

Staff Report

TO: Clark County Planning Commission
FROM: Oliver Orjiako, Director
PREPARED BY: Matt Hermen, AICP, Planner III
DATE: September 6, 2018
SUBJECT: CPZ2018-00015 AMENDMENT OF COMPREHENSIVE PLAN
AND ZONING MAPS TO REMOVE URBAN HOLDING OVERLAY–
PHASE 1

PROPOSED ACTION

A property owner is requesting the removal of the urban holding overlay on the comprehensive plan and zoning maps for properties identified by account numbers 181199000, 181190000, and 181206000. The urban holding removal is associated with a development agreement that will be required to be approved concurrently with this comprehensive plan and zoning map amendments.

BACKGROUND

The urban holding overlay is placed on property when it is brought into the urban growth boundary. It protects areas from premature land division and development that would preclude efficient transition to urban development or large-scale industrial development. The urban holding overlay is implemented by Urban Holding-10 (UH-10) and Urban Holding-20 (UH-20) zoning overlay districts. Removal of the urban holding overlay must be consistent with the special implementation procedures provided for in Chapter 14, Procedure Guidelines. Designation and removal of the overlay is through a Type IV process.

The Comprehensive Plan identifies criteria that must be met in order to remove urban holding zoning and authorize the implementation of the underlying urban zone. The county may remove the UH overlay from appropriate areas of sufficient size that the county can collect transportation related data, analyze the cumulative transportation impacts, and address mitigation to these impacts. The urban holding overlay designation may be removed from the subject properties pursuant to Clark County Code 40.560.010(G) upon satisfaction of the following:

- **West Fairgrounds and East Fairgrounds:** Determination that the completion of localized critical links and intersection improvements are reasonably funded as shown on the county 6 year Transportation Improvement Plan or through a development agreement.

The urban holding plan map and zoning overlays were applied to the West Fairgrounds and East Fairgrounds areas in 2004 and 2007 with the expansion of the Vancouver Urban Growth Area. The urban holding overlay was placed on the land because the transportation infrastructure lacked adequate capacity to accommodate urban level development. In 2008, the County approved a circulation plan for the areas that would distribute urban traffic

efficiently to regional transportation facilities. In 2016, the Washington State Legislature awarded \$50 Million to the Washington Department of Transportation for improvements at the I-5/179th St. Interchange. The Legislature allocated the \$50 million for the state's biennial budget in 2023-25.

The three properties proposed for the removal of the urban holding overlays are identified by the account numbers 181199000, 181190000, and 181206000. The properties are commonly owned by the Three Creeks LLC. On December 8, 2012 the property owner and the County entered into a development agreement for properties south of NE 179th Street at the intersection with NE 15th Avenue. The development agreement in 2012 reserved trips and required off-site mitigation associated with the development of a conceptual commercial center and is recorded under Clark County Auditor Number 5321604. The trips reserved in the 2012 development agreement consumed the remaining capacity for trips in the I-5/179th Street interchange area and volunteered transportation mitigation to accommodate their additional impacts. As of this date, no application to develop a commercial center has been submitted, and no off-site transportation mitigation has occurred.

Three Creeks LLC purchased properties 181199000, 181190000, and 181206000 after the prior development agreement was approved in 2012. Properties 181199000 and 181190000 are designated as Mixed Use on the Comprehensive Plan and Zoning maps. Property 181206000 has two Comprehensive Plan and zoning designations: Mixed Use and General Commercial. The urban holding overlays only apply to the properties and portions of the property designated and zoned Mixed Use. Two properties are currently vacant without any structures on the land. Property 181190000 has an existing single family residence on the land. The proposed development of the properties would include 200 single family homes and 326 apartment units, generating 402 vehicular trips in the PM peak hour.

The draft development agreement associated with this proposal, seeks to remove the urban holding overlays, reserve transportation capacity for the future development of the three specific parcels, and to provide certain improvements to increase the transportation capacity in the area. In the 2012 development agreement, Three Creeks LLC consumed the transportation capacity and all available trips in the I-5/179th St interchange area, making further development of that area essentially infeasible. The draft development agreement proposes to re-allocate the trips reserved by the 2012 development agreement and apply the trips to the proposed residential development, currently designated with the urban holding overlays. The reallocation of trips is permitted pursuant to CCC 40.350.050(M), which stipulates that the trips calculated for the commercial development south of 179th will not be available until 5 years after the agreement to reallocate trips is recorded. Additionally, the draft development agreement would require the construction and dedication of an eastbound to southbound right turn lane on NE 179th Street at NE 15th Ave. This required construction and dedication mitigates the direct impacts of the contemplated residential development, as determined by the Developer's traffic study and confirmed by County Public Works staff.

The 2012 development agreement required the "design and construction of two continuous eastbound lanes, a raised median and a bicycle lane on the southside of NE 179th Street from the I-5 northbound off ramp to NE 15th Ave." [Auditor File No. 5321604, Page 26] That development agreement also required the "design and construction of one continuous westbound lane and a center median from NE 15th Ave to the proposed new signalized intersection at approximately the westernmost property line of Phase 2 – NE 179th Street

Commercial Center development site.” [Auditor File No. 5321604, Page 26] These requirements mitigated the impacts from the conceptual commercial center. The reallocation of the reserved trips from the commercial center to the residential development (on the land currently under urban holding) defers these requirements until the commercial center is developed. This deferral may impact future development east of NE 15th Avenue, along NE 179th Street. The improvements listed above in this paragraph will be required for any future development in this area to the east, but the neither the county nor the owners of those properties own the property for right-of-way on which to construct the necessary improvements.

GENERAL INFORMATION

Parcel Numbers: 181199000, 181190000, and 181206000

Location: The 3 parcels are located east of NE 10th Avenue, north of NE 184th Street, south of NE 189th Street and west of Whipple Creek.

Area: Approximately 40 acres

Owners: Three Creeks-Mumford LLC & Three Creeks North LLC

Exiting Land Use: 181199000, Mixed Use (MU), undeveloped
181190000, Mixed Use (MU), developed, Single Family Residence
181206000, Mixed Use (MU), undeveloped

SUMMARY OF PUBLIC INVOLVEMENT PROCESS

A draft of the proposed changes to the Comprehensive Growth Management Plan 2015-2035 Map and zoning map were sent to the Department of Commerce on May 21, 2018 under RCW 36.70A.106. A Notice of Determination of Non-Significance and SEPA Environmental Checklist was published in the Columbian newspaper on August 1, 2018. Property owners within 300 feet of the proposal were mailed a notice of the planning commission public hearing on August 16, 2018. A legal notice was published for the Planning Commission hearing on August 22, 2018. Two signs were posted at the location of the proposal, informing the public of the proposal, date and time of the Planning Commission’s public hearing and instructions for obtaining further information. All public comments are included in the Planning Commission Hearing binder.

APPLICABLE CRITERIA, EVALUATION AND FINDINGS

CRITERIA FOR COMPREHENSIVE PLAN MAP CHANGES [CCC 40.560.010(G)]

- A. ***The proponent shall demonstrate that the proposed amendment is consistent with the Growth Management Act (GMA) and requirements, the countywide planning policies, the Community Framework Plan, Clark County 20-Year Comprehensive Plan, city comprehensive plans, applicable capital facilities plans and official population growth forecasts.***

[CCC40.560.010(G)(1)].

Growth Management Act (GMA)

The GMA goals set the general direction for the county in adopting its framework plan and comprehensive plan policies. The GMA lists thirteen overall goals in RCW 36.70A.020 plus the shoreline goal added in RCW 36.70A.480(1). The goals are not listed in order of priority. The GMA goal that applies to the proposed action is Goal 12.

Goal 12 speaks directly to public facilities and services to “ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below established minimum standards.” [RCW 36.70A.020(12)].

Finding: The proposed comprehensive plan and zoning map amendments to remove the urban holding designation for 40 acres will allow for a greater demand on the public facilities that serve more intense urban development. The draft development agreement, which is processed concurrently with the urban holding overlay removals, thoroughly assessed the transportation infrastructure needed to serve the contemplated development. The draft development agreement ensures that critical links and infrastructure improvements are in place to serve the residential development without decreasing current service levels. Clark Public Utilities and Clark Regional Wastewater District have demonstrated in the adopted Comprehensive Growth Management Plan the sufficient capacity to provide water and sewer service to the 40 acre area.

Community Framework Plan

The Community Framework Plan (Framework Plan) provides guidance to local jurisdictions on regional land use and service issues. The Framework Plan encourages growth in centers, urban and rural, with each center separate and distinct from the others. The centers are oriented and developed around neighborhoods to allow residents to easily move through and to feel comfortable within areas that create a distinct sense of place and community. The Community Framework Plan policies applicable to this proposal include the following:

Goal 6.0 notes “the need for capital facilities to accommodate expected growth and establish policies to ensure that these facilities are available when development is occupied and to provide for the extension of public utilities to new development in a timely manner.” [Framework Plan, page 18] The following capital facilities and utilities policies apply to the proposed action:

- 6.1.0 Major public and private expenditures on facilities and services (including libraries, schools, fire stations, police, parks and recreation) are to be encouraged first in urban and rural centers.
- 6.1.1 Establish level-of-service standards for capital facilities in urban and rural areas. [Framework Plan, page 18].

These framework plan policies are implemented by Clark County Code 40.350.020 Transportation Concurrency Management System. The purpose of this section is to establish levels of service for arterial and transit routes and ensure that such standards are met or reasonably funded before new development is approved.

Finding: The proposed comprehensive plan and zoning map amendments to remove the urban holding designation through approval of a development agreement is consistent with the Community Framework Plan policies. The development agreement ensures that adequate

public facilities, that meet established levels of service, are in place to serve the proposed development and are within the Vancouver Urban Growth Area. [CCC 40.350.020].

Countywide Planning Policies (CWPP)

The GMA, under RCW 36.70A.210, requires counties and cities to collaboratively develop Countywide Planning Policies (CWPP) to govern the development of comprehensive plans. The WAC 365-196-305(1) defines “the primary purpose of CWPP is to ensure consistency between comprehensive plans of counties and cities sharing a common border or related regional issues. Another purpose of the CWPP is to facilitate the transformation of local governance in the urban growth areas, typically through annexation to or incorporation of a city, so that urban governmental services are primarily provided by cities and rural and regional services are provided by counties.”

Policy 6.0.3 states, “Public facilities and utility services shall be planned so that service provision maximizes efficiency and cost effectiveness and ensures concurrency.” [Comprehensive Plan, page 182].

Policy 6.0.12 states, “The county shall work with the state, each municipality and special districts to identify future needs of regional and statewide public facilities. This will ensure countywide consistency and avoid duplications or deficiencies in proposed facilities.” [Comprehensive Plan, page 183]

Finding: The proposed amendment is consistent with polices in the Community Framework Plan and the Countywide Planning Policies. The draft development agreement and associated off-site mitigation requirements satisfy the Comprehensive Plan’s procedural guidelines for removing urban holding overlays in the Vancouver Urban Growth Area. This includes a determination that the draft development agreement requires completion of the localized critical links and intersection improvements associated with the developments impacts.

Comprehensive Growth Management Plan 2015-2035 (2016 Plan)

The 20-year Comprehensive Growth Management Plan contains many policies that guide urban form and efficient land use patterns. The most relevant goals and policies applicable to this application are as follows:

“Goal: Ensure that necessary and adequate capital facilities and services are provided to all development in Clark County in a manner consistent with the 20-year Plan.”

6.1.1 Continue to plan for and provide capital facilities and services as necessary to support development consistent with the 20-year Plan and coordinate and facilitate the planning and provision of such facilities and services by other public or private entities.

6.1.5 Assist and facilitate the siting of capital facility and service infrastructure in a manner consistent with the 20-year Plan, through appropriate land use planning and development review policies and procedures.” [2016 Plan, page 184].

Finding: The associated development agreement with this proposed map amendments requires off site mitigation that ensure critical transportation links and intersection improvements are in place to serve the proposed development on the land that is proposed for the removal of the urban holding overlay.

Conclusion: The proposed amendment meets Goal 12 of the Growth Management Act, the Community Framework Plan, Countywide Planning Policies and the Comprehensive Plan. The associated development agreement with this map amendment ensures that public facilities are in place to serve development at the time the development is available for occupancy and use without decreasing current service levels below established minimum standards.

B. The proponent shall demonstrate that the designation is in conformance with the appropriate locational criteria identified in the Clark County Comprehensive Plan and the purpose statement of the zoning district. (See 40.560.010G(2) and 40.560.020G(2).)

Finding: The urban holding overlay protects areas from premature land division and development that would preclude efficient transition to urban development or large-scale industrial development. The urban holding overlay is implemented by Urban Holding-10 (UH-10) and Urban Holding-20 (UH-20) zoning overlay districts. The removal of the urban holding Comprehensive Plan and Zoning overlays is located within the Vancouver Urban Growth Area. The designations of the urban holding overlays were placed on the properties due to the inadequate capacity of the transportation infrastructure to accommodate urban level development. The associated development agreement requires infrastructure improvements that are associated with the traffic generation of the proposed development.

Conclusion: The removal of the urban holding overlays for the three properties is conditioned by the requirements in the associated development agreement to complete infrastructure improvements. The infrastructure improvements are directly associated with the proposed development impacts. The removal of the urban holding overlays on properties 181199000, 181190000, and 181206000 are in conformance with the locational criteria identified in the Clark County Comprehensive Plan and the purpose statement of the mixed use zoning district.

C. The map amendment or site is suitable for the proposed designation and there is a lack of appropriately designated alternative sites within the vicinity. (See 40.560.010.G(3))

Finding: The associated draft development agreement requires off-site transportation improvements that will increase the vehicular capacity on localized critical links and intersections that are impacted by the proposed development.

Conclusion: Urban holding overlays are placed on properties when the urban services are not in place to serve the urban development. The associated draft development agreement requires the developer to construct the needed infrastructure that meet the development demands of properties 181199000, 181190000, and 181206000. Criterion C is met upon approval of the associated development agreement, which requires the needed transportation improvements, thus allowing urban level development.

D. The plan map amendment either; (a) responds to a substantial change in conditions applicable to the area within which the subject property lies; (b) better implements applicable comprehensive plan policies than the current map designation; or (c) corrects an obvious mapping error. (See 40.560.010G(4) and 40.560.020H(3).)

Finding: The 20-year Comprehensive Plan policies require the provision of capital facilities to support development. The associated draft development agreement, which is concurrently processed with this map amendment, requires the improvement of transportation infrastructure. The infrastructure improvements will facilitate the siting of urban level infrastructure that facilitates urban development within the Vancouver Urban Growth Area consistent with the 20-year plan.

Conclusion: The plan map amendment better implements the applicable comprehensive plan policies with the concurrent approval of the draft development agreement by improving critical transportation links and intersection improvements to facilitate the movement of urban level development. Criterion D is met.

E. Where applicable, the proponent shall demonstrate that the full range of urban public facilities and services can be adequately provided in an efficient and timely manner to serve the proposed designation. Such services may include water, sewage, storm drainage, transportation, fire protection and schools. Adequacy of services applies only to the specific change site. (See 40.560.010G(5) and 40.560.020H(4).)

Finding: The urban holding overlays are in effect due to the lack of adequate public facilities to serve urban development on the subject site. Water, sewage, storm drainage, fire protection and school facilities have been demonstrated in the Comprehensive Plan's Capital Facilities Plan to serve the subject properties. The associated draft development agreement requires the construction and dedication of an eastbound to southbound right turn lane on NE 179th Street at NE 15th Ave. The Developer's traffic study demonstrates that this offsite infrastructure would adequately mitigate the direct impacts of the contemplated development. County Public Works staff concur with the Developer's traffic study in this regard.

Conclusion: A development agreement must be approved in conjunction with these proposed map amendments to remove the urban holding overlays. The draft development agreement requires off site mitigation that will ensure critical transportation links and intersection improvements are in place to serve the contemplated development. Criterion E is met for the removal of the urban holding overlays on properties 181199000, 181190000, and 181206000 with the approval of the associated development agreement.

RECOMMENDATION AND CONCLUSIONS

Based on the information presented in this report, staff recommends that the Planning Commission forward a recommendation of **APPROVAL** to remove urban holding overlays on the subject property with **APPROVAL** of the development agreement to Clark County Councilors.

The following table lists the applicable criterion and summarizes the findings of the staff report for CPZ2018-00015. The Planning Commission findings will be added to the table after public deliberation at the Planning Commission hearing scheduled for this application.

COMPLIANCE WITH APPLICABLE CRITERIA		
Criterion for Policy/Text Amendments	Criteria Met?	
	Staff Report	Planning Commission Findings
A. Consistency with GMA, Countywide Policies, Community Framework Plan, & Comprehensive Plan	Yes	
B. Conformance with Locational Criteria	Yes	
C. Site Suitability and Lack of Appropriately Designated Alternative Sites	Yes	
D. Amendment Responds to Substantial Change in Conditions, Better Implements Policy, or Corrects Mapping Error	Yes	
E. Adequacy/Timeliness of Urban Public Facilities and Services	Yes	
Recommendation:	Approve	

EXHIBIT 1

DEVELOPMENT AGREEMENT

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

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

Grantor : Three Creeks- Mumford LLC, Three Creeks North LLC,
Grantee : Clark County, Washington
Abbreviated Legal : Sec 14, T3N, R1E, WM; Sec 11, T3N, R1E, WM
Assessor's Tax Parcel Nos. : 181190-000; 181199-000;
181206-000; 181200-000

o

DEVELOPMENT AGREEMENT

Effective Date: _____, 2018

Parties:

THREE CREEKS-MUMFORD LLC, a
Washington limited liability company

THREE CREEKS NORTH LLC, a
Washington limited liability company
(collectively the "Developer");

And

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

Recitals:

A. The Developer and the County have collaborated over a number of years through a public-private partnership, to facilitate the improvement of transportation infrastructure in the area of the Northeast 179th Street interchange with Interstate 5 (“179th Interchange Area”), an area which faces challenges to development including a lack of capacity on the local roadways and intersections, congestion on existing roadways, and lack of access to underdeveloped properties, and resulting traffic safety problems. Each Party has dedicated significant resources to planning for that area, which provides a gateway to development of currently underutilized land in the 179th Interchange Area. It is necessary for the Parties to complete certain planning efforts in the area, so that public and private funding will be available to complete the needed infrastructure, and that development of the infrastructure can go forward. Completion of certain intersections and other transportation links in the area will allow certain properties to develop, thereby generating further resources for more transportation improvements, and addressing the continuing harm to the public because of the problems and challenges listed above. This Agreement will document the completion of planning relevant to the subject property, the Developer’s voluntary contributions to the completion of certain infrastructure in the area, and the County’s assurances that the Developer may proceed as set forth herein.

B. The Developer and the County entered into a Development Agreement dated December 18, 2012 (“Prior Agreement”) regarding certain property the legal description for which is set forth in Exhibit A, attached hereto (the “South Property”). The Prior Agreement was recorded on January 8, 2013 under Clark County Auditor Number 4929770 and re-recorded on September 1, 2016 under Clark County Auditor Number 5321604. Trips for the Prior Agreement were evaluated in two phases. The first phase of this evaluation was for a 60,000 SF parcel legally described in Exhibit A to this Development Agreement. The trip analysis for this parcel determined that no mitigation is required for development on that parcel to occur.

C. The Developer has now acquired certain additional property for which the legal description is set forth in Exhibit B, attached hereto. Parcel Nos. 181190-000 and 181199-000 and the northern portion of Parcel No. 181206-000 are subject to an Urban Holding Overlay Plan Designation and Zone (“UH Property”). Parcel No. 181200-000 (“North Property”) is not subject to the Urban Holding overlay. The Developer desires to subject the UH Property and a portion of the North Property to the terms and provisions of this Agreement.

1. The Parties understand and agree that within six months of the date this Agreement is recorded, the Developer will adjust the boundary line between the North Property and Parcel No. 181199-000, as conceptually depicted on Exhibit B, so that the northeastern corner of Parcel No. 181200-000 and land extending westward from that corner will become part of Parcel No. 181199-000. Only the

portion of the now existing North Property that becomes part of Parcel 181199-000 pursuant to that boundary line adjustment (the “Adjusted Property”) will be subject to the terms and provisions of this Agreement. The Parties agree that the intersection of the new minor arterial on the Developer’s property and NE 10th Street will not be located on the Adjusted Property, and that the area of the Adjusted Property will be no larger than one-quarter of the area of the North Property.

2. The Prior Agreement will remain in effect according to its terms, except that it is not applicable to the UH Property or the Adjusted Property. This Agreement is not applicable to the South Property, except according to its terms herein, and except to the extent that trips vested to the South Property are deferred pursuant to Clark County Code (“CCC”) 40.350.020.M and are reallocated to the UH Property by this Agreement.

D. The South Property is designated on the Clark County Comprehensive Growth Management Plan Map (“Plan Map”) as Commercial and on the Zoning Map as General Commercial.

E. The UH Property and the Adjusted Property are designated on the Plan Map and the Zoning Map as Mixed Use and General Commercial respectively. All the UH Property is subject to an overlay designated as Urban Holding (“UH”) on the Plan Map and as Urban Holding - 20 on the Zoning Map.

F. This Agreement addresses the Comprehensive Plan criteria to lift the UH overlay from the UH Property and includes the Developer’s agreement to satisfy the criteria. The County’s approval of this Agreement represents the County Council’s determination for the UH Property that the completion of localized critical links and intersection improvements are reasonably funded.

G. In order for Developer to facilitate the items identified in this Agreement, Developer desires to obtain removal of the UH overlay designation and zoning from the UH Property so that development may occur thereon. In this regard, the removal of the UH overlay from the UH Property via a County ordinance will be processed concurrently with the approval, execution and recording of this Agreement.

H. Developer and County will continue to cooperate on certain master planning and infrastructure improvements for the 179th Interchange Area. Developer hereby voluntarily offers to mitigate the impacts of the removal of the UH overlay from and the development of the UH Property and the Adjusted Property as follows:

1. Developer shall continue to work with County in a master plan process for the overall 179th Interchange Area to assist in the

identification of necessary right-of-way needs for future road alignments.

2. Within six months of the date this Agreement is recorded with the Clark County Auditor, Developer shall transfer sufficient property to County from each of the eastbound and westbound sides of 179th Street east of Interstate 5, between the Interstate 5 ramps and Northeast 15th Avenue, to constitute 50 feet of half-width right-of-way on each side of 179th Street. Attached hereto as Exhibit C is a conceptual plan for the widening of 179th Street and for improvements thereon and on the UH Property.

3. Attached to this Agreement as Exhibit G is a conceptual plan for the location of a future two-lane minor arterial with bike lanes and a center turn lane as it traverses Developer's property. The alignment of the future minor arterial, as shown on Exhibit G, crosses certain UH Property subject to this Agreement, as well as other property owned by Developer. Developer shall transfer this agreed-upon right-of-way to County as necessary to connect 15th Avenue from its connection at 179th Street on the south to 10th Avenue on the north.

4. Developer shall construct and dedicate to the County an eastbound to southbound right turn lane on NE 179th Street at NE 15th Avenue. The construction of the right turn lane will meet Clark County's standard details for roadway, drainage, sidewalk, and development. In addition to the requirements for constructing the right turn lane, the required construction will include replacement of traffic signal poles, cabinets, and associated infrastructure as needed to accommodate the new right-turn lane, in accordance with the specifications of Clark County Public Works' Signal Engineering and Operations Division.

I. The Developer's traffic engineer has prepared trip generation and distribution information based on the expected development of the UH Property and the Adjusted Property, and has prepared the same information based on the expected development of the South Property. A copy of the trip generation estimates is attached hereto as Exhibit E.

J. Pursuant to RCW 36.70 B .170 (1), the parties are authorized to enter into a development agreement that sets forth the development standards and other provisions that apply to, govern and vest the development and use of the UH Property and the Adjusted Property.

NOW, THEREFORE, the parties agree as follows:

1. Terms of Agreement.

1.1 Recitals. The Recitals set forth above are hereby agreed to be binding provisions of this Agreement as their terms provide.

1.2 Development Subject to Code. With respect to the removal of Urban Holding from the UH Property and its development and the development of the Adjusted Property, the Developer shall be bound by all applicable provisions of the Clark County Code, except as otherwise set forth in this Agreement.

1.3 Amendments. The Parties may mutually agree to any necessary amendments to this Agreement to facilitate infrastructure improvements and other matters. Any amendments hereto shall be in writing and duly executed by both parties.

2. Purpose. The purposes of this Agreement include the following: to continue the public-private collaboration on both planning and funding necessary for improvements to infrastructure in the 179th Interchange Area, which collaboration the Council finds is beneficial to the public welfare and safety; to remove the UH overlay from the UH Property; to reserve transportation capacity for the future development and use of the UH Property and the Adjusted Property; to plan for transportation and other infrastructure for the South Property, the UH Property and the Adjusted Property; to provide certain right-of-way and improvements to increase transportation capacity in the area; and to participate with the Washington Department of Transportation and others in providing for off-interchange infrastructure improvements; all as more particularly described herein.

3. Expected Development of the UH Property and Adjusted Property. The Developer intends to and may only utilize trips vested herein to residential uses on the UH Property and the Adjusted Property in compliance with the standards of the Mixed Use zoning district. However, this trip restriction shall not preclude the Developer from developing other uses as permitted on the UH Property and the Adjusted Property through an amendment hereto or through the standard County land use and development processes.

4. Reservation of Transportation Capacity and Concurrency. This Agreement sets forth on Exhibit F, attached hereto, the critical local transportation links and intersection improvements necessary to remove UH from parcels 181199-000 and 181190-000, and the northern portion of parcel 181206-000, which together comprise the UH Property. Together with other contemplated funding, this Agreement ensures that the improvements to these links and the intersections will be reasonably funded, as required by the Comprehensive Plan. The Developer's transportation engineer has calculated average daily trips and net new peak hour trips based on the expected development of the South Property and the UH Property and Adjusted Property, as identified on Exhibit E, attached hereto. County Public Works staff has approved the calculation of the *net new*

peak hour trips and average daily trips, and the County hereby reserves and vests under CCC 40.350.020.K, and CCC 40.350.020.M, such trips for the UH Property and the Adjusted Property for use throughout the term of this Agreement, subject to the terms of CCC 40.350.020.M and to the Developer's agreement to dedicate right of way and construct the off-site mitigation measures. *The net new peak hour trips* and average daily trips for the UH Property and the Adjusted Property can only be reserved, vested and used on the UH Property and the Adjusted Property. All calculations provided for herein include the trips vested as hereinabove described. s by the Prior Agreement for the South Property, as well as the trips for UH Property and the Adjusted Property

4.1 Off-Site Mitigation. In compliance with the county code, and pursuant to Recital H, above, Developer shall voluntarily provide right-of-way and construct infrastructure for mitigation of the direct impacts of the contemplated development of the UH Property and the Adjusted Property as determined by Developer and County Public Works staff after County's review and approval of Developer's traffic study, concurrency modeling, and safety analysis of the Developer's project. Any dedication of right-of-way or construction of infrastructure that does not mitigate the direct impacts of development contemplated on the UH Property and Adjusted Property is voluntarily provided by Developer and will mitigate some of the direct impacts of Developer's other contemplated development in the 179th Interchange Area. Transportation mitigation provided by Developer shall be subject to potential credits granted according to the County's regulations and policies governing traffic impact fees and credits. Exhibit F attached hereto identifies this transportation mitigation as provided for in Recital H above.

4.2 Re-allocated Trips. Pursuant to CCC 40.350.020.M, Developer wishes to defer _____ trips reserved and vested to Phase 2 of the South Property by the Prior Agreement, and to re-allocate those trips to the UH Property and the Adjusted Property. Pursuant to CCC 40.350.020.M and this Agreement, those trips will not be available for Developer's use on Phase 2 of the South Property until 5 years after this Agreement is recorded.

4.3 No Other Conditions for Concurrency. No off-site transportation improvements other than those set forth on Exhibit F will be required of Developer so long as development of the UH Property and the Adjusted Property do not generate more than those *net new peak hour trips* described on Exhibit E. If changes to the anticipated uses of the South Property and UH Property and Adjusted Property are found to cause the site to generate new peak hour trips over those set forth on Exhibit E, the relevant additional trips will be subject to review and required mitigation under the County's concurrency ordinance in effect when the application vests.

5. Traffic Impact Fees (TIF). Developer shall pay TIF for the total trips, calculated and identified on Exhibit E attached to this Agreement, at the TIF rate in effect at issuance of the relevant building permit(s) according to the terms of the Clark County Code.

6. Site Circulation and Access. The County will review site circulation and access at the time of preliminary development application.

7. Vesting.

7.1 Vesting to Standards. The parties agree that the development of the UH Property vests as to the uses set forth on Exhibit E, and the County's standards in its Comprehensive Plan and Code in effect as of the time of the recording of this Agreement (with the exception of environmental laws deemed by a Washington Court decision to not be subject to vesting). Building Permit Codes and regulations are not vested by this Agreement.

7.2 Amendment of Standards. Subject to the provisions of Section 7.3 below, this Agreement and the vested standards govern during the term of this Agreement and may not be subject to an amendment to a zoning ordinance, land use regulation, or development standard adopted after the effective date of this Agreement.

7.3 Public Health and Safety Issues. Nothing contained herein shall preclude the County from exercising any and all rights it has under RCW 36.70B.170 to address issues of public health and safety.

8. Cooperation and Necessary Acts. The Parties agree to work together in good faith and using best efforts to plan their projects together and in a way that will make them functionally compatible. Each Party agrees to execute this Agreement and other reasonably necessary instruments and documents, and perform all acts reasonably necessary, to give effect to the terms of this Agreement.

9. Disputes. Either Party may bring an action in the Superior Court for Clark County, State of Washington, for the purpose of construing or enforcing this Agreement. Each Party shall bear its own costs and attorneys' fees.

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

11. Term. This Agreement shall be effective commencing on the date it is recorded with the Clark County Auditor, and ending fifteen (15) years from the date of recording of the Prior Agreement, on January 8, 2013, under Clark County Auditor Number 4929770.

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12. Public Hearing. The Clark County Council has approved execution of this Agreement in a public hearing.

**CLARK COUNTY,
Washington**

By: _____
Shawn Hennessy, County Manager
Date: _____

Approved as to form only:
Anthony F. Golik,
Prosecuting Attorney

By: _____
Christine M. Cook,
Senior Deputy Prosecuting Attorney

**THREE CREEKS -MUMFORD LLC, a
Washington limited liability company**

By: _____
Print Name: _____
Title: _____
Date: _____

**THREE CREEKS NORTH LLC, a
Washington limited liability company**

By: _____
Print Name: _____
Title: _____
Date: _____