



DATE: December 16, 2015
TO: Mayor Boudreau and City Council
FROM: Rebecca Lowell, Senior Planner
SUBJECT: PRELIMINARY PLAT APPROVAL EXTENSION REQUEST – LAND USE NO. PL15-098

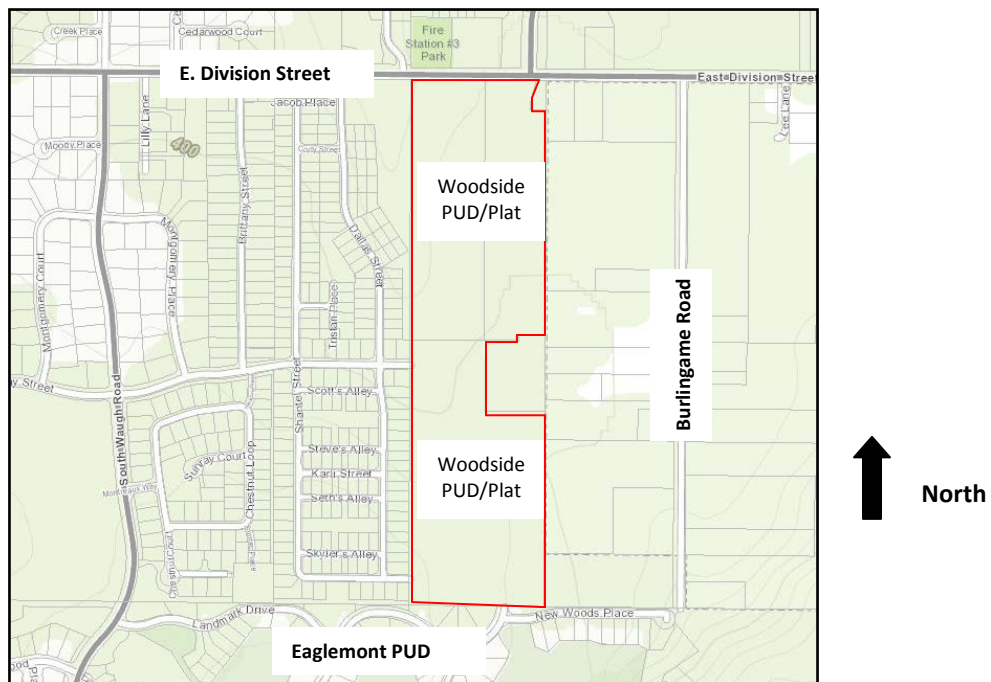
RECOMMENDED ACTION:

Staff recommends that Council make a motion to authorize the Mayor to sign the accompanying Resolution regarding the Woodside PUD/Plat preliminary plat three (3) year extension.

INTRODUCTION/BACKGROUND:

Preliminary plat approval for the Cedar Heights II PUD/Plat – re-named in 2014 to Woodside - was originally granted in November of 2009 with Resolution 797 – this Resolution currently expires in November of 2016.

The Cedar Heights II PUD/Plat originally consisted of 197 dwelling units being created over approximately 37.6 acres. The current owner has re-configured portions of this plat resulting in the elimination of ten lots; bringing the total lot count to 187. This plat is located on the south side of Division Street between South Waugh and Burlingame Roads. Please see the vicinity map below.



The following table summarizes the physical characteristics of the roads, critical areas, and stormwater facilities that the applicant has, or plans to, install/construct and compares these facilities to what would be required with currently adopted codes.

TABLE 1.1:

	EXISTING INFRASTRUCTURE CONSTRUCTED/INSTALLED AND BUFFERS OBSERVED	CURRENT CODE REQUIREMENTS
<p>Interior Plat Roads – Shelby Loop, Shelby Place, Sierra Street, Spencer Street, Alpine View Drive, Shantel Street, and Burlingame Road:</p>	<p>1. The public interior plat roads (approximately 4,220 linear feet – or .80 miles - in total) will be 28 feet in width with 4-foot planting strips and five-foot sidewalks on both sides with the exception of Burlingame, Shelby Loop and Shelby Place that will sidewalk on just one side of these roads.</p> <p>These roads will be located within a 37-foot right-of-way which means that the sidewalks will be in easements.</p> <p>Parking will be allowed on just one side of the street with these interior roads. All of these roads, with the exception of Shelby Place, Shantel Street and Burlingame Drive will have their on-street parking located between areas defined with bulb-out sections of curbing.</p>	<p>1. These street sections could only be approved through a street design standard modification process under the current code. It would be difficult for the applicant to show that that are “unique and unusual circumstances” that would warrant the approval of a modification to allow this road section.</p> <p>It is likely that all of these interior plat roads would be required to be 32 feet in width with 4-foot landscape strips and 5-foot sidewalks on both sides of these roads – all within a 51-foot wide right-of-way.</p> <p>This 32-foot wide road allows parking on both sides of the street.</p>
<p>Interior Plat Roads – Chief Street, and Chief Place:</p>	<p>2. These interior plat roads (approximately 1,025 linear feet – or .19 miles - in total) will be 20 feet in width with five-foot sidewalks on one (1) side of these roads.</p> <p>These roads will be located within a minimum 26-foot right-of-way or easement.</p> <p>Parking will not be allowed on either side of these streets.</p>	<p>2. This street section could only be approved through a street design standard modification process under the current code. It would be difficult for the applicant to show that that are “unique and unusual circumstances” that would warrant the approval of a modification to allow this road section.</p>

		<p>It is likely that all of these interior plat roads would be required to be 32 feet in width with 4-foot landscape strips and 5-foot sidewalks on both sides of these roads – all within a 51-foot wide right-of-way.</p> <p>This 32-foot wide road allows parking on both sides of the street.</p>
<p>Interior Plat Roads – Sinclair Alley, Alley #1, and Alley #2:</p>	<p>3. These interior alleys (approximately 925 linear feet in total) will be 20 feet in width.</p> <p>These roads will be located within a minimum 24 to 26-foot right-of-way or easement.</p> <p>Parking will not be allowed on either side of these streets.</p>	<p>3. This street section would likely be approved. The City’s currently adopted code allows alleys to consist of a 20-foot paved surface within a 24-foot right-of-way.</p>
<p>Frontage Road – Broadway Street:</p>	<p>4. Approximately 1,654 linear feet of Broadway Street will be extended through this site from the westerly terminus of Broadway up to and connecting with Division Street.</p> <p>Broadway will consist of 40-foot wide paved roadway section feet with 4-foot planting strips and five-foot sidewalks on both sides.</p> <p>Broadway will be located within a 50-foot right-of-way. Parking will allowed on just one side of the street between areas defined with bulb-out sections of curbing.</p>	<p>4. This street section could only be approved through a street design standard modification process under the current code. It would be difficult for the applicant to show that that are “unique and unusual circumstances” that would warrant the approval of a modification to allow this road section.</p> <p>The current standard would require either a minor arterial or a Type III road standard. A minor arterial standard includes: a 44-foot wide street width, 6-foot wide sidewalks on both sides of this street within a 60-foot right-of-way. A Type III standard includes: a 32-foot wide road with 4-foot landscape strips and 5-foot sidewalks on both within a 51-foot wide right-of-way.</p> <p>Either of these road cross-sections would allow parking on both sides of the street.</p>

<p>Critical Areas – Wetlands:</p>	<p>1. There are four (4) Category III wetlands identified within the plat boundaries. A 25-foot buffer is being observed from the edge of each of these wetlands.</p>	<p>2. 4. The City’s current code would require a 100-foot buffer from the edge of these wetlands.</p>
<p>Stormwater Pond:</p>	<p>6. The stormwater pond serving the plat is a regional detention pond that is already constructed immediately to the west of the subject plat. This detention pond also serves the Cedar Heights I PUD, the Montreaux PUD (phase located on the east side of Waugh Road).</p> <p>This pond consists of an open pond with storage for detention along with two (2) cells providing water quality functions. Stormwater discharged from this pond is released to a control structure located on the north side of the pond; near the south side of Division Road.</p> <p>This regional pond is designed to comply with the Department of Ecology’s 1992 Stormwater Management Manuel Requirements.</p> <p>This pond is approximately 1.5 acres in size.</p>	<p>6. In 2010 the City adopted the DOE’s 2005 Stormwater Management Manuel that requires different stormwater modeling processes and procedures that result in sizing stormwater facilities and their associated outlet control structures.</p> <p>The regional stormwater pond would likely be larger and/or different methods would have to be employed to infiltrate/attenuate stormwater if the requirements of this newer DOE manual were used on this site.</p>

The current owner, CH Creek LLC, an affiliate company to Landed Gentry, purchased this development in 2014. Prior to 2014 gravel fill had been imported and underground utility installation had started for approximately 40% of the northern portion of this overall development. In August of 2015 CH Creek LLC received a new fill & grade permit to begin work on completing the site work for the northern Divisions that had been started in 2009.

FINDINGS:

In June of 2015 City Council approved Ordinance 3651 that provides a way for preliminary plat approvals to be extended for either one or three years – with conditions. The part of Ordinance 3651 that allows CH Creek, LLC to request a three-year preliminary plat extension reads as follows:

MVMC 16.08.060:

C. If the developer fails to receive final approval within the timeframes outlined with the above listed subsections A or B the preliminary plat approval shall expire unless one of the following requests are submitted to the CEDD and approved by City Council through a Type V process.

2. *An applicant who files a written request to the office of the Community & Economic Development Department may be granted no more than a three-year extension for preliminary plat approvals granted on or before December 31, 2010. There shall be allowed only one three year extension; and this extension shall not be combined with the one year extension allowed within sub-section (1), above. In granting this extension a development agreement consistent with the requirements of RCW 36.70B.170 shall be prepared and approved by the City Council. In granting this extension the Council can require that a development comply with any of the development regulations in effect at the time the extension is requested should these regulations be different than the ones the development is vested to.*

CH Creek, LLC has been, and continues to, diligently work on installing the road and utility infrastructure necessary to serve the northern Divisions of this development. Additionally, the owner has been working with critical area biologists in an effort to satisfy the wetland and stream related mitigation measures required of this project.

As outlined within Table 1.1 above, staff notes that the development regulations that this plat was vested to are different than the regulations in place in 2015. Staff is recommending that the Council not require this development to comply with development regulations that are different than the ones that this project was originally vested to for the following reasons:

1. The regional stormwater pond that will serve this site is already constructed. Side note: the current owner will be required to correct any deficiencies found with this pond prior to final plat approval of Division 1.
2. A portion of the future roadbed and portions of the underground utilities to serve the northern portion of this site are close to being completely installed.
3. There is extensive wetland and stream mitigation work that is required to be completed prior to the first final plat approval being granted. The owner has been working on these particular issues for months.

4. This development will be restricted to those 55 and older which should mitigate the need for additional on-street parking on the interior plat roads that provide parking on just one (1) side of them that include: Sierra, Spencer, Shelby, Alpine-View, Shantel, and Burlingame Streets/Drives/Places/Loop.

RECOMMENDATION:

Council move to authorize the Mayor to sign the accompanying Resolution that will extend the preliminary plat expiration period for three (3) years (i.e., from November 4, 2016 to November 4, 2019) for the Woodside PUD/Plat, LU07-009.

ATTACHED:

- Proposed Resolution for Council Consideration
- Proposed Development Agreement
 - Exhibit A: Legal Description of the overall property
 - Exhibit B: Woodside PUD/Plat map
 - Exhibit C: Preliminary Plat Resolution 797

RESOLUTION NO.

A RESOLUTION OF THE CITY OF MOUNT VERNON, WASHINGTON; ACCEPTING THE DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MOUNT VERNON AND CH CREEK LLC TO EXTEND PRELIMINARY PLAT APPROVAL FOR THE CEDAR HEIGHTS II DEVELOPMENT (LU07-009)

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, this Development Agreement by and between the City of Mount and the Developer (hereinafter the “Development Agreement”), relates to the development historically known as Cedar Heights II, File No. LU07-009. This same development has been renamed by its new owners as Woodside instead of Cedar Heights II; the City file number remained unchanged; and

WHEREAS, the City Council approved Ordinance 3651 in June of 2015 providing a mechanism for the possible extension of preliminary plat approvals such as the Woodside PUD; and

WHEREAS, the Developer has requested approval of a development agreement to extend the timeframe in which the development will have a valid preliminary plat approval consistent with MVMC 16.08.060(C)(2); and

WHEREAS, the City held a public hearing regarding the approval of this Development Agreement on December 16, 2015. Notice of the Public Hearing was published in the Skagit Valley Herald on December 5, 2015; and

WHEREAS, it is further deemed advisable to record the decisions reached by the Council through the adoption of this resolution; **NOW, THEREFORE,**

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MOUNT VERNON:

1. The Recitals and General Provisions found within the accompanying Development Agreement are hereby adopted by reference as if they were fully set forth herein; and,
2. That the City of Mount Vernon will accept the accompanying Development Agreement and its associated exhibits.

ADOPTED by the City Council of the City of Mount Vernon, Washington, and **APPROVED** by its Mayor, following a public hearing on the 16th day of December, 2015.

SIGNED IN AUTHENTICATION this ____ day of December, 2015.

Alicia D. Huschka, Finance Director

Jill Boudreau, Mayor

Approved as to form:

Kevin Rogerson, City Attorney

Upon Recording Please Return To:
City of Mount Vernon
PO Box 809
910 Cleveland Avenue
Mount Vernon, WA 98273

**DEVELOPMENT AGREEMENT
BY AND BETWEEN THE CITY OF MOUNT VERNON
AND CH CREEK LLC TO EXTEND THE PRELIMINARY PLAT VALIDITY
TIMEFRAME FOR THE CEDAR HEIGHTS II (RENAMED WOODSIDE)
PRELIMINARY PLAT/PUD**

THIS DEVELOPMENT AGREEMENT is made and entered into this ____ day of December, 2015, by and between the City of Mount Vernon, a municipal corporation of Washington State, (the “City”) and CH Creek LLC a limited liability corporation of Washington State (“Developer”)

RECITALS

WHEREAS, the Chapter 36.70B RCW provides specific authority for development agreements 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 a 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, development agreements can establish mitigation measures, development conditions, phasing, and other appropriate development requirements or procedures (RCW 36.70B.170(3)(c),(g),(h),(j)); and

WHEREAS, this Development Agreement by and between the City and the Developer (the “Development Agreement”), relates to the development previously known as Cedar Heights II, File No. LU07-009. This same development has been renamed by its new owners as Woodside; the City file number remained unchanged; and

WHEREAS, the Woodside development is located on the south side of Division Street between South Waugh and Burlingame Roads. The Skagit County Assessor identifies the site with the following parcel numbers: P27571, P27502, and P108235 (hereinafter referred to as the “Property”); and

WHEREAS, the proposed Woodside development received preliminary plat approval in November of 2009 with City Resolution 797 and originally consisted of 197 residential lots being created over the approximate 37.6 acre site. This development was planned to be constructed in nine (9) different divisions; and

WHEREAS, in December of 2014 the developer purchased the property and subsequently requested a minor modification to this plat that resulted in a reduction of 10 lots. The amended plat will now consist of 187 residential lots being created; and

WHEREAS, the City Council approved Ordinance 3651 in June of 2015 providing a mechanism for the possible extension of preliminary plat approvals such as the Woodside PUD; and

WHEREAS, the Developer requested to enter into a development agreement extending the time to submit a final plat meeting all requirements of the preliminary plat approved by the City through Resolution 797; and

WHEREAS, MVMC 16.08.060(C)(2) allows Developer to file a written request for one three year extension on preliminary plat approvals granted on or before December 21, 2010 and that the City may grant such a request through entering into a development agreement and may require Developer to comply with any changes of development regulations in effect at the time the extension is requested; and

WHEREAS, Developer has followed the necessary process required to seek an extension of preliminary plat approval granted by the City through Resolution 797; and

WHEREAS, a public hearing was held on _____ to consider approval of the Development Agreement after which the City Council approved the development agreement through Resolution ____.

NOW, THEREFORE, the parties hereto agree as follows:

GENERAL PROVISIONS

Section 1. *The Project.* The Project (currently named Woodside) is the subdivision and residential development and use of the Property originally consisted of 197 residential lots being created over the approximate 37.6 acre site through preliminary plat approval in November of 2009 with City Resolution 797. This development was planned to be constructed in nine (9) different phases. The developer, through approval of a minor modification of the preliminary plat, reduced the lots from the originally approved 197 to 187.

Section 2. *The Subject Property.* The Project site 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. “Adopting Resolution” means the Resolution which approves this Development Agreement, as required by RCW 36.70B.200.

B. “Council” means the duly elected legislative body governing the City of Mount Vernon.

C. “Director” means the City’s Community and Economic Development Director or Public Works Director.

D. “Effective Date” means the effective date of the Adopting Resolution.

E. “Existing Land Use Regulations” means the ordinances adopted by the City Council of Mount Vernon in effect on the Effective Date, unless otherwise provided herein, including the adopting ordinances that govern the permitted uses of land, the density and intensity of use, and the design, improvement, construction standards and specifications applicable to the Project (i.e. the development of the Property to which the Developer has applied), including, but not limited to the Comprehensive Plan, the City’s Official Zoning Map and development standards, the Design Manual, the Public Works Standards, SEPA, Concurrency Ordinance, and all other ordinances, codes, rules and regulations of the City establishing subdivision standards, park regulations, building standards that apply to subdivisions. Existing Land Use Regulation does not include non-land use regulations, which includes taxes and impact fees. Existing land use regulations do not include environmental laws or changes to such laws adopted by the City when required to comply under any federal or state law or general permit including but not limited the National Pollution Discharge and Elimination municipal stormwater permits. Existing land use regulations do not include land use regulations governing other land development activities beyond the scope of the Project which require new applications and permits including but not limited to building permits, major modifications to the preliminary plat, and new preliminary plat applications.

F. “Landowner” means the party who has acquired any portion of the 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.

G. “Project” means the anticipated development of the Property, as specified in Section 1 and as provided for in all associated permits/approvals, and all incorporated exhibits.

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

- Exhibit A – Legal description of the Subject Property.
- Exhibit B – Map showing the proposed Woodside PUD
- Exhibit C – Resolution 797.

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

- A. The “City” is the City of Mount Vernon, PO Box 809, 910 Cleveland Avenue, Mount Vernon, WA 98273.
- B. The “Developer” or Owner is a private enterprise which owns the Subject Property in fee, and whose principal office is located at 504 East Fairhaven Ave, Burlington WA 98233, (360) 755-9021.
- C. The “Landowner.” From time to time, as provided in this Agreement, the Developer may sell or otherwise lawfully dispose of a portion of the Property to a Landowner who, unless otherwise released, shall be subject to the applicable provisions of this Agreement related to such portion of the Property.

Section 6. *Term of Agreement.* This Agreement shall commence upon the Effective Date, and shall continue in force until November 2nd, 2019; or unless terminated as provided herein. Following termination or expiration, this Agreement shall have no force and effect subject however to any post-termination obligations of the parties.

Section 7. *Preliminary Plat Timeline Extension.*

- A. Preliminary Plat Time Limitations. RCW 58.17.140(3)(a) states that “a final plat meeting all requirements of this chapter shall be submitted to the legislative body of the city, town, or county for approval within seven years of the date of preliminary plat approval if the date of preliminary plat approval is on or before December 31, 2014...”. The development received preliminary plat approval on November 4, 2009. As such, this preliminary plat approval would expire on November 4, 2016.
- B. 2015 MVMC Amendment Related to Preliminary Plat Timeframes. In June of 2015 the Mount Vernon City Council approved amendments to Mount Vernon Municipal Code (MVMC) 16.08.060(C)(2) providing a way that preliminary plat approvals can be extended for three-years “upon a showing that they have attempted in good faith to submit the final plat within the required period...” In granting an extension the Council can require that a development comply with any of the development regulations in effect at the time the extension is requested should these regulations be different than the ones the development is vested to”.
- B. Considerations for Preliminary Plat Extension.
 - i. The City finds that a significant amount of plat infrastructure required to comply with preliminary plat conditions set through Resolution 797 (e.g. utility pipes, stormwater pond, and road sub-grade) have been constructed and installed.
 - ii. The City finds that the Developer has attempted in good faith to submit the final plat within the required period; and,
 - iii. The City finds that Existing Land Use Regulations as defined herein vested when a complete application was submitted for preliminary plat approved through Resolution 797 shall not be modified.
 - iv. To mitigate the reduced amount of on-street parking that this development will provide this development shall be conditioned such that the future dwelling units

are restricted to those that are 55 or older. This restriction shall be on the face of the recorded final plats.

- D. Newly Authorized Preliminary Plat Expiration Date. The City Council with the approval of Resolution _____ concurs with the staff findings and is extending the preliminary plat validity timeline **from** November 4, 2016 **to** November 2, 2019.
- E. All Other Requirements Not Modified. This development agreement does not change or alter any other approval that the development is subject to; including, but not limited to: the conditions of Resolution 797, the mitigation measures imposed through the SEPA process, or the previous development agreement approved with Resolution 889 regarding the timing of the roundabout at the intersection of Waugh Road and Division Street.

Section 8. 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 Mount Vernon Municipal Code for violations of this Development Agreement and the Code.

Section 9. Termination. This Agreement shall expire and/or terminate and be of no further force at such time all nine (9) divisions of the Woodside PUD are approved by the City and recorded with the Skagit County Auditor; or **November 2, 2019**; whichever occurs first.

Section 10. Effect upon Termination on Developer Obligations. Termination of this Agreement as to the Developer of the 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 11. Assignment and Assumption. The Developer shall have the right to sell, assign or transfer this Agreement with all their rights, title and interests, and delegate its duties 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 Subject Property, at least 30 days in advance of such action.

Section 12. 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 13. 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 Community & Economic Development Director 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 14. Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Washington. Venue for any action shall lie in Skagit County Superior Court or the U.S. District Court for Western Washington.

Section 15. 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:

SIGNED AND APPROVED this ____ day of _____, 2015

OWNER/DEVELOPER:

Brian Gentry,
Manager of CH Creek, LLC

Kendra Decker,
Manager of CH Creek, LLC

CITY OF MOUNT VERNON:

By _____
Jill Boudreau, Mayor

Attest:

Alicia D. Huschka, Finance Director

Approved as to form:

Kevin Rogerson, City Attorney

STATE OF WASHINGTON }
COUNTY OF SKAGIT } ss.

I certify that I know or have satisfactory evidence that **Brian Gentry** 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 **Manager of CH Creek LLC**, a limited liability company, to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned.

Given under my hand and official seal this _____ day of June 2015.

(SEAL)

Notary Public
Residing at _____
My appointment expires _____

STATE OF WASHINGTON }
COUNTY OF SKAGIT } ss.

I certify that I know or have satisfactory evidence that **Kendra Decker** 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 **Manager of CH Creek LLC**, a limited liability company, to be the free and voluntary act and deed of said company, for the uses and purposes therein mentioned.

Given under my hand and official seal this _____ day of June 2015.

(SEAL)

Notary Public
Residing at _____
My appointment expires _____

EXHIBIT A

Legal Description of Property

PARCEL "A"

LOT 2, SHORT PLAT NO. PL01-0579, APPROVED JANUARY 31, 2002, AND RECORDED FEBRUARY 1, 2002, UNDER AUDITOR'S FILE NO. 200202010016; AND BEING A PORTION OF THE WEST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 22, TOWNSHIP 34 NORTH, RANGE 4 EAST, W.M.

PARCEL "B"

THE WEST 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 22, TOWNSHIP 34 NORTH, RANGE 4 EAST, W.M.,

EXCEPT COUNTY ROADS,

AND EXCEPT THE EAST 295 FEET THEREOF.

PARCEL "C"

THAT PORTION OF THE WEST 1/2 OF THE WEST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 22, TOWNSHIP 34 NORTH, RANGE 4 EAST, W.M., DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID SUBDIVISION;
THENCE WEST ALONG THE NORTH LINE OF SAID SUBDIVISION, 130 FEET;
THENCE SOUTH PARALLEL TO THE EAST LINE OF SAID SUBDIVISION, 1,290 FEET;
THENCE EAST PARALLEL TO THE NORTH LINE OF SAID SUBDIVISION, 130 FEET;
THENCE NORTH ALONG THE EAST LINE OF SAID SUBDIVISION, 1,290 FEET TO THE POINT OF BEGINNING,

EXCEPT COUNTY ROAD ALONG THE NORTH LINE THEREOF,

AND ALSO EXCEPT THE FOLLOWING:

THAT PORTION OF THE WEST 1/2 OF THE WEST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 22, TOWNSHIP 34 NORTH, RANGE 4 EAST, W.M., DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE SOUTHEAST 1/4 (EAST 1/4 CORNER) OF SAID SECTION 22, TOWNSHIP 34 NORTH, RANGE 4 EAST, W.M.;

THENCE NORTH 89°13'31" WEST ALONG THE NORTH LINE OF SAID SOUTHEAST 1/4 FOR A DISTANCE OF 2,022.72 FEET, MORE OR LESS, TO THE NORTHEAST CORNER OF SAID WEST 1/2 OF THE WEST 1/2 OF THE SOUTHEAST 1/4;

THENCE SOUTH 0°32'00" WEST ALONG THE EAST LINE OF SAID WEST 1/2 OF THE WEST 1/2 OF THE SOUTHEAST 1/4 FOR A DISTANCE OF 30.00 FEET, MORE OR LESS, TO THE NORTH RIGHT OF WAY MARGIN OF DIVISION STREET AND BEING THE TRUE POINT OF BEGINNING;

THENCE CONTINUE SOUTH 0°32'00" WEST ALONG THE EAST LINE FOR A DISTANCE OF 122.50 FEET;

THENCE NORTH 89°27'56" WEST FOR A DISTANCE OF 93.46 FEET;

THENCE NORTH 10°48'57" EAST FOR A DISTANCE OF 95.46 FEET TO A POINT OF CURVATURE;

THENCE ALONG THE ARC OF SAID CURVE TO THE RIGHT, CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 35.00 FEET, THROUGH A CENTRAL ANGLE OF 79°57'32", AN ARC DISTANCE OF 48.84 FEET, MORE OR LESS, TO A POINT OF TANGENCY ON SAID SOUTH RIGHT OF WAY MARGIN OF DIVISION STREET AT A POINT BEARING NORTH 89°13'31" WEST FROM THE TRUE POINT OF BEGINNING;

THENCE SOUTH 89°13'31" EAST ALONG SAID SOUTH RIGHT OF WAY MARGIN FOR A DISTANCE OF 41.84 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING.

PARCEL "D"

THAT PORTION OF THE WEST 1/2 OF THE WEST 1/2 OF THE SOUTHEAST 1/4, SECTION 22, TOWNSHIP 34 NORTH, RANGE 4 EAST, W.M., DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID SUBDIVISION
THENCE WEST ALONG THE NORTH LINE OF SAID SUBDIVISION 130 FEET TO THE TRUE POINT OF BEGINNING;
THENCE CONTINUING WEST ALONG THE NORTH LINE OF SAID SUBDIVISION 165 FEET;
THENCE SOUTH PARALLEL TO THE EAST LINE OF SAID SUBDIVISION 1,320 FEET;
THENCE EAST PARALLEL TO THE NORTH LINE OF SAID SUBDIVISION 165 FEET;
THENCE NORTH PARALLEL TO THE EAST LINE OF SAID SUBDIVISION 1,320 FEET TO THE TRUE POINT OF BEGINNING;

EXCEPT COUNTY ROAD.

ALL OF THE ABOVE BEING SUBJECT TO AND TOGETHER WITH EASEMENTS, RESERVATIONS, RESTRICTIONS, COVENANTS, LIENS, LEASES, COURT CAUSES AND OTHER INSTRUMENTS OF RECORD.

ALL SITUATE IN THE CITY OF MOUNT VERNON, COUNTY OF SKAGIT, STATE OF WASHINGTON.

EXHIBIT B

Maps showing the proposed Woodside residential development (for illustrative purposes only)



EXHIBIT C
Resolution 797

RESOLUTION NO. 797

A RESOLUTION PERTAINING TO SUBDIVISION CONTROL AND ACCEPTING THE CEDAR HEIGHTS PHASE 2 PRELIMINARY PLAT / PLANNED UNIT DEVELOPMENT PURSUANT TO CHAPTER 16.08 OF THE MOUNT VERNON MUNICIPAL CODE.

WHEREAS, an application for approval of a Preliminary Plat / Planned Unit Development of a proposed 197-lot subdivision has been made pursuant to Chapters 16.08 of the Mount Vernon Municipal Code (MVMC) by the owner of the real property described in Exhibit 'A' which comprises approximately 37.6 acres in Mount Vernon, Washington; and

WHEREAS, notices of the time, location and purpose of a public hearing for the purpose of giving approval, conditional approval, or disapproval of the Preliminary Plat were sent pursuant to Chapter 14.05; and

WHEREAS, pursuant to Chapter 16.08 of the Mount Vernon Municipal Code, a public hearing was conducted before the Mount Vernon Hearing Examiner on October 1, 2009; and

WHEREAS, a Preliminary Plat / Planned Unit Development map, Exhibit 'B', has been reviewed by the Hearing Examiner; and

WHEREAS, the City of Mount Vernon issued a Mitigated Determination of Non-Significance (MDNS) on June 23, 2009; and

WHEREAS, the Hearing Examiner recommends, based on Findings of Fact, Conclusions of Law and Recommendations listed within his recommendation, Preliminary Plat approval with conditions listed in the accompanying Exhibit 'C'.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MOUNT VERNON, WASHINGTON AS FOLLOWS:


That said Preliminary Plat known and described as **CEDAR HEIGHTS PHASE 2 PLAT** has been presented, as shown on the plat plan included as Exhibit 'B', attached hereto and made a part hereof by reference as though fully set forth, for acceptance, approval, and filing and is hereby accepted, approved, and ordered filed subject to the conditions listed in Exhibit 'C', attached hereto and made a part hereof by reference as though fully set forth herein. The real property comprising such plat is hereby described in Exhibit 'A', attached hereto and made a part hereof by reference as though fully set forth.

Dated this 4th day of November, 2009:



Bud Norris, Mayor

Attest:



Alicia D. Huschka, Finance Director

Approved as to form:



Kevin Rogerson, City Attorney

EXHIBIT 'A'

PARCEL "A"

LOT 2, SHORT PLAT NO. PL01-0579, APPROVED JANUARY 31, 2002, AND RECORDED FEBRUARY 1, 2002, UNDER AUDITOR'S FILE NO. 200202010016; AND BEING A PORTION OF THE WEST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 22, TOWNSHIP 34 NORTH, RANGE 4 EAST, W.M.

PARCEL "B"

THE WEST 1/2 OF THE NORTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SECTION 22, TOWNSHIP 34 NORTH, RANGE 4 EAST, W.M.,

EXCEPT COUNTY ROADS,

AND EXCEPT THE EAST 295 FEET THEREOF.

PARCEL "C"

THAT PORTION OF THE WEST 1/2 OF THE WEST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 22, TOWNSHIP 34 NORTH, RANGE 4 EAST, W.M., DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID SUBDIVISION;
THENCE WEST ALONG THE NORTH LINE OF SAID SUBDIVISION, 130 FEET;
THENCE SOUTH PARALLEL TO THE EAST LINE OF SAID SUBDIVISION, 1,290 FEET;
THENCE EAST PARALLEL TO THE NORTH LINE OF SAID SUBDIVISION, 130 FEET;
THENCE NORTH ALONG THE EAST LINE OF SAID SUBDIVISION, 1,290 FEET TO THE POINT OF BEGINNING,

EXCEPT COUNTY ROAD ALONG THE NORTH LINE THEREOF,

AND ALSO EXCEPT THE FOLLOWING:

THAT PORTION OF THE WEST 1/2 OF THE WEST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 22, TOWNSHIP 34 NORTH, RANGE 4 EAST, W.M., DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF THE SOUTHEAST 1/4 (EAST 1/4 CORNER) OF SAID SECTION 22, TOWNSHIP 34 NORTH, RANGE 4 EAST, W.M.;

THENCE NORTH 89°13'31" WEST ALONG THE NORTH LINE OF SAID SOUTHEAST 1/4 FOR A DISTANCE OF 2,022.72 FEET, MORE OR LESS, TO THE NORTHEAST CORNER OF SAID WEST 1/2 OF THE WEST 1/2 OF THE SOUTHEAST 1/4;

THENCE SOUTH 0°32'00" WEST ALONG THE EAST LINE OF SAID WEST 1/2 OF THE WEST 1/2 OF THE SOUTHEAST 1/4 FOR A DISTANCE OF 30.00 FEET, MORE OR LESS, TO THE NORTH RIGHT OF WAY MARGIN OF DIVISION STREET AND BEING THE TRUE POINT OF BEGINNING;

THENCE CONTINUE SOUTH 0°32'00" WEST ALONG THE EAST LINE FOR A DISTANCE OF 122.50 FEET;

THENCE NORTH 89°27'56" WEST FOR A DISTANCE OF 93.46 FEET;

THENCE NORTH 10°48'57" EAST FOR A DISTANCE OF 95.46 FEET TO A POINT OF CURVATURE;

THENCE ALONG THE ARC OF SAID CURVE TO THE RIGHT, CONCAVE TO THE SOUTHEAST, HAVING A RADIUS OF 35.00 FEET, THROUGH A CENTRAL ANGLE OF 79°57'32", AN ARC DISTANCE OF 48.84 FEET, MORE OR LESS, TO A POINT OF TANGENCY ON SAID SOUTH RIGHT OF WAY MARGIN OF DIVISION STREET AT A POINT BEARING NORTH 89°13'31" WEST FROM THE TRUE POINT OF BEGINNING;

THENCE SOUTH 89°13'31" EAST ALONG SAID SOUTH RIGHT OF WAY MARGIN FOR A DISTANCE OF 41.84 FEET, MORE OR LESS, TO THE TRUE POINT OF BEGINNING.

PARCEL "D"

THAT PORTION OF THE WEST 1/2 OF THE WEST 1/2 OF THE SOUTHEAST 1/4, SECTION 22, TOWNSHIP 34 NORTH, RANGE 4 EAST, W.M., DESCRIBED AS FOLLOWS:

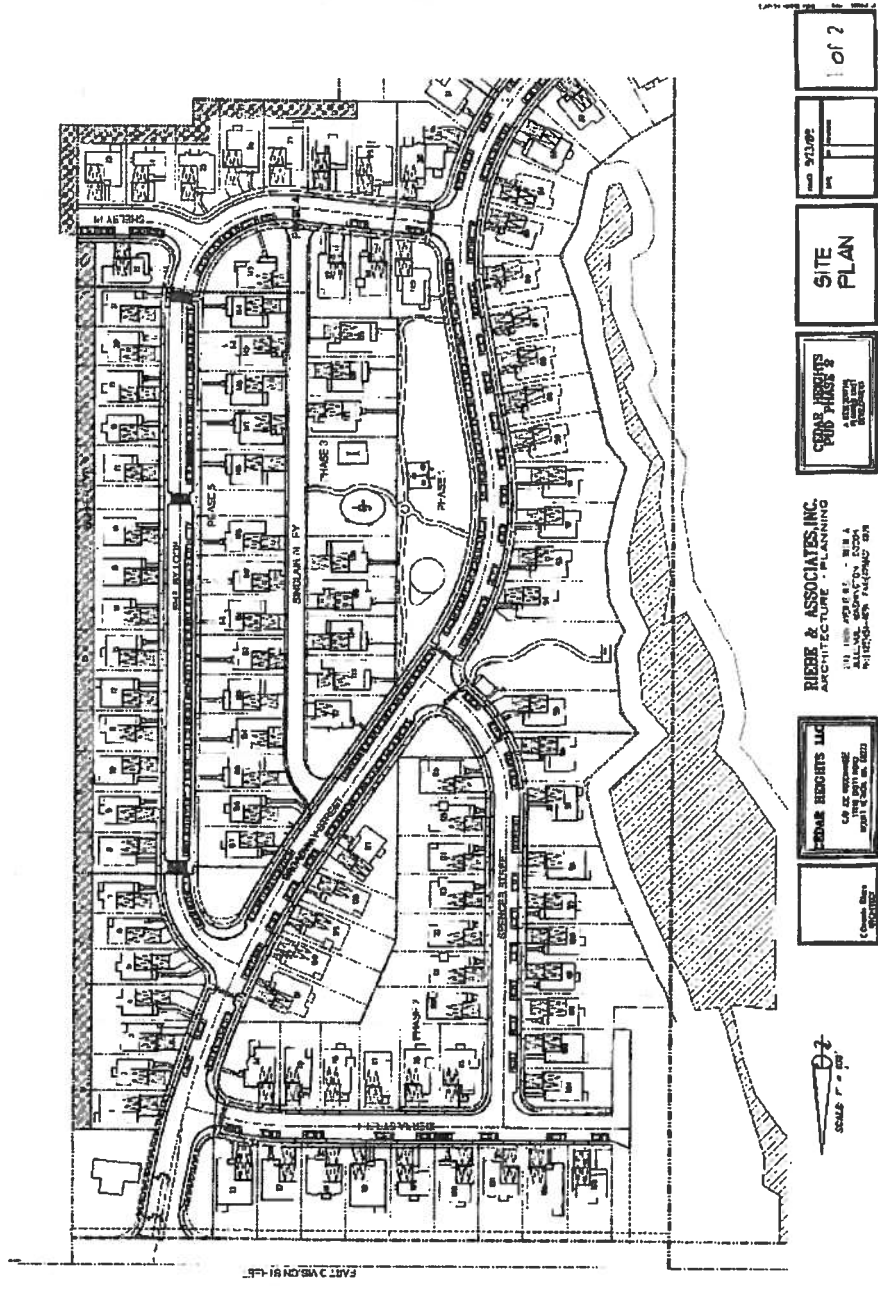
BEGINNING AT THE NORTHEAST CORNER OF SAID SUBDIVISION
THENCE WEST ALONG THE NORTH LINE OF SAID SUBDIVISION 130 FEET TO THE TRUE POINT OF BEGINNING;
THENCE CONTINUING WEST ALONG THE NORTH LINE OF SAID SUBDIVISION 165 FEET;
THENCE SOUTH PARALLEL TO THE EAST LINE OF SAID SUBDIVISION 1,320 FEET;
THENCE EAST PARALLEL TO THE NORTH LINE OF SAID SUBDIVISION 165 FEET;
THENCE NORTH PARALLEL TO THE EAST LINE OF SAID SUBDIVISION 1,320 FEET TO THE TRUE POINT OF BEGINNING;

EXCEPT COUNTY ROAD.

ALL OF THE ABOVE BEING SUBJECT TO AND TOGETHER WITH EASEMENTS, RESERVATIONS, RESTRICTIONS, COVENANTS, LIENS, LEASES, COURT CAUSES AND OTHER INSTRUMENTS OF RECORD.

ALL SITUATE IN THE CITY OF MOUNT VERNON, COUNTY OF SKAGIT, STATE OF WASHINGTON.

EXHIBIT 'B'



1 of 2

DATE: 11/11/09
BY: [Signature]

SITE PLAN

CEAR HEIGHTS PHASE 2
PLANNED UNIT DEVELOPMENT
SUBDIVISION

RUBIN & ASSOCIATES, INC.
ARCHITECTURE • PLANNING
111 WEST 42ND ST. - 11th Fl.
ALLIANCE UNIVERSITY CENTER
PHILADELPHIA, PA 19104-6091

CEAR HEIGHTS LLC
111 WEST 42ND ST. - 11th Fl.
ALLIANCE UNIVERSITY CENTER
PHILADELPHIA, PA 19104-6091

Checked By: [Signature]
DATE: 11/11/09

SCALE 1" = 40'
DATE: 11/11/09

Resolution No. 797
Preliminary Plat and Planned Unit Development for Cedar Heights Phase 2
November 4, 2009

EXHIBIT 'C'

CONDITIONS OF APPROVAL

1.0 General Conditions

- 1.01 The Conditions, Covenants, and Restrictions (CC&R) shall include a requirement that CC&R revisions must be approved by the City of Mount Vernon.
- 1.02 A Homeowners' Association for the entire Cedar Heights Phase 2 PUD shall be formed, the administration of which shall be outlined in the Conditions, Covenants, and Restrictions prior to recording the Final Plat for Division 1.
- 1.03 The Purchase and Sale Agreement for each lot shall include a disclosure statement that the purchaser is advised a Homeowners' Association will be in effect and the responsibility for participating in the association is a requirement of purchase of the land.
- 1.04 The landscape plan for the Waugh/Division roundabout and associated medians shall be approved by the City of Mount Vernon Parks and Recreation Department prior to installation. Landscape installation may be deferred for seasonal considerations with posting of a bond in accordance with Mount Vernon Municipal Code.
- 1.05 Construction and landscape installation of the Waugh/Division roundabout and associated medians shall be approved prior to recording the Final Plat for Division I.

2.0 Project Phasing Conditions

- 2.01 Phasing shall be as shown on the "Phasing Plan Approved by the City of Vernon," sheet IA, dated September 24, 2009.
- 2.02 Division 1 shall be the first phase and Divisions 8 and 9 shall be the last two phases.
- 2.03 Following the complete establishment of Division 1 infrastructure and amenities, as depicted on plan IA, dated September 24, 2009, and the dedication of rights-of-ways and easements as indicated therein, subsequent phases need not be in numerical order as shown on the Phasing Plan, provided that the infrastructure (road, sidewalks, utilities, and stormwater facilities), common areas, and amenities of the intervening phases shall be provided in numerical order. All phases regardless of the order of their development, shall provide vehicular, pedestrian, and utility connections to Division 1.
- 2.04 A proposed division construction timeline shall be provided to the Community and Economic Development Department Engineering Division at the time of application for Division 1 Fill and Grade Permit.
- 2.05 The following are conditions related to phasing:
 - 2.05.1 Division 1, prior to recording Final Plat, except as noted:
 - 2.05.1.1 Division 1 shall be the first phase developed.
 - 2.05.1.2 Division 1 shall include construction of Broadway Street from East Division Street to its connection to Broadway Street in Cedar Heights I PUD.
 - 2.05.1.3 Landscaping along East Division Street shall be included in Division 1.
 - 2.05.1.4 Construction of the roundabout and medians and installation of roundabout and median landscaping shall be included in Division 1.
 - 2.05.1.5 Mitigation Plan for wetland impacts shall be fully implemented prior to recording the Final Plat for Division 1.
 - 2.05.1.6 Provide pond as-built and Performance Report and Dam Safety Report.
 - 2.05.1.7 Clearing and grading activity to occur within Division 1 and as required to meet the conditions of Division 1.
 - 2.05.2 Division 2, prior to recording Final Plat, except as noted:

- 2.05.2.1 Provide pond as-built and Performance Report and Dam Safety Report.
- 2.05.2.2 Dedicate pond to City of Mount Vernon.
- 2.05.2.3 Provide pond maintenance bond, to remain until a minimum of one year after the recording of the Final Plat of the last division.
- 2.05.2.4 Clearing and grading activity to occur within Division 2 and as required to meet the conditions of Division 2.
- 2.05.3 Division 3, prior to recording Final Plat, except as noted:
 - 2.05.3.1 Complete full length of Sinclair Alley to Shelby Place.
 - 2.05.3.2 Complete Shelby Place to Broadway Street.
 - 2.05.3.3 Clearing and grading activity to occur within Division 3 and as needed to construct Sinclair Alley and Shelby Place, and to meet the conditions of Division 3.
- 2.05.4 Division 4, prior to recording Final Plat, except as noted:
 - 2.05.4.1 Sanitary sewer stub to provide connection for future development shall be provided to the east property line at Shelby Place.
 - 2.05.4.2 Clearing and grading activity to occur within Division 4 and to meet the conditions of Division 4.
- 2.05.5 Division 5, prior to recording Final Plat, except as noted:
 - 2.05.5.1 Complete Shelby Loop connection to Shelby Place.
 - 2.05.5.2 If Division 5 precedes Division 4, Shelby Loop and Shelby Place shall be completed to the connection with Broadway Street.
 - 2.05.5.3 Sanitary sewer stub to provide connection for future development shall be provided to the east property line in the approximate location of Lot 8.
 - 2.05.5.4 Clearing and grading activity to occur within Division 5, and to meet the conditions of Division 5.
- 2.05.6 Division 6, prior to recording Final Plat, except as noted:
 - 2.05.6.1 Complete Alpine View Drive to Shantel Street
 - 2.05.6.2 Complete Shantel Street to Cedar Heights Phase I PUD; construction shall include street end, sidewalks, storm system not installed with Cedar Heights I PUD Phase 2
 - 2.05.6.3 Clearing and grading activity to occur within Division 6 and as needed for the construction of Shantel Street, and to meet the conditions of Division 6.
- 2.05.7 Division 7, prior to recording Final Plat, except as noted:
 - 2.05.7.1 Complete Alpine View Drive to Eaglemont.
 - 2.05.7.2 Complete Burlingame Drive to its connection with the adjoining plat on the east.
 - 2.05.7.3 If Division 7 precedes Division 6 complete Shantel Street to Cedar Heights Phase I PUD; construction shall include street end, sidewalks, storm system not installed with Cedar Heights I PUD Phase 2
 - 2.05.7.4 Clearing and grading activity to occur within Division 7, and to meet the conditions of Division 7.
- 2.05.8 Division 8, prior to recording Final Plat, except as noted:
 - 2.05.8.1 Provide a fire department approved turn-around at the north end of Chief Street.
 - 2.05.8.2 Install six-foot, decorative wood fence, as approved by the Community and Economic Development Department, along the perimeter of Division 8 along the property boundary, prior to recording the Final Plat.
 - 2.05.8.3 Sanitary sewer stub to provide connection for future development shall be provided to the east property line at Burlingame Drive.
 - 2.05.8.4 Clearing and grading activity to occur within Division 8, and to meet the conditions of Division 8.
- 2.05.9 Division 9, prior to recording Final Plat, except as noted:

- 2.05.9.1 Install pedestrian path in wetland buffer as approved.
- 2.05.9.2 Install six-foot, decorative wood fence, as approved by the Community and Economic Development Department, along the perimeter of Division 9 along the property boundary, prior to recording the Final Plat.

3.0 Site Plan Conditions

- 3.01 A 50-foot wide right-of-way shall be provided for Broadway Street to accommodate arterial standard development.
- 3.02 Where sidewalks are located in easements across front yards of lots, the building setback shall be a minimum of 10 feet from the back of sidewalk. Covered porches and stairs may not project into the front setback area.
- 3.03 All Type 2 streets shall have physical components such as curb bulb-outs and painted curbs, limiting parking to one side of the street. Plan of curb bulb-out locations shall be approved by the Community and Economic Development Department Engineering Division.
- 3.04 Where it abuts the neighboring property, Chief Street shall be separated from the 6 foot cedar fence by a curb and sidewalk and have signs stating parking is of limited duration, for example, "Limit 12 Hour Maximum Parking for Guests Only."
- 3.05 Addition of a sidewalk to the preliminary plan requires shifting adjacent buildings approximately 6 feet to the west. This revision will require the alteration of the design of the subject buildings. The revised configuration of these buildings must meet all applicable critical area and zoning standards. Failure to meet these requirements after relocation may result in a reduction in the number of allowed units for the proposal. All risks associated with the relocation and the potential reduction in the number of allowable units shall be borne by the applicant. A revised plan, subject to approval by the Community and Economic Development Department, shall be submitted prior to application for construction permits.
- 3.06 An access easement on Chief Street, providing a future right-of-way dedication to the City of Mount Vernon, shall be recorded for a potential future street connection to the east. The location of the easement shall be recorded on the face of the plat prior to recording the Final Plat of Division 8. Future use of this easement shall be at the sole discretion of the City of Mount Vernon.

4.0 Architecture and Project Design Conditions

- 4.01 Mount Vernon Design Standards and Guidelines are applicable to the project (17.70 MVMC), except where building architecture has been approved in conjunction with the PUD approval. Structures shall be constructed as shown on building elevations, P-1 through P-16, dated 4/14/09 and site plans, 1 of 2 and 2 of 2, dated 9/23/09. Minor architectural modifications may be allowed as noted below in 4.02.
- 4.02 The planned unit development plan shall note that the residences thereon constitute an innovative residential development and must be constructed substantially as shown on the planned unit development plan. Modifications to architectural designs shall only reflect minor adjustments in building design to accommodate site conditions, minor revisions on floor plans and/or other similar circumstances. Changes shall not alter the architectural character or details of the design as proposed on the submissions identified in 4.01 above. Sales agreements and titles for land and residences sold in innovative residential developments shall note this restriction.
- 4.03 The Conditions, Covenants, and Restrictions shall include a mechanism for application, review, and approval by the Homeowners' Association of proposed design modifications by property owners.

- 4.04 Detailed landscape plans shall be approved by the Community and Economic Development Department prior to installation. Installation of common area landscaping shall be inspected by a landscape architect selected by the City at the project proponent's expense and shall be approved by the Community and Economic Development Department prior to recording the Final Plat for each division.
- 4.05 Detailed common area amenity plans shall be approved by the Community and Economic Development Department prior to installation. Installation of common area amenities shall be approved by the Community and Economic Development Department prior to recording the Final Plat for each division.

5.0 Critical Areas Conditions

- 5.01 Critical areas, comprised of wetland and wetland buffer, shall be designated a Native Growth Protection Easement (NGPE) area. The NGPE shall be identified on the face of the plat prior to recording the Final Plat.
- 5.02 Prior to issuance of a Fill and Grade Permit, the "Protected Critical Area" (PCA) easement, recorded with the Skagit County Auditor as #200202010017, shall be relinquished.

6.0 Forested Buffer Conditions

- 6.01 Where lots smaller than 9,600 square feet abut developed land, a twenty-foot wide forested buffer shall be provided along the project boundary.
- 6.02 Forested buffers may consist of existing vegetation with new plantings incorporated into the design to achieve the required visual screen. Existing trees to be retained shall be healthy with viable structure. Evaluation by a certified arborist, selected by the City at the project proponent's expense, may be required to verify the integrity of trees to be retained in the forested buffer.
- 6.03 Both native and non-native plants may be used, although all plants should be proven drought-tolerant and low-maintenance species. The planting plan shall be approved by the Community and Economic Development Department prior to recording the Final Plat.
- 6.04 The forested buffer shall consist of a double row of evergreen trees, with triangular (offset) spacing of no more than 15 feet on center. Shrubs and groundcover plants of a type and sufficient spacing to achieve 85 percent surface coverage within two years are required.
- 6.05 The forested buffer shall be exempted from the project requirement to provide an automated, underground irrigation system.
- 6.06 If the forested buffer cannot be fully installed prior to recording the Final Plat, due to seasonal considerations, a bond may be posted for the cost of installation, in accordance with Mount Vernon Municipal Code requirements.
- 6.07 Minimum tree size at the time of planting shall be five feet. Shrubs that reach three to five feet in height at maturity shall be a minimum two-gallon container size at planting. Minimum groundcover size shall be one gallon container or equivalent at planting. Sizes shall be based on the most recent "American Standard for Nursery Stock" by the American Nursery & Landscape Association. These sizes, however, are minimums and it may be necessary to plant trees, shrubs and groundcover of a larger size to achieve the requisite 85 percent surface coverage within two years.
- 6.08 A three foot to four foot solid, decorative cedar fence that meets specifications approved by the City of Mount Vernon shall be installed on the "project side" of the forested buffer. This interior fence shall be installed prior to recording the Final Plat for each division.
- 6.09 The forested buffer shall be indicated on the plat map and described on the face of the plat. Regulations regarding preservation and maintenance of the forested buffer and procedures for

- obtaining permission for removal of hazard trees within the buffer must be included on the face of the plat.
- 6.10 The Homeowners' Association (HOA) shall be responsible for the monitoring and maintenance of the forested buffer area and removal of trees deemed by a certified arborist to be hazardous. Until the HOA has been formed, however, the developer has responsibility for these duties.
 - 6.11 Monitoring shall be annually for a period of five years. Monitoring shall be by a certified arborist as selected by the City of Mount Vernon. Costs of monitoring shall be paid by the developer or Homeowners' Association as appropriate. Dead vegetation shall be removed and replaced following recommendations of the arborist.
 - 6.12 Maintenance shall consist of removal of noxious, invasive vegetation on a monthly basis during the growing season for a period of five years following planting. Annual maintenance shall be required for an additional five years to prevent establishment of noxious, invasive vegetation.

7.0 Common Areas Conditions

- 7.01 Prior to recording the Final Plat, a cost estimate for the maintenance of common areas and Native Growth Protection Easement area maintenance shall be provided to the Community and Economic Development Department.
- 7.02 Prior to recording the Final Plat, a contract for common area and Native Growth Protection Easement area maintenance shall be provided to the Community and Economic Development Department for approval. Contractual maintenance plan shall include level of and frequency of maintenance activities. Minimum maintenance activities shall include mowing of lawn areas, weeding, pruning, removal and replacement of dead and dying plants and trees, repair of site furniture and replacement if necessary, winterization, maintenance, repair, and spring start-up of automatic underground irrigation system, removal of graffiti, and litter control.
- 7.03 A maintenance bond, for duration not less than three years following the recording of the Final Plat for the last division, shall be posted for the cost of maintaining the common areas and Native Growth Protection Easement areas.
- 7.04 Following its incorporation, the Homeowners' Association shall be responsible for maintenance of all common areas of the subdivision, including the Native Growth Protection Easement areas.
- 7.05 Until incorporation of the HOA, the developer shall be responsible for maintenance of all common areas of the subdivision, including the Native Growth Protection Easement areas.
- 7.06 All common areas having site furniture, such as benches and play equipment, shall have signs posted identifying them as land held in common by the community and maintained by the Homeowners' Association.