.

MOTION: Move to return to regular session at 5:54 p.m.
Franich / Payne – unanimously approved.

OLD BUSINESS:

1. Official City Newspaper. City Clerk Molly Towslee presented an overview of the history of the recent re-bid for official newspaper. She explained that in 2010 the city paid approximately \$19,650 for advertising and legal fees, of which \$9,000 was reimbursed.

Councilmembers discussed the lower cost and higher circulation of *Gig Harbor Life* while noting that *The Peninsula Gateway* is a more traditional newspaper.

MOTION: Move to appoint *The Peninsula Gateway* as the city's official newspaper.
Young / Ekberg - two voted in favor. Councilmembers Franich, Malich and Payne voted no. The motion failed.

MOTION: Move to appoint *Gig Harbor Life* as the city's official newspaper.
Malich / Franich - four voted in favor. Councilmember Ekberg voted no.

NEW BUSINESS:

1. Public Hearing on 2011 Comprehensive Plan Amendment Docket. Senior Planner Jennifer Kester introduced the docket and gave a brief overview of the four proposed comprehensive plan amendments. She answered questions on the electric vehicle infrastructure policy.

Mayor Hunter opened the public hearing at 6:09 p.m. No one came forward to speak and the public hearing closed.

Ms. Kester continued to address Council's questions on the amendments.

MOTION: Move that all of the 2011 Comprehensive Plan Amendment applications be forwarded to the Planning Commission for further processing.
Ekberg / Payne – unanimously approved.

2. 2011 Planning Commission Work Program – Revised. Planning Director Tom Dolan explained that extensive oral and written comments on the Shoreline Master Program will delay the Planning Commission from beginning review of the 2011 Comprehensive Plan Amendments until late June or early July. Due to this delay, the Planning Commission is requesting a one-year interim change to the downtown parking

regulations. This would allow the review of the C-1 gross floor area text amendment first and then the Commission would go back to a more comprehensive review of the downtown parking regulations. He addressed Council questions.

MOTION: Move to approve the revised Planning Commission 2011 work program.
Payne / Young – four voted in favor. Councilmember Ekberg voted no.

3. SR16/Burnham Drive NW Interchange Improvement Project Acceptance. City Engineer Steven Misiurak presented the background information on this project to increase capacity required as a result of the construction of the hospital. He explained that the project realized over \$590,000 in construction savings, adding that the success of the project is attributable to the hard work of a consortium of organizations and shared project management. He said that he has made application to The Association of Public Works Association for Project of the Year for this project.

Councilmembers thanked Mr. Misiurak and his staff for a job well done on this complex project. City Administrator Rob Karlinsey complimented staff on avoiding costly change orders and for the outstanding public outreach.

MOTION: Move to formally accept the project completion and authorize the Mayor to sign the Project Certificate of Completion.
Payne / Malich – unanimously approved.

4. Resolution 857 – Emergency Declaration for Replacement of the Cushman Trail Cross Culvert. City Engineer Misiurak present the background information for this resolution authorizing the replacement of a broken culvert along Cushman Trail. He answered Council question on how the degradation of the culvert occurred, ownership, and funding options.

City Attorney Angela Belbeck reminded Council that due to the emergency nature of this action, it would require a majority plus one vote.

MOTION: Move to adopt Resolution No. 857 declaring an emergency, waiving competitive bidding requirements and authorizing the Mayor to execute contracts for the emergency replacement to the broken culvert under Cushman Trail located approximately 900 feet north of Rosedale Street.
Young / Ekberg – unanimously approved.

STAFF REPORT:

Lift Station Improvement Sequencing. City Administrator Rob Karlinsey explained that repairs to Lift Station No. 4 had been moved to the top of the list due to the recent malfunction at that site. He explained that Lift Station No. 4 is critical as it handles

approximately 50% of the city's sewage. He also reported that staff continues to move forward with design and property acquisition for the upgrades to Lift Station No. 6 on Cascade and Ryan with plans to construct in 2012.

City Engineer Steven Misiurak addressed questions regarding the estimated project costs for Lift Station No. 6. He said that the goal is to avoid having the project cost more than the estimate adding that there will be regular updates to the Operations and Public Projects Committee and City Council as this moves forward.

City Attorney Angela Belbeck explained that there are upcoming project hearings that are in the queue for public noticing and asked if Council would consider postponing the appointment of the Official Newspaper to allow a transition period. Planning Director Tom Dolan added that the *Gig Harbor Life's* requirement to have public notices submitted eleven days prior to publication adds additional restraints and asked if the appointment could be postponed until April 15th.

T.J. Erickson, editor for *Gig Harbor Life*, explained that that eleven day notification period only pertains to classified ads.

MOTION: Move for reconsideration of the previous motion to appoint *Gig Harbor Life* as the city's official newspaper.
Young / Payne – unanimously approved.

MOTION: Move to amend the previous motion to appoint *Gig Harbor Life* as the city's official newspaper effective April 15, 2011.
Malich / Franich – unanimously approved.

PUBLIC COMMENT:

Kit Kuhn – A Jeweler Designed for You. Mr. Kuhn explained that the petition he passed out is signed by 27 business owners requesting that the city consider 2-3 hour timed parking in the downtown area. He said that marking even every fifth spot would help movement and suggested that the salary of the enforcement person could be paid by parking fines. He said that the current 30 minute spots seem to be helping.

Councilmembers mentioned several issues and agreed that there needs to be continued discussion on parking that involves the property owners.

MAYOR'S REPORT / COUNCIL COMMENTS:

Councilmember Malich asked the date of the activation of the pump-out at Jerisich Dock. Wastewater Treatment Plant Supervisor, Darrel Winans responded that it would be turned on April 1st.

ANNOUNCEMENT OF OTHER MEETINGS:

1. Outfall Ceremonial Valve Turning – Wed. March 16th at 3:00 p.m.
2. Operations Committee – Thu. March 17th at 3:00 p.m.
3. Finance / Safety Committee – Mon. March 21st at 4:00 p.m.

ADJOURN:

MOTION: Move to adjourn at 7:25 p.m.
Franich / Malich – unanimously approved.

CD recorder utilized: Tracks 1002 – 1019

Charles L. Hunter, Mayor

Molly Towslee, City Clerk

**CITY OF GIG HARBOR
COMMITTEE OUTLINE MINUTES**

City of Gig Harbor Finance and Safety Committee
(Council Committee Ekberg, Malich, and Payne)

Date: February 22, 2011

Time: 4:00 p.m.

Location: Executive Conf Rm.

Scribe: Jaci Auclair

Commission Members and Staff Present: Steve Ekberg, Ken Malich, Tim Payne, Rob Karlinsey, Chief Mike Davis, and Paul Nelson.

Others Present:

Absent:

Topic / Agenda Item	Main Points Discussed	Recommendation/Action Follow-up (if needed)
NEW BUSINESS		
1. Municipal Court Judge Contract Renewal.	Councilmember Steve Ekberg called the meeting to order and Court Administrator, Paul Nelson, introduced the municipal court judge's contract for renewal. The 2011-2013 contract includes a retroactive 6.6% COLA adjustment bringing the judge's monthly compensation to \$4,316. Mr. Nelson briefly reviewed the judge's hours and duties. Committee members stated they would like to see comparable data prior to approving this contract.	Finance committee members requested that staff gather comparable data on the municipal court judge's compensation. If the contract amount appears to be in line with those comparables, the committee instructed staff to bring the contract to council for approval.
2. Anti-Graffiti Ordinance / Program.	Mr. Karlinsey presented the proposed anti-graffiti ordinance, reviewing the highlights. He stated that this ordinance would provide a mechanism for rapid removal of graffiti from private property as well as provide rewards up to \$300 for information	Committee members recommended the ordinance be brought to council for approval.

Topic / Agenda Item	Main Points Discussed	Recommendation/Action Follow-up (if needed)
	<p>leading to the arrest of graffiti artists. He added that the Parks Commission and the city attorney, Angela Belbeck, were helpful in developing this policy which calls for formal noticing to the property owner, attempting first to have the property owner remove the graffiti, but allowing city resources to be used with the owners consent to perform rapid removal of the graffiti if the property owner is unable to remove it quickly. Mr. Karlinsey answered committee members' questions regarding cost, liability, and ultimate responsibility.</p>	
<p>3. Panhandlers Policy</p>	<p>Chief Mike Davis presented a proposal to deal with the city's panhandler issue. He recommended passing an ordinance similar to Tacoma and Dupont which attempts to extract these solicitors and transfer the risk elsewhere. Chief Davis answered questions regarding safety issues, criminal histories of the panhandlers, and time spent responding to complaints. Committee members indicated that they would like further information and officer testimony on the issue.</p>	<p>Finance committee members directed Chief Davis, Lieutenant Colberg, and other officers to return to the March committee meeting with additional information and testimony.</p>
<p>4. Donation Policy</p>	<p>Mr. Karlinsey introduced a draft donation policy intended to provide guidelines for individuals, organizations and businesses wishing to make contributions to city parks or streets. The policy will be presented to</p>	<p>Committee members directed Mr. Karlinsey to add this item to the council's consent agenda.</p>

Next Meeting: December 20, 2010 at 4:00 p.m.

Topic / Agenda Item	Main Points Discussed	Recommendation/Action Follow-up (if needed)
	the Operations Committee and the Parks Commission. A donations fund will be created as well.	
Meeting adjourned at 4:55 p.m.		

Next Meeting: December 20, 2010 at 4:00 p.m.



CITY OF GIG HARBOR
PLANNING AND BUILDING
COMMITTEE MEETING - MINUTES

DATE of MEETING: March 7, 2011

TIME: 5:20 pm

LOCATION: Planning/Building Conference Room

MEMBERS PRESENT: Councilmembers Kadzik (via conference call), Conan and Young

STAFF PRESENT: Planning Director Tom Dolan, Senior Planner Jennifer Kester, Senior Planner Peter Katich

OTHERS PRESENT: Jason Hubbell, Tom Sturgeon, Jon Moist, Charlee Glock-Jacson

SCRIBE: Jennifer Kester

1. 1st AMENDMENT TO THE MCCORMICK CREEK PLAT DEVELOPMENT AGREEMENT.

DISCUSSION POINTS

Tom Dolan presented the proposed 1st amendment to the McCormick Creek Plat Development Agreement. This amendment would:

- a. Allow three phases instead of four phases
- b. Phase 1 vested for 6 years
- c. If phase 1 completed and 35% of the sewer and water connection fees have been paid, the development agreement would be automatically extended for another 6 years. If phase 1 and phase 2 have been recorded by year 12 and 70% of the total sewer and water connection fees have been paid, the applicant may apply for an additional 7 year extension of the development agreement. This 7 year final extension would be subject to city council approval.
- d. Allow for civil permit approvals to remain valid for two years.
- e. Remove the requirement for paying a pro-rata share of the City's Interim Improvement project at the Borgen SR16 interchange. Note: This is still a requirement of the Hearing Examiner approval.
- f. Private soccer fields will be kept available for PAA use for 2 years.
- g. As part of Phase 1 the Developer shall clear and rough grade the portion of road 1 that will not be constructed until Phase 2. This road will also be signed to identify the future road connection to Harbor Hill.
- h. As part of each final plat notes shall be included on the face of the plat and in the CC&R's regarding the future road connection to Harbor Hill Drive.

RECOMMENDATION / ACTION / FOLLOW-UP

The Committee had no specific comments and recommended the proposed amendment go to the City Attorney for review and be scheduled at the next available Council meeting after legal review and public noticing.

2. WATERFRONT MILLVILLE RESTAURANT DEVELOPMENT REGULATIONS TEXT AMENDMENT.

DISCUSSION POINTS

Jennifer Kester presented the text amendment submitted by Jon Moist on behalf of Stan Stearns which if approved would allow restaurant 1 uses in the WM district to be open until 9pm and serve beer and wine provided the establishment does not exceed 1,200 square feet. Councilmember Kadzik explained his history with the development of the regulations in the WM zone when serving of alcohol was prohibited from this zone. He expressed his opinion that circumstances have changed in the WM district and proposed text amendment could be a good idea for the area. He has spoken to several residents of the area and has not heard opposition. Councilmember Young felt that this amendment could be good for small businesses along the waterfront. Councilmember Young suggested the amendment receive direct review by the Council bypassing the Planning Commission. Mr. Dolan suggested that the Planning Commission be allowed to review that direct consideration request. The Committee agreed and requested that draft language be brought back to a special committee meeting on April 4th.

RECOMMENDATION / ACTION / FOLLOW-UP

Staff to present direct consideration request to the Planning Commission and develop draft language for review by the April 4th committee meeting.

3. INTERIM ORDINANCE TO ADDRESS DOWNTOWN ISSUES – DIRECT CONSIDERATION.

DISCUSSION POINTS

Planning staff explained that since the Planning Commission review of the Shoreline Master Program has taken longer than originally expected, staff has drafted an interim DB zone parking ordinance that would allow existing buildings in the DB district to change use without having to provide additional parking, regardless of the use. While the Planning Commission will look at the commercial area in the DB and along Harborview/N. Harborview, the interim ordinance would be limited to the DB district. This interim ordinance would allow businesses to utilize these new provisions this summer rather than late fall as would occur if the City waited for the Planning Commission's deliberation. Furthermore, this would also allow the C-1 gross floor area text amendment to move one spot up in the Planning Commission's queue.

RECOMMENDATION / ACTION / FOLLOW-UP

The committee recommended that the Council approve the interim ordinance. The committee further recommended that the Planning Commission review the downtown parking regulations in the fall/winter of this year and include in that review building size regulations in the DB.

4. RESTAURANT PARKING REQUIREMENTS – DIRECT CONSIDERATION.

DISCUSSION POINTS

Jennifer Kester presented the staff-recommended text amendment to change how parking is calculated for restaurant and tavern uses. Currently, the City requires that parking be based on the maximum occupancy of the seating area as calculated by the International Building Code. Ms. Kester explained that the building code seating capacity is much larger than the reasonable seating capacity of a restaurant because the IBC considers the worst case scenario in seating capacity in order to avoid health and safety issues. Using the IBC maximum seating capacity for the parking calculation leads to excessive parking requirements in the range of 40% to 75% increase over what one might consider reasonable. Staff is proposing that restaurant parking be based on a submitted seating plan which shows a reasonable seating capacity as determined by the Planning Director.

RECOMMENDATION / ACTION / FOLLOW-UP

The committee recommended that the Council approve the ordinance.

5. AMENDMENTS TO THE PLANNING COMMISSION'S 2011 WORK PROGRAM.

DISCUSSION POINTS

The committee reviewed the 2011 Planning Commission's work program in light of their recommendations for the three text amendment they reviewed at the meeting: interim DB parking, restaurant parking, and restaurants in the WM.

RECOMMENDATION / ACTION / FOLLOW-UP

Assuming that the interim DB ordinance is passed, the Planning and Building Committee recommended the following order of review starting in late June/early July once the Commission has finished review of the 2011 Comprehensive Plan amendments.

1. GFA in C-1
2. Downtown Parking/Street-Level Retail/DB Building Size in QFC Block
3. Green First
4. Tree Retention/Enforcement
5. Residential Plat Layout and FARs
6. Cottage Housing

6. SHORELINE MASTER PROGRAM CONSULTANT CONTRACT EXTENSION.

DISCUSSION POINTS

Peter Katich addressed the Planning Commission's review of the draft shoreline master program and noted that due to the Commission's comprehensive review of the draft document, including conducting 32 public meetings on the draft as of the date of the Planning & Building Committee's meeting, the city's shoreline master program grant funding had been mostly expended with approximately \$11,000.00 of the original \$93,000 remaining in the budget. Mr. Katich indicated that due to the Commission's extended review of the draft, the update effort was currently 4-5 months behind schedule with City Council review anticipated to start in June, 2011. He noted that additional funding may be necessary in order to provide for additional consultant support through the Council and Department of Ecology review phases of the update effort.

RECOMMENDATION / ACTION / FOLLOW-UP

None

Meeting adjourned at 6:30 p.m.

Respectfully submitted:

Jennifer Kester



Business of the City Council
City of Gig Harbor, WA

Subject: Eddon Boat Property – Long Term Monitoring Plan Implementation (Year 3)
-- Consultant Services Contract

Proposed Council Action:

Move to: Approve and authorize the Mayor to execute the contract with Anchor QEA, LLC for the Eddon Boat Property – Long Term Monitoring Plan (Year 3) for the amount not-to-exceed \$18,079.

Dept. Origin: Public Works/Engineering

Prepared by: Stephen Misiurak, P.E. City Engineer

For Agenda of: March 28, 2011

Exhibits: Consultant Services Contract with Exhibit A – Scope of Work and Exhibit B – Cost Estimate and Exhibit B-1 Task 3 Lab and Field Costs

Concurred by Mayor: Initial & Date CLA 3/22/11
Approved by City Administrator: RDK
Approved as to form by City Atty: approx via email 3/18/11
Approved by Finance Director: DR 3/21/11
Approved by Department Head: [Signature] 3/21/11

Table with 4 columns: Expenditure Required, Amount Budgeted, Appropriation Required, and a final dollar amount (\$0).

INFORMATION / BACKGROUND

This consultant services contract is for the Long Term Monitoring Plan (LTMP) implementation at the Eddon Boat Property. Five years of monitoring are required by the Department of Ecology (DOE) per the Cleanup Action Plan. This contract provides for the third year of monitoring that was mandated by the Department of Ecology. The work to be performed includes a sediment sampling and chemical testing and results analysis, creation of a draft report and submittal to the Department of Ecology for review, comment and approval.

FISCAL CONSIDERATION

This contract is for the third year of monitoring. This work is a budgeted item contained in the Parks Division, Objective No. 7, (001-015-576-80-41-00).

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION / MOTION

Move to: Approve and authorize the Mayor to execute the contract with Anchor QEA, LLC for the Eddon Boat Property – Long Term Monitoring Plan (Year 3) for the amount not to exceed Eighteen Thousand Seventy-Nine Dollars and No Cents (\$18,079.00).

**CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
ANCHOR QEA, LLC**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (the "City"), and Anchor QEA, LLC, a limited liability company organized under the laws of the State of Washington (the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in the Long Term Monitoring Plan for the Eddon Boat Property (Year 3) and desires that the Consultant perform services necessary to provide the following consultation services; and

WHEREAS, the Consultant agrees to perform the services more specifically described in the Scope of Work including any addenda thereto as of the effective date of this Agreement, all of which are attached hereto as **Exhibit A – Scope of Work**, and are incorporated by this reference as if fully set forth herein;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the parties as follows:

TERMS

1. Retention of Consultant - Scope of Work. The City hereby retains the Consultant to provide professional services as defined in this Agreement and as necessary to accomplish the scope of work and fee attached hereto as **Exhibit A** and **Exhibit B** and incorporated herein by this reference as if set forth in full. The Consultant shall furnish all services, labor and related equipment necessary to conduct and complete the work, except as specifically noted otherwise in this Agreement.

2. Payment.

A. The City shall pay the Consultant an amount based on time and materials, not to exceed Eighteen Thousand Seventy-Nine Dollars and Zero Cents (\$18,079.00) for the services described in Section 1 herein. This is the maximum amount to be paid under this Agreement for the work described in **Exhibit A – Scope of Work and Exhibit B – Cost Estimate**, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement.

B. The Consultant shall submit monthly invoices to the City after such services have been performed, and a final bill upon completion of all the services described in this Agreement. The City shall pay the full amount of an invoice within forty-five (45) days of receipt. If the City objects to all or any portion of any invoice, it shall so notify the Consultant of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

3. Relationship of Parties. The parties intend that an independent contractor-client relationship will be created by this Agreement. As the Consultant is customarily engaged in an

independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or subconsultant of the Consultant shall be or shall be deemed to be the employee, agent, representative or subconsultant of the City. In the performance of the work, the Consultant is an independent contractor with the ability to control and direct the performance and details of the work, the City being interested only in the results obtained under this Agreement. None of the benefits provided by the City to its employees, including, but not limited to, compensation, insurance, and unemployment insurance are available from the City to the employees, agents, representatives, or subconsultants of the Consultant. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and subconsultants during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.

4. **Duration of Work.** The City and the Consultant agree that work will begin on the tasks described in **Exhibit A** immediately upon execution of this Agreement. The parties agree that the work described in **Exhibit A** shall be completed by August 1, 2011; provided however, that additional time shall be granted by the City for excusable days or extra work.

5. **Termination.** The City reserves the right to terminate this Agreement at any time upon ten (10) days written notice to the Consultant. Any such notice shall be given to the address specified above. In the event that this Agreement is terminated by the City other than for fault on the part of the Consultant, a final payment shall be made to the Consultant for all services performed. No payment shall be made for any work completed after ten (10) days following receipt by the Consultant of the notice to terminate. In the event that services of the Consultant are terminated by the City for fault on part of the Consultant, the amount to be paid shall be determined by the City with consideration given to the actual cost incurred by the Consultant in performing the work to the date of termination, the amount of work originally required which would satisfactorily complete it to date of termination, whether that work is in a form or type which is usable to the City at the time of termination, the cost of the City of employing another firm to complete the work required, and the time which may be required to do so.

6. **Non-Discrimination.** The Consultant agrees not to discriminate against any customer, employee or applicant for employment, subcontractor, supplier or materialman, because of race, color, creed, religion, national origin, marital status, sex, sexual orientation, age or handicap, except for a bona fide occupational qualification. The Consultant understands that if it violates this provision, this Agreement may be terminated by the City and that the Consultant may be barred from performing any services for the City now or in the future.

7. **Indemnification.**

A. The Consultant agrees to hold harmless, indemnify and defend the City, its officers, agents, and employees, from and against any and all claims, losses, or liability, for injuries, sickness or death of persons, including employees of the Consultant, or damage to property, arising out of any willful misconduct or negligent act, error, or omission of the Consultant, its officers, agents, subconsultants or employees, in connection with the services required by this Agreement; provided, however, that:

1. The Consultant's obligations to indemnify, defend and hold harmless shall not extend to injuries, sickness, death or damage caused by or resulting from the sole willful misconduct

or sole negligence of the City, its officers, agents or employees; and

2. The Consultant's obligations to indemnify, defend and hold harmless for injuries, sickness, death or damage caused by or resulting from the concurrent negligence or willful misconduct of the Consultant and the City, or of the Consultant and a third party other than an officer, agent, subconsultant or employee of the Consultant, shall apply only to the extent of the negligence or willful misconduct of the Consultant.

B. It is further specifically and expressly understood that the indemnification provided herein constitutes the consultant's waiver of immunity under industrial insurance, title 51 RCW, solely for the purposes of this indemnification. The parties further acknowledge that they have mutually negotiated this waiver. The consultant's waiver of immunity under the provisions of this section does not include, or extend to, any claims by the consultant's employees directly against the consultant.

C. The provisions of this section shall survive the expiration or termination of this Agreement.

8. Insurance.

A. The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Consultant's own work including the work of the Consultant's agents, representatives, employees, subconsultants or subcontractors.

B. Before beginning work on the project described in this Agreement, the Consultant shall provide evidence, in the form of a Certificate of Insurance, of the following insurance coverage and limits (at a minimum):

1. Business auto coverage for any auto no less than a \$1,000,000 each accident limit, and
2. Commercial General Liability insurance no less than \$1,000,000 per occurrence with a \$2,000,000 aggregate. Coverage shall include, but is not limited to, contractual liability, products and completed operations, property damage, and employers liability, and
3. Professional Liability insurance with no less than \$1,000,000. All policies and coverages shall be on a claims made basis.

C. The Consultant is responsible for the payment of any deductible or self-insured retention that is required by any of the Consultant's insurance. If the City is required to contribute to the deductible under any of the Consultant's insurance policies, the Contractor shall reimburse the City the full amount of the deductible within 10 working days of the City's deductible payment.

D. The City of Gig Harbor shall be named as an additional insured on the Consultant's commercial general liability policy. This additional insured endorsement shall be included with evidence of insurance in the form of a Certificate of Insurance for coverage necessary in Section B. The City reserves the right to receive a certified and complete copy of all of the Consultant's insurance policies upon request.

E. Under this Agreement, the Consultant's insurance shall be considered primary in the event of a loss, damage or suit. The City's own comprehensive general liability policy will be considered excess coverage with respect to defense and indemnity of the City only and no other party. Additionally, the Consultant's commercial general liability policy must provide cross-liability coverage as could be achieved under a standard ISO separation of insured's clause.

F. The Consultant shall request from his insurer a modification of the ACORD certificate to include language that prior written notification will be given to the City of Gig Harbor at least 30 days in advance of any cancellation, suspension or material change in the Consultant's coverage.

9. Exchange of Information. The City warrants the accuracy of any information supplied by it to the Consultant for the purpose of completion of the work under this Agreement. The parties agree that the Consultant will notify the City of any inaccuracies in the information provided by the City as may be discovered in the process of performing the work, and that the City is entitled to rely upon any information supplied by the Consultant which results as a product of this Agreement.

10. Ownership and Use of Work Product. Any and all documents, drawings, reports, and other work product produced by the Consultant under this Agreement shall become the property of the City upon payment of the Consultant's fees and charges therefore. The City shall have the complete right to use and re-use such work product in any manner deemed appropriate by the City, provided, that use on any project other than that for which the work product is prepared shall be at the City's risk unless such use is agreed to by the Consultant.

11. City's Right of Inspection. Even though the Consultant is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure the satisfactory completion thereof. The Consultant agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or become applicable within the terms of this Agreement to the Consultant's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

12. Records. The Consultant shall keep all records related to this Agreement for a period of three years following completion of the work for which the Consultant is retained. The Consultant shall permit any authorized representative of the City, and any person authorized by the City for audit purposes, to inspect such records at all reasonable times during regular business hours of the Consultant. Upon request, the Consultant will provide the City with reproducible copies of any such records. The copies will be provided without cost if required to substantiate any billing of the Consultant, but the Consultant may charge the City for copies requested for any other purpose.

13. Work Performed at the Consultant's Risk. The Consultant shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and subconsultants in the performance of the work hereunder and shall utilize all protection necessary for that purpose. All work shall be done at the Consultant's own risk, and the Consultant shall be responsible for any loss of or damage to materials, tools, or other articles used or held by the Consultant for use in connection with the work.

14. Non-Waiver of Breach. The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred

in one or more instances shall not be construed to be a waiver or relinquishment of said covenants, agreements, or options, and the same shall be and remain in full force and effect.

15. Resolution of Disputes and Governing Law.

A. Should any dispute, misunderstanding, or conflict arise as to the terms and conditions contained in this Agreement, the matter shall first be referred to the City Engineer or Director of Operations and the City shall determine the term or provision's true intent or meaning. The City Engineer or Director of Operations shall also decide all questions which may arise between the parties relative to the actual services provided or to the sufficiency of the performance hereunder.

B. If any dispute arises between the City and the Consultant under any of the provisions of this Agreement which cannot be resolved by the City Engineer or Public Works Director determination in a reasonable time, or if the Consultant does not agree with the City's decision on the disputed matter, jurisdiction of any resulting litigation shall be filed in Pierce County Superior Court, Pierce County, Washington. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The prevailing party in any such litigation shall be entitled to recover its costs, including reasonable attorney's fees, in addition to any other award.

16. Written Notice. All notices required to be given by either party to the other under this Agreement shall be in writing and shall be given in person or by mail to the addresses set forth below. Notice by mail shall be deemed given as of the date the same is deposited in the United States mail, postage prepaid, addressed as provided in this paragraph.

CONSULTANT:
Anchor QEA, LLC
ATTN: David Templeton, Partner
720 Olive Way, Suite 1900
Seattle, WA 98101
(206) 287-9130 FAX (206) 287-9131

City of Gig Harbor
ATTN: Stephen Misiurak, P.E.
City Engineer
3510 Grandview Street
Gig Harbor, WA 98335
(253) 851-6170 FAX (253) 853-7597

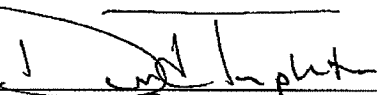
17. Subcontracting or Assignment. The Consultant may not assign or subcontract any portion of the services to be provided under this Agreement without the express written consent of the City. Any subconsultants approved by the City at the outset of this Agreement are named on **Exhibit C** attached hereto and incorporated herein by this reference as if set forth in full.

[Remainder of Page Intentionally left blank]

18. **Entire Agreement.** This Agreement represents the entire integrated agreement between the City and the Consultant, superseding all prior negotiations, representations or agreements, written or oral. This Agreement may be modified, amended, or added to, only by written instrument properly signed by both parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement this _____ day of _____, 2011.

CONSULTANT

By: 
Its: Partner

CITY OF GIG HARBOR

By: _____
Mayor Charles L. Hunter

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney



720 Olive Way, Suite 1900
Seattle, Washington 98101
Phone 206.287.9130
Fax 206.287.9131

March 7, 2011

Mr. Stephen Misiurak
City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335

Re: Long-Term Monitoring Plan Implementation for the Eddon Boatyard Property
Scope of Work and Cost Estimate for Year 3 Activities

Anchor QEA Project Number: 040289-02

Dear Mr. Misiurak:

The purpose of this letter is to provide the City of Gig Harbor (City) with Anchor QEA's scope of work and cost estimate for the Washington State Department of Ecology (Ecology) approved Long-Term Monitoring Plan (LTMP) implementation at the Eddon Boatyard Property. Five years of monitoring are required per the Cleanup Action Plan (CAP), and Year 1 and 2 have been completed. Only the costs of Year 3 activities will be approved at this time; however, Years 4 and 5 will be reserved for a later submittal date and are included for reference only. Table 1 provides a summary and cost for each year's tasks.

A visual inspection will be performed during all five monitoring years. The scope of this task includes:

- Site visit for cap visual inspection
- Photographs
- Documentation
- Technical memo production time
- Senior review

Year 3 includes a sampling event. If Year 3 results exceed SMS criteria, an identical sampling event will occur in Year 5. The scope of this task includes:

- Collecting two cores in the cap area and one core in the habitat mix layer
 - Requires subcontractor or specialized coring equipment
- Possibly collecting three surface grabs (same locations)
- Lab analysis of up to 6 samples for compounds identified in the LTMP
- Technical memo production time
- Data management time
- Senior review

Pending the results of visual inspections and/or analytical sample results several corrective actions may be necessary. These contingency costs are listed in Table 1 under Contingency Costs. These costs are not included in the Year 3 scope so additional funding will be required to perform these tasks if needed. Possible contingency measures include:

- Write response plan to Ecology
- Take hand cores to determine if cap has eroded
- Take additional samples
- Conduct Bioassay studies
- Evaluate institutional controls
- Add additional material to cap
- Repair cap
- Conduct source control evaluation

The costs associated with adding cap material, repairing cap, and conducting extensive source control evaluations are not included in the contingency costs in Table 1. If these or other supplemental actions are necessary, additional costs will be negotiated with the City.

Table 1

Event	Cost ^{1,2}	Year 3 Costs
Year 1- Visual Inspections/Tech Memo (2009)	Completed	\$0
Year 2- Visual Inspections/Tech Memo (2010)	Completed	\$0
Year 3- Sampling Event (2011)	\$18,079	\$18,079
Year 4- Visual Inspections/Tech Memo (2012)	TBD	\$0
Year 5- Visual Inspections/Tech Memo (2013)	TBD	\$0
Contingency Costs ³	\$32,959	TBD
Totals:		\$18,079

Notes:

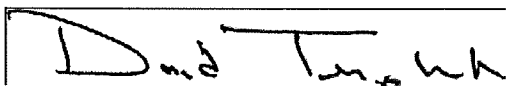
¹ Visual inspections include photographing and possible hand cores

² Sampling assumes up to 6 samples for Hg, TOC, TBT, TS and tasks associated with data mgmt.

³ Contingency measures include response plan to Ecology, several handcores along a transect, additional sampling, bioassay testing, and evaluation of institutional controls

Please feel free to request a phone conference to discuss the assumptions behind the estimated costs. Or contact me directly at (206) 910-4279 or dtempleton@anchorqea.com.

Sincerely,



David Templeton
 Partner
 Anchor QEA, LLC

cc: Joy Dunay, Anchor QEA, LLC

Attachments:

1. Cost Estimate Summary

ANCHOR OEA L.L.C.
2011 PROJECT COST ESTIMATING FORM
City of Gig Harbor
Eddon Boatyard Remediation

Number: 040289-02
Prepared: Joy Dunay

Labor Categories	Billing Rate	Task 1	Task 2	Task 3	Task 4	Task 5	Task 6	Task 7	Task 8	Task 9	Task 10	Total Hours	Total Dollars
		Task 1	Task 2	Task 3	Task 4	Task 5	Task 6	Task 7	Task 8	Task 9	Task 10	Total Hours	Total Dollars
Principal	\$ 210	0	0	6	0	0	0	0	0	0	0	6	\$ 1,260
Sr Project Manager	\$ 190	0	0	0	0	0	0	0	0	0	0	0	\$ -
Project Manager	\$ 170	0	0	0	0	0	0	0	0	0	0	0	\$ -
Senior Engr/LA/Plan/Sci	\$ 150	0	0	0	0	0	0	0	0	0	0	0	\$ -
Staff 3 Engr/LA/Plan/Sci	\$ 130	0	0	42	0	0	0	0	0	0	0	42	\$ 5,460
Staff 2 Engr/LA/Plan/Sci	\$ 120	0	0	20	0	0	0	0	0	0	0	20	\$ 2,400
Staff 1 Engr/LA/Plan/Sci	\$ 105	0	0	0	0	0	0	0	0	0	0	0	\$ -
Senior Design/CAD	\$ 110	0	0	6	0	0	0	0	0	0	0	6	\$ 660
Design/CAD	\$ 95	0	0	0	0	0	0	0	0	0	0	0	\$ -
Project Coordinator (PC/PA)	\$ 85	0	0	5	0	0	0	0	0	0	0	5	\$ 425
Project Coordinator (Admin)	\$ 85	0	0	0	0	0	0	0	0	0	0	0	\$ -
Field Technician	\$ 80	0	0	0	0	0	0	0	0	0	0	0	\$ -
Total Hours		0	0	79	0	0	0	0	0	0	0	79	\$ 10,205
Total Labor		\$ -	\$ -	\$ 10,205	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 10,205
Average Hourly Rate	\$ 129												
Subcontractants													
ARI laboratory		\$ -	\$ -	\$ 5,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 5,000
Eric Parker		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Newfields		\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Cost		\$ -	\$ -	\$ 5,000	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 5,000
Markup	10.0%	\$ -	\$ -	\$ 500	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 500
Reimbursables													
CAD/Computer (\$/hr)	\$10.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Mileage (\$/mile)	\$0.585	\$ -	\$ -	\$ 53	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 53
Copies (\$/copy)	\$0.10	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Anchor boat (\$/day)	\$300	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Faxes (\$/fax)	\$1.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Outside Expenses													
Vehicle Rental	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Repro/Plotting	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Mail/Fedex/Counter	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Travel	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Hotel/Per Diem	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Miscellaneous	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Total Cost		\$ -	\$ -	\$ 53	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 53
Markup	10.0%	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Field Equipment and Supplies Summary													
Markup	10.0%	\$ -	\$ -	\$ 2,110	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,110
TOTAL COSTS		\$ -	\$ -	\$ 18,079	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 18,079

Anchor QEA, LLC

EXHIBIT B-1
TASK 3
LAB AND FIELD COSTS

Test	Unit cost	Sample #	Total
TS	15	6	90
TOC	45	6	270
Hg (low level)	60	6	360
Porewater extraction (TBT)	150	6	900
TBT analysis	335	6	2010
Archive* (1 year)	115	6	690
Level IV data package (15%)		1	648
Total			\$4968
*Archive is \$25 for 90 days than \$10 per sample/month			

truck	\$50
camera	\$10
Decon kit	\$20
Van Veen	
H&S equip	\$20
GPS	\$10
Coring Device Equipment	\$2,000
Total	\$2110

Total = \$7,078

Subject: Resolution authorizing a Development Agreement for phased development with McCormick Creek LLC.

Proposed Council Action: Adopt the Resolution authorizing the Mayor to execute the Development Agreement with McCormick Creek LLC

Dept. Origin: Planning Department

Prepared by: Cliff Johnson, Associate Planner *CLJ*

For Agenda of: March 28, 2011

Exhibits: Summary of proposed changes, Resolution, Development Agreement and Exhibits

	Initial & Date
Concurred by Mayor:	<u>CLJ 3/22/11</u>
Approved by City Administrator:	<u>RJK</u>
Approved as to form by City Atty:	<u>by e-mail</u>
Approved by Finance Director:	<u>N/A</u>
Approved by Department Head:	<u>ID 3/22/11</u>

Expenditure	Amount	Appropriation
Required 0	Budgeted 0	Required 0

INFORMATION/BACKGROUND

On April 7, 2010 the City of Gig Harbor Hearing Examiner approved a 185 lot preliminary plat for the property located immediately northeast of Burnham Drive NW and west of Harbor Hill Drive. By Resolution No. 832, on April 26, 2010 the City Council authorized the Mayor to sign a Development Agreement with the developer. This development agreement allowed the Developer to develop the plat in four separate phases, and to vest the approval for a period of up to 20 years. The agreement specified that the individual phases would be recorded at intervals not to exceed one phase every 5 years.

Since the effective date of that development agreement, the Developer has determined he would like to undertake a different phasing schedule. This different phasing schedule would allow for the Developer to develop and record the final plat in three separate phases, and would vest the approval for a period of up to 19 years. The Development Agreement would allow the Developer to record the final plat in three separate phases. The Agreement specifies that the Developer must record the first phase of the plat within 6 years. If the first phase of the plat is recorded within the first 6 years (and 30% of the total plat connection fees have been paid) the Agreement would be automatically extended for another 6 years. If at the end of that period Phases 1 and 2 are recorded (and 60% of the total plat connection fees have been paid) the Developer may request on additional 7 year extension, subject to council approval. If the Agreement does not get extended at the end of the first 12 years, the Agreement would automatically be extended for 2 years to allow the Developer to fully develop the infrastructure and record the remaining phase. The Development Agreement specifies the improvements that must be completed for each phase.

The Development Agreement also specifies that the Developer shall dedicate two wetland and public use easements to the City. The Developer would also grant fee ownership of the easement areas to the City upon recording of final plat. The Development Agreement also specifies that the existing soccer fields located on the area identified as Phase 3 on Exhibit B shall be kept open to Peninsula Athletic Association use for a minimum of 2 years from the date of the agreement. Additionally, prior to recordation of the final plat for Phase 1, the Developer shall clear and rough grade the remainder of Road 1 (as shown on Exhibit B) from the easterly property line of the property to the improved section of Road 1. This rough graded section of Road 1 shall be signed by the Developer "Future Road Connection to Harbor Hill Drive." Please see the attached summary of the proposed differences between the previous development agreement and the new agreement.

FISCAL CONSIDERATION

None

BOARD OR COMMITTEE RECOMMENDATION

The Planning and Building committee reviewed the development agreement at its regular meeting of March 7, 2011 and recommended approval.

RECOMMENDATION / MOTION

Move to: Adopt the Resolution authorizing the Mayor to execute the Development Agreement with McCormick Creek LLC.

Summary of Proposed Development Agreement Changes

Proposed changes in the McCormick Creek Development Agreement
(compared to the original agreement)

- Three phases instead of four phases
- Phase 1 vested for 6 years
- If phase 1 completed and 35% of the sewer and water connection fees have been paid, the development agreement would be automatically extended for another 6 years. If phase 1 and phase 2 have been recorded by year 12 and 70% of the total sewer and water connection fees have been paid, the applicant may apply for an additional 7 year extension of the development agreement. This 7 year final extension would be subject to city council approval.
- Allowing for civil permit approvals to remain valid for two years.
- Removal of the requirement for paying a pro-rata share of the City's Interim Improvement project at the Borgen SR16 interchange. Note: This is still a requirement of the Hearing Examiner approval.
- Private soccer fields will be kept available for PAA use for 2 years.
- As part of Phase 1 the Developer shall clear and rough grade the portion of road 1 that will not be constructed until Phase 2. This road will also be signed to identify the future road connection to Harbor Hill.
- As part of each final plat notes shall be included on the face of the plat and in the CC&R's regarding the future road connection to Harbor Hill Drive.

RESOLUTION NO.

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, AUTHORIZING THE EXECUTION OF A DEVELOPMENT AGREEMENT WITH MCCORMICK CREEK LLC.

WHEREAS, RCW 36.70B.170 authorizes the execution of a development agreement between a local government and a person having ownership or control of real property within its jurisdiction; and

WHEREAS, a development agreement must set forth the development standards and other provisions that shall apply to, govern and vest the development, use and mitigation of the development of the real property for the duration specified in the agreement; and

WHEREAS, for the purposes of this development agreement, "development standards" includes, but is not limited to, all of the standards listed in RCW 36.70B.170(3); and

WHEREAS, a development agreement must be consistent with the applicable development regulations adopted by a local government planning under chapter 36.70A RCW (RCW 36.70B.170(1)); and

WHEREAS, the Developer has a fee simple or other substantial beneficial interest in the real property located east of Burnham Drive NW and west of Harbor Hill Drive, Gig Harbor, Washington, which is legally described in Exhibit A of the Development Agreement, attached hereto and incorporated herein by this reference; and

WHEREAS, the Developer has obtained approval of a 185 lot preliminary plat

and initially desired to develop and record the final plat in four separate phases; and

WHEREAS, after a public hearing, by Resolution No. 832, the City Council authorized the mayor to sign a Development Agreement with the developer and the development agreement was executed and recorded and recorded at Pierce County Auditor's File No. 201004290173, and later amended by the First Amendment to Development Agreement, recorded at Pierce County Auditor's File No. 201006290783; and

WHEREAS, since the effective date of that development agreement, the Developer has determined it would like to undertake a different phasing schedule which would allow the plat to be recorded in three phases; and

WHEREAS, In order to effectuate the change in phasing schedule and to incorporate additional changes desired by the City and the developer, the parties have determined to terminate the prior development agreement and enter into a new development agreement; and

WHEREAS, on March 28, 2011, the City Council held a public hearing on the Development Agreement during a regular public meeting and voted to approve the Development Agreement attached hereto as Exhibit A; Now, Therefore,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

Section 1. The City Council hereby authorizes the Mayor to execute the Development Agreement attached hereto as Exhibit A, with McCormick Creek LLC.

Section 2. The City Council hereby directs the Planning Director to record the Development Agreement against the Property legally described in Exhibit A to the

Development Agreement, at the cost of the applicant, pursuant to RCW 36.70B.190.

PASSED by the City Council this 28th day of March, 2011.

APPROVED:

MAYOR, CHARLES L. HUNTER

ATTEST/AUTHENTICATED:

CITY CLERK, MOLLY M. TOWSLEE

APPROVED AS TO FORM;
OFFICE OF THE CITY ATTORNEY:

BY: _____
ANGELA S. BELBECK

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
RESOLUTION NO.

**DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF GIG HARBOR
AND MCCORMICK CREEK LLC FOR THE
MCCORMICK CREEK DEVELOPMENT**

THIS DEVELOPMENT AGREEMENT is made and entered into this ____ day of _____, 20____, by and between the CITY OF GIG HARBOR, a Washington municipal corporation, hereinafter the "City," and MCCORMICK CREEK LLC, a limited liability corporation, organized under the laws of the State of Washington, hereinafter the "Developer."

RECITALS

WHEREAS, RCW 36.70B.170 authorizes the execution of a development agreement between a local government and a person having ownership or control of real property within its jurisdiction; and

WHEREAS, a development agreement must set forth the development standards and other provisions that shall apply to, govern and vest the development, use and mitigation of the development of the real property for the duration specified in the agreement; and

WHEREAS, this Development Agreement relates to the development known as McCormick Creek Preliminary Plat/PRD, which is located at: 10023 Burnham Drive NW, Application No. PL-PPLAT-09-0003; and

WHEREAS, the following events have occurred in the processing of the Developer's application:

a) a Transportation Concurrency Reservation Certificate was issued for the development on February 8, 2010; and

b) a Revised Mitigated Determination of Non-significance was issued for the development on February 24, 2010; and

c) By Hearing Examiner's decision No. PPLAT-09-0003 dated April 7, 2010, the Preliminary Plat and PRD was approved subject to conditions;

d) After a public hearing, by Resolution No. 832, the City Council authorized the Mayor to sign a Development Agreement with the Developer and the development agreement was executed and recorded at Pierce County Auditor's File No. 201004290173, and later amended by the First Amendment to Development Agreement, recorded at Pierce County Auditor's File No. 201006290783;

e) Since the effective date of that development agreement, the Developer has determined it would like to undertake a different phasing schedule;

f) In order to effectuate the change in phasing schedule and to incorporate additional changes desired by the City, the parties have determined to terminate the prior development agreement and enter into a new development agreement; and g) After a public hearing, by Resolution No. ____, the City Council authorized the Mayor to sign this Development Agreement with the Developer, which terminates, replaces and supersedes the prior development agreement;

Now, therefore, the parties hereto agree as follows:

General Provisions

Section 1. The Project. The Project is the development and use of the Property contemplated in this Agreement. The preliminary plat and PRD application and Hearing Examiner Decision describes the Project as a preliminary plat and planned residential development resulting in a total of 185 lots, 18 individual wetland, stormwater and open space tracts and associated roads. One hundred eighty-two of the lots are proposed to be residential, and three of the lots are proposed to be non-residential: one for office use, one for a mini-storage type of development to serve the residents of the plat, and one lot that contains an existing church.

Section 2. The Property. The Property consists of 52.16 acres and is legally described in Exhibit A, attached hereto and incorporated herein by this reference.

Section 3. Definitions. As used in this Development Agreement, the following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section.

A. "Adopting Resolution" means the resolution which approves this Development Agreement, as required by RCW 36.70B.200.

B. "Certificate of occupancy" means either a certificate issued after inspections by the City authorizing a person(s) in possession of property to dwell or otherwise use a specified building or dwelling unit, or the final inspection if a formal certificate is not issued.

C. "Civil Permit" means any ministerial, nondiscretionary City permit approved by the City Engineer and authorizing clearing and grading, landscaping improvements, the construction of roads, bridges, storm water facilities, or utility facilities, or other construction work, such as those issued under the authority of GHMC chapters 12.06 and 12.08, except any building permit. "Civil Permit" does not include any landscaping improvements required by GHMC Titles 16, 17, or 18 and approved by the Director.

D. "Design Guidelines" means the Gig Harbor Design Manual, as adopted by the City.

E. "Development Standards" includes, but is not limited to, all of the standards listed in RCW 36.70B.170(3).

F. "Director" means the City's Community Development Director or Director of Planning and Building.

G. "Effective Date" means the effective date of the Adopting Resolution.

H. "Existing Land Use Regulations" means the ordinances adopted by the City Council of Gig Harbor in effect on the Effective Date, including the adopting ordinances that govern the permitted uses of land, the density and intensity of use, and the design, improvement, construction standards and specifications applicable to the development of the Property, including, but not limited to the Comprehensive Plan, the City's Official Zoning Map and development standards, the Design Manual, the Public Works Standards, SEPA, Concurrency Ordinance, and all other ordinances, codes, rules and regulations of the City establishing subdivision standards, park regulations, building standards. Existing Land Use Regulation does not include non-land use regulations, which includes taxes and impact fees.

I. "Landowner" is the party who has acquired any portion of the Property from the Developer who, unless otherwise released as provided in this Agreement, shall be subject to the applicable provisions of this Agreement.

Section 4. Exhibits. Exhibits to this Agreement are attached hereto and incorporated herein, including the following:

- Exhibit A – legal description of the Property.
- Exhibit B – Map showing Development Phases.
- Exhibit C – Map of Wetland Areas.
- Exhibit D – Cross Section of proposed roadways
- Exhibit E – Hearing Examiner Decision

Section 5. Project is a Private Undertaking. It is agreed among the parties that the Project is a private development and that the City has no interest therein except as authorized in the exercise of its governmental functions.

Section 6. Term of Agreement. This Agreement shall commence upon the Effective Date of this amended Agreement for an initial term of 6 years, and shall continue in force as described herein:

- A. Developer shall record final plat for Phase 1, as described in Exhibit B, and shall pay a minimum of 30 percent of the total sewer and water

- service connection fees for the entire plat, within 6 years from the Effective Date. The 30 percent of connection fees will be paid at the time of individual building permits or within 6 years, whichever is sooner.
- B. If Phase 1 is recorded within the initial 6-year term and the 30 percent connection fees paid, this Agreement shall be automatically extended for a period of 6 years.
 - C. Developer may apply for a final 7-year extension of this Agreement, provided the extension request has been submitted in writing no less than 60 days prior to expiration, and provided that a minimum of Phase 1 and Phase 2 have been recorded and a minimum of 60 percent of the total sewer and water service connection fees for the entire plat have been paid to the City (to be paid at the time of individual building permits or 12 years, whichever is sooner). Such extensions are subject to approval by the City Council.
 - D. In the event the Developer does not apply for or if the City Council does not approve the final 7-year extension, and if a minimum of 60 percent of the total sewer and water service connection fees have been paid, this Agreement shall automatically be extended for two years to allow for recording of the final phase(s).
 - E. Following the expiration of the term, or if sooner terminated, this Agreement shall have no force and effect, subject however, to post-termination obligations of the Developer or Landowner.
 - F. Any Civil Permit shall not expire or terminate until the date that is two (2) years after the issuance of such approval or permit. This subsection shall not apply to any building permit. Notwithstanding the foregoing, the city reserves the right during the Development Period to modify the Development Standards to the extent required by a serious threat to public health and safety.
 - G. Developer acknowledges and agrees that the existing soccer fields located on the area identified as Phase 3 on Exhibit B shall be kept open to Peninsula Athletic Association use for a minimum of 2 years from the effective date of this Agreement.
 - H. At the time each Phase of the plat receives final plat approval, a note shall be added to the face of the plat mylars and in the recorded CC&R's stating that "Road 1 of the plat is intended and has been designed to provide a public right of way vehicular connection between Harbor Hill Drive and Burnham Drive".

Section 7. Vested Rights of Developer. During the term of this Agreement, unless sooner terminated in accordance with the terms hereof, in developing the Property consistent with the Project described herein, Developer is assured, and the City agrees, that the development rights, obligations, terms and conditions specified in this Agreement, are fully vested in the Developer and may not be changed or modified by the City, except as may be expressly permitted by, and in accordance with, the terms and conditions of this

Agreement, including the exhibits hereto, or as expressly consented thereto by the Developer.

Section 8. Permitted Uses and Development Standards. The permitted uses, the density and intensity of use, the maximum height and size of proposed buildings, provisions for reservation and dedication of land or payment of fees in lieu of dedication for public purposes, the construction, installation and extension of public improvements, development guidelines and standards for development of the Property shall be those set forth in this Agreement, the permits and approvals identified herein, and all exhibits incorporated herein.

Section 9. Minor Modifications. Minor modifications from the approved permits or the exhibits attached hereto may be approved in accordance with the provisions of the City's code, and shall not require an amendment to this Agreement.

Section 10. Further Discretionary Actions. Developer acknowledges that the Existing Land Use Regulations contemplate the exercise of further discretionary powers by the City. These powers include, but are not limited to, review of additional permit applications under SEPA. Nothing in this Agreement shall be construed to limit the authority or the obligation of the City to hold legally required public hearings, or to limit the discretion of the City and any of its officers or officials in complying with or applying Existing Land Use Regulations.

Section 11. Financing of Public Facilities.

A. Developer acknowledges and agrees that it shall participate in the granting of a non-exclusive wetland and public use easement over all of the areas shown as Tract I and J on Exhibit B.

The easement over the areas shown as Tract I and Tract J shall be dedicated to the City within 60 days of the effective date of the Adopting Resolution approving this agreement.

The City acknowledges that portions of Tract I contain an existing vehicular access easement that will remain until Road 1 is complete.

The Developer acknowledges that wetland mitigation for Road 1 improvements will continue to be the Developer's responsibility and must be completed prior to recording the final plat for phase 1. The City's easement over tracts I and J shall not restrict the Developer's plans for wetland mitigation of Road 1 as depicted in the approved conceptual wetland mitigation plans.

The Developer acknowledges that the wetland monitoring and maintenance will continue to be the Developer's responsibility until such time that the wetlands are deeded to the city.

B. The City may pursue the use of a local improvement district and other similar project-related public financing mechanism for financing the construction, improvement or acquisition of public infrastructure, facilities, lands and improvements to serve the Property, whether located within or outside the Property. For reimbursement of expenses incurred by Developer associated with the off-site improvements and/or upsizing of utilities, and/or construction of infrastructure to accommodate City Comprehensive Transportation and Utility Plans, Developer may apply for a latecomer reimbursement agreement in accordance with the City's ordinances and State law.

C. Within 90 days of final plat recording for Phase 1, Developer shall grant fee ownership of Tract J to the City.

D. Within 90 days of final plat recording for Phase 2, Developer shall grant fee ownership of Tract I to the City.

Section 12. Existing Land Use Fees and Impact Fees.

A. Land use fees adopted by the City by ordinance as of the Effective Date may be increased by the City from time to time, and applicable to permits and approvals for the Property, as long as such fees apply to similar applications and projects in the City.

B. Impact fees shall be paid as set forth in the approved permit or approval, or as addressed in chapter 19.12 of the Gig Harbor Municipal Code. The Developer has requested in writing on September 23, 2008 a transportation impact fee credit in accordance with GHMC 19.12.083.B. If this request is pursued by the Developer, the credit will be determined in accordance with GHMC 19.12.083.

Section 13. Phasing of Development.

A. The parties acknowledge that the most efficient and economic development of the Property depends upon numerous factors, such as market orientation and demand, interest rates, competition and similar factors, and that generally it will be most economically beneficial to the ultimate purchasers of the Property to have the rate of development determined by the Developer. However, the parties also acknowledge that because the Development will be phased, certain amenities associated with the Project must be available to all phases of the Project, in order to address health, safety and welfare of the residents. Therefore, the parties agree that the improvements associated with the Project, as depicted in Exhibit B, shall be constructed by the developer according to the following schedule:

B. Phasing.

1. Phase 1:

a. Street Improvements. The Developer shall construct Road 1 from Burnham Drive to the intersection of Road 8 and dedicate this roadway to the City. The Developer shall dedicate all of Road 1 as shown on Exhibit B, including any portion remaining undeveloped as part of the phase 1 improvements, to the City. The Developer shall construct Road 4 and Road 5 and dedicate them to the City. The Developer shall design and construct left turn lane improvements, as acceptable to the City, on Burnham Drive. The Developer shall complete the required wetland mitigation necessary for the construction of Road 1, per the Hearing Examiner Decision (Exhibit E). Developer shall clear and rough grade the remainder of Road 1 (as shown on Exhibit B) from the easterly property line of the property to the improved section of Road 1. The cleared and rough graded section of Road 1 shall be signed by the developer "Future Road Connection to Harbor Hill Drive".

b. Potable Water and Fire Flow Facilities. The Developer shall construct an extension of a water line from Burnham Drive to the proposed lots within Phase 1.

c. Sewer Facilities. The Developer shall construct an extension of the sewer line from Burnham Drive to proposed lots within Phase 1.

d. Utilities. The Developer shall construct the Phase 1 storm facility shown on the plans as Tract A, and all associated appurtenances per the preliminary plan set attached as Exhibit 2 to the Hearing Examiner Decision (the "Preliminary Plan Set"). The Developer shall extend other utilities as necessary to the proposed lots within the phase.

e. Parks and Open Space. The Developer shall construct physical improvements and the public trail linking the park to the Cushman Trail and the adjacent Little League Fields. The Developer shall construct physical improvements to Open Space Tracts D E, F, J and Q, as shown in the preliminary plan set attached as Exhibit 2 to the Hearing Examiner Decision (the "Preliminary Plan Set").

2. Phase 2:

a. Street Improvements. The Developer shall construct and dedicate to the City Roads 6, 7, 8 and 9, and the remainder of Road 1.

b. Potable Water and Fire Flow Facilities. The Developer shall construct an extension of the water line to the proposed lots within the phase.

- c. Sewer Facilities. The Developer shall construct an extension of the sewer line to proposed lots within the phase.
- d. Utilities. The Developer shall extend other utilities as necessary to the proposed lots within the phase.
- e. Parks and Open Space. The Developer shall construct improvements, as shown in the Preliminary Plan Set, to Tracts I, K, L, M, N and O.

3. Phase 3:

- a. Street Improvements. The Developer shall construct and dedicate to the City Roads 2 and 3.
- b. Potable Water and Fire Flow Facilities. The Developer shall construct an extension of the water line to the proposed lots within the phase.
- c. Sewer Facilities. The Developer shall construct an extension of the sewer line to proposed lots within the phase.
- d. Utilities. The Developer shall extend other utilities as necessary to the proposed lots within the phase. Developer shall construct the storm facility shown on the plans as Tract R, and all associated appurtenances per the preliminary plan set attached as Exhibit 2 to the Hearing Examiner Decision (the "Preliminary Plan Set").
- e. Parks and Open Space. The Developer shall construct improvements, as shown in the Preliminary Plan Set, to Open Space Tracts P, R and S.

C. "Road" means the cross section shown in the preliminary plat plans and attached to this Agreement as Exhibit D, and includes curb, gutter, sidewalk, landscaping, illumination, pavement section, road drainage facilities not included in paragraph D, below. Potable water and fire lines, sewer facilities and utilities within the Road shall be installed by the Developer at the Developer's cost prior to City acceptance of the road.

D. All improvements shall be constructed in accordance with the underlying approval for the McCormick Creek preliminary plat, the City of Gig Harbor Public Works Standards and engineering industry standards approved by the City of Gig Harbor. Construction of the street, potable water, sewer and utility improvements shall not be considered complete until the improvements have been accepted by the City in writing. Phases referred to above are to be as shown on the phasing plan, attached as Exhibit B to this Agreement.

Section 14. Dedication of Public Lands. Except as otherwise provided herein, the Developer shall dedicate all public lands required in the permits/approvals within ninety (90) days of the Effective Date of this Agreement. Dedication shall be considered by the City in the following schedule:

A. **Parks.** With regard to parks within the Property, each park site (or portion of the community park site, which is to be dedicated in phases) shall be dedicated to the City as the maps for the phases of the subdivisions are approved and recorded, as shown in Exhibit B, attached hereto.

B. **Rights-of-Way.** Within fifteen (15) days of submission of an application for final plat to the City for any phase of the development, the Developer agrees to dedicate any or all road rights-of-way without expense to the City. The developer is required to acquire all property, easements or right-of-way necessary to construct the roads shown on the preliminary plat application before making application for any building permits to construct any improvements or begin any work within any phase. All building permits and other permits shall be reviewed for completeness, including the requirements of GHMC 19.02.002.

Section 15. Default.

A. Subject to extensions of time by mutual consent in writing, failure or delay by either party or Landowner not released from this Agreement to perform any term or provision of this Agreement shall constitute a default. In the event of alleged default or breach of any terms or conditions of this Agreement, the party alleging such default or breach shall give the other party or Landowner not less than thirty (30) days notice in writing, specifying the nature of the alleged default and the manner in which said default may be cured. During this thirty (30) day period, the party or Landowner charged shall not be considered in default for purposes of termination or institution of legal proceedings.

B. After notice and expiration of the thirty (30) day period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the other party or Landowner to this Agreement may, at its option, institute legal proceedings pursuant to this Agreement. In addition, the City may decide to file an action to enforce the Gig Harbor Municipal Code, and to obtain penalties and costs as provided in the Gig Harbor Municipal Code for violations of this Development Agreement and the Code.

Section 16. Periodic Review. The City shall, at least every six years, or after the recording of each phase, whichever is sooner, review the extent of good faith substantial compliance by Developer and Landowner with this Agreement. The City may charge fees as necessary to cover the costs of conducting the annual review.

Section 17. Termination.

A. This Agreement shall expire and be of no further force and effect if the development contemplated in this Agreement and all of the permits and/or approvals issued by the City for such development are not substantially underway prior to expiration of such permits and/or approvals. Nothing in this Agreement shall extend the expiration date of any permit or approval issued by the City for any development except as noted in Section 6.

B. This Agreement shall expire and be of no further force and effect if the Developer does not construct the Project as contemplated by the permits and approvals identified in this Agreement, and submits applications for development of the Property that are inconsistent with such permits and approvals.

C. This Agreement shall terminate upon the expiration of the term identified in Section 6 or when the Property has been fully developed, which ever first occurs, and all of the Developer's obligations in connection therewith are satisfied as determined by the City. Upon termination of this Agreement, the City shall record a notice of such termination in a form satisfactory to the City Attorney that the Agreement has been terminated. This Agreement shall automatically terminate and be of no further force and effect as to any single-family residence and the lot or parcel upon which such residence is located, when it has been approved by the City for occupancy.

Section 18. Effect upon Termination on Developer Obligations. Termination of this Agreement as to the Developer of the Property or any portion thereof shall not affect any of the Developer's obligations to comply with the City Comprehensive Plan and the terms and conditions or any applicable zoning code(s) or subdivision map or other land use entitlements approved with respect to the Property, any other conditions of any other development specified in the Agreement to continue after the termination of this Agreement, or obligations to pay assessments, liens, fees or taxes.

Section 19. Effects upon Termination on City. Upon any termination of this Agreement as to the Developer of the Property or any portion thereof, the entitlements, conditions of development, limitations on fees and all other terms and conditions of this Agreement shall no longer be vested hereby with respect to the property affected by such termination (provided that vesting of such entitlements, conditions or fees may then be established for such property pursuant to then existing planning and zoning laws).

Section 20. Assignment and Assumption. The Developer shall have the right to sell, assign or transfer this Agreement with all their rights, title and interests therein to any person, firm or corporation at any time during the term of this Agreement. Developer shall provide the City with written notice of any intent to sell, assign, or transfer all or a portion of the Property at least 30 days in advance of such action.

Section 21. Covenants Running with the Land. The conditions and covenants set forth in this Agreement and incorporated herein by the Exhibits shall run with the land and the benefits and burdens shall bind and inure to the benefit of the parties, their respective heirs, successors and assigns. The Developer, Landowner and every purchaser, assignee or transferee of an interest in the Property, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a party thereto, but only with respect to the Property, or such portion thereof, sold, assigned or transferred to it. Any such purchaser, assignee or transferee shall observe and fully perform all of the duties and obligations of a Developer contained in this Agreement, as such duties and obligations pertain to the portion of the Property sold, assigned or transferred to it.

Section 22. Amendment to Agreement; Effect of Agreement on Future Actions. This Agreement may be amended by mutual consent of all of the parties, provided that any such amendment shall follow the process established by law for the adoption of a development agreement (see, RCW 36.70B.200). However, nothing in this Agreement shall prevent the City Council from making any amendment to its Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations affecting the Property during the term of this Agreement, as the City Council may deem necessary to the extent required by a serious threat to public health and safety. Nothing in this Development Agreement shall prevent the City Council from making any amendments of any type to the Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations relating to the Property after termination of this Agreement.

Section 23. Notices. Notices, demands, correspondence to the City and Developer shall be sufficiently given if dispatched by pre-paid first-class mail to the following addresses:

If to the Developer:

McCormick Creek LLC
Attn: Tom Sturgeon
PO Box 1800
Orting, WA 98360

If to the City:

City of Gig Harbor
Attn: City Administrator
3510 Grandview Street
Gig Harbor, WA 98335

Notices to subsequent Landowners shall be required to be given by the City only for those Landowners who have given the City written notice of their address for such notice. The parties hereto may, from time to time, advise the other of new addresses for such notices, demands or correspondence.

Section 24. Reimbursement for Agreement Expenses of the City. Developer agrees to reimburse the City for actual expenses incurred over and

above fees paid by Developer as an applicant incurred by City directly relating to this Agreement, including recording fees, publishing fees and reasonable staff, legal and consultant costs not otherwise included within application fees. Such payment of all fees shall be made, at the latest, within thirty (30) days from the City's presentation of a written statement of charges to the Developer. In the event Developer fails to pay the fees within the 30-day period, the City may declare the Developer in default and terminate this Agreement after 30 days written notice if the default is not timely cured.

Section 25. Applicable Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. If litigation is initiated to enforce the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party. Venue for any action shall lie in Pierce County Superior Court or the U.S. District Court for Western Washington.

Section 26. Third Party Legal Challenge. In the event any legal action or special proceeding is commenced by any person or entity other than a party or a Landowner to challenge this Agreement or any provision herein, the City may elect to tender the defense of such lawsuit or individual claims in the lawsuit to Developer and/or Landowner(s). In such event, Developer and/or such Landowners shall hold the City harmless from and defend the City from all costs and expenses incurred in the defense of such lawsuit or individual claims in the lawsuit, including but not limited to, attorneys' fees and expenses of litigation, and damages awarded to the prevailing party or parties in such litigation. The Developer and/or Landowner shall not settle any lawsuit without the consent of the City. The City shall act in good faith and shall not unreasonably withhold consent to settle.

Section 27. Specific Performance. The parties specifically agree that damages are not an adequate remedy for breach of this Agreement, and that the parties are entitled to compel specific performance of all material terms of this Development Agreement by any party in default hereof.

Section 28. Severability. If any phrase, provision or section of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any statute of the State of Washington which became effective after the effective date of the Adopting Resolution, such invalidity shall not affect the validity of the remainder of this Agreement.

Section 29. Termination and Replacement of Prior Development Agreement. The development agreement recorded at Pierce County Auditor's File No. 201004290173, as amended by the First Amendment to Development Agreement recorded at Pierce County Auditor's File No. 201006290783, is

hereby terminated, and this Development Agreement replaces and supersedes the provisions of that agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Development Agreement to be executed as of the dates set forth below:

OWNER/DEVELOPER:

CITY OF GIG HARBOR

By: [Signature]
Its: member
Date: 3-2-11

By: _____
Its: Mayor
Date: _____

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF _____)

I certify that I know or have satisfactory evidence that Thomas R Sturgeon is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the member of McCormick Creek LLC, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: 3/21/2011

PATRICIA M MCGALLIAN
Notary Public
State of Washington
My Commission Expires
January 22, 2013

[Signature]
Printed: Patricia M. McGallian
NOTARY PUBLIC in and for Washington
Residing at: Kitap County
My appointment expires: 1-22-2013

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that CHARLES L. HUNTER is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Mayor of the City of Gig Harbor, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

DATED: _____

Printed: _____
NOTARY PUBLIC in and for Washington
Residing at: _____
My appointment expires: _____

LEGAL DESCRIPTION

PARCEL A (PIERCE COUNTY 0222312027):

THE NORTH 80 FEET OF THAT PORTION OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 31, TOWNSHIP 22 NORTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN LYING EASTERLY OF THE CITY OF TACOMA'S LAKE CUSHMAN ELECTRIC POWER LINE RIGHT OF WAY.

AND

THE NORTH 60 FEET OF THE NORTH 330 FEET OF THE WEST HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 31, TOWNSHIP 22 NORTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN.

SITUATE IN THE CITY OF GIG HARBOR, COUNTY OF PIERCE, STATE OF WASHINGTON.

PARCEL B (PIERCE COUNTY 0222312028):

THAT PORTION OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 31, TOWNSHIP 22 NORTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN, LYING EASTERLY OF THE CITY OF TACOMA'S LAKE CUSHMAN ELECTRIC POWER LINE RIGHT OF WAY.

EXCEPT THE NORTH 80 FEET THEREOF.

SITUATE IN THE CITY OF GIG HARBOR, COUNTY OF PIERCE, STATE OF WASHINGTON.

PARCEL C (PIERCE COUNTY 0222312023):

THAT PORTION OF THE SOUTH HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 31, TOWNSHIP 22 NORTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN, LYING EASTERLY OF THE CITY OF TACOMA'S LAKE CUSHMAN ELECTRIC POWER LINE RIGHT OF WAY.

AND

ALL THAT PORTION OF GOVERNMENT LOT 3 OF SECTION 31, TOWNSHIP 22 NORTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID GOVERNMENT LOT 3, SECTION 31, TOWNSHIP 22 NORTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN; THENCE SOUTH 01°0'40" WEST ALONG THE EAST LINE OF GOVERNMENT LOT 3, 498.36 FEET TO A POINT 833.20 FEET NORTH OF THE SOUTHWEST CORNER OF SAID GOVERNMENT LOT 3; THENCE NORTH 88°20'24" WEST 378.94 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF TACOMA-LAKE CUSHMAN TRANSMISSION LINE; THENCE NORTH 13°26'07" WEST ALONG SAID EASTERLY RIGHT OF WAY LINE 514.56 FEET TO A POINT ON THE EAST-WEST CENTERLINE OF SAID SECTION 31; THENCE ALONG SAID EAST-WEST CENTERLINE SOUTH 88°17'17" EAST 508.77 FEET TO THE POINT OF BEGINNING.

SITUATE IN THE CITY OF GIG HARBOR, COUNTY OF PIERCE, STATE OF WASHINGTON.

PARCEL D (PIERCE COUNTY 0222312029):

THE NORTH 330 FEET OF THE WEST HALF OF THE SOUTHWEST QUARTER OF THE NORTHWEST QUARTER OF SECTION 31, TOWNSHIP 22 NORTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN.

EXCEPT THE NORTH 60 FEET THEREOF.

SITUATE IN THE CITY OF GIG HARBOR, COUNTY OF PIERCE, STATE OF WASHINGTON.

PARCEL E (PIERCE COUNTY 0222313035):

ALL THAT PORTION OF THE NORTH HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 31, TOWNSHIP 22 NORTH, RANGE 2 EAST OF THE WILLAMETTE MERIDIAN, IN PIERCE COUNTY, WASHINGTON, LYING EASTERLY OF THE EASTERLY LINE OF OLD STATE HIGHWAY NO. 14.

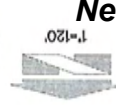
PARCEL "KOTELNICKI" (PIERCE COUNTY 0222313023):

PARCEL A: THE NORTH 300 FEET OF THE SOUTH 900 FEET OF THE WEST HALF OF THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 31, TOWNSHIP 22 NORTH, RANGE 2 EAST OF THE W.M., IN PIERCE COUNTY, WASHINGTON.
PARCEL B: A NON-EXCLUSIVE EASEMENT FOR THE INGRESS AND EGRESS AS CREATED BY INSTRUMENT UNDER RECORDING NO. 2346365.

LOTS A AND B OF BOUNDARY LINE ADJUSTMENT RECORDED UNDER AUDITOR'S FILE NUMBER 200612075006 RECORDS OF PIERCE COUNTY WASHINGTON.

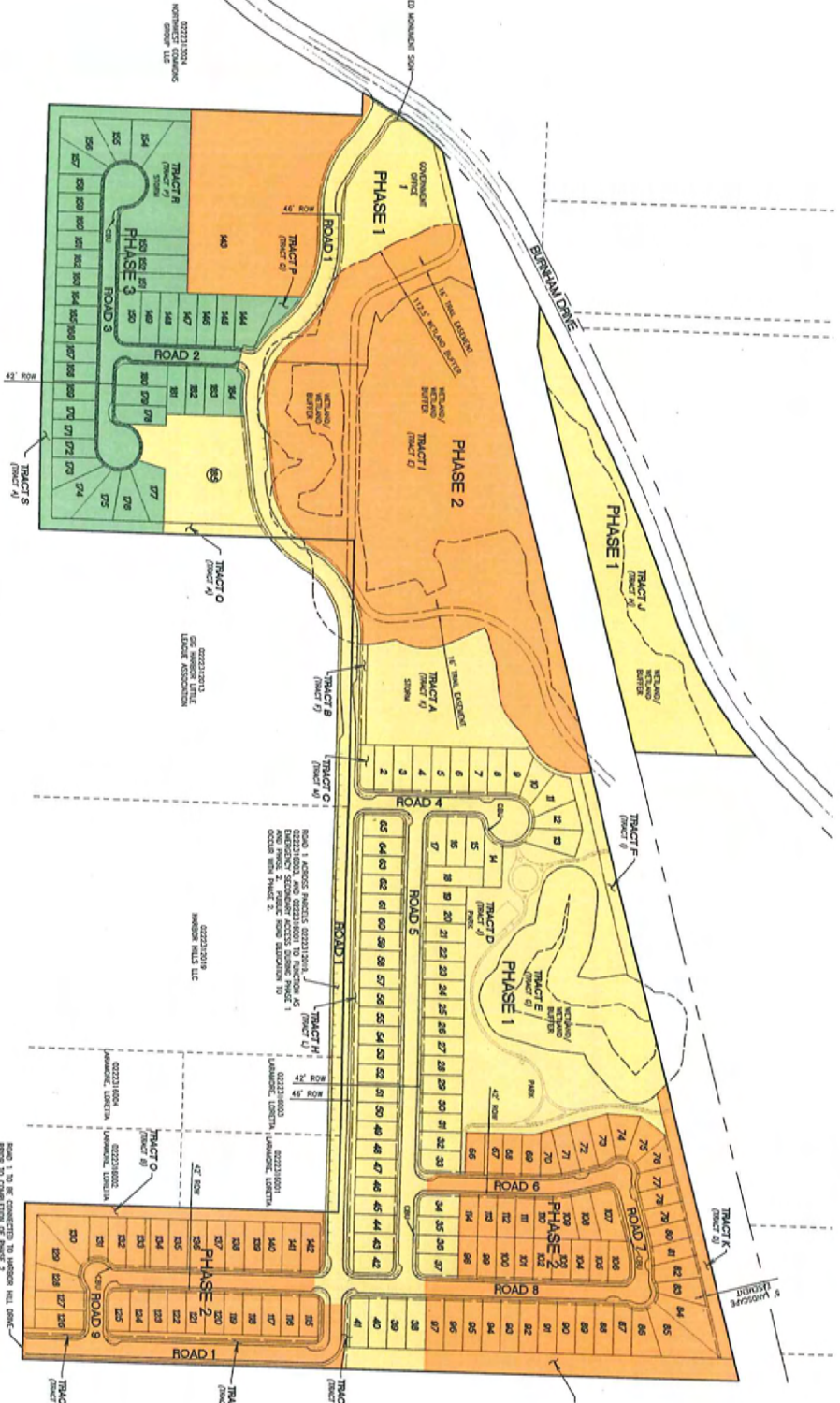
SITUATE IN THE CITY OF GIG HARBOR, COUNTY OF PIERCE, STATE OF WASHINGTON.

EXHIBIT A



ACCORDANCE ORDER ROAD# BY PHASE	PHASE 1	PHASE 2	PHASE 3	PHASE 4	PHASE 5	PHASE 6	PHASE 7	PHASE 8	PHASE 9	PHASE 10	PHASE 11	PHASE 12	PHASE 13	PHASE 14	PHASE 15
ROAD #	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
ROAD #	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
ROAD #	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
ROAD #	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
ROAD #	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
ROAD #	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
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ROAD #	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15
ROAD #	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15

TRACT	PHASE	ADJACENT TRACT	ADJACENT PHASE
TRACT A	1	TRACT B	1
TRACT B	1	TRACT C	1
TRACT C	1	TRACT D	1
TRACT D	1	TRACT E	1
TRACT E	1	TRACT F	1
TRACT F	1	TRACT G	1
TRACT G	1	TRACT H	1
TRACT H	1	TRACT I	1
TRACT I	1	TRACT J	1
TRACT J	1	TRACT K	1
TRACT K	1	TRACT L	1
TRACT L	1	TRACT M	1
TRACT M	1	TRACT N	1
TRACT N	1	TRACT O	1
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TRACT BR	1	TRACT BS	1
TRACT BS	1	TRACT BT	1
TRACT BT	1	TRACT BU	1
TRACT BU	1	TRACT BV	1
TRACT BV	1	TRACT BV	1



McCORMICK CREEK PRELIMINARY PLAT/PRD
A PORTION OF THE W. 1/2 OF SECT. 31, TWP. 22 N., R0E. 2 E. W14.
CITY OF OREGON HARBOR, PERCE COUNTY, WASHINGTON

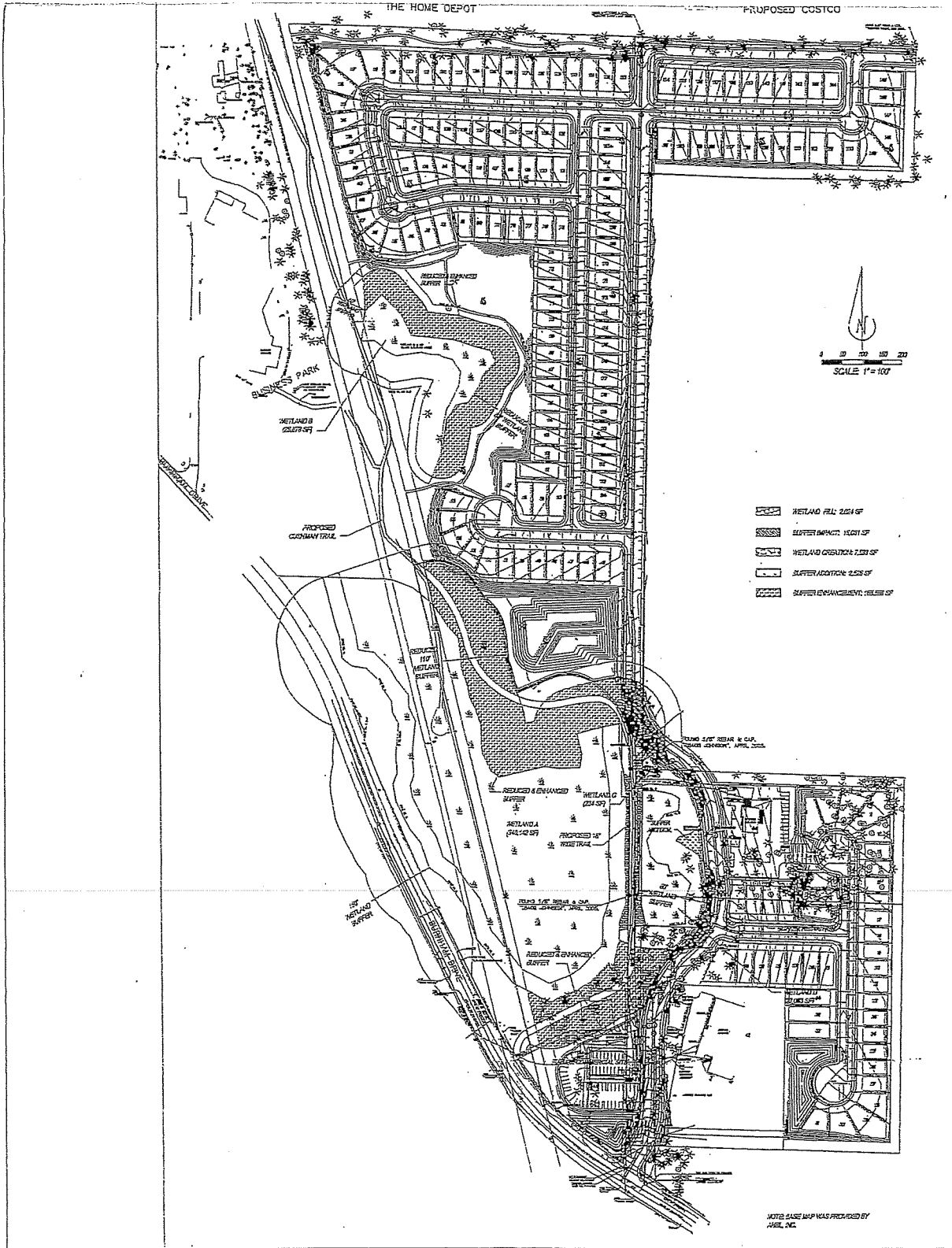
Job Number	14830	Scale	Horizontal Vertical	For	McCORMICK CREEK LLC P.O. BOX 1800 ORTING, WA 98360 TOM STURGEON (253) 381-0101	Title	OVERALL PHASING PLAN McCORMICK CREEK
Design	CHK	Date	6/28/10	Drawn	CHK	By	CHK
Checked	CHK	Approved	CHK	Scale	N/A	Chk.	Appr.
Approved	CHK	Date	6/28/10	Scale	N/A	Chk.	Appr.
Design	CHK	Date	6/28/10	Scale	N/A	Chk.	Appr.

18215 72ND AVENUE SOUTH
KENT, WA 98032
(425) 251-6222
(425) 251-8762 FAX
CIVIL ENGINEERING, LAND PLANNING,
SURVEYING, ENVIRONMENTAL SERVICES

BARGHAUSEN
CONSULTING ENGINEERS, P.C.

1 of 1

File Path: \\14000\14830\eh\3\14830-phasing exhibit.dwg Date: 7/11/2011 2:59 PM Scale: 1"=0' S:\E\Kref: s14830-1.dwg 214830-5.dwg Publish



REVISIONS	
△	REVISED MAR 11, 2007
△	REVISED JAN 24, 2007

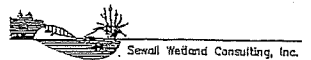
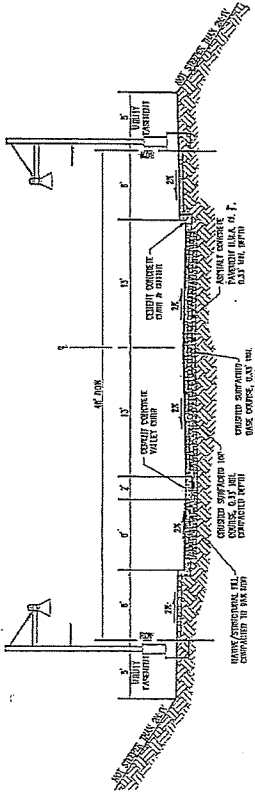


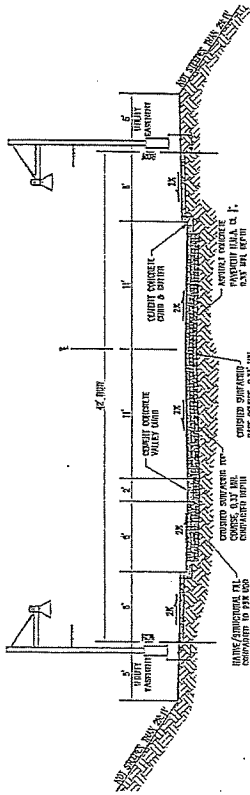
EXHIBIT C

MCCORMICK CREEK
CONCEPT MITIGATION PLAN

A PORTION OF THE W. 1/2 OF SECT. 31, TWP. 22 N., RGE. 2 E., W.M.
CITY OF GIG HARBOR, PIERCE COUNTY, WASHINGTON



1 NEIGHBORHOOD COLLECTOR W/PARKING ONE SIDE
NOT TO SCALE

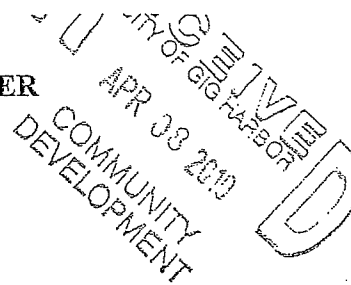


2 MAJOR LOCAL RESIDENTIAL W/PARKING ONE SIDE
NOT TO SCALE

EXHIBIT D

21

DECISION OF THE HEARING EXAMINER
CITY OF GIG HARBOR



In the Matter of the Application of

McCormick Creek LLC

PPLAT 09-0003 & PRD 09-0002

for Preliminary Plat and PRD Approval

Background

AHBL Inc., on behalf of the owner, McCormick Creek LLC, applied for approval of a preliminary plat and a planned residential development proposed for property at 50th Avenue NW north of Burnham Drive.

An open record public hearing was held on April 1, 2010. Cliff Johnson, Associate Planner represented the Community Development Department. Matt Weber represented the applicant. The testimony at hearing and the exhibits listed at the end of this decision constitute the record.

For the purpose of this decision, all section numbers refer to the Gig Harbor Municipal Code, unless otherwise indicated.

Based upon consideration of all the information in the record, the following shall constitute the findings, conclusions and decision of the Hearing Examiner in this matter.

Findings of Fact

1. McCormick Creek LLC, by Matt Weber, AHBL, Inc., applied for approval of a preliminary plat and planned residential development (PRD) to subdivide property located north of Burnham Drive off 50th Avenue NW into 182 residential lots, three non-residential lots, one for office use, one for storage, and one for the existing church, and eighteen wetland, stormwater and open space tracts. Approval was granted in December 2008 for a preliminary plat and PRD on this property, but Applicant seeks new approval due to proposed changes to the roadway and access.

2. The subject site is designated as Mixed Use on the Comprehensive Plan Land Use Map and is zoned Single-Family Residential, R-1, with permitted density of four dwelling units per acre. The Mixed Use designation is intended for commercial, employment, office and multifamily development along principal collector routes. The residential and office uses are included in the list of intended uses to provide economic diversity and housing opportunities near transit routes and business activities.

3. Surrounding property is zoned R-1 and PCD-BP with vacant land and a gun club/shooting range to the east, R-1 and Employment Districts with vacant land and warehouse development to the west, R-1 and R-2 on the south with vacant residential

EXHIBIT E 22

land, and Planned Community Development Commercial developed with large retail uses to the north.

4. The subject site consists of eight Assessor's Parcels and is developed with two single-family residences and a church.

5. The site contains 52.16 acres. It slopes from the north down toward the south with a change in elevation of approximately 90 ft. over the entire site. There are five wetlands on the site. Some of the site is heavily forested, some areas are covered with scrub vegetation, and some large areas have been logged and cleared.

6. The subject site is accessed from Burnham Drive on the west. Roads within the plat are proposed to be public. The proposed plat includes an easement to be granted the city for a portion of the Cushman Trail.

7. The applicant proposes to develop the subdivision in four phases. A development agreement would be required and has been proposed by the applicant. Generally, the first phase would be the development of 51 lots and partial construction of one road and construction of two other roads, a storm water facility and left turn lane improvements on Burnham Drive. The second phase would be the construction of 49 lots and the construction of three roads. Phase 3 would be the development of 41 lots and the construction of one road and the remainder of two roads partially constructed in earlier phases, and Phase 4 would be development of 41 residential lots, the one intended for office development, and construction of a storm facility and of additional roads. Improvement to open space tracts would occur in each phase. As proposed, each phase would independently meet the development standards and public works requirements. Applicant indicated that minor changes to some of the phases may be proposed prior to the entering into the development agreement but that each phase would still meet all requirements.

8. The residential lots would range in size from 3,439 square feet to 8,324 square feet with an average size of approximately 4,811 square feet.

9. The density required in an R-1 zone is four dwelling units per acre, but a bonus of up to 30 percent may be permitted as part of a PRD. The proposed density in the net buildable area of 38.05 acres would be 4.78 dwelling units per acre, 20 percent above the standard density.

10. The required setbacks for single-family development are 20 feet for the front setback of the house, 12 feet for the porch and 26 feet for a garage, 8 feet for side yards and 30 feet in the rear. Section 17.99.290(A). Applicant is proposing typical setbacks of 20 feet in the front, three feet on the sides and 10 feet in the rear. This deviation from the standard could be allowed through PRD approval.

11. For the three non-residential lots, the applicant is proposing setbacks of 10 feet on lot 43, proposed for a government office, 45 feet on lot 44 proposed for accessory residential storage, and the existing church on lot 42 would be within 25 feet of the nearest property line. These lots are all adjacent to the proposed main access road and no development would be within 60 feet of the perimeters of the PRD. The Code does not establish required setbacks in the R-1 zone for non-residential development.

12. Lot width for residential lots in the zone is required to be at least 0.7 percent of the lot area. Lots 9-12, 28, 29, 115-117, 148 and 149 do not comply but narrower lots may be allowed through PRD approval. Though narrower at the street front because at curves in the road, each appears to have greater area than the width-conforming lots and should be approved.

13. The maximum height permitted in the R-1 zone is 35 ft. Height compliance would be determined at the time of building permit review.

14. Impervious lot coverage in the zone is limited to 40 percent. The applicant indicates that some individual lots may exceed this limit but that total coverage for the development would conform. This deviation could be approved as part of a PRD.

15. The applicant proposes nine public roads through the plat. Section 17.89.090 requires that all roads be consistent with the City's public works construction policies and standards for public roads. The Engineering Division has reviewed the proposal and recommended approval subject to conditions. The Division approved a public works variance to allow Road 1 to be 46 ft. wide, as opposed to the required width of 47 feet for a Neighborhood Collector without Driveway Access Street. Exhibit 9. A network of sidewalks is proposed along the public roads and the sidewalks are acceptable to the City's Engineering Division. The roads meet or can be conditioned to meet the City's public works standards.

16. Section 19.02.002B requires that the applicant verify that the property affected by the application is owned by the applicant exclusively or that the application is made with the consent of all owners. Portions of Road 1 are not on land owned by the applicant. Documentation represented to verify applicant's right to utilize some of the unowned property was provided. Exhibits 16 and 17. Because the applicant still cannot verify that it has authority to develop some of the road, Applicant has submitted a second road design for approval that shifts a portion of the road 20 feet to the west, onto property entirely owned or controlled by the applicant. Exhibit 19. City staff confirmed that both the original configuration and the alternate configuration would comply with requirements. Applicant proposes that the plat be approved with a condition requiring that the road be located on land for which ownership has been demonstrated.

17. Section 17.78.050 requires retention of all significant vegetation within required perimeter landscaping areas. Section 17.78.060B requires a 25 ft. landscaped buffer with a dense vegetative screen around residential subdivisions. All significant vegetation in the buffer area must be retained and be protected by a 10 ft. no construction zone.

18. The proposal includes areas that would have less than the required perimeter buffer and areas where significant vegetation would be removed, specifically along the east side of proposed road 1, the south side of proposed road 1 where it is located on the perimeter of the plat, along the south side of lot 31, and along the north side of lots 124 and 130. Therefore, the applicant has requested approval of an alternative landscape plan pursuant to Section 17.78.100.

19. An alternative landscape plan may be approved if it complies with the intent of the landscaping chapter of the code and meets one of four criteria. The applicant asks

that the proposed plan be reviewed under criterion A, "The proposed landscaping represents a superior result than that which would be achieved by strictly following requirements of this chapter...."

20. A total of four significant trees would be removed in the perimeter, along lots 31, 124, and 130, to allow for grading of these lots. The four trees represent a very small percentage of the total significant trees in the buffer. The buffer would have to be supplemented to meet the screening requirement. Staff recommends a total of 12 evergreen trees with a height of 12 feet be required, four behind each of the lots, to achieve a superior result. Trees inadvertently destroyed must be replaced at a 3:1 ratio and be 6 ft. in height, so the alternative with the recommended number of trees and with the greater height would be superior.

21. Alternative landscape plan approval would also be required for the eastern boundary of much of the plat where applicant proposes to locate the main road. To comply with the standard, the road would have to be set in 25 ft. to provide the landscaped buffer. Applicant proposes to provide a 15 foot landscaped buffer along the west side of the road in this area and along the south side of the road in the northern portion of the plat, identified on the plat map as Tracts L, O, and N. The reduced buffer would be planted with evergreen trees 20 feet on center, deciduous trees 40 feet on center and evergreen and deciduous shrubs, groundcover and ornamental grasses. A bench for eating every 100 feet would be provided for the public and a six-foot high fence along the western edge.

22. The intent of the landscaping requirements is to "...provide physical and visual buffers between differing land uses, lessen environmental and improve aesthetic impacts of development and to enhance the overall appearance of the City." Section 17.78.010. In this case the single-family residences would be across the roadway from property that is largely undeveloped at this time. There would be a 61 ft. separation, 46 feet of roadway and the 15-foot screened buffer, much greater than the 25 feet standard. With the screened buffer, the greater separation, and the bench amenities proposed, the aesthetic impacts of the proposed development would be improved and the overall appearance of the city enhanced, meeting the intent of the chapter and provide a superior result. Staff recommends requiring the trees in the three tracts be a minimum of six feet in height at planting.

23. Section 17.89.010 describes the intent of the PRD. The PRD allows opportunity for more creative and imaginative projects, to preserve unique or sensitive physical features, to provide more open space and recreational amenities, and to promote more economical and efficient use of land and a unified design concept. PRD projects are allowed on parcels greater than two acres in size. Section 17.89.020.

24. Standards that may be modified through a PRD are described in Section 17.89.060A and include lot area and width, setbacks, impervious surface on individual parcels, and building height. The proposal requests modification of impervious surface on individual lots, lot width and lot setbacks. Subsection B to that section describes standards that may not be modified. None of these standards is proposed for modification.

25. Section 17.89.110 requires that all PRDs provide at least 30 percent of the area of the PRD as common open space and that the open space be a recreational, park or environmental amenity available to the occupants collectively. Half of the required open space must be usable for active or passive recreation. Under this standard, 15.6 acres of open space is required for the proposed PRD. The plans show a total of 20.36 acres, including wetland and wetland buffer areas plus park and trail areas. The total area of park and trail, and the areas adjacent to them, is greater than the 7.8 acres that would be required.

26. Uses allowed include all uses allowed outright or conditionally in the underlying zone, here R-1. The R-1 zone allows residential uses outright and churches by conditional use. The existing church does not have a conditional use permit but is "grandfathered." The proposed use of lot 43, government administrative office, is a conditionally permitted use in the R-1 district. The storage use proposed as an option for Lot 44 is not allowed if it is available to the general public for storage of personal property, Section 17.04.555, but if its use were limited entirely to the residents of the development, it would be allowed as a use that is accessory to the principal residential use of the subdivision. The commercial day care center, also proposed as an option for Lot 44, is not a permitted use in the zone. Section 17.14.020.

27. Density in a PRD may be increased up to 30 percent over that allowed in the underlying zone if it would be consistent with the comprehensive plan designation for the property. Section 17.89.100. The Mixed Use comprehensive plan designation does not specify a minimum or maximum density. The applicant is requesting a 20 percent density bonus.

28. A density bonus of 10 percent for each, up to a total of 30 percent, may be allowed for meeting criteria set out in Section 17.89.100B. The applicant seeks 20 percent for satisfying the open space criterion and the preservation of scenic vistas criterion. Ten percent would be available if the plat provides open space exceeding by at least 30 percent the minimum required by the code. The applicant is proposing more than an additional 30 percent open space so qualifies for the additional 10 percent available. Another 10 percent density bonus is available if a scenic vista corridor within and off-site accessible to the general public is preserved. The public trail that the applicant proposes to dedicate to connect to the Cushman Trail would provide scenic views of the headwaters of McCormick Creek as well as other forested wetlands. There also would be views of these wetlands from the proposed main roadway and the benches placed along the roadway would allow the public to stop and enjoy the views. This would qualify for the second ten percent bonus.

29. Section 17.89.110 requires that the common open space and landscaping be permanently maintained by and conveyed to either an owners association or a public agency. Staff recommends that a condition of approval be imposed to assure satisfaction of this requirement.

30. The requested variation to impervious surface standards to allow individual parcels to exceed the 40 percent allowed, provided the total for the PRD does not exceed 40 percent, is appropriate in this case because of the clustering of residential lots required to conserve the significant amount of open space.

31. The Revised Critical Areas and Habitat Report, Exhibit 5, shows that five wetlands and one small stream are located on the site. Wetland A on the drawings is a category II wetland with a 150 ft. buffer and is identified as the headwaters of McCormick Creek. Three of the wetlands are category III with 80-foot buffers. The fifth wetland is a category IV wetland with a 50-foot buffer. The stream is identified as a type 4 stream which requires a 25-foot buffer.

32. The applicant proposes reduced buffers for portions of wetlands A, B and D and is proposing to locate the road through a portion of the buffers of C, D and E. The road would alter portions of those wetlands buffers and require the filling of 2,024 square feet of wetland E. Section 18.08.110 allows reduction of the buffers if the proposal provides an overall improvement in water quality protection, will not adversely affect fish or wildlife species and provide overall enhancement to their habitat, will provide a net improvement in drainage and/or storm water detention capability, will stabilize all exposed area with native vegetation, will not lead to unstable earth conditions or create erosion hazard, and will not be materially detrimental to other property or the whole city.

33. The Revised Critical Areas and Habitat Report, reviewed by Grette and Associates, the City's consulting biologists, shows that the project will be consistent with all the criteria. Grette and Associates found the proposal to be consistent with the code requirements. There will be significant buffer enhancement and creation of wetland to mitigate for the impacts of reduced buffers and buffer and wetland disturbance. The applicant would create 4,048 square feet of wetland as mitigation for alteration of wetland E, and 4,831 square feet to mitigate the impacts of the alteration of C, D and E, in addition to the enhancement of approximately 178,735 square feet of existing wetland buffer.

34. The transportation impact analysis prepared in 2007 showed that the single family dwelling units would generate approximately 183 pm peak hour trips. The analysis projected that the office use would generate 75 pm peak hour trips. The City granted a transportation concurrency reservation certificate for 258 PM peak hour trips contingent on the traffic mitigation identified in the MDNS, payment of traffic impact fees, a demonstration that the applicant has ownership or interest in the property for Road ABC, and identification of the use of the commercial building to determine trips based on the actual use. Exhibit 21. The traffic mitigation includes a new public collector road between Burnham Drive through the proposed development to the eastern boundary of the plat (Road ABC), a left turn pocket on Burnham Drive at 50th Avenue, and underground signal appurtenances for a future signal at the 50th Avenue/Burnham Drive intersection.

35. The project proposes to connect to the City's water and sewer systems. A Concurrency Reservation Certificate for water for 202 ERUs has been issued indicating that adequate domestic and irrigation water supplies are available. The current sewer system has capacity for the plat and 200.75 ERUs have been reserved.

36. The Stormwater Design Manual requires both quantity and quality control of storm water run-off for the proposed development. The system proposed includes on-site treatment and detention in three wet ponds with two releasing to a wetland and the third to the City's existing stormwater system next to Burnham Drive. The City Senior

Engineer reviewed the proposal and recommended preliminary approval of the project subject to a series of conditions to assure compliance of the stormwater facility design with the City's Public Works Standards and Stormwater Design Manual.

37. Pierce Transit did not comment or request additional transit facilities in response to the City's request for comments, so no new transit shelters or stops are required.

38. The Fire Marshall/Building Official reviewed the proposal and provided comments. Conditions of approval as to fire lane markings and fire flow requirements were recommended.

39. The Peninsula School District did not make any requests. Section 19.12.050(B)(11) requires school impact fees be imposed on residential development prior to issuance of a building permit.

40. Notice of Administrative Decision for design review was issued for the proposed preliminary plat and PRD on August 22, 2008. The decision approved the Design Review application subject to two conditions finding that the requirements of the Design Manual would be met by the proposed design with the conditions. The conditions required that vegetation to be retained be protected during construction and that an irrigation system be provided for landscaped areas. The City has determined that this Design Review approval applies to the current proposal.

41. Applicants must show that a PRD application satisfies the code requirements, except for those proposed to be varied by the PRD, and must show the following:

1. Landscaping and site plans showing the location of the proposed open space or parks, road layout and proposed buffering of buildings, parking, integrated pedestrian circulation, loading and storage areas, all approved under the design review process;
2. Identification of unique characteristics of the subject property proposed to be retained and how those characteristics qualify for density and/or height bonus under GHMC 17.89.100;
3. Identification of unique characteristics of the proposed use(s) and how those characteristics qualify for density and/or height bonus
4. The proposed relationship and arrangement of buildings and open spaces as they relate to various uses within or adjacent to the PRD approved under the design review process;
5. Measures proposed to mitigate visual impact of the PRD upon the surrounding area and approved under the design review process;
6. Identification of any extraordinary public improvements proposed for acceptance of ownership by the city in connection with the planned development and that qualify for the density and/or height bonus under GHMC 17.89.100;

7. Identification of any unique natural features of the property proposed for acceptance of ownership by the city for preservation, and that qualify for the density and/or height bonus under GHMC 17.89.100'
 8. Identification of any unique historic or cultural features of the property and surrounding neighborhood proposed for acceptance of ownership by the city for preservation and that qualify for density and/or height bonus; and
 9. Identification of any proposed recreational opportunities in excess of those normally required of a subdivision and a description of how they qualify for density and/or height bonus.
42. The plans show substantial open space throughout the plat and a perimeter landscaping buffer. Parking for two cars will be met on each lot, as will parking to meet requirements for the commercial lots. Pedestrian circulation is provided through sidewalks on the access road and by trails through the open space. Garages can provide for loading and storage and will be determined in later review for the commercial lots. The proposed plat and PRD met the requirements for design review as shown by the administrative approval.
43. The unique characteristics shown for preservation by the application are the McCormick Creek headwaters and the forested wetland, incorporated into the PRD through trail and park areas. These features were shown to meet the requirement for density bonus.
44. No bonus was requested by reason of unique characteristics of the proposed uses.
45. The arrangement of building lots and open spaces were approved under the design review process. With open space/wetland/park tracts and a perimeter buffer with significant vegetation the Design Manual requirements were met.
46. The alternative landscape plan provides for mitigation of any visual impact from the proposed development on surrounding area. The preliminary plat was found to meet the applicable Design Manual requirements.
47. The public improvements proposed for acceptance by the city are the easement for the extension of the Cushman Trail and public roads.
48. The natural features that support the request for bonus are not proposed for ownership by the city.
49. No historic or cultural features are known so none are proposed for ownership by the city.
50. The proposed trail and park areas exceed the recreational opportunities required for a residential subdivision and support the request for density bonus.
51. Eleven additional criteria must be satisfied for PRD approval:
1. The director of public works and the decisionmaker finds that the site access, proposed onsite circulation and off-street parking meet

all public works standards and makes adequate provision for roads, streets, alleys and other public ways. Streets and sidewalks, existing and proposed, must be suitable and adequate to carry anticipated traffic within the proposed PRD and in the vicinity of the PRD;

2. The director of public works and the decisionmaker finds that the PRD makes adequate provision for all public utilities, including, but not limited to, water, sewer and stormwater drainage. Water, sewer and stormwater facilities, existing and proposed, must be suitable and adequate to provide service within the proposed PRD and in the vicinity of the PRD;
3. The PRD is consistent with the comprehensive plan;
4. The PRD accomplishes, by the use of permitted flexibility and variation in design, a development that is better than that resulting from traditional development, and benefiting the general public as well as the residents of the PRD. Net benefit to the city may be demonstrated by one or more of the following:
 - a. Placement, type or reduced bulk of structures, or
 - b. Interconnected usable open space, or
 - c. Recreational facilities, or
 - d. Other public facilities, or
 - e. Conservation of natural features, or
 - f. Aesthetic features and harmonious design, or
 - g. Energy efficient site design or building features;
5. The PRD results in no greater burden on present and projected public utilities and services than would result from traditional development;
6. The fire marshal and the decisionmaker find that adequate provision has been made for fire protection;
7. The perimeter of the PRD is compatible with the existing land use or property that abuts or is directly across the street from the subject property. Compatibility includes but is not limited to size, scale, mass and architectural design;
8. One or more major circulation point(s) functionally connected to a public right-of-way as required by the director of public works, or the fire marshal, or any other appropriate decisionmaker;

9. Open space within the PRD is an integrated part of the project rather than an isolated element of the PRD and is accessible to the general public;
10. The design is compatible with and responds to the existing or intended character, appearance, quality of development and physical characteristics of the subject property and immediate vicinity;
11. Each phase of the proposed PRD, as it is planned to be completed, contains the required parking spaces, open space, roads, recreation space, utilities and utility area and landscaping necessary for creating and sustaining a desirable and stable environment.

52. As to the first, the access, circulation and off-street parking would be suitable and adequate if the MDNS conditions and the conditions recommended by Public Works are met.

53. The water, sewer, and stormwater facilities would be suitable and adequate to provide service if the conditions recommended by Public Works are met.

54. As described above, the Mixed Use designation on the Comprehensive Land Use map for such areas does not list single family residential as an intended use, however, it does indicate intent to provide housing opportunities near transit routes and businesses. The location of the PRD is close to both and would bring housing in proximity to transit and retail uses. A goal of the comprehensive plan Land Use Element is to limit development within open space areas while increasing housing opportunities, and the PRD would accomplish that.

55. This proposed development responds to the requirements of subsection 4 b, providing interconnected usable open space, and 4e, conserving natural features. The natural open space through the wetland and buffer areas and perimeter landscaping interconnects along with the trails linking the open spaces to the park area plus the provision of the public trail link to connect the segments of the Cushman Trail all provide benefit to the city. Wetlands and their buffers and the headwaters of the creek are natural features to be preserved by clustering the residential lots, again providing benefit to the city.

56. With the conditions recommended by staff and imposed pursuant to the MDNS, the PRD would not result in greater burden on public utilities and services than a regular subdivision, satisfying subsection 5.

57. The proposal, with conditions recommended by the Fire Marshall will make adequate provisions for fire protection satisfying subsection 6.

58. As to subsection 7, that the perimeter of the PRD would be compatible with adjacent uses and properties, compatibility is assured by the buffers along the perimeter and the extra separation due to the location of wetland and open space tracts between the 31

development and much of the adjacent property. There is considerable separation between the proposed development and the large retail facilities on the north and an outdoor shooting range to the east.

59. The proposal provides for public roads that would connect to Burnham Drive.

60. The open space in the plat is well integrated into the proposed development as a trail would connect to the perimeter and interior sidewalks and the wetlands and by or into the wetland and other tracts. Many of the lots and streets, and the trail and park areas provide views of the wetlands.

61. As the site is in a relatively undeveloped area except for the retail to the north and the existing church, the residential character has not been established. The Design Manual provides the intended character so its application at the time of building permit review will assure that character is as intended.

62. Development is planned to be phased. According to the phasing plan submitted by the applicant, appropriate infrastructure will be installed for each phase and each phase will comply with the open space, recreation space, utilities, roads, parking and landscaping and density requirements applicable to that phase.

63. ~~Section 16.05.003 sets forth the following criteria for consideration of a preliminary plat by the Hearing Examiner:~~

1. Whether the preliminary plat conforms to Chapter 16.08 GHMC, General requirements for subdivision approval;
2. If appropriate provisions are made for, but not limited to, the public health, safety and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and school grounds, and shall consider all relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who only walk to and from school; and
3. Whether the public interest will be served by the subdivision and dedication.

64. The proposed single-family residence use is consistent with the R-1 zoning, which is required by the Growth Management Act to be consistent with the comprehensive plan so, though not specifically listed as an intended use in the comprehensive plan designation, the adopted zoning allowing the single-family residential use must be consistent with the Comprehensive Plan's intent to provide housing opportunities near transit routes and businesses. Storage for the uses within the plat would be a permitted accessory use. The government office use is a conditional use in the R-1 zone, and the church use is "grandfathered". With the alternative landscape plan and PRD approval, the proposed development and uses would meet zoning standards and all other land use regulations. The roads are to be dedicated and conditions are proposed to respond to the other requirements listed such as drainage, water, sanitary wastes, schools.

65. The provision of housing opportunities while preserving wetlands and open space near transportation corridors and retail opportunities will serve the public interest.

66. The City issued a Mitigated Determination of Nonsignificance (MDNS) for the proposal September 10, 2008. The conditions of the MDNS required an archaeological survey, a permanent buffer fence with signage along all wetland buffers adjacent to the proposed park and trail and along the edge of the created wetland areas, a wetland mitigation plan, evidence of ownership of property for the public roads, and phased installation of a new road to provide access from Burnham Drive, left turn pocket, underground signal appurtenances for a future signal, and a new road for the connection between Burnham Drive and Harbor Hill Drive. Due to the revised proposal, a Revised Mitigated Determination of Nonsignificance was issued on February 24, 2010. The Revised MDNS eliminated the requirement for the connection to Harbor Hill Drive. The Revised MDNS was not appealed.

67. Notice of the action and public hearing was published and posted on March 17, 2010, and mailed to property owners within 300 feet on March 1, 2010.

Conclusions

1. Section 16.05.002 authorizes the Hearing Examiner to make a final decision on a preliminary plat application. Section 19.01.004 provides authority for a final decision on a PRD and substantial development permit.

2. Notice and hearing requirements were met.

3. The findings show that the proposed preliminary plat and PRD for residential and governmental administrative office use with appropriate accessory uses, is in conformity with the R-1 district and is consistent with the Comprehensive Plan's intended use as required by Section 16.08.001A.

4. The findings show that all of the required criteria for PRD have been satisfied and the additional density and the modifications of lot widths, lot setbacks, and impervious surface coverage for the individual lots are appropriate. The PRD should be approved for the benefits it provides the public and future residents.

5. The findings also show that the proposed subdivision is consistent with applicable zoning ordinances, the Comprehensive Plan and all other land use controls, makes provision for open space, storm water drainage, a new public street, potable water, sanitary sewer, parks and recreation, schools, and sidewalks, and that traffic impacts will be mitigated. Some conditions of approval should be imposed to assure that these provisions are adequate.

6. Provided the owners of all properties subject to the proposed subdivision and PRD consent to the division and development of their land as proposed and approved, because the proposed subdivision, PRD and dedication of public streets will forward the intent of the Comprehensive Plan and be consistent with the public health, safety and welfare, the proposal will serve the public interest and should be approved.

7. The application, including the alternative landscape plan, reduced wetland buffers, and governmental administrative offices, should be conditionally granted.

Decision

The Preliminary Plat and PRD are approved subject to the conditions that follow:

1. All perimeter landscaping buffers shall be vegetated to meet GHMC 17.78.060 standards, as amended through the alternative landscape plan approved by the Hearing Examiner. In addition to any trees necessary to create a dense vegetative screen, a total of 12 evergreen trees with a height of 12 feet shall be planted in the perimeter area behind lots 31, 124 and 130 (four trees behind each lot, for a total of 12). All evergreen and deciduous trees proposed to be planted within Tract L, Tract O and Tract N shall be a minimum of 6 feet in height. This requirement shall be met prior to approval of the final plat.
2. Development shall comply with all mitigation measures found in the MDNS (SEPA-09-0022), as amended by the Revised MDNS (SEPA 09-0037) issued for the project (or as further amended through any subsequent environmental review process).
3. ~~The applicant shall submit a detailed wetland mitigation plan, as described in GHMC 18.08.150(A)(2) to the City of Gig Harbor and receive approval prior to the issuance of building permits or other development permits. No development of the site shall occur prior to approval of the mitigation plan.~~
4. Prior to the City's final approval of the engineering plans for the construction of any portion of the public roads within the project the applicant shall provide to the City evidence of the applicant's ownership of the necessary property and property interests which will afford the applicant the ability to dedicate to the public such portions of proposed public roadways.
5. The applicant has requested in writing on September 23, 2008 a transportation impact fee credit in accordance with GHMC 19.12.083.B. If the applicant pursues this request, the credit will be determined in accordance with GHMC 19.12.083.
6. The applicant has proposed to meet the Public Works Standards requirement for the sidewalk portion of the frontage improvements by facilitating pedestrian amenities in a similar, more cooperative manner with the incorporation of a portion of the Cushman Trail in the proposed development. The City has agreed to this proposal with the following condition: Developer acknowledges and agrees that it shall grant a public trail easement adequate for the City's construction of the Cushman Trail. If the timing of the granting of the easement is not addressed in a development agreement, the easement shall be granted to the City of Gig₃₄

Harbor and recorded with Pierce County at the time of final plat recording. Developer shall pay a pro-rata share of the costs of public improvements in the amount of \$37,665.00 (Thirty-Seven Thousand Six Hundred Sixty Five Dollars). If the timing of the payment of the pro-rata share is not addressed in a development agreement, said funds shall be paid prior to final plat approval. The pro-rata share was calculated based on Developers credit for relieving the requirement for a 5 foot wide concrete sidewalk along the west side of Road 1 from Burnham Drive to Tract F, and the removal of trail requirements from Tract C and Tract E. The funds are based on a value of \$20 per lineal foot of sidewalk (1,325 LF) and \$5 per lineal foot of trail (2233 LF).

7. The applicant shall pay a pro-rata share of the City's Interim Improvements project at the Borgen-SR16 Interchange. The pro-rata share shall be calculated based on the best information available when the pro-rata share is paid. The pro-rata share shall be paid prior to final plat approval. If the applicant provides other transportation improvements that make available additional capacity through the Interim Improvements project, the applicant may request a refund of the pro-rata share payment. The City of Gig Harbor's transportation concurrency model shall be utilized at the applicant's cost to document the additional capacity (number of trips) and the applicant may request a refund for the additional capacity provided up to the number of trips that was used to calculate the pro-rata share.
8. The applicant shall provide to the City both a final record drawing and a final record survey of the proposed development, each in both Mylar format and digital format. These drawings shall be provided after the City accepts the construction improvements shown on the civil plans but prior to any certificate of occupancy for any buildings or structures located on the site plan. The digital format of the drawings shall be in AutoCAD version 2008 or older and include all improvements in the right of way and all stormwater, water, and sewer utilities. The horizontal datum shall be NAD 1983 HARN State Plane South FIPS 4602 feet, or as otherwise approved by the City. The vertical datum shall be NGVD 29, or as otherwise approved by the City.
9. Proposed water and sewer utility designs, stormwater facility designs, and roadway designs shall conform to the City's Public Works Standards and Stormwater Design Manual. These Standards also address specific City design requirements such as restoration of the City right of way and traffic control.
10. Erosion shall be controlled throughout the construction of the project per the City's Public Works Standards and Stormwater Design Manual.

11. City forces may remove any traffic control device constructed within the City right of way not approved by this division. Any liability incurred by the City due to non-conformance by the applicant shall be transferred to the applicant.
 12. A road encroachment permit shall be acquired from the City prior to any construction within City right of way, including utility work, improvements to the curb, gutter, and sidewalk, roadway shoulders and ditches, and installation of culverts. All work within the City right of way shall conform to the City's Public Works Standards and Stormwater Design Manual.
 13. Permanent survey control monuments shall be placed to establish public street centerlines, intersections, angle points, curves, subdivision boundaries and other points of control. A minimum of two permanent survey control monuments shall be installed at locations determined by the City in accordance with the City's Public Works Standards and recorded with the Pierce County Auditor prior to final engineering approval of civil improvements.
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14. Sight distance at all access points shall meet the minimum requirements of the AASHTO "Geometric Design of Highways and Streets", most current version. The property owner is responsible to maintain the minimum sight distance.
 15. Irrigation, and maintenance of landscaping within the public right of way shall be the responsibility of the property owner(s) or its heirs or assigns.
 16. The owner is required to sign the City's stormwater maintenance agreement, which shall be recorded prior to final civil plan approval by the City. Stormwater and/or drainage easements also shall be granted to the City for the inspection of utilities and drainage facilities. No encroachment will be placed within the easements that may damage or interfere with the installation, inspection, and maintenance of utilities. Maintenance and expense thereof of the utilities and drainage facilities shall be the responsibility of the property owner(s) or its heirs or assigns, as noted under the recorded stormwater maintenance agreement.
 17. The site plan shall note (where quoted) or delineate the following:
 - a. "WARNING: City of Gig Harbor has no responsibility to build, improve, maintain or otherwise service private roadways or driveways within, or providing access to, property described in this plat."
 - b. "Increased stormwater runoff from the road(s), building, driveway,

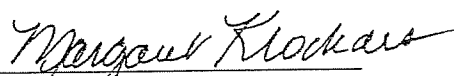
and parking areas shall not be directed to City infrastructure. Increased storm water runoff shall be retained/detained on site.”

- c. “Where seasonal drainage crosses subject property, no filling or disruption of the natural flow shall be permitted.”
 - d. Stormwater for runoff from buildings and parking surfaces shall be shown on individual building lots, including drywell sizing or storm drain connection points.
 - e. If private roadways are proposed then provisions shall be made for the roads and easements to be open at all times for emergency and public service vehicle use.
 - f. “This plat is subject to stormwater maintenance agreement recorded under Auditor’s file number (enter AFN here).”
 - g. “Stormwater/Drainage easements are hereby granted for the installation, inspection, and maintenance of utilities and drainage facilities as delineated on this plat map. No encroachment will be placed within the easements shown on the plat that may damage or interfere with the installation, inspection, and maintenance of utilities. Maintenance and expense thereof of the utilities and drainage facilities shall be the responsibility of the property owner(s) or its heirs or assigns, as noted under the stormwater maintenance agreement for the plat.”
18. This approval does not relieve the Permittee from compliance with all other local, state and/or federal approvals, permits, and/or laws necessary to conduct the development activity for which this permit is issued. Any additional permits and/or approvals shall be the responsibility of the Permittee.
19. An association of owners shall be formed and continued for the purpose of maintaining the common open space. The association shall be created as an association of owners under the laws of the state and shall adopt and propose articles of incorporation or association and bylaws, and adopt and improve a declaration of covenants and restrictions on the common open space that are acceptable to the city in providing for the continuing care of the space. No common open space may be put to a use not specified in the final development plan unless the final development plan is first amended to permit the use. No change of use may be considered as a waiver of any of the covenants limiting the use of common open space area, and all rights to enforce these covenants against any use permitted are expressly reserved to the city as well as the owners. Alternatively, the applicant may

convey the common open space to a public agency that agrees to maintain the common open space.

20. School impact fees as required by GHMC 19.12.050(B)(11) shall be paid for all residential development prior to the issuance of a building permit.
21. Locations and details of markings of fire lanes must be provided at the time of civil plan review.
22. If ownership of the properties necessary for construction of proposed road 1 is not obtained within the time frames specified by GHMC Section 16.06.003, this preliminary plat approval shall expire.
23. Since the plat is subject to a dedication, the certificate or a separate written instrument shall contain the dedication of all streets and other areas to the public, as shown on the plat, and a waiver of all claims for damages against any governmental authority which may be occasioned to the adjacent land by the established construction, drainage and maintenance of said road. Said certificate or instrument of dedication shall be signed and acknowledged before a notary public by all parties having any ownership interest in the lands subdivided and recorded as part of the final plat.
24. Any dedication filed for record shall be accompanied by a title report confirming that the title of the lands as described and shown on said plat is in the name of the owners signing the certificate or instrument of dedication.

Entered this 7th day of April 2010


Margaret Klockars
Hearing Examiner

Concerning Further Review

There is no administrative appeal of the hearing examiner's decision. A request for reconsideration may be filed according to the procedures set forth in Ordinance No. 1073. If a request for reconsideration is filed, this may affect the deadline for filing judicial appeal (Chapter 36.70c RCW) (see Ord. 1073, Ch. 36.70C RCW and RCW 90.58.180.) Affected property owners may request a change in valuation for property tax purposes notwithstanding any program of revaluation.

Parties of Record:

Matt Weber, AHBL Inc.
2215 North 30th St. #300
Tacoma, WA 98403

McCormick Creek LLC
PO Box 1800
Orting, WA 98360

Tom Sturgeon
PO Box 1800
Orting, WA 98360

Bryan Stowe
14604 149th St. Ct. East
Orting, WA 98360

Cliff Johnson, Associate Planner
City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335

Exhibits in the record:

- 1) Staff Report dated March 25, 2010
- 2) Preliminary plat plans, received December 17, 2009
- 3) Administrative Design Review Decision, dated August 22, 2008
- 4) Revised MDNS issued February 24, 2010
- 5) Revised Critical Areas and Habitat Report dated May 21, 2007
- 6) Memorandum from Grette Associates dated February 21, 2008
- 7) Appleton Memorandum dated March 24, 2010
- 8) DOE Letter dated March 10, 2010
- 9) City of Gig Harbor Engineering Variance No. 07-03
- 10) Request for approval of an alternative landscape plan, dated July 2, 2007
- 11) Applicant's response to the criteria dated July 5, 2007
- 12) Applicant's response to the criteria for density bonus dated May 30, 2008
- 13) Concept Mitigation Plan, revised July 22, 2008
- 14) PRD Overall Phasing Plan, dated October 9, 2008
- 15) Letter from Sturgeon, McCormick Creek LLC, dated June 30, 2008
- 16) Agreement for Road Construction and Dedication between McCormick Creek LLC and Gig Harbor Little League
- 17) Statutory Warranty Deed and Escrow Instructions, from Loretta Laramore, Grantor
- 18) Applicant's revised response to the PRD Density Bonus Criteria for both road alternatives, dated March 23, 2010
- 19) Plan showing the alternative road layout of a portion of Road 1
20. Staff Report, Supplement, dated 4/1/10
21. Traffic Concurrency Letter
22. Hearing Examiner Decision on PPLAT 07-0002

DECLARATION OF MAILING

I certify that on the 7th day of April 2010, I sent by first class mail, postage paid, a copy of the Decision in the matter of the Application of McCormick Creek LLC (PPLAT-09-0003 and PRD 09-0002) for preliminary plat and PRD approval to each of the following persons at the address listed:

Matt Weber, AHBL Inc.
2215 North 30th St. #300
Tacoma, WA 98403

McCormick Creek LLC
PO Box 1800
Orting, WA 98360

Tom Sturgeon
PO Box 1800
Orting, WA 98360

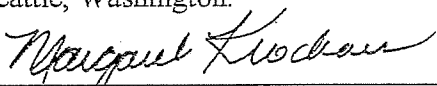
Bryan Stowe
14604 149th St. Ct. East
Orting, WA 98360

Cliff Johnson, Associate Planner
City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335

Pierce County Assessor
2401 South 35th St. Rm. 142
Tacoma, WA 98409

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

Dated this 7th day of April 2010, at Seattle, Washington.



Margaret Klockars