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CLARK COUNTY
WASHINGTON

COMMUNITY DEVELOPMENT

Memorandum

TO: Board of Clark County Councilors
FROM: Marty Snell, Director 
DATE: July 5, 2016
SUBJECT: Proposed Development Agreement for Whipple Creek Village

In February 2005 the Board of County Commissioners approved a development agreement (DA) regarding dedication and construction of a portion of NE 15th Avenue, which alluded to an eventual 81-lot single family townhouse subdivision. The DA points to a preliminary plat and vesting of impact fee rates and impact fee credits. (See attachment #1)

In 2009 Whipple Creek Village was approved, which included satisfying the requirements of transportation concurrency approval and reserving 61 am peak hour trips and 82 pm peak hour trips. The developer did satisfy the requirements and was given concurrency approval. Subsequent to the 2009 Whipple Creek Village approval, additional properties (APN's 117870000, 117880000 and 117890000) were added to the current ownership and now the developer desires to coordinate development of the entire property. The developer commits that the modified project will create no more (and maybe less) trips than was approved for the original development. As consideration for the Agreement, the developer has agreed to pay current impact fees rather than the lower fees in effect when the project was originally approved.

This DA would provide the ability to utilize the vehicle trips and reserved capacity granted as part of the approved 81-lot townhouse subdivision for a new development proposal. In exchange for the ability to utilize these trips, the developer proposes to seek a rezone and development project that lowers the density and provides for much needed housing for seniors in Clark County. If ultimately approved, the proposed development would reduce the density from 15.5 units per net acre to 10.5 units per net acre. It would also provide for 100 units to be designated for 55 years of age and older and 41 lots designated for standard attached housing. (See attachment #2)

Regardless of the disposition of the proposed DA, one outstanding issue on the latest proposed project is documented impacts (clearing and perhaps grading) of approximately 2.85 acres of Habitat Conservation Areas and Wetland. A permit for clearing was approved on adjacent land but not the 2.85 acres. The developer has acknowledged responsibility and proposed paying into the Cumulative Effects Fund as provided for in Clark County Code 40.450.040(D)7(b). Staff continues to work with the developer on the proper mitigation and the specific amount of payment in lieu of wetland mitigation.



ATTACHMENT 1

**RECORDING REQUESTED BY
AND WHEN RECORDED RETURN TO:**

Richard S. Lowry
Chief Civil Deputy Prosecuting Attorney
Clark County - Civil Division
PO Box 5000
Vancouver WA 98666-5000

Grantors	:	Timothy and Susan Brown, H. A. Andersen; and Andersen Construction Co., Inc.
Grantee	:	Clark County, Washington
Abbreviated Legal	:	Lots 8 and 9, Mountain View Acres, according to the plat thereof, recorded in Book "D" of Plats, page 74, Records of Clark County, Washington
Assessor's Tax Parcel Nos.	:	117840-000, 117850-000
Prior Excise Tax No.	:	
Other Reference No(s).	:	Lot 8, Lot 9

DEVELOPMENT AGREEMENT

Effective Date:

February 15, 2005

Parties:

TIMOTHY P. BROWN and SUSAN K. BROWN, husband and wife; H. A. ANDERSEN; and ANDERSEN CONSTRUCTION CO., INC. (hereinafter referred to as "Owners"); and

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

Recitals:

A. Owners hold title to and desire to develop Lots 8 and 9, Mountain View Acres, according to the plat thereof, recorded in Book "D" of Plats, page 74, Records of Clark County, Washington (hereinafter referred to as "the Properties").

B. The County has programmed a county road project to construct NE 15th Avenue which would generally bisect the Properties, as shown on the map attached hereto as *Exhibit "A"*. The County anticipates, but does not guarantee, that said road project will be constructed during calendar years 2005-2006.

C. The County has requested that Owners dedicate right-of-way for such county road project as it traverses the Properties.

D. Construction of NE 15th Avenue would facilitate development of the Properties.

E. The parties desire to enter into this Development Agreement in order to vest impact fee rates and impact fee credits as it relates to development of the Properties.

F. Pursuant to RCW 36.70B.170, the parties are authorized to enter into this Development Agreement.

NOW, THEREFORE, the parties agree as follows:

1. **Right-of-way Dedication.** A legal description of the needed right-of-way for NE 15th Avenue through the Properties is attached hereto as *Exhibit "B"*.

1.1 Owners shall place in escrow with Clark County Title Company an executed deed for said right-of-way with the following escrow instructions:

- a. If, within five (5) years from the effective date of this Development Agreement, the director of Public Works of the County certifies in writing to the escrow agent that either:
 - i. Construction of the county road project through the Properties is scheduled to commence within six (6) months; or
 - ii. The Owners have filed a development application for the Properties, which would trigger right-of-way dedication requirements under Chapter 40.350 of the County Code;

Then such deed, together with a title report evidencing the Owners' ability to convey good title shall be tendered to the County for acceptance and recording. If no such certification occurs within five (5) years of the effective date of this Development Agreement, then the escrow shall lapse and the executed deed shall be returned to the Owners.



1.2 During said five (5) year period, the County is granted a right of entry into the Properties for the purpose of conducting surveys, staking, and undertaking other work preliminary to work construction.

2. Transportation Impact Fees / Credits. Should a right-of-way deed be tendered to the County pursuant to the provisions of Section 1.1(a), above, then any development application for the Properties which is filed within five (5) years of the effective date of this Development Agreement, shall vest under the transportation impact fee requirements and provisions in effect on the effective date of this Development Agreement. In particular, it is agreed that such an application shall be subject to a transportation impact fee trip rate of \$306.00 per trip and result in transportation impact fee credits for a full width right-of-way dedication through the Properties in the amount of \$325,786.00.

2.1 Owners may elect to seek preliminary plat or preliminary site plan approval for development of the Properties prior to county construction of NE 15th Avenue. In such event, preliminary approval may be conditioned upon County's completion of such road project or completion by the Owners of a partial-width improvement to NE 15th Avenue if undertaken by the Owners, the Owners shall be entitled to additional impact fee credits in accordance with the provisions of Chapter 40.610 CCC, to the extent that such improvement is consistent with the larger county road project.

2.2 In the event that neither preliminary plat nor preliminary site plan approval for a development within the Properties is obtained within five (5) years of the effective date of this Development Agreement, or in the event building permits are not sought for such preliminarily-approved development within three (3) years following preliminary development approval, then traffic impact fees and impact fee credits shall be determined in accordance with the applicable impact fee program in effect on the date of preliminary development approval or building permit application, whichever is applicable.

3. Cross-circulation. The County and Owners shall work cooperatively to determine the appropriate location for cross-circulation providing access to the Properties in accordance with the provisions of Chapter 40.350 CCC.

4. Annual Review / Rezone. The County shall initiate an annual review application for calendar year 2005 seeking a comprehensive plan and zoning redesignation of that portion of Lot 9 of the Properties' line west of the right-of-way alignment for NE 15th Avenue so that such portion bears a comprehensive plan and zoning designation identical to that applicable to Lot 8 of the Properties.

5. **No Implied Assurances.** The parties' understandings are set forth in full in this Development Agreement. There are no implied assurances. In particular, nothing in this Agreement should be construed as providing County assurances regarding the timing of its county road project for NE 15th Avenue, or the approvability of a development proposal for the Properties, including approval under county transportation concurrency requirements.

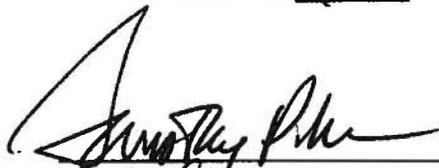
6. **Public Health and Safety.** Nothing contained in this Agreement shall preclude the County from exercising any and all rights it has under RCW 36.70B.170 to address issues of public health and safety.

7. **Run With the Land.** This Development Agreement shall be binding on the parties' successors and assigns, and shall be recorded with the Clark County Auditor.

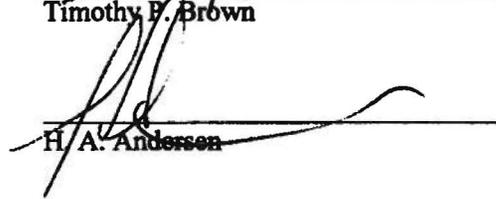
8. **Term.** The term of this Development Agreement shall be five (5) years.

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

DATED this 6th day of December, 2004.



Timothy F. Brown



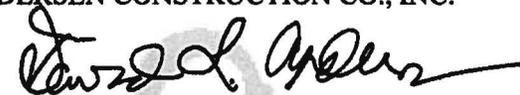
H. A. Andersen

GRANTORS:



Susan K. Brown

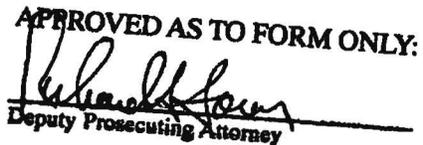
ANDERSEN CONSTRUCTION CO., INC.

By: 

Name: DAVID L. ANDERSEN
Title: PRESIDENT

~~GRANTEE: CLARK COUNTY~~

~~By: _____
Name: _____
Title: _____~~

APPROVED AS TO FORM ONLY:


Deputy Prosecuting Attorney

GRANTEE:

BOARD OF COUNTY COMMISSIONERS
CLARK COUNTY, WASHINGTON

Betty Sue Morris
Betty Sue Morris, Chair

Marc Boldt, Commissioner

Steven J. Stuart, Commissioner



NOTARIAL ACKNOWLEDGEMENT

STATE OF WASHINGTON

COUNTY OF CLARK

On this 15 day of February, 2005, before me personally appeared and BETTY SUE MORRIS to me known to be the duly elected, qualified and acting County Commissioner(s) of Clark County, Washington, who executed the foregoing instrument and acknowledged said instrument to be the free and voluntary act and deed of Clark County, for the uses and purposes therein mentioned, and on oath stated that he/she/they is/are authorized to execute said instrument.

DATE: February 15, 2005



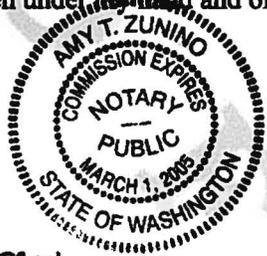
Rebecca L. Tilton

Notary Public in and for the State of
WA residing at Vancouver
My commission expires 4/26/05

State of Washington)
) ss.
County of Clark)

On this day personally appeared before me TIMOTHY P. BROWN and SUSAN BROWN, to me known to be the individuals described in and who executed the within and foregoing instrument, and acknowledged that they signed the same as their free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 6th day of December, 2004.



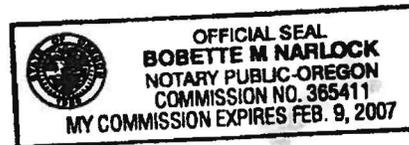
Amy Zunino
Notary Public for the State of Washington
My commission expires: 3/1/05

OREGON
State of Washington)
) ss.
MULTNOMAH
County of ~~Clark~~)

On this day personally appeared before me H. A. ANDERSEN, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same as his free and voluntary act and deed, for the uses and purposes therein mentioned.

Given under my hand and official seal this 30th day of NOVEMBER, 2004.

Bobette M. Narlock
Notary Public for the State of ~~Washington~~ OREGON
My commission expires: 2/9/07



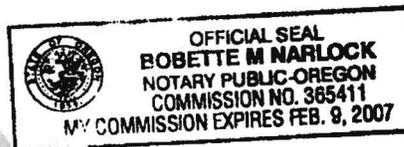


OREGON
State of ~~Washington~~)
MULTNOMAH) ss.
County of ~~Clark~~)

On this 30th day of NOVEMBER, 2004, before me personally appeared DAVID L. ANDERSEN, to me known to be the PRESIDENT of ANDERSEN CONSTRUCTION CO., INC., that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

Given under my hand and official seal this 30th day of NOVEMBER, 2004.

Bobette M. Narlock
Notary Public for the State of ~~Washington~~ OREGON
My commission expires: 2/9/07



State of Washington)
County of Clark) ss.

On this ___ day of _____, 2004, before me personally appeared _____, to me known to be the _____ of the CLARK COUNTY, WASHINGTON that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

Given under my hand and official seal this ___ day of _____, 2004.

Notary Public for the State of Washington
My commission expires: _____



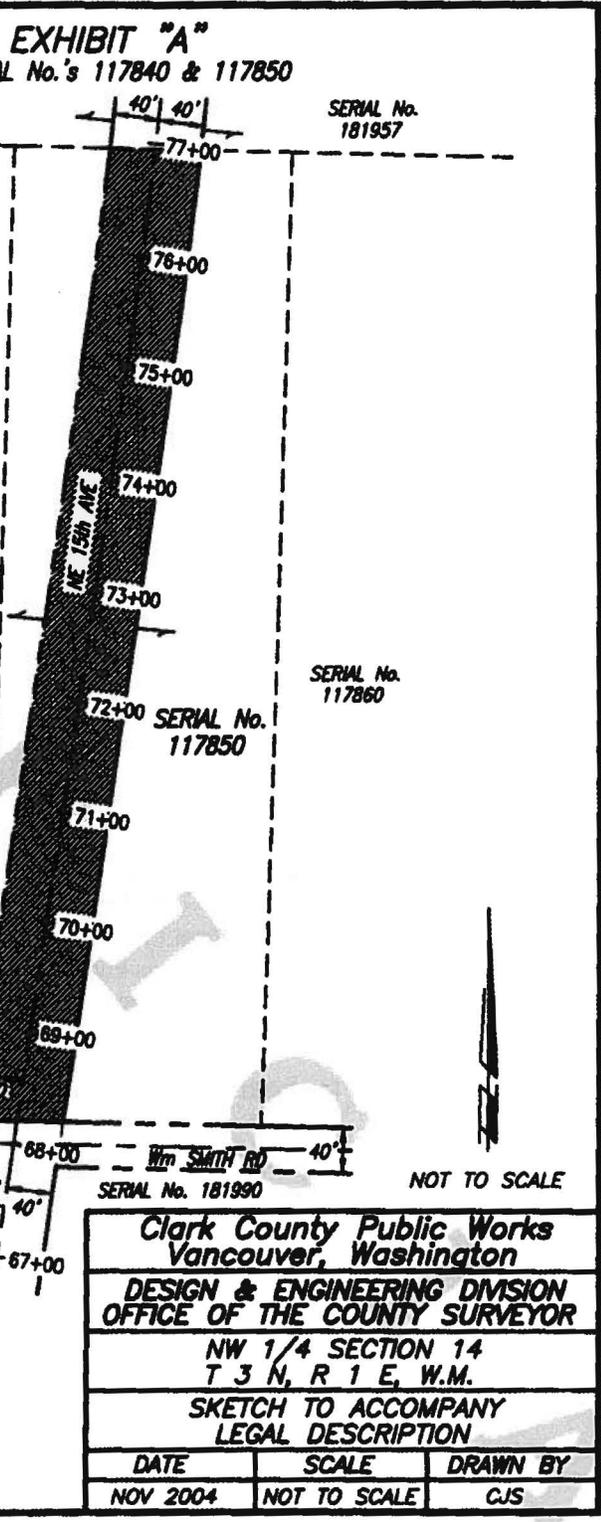
3950192

Page: 8 of 12
02/24/2005 03:55P
Clark County, WA

REAL PROPERTIES

AGR

0.00



Clark County Public Works Vancouver, Washington		
DESIGN & ENGINEERING DIVISION OFFICE OF THE COUNTY SURVEYOR		
NW 1/4 SECTION 14 T 3 N, R 1 E, W.M.		
SKETCH TO ACCOMPANY LEGAL DESCRIPTION		
DATE	SCALE	DRAWN BY
NOV 2004	NOT TO SCALE	CJS



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DEPARTMENT OF PUBLIC WORKS
COUNTY SURVEYOR'S OFFICE

EXHIBIT "B"
N.E. 15th AVENUE
SERIAL No.'s 117840 & 117850

A parcel of land lying in the Northwest 1/4 of Section 14, Township 3 North, Range 1 East, of the Willamette Meridian, in Clark County, Washington, being more particularly described as follows:

Parcel 1

A strip of land 80.00 feet wide being all that portion of Lot 9, Mountain View Acres, recorded in Book "D" of plats, page 74, records of Clark County, Washington, lying 40.00 feet on each side of, when measured at right angles or radial to, the construction-centerline of Northeast 15th Avenue as described in Exhibit "B-1", attached, all in Clark County, Washington.

Parcel 2

All that portion of Lot 8, Mountain View Acres, recorded in Book "D" of Plats, page 74, records of Clark County, Washington, lying southerly and easterly of the following described line:

Beginning at a point on the northerly right-of-way line of William Smith Road, said point being 20.00 feet Northerly of, when measured at right angles or radial to, the centerline of William Smith Road, as described in Exhibit "B-2", attached, at Engineers' station 12+69.84; thence to a point 27.00 feet Northerly of, when measured at right angles or radial to, said centerline at station 12+69.84; thence to a point 27.00 feet Northerly of, when measured at right angles or radial to, said centerline at station 13+11.84; thence North 43°14'22" East 44.42 feet to a point 40.00 feet Westerly of, when measured at right angles or radial to, the construction centerline of NE 15th Avenue, as described in Exhibit "B-1", attached, at station 68+57.00; thence to a point on the easterly line of said parcel, said point being 40.00 feet Westerly of, when measured at right





REAL PROPERTIES

AGR

0.00



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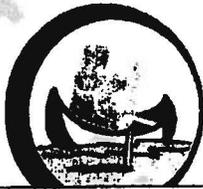
**DEPARTMENT OF PUBLIC WORKS
COUNTY SURVEYOR'S OFFICE**

angles or radial to, said construction centerline of NE 15th Avenue at station 69+12.56, and there terminating, all in Clark County, Washington.

Bearings used hereon are based on Washington State Plane Coordinates, South Zone, NAD(83) 91 adjustment. The control scheme is on file at the Clark County Surveyor's office.

This description contains 70,892 square feet as calculated by the double meridian distance method.





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COUNTY SURVEYOR'S OFFICE

EXHIBIT "B-1"
NE 15th AVENUE CONSTRUCTION CENTERLINE DESCRIPTION

A strip of land of varying width lying in the west 1/2 of Section 14, Township 3 North, Range 1 East of the Willamette Meridian, the centerline of said strip being more particularly described as follows:

Beginning at a point that point bears North 77°10'37" East 979.24 feet from a brass cap marking the southwest corner of said Section 14, said point being designated as Engineer's station 34+42.76; thence from a tangent which bears North 10°38'12" West, along the arc of an 1150.00 foot radius curve right through a central angle of 28°13'26" a distance of 566.49 feet; thence North 17°35'14" East 292.66 feet; thence along the arc of an 1150.00 foot radius curve left through a central angle of 8°51'47" a distance of 177.89 feet; thence North 8°43'26" East 966.41 feet; thence along the arc of a 5800.00 foot radius curve right through a central angle of 3°37'27" a distance of 366.87 feet; thence along the arc of a 5800.00 foot radius curve left through a central angle of 4°11'41" a distance of 424.64 feet; thence North 8°09'12" East 1301.10 feet; thence along the arc of a 5800.00 foot radius curve left through a central angle of 6°22'20" a distance of 645.07 feet; thence North 1°46'51"E 337.15 feet to a point on the North line of said Section 14, said point bears North 88°38'27" West 1143.42 feet from a brass cap marking the north 1/4 corner of said Section 14, and there terminating, all in Clark County, Washington.

Bearings hereon use are based on the Washington State Plane Coordinate System, South Zone, NAD 83/91. Control scheme is on file at the County Surveyor's office.



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(360) 397-6118, EXTENSION 4372 • FAX (360) 397-6087 • TDD (360) 397-6057



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COUNTY SURVEYOR'S OFFICE

EXHIBIT "B-2"
WILLIAM SMITH ROAD CENTERLINE DESCRIPTION

A strip of land of varying width lying in the Northwest 1/4 of Section 14, Township 3 North, Range 1 East of the Willamette Meridian, the centerline of said strip being more particularly described as follows:

Beginning at a point that point bears North 1°46'50" East 924.00 feet from a brass plug marking the West 1/4 corner of said Section 14, said point being designated as Engineer's station 0+00.00; thence South 88°40'35" East 2633.62 feet to a point that bears South 1°51'06" West 1712.21 feet from a brass cap marking the North 1/4 corner of said Section 14, and there terminating, all in Clark County, Washington.

Bearings hereon use are based on the Washington State Plane Coordinate System, South Zone, NAD 83/91. Control scheme is on file at the County Surveyor's office.



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(360) 397-8118, EXTENSION 4372 • FAX (360) 397-8087 • TDD (360) 397-8057

ATTACHMENT 2

MAIL TAX STATEMENTS TO:
Unchanged

AFTER RECORDING RETURN TO:
Jordan Ramis PC
Attn: James D. Howsley
1499 S.E. Tech Center Place, Suite 380
Vancouver, WA 98683

This space provided for recorder's use.

INSTRUMENT TITLE: DEVELOPMENT AGREEMENT

GRANTOR(S): WHIPPLE CREEK VILLAGE, LLC

GRANTEE: CLARK COUNTY

ABBREVIATED LEGAL DESC: East Portion Lot 9, and Lots 11, 12 & 13, of
MOUNTAIN VIEW ACRES

FULL LEGAL DESC: See Exhibit A to This Document

ASSESSOR'S PROPERTY TAX
PARCEL ACCOUNT NUMBER(S): 117850000, 117860000, 117870000, 117880000,
117890000

REFERENCE NUMBER OF
RELATED DOCUMENTS: 3950192

DEVELOPMENT AGREEMENT

Effective Date: _____, 2016

PARTIES:

Whipple Creek Village LLC (“Developer”) is the owner of APNs 117850000, 117860000, 117870000, 117880000, and 117890000 (“Property”). The legal description for this parcel is attached as Exhibit A.

Clark County is a Washington municipal corporation (“County”), and is responsible for land use planning and permitting pursuant to the Growth Management Act.

Developer and County are collectively referred to as the Parties.

AUTHORITIES

The parties are authorized to enter this Development Agreement by RCW 36.70B.170(1), and Clark County Development Code (“CCDC”) Chapter 40.350.020.K.

County Code Section 40.500.010B.3 authorizes the County board to approve a development agreement for a longer period than the seven year time period that applies to most land divisions under Section 40.500.010B.1.

RECITALS:

1. County and Developer’s predecessor in interest executed a development agreement regarding a portion of the Property effective February 15, 2005, Recording No. 3950192, (the “2005 Development Agreement”) and the Owners’ interest in that agreement was assigned to Developer, in accordance with its Section 7, as shown on Exhibit ___ attached hereto.
2. County previously approved an 81 lot single family townhome subdivision for a portion of the Property (APNs 117850000 and 117860000), land use case file numbers PLD2008-00074; SEP2008-00116; and EVR2008-00087, in the Final Order dated March 31, 2009, attached as Exhibit B (the “2009 Approval”).
3. County Code Section 40.500.010B.1 in effect when this preliminary land division vested subjected the development to five (5)years after the approval.” The five year period effectively extended the 2009 Approval until January 14, 2014 .

4. Commencing in 2010, the Board of Commissioners extended the preliminary plat approval of projects and has renewed the extension on numerous occasions. This development approval will expire December 31st of 2016.

5. For the 2009 Approval, Developer's predecessor in interest satisfied the requirements of transportation concurrency approval in CCDC 40.350.020.E, and reserved 61 am peak hour trips and 82 pm peak hour trips pursuant to CCDC 40.350.020.J. Confirmation of the concurrency approval is attached as Exhibit C.

6. Subsequent to the 2009 Approval, additional properties (APNs 117870000, 117880000 and 117890000) were added to the ownership and now the Developer desires to coordinate development of the entire Property.

7. The Developer desires to utilize the vehicle trips and reserved capacity from Exhibit C for the development shown on Exhibit D, in accordance with CCDC 40.350.020.K.

8. The portion of the Property governed by the 2009 Approval was not built pursuant to the 2009 Approval, and Developer now desires to develop the Property according to the site plan attached as Exhibit D.

9. The 2009 Approval had a density of 15.5 units per net developable acre (after deducting roads and open space), with an average lot size of 2801 square feet. The proposed site plan will have a reduced density of 10.5 units per net developable acre, with an average lot size of 4124 square feet, which is a 47% increase in the area of the average lot. The change is to accommodate 100 lots designated as 55+ housing and 41 lots designated as standard attached housing.

10. County seeks improved options for senior housing as described in Section 2 of the Aging Readiness Plan prepared by the Commission on Aging. The plan found that "most homes are not designed to accommodate the needs of older adults" and that 35% of County housing stock is single story. The County finds the proposed change from townhomes to single story detached housing will improve the supply of needed housing for County seniors.

11. Section 1 of the Aging Readiness Plan emphasized proximity to open space is a benefit, and County finds the new site plan includes 3.69 acres of open space, plus a central park and pedestrian path, which were not included in the 2009 Approval, and will improve the availability of open space for seniors.

12. The Housing Element of the County Comprehensive Plan projects the number of senior households will increase to 67,681 by 2024. Table 2.5. It found that: "The majority of the elderly populations prefer to live independently in family units or alone" and that the GMA compels the provision of land and opportunity for a variety of housing

types. The County finds the proposed subdivision supports the GMA and Comprehensive Plan by providing housing units designed for seniors.

13. County Housing Policy 2.7.1 describes the strategy of “Recognition of Senior Housing Units as a housing type” in support of the Goal to “Support diversity in the mix of housing types in the community.” County finds the proposed subdivision supports this policy and goal by designing dwelling units for seniors which differ from the common types of new housing.

AGREEMENT

NOW, THEREFORE, the Parties agree as follows:

Revised Development Plan Submittal

Developer agrees to submit a land use application for a zone change and subdivision for senior housing substantially similar to the development shown on Exhibit D within ____ days of the date of this Development Agreement.

Vesting of Transportation Concurrency.

The County agrees the certificate of concurrency on Exhibit C was lawfully issued and remains in effect for the Property, and can be transferred and used for the development shown on Exhibit D.

Traffic Impact Fees

Developer agrees to pay the traffic impact fees for the project at the rate in effect when each building or site plan is approved.

Vesting of Transportation Impact Fee Credit.

The County agrees the provisions of Section 2 from the 2005 Development Agreement remain in effect and govern the transportation impact fee credit for a full width dedication for NE 15th Ave to the owners of the credits.

Traffic Studies.

The Parties agree that senior housing generates fewer auto trips on a per unit basis than conventional housing, and that the ITE Trip Generation Manual accurately reflects the reduced number of trips. According to that manual, the number of p.m. peak hour trips for the proposed 100 senior housing units plus 41 family units equals the number of trips authorized in the 2009 Approval. County agrees that because the current proposal will generate no more vehicle trips than the 2009 Approval, no traffic study will be required, so long as the land use approval includes a condition requiring that a covenant be recorded naming the County as a beneficiary that limits the number of housing units to 141, with 100 restricted to seniors.

MISCELLANEOUS PROVISIONS

Recitals. Each of the Recitals contained herein are intended to be, and are incorporated as, covenants between the Parties and will be so construed.

Counterparts. This Agreement may be executed in counterparts; however all signature pages will be recorded together, and the complete recorded Agreement will constitute the final instrument.

Effective Date. This Agreement is effective on the date of recording.

Termination. This Agreement will terminate upon the mutual agreement of the Parties in writing, which will be recorded.

County's Reserved Authority. Notwithstanding anything in this Agreement to the contrary, the County will have the authority to impose new or different regulations to the extent required by a serious threat to public health and safety as required by RCW 36.70B; provided, however that traffic congestion generally is not a serious threat to public health and safety but the impact of congestion at any particular location may degrade to a level that constitutes a safety hazard, and that such action will only be taken by legislative act of the Clark County Board of Commissioners after appropriate public process.

Authorization. The persons executing this Agreement on behalf of Developer and the County are authorized to do so and, upon execution by such parties, this Development Agreement will be a valid and binding obligation of such parties in accordance with its terms. The Parties have obtained any and all consent required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby.

Run with the Land. This Agreement will run with the land and be binding on the Parties' successors and assigns, and will be recorded with the Clark County Auditor.

Term. The Term of this Agreement will expire on 5 years following the date of execution, unless earlier extended by the Parties.

Public Hearing. The Clark County Board of Commissioners has approved execution of this Agreement by resolution after a public hearing.

Dispute Resolution. Should a disagreement arise between the Parties, the Parties agree to attempt to resolve the disagreement by first meeting and conferring. If such meeting proves unsuccessful to resolve the dispute, the disagreement may be resolved by a civil action.

Venue. This Agreement will be construed in accordance with the laws of the State of Washington, and venue is in the Clark County Superior Court.

Performance.

Failure by any Party at any time to require performance by the other Parties of any of the provisions hereof will not affect the Parties' rights hereunder to enforce the same, nor will any waiver by a Party of the breach hereof be held to be a waiver of any succeeding breach or a waiver of this clause.

Severability. If any portion of this Agreement will be invalid or unenforceable to any extent, the validity of the remaining provisions will not be affected thereby. If a material provision of this Agreement is held invalid or unenforceable such that a Party does not receive the benefit of its bargain, then the other Parties will renegotiate in good faith terms and provisions that will effectuate the spirit and intent of the Parties' agreement herein.

Inconsistencies. If any provisions of the Clark County Development Code and land use regulations are deemed inconsistent with this Agreement, the court shall first attempt to harmonize the provisions and if unable to do so, the provisions of this Agreement will prevail, excepting the County's reserved authority under the Section titled "County's Reserved Authority".

Amendments. This Agreement may only be amended by mutual written agreement of the Parties, and all amendments will be recorded in the Clark County deed records.

Survival. Any covenant or condition set forth in this Agreement, the full performance of which is not specifically required prior to the expiration or earlier termination but which by its terms is to survive the termination of this Agreement, will survive the expiration or earlier termination of this Agreement and will remain fully enforceable thereafter.

No Benefit to Third Parties. The Parties are the only parties to this Agreement and are the only parties entitled to enforce its terms, except as otherwise specifically provided in this Agreement. There are no third-party beneficiaries.

Entire Agreement. This Agreement constitutes the entire agreement between the Parties as to the subject matter, and merges, supersedes, and terminates the Prior Development Agreements.

Notices. All notices will be in writing and may be delivered by personal delivery, by overnight courier service, or by deposit in the United States Mail, postage prepaid, as certified mail, return receipt requested, and addressed as follows:

County: _____

With a copy to: _____

Whipple Creek Village LLC

Whipple Creek Village LLC
Patrick Ginn
Jeff Creagan

With a copy to: Jordan Ramis, PC
Attn: James D. Howsley
1499 SE Tech Center Place, Suite 380
Vancouver, WA 98683

Notices will be deemed received by the addressee upon the earlier of actual delivery or refusal of a party to accept delivery thereof. The addresses to which notices are to be delivered may be changed by giving notice of such change in address in accordance with this notice provision.

Time is of the Essence. Time is of the essence in the performance of and adherence to each and every provision of this Agreement.

Non-waiver. Waiver by any Party of strict performance of any provision of this Agreement will not be deemed a waiver of or prejudice a Party's right to require strict performance of the same or any other provision in the future. A claimed waiver must be in writing and signed by the Party granting a waiver. A waiver of one provision of this Agreement will be a waiver of only that provision. A waiver of a provision in one instance will be a waiver only for that instance, unless the waiver explicitly waives that provision for all instances.

Headings, Table of Contents. The section headings are for convenience in reference and are not intended to define or limit the scope of any provision of this Agreement.

Interpretation of Agreement; Status of Parties. This Agreement is the result of arm's-length negotiations between the Parties and will not be construed against any Party by reason of its preparation of this Agreement. Nothing contained in this Agreement will be construed as creating the relationship of principal and agent, partners, joint venturers, or any other similar relationship between the Parties.

Future Assurances. Each of the Parties will promptly execute and deliver such additional documents and will do such acts that are reasonably necessary, in connection with the performance of their respective obligations under this Agreement according to the Schedule so as to carry out the intent of this Agreement.

Signatures appear on the following pages.

EXHIBIT A

Lots 9, 10, 11, 12 and 13 of MOUNTAIN VIEW ACRES, recorded in Book "D" of Plats, page 074, in Section 14, Township 3 North, Range 1 East, Willamette Meridian, Clark County, Washington.

EXCEPT that portion of Lot 9 lying West of the East line of NE 15th Avenue as conveyed by deeds recorded under Auditor's File Nos. 4114159, 4162120 and 4165351.

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

EXHIBIT B

Final Order 21 pages

**BEFORE THE LAND USE HEARINGS EXAMINER
CLARK COUNTY, WASHINGTON**

REGARDING THE APPLICATION FOR A)	FINAL ORDER
PRELIMINARY PLAT TO SUBDIVIDE)	
APPROXIMATELY 8.5 ACRES INTO 81)	WHIPPLE CREEK VILLAGE
RESIDENTIAL TOWNHOUSE LOTS/UNITS)	PLD2008-00074; SEP2008-00116;
PURSUANT TO THE TOWNHOUSE STANDARDS IN)	EVR2008-00087
THE R-18 ZONING DISTRICT IN THE)	
UNINCORPORATED CLARK COUNTY, WA.)	

APPROVED WITH CONDITIONS

INTRODUCTION

The applicant proposes to divide the subject site into 81 single-family attached residential lots. The subject site is located on the east side of NE 15th Avenue and on the east side of NE 173rd Street. The following is a comprehensive plan, zoning, and use chart of the area surrounding the site: south and west of the site is vacant R-18, while east and north is community commercial and also vacant. The site itself is forested and vacant.

Location: NE 15th Avenue and NE 173rd Street; Legal Description: Tax Lot 10 (117860) and a portion of Tax Lot 9 (117850) in the Northwest quarter of Section 14, Township 3 North, Range 1 East of the Willamette Meridian

Applicant: Brown/Andersen
112 West 11th Street, Suite 100
Vancouver, WA 98660

Owner: Timothy P. Brown Etux
112 West 11th Street, Suite 100
Vancouver, WA 98660

Comp Plan: Urban Medium Density

Zoning: R-18

Applicable Laws: Clark County Code: 15 (Fire Prevention), 40.220.020 (Residential Districts), 40.320 (Landscaping), 40.260.230 (Townhouses), 40.350 (Transportation), 40.350.020 (Transportation Concurrency), 40.380 (Stormwater & Erosion Control), 40.500 & 40.510 (Procedures), 40.520.040 (Site Plan Review), 40.540 (Land Division), 40.570 (SEPA), 40.570 (SEPA Archaeological), 40.610 (Impact Fees), 24 (Public Health), RCW 58.17, and the Clark County Comprehensive Plan

Vesting:

January 12, 2009.

HEARING AND RECORD

The Public Hearing on this matter was held on March 26, 2009 and the record was closed at the conclusion of the hearing. Records of all testimony received are filed at the Clark County Department of Community Development.

Pre-Hearing Public Comments:

Hearing Summary:

Richard Daviau, the lead County Planner on this application, introduced the site, highlighted key issues in the Staff Report and made a recommendation of approval. In doing so he testified that Staff has additions to the staff report and recommends (see Exhibit 17). These were:

1. A Class IV G Forest Practice permit will be required for the removal of trees on the site. Approval of such a permit is required prior to final construction plan approval and this requires a new Condition of Approval A-7 "Approval of a Class IV G Forest Practice permit will be required."
2. In Finding 4 of the staff report, L3 Landscape Standards are required along the north property line. However, only an L2 is required because a public street will separate the proposed development from the property to the north. Also, staff required the required buffers be placed in a separate tract or easement and a home owners association be formed. The applicant has indicated they do not intend to form a home owners association. Condition D-2 should be modified:

"The applicant shall submit a landscape plan with the final plat review that identifies L2 Landscape Standards (in a 5-foot buffer) along the site's frontage with NE 15th Avenue and NE 176th Street, L1 Landscape Standards (in a 5-foot buffer) along the other property lines. Because the required buffer will be located within the lot lines of townhouse lots, a covenant is warranted requiring the owners of the lots to maintain the buffer. (See Finding 5)"

3. Right-of-way Landscaping is not required for the proposed development.
4. There are two parcel associated with this application (117850 and 117860). A development agreement exists regarding TIF on parcel 117850 (see Tab O of the submittal). Based on this development agreement, Conditions D-8e and E2 should be modified:

For Townhouse units located on parcel 117860 the applicant shall pay the TIF as required by the ordinance effective April 1st, 2009, unless the Examiner renders this decision prior to April 1st, in which case the amounts specified in the Staff Report shall apply.

Kurt Stonex, testifying for the applicant suggested alternative language in point four which would have permitted amendment to the development agreement and avoided any post-decision review. To that effect Michael Odren, the applicant's landscape architect offered alternative language, via Exhibit 18:

1. Please revise the second sentence of Condition of Approval D-2, as found on page 16, to read, "*A covenant running with the land shall be recorded with the final plat that requires the owners of lots containing the required landscape buffers to maintain the landscaping in accordance with the approved final landscape plan.*" The applicant accepted Staff's revision to D-2 as identified above in lieu of this language.
2. Please add to the end of Condition of Approval D-8.e, as found on page 17, and Condition E-2, as found on page 18, a sentence which reads, "*The applicant shall pay impact fees based on the number of dwelling units as follows and as per the Development Agreement between the Property Owners and Clark County as recorded under Auditor's Recording Number 3950192 and/or as amended or revised.*" The Staff, however, insisted on referencing lot numbers. The Examiner expressed an opinion that the lots can be identified and flexibility to amend at a future date preserved.
3. Please move Condition of Approval D-9, as found on page 17, to be a condition of issuance of an Occupancy Permit under section F. Please revise the condition to read, "*All required landscaping on individual lots shall be installed prior to issuance of occupancy permits for each lot.*" There was some discussion of this point around the issue of whether rear setback landscaping was likely to be affected by construction. The Examiner has allowed landscaping to be installed prior to occupancy in prior cases on the theory that landscaping at the time of the final plat can be damaged or interfere with construction and that occupancy permit was a sufficient hammer for the lot owner to landscape on their lot.

FINDINGS

Only issues and approval criteria raised in the course of the application, during the hearing or before the close of the record are discussed in this section. All approval criteria not raised by staff, the applicant or a party to the proceeding have been waived as contested issues, and no argument with regard to these issues can be raised in any subsequent appeal. The Examiner finds those criteria to be met, even though they are not specifically addressed in these findings. The following issues were either raised by the applicant, addressed by staff in its report, or by agency comments on the application, and the Examiner adopts the following findings:

LAND USE:

Finding 1 - Density

The subject site is 7.38 acres and is located in the R-18 zoning district. This zone has minimum density requirement of 12 units per acre and a maximum density requirement of 18 units per acre. Pursuant to CCC 40.220.020 (C2)(c), minimum densities shall be calculated based on the site minus any roads and required landscaping. The area of proposed right-of-way dedication/roads is 1.92 acres and the area of required landscaping is .25 acres; therefore, the net site area is 5.21 acres. Based on a net area of 5.21 acres and a minimum density of 12 units per acre, 63 units is the minimum density allowed. Pursuant to CCC 40.220.020 (C2)(d), maximum densities shall be calculated based on the site minus any roads. Based on a net area of 5.46 (subtracting only the 1.92 acres of roads), and a maximum density of 18 units per acre, 98 units is the maximum density allowed. The proposed 81 lots comply with density requirements.

Finding 2 - Townhouse Standards

Pursuant to CCC 40.260.230 - Table 1, R-18 townhouse lots are required to be at least 1,800 square feet, a minimum width of 25 feet, and a minimum depth of 50 feet. All lots in the proposed subdivision comply with the area and dimensional requirements.

Pursuant to CCC 40.260.230, no more than 40 percent of the total front façade of each unit may be garage door area. From the submitted architectural rendering, it appears this requirement is met; however, the plan is not to scale. Prior to final plat approval, the applicant needs to submit an elevation plan (to scale) that identifies no more than 40 percent of the total front façade of each unit is garage door area. (Condition D-1)

Finding 3 - Setbacks

Although details of home construction on the proposed lots have not been provided or required, the following setbacks apply to the proposed lots:

- Eighteen foot front or side setback for garages (or other similar vehicular shelter)
- Ten foot front setback for non-garage structures
- Ten foot street side setback
- 0-foot side setback (for the attached sides)
- Five foot side and rear setback for all other setbacks in the plat

Building setbacks are defined as the minimum horizontal distance between the property line and the foundation wall, exclusive of other building elements.

Finding 4 - Landscape Buffers Pursuant to CCC Table 40.320.010-1, L3 Landscape Standards are required along the north property line. However, only an L2 is required because a public street will separate the proposed development from the property to the north. Also, staff required the required buffers be placed in a separate tract or easement and a home owners association be formed. The applicant has indicated they do not intend to form a home owners association. Condition D-2 should be modified:

The applicant shall submit a landscape plan with the final plat review that identifies L2 Landscape Standards (in a 5-foot buffer) along the site's frontage with NE 15th Avenue and NE 176th Street, L1 Landscape Standards (in a 5-foot buffer) along the other property lines. Because the required buffer will be located within the lot lines of townhouse lots, a covenant is warranted requiring the owners of the lots to maintain the buffer. (See Condition D-2)

Finding 5 - State Platting Standards (RCW 58.17)

With conditions of approval, staff finds the proposed subdivision will make appropriate provisions for public health, safety, and general welfare of the community. Connection of the proposed residences to public water and sewer, as well as treatment of any increase of stormwater runoff, will be provided, to protect groundwater supply and integrity. Impact Fees will also be required to contribute a proportionate share toward the costs of school, park and transportation provisions, maintenance and services.

Conclusion (Land Use):

The proposed preliminary plan meets the land use requirements of the Clark County Code subject to conditions.

ARCHEOLOGICAL:

Finding 6

The proposal is located within a high probability area for containing cultural resources. An archaeological predetermination was completed for the site that included a pedestrian search (utilizing parallel adjacent transects and meandering transects) and eight shovel test probes. No cultural materials were found during the surface or subsurface archaeological field work and Archaeological Services of Clark County recommends that no further archaeological work is necessary. The Washington State Department of Archaeology has reviewed the predetermination and agrees with the recommendations (see Exhibit 8).

If any cultural resources are discovered in the course of development construction, the Office of Archaeology and Historic Preservation in Olympia and Heritage Trust of Clark County should be notified. Failure to comply with these State requirements may constitute a Class C felony, subject to imprisonment and/or fines. (See Condition D-8c)

TRANSPORTATION CONCURRENCY:

Finding 7 - Trip Generation

The applicant has submitted a traffic study that indicates that the proposed Whipple Creek Village Subdivision will consist of 81 residential townhomes. The applicant's traffic study has estimated the weekday a.m. peak-hour trip generation at 61 new trips, while the p.m. peak-hour trip generation is estimated at 82 new trips using nationally accepted data published by the Institute of Transportation Engineers.

The applicant has submitted a traffic study under the provisions of Clark County Code section 40.350.020 (D)(1). The site is located near the intersection of NE 15th Avenue/NE 179th Street – Vancouver.

Finding 8 - Site Access

Congestion, or concurrency, level of service (LOS) standards are not applicable to site accesses or intersections that are not regionally significant; however, the LOS analysis provides

information on the potential congestion and safety problems that may occur in the vicinity of the site.¹

The applicant's traffic study shows that NE 176th Street and NE 173rd Street will be constructed as a part of this development. NE 176th Street is proposed to be constructed as a public urban local access road with full access to/from NE 15th Avenue. NE 173rd Street will be extended into the proposed subdivision from the intersection of NE 173rd Street/NE 14th Avenue, which was constructed as a part of the NE 15th Avenue capital improvement project. NE 173rd Street is also proposed as a public urban local access road with full access to/from NE 15th Avenue.

NE 15th Avenue is classified as an Urban Minor Arterial (M-2cb), as identified in the Clark County Arterial Atlas. As such, there are two applicable portions of the Clark County Code that would regulate accesses along NE 15th Avenue. These code sections are as follows:

- CCC 40.350.030 (B)(3) Table 40.350.030-2 Design Criteria for Urban Arterials and Urban Collectors. This table identifies the minimum full access intersection spacing at 500 feet. Because the NE 173rd Street/NE 15th Avenue intersection was established by the NE 15th Avenue capital improvement project, it is appropriate to measure intersection spacing from that location. According to the applicant's traffic study the intersection spacing between the intersection of NE 173rd Street/NE 15th Avenue and NE 176th Street/NE 15th Avenue is greater than 600 feet. Furthermore, Staff measured the spacing of the proposed NE 176th Street/NE 15th Avenue intersection from NE 179th Street. Staff found that the intersection spacing of NE 179th Street/NE 15th Avenue and NE 176th Street/NE 15th Avenue is approximately 800 feet. Because these distances are clearly greater 500 feet, the proposed full access driveway location does comply with code requirements.
- CCC 40.350.030 (B)(4)(d)(2) which states, "...In order to preserve capacity and promote safety, arterials shall include raised medians to restrict cross traffic movements. In general, full access intersections, signalized and non-signalized, on arterials will be permitted only with other county, state and city roads as are designated on the Arterial Atlas, as recommended. ..." As a part of the NE 15th Avenue 2006 capital improvement project median curb was placed per design. This median curb design included access breaks in anticipation for locations of full access. The applicant's proposed subdivision plan shows that the locations of the proposed NE 173rd Street and NE 176th Street are accommodated by the constructed median curb access breaks. Therefore, the proposed access locations comply with code requirements.

The traffic study indicates that the intersections of NE 176th Street/NE 15th Avenue and NE 173rd Street/NE 15th Avenue, will have an estimated LOS B or better through the 2013 build-out horizon. The study also shows that the LOS was evaluated in both the am and pm peak

¹ Traffic conditions are usually expressed using a scale that quantifies the ability of a facility to meet the needs and expectations of the driver. This scale is graded from A to F and is referred to as level-of-service (LOS). A driver who experiences an LOS A condition would expect little delay. A driver who experiences an LOS E condition would expect significant delay, but the traffic facility would be just within its capacity to serve the needs of the driver. A driver who experiences an LOS F condition would expect significant delay with traffic demand exceeding the capacity of the facility with the result being growing queues of traffic.

hour traffic conditions in existing and build-out scenarios, meeting the requirements as outlined in Clark County Code Section 40.350.020 (G)(1)(d) & (f). County Staff concurs with the traffic study findings.

Although the proposed intersections of NE 176th Street/NE 15th Avenue and NE 173rd Street/NE 15th Avenue are accommodated by existing median curb access breaks, the existing signage, pavement striping and markings do not facilitate left turning movements from north/southbound NE 15th Avenue. Because this development is proposing to take advantage of both access break locations, the applicant should prepare and submit a signing and striping design to Public Works Transportation Division for review and approval. This signing and striping design should facilitate southbound left-turning movements at the intersections of NE 176th Street/NE 15th Avenue and NE 173rd Street/NE 15th Avenue. (See Condition A-2a)

Finding 9 - Concurrency

The proposed development is required to meet the standards established in CCC 41.350.020(G) for corridors and intersections of regional significance within two miles of the proposed development.

The applicant's study shows a one-mile radius study area, which includes regionally significant unsignalized and signalized intersections.

County Staff has performed an evaluation of the operating levels, travel speed and delay standards represented in the County's model. The County's model consists of the study intersections and corridors of regional significance in the development area yielding operating levels, travel speed and delay standards, during the pm peak hours with a LOS better than the minimum allowable LOS E for unsignalized intersections.

The County's model also evaluated the operating levels, travel speeds and delay times for the regionally significant signalized intersections. This analysis showed that individual movements during peak hour traffic conditions had approach delays that did not exceed the maximum 240 seconds of delay in the 2013 build-out horizon.

The County has determined that this development can comply with adopted Concurrency Standards.

The County incurs costs to analyze the proposed development's impacts; therefore, the applicant shall reimburse the County for costs incurred in running the concurrency model. (See Condition A-2c)

SAFETY:

Where applicable, a traffic study shall address the following safety issues:

- traffic signal warrant analysis,
- turn lane warrant analysis,
- accident analysis, and
- any other issues associated with highway safety.

Mitigation for off-site safety deficiencies may only be a condition of approval on development in accordance with CCC 40.350.030(B)(6) The code states that "nothing in this section shall be

construed to preclude denial of a proposed development where off-site road conditions are inadequate to provide a minimum level of service as specified in Section 40.350.020 or a significant traffic or safety hazard would be caused or materially aggravated by the proposed development; provided, that the applicant may voluntarily agree to mitigate such direct impacts in accordance with the provisions of RCW 82.02.020.”

Finding 10 - Traffic Signal Warrants

The applicant’s traffic study has determined that the unsignalized intersections analyzed are anticipated to operate at acceptable levels in the build-out year. The County concurs with the applicant’s findings. Because these unsignalized intersections will operate at an acceptable level, a signal warrant analysis is not necessary. Therefore, no further analysis is required.

Finding 11 - Turn Lane Warrants

Turn lane warrants are evaluated at unsignalized intersections to determine if a separate left or right turn lane is needed on the uncontrolled roadway.

The applicant’s traffic study reviewed the site access for turn lane warrants and found that with the low traffic volumes, turn lanes would not be warranted at the studied intersection. County staff agrees with the traffic study findings.

Finding 12 - Historical Accident Situation

The applicant’s traffic study analyzed the accident history within the vicinity of the site. The intersection accident rates do not exceed thresholds that would warrant additional analysis. Therefore, further analysis is not required.

Conclusion

In summary, the development application, as proposed, subject to the conditions of approval stated above meets the concurrency requirements.

TRANSPORTATION

Finding 13 - Pedestrian/Bicycle Circulation Plan

Pedestrian circulation facilities in compliance with the Americans with Disabilities Act are required in accordance with the provisions of Section CCC 40.350.010. The preliminary plat shows a 6 foot detached sidewalk existing along NE 15th Avenue, an Urban Minor Arterial (M-2cb). NE 16th Avenue and NE 175th Streets, both shown as full width Urban Local Residential Access, NE 173rd Circle and NE 174th Circle, both shown as full width Urban Private Roads, NE 173rd Street, shown as a partial width Urban Local Residential Access, and NE 176th Street, shown a partial width Urban Neighborhood Circulator, are all shown accordingly to their respective Clark County dimensional requirements. In addition, both private roads, NE 173rd and NE 174th Circle, propose a pedestrian connection from their terminations to NE 15th Avenue. Bike lanes are not required for Urban Local Access roads or private. Based upon this information, staff finds that the proposed pedestrian/bicycle circulation complies with Section CCC 40.350.010.

Finding 14 - Circulation Plan

In compliance with Section CCC 40.350.030(B)(2), the circulation plan shall provide adequate cross-circulation for serving the proposed subdivision and allow future developments to meet the cross circulation standards. NE 173rd, NE 175th, and NE 176th Streets will provide east-

west cross circulation. North-south cross circulation can be provide when the adjoining parcels north and south of the site develop by extending the partial width streets, NE 173rd and NE 176th Streets. Based upon this information, staff finds that the proposed circulation complies with Section CCC 40.350.030(B)(2).

Finding 15 - On-Site Roads

NE 16th Avenue and NE 175th Streets as shown on the preliminary plat are proposed as Urban Local Residential Access Roads, NE 173rd Circle and NE 174th Circle, as proposed as Urban Private Roads, all meet the dimensional requirements in accordance with their respective Clark County dimensional requirements. Based upon this information all on-site roads, as shown on the preliminary plat, staff finds that the proposed circulation complies with Section CCC 40.350.030(B)(2).

Finding 16 - Access Management

As shown on the preliminary plat no residence will take direct access onto NE 15th Avenue.

Finding 17 - Frontage Roads

NE 15th Avenue, as shown on the preliminary plat is an existing Urban Minor Arterial (M-2cb) built as a publicly funded county project meeting Clark County standards. NE 173rd Street is proposed on the preliminary plat as an Urban Local Residential Access Road, and NE 176th Street, as proposed as an Urban Neighborhood Circulator, both meet the dimensional requirements in accordance with their respective Clark County dimensional requirements.

Finding 18 - Intersection Design

The intersections of NE 15th Avenue with NE 173rd Street and NE 15th Avenue with NE 176th Street exceeds the cross circulation distance of 800 feet in accordance with CCC 40.350.030(B)(2)(c)(1)(a). The applicant has submitted a request for a Road Modification to allow an intersection distance of approximately 880 feet. Staff is making a recommendation for approval. (See Finding 22)

Finding 19 - Sight Distance

The application has provided a Sight Distance Certification prepared by Charbonneau Engineering, Inc., dated December 2008. The certification dates that NE 15th Avenue's posted speed limit or 40 mph CCC Table 40.350.030-11 a vehicle accessing NE 15th Avenue from either NE 173rd or NE 176th Streets shall see, both north and south, a minimum distance of 400 feet. The certification states that the county's sight distance of more than 830 feet when looking north and 725 feet when looking south from NE 176th Street onto NE 15th Avenue is obtained. The certification states that the county's sight distance of 530 feet when looking north and 620 feet when looking south from NE 173rd Street onto NE 15th Avenue is obtained. Based upon this information staff finds that the sight distance at the two intersections complies with Section CCC Table 40.350.030-11.

Finding 20 - Street Extension

Both NE 175th Street and NE 176th Streets, as shown on the preliminary plat, are stubbed at the easterly boundary of the site. NE 175th Street has a distance of less than 150 feet; therefore, a turnaround as in accordance with CCC 40.350.030(B)(9)(b)(2) is not required. Staff is recommending approval of a Road Modification for NE 176th which will exceed the 150 distance in accordance with CCC 40.350.030(B)(9)(b)(2). (See Finding 22)

Finding 21 - Private Roads

The proposed private road shall be privately owned and privately maintained (see Condition D-8d).

Finding 22 - Road Modifications

The applicant has applied for a Road Modification and has requested the follow variations to Clark County's Street and Road Standards:

- Design Modification from Maximum Block Length Standard CCC 40.350.030(B)(2)(C)(1)(a) based on criteria 2 and 3.
- Design' Modification from Temporary Turnaround Requirement in Table 40.350.030-4 based on criteria 1.
- Administrative Modification from Standard Drawings 13 and 14 based on criteria 2 and 3.

Staff has reviewed the applicant's narrative and concurs with the applicant's justifications for the requested Road Modifications. Therefore, the Examiner approves these requested road modifications. (See Exhibit 13 for a complete discussion of these requests)

Conclusion (Transportation):

The proposed preliminary plan, subject to conditions identified above, meets the transportation requirements of the Clark County Code.

STORMWATER:

Finding 23 - Applicability

Stormwater and Erosion Control Ordinance CCC 40.380 applies to development activities that results in 2,000 square feet or more of new impervious area within the urban area; the platting of single-family residential subdivisions in an urban area; and all land disturbing activities, except those exempted in Section CCC 40.380.030(A).

The project will create more than 2000 square feet of new impervious surface, involves platting of single-family residential subdivision, and it is a land disturbing activity not exempted in Section CCC 40.380.030(A). Therefore, this development shall comply with the Stormwater and Erosion Control Ordinance, CCC 40.380.

The erosion control ordinance is intended to minimize the potential for erosion and a plan is required for all projects meeting the applicability criteria listed in CCC 40.380,050. This project is subject to the erosion control ordinance.

Finding 24 - Stormwater Proposal:

Stormwater quality will be provided by a bio-filter swale facility and a media filter and quantity control will be provided by an above ground detention point prior to release into a proposed storm sewer system that will route stormwater to release point within the habitat area adjacent to Whipple Creek to the east as previously approved with the Cooledge Meadows Subdivision (PLD2006-00001) project located to the northeast. If Whipple Creek subdivision construction begins first, the pertinent storm sewer main with the Cooledge Meadows site will be constructed as part of the development and temporary easements will be dedicated as required by Clark County.

Any runoff onto the site from the south will be intercepted by the improvements to NE 173rd Street associated with the proposed Park Avenue subdivision.

The proposed water quality facility will be designed to treat 70% of the 2-year, 24-hour storms, as required.

The stormwater facility is proposed to be a public facility dedicated to Clark County.

Finding 25 - Site Conditions and Stormwater Issues

The property is 8.31 acres in area with slopes of 0-5% over 63% of the parcel and 5-10% over 37% of the parcel. The preliminary stormwater report indicates that the proposed total area of new impervious surface consisting of roofs, driveways, and streets will be approximately 5.407 acres.

The National Resources conservation service (NRCS, formerly SCS) mapping shows the site to be underlain by Gee soils (GeB), classified by AASHTO as A-6 soils. This soil is designated as hydrologic group "C". CCC 40.380 does not list A-6 soils as suitable for infiltration; therefore, disposal of stormwater runoff by infiltration is not proposed.

In accordance with the provisions of Section CCC 40.380.040(B)(2), all development activities require to prepare a final stormwater control plan shall conduct an analysis of off-site water quality impacts resulting from the development activities and shall mitigate their impacts. This project will be required to perform an offsite analysis extending a minimum of one-fourth of a mile downstream from the development. (See Condition A-3a)

Conclusion (Stormwater):

The project complies with the requirements of Clark County's Stormwater and Erosion control Ordinance. The proposed preliminary stormwater plan, subject to the conditions above, is feasible. Therefore, the requirements of the preliminary plan review criteria are satisfied.

FIRE PROTECTION:

Finding 26

Tom Scott (in the Fire Marshal's Office) reviewed this application.² Building construction occurring subsequent to this application shall be in accordance with the provisions of the county's building and fire codes. Additional specific requirements may be made at the time of building construction as a result of the permit review and approval process. (See Condition E-1)

- a. Fire flow in the amount of 1000 gallons per minute supplied at 20 psi for 60 minutes duration is required for this application. Information from the water purveyor indicates that the required fire flow is available at the site. Water mains supplying fire flow and fire hydrants shall be installed, approved and operational prior to final plat approval. Fire hydrants are required for this application and the indicated number is adequate. (See Condition D-3)

² Tom can be reached at (360) 397-2375 x 4095 or 3323. Information can be faxed to Tom at (360) 759-6063. Where there are difficulties in meeting these conditions or if additional information is required, contact Tom in the Fire Marshal's office immediately:

- b. Fire hydrants shall be provided with appropriate 'storz' adapters for the pumper connection. A 3-foot clear space shall be maintained around the circumference of all fire hydrants. The local fire district chief approves the exact locations of fire hydrants. As a condition of approval, contact Fire District 6 at 360-576-1195 to arrange for location approval.
- c. The roadways and maneuvering areas as indicated in the application meet the requirements of the Clark County Road Standards. The applicant should provide an unobstructed vertical clearance of not less than 13.5 feet, with an all weather driving surface and capable of supporting the imposed loads of fire apparatus. Fire apparatus turnarounds are required and meet the requirements of the Road Standard. (See Condition D-4)
- d. Parallel parking is prohibited on streets that are less than twenty-four (24) feet wide. Streets that are less than twenty-four (24) feet wide shall be posted "NO PARKING" (see Condition D-5).

HEALTH DEPARTMENT:

Finding 27

Submittal of a "Health Department Evaluation Letter" is required as part of the Final Construction Plan Review application. If the Evaluation Letter specifies that an acceptable "Health Department Final Approval Letter" must be submitted, the Evaluation Letter will specify the timing of when the Final Approval Letter must be submitted to the county (e.g., at Final Construction Plan Review, Final Plat Review or prior to occupancy). The Health Department Evaluation Letter will serve as confirmation that the Health Department conducted an evaluation of the site to determine if existing wells or septic systems are on the site, and whether any structures on the site have been/are hooked up to water and/or sewer. The Health Department Final Approval Letter will confirm that all existing wells and/or septic systems have been abandoned, inspected and approved by the Health Department (if applicable). (See Condition D-6)

UTILITIES:

Finding 28

The applicant has submitted utility reviews from Clark Regional Wastewater and Clark Public utilities indicating that public sewer and water is available to the subject site. All lots in the proposed plat must connect to an approved public sewer and water system. A copy of the final acceptance letter from the sewer and water purveyor should be submitted to the Health Department with the final plat mylar. The applicant needs to comply with all requirements of the purveyor. (See Condition D-7)

IMPACT FEES:

Finding 29

All residential lots created by this plat will produce impacts on schools, parks, and traffic, and will be subject to School (SIF), Park (PIF), and Traffic Impact Fees (TIF) per dwelling. The site is within the Ridgefield School District with a SIF of \$2,314.00, Park District 10 with a PIF of \$799.00 (acquisition) & 321.00 (Development), and the Mt. Vista Transportation Subarea with a TIF of \$3,232.67.

Impact fees shall be paid prior to issuance of a building permit for each lot. If a building permit application is made more than three years following the date of preliminary plat approval, the impact fees will be recalculated according to the then-current ordinance rate. (See Condition D-8e & E-2)

FOREST PRACTICES:

Finding 30

A Class IV G Forest Practice permit will be required for the removal of trees on the site. Approval of such a permit is required prior to final construction plan approval and this requires a new Condition of Approval A-7 "Approval of a Class IV G Forest Practice permit will be required."

SEPA DETERMINATION

The likely SEPA determination of Non-Significance (DNS) in the Notice of Development Review Application issued on January 28, 2009 is hereby final.

DECISION

Based upon the proposed plan (identified as Exhibit 5) and the findings and conclusions stated above, the Hearings Examiner APPROVES this request, subject to the understanding that the applicant is required to adhere to all applicable codes and laws, and is subject to the following conditions of approval:

Conditions of Approval

**A Final Construction Plan Review for Land Division
Review & Approval Authority: Development Engineering**

Prior to construction, a Final Construction shall be submitted for review and approval, consistent with the approved preliminary plan and the following conditions of approval:

- A-1 Final Transportation Plan (On-Site & Frontage) - The applicant shall submit and obtain County approval of a final transportation design in conformance with CCC 40.350.

- A-2 Transportation Plan/Off Site (Concurrency):
 - a. Signing and Striping Plan: The applicant shall prepare and submit a signing and striping design to Public Works Transportation Division for review and approval. This signing and striping design shall facilitate southbound left-turning movements at the intersections of NE 176th Street/NE 15th Avenue and NE 173rd Street/NE 15th Avenue. The applicant shall obtain a Work Order with Clark County to reimburse the County for the signing and striping changes needed along the frontage of this development.
 - b. Traffic Control Plan: Prior to issuance of any building or grading permits for the development site, the applicant shall obtain written approval from Clark County Department of Public Works of the applicant's Traffic Control Plan (TCP). The TCP shall govern all work within or impacting the public transportation system.
 - c. Modeling Fees

The applicant shall reimburse the County for the cost of concurrency modeling incurred in determining the impact of the proposed development, in an amount not to exceed \$2,000. The reimbursement shall be made prior to final site plan review.

- A-3 Final Stormwater Plan - The applicant shall submit and obtain County approval of a final stormwater plan designed in conformance with CCC 40.380 and the following conditions of approval:
 - a. This project shall perform an offsite analysis extending a minimum of one-fourth of a mile downstream from the development.
- A-4 Archaeology - A note shall be placed on the face of the final site plan and construction plans as follows:

"If any cultural resources and/or human remains are discovered in the course of undertaking the development activity, the Office of Archaeology and Historic Preservation in Olympia and Clark County Community Development shall be notified. Failure to comply with these State requirements may constitute a Class C Felony, subject to imprisonment and/or fines."
- A-5 Erosion Control Plan - The applicant shall submit and obtain County approval of a final erosion control plan designed in accordance with CCC 40.380.
- A-6 Excavation and Grading - Excavation/grading shall be performed in compliance with Appendix Chapter J of the 2003 International Building Code (IBC); and, drainage facilities shall be provided, in order to ensure that building foundations and footing elevations can comply with CCC 14.04.252.
- A-7 Approval of a Class IV G Forest Practice permit will be required. (Finding 30)

B	Prior to Construction of Development Review & Approval Authority: Development Inspection
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Prior to construction, the following conditions shall be met:

- B-1 Pre-Construction Conference - Prior to construction or issuance of any grading or building permits, a pre-construction conference shall be held with the County.
- B-2 Erosion Control - Prior to construction, erosion/sediment controls shall be in place. Sediment control facilities shall be installed that will prevent any silt from entering infiltration systems. Sediment controls shall be in place during construction and until all disturbed areas are stabilized and any erosion potential no longer exists.
- B-3 Erosion Control - Erosion control facilities shall not be removed without County approval.

D	Final Plat Review & Recording Review & Approval Authority: Development Engineering
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Prior to final plat approval and recording by Development Engineering, the following conditions shall be met:

- D-1 The applicant shall submit an elevation plan (to scale) that identifies no more than 40 percent of the total front façade of each unit is garage door area (see Finding 2).
- D-2 The applicant shall submit a landscape plan with the final plat review that identifies L2 Landscape Standards (in a 5-foot buffer) along the site's frontage with NE 15th Avenue and NE 176th Street, L1 Landscape Standards (in a 5-foot buffer) along the other property lines. Because the required buffer will be located within the lot lines of townhouse lots, a covenant is warranted requiring the owners of the lots to maintain the buffer (See Finding 5).
- D-3 Water mains supplying fire flow and fire hydrants shall be installed, approved and operational. Required hydrants shall be installed per Fire Marshal standards with locations approved by the Fire District Chief. (See Finding 19b & c)
- D-4 The applicant shall provide an unobstructed vertical clearance of not less than 13.5 feet, with an all weather driving surface and capable of supporting the imposed loads of fire apparatus. Fire apparatus turnarounds are required and meet the requirements of the Road Standard. (See Finding 19d)
- D-5 Parallel parking is prohibited on streets that are less than twenty-four (24) feet wide. Streets that are less than twenty-four (24) feet wide shall be posted "NO PARKING"
- D-6 Submittal of a "Health Department Evaluation Letter" is required as part of the Final Construction Plan Review application. If the Evaluation Letter specifies that an acceptable "Health Department Final Approval Letter" must be submitted, the Evaluation Letter will specify the timing of when the Final Approval Letter must be submitted to the county (e.g., at Final Construction Plan Review, Final Plat Review or prior to occupancy). The Evaluation Letter will serve as confirmation that the Health Department conducted an evaluation of the site to determine if existing wells or septic systems are on the site, and whether any structures on the site have been/are hooked up to water and/or sewer.
- D-7 All lots in the proposed plat must connect to an approved public sewer and water systems. A copy of the final acceptance letter from the sewer and water purveyor shall be submitted to the Health Department with the final plat mylar. The applicant shall comply with all requirements of the purveyor.
- D-8 Developer Covenant – A "Developer Covenant to Clark County" shall be submitted for recording to include the following:
 - a. Critical Aquifer Recharge Areas - "The dumping of chemicals into the groundwater and the use of excessive fertilizers and pesticides shall be avoided. Homeowners are encouraged to contact the State Wellhead Protection program at (206) 586-9041 or the Washington State Department of Ecology at 800-RECYCLE for more information on groundwater /drinking supply protection."

- b. Erosion Control - "Building Permits for lots on the plat shall comply with the approved erosion control plan on file with Clark County Building Department and put in place prior to construction."
- c. Archaeological (all plats): "If any cultural resources are discovered in the course of undertaking the development activity, the Office of Archaeology and Historic Preservation in Olympia and Clark County Community Development shall be notified. Failure to comply with these State requirements may constitute a Class C Felony, subject to imprisonment and/or fines."
- d. Private Roads: "Clark County has no responsibility to improve or maintain the private roads contained within or private roads providing access to the property described in this development. Any private access street shall remain a private street unless it is upgraded to public street standards at the expense of the developer or abutting lot owners to include hard surface paving and is accepted by the county for public ownership and maintenance."
- e. Impact Fees: "In accordance with CCC 40.610, the School, Park and Traffic Impact Fees for each dwelling in this subdivision are: \$2,314.00 (Ridgefield School District), \$1,120.00 (\$799 - Acquisition; \$321 - Development for Park District 10), and \$3,232.67 (Mt. Vista TIF subarea) respectively, unless otherwise provided by a development agreement applicable to any parcel at the time the fee is due, such as the one dated February 15, 2005 and recorded as #3950192 as it may be amended or modified by the agreement of all parties thereto, then the impact fees for lots on this plat shall be fixed for a period of three years, beginning from the date of preliminary plat approval, dated _____, and expiring on _____. Impact fees for permits applied for following said expiration date shall be recalculated using the then-current regulations and fees schedule."

D-9 Moved to Section F

D-10 Private Road Maintenance Covenant – A private road maintenance covenant shall be submitted to the responsible official for approval and recorded with the County Auditor. The covenant shall set out the terms and conditions of responsibility for maintenance, maintenance methods, standards, distribution of expenses, remedies for noncompliance with the terms of the agreement, right of use easements, and other considerations, as required under 40.350.030(C)(4)(g).

D-11 Plat Notes - The following notes shall be placed on the final plat:

- a. Sidewalks: "Prior to issuance of occupancy permits, sidewalks shall be constructed along all the respective lot frontages. Sidewalks are attached except along the frontage of (insert street name) which is detached."
- b. Utilities: "An easement is hereby reserved under and upon the exterior six (6) feet at the front boundary lines of all lots for the installation, construction, renewing, operating and maintaining electric, telephone, TV, cable, water and sanitary sewer services. Also, a sidewalk easement, as necessary to comply with ADA slope requirements, shall be reserved upon the exterior six (6) feet along the front boundary lines of all lots adjacent to public streets."

- c. Driveways: "All residential driveway approaches entering public roads are required to comply with CCC 40.350." No direct access is allowed onto NE 15th Avenue."

E	Building Permits Review & Approval Authority: Customer Service
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Prior to issuance of a building permit, the following conditions shall be met:

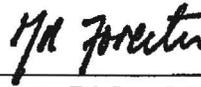
- E-1 Building construction occurring subsequent to this application shall be in accordance with the provisions of the county's building and fire codes. Additional specific requirements may be made at the time of building construction as a result of the permit review and approval process.
- E-2 Impact Fees – Unless otherwise provided by a development agreement applicable to any parcel at the time the fee is due, such as the one dated February 15, 2005 and recorded as #3950192 as it may be amended or modified by the agreement of all parties thereto, the applicant shall pay impact fees based on the number of dwelling units in the building, as follows:
- a. \$2,314.00 per dwelling for School Impact Fees (Ridgefield School Dist.)
 - b. \$1,120 per dwelling for Park Impact Fees (\$799 – Acquisition; \$321 – Development for Park District 10);
 - c. \$3,232.67 per dwelling for Traffic Impact Fees (Mt. Vista TIF Sub-area)

If the building permit application is made more than three years following the date of preliminary site plan approval, the impact fees shall be recalculated according to the then-current rate.

G	Development Review Timelines & Advisory Information Review & Approval Authority: None - Advisory to Applicant
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- F-1 Land Division - Within 5 years of preliminary plan approval, a Fully Complete application for Final Plat review shall be submitted.
- F-2 Department of Ecology Permit for Construction Stormwater - A permit from the Department of Ecology (DOE) is required If:
- The construction project disturbs one or more acres of land through clearing, grading, excavating, or stockpiling of fill material; AND
 - There is a possibility that stormwater could run off the development site during construction and into surface waters or conveyance systems leading to surface waters of the state.
 - The cumulative acreage of the entire project whether in a single or in a multiphase project will count toward the one acre threshold. This applies even if the applicant is responsible for only a small portion [less than one acre] of the larger project planned over time. The applicant shall Contact the DOE for further information.
- F-3 All required landscaping on individual lots shall be installed prior to issuance of occupancy permits for each lot in accordance with Section 40.320.030(B) that the required landscape has been installed in accordance with the approved landscape plan.

Dated this 31st day of March, 2009



J. Richard Forester
Hearing Examiner

NOTE: Only the decision and the condition of approval are binding on the applicant, owner or subsequent developer of the subject property because of this order. Other parts of the final order are explanatory, illustrative and/or descriptive. There may be requirements of local, state, or federal law, or requirements, which reflect the intent of the applicant, the county staff, or the Hearings Examiner, but they are not binding on the applicant as a result of the final order unless included as a condition.

Appeals:

Only a party of record may appeal an appeal of any aspect of the Hearing Examiner's decision, except the SEPA determination, to the Board of County Commissioners. A party of record includes the applicant and those individuals who signed the sign-in sheet or presented oral testimony at the public hearing, and/or submitted written testimony prior to or at the Public Hearing on this matter.

The appeal shall be filed with the Board of County Commissioners, 1300 Franklin Street, Vancouver, Washington, 98668, within fourteen (14) calendar days from the date the notice of final land use decision is mailed to parties of record.

Any appeal of the final land use decisions shall be in writing and contain the following:

1. The case number designated by the County and the name of the applicant;
2. The name and signature of each person or group (petitioners) and a statement showing that each petitioner is entitled to file an appeal as described under Section 40.510.030 (H) of the Clark County Code. If multiple parties file a single petition for review, the petition shall designate one party as the contact representative with the Development Services Manager.
3. The specific aspect(s) of the decision and/or SEPA issue being appealed, the reasons why each aspect is in error as a matter of fact or law, and the evidence relied, on to prove the error; and,
4. If the petitioner wants to introduce new evidence in support of the appeal, the written appeal also must explain why such evidence should be considered, based on the criteria in subsection 40.510.030(H)(3)(b);
5. A check in the amount of \$303.00 (made payable to the Clark County Board of County Commissioners).



HEARING EXAMINER EXHIBITS

APPLICATION: WHIPPLE CREEK VILLAGE

CASE NUMBERS: PLD2008-00074; SEP2008-00116; EVR2008-00087

Hearing Date: March 26, 2009

EXHIBIT NO.	DATE	SUBMITTED BY	DESCRIPTION
1		CC Development Services	Aerial Map
2		CC Development Services	Vicinity Map
3		CC Development Services	Zoning Map
4		CC Development Services	Comprehensive Plan Map
5	12/31/08	Applicant, Olson Engineering, Inc.	Preliminary Boundary Survey Existing Conditions Plan Preliminary Plat and Site Plan Preliminary Landscape Plan Engineering Plan Architectural Plans Circulation Plan
6	12/31/08	Applicant, Olson Engineering, Inc.	Application Form Pre-Application Conference Report GIS Packet Narrative Legal Lot Determination Approved Preliminary Plats Abutting the Site Plans Preliminary Boundary Survey Existing Conditions Plan Preliminary Plat and Site Plan Preliminary Landscape Plan Engineering Plan Architectural Plans Circulation Plan Soil Analysis Report Preliminary Stormwater Design Report and Project Engineer Statement of Completeness and Feasibility Traffic Study State Environmental Review (SEP A Checklist) Water and Sewer Purveyor Utility Review Letters Health Department Development Review Evaluation Letter Covenants and Restrictions Archaeological Predetermination School District Letter Preliminary Wetland and Habitat Assessment Road Modification Request

EXHIBIT NO.	DATE	SUBMITTED BY	DESCRIPTION
7	1/14/09	CC Development Services	Fully Complete Determination
8	12/9/08	Applicant, Olson Engineering, Inc.	Dept of Archaeology & Historic Preservation Letter
9	1/28/09	CC Development Services	Affidavit of Mailing Public Notice
10	1/28/09	CC Development Services	Notice of Development Review Application (Type III) Optional SEPA Determination of Non-Significance & Public Hearing
11	2/19/09	CC Development Services	Notice of Public Hearing
12	2/25/09	Applicant, Olson Engineering, Inc.	Affidavit of Posting Land Use Sign
13	3/9/09	Dept of Public Works, Doug Boheman	Road Modification Report & Recommendation
14	3/11/09	CC Development Services	Affidavit of Posting Public Notice
15	3/11/09	CC Development Services	Staff Report & Recommendation
16	3/26/09	CC Development Services	PowerPoint Presentation
17	3/26/09	Richard Daviau, Project Planner	Memo to the Hearing Examiner
18	3/26/09	Applicant, Olson Engineering, Inc.	Conditions of Approval Revisions

Copies of these exhibits can be viewed at:

Department of Community Development / Planning Division
1300 Franklin Street
Vancouver, WA 98666-9810

EXHIBIT C

Certificate of Transportation Concurrency

Snell, Marty

From: Jardin, David
Sent: Friday, April 15, 2016 11:19 AM
To: 'Patrick Ginn'; Horne, Chris; Snell, Marty
Cc: 'Scott Taylor'; Merrill, Angie; Jamie Howsley; Shafer, Greg; Safayi, Ali; Ellinger, Susan
Subject: RE: Whipple Creek Traffic Memo-Last Item for Fully Complete
Attachments: RE: Whipple Creek Village Developers agreement; PLD2015-00044 Whipple Creek Village Subdivision - Fully Complete Determination Request - Concurrency Review; RE: PLD2015-00090 Whipple Creek Village Subdivision - Concurrency Comments

Concurrency Staff has reviewed the supplemental traffic information for the Whipple Creek Village Subdivision against the original submittal in order to determine completeness of the application. The trip generation and trip accounting information has been submitted and is in compliance with CCC 40.350.020. Based on the required trip generation/trip accounting information Concurrency can make findings and conditions for the proposed development. Therefore, based on the trip generation/trip accounting **ONLY**, Concurrency can deem their submittal **Complete**.

HOWEVER, the **fully complete determination** along with any conditions for the fully complete determination will come from the County Prosecuting Attorney's (PA's) Office . The fully complete determination shall be made by the PA's office because the feasibility of the proposed development is based on a draft Developer's Agreement. Development Engineering/Concurrency Staff is not in a position to allow a development to move forward based on an "assumed approval" of an agreement that is at the Board of County Councilors (BOCC) discretion to deny or approve. Further, Staff will not/cannot condition the approval of a Developer's Agreement.

Staff has attached previous correspondence regarding discussions of fully complete determination and the inability of Staff to deem an application complete based on an assumed Developer's Agreement approval. Staff has summarized some of the attached email concerns and concerns of the most recent submittal.

Staff has a number of concerns with the proposed development application. Staff's concerns are identified below.

1. The Whipple Creek Village Subdivision development application is based on a "**Draft**" Developer's Agreement. (See attached email for the status of the DA as of 1/21/16 2:37pm)
 - a. It has been our past practice, and direction from the Clark County Prosecuting Attorney's Office, that if the applicant is proposing a Developer's Agreement, that the DA be finalized prior to the land use application. With the DA finalized prior to land use review the feasibility of the development can be determined based on what the BOCC has agreed to, rather than the County being put into a position where the BOCC has to approve the DA in order to make the proposed development work.
2. The proposed "Draft" DA seeks to maintain a TIF rate of \$306/ADT over the entire development proposal (Parcels numbered 117850-000, 117860-000, 117870-000, 117880-000 and 117890-000).
 - a. The TIF rate of \$306 was established in a Developer's Agreement for development of parcels numbered 117850-000 and 117860-000 specifically. This TIF rate was established as compensation for the NE 15th Avenue right-of-way acquisition through parcels numbered 117850-000 and 117860-000. As a part of a land use approval, PLD2008-00074 – Whipple Creek Village HE Final Order dated March 31, 2009, 61 AM peak hour trips and 82 PM peak hour trips were reserved for these two parcels.
 - b. The applicant's "Draft" DA seeks to add parcels, (parcels numbered 117870-000, 117880-000 and 117890-000) to the proposed development area. This property add would increase the development area from 7.38 acres (approved for development under PLD2008-00074) to 23.5 acres. The applicant indicates that the number of lots in the proposed development would also increase from 81 lots to 140 lots. Further, the applicant has indicated that the number of trips would remain the same. The

applicant's engineer has calculated the trips based on 100 detached Senior Adult Housing units and 41 single family townhomes.

i. CCC 40.350.020 (J) – Reservation of Capacity,

1. Upon issuance of a concurrency approval by the Public Works Director, the transportation capacity allocated by the Public Works Director to the development application shall become encumbered capacity. This encumbered capacity shall not be considered for use by another development application until such time as the concurrency approval expires pursuant to Section [40.350.020\(J\)\(4\)](#).
2. Upon issuance of a development approval by the review authority, this encumbered capacity shall become reserved capacity and shall not be considered for use by another development application.
3. Reserved capacity shall not be transferable to another development upon another site. Reserved capacity from a previous development approval shall not be transferable to a different land use development upon the same site.
4. Concurrency approvals shall be valid for the same period of time as the development approval, and shall expire upon the date the development approval expires. Notwithstanding the provisions of this subsection, a concurrency approval shall expire upon the date the development application for which the concurrency approval was required is:

- a. Withdrawn by the applicant;
- b. Denied approval by the review authority; provided, that for purposes of this section, an application shall not be deemed to be denied by the review authority until a final decision has been issued pursuant to any administrative appeal under Sections [40.510.010\(E\)](#), [40.510.020\(H\)](#), and [40.510.030\(H\)](#); or until a final decision has been rendered by a superior court with competent jurisdiction, where such judicial appeal has been filed in a timely way; or
- c. Not found to be fully complete within one hundred eighty (180) days of a pre-application concurrency approval.

- ii. Per the Clark County Code section identified above, PLD2008-00074 has reserved trips for the development as approved on parcels 117850-000 and 117860-000. Further, CCC 40.350.020 (J)(2) & (3), the reserved capacity shall not be considered for use by another development and shall not be transferable upon another site.

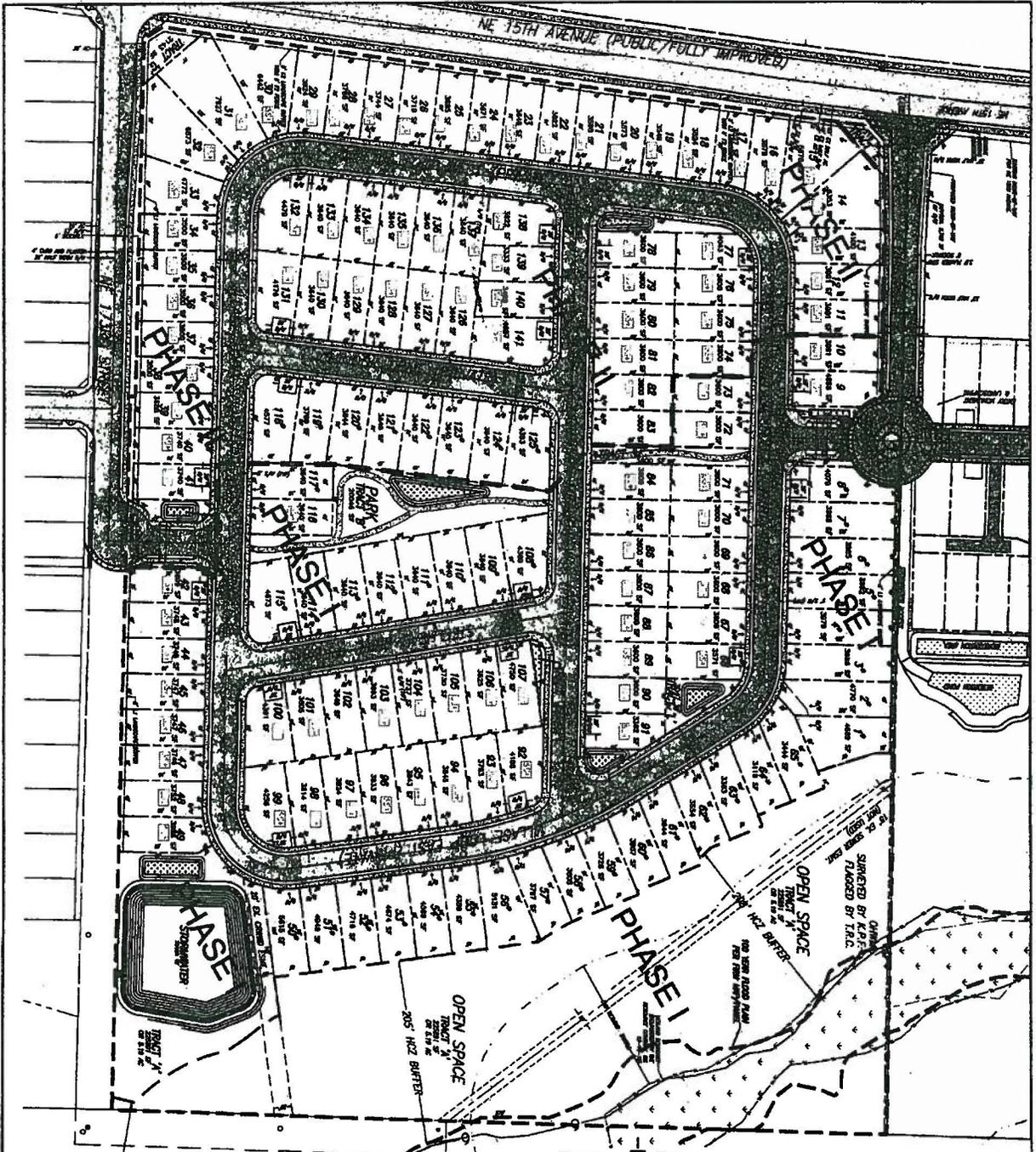
3. The applicant's trip generation letter seeks to claim 100 single family detached homes as Senior Adult Housing (55+) and 40-unrestricted age single family detached homes ;
 - a. The applicant has proposed these 100 Senior Adult Housing units as a method to maximize the number of lots in the development and taking advantage of the low trip generation rate. Staff does not dispute the trip generation rate, rather the designation of single family detached lots that will only be assigned Senior Adult Housing. Staff has concerns with the development and its trip impacts if the lots are not clearly defined and notes are placed on the plat so that the homes are restricted to the applicant's proposal. The applicant's plan and narrative does not designate the proposed housing differences.
 - b. If a Developer's Agreement is created to facilitate this development, Staff believes that there should be language about changes of use from the Senior Adult Housing to any unrestricted age types of homes to comply with CCC 40.350.020 (J)(2 & 3).

It is staff's recommendation that the Traffic Impact Fee rate for parcels 117850-000 and 117860-000 be honored per Development Agreement dated 2/15/2005 with a recording number 3950192, and that the additional parcels, added as a part of the current application, be assessed at the current Traffic Impact Fee Rate.

David Jardin
Concurrency Engineer
360-397-6118 ext. 4354

EXHIBIT D

Whipple Creek Village Site Plan [141 Lots]

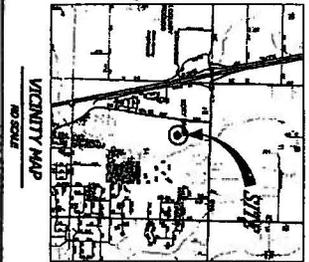


WHIPPLE CREEK VILLAGE SUBDIVISION
 Subdivision of 20.17 Acres of Land in Clark County, Washington, as shown on the attached map.

GENERAL NOTES:
 1. THE SUBDIVISION IS SHOWN ON THE ATTACHED MAP.
 2. THE SUBDIVISION IS SUBJECT TO ALL APPLICABLE ZONING ORDINANCES AND REGULATIONS.
 3. THE SUBDIVISION IS SUBJECT TO ALL APPLICABLE STATE AND FEDERAL LAWS.
 4. THE SUBDIVISION IS SUBJECT TO ALL APPLICABLE LOCAL ORDINANCES AND REGULATIONS.
 5. THE SUBDIVISION IS SUBJECT TO ALL APPLICABLE CONTRACTS AND AGREEMENTS.
 6. THE SUBDIVISION IS SUBJECT TO ALL APPLICABLE DEEDS AND INSTRUMENTS.
 7. THE SUBDIVISION IS SUBJECT TO ALL APPLICABLE EASEMENTS AND RIGHTS.
 8. THE SUBDIVISION IS SUBJECT TO ALL APPLICABLE ENCUMBRANCES AND LIENS.
 9. THE SUBDIVISION IS SUBJECT TO ALL APPLICABLE TAXES AND FEES.
 10. THE SUBDIVISION IS SUBJECT TO ALL APPLICABLE RECORDS AND DOCUMENTS.

PROPERTY INFORMATION:
 TOTAL ACRES: 20.17
 TOTAL LOTS: 100
 TOTAL SQUARE FEET: 875,000

DEVELOPER: SEA ENGINEERING PLLC
DESIGNER: SEA ENGINEERING PLLC
DATE: 12/08/2010



PRELIMINARY PLAT

WHIPPLE CREEK VILLAGE
SUBDIVISION

CLARK COUNTY WASHINGTON

SEA ENGINEERING PLLC

1401 2 OF 5

