

Return Address:

City Clerk
City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335

Please print legibly or type information.

Document Title(s) (Or transaction contained therein):

1. **Adopting Resolution and Development Agreement**
- 2.
- 3.

Grantor(s) (Last name first, then first name and initials):

1. **McCormick Creek LLC**
- 2.
- 3.

Grantee(s) (Last name first, then first name and initials):

1. **CITY OF GIG HARBOR**
- 2.
- 3.

Legal Description (Abbreviated: i.e., lot, block, plat; or section, township, range):

A PORTION OF THE W. ½ OF SECT. 31, TWP, 22 N., RGE.2 E., W.M....

Additional Legal Description on Page 18 of Document

Reference Number(s) (Of documents assigned or released):

Additional Reference numbers on Pages of Document.

Assessor's Property Tax Parcel/Account Number

**Parcel A 0222312027; Parcel B 0222312028; Parcel C 0222312023; Parcel D 0222312029;
Parcel E 0222313035; Parcel "KOTELNICKI" 0222313023**

The Auditor/Recorder will rely on the information provided on this cover sheet. The staff will not read the Document to verify the accuracy or completeness of the indexing information provided herein.

RESOLUTION NO. 832

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

WHEREAS, on April 26, 2010, 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 26th day of April, 2010.

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: 04/20/10
PASSED BY THE CITY COUNCIL: 4/26/10
RESOLUTION NO. 832

**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 26th day of April, 2010, 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 this Development Agreement with the Developer; and

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

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

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

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

G. "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.

H. "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 for an initial term of 5 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 25 percent of the total sewer and water service connection fees for the entire plat, within 5 years from the Effective Date. The 25 percent of connection fees will be paid at the time of individual building permits or within 5 years, whichever is sooner.
- B. If Phase 1 is recorded within the initial 5-year term and the 25 percent connection fees paid, this Agreement shall be automatically extended for a period of 5 years.
- C. Developer may apply for up to two additional 5-year extensions 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 50 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 10 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 first 5-year extension, and if a minimum of 50 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.

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 H and E on Exhibit B. In addition, developer agrees to grant funds in the amount of Ten Thousand Dollars (\$10,000) to the City. Said funds are to be used for an environmental assessment and other necessary analyses of the property. Said funds shall be dedicated to the City within 14 days of the effective date of the Adopting Resolution approving this agreement.

The easement over the areas shown as Tract H and Tract E shall be dedicated to the City within 60 days of the effective date of the Adopting Resolution approving this agreement; however, the City shall have the right to refuse this easement based on information that may become available during the environmental assessment of the property in question. If the City refuses to accept the easement, the Developer shall be required to grant an additional Twenty-Seven Thousand Six Hundred Sixty Five Dollars (\$27,665.00) to the City. These funds are based on the Developer's credit for relieving the requirement for a 5 foot wide sidewalk along the west side of Road 1 from Burnham Drive to Tract F, and shall be paid to the City prior to final plat for phase 1.

The City acknowledges that portions of Tract E 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 E and H shall not restrict the Developer's plans for wetland mitigation of Road 1 as depicted in the approved conceptual wetland mitigation plans.

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. The Developer 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 Developer provides other transportation improvements that make available additional capacity through the Interim Improvements project, the Developer may request a refund of the pro-rata share payment. The City of Gig Harbor's transportation concurrency model shall be utilized at the Developer's cost to document the additional capacity (number of trips) and the Developer may request a refund for the additional capacity provided up to the number of trips that was used to calculate the pro-rata share.

D. Within 90 days of final plat recording for Phase 2, Developer shall grant fee ownership of Tract H to the City. The City reserves the right to refuse

ownership of Tract H based on information that may become available during the environmental assessment of the property.

E. Within 90 days of final plat recording for Phase 3, Developer shall grant fee ownership of Tract E to the City. The City reserves the right to refuse ownership of Tract E based on information that may become available during the environmental assessment of the property.

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).

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 K, 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 G, I and J, as shown in the preliminary plan set attached as Exhibit 2 to the Hearing Examiner Decision (the "Preliminary Plan Set"). The Developer shall preserve by easement the open space over Lot 43.

2. Phase 2:

a. Street Improvements. The Developer shall construct and dedicate to the City Roads 6, 7 and 8.

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 C, D and H.

3. Phase 3:

- a. Street Improvements. The Developer shall construct and dedicate to the City Road 9 and remainder of Roads 1 and 8.
- 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 Open Space Tracts B, E, N, O and R.

4. Phase 4:

- 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 P, 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 common open space Tract A.

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 five 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.

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.

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 McCormick Creek LLC
Date: 4-19-10

By: Chad L. Hunter
Its: Mayor
Date: April 27, 10

ATTEST:

[Signature: Molly Jowles]
City Clerk

APPROVED AS TO FORM:

[Signature: Amy Belben]
City Attorney

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

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: 4/19/2010

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

[Signature: Patricia M. McCallian]
Printed: Patricia M. McCallian
NOTARY PUBLIC in and for Washington
Residing at: Kitsap 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: 4/27/10



Molly M Towslee
Printed: Molly M. Towslee
NOTARY PUBLIC in and for Washington
Residing at: Gig Harbor
My appointment expires: 12/2/2011

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 SOUTHEAST 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°10'40" WEST ALONG THE EAST LINE OF GOVERNMENT LOT 3, 496.36 FEET TO A POINT 833.20 FEET NORTH OF THE SOUTHEAST 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 CUSHION 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 SOUTHEAST 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.

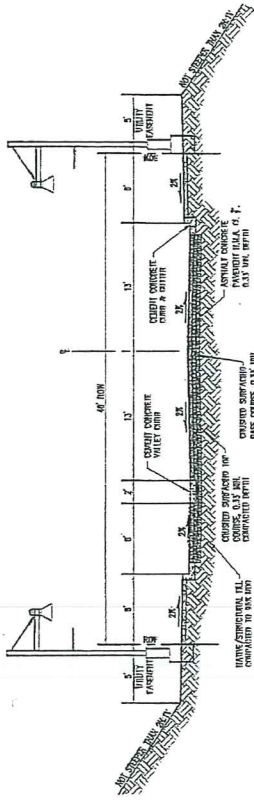
LOTS A AND B OF BOUNDARY LINE ADJUSTMENT RECORDED UNDER AUDITOR'S FILE NUMBER 200612075006 RECORDS OF PIERCE COUNTY WASHINGTON.

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

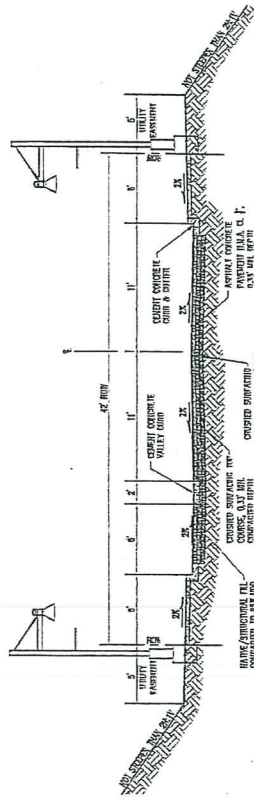
EXHIBIT A

18

**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

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

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 Gig

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.

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,

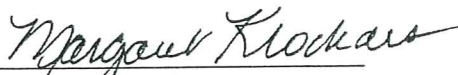
and parking areas shall not be directed to City infrastructure. Increased storm water runoff shall be retained/detained on site.”

- 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

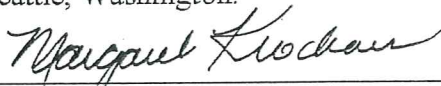
Bryan Stowe
14604 149th St. Ct. East
Orting, WA 98360

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