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Page: 7 of 63

12/27/2004 11:57

Clark County, WA

CLARK COUNTY COMMISSIONERS ORD

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

Mark R. Feichtinger, Attorney
STOEL RIVES LLP
805 Broadway, Suite 725
Vancouver, WA 98660

Grantor	:	Glacier Northwest, Inc.
Grantee	:	Clark County, Washington
Abbreviated Legal	:	NE and SE ¼ Section 30 T2N R3E WM
Assessor's Tax Parcel Nos.	:	176400-000; 176411-000
Prior Excise Tax No.	:	NA
Other Reference No(s).	:	None

DEVELOPMENT AGREEMENT

Effective Date:

Dec 14, 2004

Parties:

GLACIER NORTHWEST, INC., a
Washington corporation (hereinafter
referred to as "Glacier"); and

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



CLARK COUNTY COMMISSIONERS ORD

0.00

3925154

Page: 8 of 63

12/27/2004 11:57

Clark County, WA

Recitals:

A. Glacier owns real property within the County, in the area commonly known as Section 30, hereinafter referred to as the "Property". The legal description for the Property, as well as a parcel map, is attached hereto and incorporated herein by reference as Exhibit "A." At the time of the execution and approval of this Development Agreement all of the Property is subject to this Development Agreement.

B. The Property is currently zoned with a Surface Mining Overlay. The Property has been operated as a concrete batch plant facility and for related uses for over twenty-five years and before the adoption of the Surface Mining Overlay District. Glacier intends that such uses and practices continue for the foreseeable future and the term of this Agreement, and independent of the presence of Aggregate resources in Section 30.

C. The County is implementing a Section 30 Subarea Master Plan (the "Plan"), which Plan recognizes the historic and ongoing use of much of Section 30 for mining and mining-related uses, and was developed with reference to the County's current comprehensive plan policies protecting mineral resources. The Plan was prepared on behalf of the County by the J. D. White Company dated February, 2004, and reflects the County's vision for possible development events and for potential future uses within Section 30 when mining and mining related uses cease. The County's mineral resource planning provisions and implementing regulations have been adopted in accordance with RCW 36.70A.060 and .170, requiring that local governments designate and protect mineral resource lands from interference from uses on adjacent lands, in order to conserve mineral resources and associated commercial activities for long-term use. The Plan provides for various land uses to ultimately be designated in Section 30, but it states explicitly that the Plan and new zoning designations will not interfere with any legally existing use. This Plan is intended to provide a long-term horizon for the conservation of mineral resource lands and associated commercial activities in accordance with RCW Ch. 36.70A.

D. The parties desire to enter into this Development Agreement to protect and secure Glacier's existing rights without expanding them and to: (i) assure the right to continue uses on the Property, (ii) govern transition to future uses, and (iii) govern interim development on the site, including mitigation. This Agreement will be interpreted to implement that intent.

E. Pursuant to RCW 36.70B.170(1), the parties are authorized to enter into a development agreement that sets forth development standards and other provisions that



3925154

Page: 9 of 63

12/27/2004 11:57

CLARK COUNTY COMMISSIONERS ORD 0.00 Clark County, WA

apply to and govern and vest the development, use, and mitigation of the development of the Property.

NOW, THEREFORE, the parties agree as follows:

1. **Purpose.** The purpose of this Development Agreement is to protect and secure Glacier's existing rights without expanding them and to (i) recognize and assure the right to continue the Uses on the Property, (ii) provide for transition to uses consistent with ultimate zoning designations upon completion of the Uses described below, and (iii) provide standards for interim development, including mitigation. This Agreement will be interpreted to implement that intent.
2. **Agreement.** This Development Agreement governs and vests the development of the Property pursuant to the terms and conditions herein.
3. **Zoning and Permitted Uses.** The Property is currently zoned with the County's Surface Mining Overlay, CCC 40.250.020, which permits extractions from deposits of rock, stone, gravel, sand, earth and minerals and conditionally permits various related activities such as concrete batch plant operations. The underlying Comprehensive Plan designation under the Plan is Employment Center (EC) and the underlying zone designation under the Plan is Urban Holding-20 (UH-20) and Office Commercial (OC).
4. **Description of the Allowable Uses on the Property.** The Property is currently used for cement and concrete production and manufacturing, including ready-mix concrete batch facilities; concrete block, brick, pipe and forms manufacturing; concrete pumping services; raw materials storage and sale; and related uses including office and dispatch, and truck and equipment storage and repairs. The following is a list of currently allowed and vested uses on, under and in the Property (the "Uses"). Because these Uses were vested prior to zoning of the Property and are uses permitted outright, or as permitted conditional uses and as accessory uses under the Surface Mining Overlay District as enacted on the date of this Agreement, these Uses shall not be subject to any changes in the Comprehensive Plan, or implementing zoning regulations, except as set forth in this Development Agreement. One or all the Uses shall be allowed on the Property until Glacier signs a written statement that it is abandoning such vested Uses and operations on the Properties, or portion thereof.
 - 4.1 Extractions from deposits of rock, stone, gravel, sand, earth and minerals ("Aggregate") and related reclamation activities including import of fill material.
 - 4.2 Concrete batch plant and other cement and concrete mixing.



3925154

Page: 10 of 63

12/27/2004 11:57

Clark County, WA

CLARK COUNTY COMMISSIONERS ORD

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- 4.3 Concrete pumping.
 - 4.4 Concrete block, brick, pipe and forms manufacture.
 - 4.5 Raw materials storage and sale.
 - 4.6 Concrete recycling from leftover or used concrete operations, but excluding crushing operations, and use, treatment and recycling of well, storm and process water.
 - 4.7 Loading, unloading, storage, handling and transporting of materials to and from the Property, and on the Property.
 - 4.8 Retail and wholesale sales of ready-mix concrete, concrete services, and related products.
 - 4.9 Use of stationary and portable equipment, modular buildings and trailers, for accomplishing the Uses.
 - 4.10 Parking, storage, fueling, maintenance, repair and overhaul of trucks and other vehicles and equipment (including storage and handling of necessary parts, fuels, oils and lubricants), and fabrication of plant components either enclosed or not enclosed.
 - 4.11 Office, dispatching and other administrative uses.
 - 4.12 all accessory equipment and facilities for the uses described above.
5. **Conforming Use.** Notwithstanding any current or future change in the comprehensive plan or zoning designation for the Property, the County acknowledges and agrees that Glacier's Uses can continue in all respects and are legal conforming and permitted uses until Glacier signs a written statement that it is abandoning the particular uses described in Section 4 on the Properties, or portion thereof. If Glacier's notice terminates the Agreement as to certain of the Uses, but not others of the Uses, the effect shall be to modify this Agreement to delete the uses so terminated from Section 4 of this Agreement, and this Agreement shall continue in full force and effect as to such Uses as are not so terminated as long as the primary use of the property is for uses permitted outright or as conditional uses in the Surface Mining Overlay District. No interruption or cessation of any particular uses under the Uses shall be deemed to make resumption of Uses other than conforming and in compliance with this Development Agreement, except as set forth in Section 11, below.



3925154

Page: 11 of 63
12/27/2004 11:57

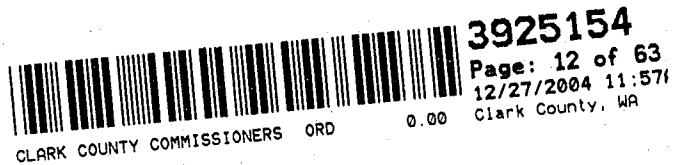
CLARK COUNTY COMMISSIONERS ORD 0.00 Clark County, WA

6. Significant Expansions and Applicable Standards.

6.1 Change in Type of Uses. If Glacier desires to conduct on the Property uses which are permitted outright or conditionally permitted uses under the Surface Mining Overlay District, and which are different or additional uses to those listed as Uses in Section 4 above, Glacier must comply with the applicable provisions of the Surface Mining Overlay District. If Glacier desires to replace the permanent concrete batch plant/ready-mix plant with a plant that is greater in size than 60 feet x 120 feet and no part to exceed 76 feet in height (the "Dimension"), or expand the permanent concrete batch plant/ready-mix plant to a size which is greater than the Dimension, or add a second permanent concrete batch plant/ready-mix plant in addition to the permanent concrete batch plant/ready-mix plant (collectively or individually a "Significant Expansion"), then such Significant Expansion shall be subject to the conditional use process and other applicable requirements under the Clark County Code, other than those imposed or applicable as a result of underlying comprehensive plan designations or underlying zoning code designations.

6.2 Other Changes or Modifications of Conforming Uses. Because the Uses are vested and conforming uses, growth in capacity and service which anticipates and responds to demand, expansions, changes or modifications of the Uses, whether changes or modifications or replacements to the structures or other improvements, methods, equipment, access or facilities, etc., or whether or not they increase the capacity or intensity of use, but which do not result in Significant Expansions, are permitted as conforming uses and conforming structures, as applicable, subject, however, to site plan review processes when applicable. Conversions of temporary buildings to permanent buildings, construction of new buildings or accessory structures or additions to existing or new buildings or accessory structures, erection of new equipment or facilities on the site, expansion of parking areas or reconfiguration of uses or improvements or traffic routing on the site, or similar or related actions, and are allowed and shall be considered matters for site plan review, if applicable, and reviewed for site planning review if the changes would trigger site plan review under then-applicable provisions of the Clark County zoning/development code. In no event shall such matters be reviewed or processed as conditional uses or changes to conditional uses, unless they are a Significant Expansion.

6.3 Temporary Changes. The County acknowledges that the additions and operation of portable equipment or portable facilities to create capacity to meet temporary demands from large, off-site construction projects, are vested as permitted uses and will not be required to comply with the site plan review process or temporary permits, and shall not be reviewed or processed as conditional uses or changes to conditional uses.



6.4 Environmental Compliance. The Uses described above are regulated by State of Washington and local environmental regulations, including (without limitation) stormwater and process water treatment and disposal, noise regulations and air quality regulations. The parties agree that existing uses shall be subject to changes in the environmental regulations to protect public health/safety. Upgrades, modifications, additions and reconstruction to buildings, equipment and facilities, or other improvements to facilitate compliance with such regulations, shall be processed under a site plan review process, if applicable, shall be considered conforming and shall not be reviewed or processed as conditional uses or changes to conditional uses.

6.5 Reconstruction of Uses. Buildings, equipment or other facilities related to the Uses and damaged during the life of the term of this Development Agreement may be rebuilt, replaced or repaired in full or in part, or modified, and shall be reviewed under site plan review to the extent dimensional changes to structures trigger site plan review, but shall not be required to be processed or reviewed as conditional uses or as changes to conditional uses unless they result in a Significant Expansion.

6.6 Surface Mining Overlay District. References to the Surface Mining Overlay District throughout this Agreement shall mean Clark County Code Chapter 40.250.020, as in effect on the Effective Date of this Development Agreement, or as amended hereafter only by the Board of County Commissioners of Clark County, Washington. A copy of CCC 40.250.020 in effect on the Effective Date is attached hereto as Exhibit "B", and shall apply, as hereafter amended, to the extent and according to the terms set forth in this Agreement, including in the event of its repeal or if the Property is annexed. For the purposes of this agreement, Section 40.250.020(D)(6) shall not apply to the Uses. Glacier and its predecessors assert certain existing rights predating adoption of the Surface Mining Overlay District which it does not forfeit or compromise by this Agreement. If CCC 40.250.020 (the Surface Mining Overlay District) is repealed, its last effective version prior to repeal shall be the applicable reference for this Agreement.

6.7 Outdoor Activities. The Uses are generally conducted as outdoor uses and not within the confines of structures. During the term of this Agreement, the Uses may be conducted as outdoor uses.

6.8 Setbacks and Buffers and Mitigation. The County acknowledges that there are no applicable buffer, setback or landscaping standards for the Uses (other than the use described in Section 4.1 above) under the Surface Mining Overlay District or other code provisions and the width and size of the Property are legally conforming for purposes of the Uses, except that Significant Expansions or other subsequent applications for purposes of conditional use permits must comply with then applicable landscape, buffer, setback, and

lot size requirements. At such time as the owner of an immediately adjoining property constructs new buildings pursuant to new zoning designations for office, business park or commercial uses, which buildings are located within sixty (60) feet of the east, west or north boundaries of the Property, the Owner of the Property shall, at the time of construction of such buildings, erect on the Property a wall on its boundary, in the proximity of such buildings, of six (6) feet in height, made of materials of the owner of the Property's choosing, in lieu of any other buffer requirements.

6.9 Standard for Interim Development and Site Plan Review. During the term of this Agreement, the use and development standards of applicable base zones and overlay zones shall not apply, and the setback, landscaping and buffer standards of Chapter 40.320 or otherwise shall not apply, and landscape and buffering shall be controlled by the terms of this Agreement, except that subsequent applications for Significant Expansions and new conditional use permits must comply with then applicable landscape, buffer, setback and lot size requirements, other than those imposed or applicable as a result of underlying comprehensive plan designations or underlying zoning code designations. Other generally applicable transportation and environmental standards and regulations under Clark County Code, but not imposed or applicable as a result of underlying comprehensive plan designations or underlying zoning designations, shall apply. If site plan review is for the use listed in Section 4.1 above, or for any uses, other than the Uses, which are permitted outright or conditionally under the Surface Mining Overlay District or for Significant Expansions, all applicable criteria of the Clark County Code, other than those imposed or applicable as a result of underlying comprehensive plan designations or underlying zoning code designations, shall apply.

7. Continuation. The parties agree that Glacier has the right to conduct the Uses on the Property. Except for Significant Expansions and for the uses other than the Uses, and except as set forth in Section 6 above and Section 8 below, the Property may not be subject to an amendment to a zoning ordinance adopted after the effective date of this Development Agreement. Any permit or approval issued by the County after the execution of this Development Agreement must be consistent with the Development Agreement. Nothing contained in this Development Agreement shall preclude the County from exercising any and all rights it has under RCW 36.70B.170 to address issues of public health and safety.

8. Section 30 Subarea Master Plan. Notwithstanding any statement, suggestion or implication in the Plan or implementing comprehensive plan designation or zoning to the contrary, this Development Agreement and the Surface Mining Overlay District, as amended, shall take precedence over any other zoning or comprehensive plan designation



3925154

Page: 14 of 63

12/27/2004 11:57

Clark County, WA

CLARK COUNTY COMMISSIONERS ORD

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applicable to the Property and code provisions for such underlying zones or comprehensive plan designations. In the event of conflict between the Surface Mining Overlay District and any other comprehensive plan designation or zoning code provision, the provisions of the Surface Mining Overlay District shall control and, in the event of any conflict among the comprehensive plan and plan designations, zoning code and zoning designations and other regulations, the Surface Mining Overlay District and this Development Agreement, this Development Agreement shall control. It is the specific agreement of the parties that code provisions for underlying zoning code designations and comprehensive plan designations shall not apply unless and until this Development Agreement is terminated and the Surface Mining Overlay District designation is removed from the Property.

9. Run with the Land; Binding upon Successors and Assigns. This Development Agreement shall be binding on the parties' successors and assigns, including the City of Vancouver or other city under RCW 36.70B.190. This Development Agreement shall be recorded with the Clark County Auditor. In the event the Property is annexed by the City of Vancouver or other city, this Agreement shall be binding upon such successor municipal corporation for the term of this Agreement; provided, however, if the successor jurisdiction and Glacier execute a subsequent development agreement governing the current and future uses of the Property, the subsequent development agreement shall supersede, replace and terminate this Agreement in its entirety.

10. Additional Property. Glacier leases and uses or may acquire the parcels of real property described in the attached Exhibit "C" for certain of the Uses (the "Additional Parcels"). If during the term of this Development Agreement Glacier acquires fee title to any or all of the Additional Parcels, or if Glacier leases any or all of the Additional Parcels and the owner in fee title of that Additional Parcel signs and records in the real property records a duplicate counterpart of this Agreement or other agreement to be bound by the terms of this Development Agreement as to the Additional Parcel, at Glacier's request, this Development Agreement shall apply to the newly acquired or leased parcels, when and as they are acquired and leased, respectively, and the property so acquired or leased shall thereafter be governed by this Agreement. Because the Additional Parcel described in Exhibit C-2 includes an existing, vested concrete batch plant operation, this Agreement would apply to the Additional Parcel described in Exhibit C-2 as a separate duplicate, stand alone agreement, and the operation of the existing batch plant operation on the property described in Exhibit C-2, and the operation of a batch plant operation on the Property would not be deemed a Significant Expansion under this Agreement.



3925154

Page: 15 of 63
12/27/2004 11:57

CLARK COUNTY COMMISSIONERS ORD 0.00 Clark County, WA

11. **Term and Transition to New Zoning.** The term of this Development Agreement shall be thirty (30) years. The parties may mutually agree to extend the term of this Agreement for an additional five-year term. Glacier may elect to terminate this Development Agreement upon written notice to County. In the event of such termination, the terms of the Surface Mining Overlay District, as amended shall continue to apply, unless repealed or the property is annexed to a city.

If after the recording of this Agreement, none of the Uses are conducted on the Property for a period of not less than five (5) years, with the circumstances of such abandonment that objectively demonstrates an intent to permanently cease operations, the governing body of the County may declare this Agreement terminated.

12. **Consistency.** In the event any provision or term of this Development Agreement is held by a court's final decision to be invalid or unenforceable, the same shall not have the effect of modifying or invalidating the remainder of this Development Agreement, which shall continue in full force and effect until terminated by the owner of the Property.

13. **Public Hearing.** The Board of County Commissioners has approved execution of this Development Agreement by resolution after a duly noticed open public hearing.

DATED this 9 day of December, 2004.

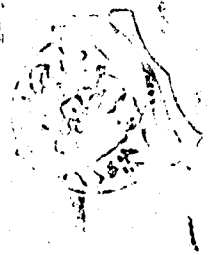
CLARK COUNTY, WASHINGTON

GLACIER NORTHWEST, INC.

By: Betty Sue Morris
Name: BETTY SUE MORRIS
Title: CHAIR, BOARD OF COMMISSIONERS

By: William C. Parfitt, Jr.
Name: William C. Parfitt, Jr.
Title: Vice President

DECEMBER 14, 2004





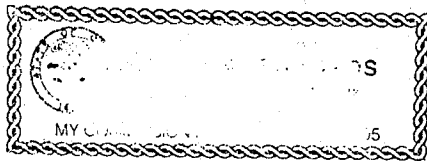
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Page: 16 of 63
12/27/2004 11:57
Clark County, WA

CLARK COUNTY COMMISSIONERS ORD 0.00

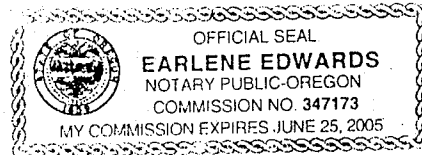
STATE OF OREGON)
COUNTY OF Multnomah) ss.

This instrument was acknowledged before me this 9th day of December, 2004, by Wm. C. Parfitt Jr., Vice President of GLACIER NORTHWEST, INC., a Washington corporation, on its behalf.



Earlene Edwards
Notary Public
My commission expires: 6-25-05
Commission No.: _____

State of Washington)
County of Clark) ss.



On this 14 day of DECEMBER, 2004, before me personally appeared BETTY SUE MORRIS, to me known to be the BOCC, CHAIR of the CLARK COUNTY, WASHINGTON that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he/she was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

Dated: DEC. 14, 2004.



Rebecca L. Tilton
Notary Public for Washington
REBECCA L. TILTON
(Printed or Stamped Name of Notary)
Residing at VANCOUVER
My appointment expires: 4/26/05



3925154

Page: 17 of 63

12/27/2004 11:57

Clark County, WA

CLARK COUNTY COMMISSIONERS ORD 0.00

EXHIBIT "A"

LEGAL DESCRIPTION and PARCEL MAP

The West 150 feet of the Southeast quarter of the Southeast quarter Section 30, Township 2 North, Range 3 East of the Willamette Meridian, in Clark County, Washington.

Except that portion lying within SE 1st Street.

DEVELOPMENT AGREEMENT
EXHIBIT "A" - 1
Portlnd2-4485030.14 0023509-00002



3925154

Page: 19 of 63

12/27/2004 11:57

CLARK COUNTY COMMISSIONERS ORD

0.00

Clark County, WA

EXHIBIT "B"

CLARK COUNTY CODE 40.250.020 IN EFFECT ON THE EFFECTIVE DATE

40.250.020 Surface mining overlay district (S).

A. Purpose. It is the intent of this overlay district to ensure the continued use of rock, stone, gravel, sand, earth and minerals without disrupting or endangering adjacent land uses, while safeguarding life, property and the public welfare. Provisions of RCW 78.44 and WAC 332-18 applicable to Clark County pertaining to surface mining are adopted by reference. No surface mining use shall be established until the responsible official issues site plan approval.

B. Uses. The following uses are permitted outright or by conditional use permit within this district:

1. Permitted.

- a. All uses allowed in the zone district with which this district is combined.
- b. Extractions from deposits of rock, stone, gravel, sand, earth and minerals.

2. Conditional.

- a. Asphalt mixing.
- b. Concrete batching.
- c. Clay bulking.
- d. Rock crushing.

C. Accessory Uses. On-site hazardous waste treatment and storage facilities, subject to State Siting Criteria (RCW 70.105.210) are permitted as an accessory use in this district.

D. Special Standards or Requirements.

1. Site Area. When the activity includes both extraction and any one (1) of the uses listed in Section 40.250.020(B)(2), the total site area shall be a minimum of twenty (20) acres. Activities which are limited to extractions only shall not have a minimum site size.

2. Lot Width. There shall be a minimum lot width of sixty (60) feet for all activities included in Section 40.250.020(B)(2).

3. Fencing. The periphery of all sites within the gross site area being actively mined or reclaimed shall be fenced according to the department of natural resources' standards.

4. Setbacks. The tops and toes of cut and fill slopes shall be set back from property boundaries according to the department of natural resources' standards for safety of the adjacent properties, and to prevent damage resulting from water runoff or erosion of slopes.

DEVELOPMENT AGREEMENT

EXHIBIT "B" - 1

Portlnd2-4485030.14 0023509-00002



3925154

Page: 20 of 63
12/27/2004 11:57

CLARK COUNTY COMMISSIONERS ORD 0.00 Clark County, WA

5. Maximum Permissible Noise Levels. Maximum permissible noise levels shall be according to the provisions of the WAC 173-60.
 6. Hours of Operation. Hours of operation, unless otherwise authorized by the responsible official, shall be between 6:00 A.M. and 8:00 P.M.
 7. Erosion Control. All disturbed areas, including faces of cuts and fill slopes, shall be prepared and maintained to control erosion. This control may consist of planting sufficient in amount or type to stabilize the slope (as approved by the responsible official).
 8. Drainage. Provisions shall be made to:
 - a. Prevent any surface water or seepage from damaging the cut face of any excavations or the sloping face of a hill.
 - b. Prevent sediment from leaving the site in a manner which violates RCW 90.48.080 and WAC 173-201-100.
 9. Bench/Terrace. Benches shall be backsloped, and shall be established at not more than forty (40) foot vertical intervals, to control surface drainage and debris. Swales or ditches on benches shall have a maximum gradient of five percent (5%).
 10. Access Roads Maintenance. Access roads to mining and quarrying sites shall be maintained and located to the satisfaction of the director of public works, to minimize problems of dust, mud and traffic circulation.
 11. Overburden. Overburden shall only be removed to accommodate aggregate and related activities of this section.
- E. Plan approval. Prior to receiving approval, the responsible official shall first review and approve plans and specifications and other supporting data, through a Type II site plan review process.
- F. Information on Plans and in Specifications. Plans shall be drawn to an engineer's scale and shall be of sufficient clarity to indicate the nature and extent of the work proposed, and show in detail that they will conform to the provisions of this section and all other relevant laws, ordinances, rules and regulations. The first sheet of each set of plans shall give the location of the work, and the names and addresses of the owner and the person by whom they were prepared. The plans shall include the following minimum information:
1. General vicinity maps of the proposed site.
 2. Property boundaries and accurate contours of existing ground, details of terrain, and details of area drainage.
 3. Dimensions of area to be mined, elevations or finished contours to be achieved by the grading, proposed drainage channels and related construction.
 4. Detailed plans of all surface and subsurface drainage devices, walls, cribbing, dams, berms, settling ponds and other protective devices to be constructed with or as a part of the proposed work, together with the maps showing the drainage area and the estimated runoff of the area served by any drains.

DEVELOPMENT AGREEMENT
EXHIBIT "B" - 2
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3925154

Page: 21 of 63
12/27/2004 11:57
Clark County, WA

CLARK COUNTY COMMISSIONERS ORD 0.00

5. Location of any buildings or structures on the property where the work is to be performed, and the location of any buildings or structures on land of adjacent property owners which are within fifty (50) feet of the property, or which may be affected by the proposed operation.

6. Landscape and rehabilitation plan, as required by Section 40.250.020(G).

G. Land Restoration.

1. Upon the exhaustion of minerals or materials, or upon the permanent abandonment of the quarrying or mining operation, all buildings, structures, apparatus or appurtenance accessory to the quarrying and mining operation which are nonconforming to the underlying district shall be removed or otherwise dismantled to the satisfaction of the responsible official.

2. Unless approved as a sanitary landfill, grading or backfilling shall be made with non-noxious, nonflammable, noncombustible and nonputrescible solids.

3. Such graded or backfilled areas, except for roads, shall be sodded or surfaced with soil of a quality at least equal to the topsoil of the land areas immediately surrounding, and to a depth of at least four (4) inches, or a depth of that of the topsoil of land areas immediately surrounding, if less than four (4) inches.

4. Such topsoil as required by subsection (G)(3) of this section shall be planted with trees, shrubs or grasses. If the site is within an AG or FR district, the topsoil shall be of a similar type to the surrounding area.

5. Graded or backfilled areas shall be reclaimed in a manner which will not permit stagnant water to remain. Suitable drainage systems approved by the responsible official shall be constructed or installed if natural drainage is not possible.

6. Waste or soil piles shall be leveled and the area treated, as required in subsections (G)(3) and (G)(4) of this section.

H. Applicability to Preexisting Operations. Notwithstanding Section 40.530.050, the provisions of the surface mining overlay district shall apply to surface mining operations commenced prior to, and in continued operation, as of December 30, 1997. (Sec. 1 (Exh. A) of Ord. 2003-11-01)

40.250.020

DEVELOPMENT AGREEMENT
EXHIBIT "B" - 3
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3925154

Page: 22 of 63

12/27/2004 11:57

Clark County, WA

CLARK COUNTY COMMISSIONERS ORD 0.00

EXHIBIT "C"
ADDITIONAL PARCELS

DEVELOPMENT AGREEMENT
EXHIBIT "C"
Portlnd2-4485030.14 0023509-00002



3925154

Page: 23 of 63
12/27/2004 11:57

CLARK COUNTY COMMISSIONERS ORD 0.00 Clark County, WA

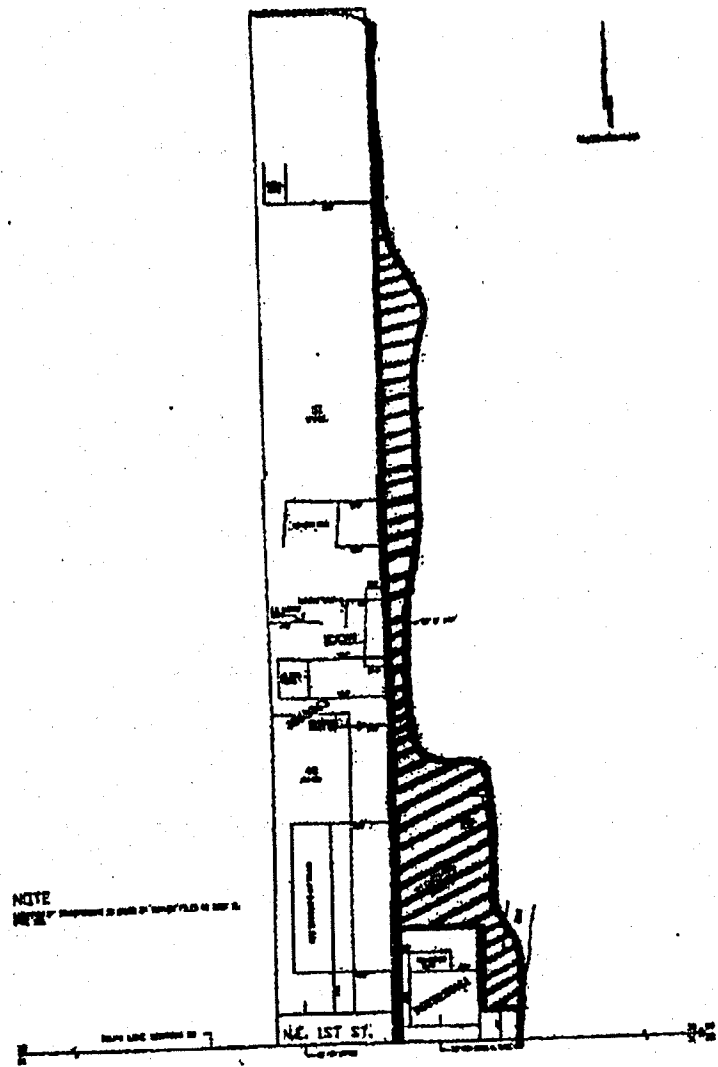

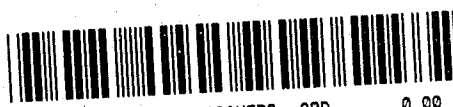


Exhibit C-1

 Additional
Parcels



3925154

Page: 24 of 63

12/27/2004 11:57

CLARK COUNTY COMMISSIONERS ORD 0.00 Clark County, WA

