

## **RESOLUTION NO. 613**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, AUTHORIZING THE EXECUTION OF A DEVELOPMENT AGREEMENT WITH OLYMPIC PROPERTY GROUP PROPERTIES, LLC AS A CONDITION FOR APPROVAL OF A COMPREHENSIVE PLAN AMENDMENT TO APPLY TO TEN ACRES OF PROPERTY LOCATED SOUTH OF BORGEN BOULEVARD AND EAST OF THE EXISTING HOME DEPOT SITE (5120 BORGEN BOULEVARD), GIG HARBOR, WASHINGTON.**

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WHEREAS, applicant Olympic Property Group Properties, LLC submitted a revised comprehensive plan amendment (No. 02-01R) for a commercial designation of ten acres of property located south of Borgen Boulevard and east of the existing Home Depot site (5120 Borgen Boulevard), Gig Harbor, Washington;

WHEREAS, the revised comprehensive plan amendment proposed that it be granted conditioned upon Olympic Property Group's execution of a development agreement with the City to ameliorate the adverse impacts of unrestricted commercial use on the property; and

WHEREAS, on July 23, 2003, the SEPA Responsible Official issued an MDNS for this draft development agreement; and

WHEREAS, on July 28, 2003 and on August 11, 2003, the City Council held a public hearing on the development agreement;

WHEREAS, there were no appeals/comments on the MDNS issued for the development agreement; and

WHEREAS, on August 11, 2003, the City Council considered the development agreement together with the Olympic Property Group's revised comprehensive plan amendment during a regular public meeting and voted to approve the amendment,

conditioned upon the execution of 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 Olympic Property Group Properties, LLC.

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.

RESOLVED by the City Council this 11<sup>th</sup> day of August 2003.

APPROVED:

  
MAYOR, GRETCHEN A. WILBERT

ATTEST/AUTHENTICATED:

  
CITY CLERK, MOLLY M. TOWSLEE

APPROVED AS TO FORM;  
OFFICE OF THE CITY ATTORNEY:

BY:   
CAROL A. MORRIS

FILED WITH THE CITY CLERK: 8/6/03  
PASSED BY THE CITY COUNCIL: 8/11/03  
RESOLUTION NO. 613

APPEALS: THE DEVELOPMENT AGREEMENT AUTHORIZED BY THIS RESOLUTION DOES NOT APPLY TO A PROJECT PERMIT APPLICATION, AND MAY NOT BE APPEALED UNDER CHAPTER 36.70C RCW (RCW 36.70B.200). THE DEVELOPMENT AGREEMENT AUTHORIZED BY THIS RESOLUTION IS A CONDITION OF COMPREHENSIVE PLAN AMENDMENT APPROVAL, AND APPEALS OF THE DEVELOPMENT AGREEMENT AND THE COMPREHENSIVE PLAN AMENDMENT APPROVAL MUST BE FILED AS PROVIDED IN RCW 36.70A.290.

## **DEVELOPMENT AGREEMENT**

THIS AGREEMENT is entered into by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City") and Olympic Property Group Properties, LLC, a Washington limited liability company, 19245 Tenth Avenue N.E., Poulsbo, WA 98370 (hereinafter the "Owner").

### **WITNESSETH:**

WHEREAS, the Owner has a fee simple or other substantial beneficial interest in the real property located at south of Borgen Boulevard and east of the existing Home Depot site (5120 Borgen Boulevard), Gig Harbor, Washington, which is legally described in Exhibit A, attached hereto and incorporated herein by this reference (hereinafter the "Property"); and

WHEREAS, the Owner applied to the City for a comprehensive plan amendment to change the comprehensive land use designation for 35 acres from Planned Unit Development to Planned Unit Development Commercial (PCD-C); and

WHEREAS, the Owner asked the City Council to approve the application for a change to Planned Unit Development Commercial (PCD-C) with a development agreement for the Property (which was 10 acres of the 35 acre site and legally described in Exhibit A); and

WHEREAS, for the reasons set forth on the record of the City's action on the comprehensive plan amendment, the City Council does not believe that a comprehensive plan amendment to PCD-C for the Property is appropriate, without a development agreement, so that the agreement sets forth additional limitations on the development to be constructed on the Property, in order to ameliorate the adverse impacts of unrestricted commercial development on the surrounding area; and

WHEREAS, the Owners desire to develop the Property with a "village center" concept, to address the concerns of the City Council to restrict commercial development that could otherwise occur in a PCD-C zone; and

WHEREAS, the City has the authority to enter into a development agreement with the owners of real property for the purposes described above; and

WHEREAS, on July 14, 2003, the City Council directed the staff to negotiate a development agreement with the Owners, and to present the Council with a draft development agreement at the July 28, 2003 City Council meeting; and

WHEREAS, on July 28, 2003 and August 11, 2003, the City Council held a public hearing on the development agreement; and

WHEREAS, on August 11, 2003, the City Council considered the comprehensive plan amendment applications on file and voted to approve the comprehensive plan amendment for the Property, expressly conditioned on execution of this Development Agreement, which must be recorded against the Property;

NOW, THEREFORE, the parties hereby covenant, bargain and agree on behalf of themselves, their heirs, successors, legal representatives and assigns as follows:

## **TERMS**

### **Section 1. Conditions on Use and Development of the Property.**

A. *Permitted Uses.* The following uses shall be allowed on the Property as permitted uses:

1. Retail sales and service;
2. Business and professional offices and services, including governmental offices;
3. Hotels;
4. Commercial recreation;
5. Restaurants, excluding drive-through restaurants;
6. Cocktail lounges and taverns;
7. Public facilities;
8. Banks and financial institutions, excluding drive-through facilities;
9. Conference center facilities;
10. Performing arts centers;
11. Museums and art galleries;
12. Public and private schools;
13. Trails, open space, community centers;
14. Residential uses located above retail facilities; and
15. Family day care and adult family homes.

B. *Conditional Uses.* Churches or houses of religious worship shall be allowed on the Property, but only as a secondary use of an existing permitted use, and only as a conditional use (pursuant to GHMC chapter 17.64, Conditional Uses).

C. *Prohibited Uses.* All uses not specifically set forth above as either a permitted or a conditional use are prohibited.

D. *Densities.* The density for residential uses on the Property shall be the same as the density allowed in GHMC chapter 17.17, Planned Community Development Low Density Residential (RLD).

E. *Building Footprint.* No building may be constructed with a building footprint

greater than 16,000 square feet.

F. *Development standards.* The minimum development standards for the Property are as follows:

<u>Contiguous Parcel Situation</u> <sup>1</sup>	<u>Minimum Lot Width</u>
Commercial/Commercial	75 feet
Commercial/Residential	75 feet
<u>Contiguous Parcel Situation</u>	<u>Minimum Front Setback</u>
Commercial/Commercial	20 feet
Commercial/Residential	20 feet
<u>Contiguous Parcel Situation</u>	<u>Minimum Side Setback</u>
Commercial/Commercial	5 feet
Commercial/Residential	30 feet
<u>Contiguous Parcel Situation</u>	<u>Minimum Rear Setback</u>
Commercial/Commercial	20 feet
Commercial/Residential	30 feet
<u>Contiguous Parcel Situation</u>	<u>Minimum Street Frontage</u>
Commercial/Commercial	20 feet
Commercial/Residential	20 feet

G. *Landscaping.* All uses shall conform to the landscaping requirements established in chapter 17.78 GHMC (as the same exists or may be hereafter amended). All required yards shall be landscaped in accordance with the landscaping requirements of chapter 17.78 GHMC (as the same exists or may be hereafter amended).

H. *Lot Area.* There is no minimum lot area for the Property.

I. *Height.* See Section 2., 2.

J. *Lot Coverage.* There is no maximum lot coverage except as needed to comply with setback, open space and landscaping requirements.

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<sup>1</sup> Parcels with intervening streets are still considered "contiguous."

K. *Off-Street Parking.* Off-street parking and loading areas shall meet the requirements of chapter 17.72 GHMC (or as the same is hereafter amended). For all structures exceeding 16,000 square feet in floor area, 40% of required parking for the floor area in excess of 16,000 square feet shall be in covered parking, underground parking or above ground parking structures.

L. *Exterior Mechanical Devices.* All HVAC equipment, pumps, heaters and other mechanical devices shall be screened from view from all public rights-of-way.

M. *Outdoor Storage of Materials.* Outdoor storage of materials and supplies, shall be completely screened from adjacent properties and public rights-of-way.

N. *Outdoor Lighting.* Outdoor lighting shall comply with GHMC 17.41.030(I) and the City of Gig Harbor Design Manual, (as the same exists or may hereafter be amended).

O. *Trash Dumpsters.* Trash dumpsters shall be screened from view. Screening shall be made of the same siding materials found on the building to which the trash dumpster applies.

P. *Signs.* All signage must comply with chapter 17.80 GHMC (as the same exists or may hereafter be amended).

Q. *Impact Fees.* Impact fees shall be paid as required by chapter 19.12 GHMC (as the same exists or may hereafter be amended).

R. *Residential Uses.* For all structures exceeding 16,000 square feet in floor area, one residential unit shall be required for every 8,000 square feet of non-residential floor area in excess of 16,000 square feet, not to exceed allowable densities described in Section 1 D. Residential units shall be located above non-residential development and strategically located to assure optimal living conditions in a mixed-use area, and may be transferred to other buildings on the Property.

S. *Mitigation measures and other conditions on development.* The City may impose mitigation measures on development of the Property, as allowed by applicable law.

T. *Development Regulations and Design Standards.* The Property shall be developed in accordance with the City's Design Manual (as the same exists or may hereafter be amended). Nothing in this Agreement shall allow any development that does not conform to the applicable development regulations.

U. *Parks and open spaces.* The conditions imposed by the City for the dedication of parks and open spaces shall be in accordance with applicable law.

**Section 2. Binding Site Plan.** Concurrent with the submission of a rezone application for the Property, the Owners shall submit a complete application for a binding site plan, as required by the codes in place at the time of application. In addition to the requirements for a binding site plan as set forth in the City's codes, the Owners shall submit the following information and essential features of the plan:

1. The location of building pads and the intended general use for each pad. Building pads shall be sized, located and oriented in a manner that provides variation of design along streetscapes. Variation shall be achieved through a combination of staggered building heights & setbacks along street fronts, shifts in the angle of pads to the street, and variation in the shape and size of building pads.
2. The height of buildings. Building heights, as defined in GHMC 17.04.160, may not exceed two stories, as defined in GHMC 17.04.750, except that one building pad may include a structure, which will not exceed three stories.
3. A parking plan for all required parking which conforms to the parking requirements of this Agreement (Section 1(K)).
4. A village green located central to the development that will include a large gazebo, large fountain, or civic monument reflecting a prominent historic figure or event in Gig Harbor's history.
5. A pedestrian/bicycle plan providing links between each building pad, common area and right-of-way, and to larger parcels, plats and development abutting the binding site plan. The plan shall include minimum 8-foot wide walkways in front of all commercial buildings, and minimum 5.5 feet wide walkways/paths in all other locations.
6. A vehicular circulation plan that allows convenient movement within the binding site plan without relying upon perimeter roads, and that provides on-street parking along at least one side of each street.
7. Any residential units, which shall be located above non-residential development.
8. A fixture and furnishing plan that specifies the model, color and locational criteria for all outdoor light fixtures, benches, tables, and receptacles. Outdoor seating shall be provided at a minimum of .025 seats per square foot of required common area.
9. A pavement design plan that specifies the materials, patterns and colors of all pedestrian ways, plazas and common area surfaces, as per the City's Design Manual.
10. A landscape plan that identifies areas of required significant vegetation retention as per the City's Design Manual, areas of formal or planted landscaping, and that specifies street tree types, spacing and locations.

**Section 3. Binding Nature of Agreement.** This Development Agreement shall be recorded in the records of the Pierce County Auditor against the Property, and the covenants, conditions and restrictions set forth herein shall be deemed to attach to and run with the Property, and shall be binding upon the Owners, its heirs, successors, assigns, legal representatives and all other owners of an after-acquired interest in the

Property.

**Section 4. Adoption of Comprehensive Plan Amendment.** An ordinance amending the City's Comprehensive Plan changing the land use designation of the Property shall not be approved until the Owners file a signed copy of this Development Agreement with the City Clerk and the City Council authorizes the Mayor to sign the Development Agreement after a public hearing on the Development Agreement.

**Section 5. Term and Expiration.** This Development Agreement shall be effective on the date the Ordinance adopting the Comprehensive Plan Amendment for the Property is effective, (barring any appeals). This Development Agreement shall expire as provided below:

*A. Expiration by Lapse of Time.* The parties agree that after the fifth year anniversary of the date the Ordinance adopting the Comprehensive Plan Amendment for the Property is effective, there are no limitations on the City Council's ability to amend the Comprehensive Plan Map or Zoning Map to change the land use designation/zoning classification of the Property (other than those limitations set forth in applicable law and the City's codes).

*B. For subsequent comprehensive plan amendment applications by the Owner.* This Development Agreement has been executed to ameliorate the adverse impacts of the use and development of the Property under the PCD-C land use/zoning designation, as such adverse impacts are known at this time. If the Owners apply for and receive approval for any other comprehensive plan amendment or any rezone of the Property inconsistent with the comprehensive plan amendment referenced herein, this Development Agreement shall expire.

**Section 6. Modifications and Waiver.** This Development Agreement may be amended or modified by written agreement between the Owners and the City; PROVIDED THAT: the amended Development Agreement shall be approved by the City Council by ordinance after a public hearing, as provided in RCW 36.70B.200. The failure of any party to insist upon strict performance of any of the terms and conditions of this Development Agreement shall not be deemed a waiver of any rights or remedies that the party may have hereunder, at law or in equity, and shall not be deemed a waiver of any subsequent breach or default in such terms, covenants and conditions.

**Section 7. Notice.** Any notice which any party to this Development Agreement may make or deliver to the other shall be in writing and addressed as follows:

**The City of Gig Harbor**

Attn: Community Development Director  
3510 Grandview Street  
Gig Harbor, WA 98335  
(253) 851-6170

**Olympic Property Group Properties, LLC**

Attn: President  
19245 Tenth Avenue N.E.  
Poulsbo, WA 98370  
(360) 697-6626



City Attorney  
Carol Morris  
P.O. Box 948  
Seabeck, WA 98380-0948

**Section 8. Presumptions.** This Agreement was drafted by counsel for the parties and there shall not be a presumption or construction against any of the parties. Any titles or captions of paragraphs contained in this Development Agreement are for convenience and reference only. All of the terms and conditions are binding on the parties, regardless of the section in which such terms and conditions are set forth.

**Section 9. 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. In addition, the City may decide to file an action to enforce the City's Zoning Code, as provided in chapter 17.07 GHMC, and to obtain penalties and costs as provided therein for violations of this Development Agreement and the City's Zoning Code.

**Section 10. Governing Law, Venue and Attorney's Fees.** This Development Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Venue for any action arising out of or relating to this Development Agreement shall lie in Pierce County Superior Court or the U.S. District Court of Washington for the Western District. In any action brought to enforce this Development Agreement, the prevailing party shall be reimbursed for its reasonable attorney's fees and costs by the non-prevailing party.

**Section 11. Entire Agreement.** This Development Agreement, the Owner's application(s) for the Comprehensive Plan Amendments, the SEPA Checklist, the Resolution adopting this Development Agreement and the Ordinance adopting the Comprehensive Plan Amendment contain the entire agreement between the parties with respect to the subject matter hereof, and shall not be modified or amended in any way, except in writing, and signed by the duly authorized representatives of the parties.

**Section 12. Effect of Development Agreement on Future Comprehensive Plan and Zoning Actions.**

A. This Development Agreement shall be considered by the decisionmaker in any subsequent rezone of the Property, and the approval of any rezone shall include and incorporate this Development Agreement. Nothing in this Development Agreement shall prevent the decisionmaker from imposing any additional conditions on use and


development of the Property, as long as such conditions are consistent with this Development Agreement.

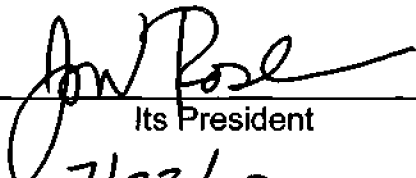
B. Nothing in this Development Agreement shall prevent the City Council from making any amendment to its Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations relating to the Property during the next five years, as the City Council may deem necessary to the extent required by a serious threat to public health and safety. Nothing in this Development Agreement shall prevent the City Council from making any amendment to the Comprehensive Plan, Zoning Code, Official Zoning Map or development regulations relating to the Property five years from the anniversary date of the Council's adoption of the Comprehensive Plan Amendment for the Property implementing this Development Agreement.

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

THE CITY OF GIG HARBOR

OLYMPIC PROPERTY GROUP  
PROPERTIES, LLC

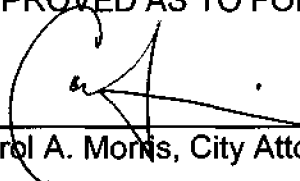
By   
Its Mayor

By   
Its President  
7/23/03

ATTEST:

  
Molly Towslee, City Clerk

APPROVED AS TO FORM:

  
Carol A. Morris, City Attorney

STATE OF WASHINGTON       )  
  ) ss.  
COUNTY OF PIERCE       )

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

Dated: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(print or type name)  
NOTARY PUBLIC in and for the State of  
Washington, residing at: \_\_\_\_\_

My Commission expires: \_\_\_\_\_

STATE OF WASHINGTON )  
 ) ss.  
COUNTY OF Kitsap )

I certify that I know or have satisfactory evidence that Jon Rose 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 President to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

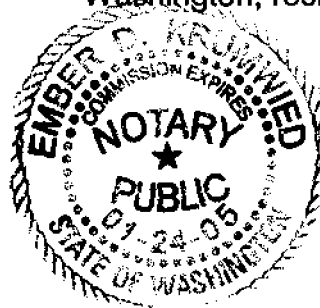
Dated: July 23, 2003

Ember D. Krumwied

Ember D. Krumwied  
(print or type name)

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

My Commission expires: 01-24-05



**EXHIBIT "A"**  
**LEGAL DESCRIPTION FOR**  
**VILLAGE CENTER**

**THAT portion of the northeast quarter of the northwest quarter AND of the northwest quarter of the northeast quarter of Section 31, Township 22 North, Range 2 East, W.M., City of Gig Harbor, Pierce County, Washington, more particularly described as follows:**

COMMENCING at the northwest corner of said Section 31, as shown on that Record of Survey by ESM Consulting Engineers, L.L.C., recorded under Pierce County Recording No. 200104115003;

THENCE along the north line of the northwest quarter of said Section 31, S 88°30'59" E, 2,302.97 feet;

THENCE S 01°29'01" W, 42.18 feet to the southerly margin of Borgen Boulevard AND the TRUE POINT OF BEGINNING;

THENCE along said southerly margin, easterly 659.67 feet along the arc of a non-tangent curve to the right, having a radius of 9,950.00 feet, the radius point of which bears

S 00°22'57" W, through a central angle of 03°47'55";

THENCE leaving said southerly margin, S 00°01'04" E, 640.08;

THENCE S 89°58'56" W, 558.05 feet;

THENCE N 31°14'17" W, 23.33 feet to a point of curvature;

THENCE northerly 521.08 feet along the arc of a tangent curve to the right, having a radius of 960.00 feet, through a central angle of 31°05'59" to a point of tangency;

THENCE N 00°08'18" W, 100.91 feet to a point of curvature;

THENCE northeasterly 78.99 feet along the arc of a tangent curve to the right, having a radius of 50.00 feet, through a central angle of 90°31'15" to the TRUE POINT OF BEGINNING.

Containing 10 acres, more or less.

See Exhibit "B" attached.

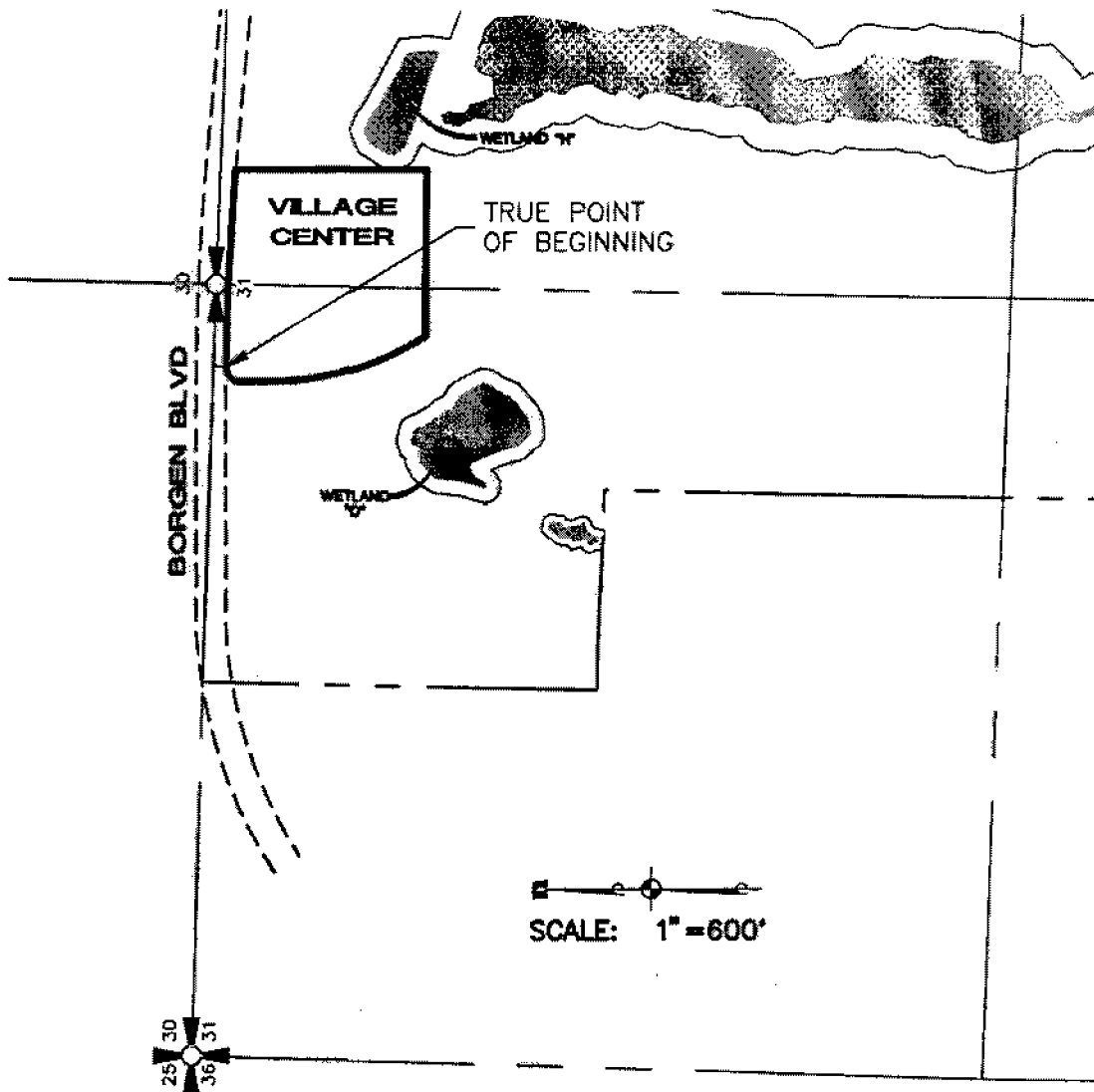
Written by: M.R.B.

Checked by:

## EXHIBIT B

### TO ACCOMPANY LEGAL DESCRIPTION FOR PROPOSED VILLAGE CENTER

A PORTION OF THE NW 1/4 OF THE NE 1/4 AND  
OF THE NE 1/4 OF THE NW 1/4 OF SECTION 31, TWP. 22 N., RGE. 2 E., W.M.,  
CITY OF GIG HARBOR, PIERCE COUNTY, WASHINGTON



**ESM**

CONSULTING ENGINEERS LLC

720 S. 348th Street  
Federal Way, WA 98003

[www.esmcivil.com](http://www.esmcivil.com)

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Landscape Architecture

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BOTHELL (425) 415-6144  
SPREMERSON (360) 789-3375

JOB NO. 528-019-001-0002  
DRAWING NAME : \\EXHIBITS\SR-02.DWG  
DATE : 07-21-03  
DRAWN : MRB  
SHEET 1 OF 1