CLARK COUNTY
STAFF REPORT

DEPARTMENT/DIVISION: Public Works / Transportation

DATE: December 11, 2012

REQUEST: Consider Approval of the Attached Resolution and Developer Agreement between Three Creeks Investors and Clark County – for the Development of a Commercial Shopping Center in north Salmon Creek

CHECK ONE: ____ Consent _____ Chief Administrative Officer __X__ Hearing

PUBLIC WORKS GOALS:

- ☑ Provide safe and efficient transportation systems within Clark County
- ☑ Continue responsible stewardship of public funds
- ☑ Promote family-wage job creation and economic development to support a thriving community
- ☐ Maintain a desirable quality of life
- ☐ Improve environmental stewardship and protection of natural resources
- ☑ Increase partnerships and foster an engaged, informed community
- ☐ Make Public Works a great place to work

BACKGROUND: Three Creeks Investors is proposing a Developer Agreement with Clark County, under which a commercial shopping center would be developed on the southwest quadrant of the intersection of NE 179th Street and 15th Avenue. The proposed agreement is unique, in that it would be initially executed to establish a collaborative working relationship between both parties. And then at later date(s) as the development proposal became more refined and its impacts and mitigations better known, specific detailed information and commitments would be added to the Agreement as exhibits. Note that both Three Creeks Investors and Clark County would need to approve the later exhibits, before they would be formally added to the Agreement.

The only Exhibit included with the initial adoption of the Agreement would be:

Exhibit A – Description of the Developer Property

The Exhibits that would be added at a later date, with approval of both parties, are as follows:

Exhibit B – Additional Property Description
Exhibit C – Trip Generation Estimate
Exhibit D – Number of Reserved Trips
Exhibit E – Traffic Impact Fee Calculation
Exhibit F – Conceptual Plan
Exhibit G – Off-Site Mitigation

Note that the written Agreement as proposed by Three Creeks Investors has no explicit requirement that all of the later exhibits (C through G) be adopted concurrently. **However, County staff is recommending that such a requirement be added.** This is to ensure that before commitments by either party are made, the full ramifications and expectations of those commitments are known. As an example, before Exhibit D is adopted which would establish a vehicle trip reservation for the shopping center, Exhibit G should be adopted which identifies any needed mitigation that would accompany that additional traffic generation.

PW 12-113

* 6 5 1 8 4 0 *

COMMUNITY OUTREACH: None, except the legal notice in the Columbian for this Public Hearing.

BUDGET AND POLICY IMPLICATIONS: The primary policy implication associated with the proposed Developer Agreement relates to Section 14-Term. Under this section, the agreement would provide Three Creeks Investors with certain development rights for 15 years. Additionally, the agreement would establish a 10 year "reservation period" for the new vehicle trips associated with the shopping center. This reservation would assign that roadway capacity to the Three Creeks Investors development only, such that it would not be available to other developers in the area. And due to capacity limitations at the I-5/179th Street interchange and other local roadways and intersections in north Salmon Creek, this could preclude other developers from building in the area.

FISCAL IMPACTS: ☐ Yes (See Attached Fiscal Impacts Form) ☑ No

ACTION REQUESTED: Consider Approval of the Attached Resolution and Developer Agreement between Three Creeks Investors and Clark County – for the Development of a Commercial Shopping Center in north Salmon Creek.

DISTRIBUTION: Please return to the Department of Public Works Transportation, attention Steve Schulte, a copy of the approved Resolution and staff report indicating the Board's action along with the original Developer Agreement. Upon receipt of a fully-executed, original signed copy of the Agreement from the Developer, a copy will be provided to the Board for its records.

Steven C. Schulte

Steven Schulte, P.E.
Transportation Division Manager

APPROVED: 12/18/12

CLARK COUNTY, WASHINGTON
BOARD OF COMMISSIONERS

Peter Capell

Peter Capell, P.E.
Public Works Director/County Engineer

SR 29712

PC/SCS/scw

c: Pete Capell, Steve Schulte, Dianna Nutt

Attachments Agreement
Resolution
Notice

PW 12-113

RESOLUTION NO. 2012-12-24

A RESOLUTION relating to land use; approving a development agreement with Three Creeks Investors, LLC ("Developer") for property generally located at the southeast quadrant of the intersection of NE 179th Street and NE Union Rd. (the "Site").

WHEREAS, Developer has not yet applied for site plan approval but has met with county staff regarding a retail development on the site; and

WHEREAS, in conjunction with such work, Developer has agreed to mitigate deficiencies caused by impacts existing at the time of development; and

WHEREAS, Developer has asked that it be granted a guarantee of transportation capacity needed by this development; and

WHEREAS, the Developer will file exhibits necessary to the final approval of this agreement and these exhibits must be approved by Clark County; and

WHEREAS, the Board is considering this matter at a duly advertised public hearing; and

WHEREAS, the Board concludes that approval of this development will further the public welfare and may create needed jobs; and

WHEREAS, a development agreement as proposed by Developer is authorized by RCW 36.70B.170 - .210; now, therefore,

BE IT ORDERED AND RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF CLARK COUNTY, STATE OF WASHINGTON as follows:

1. The findings contained in the recital clauses are incorporated herein.
2. The Three Creeks, LLC development agreement is hereby provisionally approved and attached hereto as Exhibit "A".

ADOPTED this 18th day of December, 2012.

Attest:

Rebecca Tilton
Clerk to the Board

Approved as to Form Only:
Anthony F. Golik
Prosecuting Attorney

By _____
Christopher Horne
Civil Deputy

BOARD OF COUNTY COMMISSIONERS
CLARK COUNTY, WASHINGTON

By _____
Marc Boldt, Chair

By _____
Steve Stuart, Commissioner

By _____
Tom Mielke, Commissioner

RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:

Stephen W. Horenstein, Attorney
Horenstein Law Group PLLC
500 Broadway, Suite 120
Vancouver, WA 98660

Grantor	:	Three Creeks Investors LLC
Grantee	:	Clark County, Washington
Abbreviated Legal	:	Sec 14, T3N, R1E, WM
Assessor's Tax Parcel Nos.	:	117770-000; 117780-000; 117790-000; 117795-000; 117800-000; 117820-000; 117830-000; 117840-000; 181901-000; 181905-000; 181930-000; 181937-000; 181942-000; 181957-000; 181963-000; 181971-000

DEVELOPMENT AGREEMENT

Effective Date: Dec. 18, 2012

Parties: **THREE CREEKS INVESTORS LLC**, a Washington limited liability company; ("Developer");

And

CLARK COUNTY, WASHINGTON, a political subdivision of the State of Washington (the "County").

Recitals:

A. The Developer is the owner of property described in Exhibit A attached hereto and incorporated fully by this reference (hereinafter the "Developer Property").The Developer may acquire additional properties identified on the conceptual plan and node identified in Exhibit B.

B. The Developer Property is currently designated on the County's comprehensive plan as General Commercial and on the zoning map as General Commercial.

C. The Developer has proposed a conceptual plan illustrating site access and circulation, and including the node where other properties may be acquired subject to

further refinement as well as review and approval by County Public Works staff. A copy of the conceptual plan is attached to this Agreement as Exhibit F.

D. The Developer and County desire to cooperate in:

1. Developing a regional stormwater facility to serve a portion of the interchange and related improvements at 179th Street/Interstate 5 and the surrounding area including Developer's project.

2. Obtaining public and private funding for a regional stormwater facility planning and development.

3. Ensuring that the regional stormwater facility complies with Clark County's stormwater ordinance and mandates from the Washington State Department of Ecology.

4. Communicating about transportation planning for roadways and access points in the vicinity of the 179th Street/Interstate 5 interchange area.

E. The Developer's traffic engineer will prepare trip generation and distribution information based on the expected development of the Developer Property as a regional shopping center. A copy of the trip generation estimate when completed and approved by County Public Works staff will be attached as Exhibit C. This trip generation includes the property described in Exhibit A and includes other properties in the node identified as Exhibit B. All the trip generation models will be completed not later than twelve (12) months from the full execution of this Agreement.

F. Pursuant to RCW 36.70B.170(1), the parties are authorized to enter into a development agreement that sets forth development standards and other provisions that apply to, govern, and vest the development and use of the real property described in Exhibit A.

NOW, THEREFORE, the parties agree as follows:

1. The Recitals set forth above are hereby incorporated into this Agreement. The parties may mutually agree to any necessary amendments to this Agreement to facilitate infrastructure improvements, but the county does not by its signature, commit to future expenditures.

2. Purpose. The purpose of this Development Agreement is to vest the development and use of the Developer Property, plan for stormwater mitigation for the site, plan for

transportation improvements, and reserve transportation capacity for the property's development.

County acknowledges that in order to develop a regional stormwater facility in the 179th corridor and construct transportation improvements at the 179th Street/Interstate 5 interchange, the development of the Developer Property creates the need and tax base necessary to fund the project. Likewise, Developer needs stormwater and transportation improvements in order to develop its project. The parties will use best efforts to the extent reasonably possible to coordinate the project schedules and engage in regular communication for the mutual benefit of both parties' projects to ensure that the infrastructure design is viable. Any change by either party's project schedule will immediately be communicated to the other.

3. Property Governed. This Development Agreement governs and vests the development of the Developer Property described in Exhibit A. To the extent, and only to the extent additional property is acquired by Developer, the legal description for that newly acquired property shall be attached to this Agreement as Exhibit B and the Agreement shall be re-recorded and each and every term and provision of this Agreement shall apply to the newly added property identified on Exhibit B including but not limited to the vesting provision which shall vest the newly acquired property on the date of the re-recording of this Agreement.

4. Expected Development of Developer Property. The Developer intends to develop the Developer Property with shopping center uses.

5. Stormwater. The Developer Property's stormwater plans will be completed consistent with the following.

5.1 Outfall to 179th Street Right-of-Way. The project's outfall will be to the drainage ditch in the N.E. 179th Street right-of-way constructed with N.E. 15th Avenue.

5.1a. Developer's stormwater plans will provide source control and treatment best management practices in accordance with Clark County Code Chapter 13.26a, Water Quality and Ecology requirements.

5.2 Regional Stormwater Facility. The County will cooperate to develop a regional stormwater facility as described in Recital D above to provide stormwater detention capacity for interchange and related improvements at 179th Street/Interstate 5 and the surrounding area including Developer's project, if possible, subject to the monetary limits set out below. All stormwater management facilities are subject to Clark County's stormwater ordinance and mandates from the Washington State Department of Ecology.

5.3 Developer Credit. As to Three Creeks Investors LLC only, a portion of Developer's fair share of the cost of the regional stormwater facility has already been received by the County in the form of utility relocation work, at a value of approximately $250,000, completed by Developer for its improvement to the intersection of N.E. 119th Street and N.E. 117th Avenue (State Route 503) and adjacent frontage. This amount represents the County's sole financial or monetary commitment under this Agreement. Any dispute as to the amount of Developer's contribution and/or reserved capacity will be subject to mediation pursuant to Section 11 of this Agreement.

6. Reservation of Transportation Capacity and Concurrency. The Developer's transportation engineer shall calculate average daily trips and net new p.m. peak hour trips based on the expected development of the Developer Property. Upon the County Public Works staff's approval of the calculation of the net new p.m. peak hour trips and average daily trips, the County hereby reserves and vests under CCC 40.350.020(K), such trips for the Developer Property for use throughout the term of this Development Agreement, subject to Developer's agreement to construct the off-site mitigation measure(s) described below. The trip generation estimate will be identified in Exhibit C attached hereto and the approved trips associated with that property will be added to this Agreement as Exhibit D..

If additional property is acquired the legal description for that property will be attached hereto as Exhibit B. In this event and at the time Exhibit B property is acquired, the same process will be followed as in the immediately preceding paragraph. The Trip Generation Estimate will be attached to the Agreement as Exhibit C1and the approved trips associated with that property will be added to the Agreement as Exhibit D1 and the Agreement will be re-recorded accordingly.

6.1 Off-Site Mitigation. In compliance with the county code, Developer will construct the transportation mitigation as determined by the County Public Works staff's approval of the Developer's traffic study and subsequent concurrency and safety modeling for the Developer's project and/or as otherwise agreed to which shall be set forth in Exhibit G to mitigate the impacts shown in Exhibit C to this Agreement, subject to potential credits granted according to the County's regulations and policies governing traffic impact fees and credits.

The parties will evaluate Exhibits C, D, E, F, and G and determine whether this development will require interchange improvements. If so, the parties may either resolve the interchange improvements financing issues or the Developer may reduce the scale of the development.

6.2 No Other Conditions for Concurrency. No other off-site transportation improvements will be required of Developer so long as the project does not generate more

than those net new p.m. peak hour trips described on Exhibit C to be attached upon completion and county approval of Developer's traffic study. If changes to the Developer Property are found to cause the site to generate net new p.m. peak hour trips over those set forth on Exhibit C, the relevant additional trips will be subject to review under the County's concurrency ordinance. Safety mitigation will be measured and mitigated at the time of site plan approval.

7. **Traffic Impact Fees**. Based on the trip generation for a regional shopping center, as calculated by Developer's transportation engineer and approved by County Public Works staff, Developer will pay traffic impact fees for the total trips, calculated and identified on Exhibit D to be attached to this agreement by the parties upon the availability of such calculation at the rate in effect for the relevant project approval(s) according to the terms of the Clark County Code. The provisions of Resolution 2012-05-03 do not apply to this development.

8. **Site Transportation Improvements.**

8.1 Site Circulation and Access. The uses sited on the Developer Property may access the public road system as illustrated in the conceptual plan attached as Exhibit F so long as access requirements for Clark County and WDOT are met to the extent that they are applicable. Developer will complete access improvements in the general locations shown in Exhibit F, with the illustrated turning movements. Developer is responsible for any off-site work needed to complete the site access, subject to potential credits granted according to the County's regulations and policies governing traffic impact fees and credits. All of the foregoing is subject to reaching agreement on right-of-way design and location and signalization.

9. **Vesting.** The parties agree that the development of the Developer Property vests as to the permitted uses, land use regulations, and development standards in effect as of the time of the execution of this Development Agreement (with the exception of environmental laws deemed by a Washington Court decision to not be subject to vesting). This Development Agreement and the development standards in this Development Agreement govern during the term of this Development Agreement and may not be subject to an amendment to a zoning ordinance, land use regulation, or development standard adopted after the effective date of this Development Agreement. Building Permit Codes and regulations are not vested in this Agreement. Any permit or approval issued by the County after the execution of this Development Agreement must be consistent with this Development Agreement. Nothing contained herein shall preclude the County from

exercising any and all rights it has under RCW 36.70B.170 to address issues of public health and safety.

10. Cooperation and Necessary Acts. Although neither party can guarantee the actual construction of their respective projects, the parties agree to work together in good faith and using best efforts to plan their project together and in a way that will make them functionally compatible. Each party agrees to execute all other amendments to this Agreement, instruments and documents and perform all acts reasonably necessary to give effect to the language and spirit of this Development Agreement.

11. Mediation. In the event a dispute between the parties arises out of or relates to this Development Agreement or the interpretation of this Development Agreement and/or the renegotiation of a particular provision is required, the parties agree to submit such dispute to a mutually agreed upon mediator and to continue good faith mediation efforts until such dispute is resolved or either party notifies the other in writing that it elects to withdraw from mediation. In the event mediation of any dispute fails, either party may bring an action in the superior court for Clark County, State of Washington, for the purpose of enforcing this Development Agreement. Each party shall bear their own costs and attorneys' fees.

12. The parties are hereby authorized to attach as additional exhibits to this Development Agreement any reports, studies, or other documents provided by either party so long as such documents further support the terms and provisions contained in this Development Agreement.

13. Run with the Land. This Development Agreement shall run with the land and be binding on the parties' successors and assigns. This Development Agreement shall be recorded with the Clark County Auditor.

14. Term. The term of this Development Agreement shall be fifteen (15) years from the date of recording or recording as to the property described in Exhibit B of this Agreement as the case may be with the provision that Transportation Capacity provided for in Section 6 above shall vest for ten (10) years from the date of recording or recording for transportation capacity for the property described in Exhibit B of this Agreement as the case may be. The parties may mutually agree to extend the term.

15. Public Hearing. The Board of County Commissioners has approved execution of this Development Agreement after a public hearing.

Dated this 18th day of December, 2012.

CLARK COUNTY,
a political subdivision of the State of Washington

By: _____

Approved as to form:

_____
Deputy Prosecuting Attorney

THREE CREEKS INVESTORS LLC, a Washington limited liability company

By: _____

Name: Lance E. Killian

Title: Manager

State of Washington)
) ss.
County of Clark)

I certify that I know or have satisfactory evidence that LANCE E KULIAN 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 _____ of Three Creeks Investors LLC, a Washington limited liability company, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: JANUARY 7, 2013.

Notary Seal

MELISSA FAYE TRACY
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
APRIL 29, 2014

Melissa F. Tracy
Notary Public for Washington

MELISSA F. TRACY
Name of Notary

My appointment expires: APRIL 29 2014

EXHIBIT A

DESCRIPTION OF DEVELOPER PROPERTY

117840-000

Lot 8 and 9, MOUNTAIN VIEW ACRES, according to the plat thereof, recorded in Volume "D" of plats, Page 074, records of Clark County, Washington.

EXCEPT that portion of said premises lying East of the West line of NE 15th Avenue (as conveyed by deeds recorded under Auditor's File No.'s 4114159, 4165351 and 4162120).

ALSO EXCEPT any portion lying within William Smith Road (now known as NE 173rd Street).

181930-000

That portion of the Northwest quarter of Section 14, Township 3 North, Range 1 East of the Willamette Meridian, described as follows:

BEGINNING at a point that is North 89°35' East 832 feet from the Northwest corner of said Section 14; thence South 825 feet; then South 89°35' West 225.72 feet; thence North 796.1 feet to the South line of the County Road; thence North 69°57' East 79.54 feet; thence North 89°35' East 151.0 feet to the Point of Beginning.

EXCEPT that portion conveyed to the State of Washington under Auditor's File No. G 274953.

181937-000

That portion of the Northwest quarter of Section 14, Township 3 North, Range 1 East of the Willamette Meridian, described as follows:

BEGINNING at a point that is North 89°35' East 1100 feet East from the Northwest corner of Section 14, Township 3 North, Range 1 East of the Willamette Meridian; thence South 89°35' West 268.4 feet; thence South 825 feet; thence North 89°35' East 239.4 feet; thence Northerly 825 feet, more or less, to the Point of Beginning.

EXCEPT any portion lying within NE 179th Street.

181905-000, 181963-000 and 181971-000

PARCEL A

BEGINNING at a point 16 chains East of the Northwest corner of Section 14, Township 3 North, Range 1 East of the Willamette Meridian, in Clark County, Washington; thence East 191.4 feet, more or less, to the Northwest corner of the Stuart tract as conveyed by deed recorded under Auditor's File No. G 624943; thence South along said Stuart tract 660 feet to the Southwest corner of said Stuart tract; thence West 191.4 feet, more of less, to a point 660 feet South of the Point of Beginning; thence north 660 feet to the Point of Beginning.

EXCEPT that portion conveyed to Clark County by deed recorded July 14, 2005, under Auditor's File No. 4017134, records of Clark County, Washington.

EXCEPT any portion lying within N.E. 179th Street.

ALSO EXCEPT beginning at a point that is North 89°35' East 1100 feet East from the Northwest corner of Section 14, Township 3 North, Range 1 East of the Willamette Meridian, in Clark County, Washington; thence South 89°35' West 44 feet; thence South 825 feet; thence North 89°35' East 15 feet; thence Northerly 825 feet, more or less, to the Point of Beginning.

PARCEL B

BEGINNING at a point 1412.4 feet East of the Northwest corner of Section 14, Township 3 North, Range 1 East of the Willamette Meridian, in Clark County, Washington; thence South 660 feet; thence West 165 feet; thence North 660 feet; thence East 165 feet to the Point of Beginning.

EXCEPT that portion conveyed to Clark County by deed recorded July 14, 2005, under Auditor's File No. 4017134, records of Clark County, Washington.

EXCEPT any portion lying within N.E. 179th Street.

PARCEL C

BEGINNING at a point 1742.4 feet East of the Northwest corner of Section 14, Township 3 North, Range 1 East of the Willamette Meridian, in Clark County, Washington; thence South 660 feet; thence West 330 feet; thence North 660 feet; thence East 330 feet to the Place of Beginning.

EXCEPT that portion conveyed to Clark County by deed recorded July 14, 2005, under Auditor's File No. 4017134, records of Clark County, Washington.

EXCEPT any portion lying within N.E. 179th Street.

181957-000

That portion of the Northwest quarter of Section 14, Township 3 North, Range 1 East of the Willamette Meridian, described as follows:

BEGINNING at a point which is 1,742.4 feet East and 660 feet South of the Northwest corner of Section 14; thence South 165 feet; thence West 671.4 feet; thence Northerly along the tract presently owned by Grantee 165 feet more or less to a point located 666.2 feet West of the Place of Beginning; thence East to the Place of Beginning.

TOGETHER WITH a 30 foot wide easement for ingress, egress and utilities, described as follows:

A 30 foot easement over the East portion of the following described property:

That property beginning at a point that is North 89°35' East 1,100 feet East of the Northwest corner of Section 15 Township 3 North, Range 1 East of the Willamette Meridian; thence South 89°35' West 44 feet; thence South 825 feet; thence North 89°35' East 15 feet; thence Northerly 825 feet, more or less, to the Point of Beginning.

EXCEPT that portion conveyed to Clark County by deed recorded October 26, 2005, under Auditor's File No. 4072444, records of Clark County, Washington.

TOGETHER WITH that portion of the Northwest quarter of Section 14, Township 3 North, Range 1 East of the Willamette Meridian, in Clark County, Washington, described as follows:

BEGINNING at a point that is North 89°35' East 1,100 feet East from the Northwest corner of Section 14, Township 3 North, Range 1 East of the Willamette Meridian; thence South 89°35' West 268.4 feet; thence South 825 feet; thence North 89°35' East 239.4 feet; thence Northerly 825 feet, more or less, to the Point of Beginning.

EXHIBIT B

ADDITIONAL PROPERTY DESCRIPTION

EXHIBIT C

TRIP GENERATION ESTIMATE

EXHIBIT D

NUMBER OF RESERVED TRIPS

EXHIBIT E

TRAFFIC IMPACT FEE CALCULATION

EXHIBIT F

CONCEPTUAL PLAN

EXHIBIT G

OFF-SITE MITIGATION

BOARD OF COUNTY COMMISSIONERS' HEARING PACKET

Hearing Item:	Consider Approval of the Attached Resolution and Developer Agreement between Three Creeks Investors and Clark County – for the Development of a Commercial Shopping Center in north Salmon Creek
Date:	Tuesday, December 11, 2012
Time:	10:00 A.M.

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PW12-113

4929770 AGR
RecFee - $93.00 Pages: 22 - CLARK COUNTY ENGINEERING
Clark County, WA 01/08/2013 03:15

RETURN ADDRESS
Clark County – Public Works/Development Engineering

DOCUMENT TITLE (S)
Developer's Agreement

REFERENCE NUMBER (S) OF RELATED DOCUMENT (S)
Resolution No. 2012-12-24

GRANTOR (S)
Three Creeks Investors, LLC

GRANTEE (S)
Clark County

Private and Public

LEGAL DESCRIPTION (abbreviated form i.e. lot, block, plat or section, township, range, quarter/quarter)
Section 14,Township 3 North, Range 1 East of the Willamette Meridian.

ASSESSOR'S PROPERTY TAX PARCEL/ACCOUNT NUMBER
117770-000;117780-000;117790-000;117795-000;117800-000;117820-000;117830-000;117840-000; 181901-000; 181905-000; 181930-000; 181937-000; 181942-000; 181957-000; 181963-000; 181971-000

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