

RESOLUTION NO. 872

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, AUTHORIZING THE EXECUTION OF A DEVELOPMENT AGREEMENT WITH CHAPEL HILL PRESBYTERIAN CHURCH.

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 south of Rosedale Street NW and west of Skansie Avenue, 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 Hearing Examiner held a public hearing on June 2, 2011 on

the underlying permits associated with the proposed development agreement and has forwarded a recommendation on the development agreement; and

WHEREAS, on July 25, 2011, the City Council held its public hearing on the development agreement during a regular public meeting; and

WHEREAS, by way of letter to the City dated August 28, 2011, the Applicant proposed ten additional conditions for inclusion in the development agreement, considered by the City Council on September 12, 2011; 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 including the conditions proposed by the applicant in its letter dated August 28, 2011, with Chapel Hill Presbyterian Church.

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 12th day of September, 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
ANGELA S. BELBECK

FILED WITH THE CITY CLERK: 09/07/11
PASSED BY THE CITY COUNCIL: 09/12/11
RESOLUTION NO. 872

EXHIBIT 'A'

**DEVELOPMENT AGREEMENT
BETWEEN THE CITY OF GIG HARBOR AND
CHAPEL HILL PRESBYTERIAN CHURCH FOR
THE WEST SIDE ENHANCEMENTS,
CONDITIONAL USE PERMIT AND SITE 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 Chapel Hill Presbyterian Church, a non-profit corporation organized under the laws of the State of Washington, hereinafter the "Developer" or "CHPC."

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 Chapel Hill Presbyterian Church – West Side Enhancements, which is located at: 7700 Skansie Ave., Gig Harbor, WA (hereinafter the "Property"); Application No. MSPA 06-1219, DRB 06-1220, CUP 06-1220, SEPA 06-1223; and

WHEREAS, the City issued a Mitigated Determination of Non-significance (MDNS) for the proposed development applications referenced above on August 20, 2008, requiring an archeological survey prior to approval of any ground disturbing activity on the site; and

WHEREAS, the Hearing Examiner will consider the above applications after approval of this Development Agreement; and

WHEREAS, after a public hearing on July 25, 2011 and by Resolution No.872, the City Council authorized the Mayor to sign this Development Agreement with the Developer;

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 including a new 122 space parking lot, prayer garden, walking paths, multi-purpose field, pavilion structure and 54 space parking lot adjacent to the pavilion.

Section 2. The Property. The Property consists of 34.17 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 Planning Director .

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 building codes, clearing and grading codes, stormwater management codes, stormwater management and site development manuals, regulations relating to 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 and explanation of phases

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.

A. This Agreement shall commence upon the effective date of the Adopting Resolution, and shall continue in force for a period of seven years unless extended or terminated as provided herein. Following the expiration of the term or extension thereof, or if sooner terminated, this Agreement shall have no force and effect, subject however, to post-termination obligations of the Developer or Landowner.

B. Extensions are authorized in this Agreement. The Developer may request the extension at least 60 days prior to expiration of the current agreement. All requests for extensions shall be reviewed by the city council.

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. [Intentionally omitted.]

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. All 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.

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.

B. The improvements associated with the Project may be constructed in phases in accordance with the terms of this Agreement and as shown on "Exhibit B". Because the phases are not dependent upon one another, each phase may be constructed in the order determined by the Developer.

C. A Wetland and Wetland Buffer Notice shall be recorded on the title to provide notice in the public record of the presence of wetlands prior to the approval of the civil or building permits for the first phase proposed to be constructed.

D. All open space will be maintained in a natural condition until approval is

given for the referenced phase of improvements. Clearing will be limited to only the phase that is being built and landscaping for that phase must be implemented according to approved plans.

Section 14. Dedication of Public Lands. [Intentionally omitted.]

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. Annual Review. The City shall, at least every twelve (12) months during the term of this Agreement, 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 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, or if the Hearing Examiner denies the Project.

B. 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:

Chapel Hill Presbyterian Church
P.O. Box 829
Gig Harbor, WA 98335

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.

[remainder of page intentionally left blank]

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: Molly M. Towslee
NOTARY PUBLIC in and for Washington
Residing at: Gig Harbor
My appointment expires: 12/02/11

EXHIBIT A

LEGAL DESCRIPTION

THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER OF SECTION 7, TOWNSHIP 21 NORTH,
RANGE 2 EAST, OF THE W.M.;

EXCEPT THE NORTH HALF OF THE EAST HALF OF THE EAST HALF OF THE NORTHEAST
QUARTER OF THE NORTHWEST QUARTER OF SAID SECTION 7;

ALSO EXCEPT ROSEDALE STREET NW ON THE NORTH AND 46TH AVENUE NW ON THE EAST;

(BEING REVISED PARCEL A OF BOUNDARY LINE ADJUSTMENT NO. 9710160287.);

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

EXHIBIT B

DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF GIG HARBOR AND CHAPEL HILL PRESBYTERIAN CHURCH, FOR THE WEST SIDE ENHANCEMENTS, CONDITIONAL USE PERMIT AND SITE DEVELOPMENT

PROJECT PHASES

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.

The improvements associated with the Project may be constructed in phases in accordance with the terms of the Developer Agreement and as depicted herein. Because the phases are not dependent upon one another, each phase may be constructed in the order determined by the Developer.

Construction of each phase must be done according to the approved plans, including Civil plans, Landscape plans, building plans that are effective at the time of construction.

- A. Prayer Garden**
- B. Prayer Garden Parking Area - near sanctuary**
- C. Trail around wetlands**
- D. Northwest Parking area**
- E. Multi Purpose Field**
- F. Multi Purpose Parking area**
- G. Pavilion**
- H. North Creek Street Exit**

Phase A: Prayer Garden

Street Improvements.

Match with existing concrete sidewalks
Install sidewalk crossings as shown on plans

Potable Water and Fire Flow Facilities

N/A

Sewer Facilities.

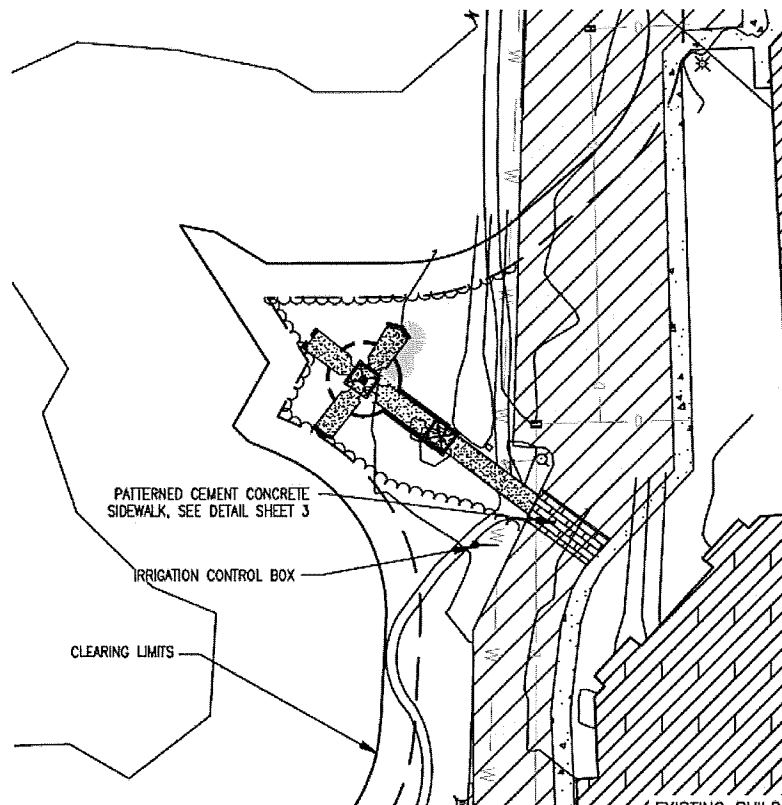
N/A

Utilities.

Water line extended for landscaping, Power connection for lighting

Parks and Open Space.

Clearing only as shown on approved plans. Landscape according to approved plans.



Phase B: Prayer Garden Parking Area - near sanctuary

Civil plans to be submitted and approved prior to start of construction

Street Improvements.

Tie into existing storm drainage on site .

Potable Water and Fire Flow Facilities.

N/A

Sewer Facilities.

N/A

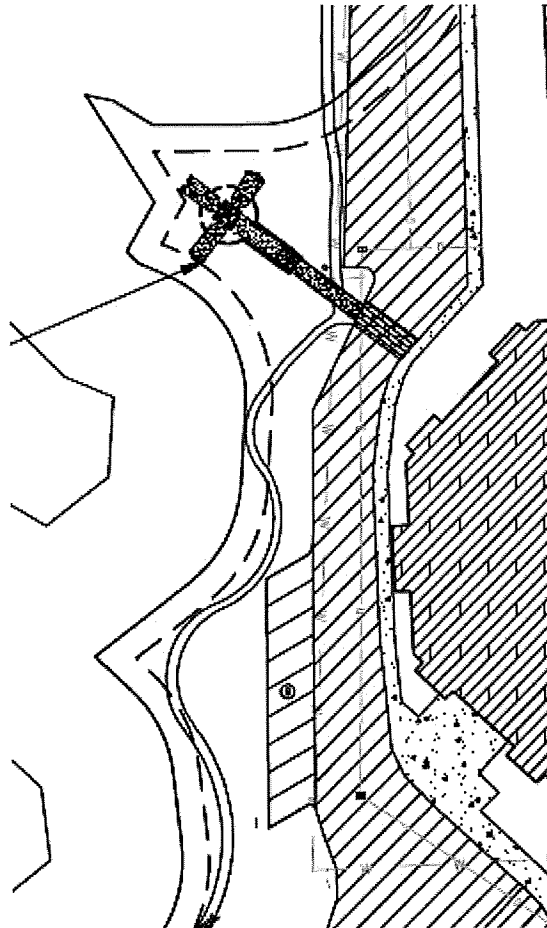
Utilities.

Extend on site power as necessary and install approved lighting

Parks and Open Space.

Arborist to submit report prior to clearing. Landscaping installed per plan .

See tree retention plan for clearing.



Phase D: Northwest Parking area

Civil plans to be submitted and approved prior to construction

Street Improvements.

Build on site drainage improvements per plan.

Construct all Fire and Emergency Vehicle access. Tie into existing Rosedale street.

Gate according to plans

Potable Water and Fire Flow Facilities.

One water CRC needed.

Construct water and Fire Flow as required by building permit

Sewer Facilities.

N/A

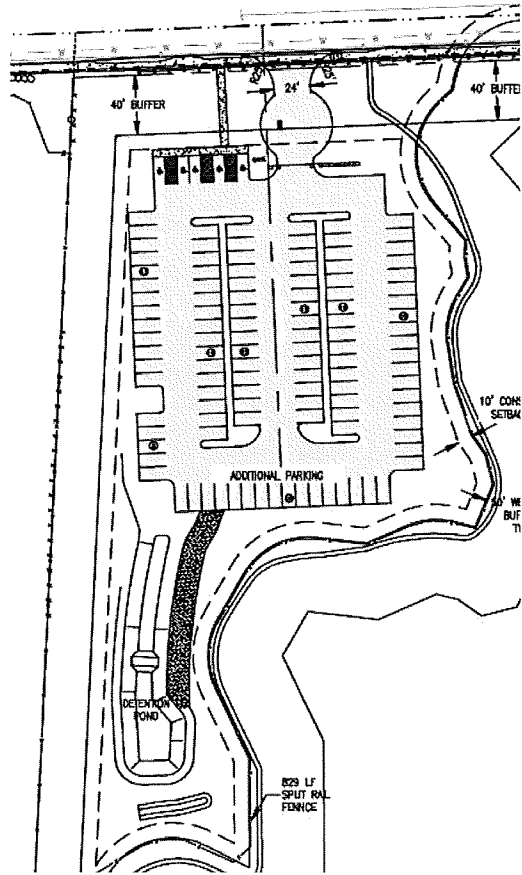
Utilities.

Construct utilities – power, lighting and irrigation water. Onsite connections needed.

Parks and Open Space.

Landscape per approved plans. Install construction fencing and wetland fencing around wetland A, prior to clearing.

Clear only areas indicated on plans as necessary for this phase.



Phase E Multi Purpose Field

Civil plans to be submitted and approved prior to start of construction.

Street Improvements.

N/A

Potable Water and Fire Flow Facilities.

N/A

Sewer Facilities.

N/A

Utilities.

Extend on site power, lighting and irrigation water per approvals

Parks and Open Space.

Clear only area needed for construction. Construct Wetland B buffer and construction fencing. See tree retention plan per landscape plans.

Phase F: Multi Purpose Parking area

Civil and building permit plans to be submitted and approved prior to start of construction.

Street Improvements.

Build on site drainage improvements per plan.

Construct all Fire and Emergency Vehicle access. Tie into existing parking lot.

Construct wetland buffer fencing – Wetland B and portions of wetland A as needed.

Potable Water and Fire Flow Facilities.

Install as required per approved building permit plans

Sewer Facilities.

N/A

Utilities.

Construct utilities – power, lighting and irrigation water per approved plans

Parks and Open Space.

Landscape per approved plans

Phase G: Pavilion

Civil and building permit plans to be submitted and approved prior to start of construction.

Street Improvements.

Build on site drainage improvements as required per approved civil plans.

Construct all Fire and Emergency Vehicle access. Tie into existing parking lot.

Potable Water and Fire Flow Facilities.

Apply for water connection (one CRC) and one connect per building plans

Construct Water and Fire Flow as required by building permit
Sewer Facilities.

Apply for Sewer connection (Sewer CRC) per approved civil plans.
Extend and construct sewer connection. Tie into main line at street
Utilities.

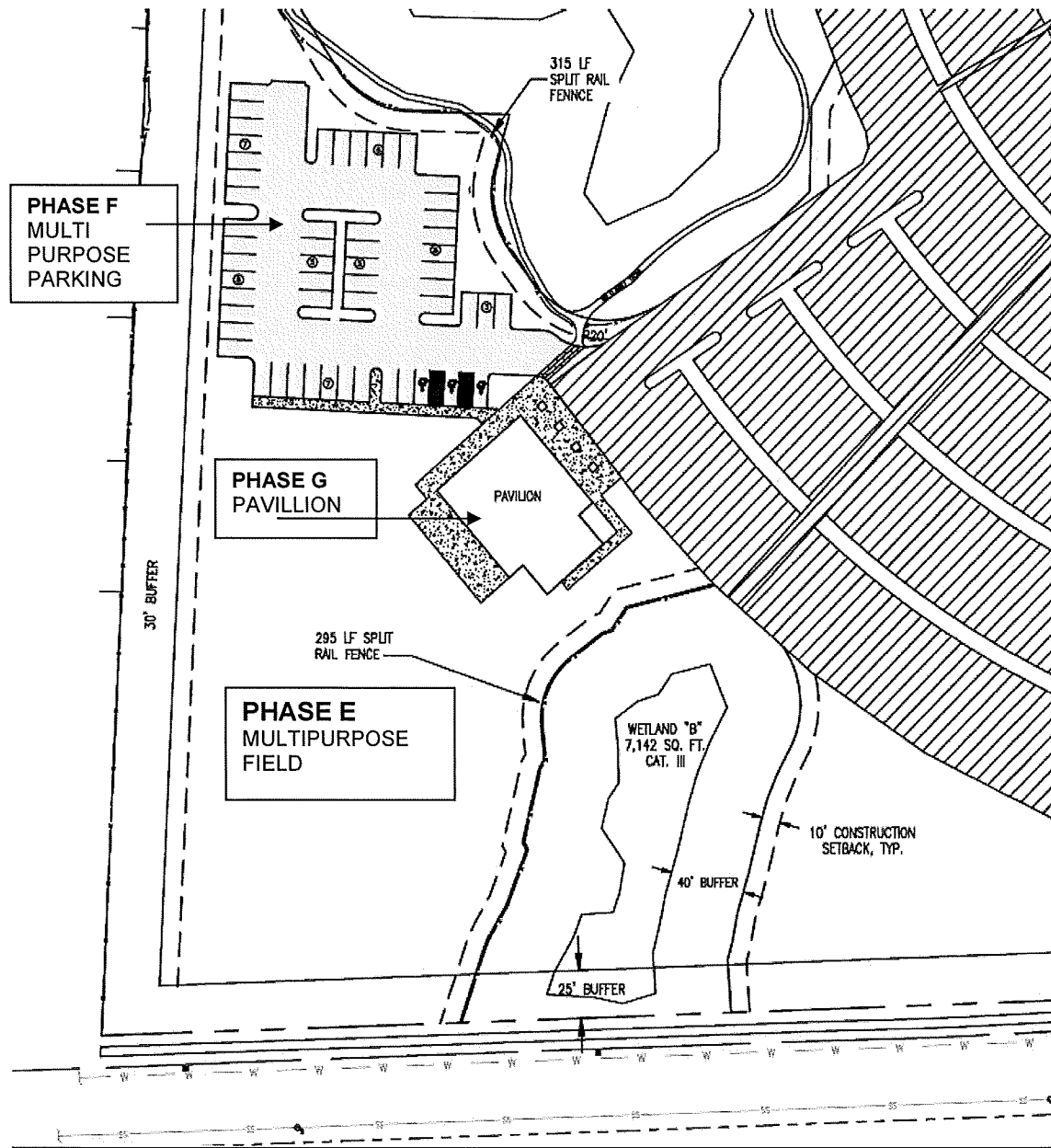
Construct utilities – power, lighting and irrigation water per approved plans
Parks and Open Space.

Install landscaping per approved Landscape plans

Clearing only as needed for this phase including drainage facility

Construct Wetland B buffer and construction fencing.

ILLUSTRATION FOR PHASES E, F, G:



Phase H: North Creek Street exit

Civil plans to be submitted for approval prior to start of construction.

Street Improvements.

Tie into existing storm drainage on site and street .

Construct and tie into existing North Creek street to match elevations.

Potable Water and Fire Flow Facilities.

N/A

Sewer Facilities.

N/A

Utilities.

Extend on site power and lighting if required per approved plans

Parks and Open Space.

Clear only area needed for construction. No landscaping required – see tree retention plan per landscape plans.

