

RESOLUTION NO. 932

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, AUTHORIZING THE EXECUTION OF TWO DEVELOPMENT AGREEMENTS WITH RUSH RESIDENTIAL INC.

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 these two development agreements, "development standards" includes, but is not limited to, all of the standards listed in RCW 36.70B.170(3); and

WHEREAS, these development agreements 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 at the intersection of Hunt Street NW and 46th Avenue NW (parcel numbers 0221073086), Gig Harbor, Washington, which is legally described in Exhibit A of the Development Agreements, attached hereto and incorporated herein by this reference; and

WHEREAS, the Mitigated Determination of Nonsignificance dated 11/20/06 attached as Exhibit B to the Development Agreements requires a "Development Agreement for Street Improvement Monetary Contributions" for payment of a pro-rata share of the cost of future roadway improvements along Wollochet Drive between Hunt Street NW and Highway 16 interchange and at the intersection of Hunt Street and Skansie Avenue; and

WHEREAS, on June 10, 2013, the City Council held its public hearing on the development agreements during a regular public meeting; 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 Agreements attached hereto as Exhibit A, with Rush Residential Inc.

Section 2. The City Council hereby directs the City Clerk to record the Development Agreements against the Property legally described in Exhibit A to the Development Agreements, pursuant to RCW 36.70B.190.

PASSED by the City Council this 10th day of June, 2013

APPROVED:


MAYOR, CHARLES L. HUNTER

ATTEST/AUTHENTICATED:


CITY CLERK, MOLLY M. TOWSLEE

FILED WITH THE CITY CLERK: 06/04/13
PASSED BY THE CITY COUNCIL: 06/10/13
RESOLUTION NO. 932

EXHIBIT A
PROPERTY LEGAL DESCRIPTION

THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE
SOUTHWEST QUARTER OF SECTION 7, TOWNSHIP 21 NORTH, RANGE 2 EAST,
W.M., IN PIERCE COUNTY WASHINGTON;

EXCEPT THE WEST 8 FEET THEREOF;

AND EXCEPT ROADS;

AND EXCEPT THAT PORTION CONVEYD TO STATE OF WASHINGTON BY DEED
RECORDED UNDER RECORING NUMBER 2364858, IN PIERCE COUNTY,
WASHINGTON.

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. DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF GIG HARBOR AND RUSH RESIDENTIAL INC., FOR STREET IMPROVEMENT MONETARY CONTRIBUTIONS

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

1. Rush Residential Inc.

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

1. City of Gig Harbor

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

1. See Attachment Exhibit A

Property Tax Parcel No.: 0221073086

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

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

**DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF GIG HARBOR
AND RUSH RESIDENTIAL INC., FOR
STREET IMPROVEMENT MONETARY CONTRIBUTIONS**

THIS DEVELOPMENT AGREEMENT is made and entered into this 10 day of June, 2013, by and between the City of Gig Harbor, a noncharter, optional code Washington municipal corporation, hereinafter the "City," and Rush Residential Inc., 6622 Wollochet Drive NW, Gig Harbor, WA 98335, a Washington Corporation, organized under the laws of the State of Washington, hereinafter the "Developer."

RECITALS

WHEREAS, the Washington State Legislature has authorized the execution of a development agreement between a local government and a person having ownership or control of real property within its jurisdiction (RCW 36.70B.170(1)); and

WHEREAS, the Developer has received a permit or approval from the City, and as a condition of such permit/approval, is required to either construct or make monetary contributions toward construction of an identified transportation improvement; and

WHEREAS, the City agrees to accept such monetary contribution; and

WHEREAS, on June 10, 2013, the City Council held a public hearing on this Development Agreement, and 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, consisting of 9.06 acres, located at 4613 Hunt Street NW, in the City of Gig Harbor. The mitigation of adverse impacts is a requirement of the Modified Mitigated Determination of Nonsignificance (MDNS), SEPA 05-1128, dated November 20, 2006, attached hereto as Exhibit B and incorporated herein by this reference.

Section 2. *The Subject Property.* The Project site is legally described in Exhibit A, attached hereto and incorporated herein by this reference.

Section 3. *The Street Improvements.* The Developer has been required to make a pro-rata share contribution toward the cost for the "Wollochet Drive Improvement Project", as a condition of SEPA approval. See Exhibit B.

Section 4. *Developer's Monetary Contribution to Public Improvement Financing.*
a) The Developer has agreed to satisfy the condition in the permit/approval described above by paying the Developer's pro-rata share of the cost of the construction of the transportation improvements required by Mitigation #4 of the MDNS (attached as Exhibit B)

to the City. The amount of the pro rata share is Thirty Eight Thousand Four Hundred and 00/100 Dollars (\$38,400.00). The City agrees to accept such payment towards the construction of the transportation improvements in accordance with this Agreement.

b) The City shall hold the Developer's payment in a reserve account. The payment may only be expended by the City to fund the transportation improvements identified in Exhibit B, attached hereto, or a transportation project which includes the transportation improvements identified in Exhibit B.

c) The City agrees that if the payment is not expended as set forth above within five years after the Effective Date of the Adopting Resolution, any payment not so expended shall be refunded by the City with interest to the Developer. The interest shall be calculated at the rate applied to judgments to the property owners of record at the time of the refund; PROVIDED, HOWEVER, that if the payment is not expended by the City within five years due to delay attributable to the Developer, the payment shall be refunded without interest.

Section 5. Effective Date and Termination. This Agreement shall commence upon the date it is executed by both parties, and shall continue in force for a period of five years or until the street improvement identified in Exhibit B, page 8 of 10 is actually constructed, whichever comes first. Following the expiration of the term or extension thereof, or if sooner terminated, this Agreement shall have no force and effect.

Termination shall not affect any of the Developer's obligations to comply with the terms and conditions of this Agreement, or any applicable zoning code(s) or subdivision map or other land use permits or approvals granted with respect to the Subject Property, any other conditions of the Project, which are specified as continuing after the termination of this Agreement, nor shall it affect the Developer's (or Landowner's) obligations to pay assessments, liens, fees or taxes.

Section 6. 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.

Section 7. 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).

Section 8. Notices. Notices, demands, correspondence to the City and Developer shall be sufficiently given if dispatched by pre-paid first-class mail to the addresses of the parties as set forth below. Notice to the City shall be to the attention of both the Community Development Director and the City Attorney. Notices to the Developer or any subsequent purchasers of the property described in Exhibit A shall be required to be given by the City only for those purchasers 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, correspondence or refunds.

Section 9. 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 10. 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 ordinance adopting this Development Agreement, and either party in good faith determines that such provision or provisions are material to its entering into this Agreement, that party may elect to terminate this Agreement as to all of its obligations remaining unperformed.

[Remainder of page intentionally left blank]

State of Washington, residing at:
Fox Island, WA
My Commission expires: 8/26/15

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/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Mayor of Gig Harbor to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: June 11, 2013



Molly Towslee
Molly Towslee
(print or type name)
NOTARY PUBLIC in and for the
State of Washington, residing at:
Gig Harbor
My Commission expires: 12/2/15

Exhibit A
Property Legal Description

THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE
SOUTHWEST QUARTER OF SECTION 7, TOWNSHIP 21 NORTH, RANGE 2 EAST,
W.M., IN PIERCE COUNTY WASHINGTON;

EXCEPT THE WEST 8 FEET THEREOF;

AND EXCEPT ROADS;

AND EXCEPT THAT PORTION CONVEYD TO STATE OF WASHINGTON BY DEED
RECORDED UNDER RECORING NUMBER 2364858, IN PIERCE COUNTY,
WASHINGTON.

Exhibit B

Modified Mitigated Determination of Nonsignificance (MDNS)
SEPA 05-1128



COMMUNITY DEVELOPMENT DEPARTMENT

(CORRECTED) Mitigated Determination of Nonsignificance (MDNS)
W.A.C. 197-11-970

Environmental Review Application No.: SEPA 05-1128

Action: Preliminary Plat, Design Review

Proposal: The proposal is to subdivide a 9.06 acre parcel into 31 single-family lots.
"Heritage Wright Subdivision"

Location: 4613 Hunt Street
Gig Harbor, WA 98335

Proponent: James Wright
P. O. 815
Gig Harbor, WA 98335

Agent: Erik Farstad, Bennett Development
12011 NE 1st Street, Suite 201
Bellevue, WA 98005

I. DESCRIPTION OF PROPOSAL:

The applicant requests a subdivision of 9.06 gross acres into 31 lots and two tracts. The property is zoned R-1, four units per acre. The site contains a small, (9,200 sq ft) Category III wetland. The net developable area is 7.71 acres therefore, 31 lots are allowed and thirty-one lots are proposed. The parcel was used for agricultural purposes including some orchard trees and livestock grazing. During the plat construction phase all buildings on the site shall be removed.

II. INCORPORATION BY REFERENCE:

The following documents contain information, studies and analysis that have been used in the review of this proposal and are hereby incorporated into this threshold determination by reference:

1. Geotechnical Engineering study prepared by Earth Consultants LLC. Dated June 9, 2005, date stamped November 23, 2005.
2. Wetland Analysis Report prepared by Wiltermood Associated, Inc. Dated June 27, 2005, date stamped November 23, 2006

3. Traffic Impact Analysis prepared by Heath and Associates, Inc. dated June 15, 2005, with a City of Gig Harbor date stamp November 23, 2005
4. Signal Warrant Analysis for Hunt and Skansie, Dated May 16, 2006, date stamped May 18, 2006.
5. SEPA Checklist 05-1129

III. ANALYSIS:

A. Traffic and Transportation. The applicant is required to demonstrate that the significant adverse environmental impacts associated with their application can be reasonably mitigated, (RCW 43.21C.060). In addition, the applicant must demonstrate that if the proposed development resulting from approval of the application will cause the level of service on a transportation facility identified in the City's Comprehensive Plan to decline below the standards adopted in the transportation element of the Comprehensive Plan, that the applicant plans to install transportation improvements or strategies acceptable to the City to accommodate the impacts of the development, which shall be made concurrent with the development, (RCW 36.70A.070(6)).

The existing road facilities related to the proposed development location include Hunt Street, Skansie Avenue and Wollochet Drive. This proposed project impacts these and other existing facilities by adding additional vehicle trips to these facilities.

The City requested the applicant to analyze the intersection of Skansie Avenue and Hunt Street to see if a traffic signal and/or a left turn lane from Skansie Avenue southbound was warranted based on project impacts and future growth. The signal warrant analysis was not warranted at this time. However, the analysis did indicate that a left turn lane for southbound traffic on Skansie Avenue "would be a solution if congestion issues were present."

A review of WSDOT guidelines for a left-turn storage and review of the signal warrant analysis indicates that installation of a left-turn lane for traffic southbound on Skansie Avenue would alleviate congestion and increase safety due to separated volumes for right and left turns. Condition 1 noted below provides mitigation for these congestion and safety issues.

Additionally, the TIA indicated 16 of the 37 PM peak hour trips would utilize Wollochet Drive north of Hunt Street where the City has identified a transportation improvement project. The City has identified the "Wollochet Drive improvement Project" in the six year transportation Plan (TIP) to include various improvements along Wollochet Drive between Hunt Street and SR 16 to upgrade the roadway in the vicinity of this proposed development. Condition 2 noted below provides mitigation as part of these improvements.

B. *Sewer Impacts:* City code requires all new houses, buildings, structures, or other uses of property used for human occupancy to connect the improvements to a public sanitary sewer. No public sanitary sewer currently exists in the area of the proposed development. The City's current wastewater Comprehensive Plan shows the proposed development located in the C5 sewer collection basin. In order for the proposed development to connect to the public sanitary sewer, the Comprehensive Plan indicates a sewer lift station will be required. Item 1 below, is related to sewer impacts.

C. *Critical Areas:* The site contains a Category III on the southern portion of the site. A wetland report has been prepared and the wetland with the appropriate buffers, have been shown on the plat drawings. In addition, the wetland and buffers have been placed in is a separate tract for their protection. Additional wetland protections are being required with this MDNS.

Conditions:

The applicant shall provide the following mitigation measures in connection with transportation concurrency for this development application:

1. The applicant shall be required to provide any or all of the sewer improvements necessary as noted in the City's Wastewater Comprehensive Plan (Basin C5) in order to provide the public sanitary sewer to the development. The sewer improvements shall be designed, constructed and accepted by the City prior to the certificate of occupancy of any houses, buildings, or structures associated with the proposed development. Design and construction of the sewer lift station and associated sewer mains require a separate SEPA checklist and review process.
2. The applicant shall pay the City's traffic impact fees in accordance with Chapter 19.12 of the Gig Harbor Municipal Code. Additionally, developments may be given credit for impact fees under certain conditions in accordance with Section 19.12.080.
3. The applicant shall design and construct separated right and left turn pockets for vehicles southbound on Skansie Avenue turning onto Hunt Street. Figure 910-9a of the Washington State Department of Transportation Design Manual provides for a left turn storage length of 150 feet. These improvements are in addition to and shall be incorporated into, all required frontage improvements. The plans for the separated right and left turn pockets shall be designed in accordance with the City of Gig Harbor Public Works standards and shall be reviewed and approved by the City of Gig Harbor prior to beginning construction. These improvements shall be completed prior to the City of Gig Harbor issuing any certificates for building occupancy at this site.
4. The applicant shall pay a pro-rata share of the cost of the "Wollochet Drive Improvement Project" identified in the City's TIP. The pro-rata share of this \$6,000,000 project, in 2006 dollars, shall be \$38,400. Payment of the share shall be received prior to the City signing the mylar drawings for construction

purposes. A "Development Agreement for Street Improvement Monetary Contributions" provided on City forms shall be executed by the applicant prior to payment of the pro-rata share.

5. The applicant shall pay a pro-rata share of the cost for the "Hunt/Skansie Intersection Improvement Project" identified in the City's TIP. The pro-rata share of this \$1,200,000 project, in 2006 dollars, shall be \$8,855.21. Payment of the share shall be received prior to the City signing the mylar drawings for construction purposes. A "Development Agreement for Street Improvement Monetary Contributions" provided on City forms shall be executed by the applicant prior to payment of the pro-rata share.

The applicant shall provide the following mitigation in connection with critical areas:

6. Prior to final occupancy of the first residence, at a minimum, the applicant shall install a split rail fence either along the wetland buffer or at the back of sidewalk beginning at the easterly edge of the buffer on Hunt Street then along the entry to the easterly edge of the storm water detention pond access driveway.

IV. THRESHOLD DETERMINATION:

Lead Agency: City of Gig Harbor

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment, provided mitigation measures specified in Section IV A – B above are imposed. An environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public upon request.

- This MDNS is issued under WAC 197-11-350; the lead agency will not act on this proposal for 14 days from the date of this document. Comments must be submitted by November 29, 2006.
- This MDNS will not become final until the end of the comment period, December 13, 2006.

Any interested person may appeal the adequacy of the final SEPA Threshold Determination to the City of Gig Harbor Hearing Examiner pursuant to the procedures set forth under Chapter 18.04 of the Gig Harbor Municipal Code if a written request for appeal is received within fourteen (14) days after the end of the comment period, or October 19, 2005, which ever is later. The written appeal must be submitted with a filing fee of one hundred fifty dollars (\$150).

Responsible Official: Tom Dolan

Contact Info: City of Gig Harbor
Community Development Department
3510 Grandview Street
Gig Harbor, WA. 98335
(253) 851-6170

Signature Tom Dolan Date: November 20, 2006

CC: Applicant
File

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. DEVELOPMENT AGREEMENT BY AND BETWEEN THE CITY OF GIG HARBOR AND RUSH RESIDENTIAL INC., FOR STREET IMPROVEMENT MONETARY CONTRIBUTIONS

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

1. Rush Residential Inc.

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

1. City of Gig Harbor

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

1. See Attachment Exhibit A

Property Tax Parcel No.: 0221073086

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

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

**DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF GIG HARBOR
AND RUSH RESIDENTIAL INC., FOR
STREET IMPROVEMENT MONETARY CONTRIBUTIONS**

THIS DEVELOPMENT AGREEMENT is made and entered into this 10 day of June, 2013, by and between the City of Gig Harbor, a noncharter, optional code Washington municipal corporation, hereinafter the "City," and Rush Residential Inc., 6622 Wollochet Drive NW, Gig Harbor, WA 98335, a Washington Corporation, organized under the laws of the State of Washington, hereinafter the "Developer."

RECITALS

WHEREAS, the Washington State Legislature has authorized the execution of a development agreement between a local government and a person having ownership or control of real property within its jurisdiction (RCW 36.70B.170(1)); and

WHEREAS, the Developer has received a permit or approval from the City, and as a condition of such permit/approval, is required to either construct or make monetary contributions toward construction of an identified transportation improvement; and

WHEREAS, the City agrees to accept such monetary contribution; and

WHEREAS, on June 10, 2013, the City Council held a public hearing on this Development Agreement, and 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, consisting of 9.06 acres, located at 4613 Hunt Street NW, in the City of Gig Harbor. The mitigation of adverse impacts is a requirement of the Modified Mitigated Determination of Nonsignificance (MDNS), SEPA 05-1128, dated November 20, 2006, attached hereto as Exhibit B and incorporated herein by this reference.

Section 2. *The Subject Property.* The Project site is legally described in Exhibit A, attached hereto and incorporated herein by this reference.

Section 3. *The Street Improvements.* The Developer has been required to make a pro-rata share contribution toward the cost for the "Hunt/Skansie Intersection Improvement Project", as a condition of SEPA approval. See Exhibit B.

Section 4. *Developer's Monetary Contribution to Public Improvement Financing.*
a) The Developer has agreed to satisfy the condition in the permit/approval described above by paying the Developer's pro-rata share of the cost of the construction of the transportation improvements required by Mitigation #5 of the MDNS (attached as Exhibit B)

to the City. The amount of the pro rata share is Eight Thousand Eight Hundred Fifty Five and 21/100 Dollars (\$8,855.21). The City agrees to accept such payment towards the construction of the transportation improvements in accordance with this Agreement.

b) The City shall hold the Developer's payment in a reserve account. The payment may only be expended by the City to fund the transportation improvements identified in Exhibit B, attached hereto, or a transportation project which includes the transportation improvements identified in Exhibit B.

c) The City agrees that if the payment is not expended as set forth above within five years after the Effective Date of the Adopting Resolution, any payment not so expended shall be refunded by the City with interest to the Developer. The interest shall be calculated at the rate applied to judgments to the property owners of record at the time of the refund; PROVIDED, HOWEVER, that if the payment is not expended by the City within five years due to delay attributable to the Developer, the payment shall be refunded without interest.

Section 5. *Effective Date and Termination.* This Agreement shall commence upon the date it is executed by both parties, and shall continue in force for a period of five years or until the street improvement identified in Exhibit B, page 8 of 10 is actually constructed, whichever comes first. Following the expiration of the term or extension thereof, or if sooner terminated, this Agreement shall have no force and effect.

Termination shall not affect any of the Developer's obligations to comply with the terms and conditions of this Agreement, or any applicable zoning code(s) or subdivision map or other land use permits or approvals granted with respect to the Subject Property, any other conditions of the Project, which are specified as continuing after the termination of this Agreement, nor shall it affect the Developer's (or Landowner's) obligations to pay assessments, liens, fees or taxes.

Section 6. *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.

Section 7. *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).

Section 8. *Notices.* Notices, demands, correspondence to the City and Developer shall be sufficiently given if dispatched by pre-paid first-class mail to the addresses of the parties as set forth below. Notice to the City shall be to the attention of both the Community Development Director and the City Attorney. Notices to the Developer or any subsequent purchasers of the property described in Exhibit A shall be required to be given by the City only for those purchasers 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, correspondence or refunds.

Section 9. 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 10. 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 ordinance adopting this Development Agreement, and either party in good faith determines that such provision or provisions are material to its entering into this Agreement, that party may elect to terminate this Agreement as to all of its obligations remaining unperformed.

[Remainder of page intentionally left blank]

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 Scott A. Walker
Its Vice President
Print Name: Scott A. Walker

By Charles J. Hunter
Its Mayor

ATTEST:

Developer Rush Residential
Address: 6622 Wollochet Dr NW
Gig Harbor WA 98335
Phone: 253 858 3636

By Molly Dowler
City Clerk

APPROVED AS TO FORM:

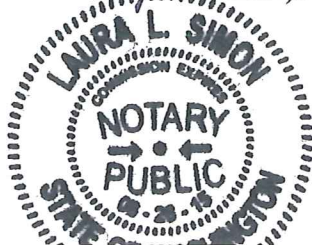
By Amy Belbin
City Attorney

City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335
Attn: Public Works Director

STATE OF WASHINGTON)
) ss.
COUNTY OF Pierce)

I certify that I know or have satisfactory evidence that Scott Walker 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 Vice President of Rush Residential Inc., to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: April 23, 2013



Laura L. Simon
LAURA L. SIMÓN
(print or type name)
NOTARY PUBLIC in and for the

Fox Island, WA
My Commission expires: 8/26/15

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/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the Mayor of Gig Harbor to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: June 11, 2013



Molly Towslee

Molly M. Towslee

(print or type name)

NOTARY PUBLIC in and for the
State of Washington, residing at:

Gig Harbor

My Commission expires: 12/2/15

Exhibit A
Property Legal Description

THE SOUTHEAST QUARTER OF THE SOUTHEAST QUARTER OF THE
SOUTHWEST QUARTER OF SECTION 7, TOWNSHIP 21 NORTH, RANGE 2 EAST,
W.M., IN PIERCE COUNTY WASHINGTON;

EXCEPT THE WEST 8 FEET THEREOF;

AND EXCEPT ROADS;

AND EXCEPT THAT PORTION CONVEYD TO STATE OF WASHINGTON BY DEED
RECORDED UNDER RECORING NUMBER 2364858, IN PIERCE COUNTY,
WASHINGTON.

Exhibit B

Modified Mitigated Determination of Nonsignificance (MDNS)
SEPA 05-1128



COMMUNITY DEVELOPMENT DEPARTMENT

**(CORRECTED) Mitigated Determination of Nonsignificance (MDNS)
W.A.C. 197-11-970**

Environmental Review Application No.: SEPA 05-1128

Action: Preliminary Plat, Design Review

Proposal: The proposal is to subdivide a 9.06 acre parcel into 31 single-family lots.
"Heritage Wright Subdivision"

Location: 4613 Hunt Street
Gig Harbor, WA 98335

Proponent: James Wright
P. O. 815
Gig Harbor, WA 98335

Agent: Erik Farstad, Bennett Development
12011 NE 1st Street, Suite 201
Bellevue, WA 98005

I. DESCRIPTION OF PROPOSAL:

The applicant requests a subdivision of 9.06 gross acres into 31 lots and two tracts. The property is zoned R-1, four units per acre. The site contains a small, (9,200 sq ft) Category III wetland. The net developable area is 7.71 acres therefore, 31 lots are allowed and thirty-one lots are proposed. The parcel was used for agricultural purposes including some orchard trees and livestock grazing. During the plat construction phase all buildings on the site shall be removed.

II. INCORPORATION BY REFERENCE:

The following documents contain information, studies and analysis that have been used in the review of this proposal and are hereby incorporated into this threshold determination by reference:

1. Geotechnical Engineering study prepared by Earth Consultants LLC. Dated June 9, 2005, date stamped November 23, 2005.
2. Wetland Analysis Report prepared by Wiltermood Associated, Inc. Dated June 27, 2005, date stamped November 23, 2006

3. Traffic Impact Analysis prepared by Heath and Associates, Inc. dated June 15, 2005, with a City of Gig Harbor date stamp November 23, 2005
4. Signal Warrant Analysis for Hunt and Skansie, Dated May 16, 2006, date stamped May 18, 2006.
5. SEPA Checklist 05-1129

III. ANALYSIS:

A. Traffic and Transportation. The applicant is required to demonstrate that the significant adverse environmental impacts associated with their application can be reasonably mitigated, (RCW 43.21C.060). In addition, the applicant must demonstrate that if the proposed development resulting from approval of the application will cause the level of service on a transportation facility identified in the City's Comprehensive Plan to decline below the standards adopted in the transportation element of the Comprehensive Plan, that the applicant plans to install transportation improvements or strategies acceptable to the City to accommodate the impacts of the development, which shall be made concurrent with the development, (RCW 36.70A.070(6)).

The existing road facilities related to the proposed development location include Hunt Street, Skansie Avenue and Wollochet Drive. This proposed project impacts these and other existing facilities by adding additional vehicle trips to these facilities.

The City requested the applicant to analyze the intersection of Skansie Avenue and Hunt Street to see if a traffic signal and/or a left turn lane from Skansie Avenue southbound was warranted based on project impacts and future growth. The signal warrant analysis was not warranted at this time. However, the analysis did indicate that a left turn lane for southbound traffic on Skansie Avenue "would be a solution if congestion issues were present."

A review of WSDOT guidelines for a left-turn storage and review of the signal warrant analysis indicates that installation of a left-turn lane for traffic southbound on Skansie Avenue would alleviate congestion and increase safety due to separated volumes for right and left turns. Condition 1 noted below provides mitigation for these congestion and safety issues.

Additionally, the TIA indicated 16 of the 37 PM peak hour trips would utilize Wollochet Drive north of Hunt Street where the City has identified a transportation improvement project. The City has identified the "Wollochet Drive improvement Project" in the six year transportation Plan (TIP) to include various improvements along Wollochet Drive between Hunt Street and SR 16 to upgrade the roadway in the vicinity of this proposed development. Condition 2 noted below provides mitigation as part of these improvements.

B. Sewer Impacts: City code requires all new houses, buildings, structures, or other uses of property used for human occupancy to connect the improvements to a public sanitary sewer. No public sanitary sewer currently exists in the area of the proposed development. The City's current wastewater Comprehensive Plan shows the proposed development located in the C5 sewer collection basin. In order for the proposed development to connect to the public sanitary sewer, the Comprehensive Plan indicates a sewer lift station will be required. Item 1 below, is related to sewer impacts.

C. Critical Areas: The site contains a Category III on the southern portion of the site. A wetland report has been prepared and the wetland with the appropriate buffers, have been shown on the plat drawings. In addition, the wetland and buffers have been placed in is a separate tract for their protection. Additional wetland protections are being required with this MDNS.

Conditions:

The applicant shall provide the following mitigation measures in connection with transportation concurrency for this development application:

1. The applicant shall be required to provide any or all of the sewer improvements necessary as noted in the City's Wastewater Comprehensive Plan (Basin C5) in order to provide the public sanitary sewer to the development. The sewer improvements shall be designed, constructed and accepted by the City prior to the certificate of occupancy of any houses, buildings, or structures associated with the proposed development. Design and construction of the sewer lift station and associated sewer mains require a separate SEPA checklist and review process.
2. The applicant shall pay the City's traffic impact fees in accordance with Chapter 19.12 of the Gig Harbor Municipal Code. Additionally, developments may be given credit for impact fees under certain conditions in accordance with Section 19.12.080.
3. The applicant shall design and construct separated right and left turn pockets for vehicles southbound on Skansie Avenue turning onto Hunt Street. Figure 910-9a of the Washington State Department of Transportation Design Manual provides for a left turn storage length of 150 feet. These improvements are in addition to and shall be incorporated into, all required frontage improvements. The plans for the separated right and left turn pockets shall be designed in accordance with the City of Gig Harbor Public Works standards and shall be reviewed and approved by the City of Gig Harbor prior to beginning construction. These improvements shall be completed prior to the City of Gig Harbor issuing any certificates for building occupancy at this site.
4. The applicant shall pay a pro-rata share of the cost of the "Wollochet Drive Improvement Project" identified in the City's TIP. The pro-rata share of this \$6,000,000 project, in 2006 dollars, shall be \$38,400. Payment of the share shall be received prior to the City signing the mylar drawings for construction

purposes. A "Development Agreement for Street Improvement Monetary Contributions" provided on City forms shall be executed by the applicant prior to payment of the pro-rata share.

5. The applicant shall pay a pro-rata share of the cost for the "Hunt/Skansie Intersection Improvement Project" identified in the City's TIP. The pro-rata share of this \$1,200,000 project, in 2006 dollars, shall be \$8,855.21. Payment of the share shall be received prior to the City signing the mylar drawings for construction purposes. A "Development Agreement for Street Improvement Monetary Contributions" provided on City forms shall be executed by the applicant prior to payment of the pro-rata share.

The applicant shall provide the following mitigation in connection with critical areas:

6. Prior to final occupancy of the first residence, at a minimum, the applicant shall install a split rail fence either along the wetland buffer or at the back of sidewalk beginning at the easterly edge of the buffer on Hunt Street then along the entry to the easterly edge of the storm water detention pond access driveway.

IV. THRESHOLD DETERMINATION:

Lead Agency: City of Gig Harbor

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment, provided mitigation measures specified in Section IV A – B above are imposed. An environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public upon request.

- This MDNS is issued under WAC 197-11-350; the lead agency will not act on this proposal for 14 days from the date of this document. Comments must be submitted by November 29, 2006.
- This MDNS will not become final until the end of the comment period, December 13, 2006.

Any interested person may appeal the adequacy of the final SEPA Threshold Determination to the City of Gig Harbor Hearing Examiner pursuant to the procedures set forth under Chapter 18.04 of the Gig Harbor Municipal Code if a written request for appeal is received within fourteen (14) days after the end of the comment period, or October 19, 2005, whichever is later. The written appeal must be submitted with a filing fee of one hundred fifty dollars (\$150).

Responsible Official: Tom Dolan

Contact Info: City of Gig Harbor
Community Development Department
3510 Grandview Street
Gig Harbor, WA. 98335
(253) 851-6170

Signature Tom Dolan Date: November 20, 2006

CC: Applicant
File

EXHIBIT B
MITIGATED DETERMINATION OF NONSIGNIFICANCE



COMMUNITY DEVELOPMENT DEPARTMENT

(CORRECTED) Mitigated Determination of Nonsignificance (MDNS)
W.A.C. 197-11-970

Environmental Review Application No.: SEPA 05-1128

Action: Preliminary Plat, Design Review

Proposal: The proposal is to subdivide a 9.06 acre parcel into 31 single-family lots.
"Heritage Wright Subdivision"

Location: 4613 Hunt Street
Gig Harbor, WA 98335

Proponent: James Wright
P. O. 815
Gig Harbor, WA 98335

Agent: Erik Farstad, Bennett Development
12011 NE 1st Street, Suite 201
Bellevue, WA 98005

I. DESCRIPTION OF PROPOSAL:

The applicant requests a subdivision of 9.06 gross acres into 31 lots and two tracts. The property is zoned R-1, four units per acre. The site contains a small, (9,200 sq ft) Category III wetland. The net developable area is 7.71 acres therefore, 31 lots are allowed and thirty-one lots are proposed. The parcel was used for agricultural purposes including some orchard trees and livestock grazing. During the plat construction phase all buildings on the site shall be removed.

II. INCORPORATION BY REFERENCE:

The following documents contain information, studies and analysis that have been used in the review of this proposal and are hereby incorporated into this threshold determination by reference:

1. Geotechnical Engineering study prepared by Earth Consultants LLC. Dated June 9, 2005, date stamped November 23, 2005.
2. Wetland Analysis Report prepared by Willermood Associated, Inc. Dated June 27, 2005, date stamped November 23, 2006

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3. Traffic Impact Analysis prepared by Heath and Associates, Inc. dated June 15, 2005, with a City of Gig Harbor date stamp November 23, 2005
4. Signal Warrant Analysis for Hunt and Skansie, Dated May 16, 2006, date stamped May 18, 2006.
5. SEPA Checklist 05-1129

III. ANALYSIS:

A. Traffic and Transportation. The applicant is required to demonstrate that the significant adverse environmental impacts associated with their application can be reasonably mitigated, (RCW 43.21C.060). In addition, the applicant must demonstrate that if the proposed development resulting from approval of the application will cause the level of service on a transportation facility identified in the City's Comprehensive Plan to decline below the standards adopted in the transportation element of the Comprehensive Plan, that the applicant plans to install transportation improvements or strategies acceptable to the City to accommodate the impacts of the development, which shall be made concurrent with the development, (RCW 36.70A.070(6)).

The existing road facilities related to the proposed development location include Hunt Street, Skansie Avenue and Wollochet Drive. This proposed project impacts these and other existing facilities by adding additional vehicle trips to these facilities.

The City requested the applicant to analyze the intersection of Skansie Avenue and Hunt Street to see if a traffic signal and/or a left turn lane from Skansie Avenue southbound was warranted based on project impacts and future growth. The signal warrant analysis was not warranted at this time. However, the analysis did indicate that a left turn lane for southbound traffic on Skansie Avenue "would be a solution if congestion issues were present."

A review of WSDOT guidelines for a left-turn storage and review of the signal warrant analysis indicates that installation of a left-turn lane for traffic southbound on Skansie Avenue would alleviate congestion and increase safety due to separated volumes for right and left turns. Condition 1 noted below provides mitigation for these congestion and safety issues.

Additionally, the TIA indicated 16 of the 37 PM peak hour trips would utilize Wollochet Drive north of Hunt Street where the City has identified a transportation improvement project. The City has identified the "Wollochet Drive improvement Project" in the six year transportation Plan (TIP) to include various improvements along Wollochet Drive between Hunt Street and SR 16 to upgrade the roadway in the vicinity of this proposed development. Condition 2 noted below provides mitigation as part of these improvements.

B. Sewer Impacts: City code requires all new houses, buildings, structures, or other uses of property used for human occupancy to connect the improvements to a public sanitary sewer. No public sanitary sewer currently exists in the area of the proposed development. The City's current wastewater Comprehensive Plan shows the proposed development located in the C5 sewer collection basin. In order for the proposed development to connect to the public sanitary sewer, the Comprehensive Plan indicates a sewer lift station will be required. Item 1 below, is related to sewer impacts.

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IV. THRESHOLD DETERMINATION:

Lead Agency: City of Gig Harbor

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