

RESOLUTION NO. 680

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, AUTHORIZING THE EXECUTION OF A DEVELOPMENT AGREEMENT WITH HMT.

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

WHEREAS, a development agreement must set forth the development standards and other provisions that shall apply to, govern and vest the development, use and mitigation of the development of the real property for the duration specified in the agreement (RCW 36.70B.170(1)); and

WHEREAS, for the purposes of this development agreement, "development standards" includes, but is not limited to, all of the standards listed in RCW 36.70B.170(3); and

WHEREAS, a development agreement must be consistent with the applicable development regulations adopted by a local government planning under chapter 36.70A RCW (RCW 36.70B.170(1)); and

WHEREAS, HMT applied to the City for a Comprehensive Plan Amendment to the City's Wastewater Comprehensive Plan to reconfigure the design and location of the required future sewer infrastructure to facilitate single family development of the Property; and

WHEREAS, on July 10, 2006, the City Council held a public hearing on the Development Agreement during a regular public meeting and voted to approve the Development Agreement attached hereto as Exhibit A; Now, Therefore,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, HEREBY RESOLVES AS FOLLOWS:

Section 1. The City Council hereby authorizes the Mayor to execute the Development Agreement attached hereto as Exhibit A, with the applicant HMT.

Section 2. The City Council hereby directs the Community Development Director to record the Development Agreement against the Property legally described in Exhibit A to the Development Agreement, at the cost of the applicant, pursuant to RCW 36.70B.190.

PASSED by the City Council this 10th day of July 2006.

APPROVED:



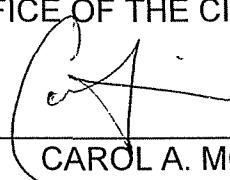
Charles L. Hunter
MAYOR, CHARLES'L. HUNTER

ATTEST/AUTHENTICATED:



Molly M. Towslee
CITY CLERK, MOLLY M. TOWSLEE

APPROVED AS TO FORM;
OFFICE OF THE CITY ATTORNEY:

BY: 
CAROL A. MORRIS

FILED WITH THE CITY CLERK: 07/10/06
PASSED BY THE CITY COUNCIL: 07/10/06
RESOLUTION NO. 680

**DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF GIG HARBOR
AND HMT, FOR A
COMPREHENSIVE PLAN AMENDMENT/RESIDENTIAL SUBDIVISION**

THIS DEVELOPMENT AGREEMENT is made and entered into this 10 day of July, 2006, by and between the City of Gig Harbor, a noncharter, optional code Washington municipal corporation, hereinafter the "City," and HMT, a partnership organized under the laws of the State of Washington, hereinafter the "Developer" or "HMT."

RECITALS

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

WHEREAS, a development agreement must set forth the development standards and other provisions that shall apply to, govern and vest the development, use and mitigation of the development of the real property for the duration specified in the agreement (RCW 36.70B.170(1)); and

WHEREAS, for the purposes of this development agreement, "development standards" includes, but is not limited to, all of the standards listed in RCW 36.70B.170(3); and

WHEREAS, a development agreement must be consistent with the applicable development regulations adopted by a local government planning under chapter 36.70A RCW (RCW 36.70B.170(1)); and

WHEREAS, this Development Agreement by and between the City of Gig Harbor and the Developer (hereinafter the "Development Agreement"), relates to the development known as Lydian Place, which is located at 5713 – 38th Street N.W., Gig Harbor, Washington; and

WHEREAS, the following events are relevant to the processing of the Developer's comprehensive plan amendment application:

- a) HMT is the fee simple owner of the property located at 5713 – 38th Street N.W., Gig Harbor, which is legally described in Exhibit A, attached hereto and incorporated herein by this reference (the "Property"); and
- b) HMT applied to the City for a Comprehensive Plan Amendment to the City's Wastewater Comprehensive Plan to reconfigure the design and location of the

required future sewer infrastructure to facilitate single family development of the Property; and

c) HMT seeks the Comprehensive Plan Amendment ("CPA") so that it may apply for a residential preliminary plat; and

e) The City issued a Determination of Significance under the State Environmental Policy Act ("SEPA") for the CPA associated with the three applications for CPA's submitted to the City for 2006, and prepared a Supplemental Environmental Impact Statement ("SEIS") to consider the probable adverse environmental impacts of the three proposed CPA's; and

f) The Final SEIS that issued on April 5, 2006, for the three proposed CPA's, concluded that the significant transportation impacts resulting from adoption of the CPA proposed by HMT could be mitigated by the conditions that are listed in Exhibit C, attached hereto; and

g) The Planning Commission recommended that the City Council approve the HMT Comp Plan Amendment, subject to the mitigation measures recommended by the Final SEIS, and that the City enter into a development agreement with HMT to clarify the manner and timing of the performance of those mitigation measures; and

WHEREAS, the parties desire by this Development Agreement to establish the mitigation to be performed by HMT as a condition of the City's approval of HMT's Comp Plan Amendment; and

WHEREAS, by Ordinance No. 1051, the City approved the HMT Comp Plan Amendment, subject to and conditioned upon execution of this Development Agreement; and

WHEREAS, after a public hearing, by Resolution No. 680, the City Council authorized the Mayor to sign this Development Agreement with the Developer; and

Now, therefore, the parties hereto agree as follows:

General Provisions

Section 1. *The Project.* The Project is the development and use of the Property, consisting of 6.98 acres in the City of Gig Harbor. After approval of the CPA, the Developer plans to submit a 23 Lot Single Family Residential Preliminary Plat application.

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

Section 3. Definitions. As used in this Development Agreement, the following terms, phrases and words shall have the meanings and be interpreted as set forth in this Section.

- a) "Certificate of Occupancy" means either a certificate issued after inspections by the City authorizing a person(s) in possession of property to dwell or otherwise use a specified building or dwelling unit, or the final inspection if a formal certificate is not issued.
- b) "Council" means the duly elected legislative body governing the City of Gig Harbor.
- c) "Director" means the City's Community Development Director.
- d) "Effective Date" means the effective date of the Ordinance adopting the Comprehensive Plan amendment and the date of passage of the Resolution authorizing the execution of this Development Agreement, whichever is later.
- e) "Landowner" is the party who has acquired any portion of the Subject Property from the Developer who, unless otherwise released as provided in this Agreement, shall be subject to the applicable provisions of this Agreement. The "Developer" is identified in Section 5 of this Agreement.
- f) "Mitigation for HMT's Project" is the specific mitigation described in Exhibit C.
- g) "Project" means the anticipated development of the Subject Property, as specified in Section 1.

Section 4. Exhibits. Exhibits to this Agreement are as follows:

- a) Exhibit A - Legal description of the Subject Property.
- b) Exhibit B - Map showing HMT's Comprehensive Plan Amendment.
- c) Exhibit C - Mitigation to be performed by HMT Partnership

Section 5. Parties to Development Agreement. The parties to this Agreement are:

- a) The "City" is the City of Gig Harbor, 3510 Grandview Street, Gig Harbor, WA 98335.
- b) The "Developer" or Owner is HMT, whose mailing address is P.O. Box 492, Tacoma, WA 98335.

Section 6. Project is a Private Undertaking. It is agreed among the parties that the Project is a private development and that the City has no interest therein except as authorized in the exercise of its governmental functions.

Section 7. Commencement, Duration and Termination.

A. Commencement. This Agreement shall commence upon the Effective Date. Adoption of the Ordinance approving the Developer's Comprehensive Plan Amendment, and is contingent upon execution of this Development Agreement. The Developer acknowledges that the Ordinance as well as this Development Agreement is subject to appeal, and that the outcome of any appeal may affect the validity of this Agreement.

B. Duration.

1. The initial term of this Development Agreement shall be two years. Within this two year period, the Developer will submit project permit applications for the Project to the City for review, and if the City approves those permits without imposing any additional or different mitigation/conditions on these project permit applications, this Agreement shall continue in force until all of the required mitigation described in Exhibit B is constructed/performed, unless extended or terminated as provided herein.

2. As described in the "whereas" sections above, the Developer intends to submit applications to the City immediately after approval of the Comprehensive Plan Amendment for the Project. These applications must include SEPA checklists, because the City is required to issue a SEPA threshold determination and the City will further evaluate the environmental impacts of the applications/comments from affected agencies and the public. Based on that review, the City may impose different or additional mitigation or conditions on the development of the Developer's Property. If the City imposes different or additional mitigation, then the parties shall amend this Agreement to reflect the mitigation/conditions imposed on the project permit applications. The Developer's execution of this Agreement shall not waive the Developer's ability to administratively or judicially appeal the City's imposition of any mitigation/conditions imposed on the project permit applications that are different from the mitigation/conditions set forth herein.

C. Termination. This Agreement shall expire and/or terminate as provided below:

1. This Agreement shall expire and be of no further force and effect if the Developer does not submit an application to the City for a preliminary plat within two years after the Effective Date of this Agreement. If this application is submitted to the City within this time frame, then the provisions of Section 7(B) above shall apply to the duration of this Agreement.

2. This Agreement shall terminate upon the expiration of the term identified in this Section 7 or when the Subject Property has been fully developed, which ever first occurs, and all of the Developer's obligations in connection therewith are satisfied as determined by the City. Upon termination of this Agreement, the City shall record a notice of such termination in a form satisfactory to the City Attorney that the Agreement has been terminated. This Agreement shall automatically terminate and be of no further force and effect as to residential or non-residential building and the lot or parcel upon which such building is located, when it has been approved by the City for occupancy.

D. Generally. Following the expiration of the term or extension thereof, or if sooner terminated, this Agreement shall have no force and effect, subject however, to post-termination obligations of the Developer or Landowner.

Section 8. Limited Vested Rights Applicable to Comp Plan Amendment.

Comprehensive Plan Amendments are not subject to the vested rights doctrine. However, because the City Council's consideration of the public health, safety and welfare under a Comprehensive Plan Amendment necessarily involves an evaluation of the available sewer capacity and transportation capacity for the Project, the City agrees that if the Developer applies for a preliminary plat application within two years of the anniversary date of this Development Agreement, and if the Developer does not change the scope or intensity of the Project as described herein, the Developer shall not be required to obtain a new concurrency evaluation for sewer or transportation. The Developer shall obtain no vested rights under any other codes, ordinances or regulations as a result of execution of this Development Agreement.

Section 9. Further Discretionary Actions. Developer acknowledges that the City's existing land use regulations, as well as any other land use regulations adopted by the City after execution of this Agreement, contemplate or will likely contemplate the exercise of further discretionary powers by the City, specifically with regard to future preliminary plat and building permit applications. These powers include, but are not limited to, review of these additional permit applications under SEPA. Nothing in this Agreement shall be construed to limit the authority or the obligation of the City to hold legally required public hearings, or to limit the discretion of the City and any of its officers or officials in complying with or applying existing land use regulations or any other land use regulations adopted in the future.

Section 10. Developer's Obligation to Perform Mitigation. Developer agrees that as a condition of the City's approval of the Comp Plan Amendment, as well as approval of a subsequent preliminary plat application (consistent with the Comp Plan Amendment), that the Developer shall perform the mitigation described in Exhibit C.

Section 11. No Obligation to Perform Mitigation if Permits for the Project are Not Approved. The parties acknowledge that the Developer shall not have any

obligation to financially contribute to the design and construction of the Transportation Mitigation Improvements or the Mitigation described in Exhibit C if the City does not approve (or conditionally approve) the Developer's application for a preliminary plat for the Project described herein.

Section 12. Additional Mitigation May be Imposed on Subsequently Issued Permits, Additional Traffic Studies May Also be Required. The parties acknowledge that the City's approval of the preliminary plat for Lydian Place may include the mitigation described in Exhibit B, as well as additional mitigation under SEPA and the City's land use regulations, as they now exist or may be amended in the future. The parties further acknowledge that neither the Washington State Department of Transportation nor Pierce County have approved or commented on the mitigation proposed in this Development Agreement, and that additional mitigation suggested by either agency may be imposed at the time the City reviews the application for preliminary plat.

Section 13. Existing Land Use Fees and Impact Fees.

- A. Permitting and Impact Fees adopted by the City by ordinance as of the Effective Date of this Agreement may be increased by the City from time to time, and applicable to permits and approvals for the Subject Property, as long as such fees apply to similar applications and projects in the City.
- B. All imposition and payment of impact fees shall be performed in accordance with chapter 19.12 of the Gig Harbor Municipal Code, as it now exists or may hereafter be amended.
- C. The Developer may request a credit from transportation impact fees for the construction of the Transportation Improvements (eligible for impact fees) or dedication of property (required for impact fee projects) at the time of project permit application, under chapter 19.12 GHMC, to the extent that the Developer has actually dedicated property, constructed improvements or paid for any improvements.

Section 14. Dedication of Public Lands. Within fifteen (15) days of submission of an application for final plat to the City for any phase of the Development, the Developer agrees to dedicate any or all road rights-of-way without expense to the City.

Section 15. Default.

- A. Subject to extensions of time by mutual consent in writing, failure or delay by either party or Landowner not released from this Agreement, to perform any term or provision of this Agreement shall constitute a default. In the event of alleged default or breach of any terms or conditions of this Agreement, the party alleging such default or breach shall give the other party or Landowner not less than thirty (30) days notice in

writing, specifying the nature of the alleged default and the manner in which said default may be cured. During this thirty (30) day period, the party or Landowner charged shall not be considered in default for purposes of termination or institution of legal proceedings.

B. After notice and expiration of the thirty (30) day period, if such default has not been cured or is not being diligently cured in the manner set forth in the notice, the other party or Landowner to this Agreement may, at its option, institute legal proceedings pursuant to this Agreement. In addition, the City may decide to file an action to enforce the City's Codes, and to obtain penalties and costs as provided in the Gig Harbor Municipal Code for violations of this Development Agreement and the Code.

Section 16. Effect upon Termination on Developer Obligations.

Termination of this Agreement as to the Developer of the Subject Property or any portion thereof shall not affect any of the Developer's obligations to comply with the City Comprehensive Plan and the terms and conditions or any applicable zoning code(s) or subdivision map or other land use entitlements approved with respect to the Subject Property, any other conditions of any other development specified in the Agreement to continue after the termination of this Agreement or obligations to pay assessments, liens, fees or taxes.

Section 17. Assignment and Assumption. The Developer shall have the right to sell, assign or transfer this Agreement with all their rights, title and interests therein to any person, firm or corporation at any time during the term of this Agreement. Developer shall provide the City with written notice of any intent to sell, assign, or transfer all or a portion of the Property, at least 30 days in advance of such action.

Section 18. Covenants Running with the Land. The conditions and covenants set forth in this Agreement and incorporated herein by the Exhibits shall run with the land and the benefits and burdens shall bind and inure to the benefit of the parties. The Developer, Landowner and every purchaser, assignee or transferee of an interest in the Subject Property, or any portion thereof, shall be obligated and bound by the terms and conditions of this Agreement, and shall be the beneficiary thereof and a party thereto, but only with respect to the Subject Property, or such portion thereof, sold, assigned or transferred to it. Any such purchaser, assignee or transferee shall observe and fully perform all of the duties and obligations of a Developer contained in this Agreement, as such duties and obligations pertain to the portion of the Subject Property sold, assigned or transferred to it.

Section 19. Amendment to Agreement; Effect of Agreement on Future Actions. This Agreement may be amended by mutual consent of all of the parties, provided that any such amendment shall follow the process established by law for the adoption of a development agreement (see, RCW 36.70B.200). However, nothing in

this Agreement shall prevent the City Council from making any amendment to its Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations affecting the Subject Property during the next five years, as the City Council may deem necessary to the extent required by a serious threat to public health and safety. Nothing in this Development Agreement shall prevent the City Council from making any amendments of any type to the Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations relating to the Property.

Section 20. Releases. Developer, and any subsequent Landowner, may free itself from further obligations relating to the sold, assigned, or transferred property, provided that the buyer, assignee or transferee expressly assumes the obligations under this Agreement as provided herein.

Section 21. Notices. Notices, demands, correspondence to the City and Developer shall be sufficiently given if dispatched by pre-paid first-class mail to the addresses of the parties as designated in Section 5. Notice to the City shall be to the attention of both the City Administrator and the City Attorney. Notices to subsequent Landowners shall be required to be given by the City only for those Landowners who have given the City written notice of their address for such notice. The parties hereto may, from time to time, advise the other of new addresses for such notices, demands or correspondence.

Section 22. Applicable Law and Attorneys' Fees. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. If litigation is initiated to enforce the terms of this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs from the non-prevailing party. Venue for any action shall lie in Pierce County Superior Court or the U.S. District Court for Western Washington.

Section 23. Third Party Legal Challenge. In the event any legal action or special proceeding is commenced by any person or entity other than a party or a Landowner to challenge this Agreement or any provision herein, the City may elect to tender the defense of such lawsuit or individual claims in the lawsuit (but not the liability associated with such lawsuit or claims) to Developer and/or Landowner(s). In such event, Developer and/or such Landowners shall hold the City harmless from and defend the City from all costs and expenses incurred in the defense of such lawsuit or individual claims in the lawsuit, including but not limited to, attorneys' fees, costs, expert witness fees. The Developer and/or Landowner shall not settle any lawsuit without the consent of the City. The City shall act in good faith and shall not unreasonably withhold consent to settle.

Section 24. Specific Performance. The parties specifically agree that damages are not an adequate remedy for breach of this Agreement, and that the parties are entitled to compel specific performance of all material terms of this Development Agreement by any party in default hereof.

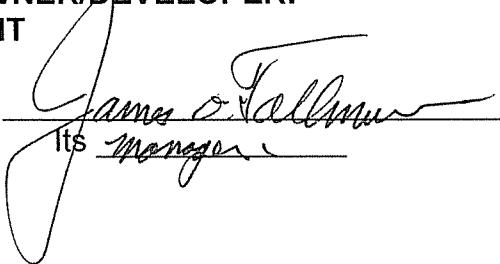
Section 25. Severability. If any phrase, provision or section of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, or if any provision of this Agreement is rendered invalid or unenforceable according to the terms of any statute of the State of Washington which became effective after the effective date of the ordinance adopting this Development Agreement, and either party in good faith determines that such provision or provisions are material to its entering into this Agreement, that party may elect to terminate this Agreement as to all of its obligations remaining unperformed.

IN WITNESS WHEREOF, the parties hereto have caused this Development Agreement to be executed as of the dates set forth below:

OWNER/DEVELOPER:

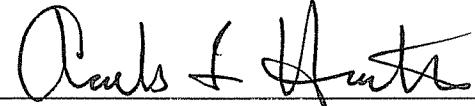
HMT

By


James O. Tallman
Its Manager

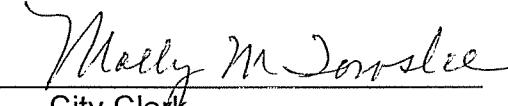
CITY OF GIG HARBOR

By


Paul F. Hunter
Its Mayor

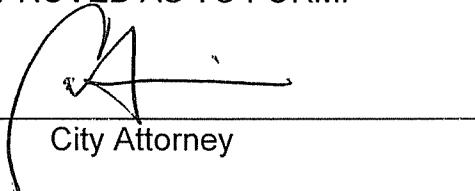
ATTEST:

By


Molly M. Doroslee
City Clerk

APPROVED AS TO FORM:

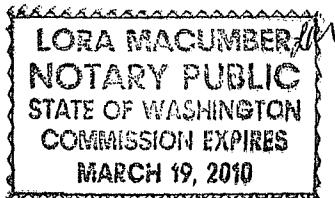
By


City Attorney

STATE OF WASHINGTON)
COUNTY OF Pierce) ss.

I certify that I know or have satisfactory evidence that James O. Tallman is the person who appeared before me, and said person acknowledged that (he/she) signed this instrument, on oath stated that (he/she) was authorized to execute the instrument and acknowledged it as the General Partner of HMT, to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: June 30, 2010



Lora Macumber

Lora Macumber

(print or type name)

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

Gig Harbor

My Commission expires 3/19/20

STATE OF WASHINGTON)
COUNTY OF PIERCE) ss.

I certify that I know or have satisfactory evidence that Charles L. Hunter is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the Mayor of Gig Harbor to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: 7-10-06

Molly M. Towslee

Molly M. Towslee

(print or type name)

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

Gig Harbor WA

My Commission expires: 12-2-07

Exhibit A
Legal description of the Subject Property

EXHIBIT "A"

(Legal Description of Tax Parcels #02-21-17-2-076 and 02-21-17-2-115)

The West one-half of the South one-half of the Southwest of the Northwest of Section 17, Township 21 North, Range 2 East of the Willamette Meridian; except the south 400 feet thereof and except the west 30 feet for the County Road (CAUSE #85-4-01658-3 & A657763)

Together with:

The South 165 feet of the North 495 feet of the following described property (after taking out exceptions): The Southwest quarter of the Northwest quarter of Section 17, Township 21 North, Range 2 East of the Willamette Meridian:

except the North one-half of the North one-half of the North one-half of the Southwest quarter of the Northwest quarter of said section;

except the west 30 feet for the road.

Map showing approved Comprehensive
Amendment

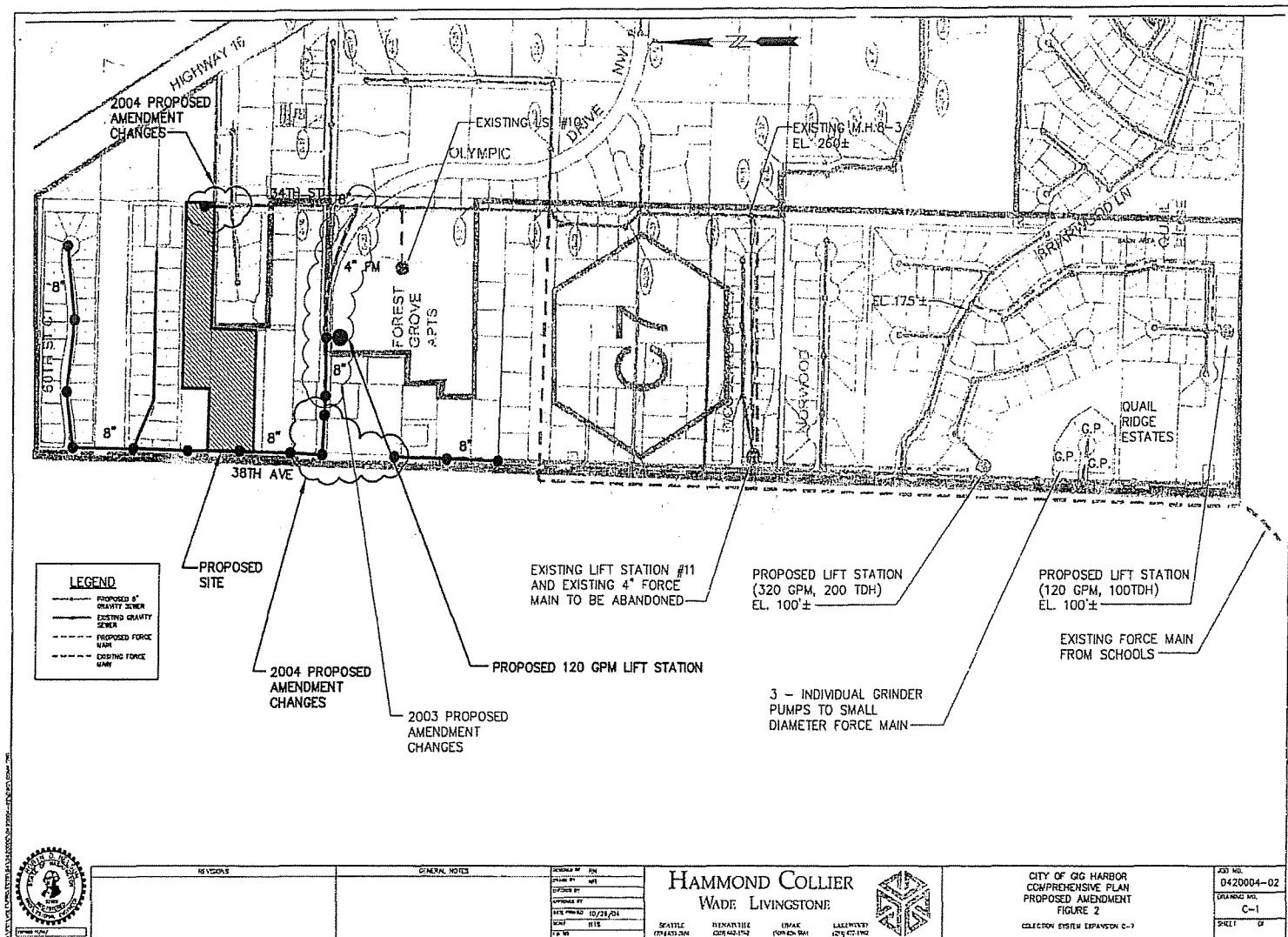


Exhibit C
Mitigation to be performed by HMT Partnership

**CPA 05-03 (Tallman/Halsan AKA HMT Partnership) Site-Specific Potential
Mitigation Measures
Page 96 & 97 FSEIS**

Land Use

Require the site developer to comply with existing comprehensive plan and development regulations concerning land use impacts. Refer to:

- GHMC Title 17.16 regulates development in the R-1 zone; and
- GHMC 18.08 regulates development in environmentally sensitive areas and provides protective measures, including buffers and setbacks for urban level development when located adjacent to critical areas.

Public Facilities

The development must comply with all provisions of the Wastewater Comprehensive Plan as amended in this FSEIS. Specifically the sewer facilities must connect to the planned facilities as described in Figure 7 as follows:

- Construct planned 8-inch gravity sewer main in 56th Street NW/Olympic Drive, from 38th Avenue NW eastward to planned lift station. Construct lift station. Construct 4 inch force main from lift station to existing sewer main in Olympic Drive near 34th Avenue NW.
- Construct planned 8-inch gravity sewer mains from the site southward, via 38th Avenue NW and via the extension of 34th Avenue NW, to connect to above-described sewer mains in 56th Street NW/Olympic Drive NW.
- Construct on-site 8 inch sewer mains for gravity flow to 34th and 38th Avenues without the use of a lift station or force main on the development site.

Transportation

Transportation impacts would be mitigated by payment of the city's traffic impact fee, and compliance with the city's concurrency management ordinance. Because of the existing LOS deficiency at the intersection of 38th Avenue NW and 56th Street NW, and the lack of a currently funded improvement to correct that deficiency, development approval on this site must be denied unless or until a financial strategy is in place to provide the needed improvements to remove the LOS deficiency. Capacity improvements for this intersection have been developed in City plans for the 56th Street NW/Olympic Drive NW corridor, including additional approach lanes, turn pockets, and signal revisions; however, these improvements are not funded. These improvements will add new capacity equal to approximately 1,800 peak hour vehicles,

for the corridor and also to this deficient intersection. The proposed development's proportionate share of future capacity for this intersection and improvements to the overall corridor is $18/1800 = 1.0$ percent. In order to remove the capacity deficiency at the intersection, however, a specific capacity improvement at the intersection must be provided that is at least commensurate with the magnitude of the development's impacts. Under GMA, the applicant has the options to provide an improvement of such magnitude, or wait for others to provide the improvement, or to modify the development proposal to reduce the site impacts.

The recommended mitigation to allow approval of this development application is as follows:

- Pay the city's traffic impact fee, based on 23 single-family dwelling units
- Construct left-turn pockets on 38th Avenue NW approaching 56th Street SW, northbound and southbound, and provide necessary matching reconstruction of pavement on both approaches to current city standards including curb/gutter/sidewalk parallel to the length of the left-turn pockets, and provide necessary matching signal control revisions. Alternatively, agree to one percent of the cost of the corridor improvements planned for 56th Street NW/Olympic Drive NW, as a contribution to the financial strategy to complete this corridor within six years.

UNAVOIDABLE ADVERSE IMPACTS

With respect to cumulative impacts of development up to the limits of the land use plan, traffic volumes will greatly increase in the Borgen Boulevard corridor until buildout is realized. Assuming all suggested mitigation measures are implemented, LOS standards will be met (or nearly so) at all locations; however, the congestion at key intersections will remain greater than existing conditions. With respect to site-specific unavoidable adverse impacts of CPA 04-01, CPA 05-01, and CPA 05-03, none are anticipated provided that all recommended mitigation is provided.