

**City of Oak Harbor
City Council
Meeting Agenda**

**September 20, 2011
6:00 p.m.**

Fall begins Sept. 23rd

Oak Harbor City Council
REGULAR MEETING
Tuesday, September 20, 2011, 6:00 p.m.

Welcome to the Oak Harbor City Council Meeting

*As a courtesy to Council and the audience, **PLEASE TURN YOUR CELL PHONES OFF** before the meeting begins. During the meeting's Public Comments section, Council will listen to your input regarding subjects of concern or interest that are not on the agenda. For scheduled public hearings, please sign your name to the sign up sheet, located in the Council Chambers if you wish to speak. The Council will take all information under advisement, but generally will not take any action during the meeting. To ensure your comments are recorded properly, state your name and address clearly into the microphone. Please limit your comments to three minutes in order that other citizens have sufficient time to speak. **Thank you for participating in your City Government!***

CALL TO ORDER

INVOCATION Pastor Ben Norris, Church of the Nazarene

ROLL CALL

MINUTES

NON-ACTION COUNCIL ITEMS:

1. State of the County – Presentation by Commission Angie Homola.
2. Public Comments.

COUNCIL CONSIDERATION AND ACTION ON THE FOLLOWING MATTERS:

3. Consent Agenda:

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- a. Noise Permit – Living Faith Christian Center.

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- b. Noise Permit – Flyer's Restaurant for Ocktoberfest.

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- c. Civil Service Commission Re-Appointment – Kent Dale.

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- d. Contract – for Information Technology (I. T.) Services.

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- e. Excused Absence Request – Councilmember Jim Palmer from the 10/4/11 Council Meeting.

- f. Approval of Accounts Payable Vouchers (Pay Bills).

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4. Contract Amendment – SWCA Environmental Consultants.

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5. Reimbursement for Services Agreement – Swinomish Indian Tribal Community.

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6. Resolution – Status of Multimodal Facility Project.

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7. Resolution – Waste Water Treatment Plant.

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8. Feasibility Study – Funding of Private Shipyard Enterprise

9. City Administrator's Comments.

10. Council Members' Comments.

- Standing Committee Reports

11. Mayor's Comments.

ADJOURN

If you have a disability and are in need of assistance, please contact the City Clerk at (360) 279-4539 at least two days before the meeting.

*"And those who were seen dancing were thought to be insane by those who could not hear the music."
- Friedrich Wilhelm Nietzsche*

**City Council Meeting
Tuesday, September 6, 2011, 6:00 p.m.
City Hall – Council Chambers**

CALL TO ORDER Mayor Slowik called the meeting to order at 6:00 p.m.

INVOCATION Pastor Ron Eerkes, Grace Community Church

ROLL CALL

Mayor Jim Slowik

Seven Members of the Council,

Rick Almberg

Beth Munns

Jim Campbell

Scott Dudley

Danny Paggao, Mayor Pro Tem

Jim Palmer

Bob Severns

Paul Schmidt, City Administrator

Margery Hite, City Attorney

Doug Merriman, Finance Director

Steve Powers, Development Services Director

Cathy Rosen, Public Works Director

Eric Johnston, City Engineer

Larry Cort, Project Manager

Rick Wallace, Chief of Police

Mark Soptich, Fire Chief

Mike McIntyre, Senior Services Director

Renée Recker, Executive Assistant to the Mayor

MINUTES

7/27/11 City Council Workshop

MOTION: Councilmember Palmer moved to approve the 7/27/11 workshop minutes and the motion was seconded by Councilmember Severns.

VOTE ON THE

MOTION: Councilmembers Almberg, Campbell, Munns, Paggao, Palmer, and Severns voted in favor of the motion. Councilmember Dudley abstained from the vote since he was absent from the meeting. The motion carried.

8/3/11 Regular Meeting

MOTION: Councilmember Palmer moved to approve the 8/3/11 regular meeting minutes and the motion was seconded by Councilmember Campbell.

VOTE ON THE

MOTION: Councilmembers Campbell, Munns, Paggao, Palmer, and Severns voted in favor of the motion. Councilmembers Almberg and Dudley abstained from the vote since they had been absent from the meeting. The motion carried.

8/16/11 Special Meeting

MOTION: Councilmember Palmer moved to approve the 8/16/11 special meeting minutes and the motion was seconded by Councilmember Campbell.

VOTE ON THE

MOTION: Councilmembers Almberg, Dudley, Campbell, Munns, Paggao, and Palmer voted in favor of the motion. Councilmember Severns abstained from the vote since he was absent from the meeting. The motion carried.

NON-ACTION COUNCIL ITEMS

Proclamation – Tenth Anniversary of 9/11, and National Day of Service and Remembrance on September 11, 2011

Councilmember Severns read and presented this proclamation to Police Chief Rick Wallace, Fire Chief Mark Soptich and members of Oak Harbor's Police and Fire Departments. On Sunday, September 11th at 10:00 a.m., police and fire departments across the nation will commemorate the 10th anniversary of 9/11 with the sounding of police and firefighter sirens and bells to show national unity and solidarity.

Employee Recognitions

Jim Boer – 20 Years of Service

Public Works Director Cathy Rosen introduced Jim Boer and talked about Mr. Boer's history with the Public Works Department. Beginning in Solid Waste, he was appointed to lead positions and transferred to the Parks Department in 2002 where Mr. Boer has shown considerable skills in customer service and special events, has impeccable attendance and great reliability, and excellent working relations with supervisors and co-workers. Ms. Rosen congratulated Jim on 20 years of service and he thanked everyone for this recognition including his wife for her support and a special thanks to Parks Manager Hank Nydam.

Robert Wallin, 25 Years of Service

Fire Chief Mark Soptich introduced Capt. Robert Wallin who has over 35 years of fire safety and fire service experience in both the public and private sectors. He holds a Bachelor of Arts Degree in Education and is a graduate of Western Washington State College. His training began with a 36 year career at the Anacortes Texaco Refinery which later became the Shell Refinery, joined their fire team in the 1980s, served as the emergency response coordinator and safety officer from 1998 – 2000, and was responsible for the fire, hazmat, medical, and oil spill response teams. Before retiring, he developed an emergency evacuation plan and an accountability program for the refinery for the several hundred employees who could be in the facility at any given time. Capt. Wallin began his OHFD career in 1986 as a volunteer firefighter, has served on numerous committees in the Department, and is currently a paid-on-call Captain/Emergency Medical Technician. In addition to thousands of training hours with OHFD and the refinery, he also attended the National Fire Academy in Emmitsburg, Maryland. Chief Soptich presented roses to Mrs. Wallin in recognition of her support and thanked Capt. Wallin for his commitment and dedication to the community and Department.

Capt. Wallin thanked Chief Soptich, Mayor and Council saying it is his honor and privilege to work with the men and women of the Oak Harbor Fire Department. His father had been with the Department and Capt. Wallin also talked about the support of his family, especially Mrs. Wallin.

Break

Mayor Slowik called for a break at 6:18 p.m. to allow Council Members to congratulate Mr. Boer and Capt. Wallin. The meeting reconvened at 6:25 p.m.

Verbal Report on SE Pioneer Way Project – Larry Cort

Project Manager Larry Cort gave this presentation.

Substantial Completion Date

As Dr. Cort stated in his September 1, 2011 project briefing:

“While there remains a great deal of uncertainty about when the block between Ireland and Ilwaco Streets will be cleared for construction following the archaeological work, the remainder of the project appears to be tracking strongly toward a revised substantial completion date of October 6, 2011 (assuming decent weather during the next five weeks). ‘Substantial completion’ is different from ‘physical completion’ but does include all underground utilities, sidewalks, final paving, striping, handrails, irrigation and signs. It is also very likely that much of the landscaping and street furniture will be installed during this period. While there will still be work to do after October 6th, including completing the Ireland to Ilwaco block and removal of the overhead lines and poles once all the individual property conversions are complete, Pioneer Way should be in good shape as we head deeper into autumn.” Dr. Cort gave a PowerPoint presentation of the area and how it looks to date. Topsoil is in by Arnie’s Restaurant and barriers have been removed; irrigation is now in, too. The third and fourth corners of Dock Street were completed today. And finally, from Midway back toward the center of town, curb and gutter is in and sidewalk is being prepared for concrete (S and S concrete, Strider Construction subcontractor), with Jensen side street completion and work on a portion of Ireland Street.

Archeological Work

From the September 1, 2011 project briefing:

“The City’s consulting archaeological firm, Northwest Archaeological Associates (NWAA), in cooperation with Tribal representatives, wrapped up all currently authorized work on Tuesday within the south half of Pioneer Way. The next step will be a consultation meeting between State, Tribal and City officials to determine how to handle the additional human remains that were discovered within the test pits. The State Department of Archaeology and Historic Preservation has scheduled this meeting for mid-September.”

That meeting has now been scheduled for September 15, 2011. The barrier fencing has been moved in a small distance to assist Strider Construction but will return to its original position when the archaeological crew returns. Remains have been found in 15 of the test pits from small fragments to intact bones. With respect to the other sites that may or may not garner regulatory interest from the State, there has been nothing more regarding the spoils site. The City did get permission for irrigation sleeving between the east and west end of the project so irrigation can now be connected entirely throughout the project.

Construction Mitigation

Dr. Cort noted that the City is working very closely with the downtown merchants community and downtown merchants association. Print ads and outreach continue with a very successful First Friday event held on September 2, 2011, complete with fall fashion preview. Dr. Cort extended a big "thank you" to Rhonda Severns for her work on this event.

Funding

Dr. Cort distributed a *Running Costs and Estimated Expenditures to Complete the Project* sheet which is attached to these minutes as Attachment A. The first line, *Pre-Construction Costs* are fixed since this has been completed. The second line, *Roadway/City Utilities/Parking Alternate/Contingency* represents Strider Construction and their sub-contractors which is now estimated to finish at \$4,486,480 (a conservative, worst case estimate). This is \$270,000 more than Council had authorized. What this represents is: Strider's overhead during the suspension period, inefficiencies (changes) in the construction critical path caused by the archaeological discovery which demobilized Strider's equipment and almost all of their staff, Strider's remobilization along with electrical, landscaping, and all of Strider's sub-contractors, and the bonus for early completion. The \$80,000 incentive bonus was built into the contract as a sliding scale. With the archaeological discovery and project shut-down, this was affected. Strider was on-track for the full incentive bonus prior to the discovery. Since Strider was 75% through the project at that point, the City has offered 75% of the bonus for the percentage completion which would be \$60,000. The remaining \$20,000 is structured toward substantial completion on October 6, 2011. The structure was in the contract, but not part of the bid tab. And finally, Finance Director Doug Merriman was asked to look at unit prices and lump sum items for every single line item out to 100%. That number also added in a certain amount of increases but should be considered soft since some line items will not reach 100%. As example, the minor changes line item shows \$60,000 but to date, not a single penny of that has been used. With regard to the fifth line, *Surveyor*, the cost estimate is for additional work. The stakes were pulled when the project was shut down. The surveyor is working very closely to Strider Construction to keep up with them, and the surveyor contract has been increased by \$30,000. The tenth line, *Archeology – Pioneer Way* also includes the security firm and other expenses for additional archaeological work since the discovery of remains. The amount shown now is a place holder; the September 15, 2011 meeting should help pinpoint an amount.

Dr. Cort talked about Attachment A's line items representing budgeted funds which are not expected to be fully spent. The third line, *City Share of PSE/Frontier Undergrounding* should be about \$70,000 less than the \$630,000 shown. The seventh line, *Other* which represents direct costs should come in substantially less than \$185,000. The ninth line, *Construction Mitigation Outreach* should be less than original projection of \$167,500.

The total projected costs numbers: original budget resolution at \$8,300,000, which then became \$6,900,000, and is now projected at \$7,549,944. And finally, Dr. Cort talked about the Pit Road site and reburial of remains – no idea of what those numbers will be.

Council Discussion

Discussion followed about increased costs on Pioneer Way and the Pit Road site, the need for more information to establish a number for the Pit Road site, and the potential to go over budget. Discussion continued regarding the source for the \$65,000 Pioneer Way art (coming out of the Arts Fund), the contract's 9% contingency, Strider's incentive funding, discussions between staff and Strider to reach a reasonable formula, and that the entire incentive could be earned by October 6th. Discussion followed regarding the survey stakes and why they were pulled and Dr. Cort responded that they were removed to ensure pedestrian safety and to clean up the area, but the control points were not disturbed. Discussion continued about the second line item on Attachment A – *Roadway/City Utilities/Parking Alternate/Contingency* – and the projection at \$4,486,480 which includes change orders, shutdown to startup costs, subcontractors, charges for remobilization and start up, and if Strider Construction charged an additional fee on top of the start up. Dr. Cort noted that, while in suspension, there were costs for Strider's overhead and skeletal crew, but they were not eligible for any markup while the project was in suspension. There was one single proposal from Strider with a breakdown for subcontractors. Discussion followed about the schedule: With one more Council meeting in September, a meeting on October 4th, and an October 6th completion date, how soon will the City know if extra costs will be incurred as the completion date comes forward. Dr. Cort felt that the September 15th meeting with the Tribes and the State will address what has to be done to complete Pioneer Way. If that is extensive, then the project will move ahead to the Pit Road site, but Dr. Cort expected substantial completion would still occur in October. Mayor Slowik asked Dr. Cort to explain the difference between project completion and substantial completion as expected on October 6th. Substantial completion will mean the street is open for its intended purpose but not all of the details will be completed. Physical completion will come later; as example, PSE's 90-day notice. As Chair of the Finance Standing Committee, Councilmember Palmer asked if the September 19th Finance Standing Committee could be provided some numbers. It was expected that the other standing committees would also be provided additional figures, as well. The regular meeting of City Council falls on September 20th.

Council complimented the Pioneer Way City staff for working with the downtown merchants, noting that China Harbor was happy with their vehicle access, Popsie's is happy with the sidewalk, and that the Strider crew continues to be very helpful to the public. Discussion followed about the PowerPoint photo from Midway south and if there is access and entrance to those shops (yes). Mayor Slowik also thanked Rhonda Severns for her hard work on the First Friday event last week.

City Administrator Paul Schmidt talked about the August 31, 2011 SE Pioneer Way Inadvertent Discovery Procedural Review which he authored and has now been distributed to Mayor Slowik, City Council, and selected staff. It addressed the SE Pioneer Way Project environmental process and the subsequent inadvertent discovery of human skeletal remains. A response to the City's current environmental review process and construction administration procedures were also included with a proposal to provide further oversight by the Development Services Department and to involve a higher level of

decision-making authority for significant and final SEPA determinations. The review was intended to learn from what has happened in order to retain the environmental integrity of the SEPA process as well as the confidence of Oak Harbor's citizens.

Mr. Schmidt talked about the discovery of remains and subsequent chain of events on this project and how that will now affect public works projects especially those projects with excavation and proximity to the shoreline. A press release was issued during the third week in June noting that the City would do this procedural review. All project records were reviewed and those involved with the project were interviewed. Highpoints included:

- Background on the SEPA process.
- Comments from the Department of Archaeology and Historic Preservation (DAHP) and DAHP's recommendations.
- The urban nature of this area and previous disturbances.
- The archeological survey at Flintstone Park for the multimodal facility.
- The 45 IS 45 permit area and antidotal information on the Copeland property in 1953. The "misses": misunderstanding, mistake, misinterpretation, miscommunication. We misinterpreted and minimized the importance of an archaeological review which DAHP was saying to the contrary. We minimized the previous disturbance but archaeological artifacts were not disturbed for long periods of time. We noted in SEPA that we would have it monitored and take a wait-and-see approach. A procedural mistake happened when the project engineer retired and that notation was not carried over.
- And lastly, our SEPA process and environmental review rested all of the authority in the project engineer and we now know that we cannot have just one individual making those decisions.

The City's corrections will include:

- Establish a Cultural Resource Management Plan by July 2012. DAHP considers Oak Harbor a rich area for archaeological resources.
- DAHP recommended archaeological reconnaissance and the City will use experts and Tribal members for archeological resource prediction and include these in the City's plan.
- SEPA authority will be split between the project engineer and Development Services.

Council Discussion

Discussion followed about November's shoreline substantial development permit (which is the City's own permit) and DAHP recommendations, what might have been done differently, the timing of the past project engineer's retirement and that he was not here when discovery was made, and that how engineers are assigned to projects will be now be changed. Discussion continued about the City-Wide Cultural Resources Management Plan which will come before Council for approval, that midden had been known since the 1950s yet previous Councils had not developed a plan, and that this project brought a sensitivity to the impact on Pioneer Way's merchants and project costs. Mr. Schmidt noted that review procedures have changed since the 1950s and, with a Cultural Resources Management Plan, the City will be able to key in on areas that could hold additional archaeological interest. The City would still have encountered remains during the Pioneer

Way project, but we will now have a plan to address these possibilities. Discussion continued about the discovery and sensitivity presentation attended by several Council members, that this is a work in progress, and that Native American remains deeply deserve reverent treatment. A resource plan for historic preservation of archaeological findings does not bring State or other financial assistance to help the City create this plan. Mayor Slowik noted that Port Angeles, which is similar in size to Oak Harbor, has a full-time archaeologist on staff.

Break

Mayor Slowik called for a break at 7:25 p.m. the meeting resumed at 7:35 p.m.

The Mayor called for public comments.

Public Comments

Helen Chatfield-Weeks, 1415 SE 9th, Oak Harbor. Ms. Chatfield-Weeks talked about the work done by the City's Environmental Educator, Maribeth Crandell and presented a brochure on plastics which talks about what can be done to reduce impact on the environment, the Beachwatcher's Program, and the time it takes for materials to break down.

Paul Brewer, 225 NE Ernst, Oak Harbor. Mr. Brewer had attended a Public Works Standing Committee meeting chaired by Mayor Pro Tem Paggao, and was pleased to see Oak Harbor taking charge of its solid waste program and recycling. The Public Works Department is doing an excellent job. Mr. Brewer also talked about the Marina security gates bid award on the consent agenda and asked if the public would still have access to the docks stating: the public pays for and subsidizes the Marina; it is public property.

Bob Olson, Owner of Whidbey Wild Birds, Pioneer Way. Mr. Olson said he was not running for political office, but he wanted to talk about the Pioneer Way project. Mr. Olson thanked the City and felt that the level of cooperation between Strider Construction, S and S Concrete, the Tribes, and the State has been phenomenal. Mr. Olson hoped that street lights would be installed soon since the days will quickly become shorter. As an individual shop owner, thank you; you are doing a good job and we appreciate it.

Gray Giordan, 651 SE Bayshore Drive, Oak Harbor. Mr. Giordan thanked the Council for their efforts, since they receive a lot of negative comments, with particular thanks from the homeowners at Waterside Condominiums. Mr. Giordan strongly encouraged Council to use the existing code and referred to OHMC 5.22.065: Violation of license conditions. A license holder who violates any license condition of his/her nightclub license shall be subject to civil penalties as follows:

- (1) First violation of a license condition: \$500.00 fine per violation;
- (2) Second violation of same license condition: \$750.00 fine per violation;
- (3) Third violation of same license condition: \$1,000 fine per violation.

First, second and third violations of license conditions shall constitute civil offenses and shall be governed by the procedures of Chapter 1.28 OHMC.

The fourth or greater violation of the same license provision shall constitute a misdemeanor punishable by a fine not exceeding \$1,000, up to 90 days in jail, or both such fine and jail time.

City Attorney Hite advised that this is a quasi-judicial item on this evening's agenda and discussion is in appropriate at this point.

Mr. Giordan then referred to OHMC 5.22.080 License – Compliance required. In addition to the conditions imposed pursuant to OHMC 5.22.045, All nightclub licensees shall comply with the rules or regulations of the Washington State Liquor Control Board relating to the sale of intoxicating liquor. A finding of violation by the Washington State Liquor Control Board shall also constitute a violation of license conditions pursuant to OHMC 5.22.065. He felt the City is not taking advantage of increased revenue and encouraged Council to read and enforce these sections of OHMC's Nightclubs Chapter.

Mel Vance, P.O. Box 2882, Oak Harbor. This will be the longest sunny streak recorded in this region according to weather predictions. Watch out for your neighbors and their health. The heat can catch up with you. Drink plenty of fluids

Shane Hoffmire, 50 SW 8th Avenue, Oak Harbor. Mr. Hoffmire spoke with concern about the content of election campaigns and negativity and said that September 11th was the saddest day of his life; we all came together, why are we so divided. E Pluribus Unum – out of many we are one.

Jill Johnson, Executive Director of Greater Oak Harbor Chamber of Commerce. Ms. Johnson talked about the 100 potential jobs that could be created if Nichols Brothers can bring a shipyard facility to Oak Harbor. There is an impasse of \$40,000 toward a feasibility study: the County does not have funding, the Navy's stance is requiring a feasibility study, and this private enterprise does not want to write a check for the study. Mayor Slowik sits on the Council of Governments, Councilmember Dudley is a member of the Economic Development Council, Councilmember Munns has a good relationship with the Navy, and someone should call Nichols Brothers and ask them to contribute.

Cecil Pierce, 871 NW Haslo Place, Oak Harbor. Mr. Pierce spoke with concern about Mr. Schmidt's Pioneer Way report and the use of words "mistakes, misinterpretation, and misunderstood." We pay for you all to not make mistakes. Five years ago, there was a mistake at the Dillard's Addition. How many more will you make?

Paul Newman, 886 Bayshore Drive, Oak Harbor. Mr. Newman recognized and thanked Public Works Director Cathy Rosen. The City inadvertently damaged our property and then responded quickly to solve the problem. Mr. Newman conceptually talked about the Element Nightclub. There is a plan about what that part of the City should be like. If there is difficulty with conduct in that area, it doesn't matter whether it starts inside the business. I believe there are ticking time bombs and I know this is one of them. I would urge the Council to not let the details get in the way of the overall concept.

With no other comments coming forth, Mayor Slowik closed this portion of the meeting at 7:55 p.m.

COUNCIL CONSIDERATION AND ACTION ON THE FOLLOWING ITEMS

Consent Agenda

- a. Noise Permit – Navy Region NW Fire & Emergency Services.
- b. Noise Permit – NASWI – Fleet and Family Readiness.
- c. Noise Permit – Event Planning Committee for Mayor Jim Slowik.
- d. Noise Permit – Oak Harbor High School Homecoming Parade.
- e. Bid Award – Marina Security Gates.
- f. Park Board Alternate Appointment – Eric Lindberg.
- g. Excused Absence Request – Jim Campbell from the 9/20/11 Council Meeting.
- h. Approval of Accounts Payable Vouchers (Pay Bills).

Councilmember AlMBERG asked to remove Consent Agenda items D and E for comment.

MOTION: Councilmember AlMBERG moved to approve Consent Agenda Items A, B, C, F, G, and H with item H paying accounts payable check numbers 14602 – 146924 in the amount of \$1,933.38, 146925 – 147091 in the amount of \$366,388.36, 147092 – 147093 in the amount of \$473.70, 147094 in the amount of \$7,222.81, 147095 – 147265 in the amount of \$644,244.44; payroll check numbers 94933 – 94944 in the amount of \$410,328.72, 94945 – 94974 in the amount of \$483,681.58, and 94975 – 95003 in the amount of \$45,076.55. The motion was seconded by Councilmember Palmer and carried unanimously.

D – Noise Permit, Oak Harbor High School Homecoming Parade.

The Homecoming Parade is on Pioneer Way, October 20th between 5:00 p.m. and 7:00 p.m., and Councilmember AlMBERG encouraged everyone to attend this event and promote the community.

MOTION: Councilmember AlMBERG moved to approve the noise permit for Oak Harbor High School's homecoming parade. The motion was seconded by Councilmember Severns and carried unanimously.

E – Bid Award, Marina Security Gate

Councilmember AlMBERG asked Development Services Director Steve Powers to address Mr. Brewer's public comments regarding the use of public funds for the Marina and the security gates. Mr. AlMBERG stated: The Marina is an Enterprise Fund supported by the ratepayers (slip fees) at the Marina, and support does not come from the General Fund (Yes). The general public has access to F Dock, the main walkway, and out to the picnic areas but not to the finger piers. Mr. Powers concurred again and also mentioned that visitor passes can be issued; the general public has broad access to the Marina. Councilmember Severns asked Harbormaster Chris Sublet if the Marina Advisory Committee has reviewed and approved the security gate project (yes).

An initial motion by Councilmember AlMBERG and seconded by Councilmember Campbell to approve the marina gate security gate was withdrawn to restate the motion as presented in the agenda bill's recommended action.

MOTION: Councilmember Alberg moved to award the bid for the purchase of a security gate system to Gateway Controls, Inc., in the amount of \$34,835 plus applicable sales tax. The motion was seconded by Councilmember Munns and carried unanimously.

Public Hearing – Element Nightclub

City Attorney Margery Hite noted that this is quasi-judicial procedure since it is a license revision hearing. Ms. Hite asked Element's owner, Mike Kummerfeldt, if he had received a copy of Police Chief Wallace's report and Mr. Kummerfeldt said, yes. Ms. Hite asked Mr. Kummerfeldt if he wished to go forward with tonight's proceeding or postpone it until the September 20, 2011 Council meeting. Mr. Kummerfeldt did not object to continuing this proceeding tonight.

Prior to the staff presentation of a quasi-judicial matter, Councilmembers shall each determine whether the appearance of fairness doctrine requires that the Councilmember recuse himself or herself from sitting on the quasi-judicial matter. As a non-land use quasi-judicial matter, City Attorney Hite asked each Councilmember to identify:

1. If they stand to gain or lose any financial benefit as a result of the outcome of the hearing.

Councilmember Severns is on the board of Whidbey Island Bank, and has an interest in a building close to Element, but did not feel this would be a conflict. Mr. Kummerfeldt agreed there would be no need to recuse Councilmember Severns. **Councilmembers Alberg, Dudley, Campbell, Munns, Paggao, and Palmer, then each answered no and there was no public objection.**

2. If they have any personal, family or other connection to any party such that their ability to be impartial might be called into question.

Councilmembers Alberg, Dudley, Campbell, Munns, Paggao, Palmer and Severns each answered no.

3. If there is any reason why they could not be fair and impartial in deciding this matter.

Councilmembers Alberg, Dudley, Campbell, Munns, Paggao, Palmer and Severns each answered that they could be fair and impartial.

Mr. Kummerfeldt and the public then had the opportunity to object to any Councilmember sitting on this matter based on the appearance of fairness doctrine. **There were no objections.**

Ex parte contacts are contacts about the quasi-judicial matter occurring outside of the open public hearing at which it is decided. Every Councilmember shall disclose any ex parte contact(s) he or she had and describe them on the record prior to the quasi-judicial hearing. Unless the Councilmember feels that the ex parte contact(s) have affected his or her ability to be fair, the fact that the Councilmember has had ex parte contacts shall not disqualify a Councilmember provided that the Councilmember discloses those contacts on the record prior to the quasi-judicial hearing. In any case in which a Councilmember has disclosed ex parte contacts, any party to the quasi-judicial hearing shall be allowed to rebut the substance of the ex parte contact(s) either prior to or during the quasi-judicial

hearing. City Attorney Hite also alluded to earlier public comments made during this meeting.

Ms. Hite then asked each Councilmember about ex parte contacts.

Councilmember Dudley – Mr. Dudley had spoken to OHPD Officer Lolmaugh about his position as a cover officer at the nightclub and asked how things were going. He also noted standing committee meeting discussion. This would not affect his ability to be fair.

Councilmember Severns – None.

Councilmember Alberg – Mr. Alberg had spoken with Gerry Oliver who took issue with Mr. Alberg's comments at the last Council meeting. Mr. Oliver did not agree with Mr. Alberg's position to have uniformed security there. Mr. Alberg said we would follow Oak Harbor and State law. This would not affect his ability to be fair.

Councilmember Palmer – Mr. Palmer talked about the envelope to respond to Billie Cook and discussions about the conditional use permit at the last Council meeting. This would not affect his ability to be fair.

Councilmember Paggao – None.

Councilmember Campbell – Mr. Campbell talked about his coffee klatch at Angelo's Café where he had talked to citizens who asked when this will be fixed and how this will be resolved. Mr. Campbell had responded that he did not know quite how to fix it. This would not affect his ability to be fair.

Councilmember Munns – None.

Ms. Hite asked Mr. Kummerfeldt if he wished to rebut these comments and he did not wish to rebut.

Chief Wallace reviewed questions concerning uniformed security at Element and if OHPD or other agency officers could act as security for the nightclub. Both the Island County Sheriff's Department and Washington State Patrol would not authorize their personnel for this work. Lt. Dyer conducted a poll of OHPD officers and they would not volunteer in that capacity.

City Attorney Hite asked Mr. Kummerfeldt if he would like to speak.

Mike Kummerfeldt, Element Nightclub Owner. I know this has been an issue for a while and I don't think this should have become this big of an issue. I have done everything legally required; I cannot ask people to whisper when they leave. Element is where people come to have a good and safe time. The club serves a purpose and provides entertainment. The one thing as a Council – way back when Council asked about the number of calls for police service, we should look at facts. There has been one noise violation in the past three years; they are minute. Let's look at arrests and violations. We have had less than other establishments. We are a large establishment which accommodates 200 to 250 people with hardly any arrests or violations. We have officers policing our parking lot from 1:30 a.m. to 2:30 a.m. and no one is arrested. Nothing illegal is going on. I really think that as a Council, the only thing it is or comes down to is, step up and say it is a legitimate legal business. The conditions were for the card room. It's not correct. I want to be left alone; I am running a legal business.

Chief Wallace noted that there was some discussion about private security firms in lieu of officers. The other two questions are legal issues: Could there be a change in conditions imposed on only one club and not all the other clubs. The whole basis of the nightclub permit is problem-based. Each nightclub has different conditions (conditions for the nightclub permit). Lava Lounge had similar nightclub permit conditions but they are no longer in operation. Chief Wallace felt Council can selectively impose conditions (nightclub permit conditions) from one nightclub to the other, however, hours of operation remain a legal question and Chief Wallace felt that could not change without imposing operating hours on all of the clubs.

Mayor Slowik opened this discussion to public comment.

Steve Boughner, 651 SE Bayshore Drive, Oak Harbor. I live across the street from Element's parking lot on the ground floor. Mr. Boughner talked about a letter with regard to a fight in the parking lot and damage to his sister's automobile. It cost \$1,800 to repair her car. At 2:00 a.m. on Sunday mornings, it is very noisy. I talked to an officer who said he could not do anything about the noise and was there to stop fights. We are frustrated. Any given night between 10:00 p.m. and 2:00 a.m. there is loud conversation and it goes on all night. We are told the reason it can't be busted up is that people are waiting for rides. A lot of people are going to their cars in the parking lot. City Attorney Hite asked Mr. Boughner if he would swear or affirm to his testimony and Mr. Boughner did so.

There were no other public comments.

Council Discussion

Council asked City Attorney Hite to explain what is allowed and not allowed. Ms. Hite noted that Council has the authority for revocation, but if it is resting on a violation of conditions, that has to go to court. Ms. Hite also concurred with Chief Wallace regarding a change in hours of operation; that would have to be across the board. Chief Wallace added that he has testified many times that the complaints aren't frequent in terms of assault, disorderly conduct, theft, robbery, drug violations, and gang violations. The consistent complaints are from the condominiums about noise. The first year, the officers were reporting that the complaints were unfounded. I believe that what the owners of the condominiums are hearing are conversations elevated by possible alcohol use. Lt. Dyer spent the night in a condominium with a decimeter, and he could hear the conversation. There have been cases where people have been cited for noise. Mr. Boughner's comment about noise this weekend are not violations of the noise ordinance. Violation has to run to a specific person, not just a transition of noise. Our officers would be chasing after jets or church bells, or kids leaving the gym if that were the case. The owners hear it, but officers do not see one person or a group of people violating the noise ordinance. It is clear that they are awakened, but this is not based on a violation of the noise ordinance. Would different security help in quieting down the crowd - that is up to Council, but I cannot tell you that it would be successful. Officers cannot bluff, but private security can possibly move people along. The key is that officers must observe someone yelling or screaming at the top of their voice for a prolonged period of time to constitute a violation of the noise ordinance.

Council discussion continued about how and if Council can deal with this situation, that Element should still be allowed to continue and remain a successful business, but there is a need to be a good neighbor. It was acknowledged that the nightclub has been doing what is asked of the club to mitigate noise pollution and meet the permit conditions. Specific discussion followed about nightclub license conditions of approval, number 5c (ban policy and the four points leading to a patron's ban), and 5b which was changed during Council's March 2, 2010 meeting for security personnel to be in the parking lot between 1:15 a.m. and 2:30 a.m. with the addition that Element staff will handle security after 2:30 a.m., as needed. Mr. Kummerfeldt responded that Element security is visible and name-tagged. Even when uniformed officers are in the parking lot, they cannot stop people from talking and 95% of the parking lot is cleared by 2:15 a.m. We cannot push people out of the lot, especially those who are waiting for cabs. The question of private security and what works better: I have been doing this for four or five years. Our security staff is very professional and we hardly have any altercations. The majority of calls run to outside noise. Would private security be better? My answer is 100% "no." A "rent-a-cop" would not have any more authority or solve this issue. I have tried to be a good neighbor. Either shut me down or tell the neighbors this is a legitimate business and do not waste OHPD officers' time. You send them to Element which pulls officers out of other areas of the City.

Six people don't like me; 1,000s of customers do. You are making all of these rules for such a minority of people and it is hurting the rest of the City.

Council asked Chief Wallace if private security could disperse the crowd. Chief Wallace disagreed with some of Mr. Kummerfeldt's assessment of private security agencies but Chief Wallace did not believe that Element security is actively moving the crowd along, but also noted that loitering is not illegal. OHPD officers cannot tell patrons to leave based on loitering. I do not believe the crowd noise lasts a full hour; possibly 45 minutes and then they are gone.

Council discussion continued about how limiting hours would even solve noise issues, a mixed response regarding the use of uniformed security, discussion that this does not appear to be a violation of the nightclub ordinance, and that the conditional use permit addresses gambling.

Discussion followed about the culture gap between patrons and condominium owners, that Element management within the premises has established policies, training, and protocol that are acceptable both for patrons and staff, and a question to Mr. Kummerfeldt about the ban policy and how it is documented. Mr. Kummerfeldt said that the club's security log notes such action and a ban book is maintained. There is a surveillance system in the casino and face shots are taken of who walks through the club's doors. Mr. Kummerfeldt provides the ban list to Chief Wallace as required in the nightclub license's conditions of approval. Patrons who cause reoccurring problems have been banned for a year, some have been banned for life, others are banned for a weekend. Mr. Kummerfeldt talked again about the club's security which he felt is far better than private security. Element has 11 to 13 employees who are considered security staff including a shuttle driver, surveillance officer, Mr. Kummerfeldt, and another manager. It is a disciplined crew who take their jobs seriously both inside and outside of the club.

There are 5 bouncers, front door security, and bartenders; on any given night, 10 Element security personnel will be outside as the crowd builds up. Mr. Kummerfeldt also talked about his personal schedule since he works until 3:30 a.m. or 4:30 a.m. and does not sleep until 5:30 a.m. In the summer, my neighbors mow their lawn between 11:00 a.m. and noon. If you live downtown, bars are a part of downtown. We are zoned for what we do. Either shut Element down or tell the condominium owners to stop complaining. We cannot tell people to not be human (human nature).

Council discussion followed about a formal noise suppression plan and the effectiveness of a written plan for policy and debriefing. Mr. Kummerfeldt said there is a written plan for inside, but he could provide a written operating procedure for outside of the club, as well. Mr. Kummerfeldt did think that throwing more security at a group of people gathered in the same spot would not necessarily quiet the hum of 50 people together. Council felt that Mr. Kummerfeldt is the best source for handling the noise problem, but a plan will help him have more success. Mr. Kummerfeldt will provide a written procedure within a week or so. Mayor Slowik asked Mr. Kummerfeldt to provide this plan within 10 days which can then be distributed to Council.

Discussion returned to Element's banned patron list and how often the list is provided to Chief Wallace. Chief Wallace noted that Mr. Kummerfeldt is in compliance and there are 5 or 6 patrons on the list with details about why they were banned. None of these people are banned because of a noise violation. Discussion followed about the cover officer's effectiveness. There are a significant number of responses each evening yet officers report that the calls are unfounded and do not rise to the level of a noise ordinance violation; our interdiction efforts have intensified. Lt. Dyer has been meeting with Mr. Kummerfeldt but the dilemma is still there. OHPD has to find a crime and Chief Wallace stands by his officers' decisions. Councilmember Dudley specifically felt that the number of noise violations is not zero and thought something could be done but the next question is what can be done. Council remarks returned to being a good neighbor, that absolute silence will never be achievable, that private security may not be the best answer, and that developing a noise suppression plan would be a positive move.

Mr. Kummerfeldt also noted that absolute silence in the parking lot will never happen, Element's customers are not criminals, and the neighbors will not be happy until the club's doors are closed.

MOTION: Councilmember Paggao moved to have Element develop a plan for noise suppression within ten days. Councilmember Severns seconded the motion.

City Attorney Hite noted, in reference to the motion, that this would become an amendment to the conditions of the license to provide a suppression of noise plan within ten days.

Continued Discussion

Councilmember Almberg asked if this could preliminarily be discussed during the Public Safety Standing Committee. Councilmember Dudley asked if the club has audio capability and if there are video cameras outside. Chief Wallace responded that a camera system which is part of Island Transit's station covers a lot of Element's parking lot.

VOTE ON THE

MOTION: The motion carried unanimously.

Break

Mayor Slowik called for a break at 9:20 p.m. and the meeting reconvened at 9:30 p.m.

WAIF Discussion

Chief Wallace led this agenda bill's discussion as originally brought forward by Council motion from Councilmember Dudley during the June 28, 2011 Council meeting. Stephen Paysee, WAIF Executive Director, was also present. Councilmember Dudley talked about the January 27, 2011 Navy letter from Capt. Johnson. Mr. Dudley noted that Kit Merritt, WAIF Board of Directors, had indicated that WAIF's new shelter facility has only been designed to accommodate County animals. How could animals from the Oak Harbor Shelter be assimilated into the new shelter and is the City communicating with WAIF about these plans. Stephen Paysee responded that WAIF appreciates the relationship with the City; we are here for the animals. The animal services contract with the City and the County are very different. WAIF is moving forward with the capital campaign to build a new shelter in Coupeville but that shelter is probably three years away. The new shelter was designed years ago and WAIF cannot now build or redesign a shelter to handle all of the animals. Within WAIF's operations committee and new shelter committee, the planned shelter might be able to handle dogs but not cats. Mr. Paysee talked about the City's options: There is a six-day holding period, and at the end of that holding period the animal becomes WAIF's property. If Oak Harbor could accommodate a holding facility, the animal could be moved to the single facility after the holding period. Oak Harbor does have a new cat adoption center uptown. Whatever you choose to do, we are here to help and facilitate for everybody and, whatever the Navy decides, a six-day holding facility without adoptions could be a smaller facility. Cat adoptions would continue at the cat adoption center in Oak Harbor. WAIF would like to be involved in this conversation as we all move forward. Councilmember Dudley asked the Mayor to update the Council on discussions with Forest City and City plans that could affect WAIF in 2012 and beyond. Mayor Slowik talked about the May 5, 2011 Forest City letter (part of the agenda bill's attachments) and the last letter to Capt. Johnson (also in the agenda bill's attachments) requesting a year extension to the license for the Seaplane Base shelter. The meeting with Admiral Biesel was done verbally. The City's point with the Navy was to bring awareness to our relationship with WAIF and to note the importance of continuing animal services. Mayor Slowik felt that we have talked to the right people and the City needs to now see what the Navy and Forest City can provide. They verbally acknowledged that they realized this is a problem on the Navy base. Mayor Slowik felt a plan could be achieved which would ultimately come before Council.

Council Discussion

Discussion followed about the high percentage of shelter animals that originate from Navy housing and Navy personnel outside of Navy housing. Discussion returned to keeping communication open between WAIF, the Navy, and Forest City, the three year timeframe for WAIF's new Coupeville facility, and the possibility of extending that facility with additional wings (WAIF would need to know in a year or so if that is considered as an option).

Final Consideration 2011 Solid Waste Franchise Ordinance, Goldie Road Annexation

Public Works Director Cathy Rosen presented this agenda bill for an ordinance to provide a solid waste franchise to Island Disposal for areas annexed under Ordinance 1603. Ms. Rosen also mentioned that the agenda bill talked about standing committee presentation on 9/1/11 but it was pulled since there were so many items on the Public Works standing committee agenda and it had been discussed before.

There were no public comments.

Council Discussion

After the ten year period can the franchise be renewed on a year by year basis (yes). Are property owners notified, when annexed, regarding the other utilities since bills are being received retroactively from other utility providers.

MOTION: Councilmember AlMBERG moved to adopt the ordinance granting a franchise for solid waste disposal services to Island Disposal for a period of ten (10) years in the recently annexed portion of the City described in Ordinance No. 1603 (Goldie Road/Wallin). The motion was seconded by Councilmember Campbell and carried unanimously.

City Administrator's Comments

City Administrator Schmidt distributed a draft resolution regarding legislative priorities for 2012 and asked Council to review and add items for priority issues inclusion.

Council Members' Comments

Council Members gave their respective standing committee reports and Councilmember Palmer noted the Finance Standing Committee had been rescheduled for September 19, 2011 at 3:30 p.m. Councilmember Munns talked about AWC's legislative committee and her conference call participation with that committee. Priorities will go to the Board on September 23, 2011 with adjustments to follow. Ms. Munns also talked about the Military Appreciation Picnic on September 10, 2011 on the Windmill side of the park from noon to 4:00 p.m. Councilmember Dudley spoke about the comments made by Jill Johnson, Executive Director of the Chamber of Commerce, concerning the feasibility study fee regarding a Nichols Brothers shipyard in Oak Harbor. The City would be the beneficiary of 100 potential new jobs.

MOTION: Councilmember Dudley moved to place an item on the September 20, 2011 City Council meeting agenda to see what we can do for the feasibility permit fee and how to make that happen. The motion was seconded by Councilmember Campbell.

Mayor's Comments

Mayor Slowik talked about the upcoming 9/11 ceremonies and specifically Capt. Johnson's participation in the ceremony. Capt. Johnson was at the Pentagon on 9/11.

ADJOURN

With no other business coming before the City Council, Mayor Slowik adjourned the meeting at 10:10 p.m.

Connie T. Wheeler
City Clerk

Running Costs and Estimated Expenditures to Complete Project

	Contract/Budget	August 2011	Total to Date	Estimate to Finish
Pre-Construction Costs	\$ 1,004,592		\$ 1,004,592	\$ 1,004,592
Roadway/City Utilities/Parking Alternate/Contingency	\$ 4,215,839	\$ 310,000	\$ 3,017,415	\$ 4,486,480
City Share of PSE/Frontier Undergrounding	\$ 630,000		\$ 70,600	\$ 630,000
Inspection/Testing	\$ 23,012	\$ 1,000	\$ 16,452	\$ 23,012
Surveyor	\$ 117,385	\$ 10,500	\$ 90,636	\$ 147,385
Construction Management	\$ 398,975	\$ 30,000	\$ 262,658	\$ 398,975
Other	\$ 185,000	\$ 16,416	\$ 45,609	\$ 185,000
Public Art (1% of project)	\$ 80,000		\$ -	\$ 65,000
Construction Mitigation Outreach	\$ 167,500	\$ 34,232	\$ 90,582	\$ 167,500
Archaeology - Pioneer Way	\$ 250,000	\$ 171,457	\$ 205,814	\$ 392,000
Archaeology - Pit Road				
Project Engineering - Pertee/HBB	\$ 50,000	\$ 15,219	\$ 24,959	\$ 50,000
Reburial				
Total Project Cost	\$ 7,122,303	\$ 588,824	\$ 4,829,317	\$ 7,549,944

Original Budget Resolution

\$ 8,300,000

**City of Oak Harbor
City Council Agenda Bill**

Bill No. 2

Date: SEPTEMBER 20, 2011

Subject: PUBLIC COMMENTS

FROM: Jim Slowik, Mayor

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

 Jim Slowik, Mayor
 Paul Schmidt, City Administrator
 Doug Merriman, Finance Director
 Margery Hite, City Attorney

SUMMARY STATEMENT

City Council will accept public comments for items not otherwise on the agenda for the first 15 minutes of the Council meeting. You may also speak to any of the consent agenda items.



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**City of Oak Harbor
City Council Agenda Bill**

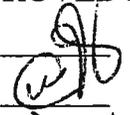
Agenda Bill No. CJA 3A

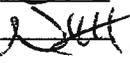
Date: September 20, 2011

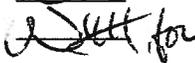
Subject: Noise Permit – Living Faith Christian
Center

FROM: Paul Schmidt, City Administrator 

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

 Jim Slowik, Mayor

 Doug Merriman, Finance Director

 Margery Hite, City Attorney, as to form

PURPOSE:

The purpose of this agenda bill is to forward to City Council for review and approval a Noise Permit request received from Living Faith Christian Center for amplified sound associated with an outdoor prayer service scheduled for September 24, 2011.

AUTHORIZATION:

Oak Harbor Municipal Code (OHMC) 5.50.040(3)(g) provisions relating to Special Events, requires compliance with noise ordinance regulations and laws. OHMC 6.56.030(2)(a) requires Council approval for a noise permit for sound amplification. As this event will include amplified sound, Council approval is required.

The City Council may grant a Noise Permit to deviate from the provisions of OHMC 6.56.030 if it is determined the activity and associated noise: 1) is not undertaken in disregard of the rights of others, or 2) is temporary, or 3) the activity creating the noise constitutes a program of a temporary nature for the benefit of the entire municipality or for the benefit of a charitable purpose.

SUMMARY STATEMENT:

Living Faith Christian Center has submitted a Noise Permit request for amplified sound associated with an outdoor prayer service scheduled for September 24, 2011. The amplified sound will consist of a sound system for live music.

The Application was reviewed by Fire, Police, and Public Works Departments. A condition of approval for the permit will be to face the speakers away from the campground area.

STANDING COMMITTEE REVIEW:

Not required.

RECOMMENDED ACTION:

Approve the request for amplified sound by granting the noise permit.

ATTACHMENTS:

Noise Permit.

MAYOR'S COMMENTS:

***CITY OF OAK HARBOR
NOISE PERMIT***

Name of Organization: Living Faith Christian Center

Location of Event: Windjammer Park – Kitchen C and surrounding area

Date of Event: September 24, 2011

Hours of Operation: 9:00 a.m. – 1:00 p.m.

Permitted Noise: Sound system for live music

Approval Conditions: Face speakers away from campground area.

Date of City Council Approval:

Issued this day of , 2011.

Karen Crouch, Special Events Coordinator

This Noise Permit is limited to the date and time specified.

Please post this notice on site

CITY OF OMAHA POLICE DEPARTMENT

OFFICE OF THE CHIEF OF POLICE

MEMORANDUM FOR THE CHIEF OF POLICE
SUBJECT: [Illegible]

DATE: [Illegible]

TO: [Illegible]

FROM: [Illegible]

RE: [Illegible]

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**City of Oak Harbor
City Council Agenda Bill**

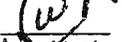
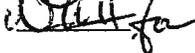
Agenda Bill No. C/A 3B

Date: September 20, 2011

Subject: Noise Permit – Flyers Restaurant
and Brewery

FROM: Paul Schmidt, City Administrator 

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

 Jim Slowik, Mayor
 Doug Merriman, Finance Director
 Margery Hite, City Attorney, as to form

PURPOSE:

The purpose of this agenda bill is to forward to City Council for review and approval a Noise Permit request received from Flyers Restaurant and Brewery for amplified sound associated with an Oktoberfest Celebration scheduled for September 24, 2011.

AUTHORIZATION:

Oak Harbor Municipal Code (OHMC) 5.50.040(3)(g) provisions relating to Special Events, requires compliance with noise ordinance regulations and laws. OHMC 6.56.030(2)(a) requires Council approval for a noise permit for sound amplification. As this event will include amplified sound, Council approval is required.

The City Council may grant a Noise Permit to deviate from the provisions of OHMC 6.56.030 if it is determined the activity and associated noise: 1) is not undertaken in disregard of the rights of others, or 2) is temporary, or 3) the activity creating the noise constitutes a program of a temporary nature for the benefit of the entire municipality or for the benefit of a charitable purpose.

SUMMARY STATEMENT:

Flyers Restaurant and Brewery has submitted a Noise Permit request for amplified sound associated with an Oktoberfest Celebration scheduled for September 24, 2011 at Flyers Restaurant and Brewery. The amplified sound will consist of a sound system for live music outdoors.

The Application was reviewed by Fire, Police, and Public Works Departments.

STANDING COMMITTEE REVIEW:

Not required.

RECOMMENDED ACTION:

Approve the request for amplified sound by granting the noise permit.

ATTACHMENTS:

Noise Permit.

MAYOR'S COMMENTS:

***CITY OF OAK HARBOR
NOISE PERMIT***

Name of Organization: Flyers Restaurant and Brewery

Location of Event: 32295 SR -20, Oak Harbor

Date of Event: September 24, 2011

Hours of Operation: Noon – 9:30 p.m.

Permitted Noise: Sound system for live music

Approval Conditions: None

Date of City Council
Approval:

Issued this day of , 2011.

Karen Crouch, Special Events Coordinator

This Noise Permit is limited to the date and time specified.

Please post this notice on site

CITY OF OAKLAND YOUR PERMIT

Permit No. _____

Issued to _____

Expiring on _____

Project Name _____

Address _____

City _____

State _____

Zip _____

Phone _____

City of Oakland
Department of Public Works

This permit is valid only for the work described on the plans.

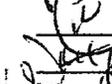
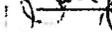
For more information, call _____

**City of Oak Harbor
City Council Agenda Bill**

Bill No. CHA 30
Date: September 20, 2010
Subject: Re-Appointment – Civil Service
Commission – Kent Dale

FROM: Jim Slowik, Mayor 

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

 Paul Schmidt, City Administrator
 Doug Merriman, Finance Director
 Margery Hite, City Attorney, as to form

PURPOSE

The purpose of this agenda bill is to recommend the re-appointment of Kent Dale to the Civil Service Commission.

AUTHORITY

The Civil Service Commission is a three-member commission appointed for a six-year term in accordance with OHMC 2.32.020. RCW 41.12.030 stipulates that at the time of appointment, no more than two members shall be “adherents of the same political party”. Members are appointed by the Mayor, and confirmed by the Council.

SUMMARY STATEMENT

Mr. Dale was first appointed to the Civil Service Commission September 1999. He has confirmed that he will serve another term if re-appointed. If re-appointed, his term will expire in September 2017. He has confirmed no adherence to a political party thus there are no more than two members of a single political party in conformity with RCW 41.12.030. Mr. Dale is an active, valued member of the committee.

Mayor Slowik recommends that Mr. Dale be re-appointed to the Civil Service Commission.

RECOMMENDED ACTION

Approve the recommendation to re-appoint Mr. Dale to the Civil Service Commission.

ATTACHMENTS

None.

MAYOR'S COMMENTS

None.

**City of Oak Harbor
City Council Agenda Bill**

Bill No. CJA 30
Date: September 20, 2011
Subject: Information Technology
Agreement

FROM: Paul Schmidt, City Administrator 

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

 Jim Slowik, Mayor
 Doug Merriman, Finance Director
 Margery Hite, City Attorney, as to form

Mr. Merriman was attending the
WFOA Annual Conference in Spokane
and was unable to review this agenda bill.
- Connie Wheeler

PURPOSE

This agenda bill proposes to revise and renew the information technology services agreement with the Oak Harbor School District for a five year period with the mutual option to extend for additional five year periods.

AUTHORITY

The Interlocal Cooperation Act, Chapter 39.34 RCW, authorizes public entities to contract to do jointly that which each is authorized to do individually.

FISCAL IMPACT DESCRIPTION

Funds Required: \$625 per workstation x 165 workstations = \$103,125 annually.

Appropriation Source: All Departments pay per workstation on-line.

SUMMARY STATEMENT

The City of Oak Harbor and the Oak Harbor School District have enjoyed a cost-effective and beneficial agreement for providing information technology services these past five years. Upon review of the existing relationship and working conditions between the City of Oak Harbor and the Oak Harbor School District, it is again proposed to continue the contractual arrangement for at least another five years as a cost effective partnership for such vital services.

The basis for the agreement is the School District provides information technology labor, expertise, telephony, network hardware and certain fiber optic infrastructure to the City as a basic service. The City provides its own computer hardware, software, and shares some other network hardware and pays the School District on a per annual workstation cost for the services provided. In January of 2006, the City agreed to pay the School District \$500 per year per network seat, of which the City had 141 network seats for an annual total of approximately \$70,500. This proposed new contract indicates the City will pay the School District \$625 per year per network seat, of which the City now has 165 network seats for an annual total of approximately \$103,125. It is anticipated that City Departments will be reviewing the need and number of computer work stations currently on-line for possible reductions under this contract.

City of Oak Harbor City Council Agenda Bill

RECOMMENDED ACTION

City Council authorization for the Mayor to enter into the new Information Technology Agreement with the Oak Harbor School District.

ATTACHMENTS

1. Interlocal Agreement

MAYOR'S COMMENTS

INTERLOCAL AGREEMENT

This Interlocal Agreement (“Agreement”) is entered into by and between Oak Harbor School District No. 201 (“District”) and the City of Oak Harbor, Washington (“City”).

RECITALS

- A. The parties are public agencies, as defined in RCW 39.34.020, who wish to enter into an agreement pursuant to Chapter 39.34 RCW to enable District to provide and City to receive computer network and telephone system support.
- B. The parties have each taken the appropriate action, by ordinance, resolution or otherwise, to authorize the execution and implementation of this Agreement.

AGREEMENTS

- 1. Duration. This Agreement shall become effective upon the filing of executed counterparts of this Agreement with the Island County Auditor pursuant to RCW 39.34.040. The continuing term of this Agreement shall be from the date of filing until December 31, 2017 unless sooner terminated in accordance with paragraph 10 hereof.
- 2. Renewal. The parties may by mutual agreement opt to extend this Agreement for successive periods of five (5) years.
- 3. Purpose. The purpose of this Agreement is to provide for computer network and telephone system support by District to City as specified below.
- 4. Services. District shall provide computer network support to City’s network, (as currently configured). See attachment “A”, citygrowthsoftware.xls spreadsheet. Such services shall be provided when necessary, on City premises and/or via secure network connection to the District Network Operations Center. Services shall include network support for installed desktops, servers and telephones including but, not limited to, the following:

- a. Network, server, IP telephone, voicemail and desktop maintenance in the same manner as is normally performed on its own systems. This includes installation of replacement equipment (except for major changeovers) and software installation. With the exception of software installation, this Agreement does not cover support for the various vendor-provided software programs installed on the network or individual user's desktops.
 - b. Preventive maintenance including cleaning, spot check, and network tuning as required.
 - c. Tape backup of City server systems to include networked work management software, records management systems, departmental databases and working files for City staff. Tape backups are for disaster recovery only. Archival backups will be addressed in a separate agreement. Tape backups will occur on a weekly basis, unless otherwise specified by City.
 - d. Recommendations for network design and infrastructure improvements where appropriate. Such modifications will take place only with the approval and notification of the City Administrator or Mayor's appointee. Funding for all modifications to city equipment and infrastructure shall be the responsibility of City.
5. Scheduling. Scheduling of maintenance and repair shall be under the direction and supervision of the district Director for Information Services ("Director") in a manner that shall minimize interference with the technology needs of District and City
6. Implementation.
- a. City computers and networks will remain part of the District Helpdesk system and City users will have access to incident reporting and response during normal working hours (Monday – Friday, 0730-1700) Emergency callouts and response will be provided by District if such a response outside of normal working hours is deemed appropriate by Director.

- b. Operational emergencies will take precedence over routine maintenance. In the event either network has an emergency, District shall exercise its best efforts to correct the emergency as soon as possible. Allocation of technician time and assignment shall be at the discretion of Director.
 - c. District shall notify City:
 - 1. (i) as soon as possible upon learning that the network is down,
 - 2. (ii) twenty four (24) hours in advance of a planned shutdown of the network, and
 - 3. (iii) Minimum one (1) hour in advance of any unscheduled maintenance of the network.
 - d. District shall notify City of the nature of any repairs and /or maintenance proposed to be performed on equipment owned jointly or solely by City and upon completion of repair or maintenance shall restore functionality and connectivity.
 - e. Subject to the approval of District and City, District will design and implement network enhancements when and where appropriate. District will not be responsible for any additional costs caused by these enhancements without the prior approval from the Director. Software loading and updating will be conducted with input from City and by mutual agreement of District and City.
7. Network Security. Each party shall make its best effort to shield, from the other and from unauthorized persons, confidential information and personally identifiable information of its employees, customers, and/or students. Should such information be accessed either inadvertently or in an unauthorized manner, each party shall promptly take steps to prevent further dissemination and shall report the incident to the director for appropriate notifications and other preventive action.

8. Financial Arrangements. Determination of costs to City will be based upon a network “seat”. Each seat will consist of a computer, telephone, user account, voicemail account and associated network support services. District will charge City \$625 per year for each seat used. Currently, City has 165 computers, 160 telephones, 325 e-mail subscribers, and 139 voicemail subscribers. For the first six months of this agreement, District will charge the City for 165 network seats. Payments by City and adjustments to consumption of network seats will be made as follows:
- a. City will pay District \$8593.75 at the beginning of each month.
 - b. On or before the first day of July or January, an adjustment will be made to increase or decrease the number of network seats supported (and accordingly, prorate the amount charged for the next six months). This adjustment will be based upon network usage reports available from the District and will reflect the intentions and desires of City management to control costs and network expansion.
 - c. The \$625 charge per year for each seat shall increase by 5 percent annually, as of the effective date of this agreement, and by an amount equal to 100% of the Seattle area CPI-W for the period July 1 through June 30 of the preceding year, effective on January 1 2013, and on January 1 of each year thereafter.
9. Equipment. City shall purchase all tools, materials and replacement equipment required to provide service to City. City purchased tools, materials and equipment will remain the property of City. District shall submit to City an annual inventory of the hardware and software that is jointly owned by District and City or solely owned by City.
10. Termination. Either party may elect to terminate this Agreement at any time by providing a ninety days’ written notice to the other party.
11. Breach of Contract. In the event either party breaches its obligations under this agreement, the breaching party shall compensate the other for direct costs resulting from such breach; but all claims for consequential damages and costs are waived.

12. Amendments. On or before the anniversary date of this Agreement, and annually thereafter, the parties shall review and consider adjustments to the financial arrangements and any other issues of concern to either party. Any mutually agreed modifications shall be reduced to writing and shall become a part of this Agreement in an addendum thereto. The City Administrator or the Finance Director on behalf of the City and the IT Director on behalf of the School District shall be authorized to agree to modifications with respect to Attachment "A" (citygrowthsoftware.xls spreadsheet) and Attachment "B" (Suggested Standard Operating Procedures). All other modifications must be authorized by the City Council and the School Board.
13. Reports of Defects. The City will exercise due diligence in notifying the district of any known issues or defects that require repairs
14. Notification. All notices and annual reports shall be in writing and sent or hand delivered to the parties at their addresses as follows:

TO CITY OF OAK HARBOR:
Paul Schmidt, City Administrator
865 SE Barrington Drive
Oak Harbor, WA 98277

and to Doug Merriman, Finance Director
865 SE Barrington Drive
Oak Harbor, WA 98277

TO OAK HARBOR SCHOOL DISTRICT 201:
Bruce Roberts, Director of IT Services
350 S Oak Harbor Street
Oak Harbor, WA 98277

and to Rick Schulte, Superintendent

350 S Oak Harbor Street

Oak Harbor, WA 98277

OAK HARBOR SCHOOL DISTRICT #201

By _____

Superintendent

Date _____

CITY OF OAK HARBOR

By _____

Mayor

Date _____

Attachment A to IT Agreement

	1998	2001	2004	2005	2008	2011
E-Mail						
Internet Accounts	<20	140	171	224	260	325
Platform Organizations	MS Mail (X4) 4	Exchange 5.5 1	Exchange 5.5 1	Exchange 2000 1	Exchange 2003 1	Exchange 2003 1
Office Suite	Office 95	Office 97	Office 2000/XP	Office 2003	Office 2003 50 GB	Office 2003/2007 95 GB
Workstation OS	Windows 95/98	Windows 98/2000	Windows 2000/XP	Windows 2000/XP	Windows XP	Windows XP/7
Server OS	NT 4.0/Netware 3.12	NT 4.0	Windows 2000/XP	Windows 2000/XP	Windows XP	Windows 2003/2008
Security Domains	4	1	1	2	1	1
Networks	4	1	1	1	1	1
Networked Sites	4	8	8	9	9	9
Telephone Systems	4	4	4	1	1	1
Network Applications						
City Hall						
Finance	Eden CS	Eden CS	Inforium Gold (SQL)	Inforium Gold (SQL)	Inforium Gold (SQL)	Inforium Gold (SQL)
Permitting	Permit Plan (SQL)	Permit Plan (SQL)	Inforium Gold (SQL)	Inforium Gold (SQL)	Inforium Gold (SQL)	Inforium Gold (SQL)
POS	Quadrant PC	Quadrant PC	Quadrant (SQL)	Quadrant (SQL)	Quadrant (SQL)	Quadrant (SQL)
Legal Case Mgt	Dataperfect	Dataperfect	ProLaw (SQL)	ProLaw (SQL)	ProLaw (SQL)	ProLaw (SQL)
Marina Accounting						Marina Program (Pervasive)
Billing						Inforium Gold (SQL)
Records Management						Laserfiche (SQL)
Server Space Used	1.2GB	2.7GB	50+GB	50+GB	50+GB	106+GB
OHPD						
Incident Reporting	Spillman	Spillman	Spillman Summit	Spillman Summit	Spillman Summit	Spillman Summit
Server Space Used	600MB	4 GB	10.8 GB	5 GB	8 GB	29 GB
Car Camera Data					713 GB	1 Terrabyte
Public Works						
Workflow Mgt.	None	GBA	GBA	GBA (SQL)	GBA (SQL)	GBA (SQL)
Fleet Mgt.	RTA	RTA	RTA	RTA	RTA	RTA
Infrastructure Mgt.	None	None	ArcView GIS	ArcView GIS	ArcView GIS	ArcView GIS
Server Space Used	800 MB	6.4GB	25 GB	66 GB	116 GB	131 GB
Camera Data					163 GB	300 GB
OHFD						
Reporting/Training Mgt	SunStar	RMS 5.0 (SQL)	RMS 5.0 (SQL)	RMS 5.0 (SQL)	RMS 5.0 (SQL)	RMS 5.0 (SQL)
Server Space Used	1.2 GB	5.4 GB	11 GB	11 GB	42 GB	139 GB
City User files				40+ GB	116+ GB	407+ GB

1.3 TB of 4.1 TB available 2.4 TB of 6.8 TB available

Attachment B to IT Agreement

Suggested Standard Operating Procedures:

1. All trouble reports should be communicated to the helpdesk at extension 5589. This ensures that all tech staff are aware of the problem. City employees should not call technicians directly unless directed to do so by that technician.
2. Any technical issue that cannot be resolved within 15 minutes requires a Helpdesk ticket. The helpdesk website is <http://helpdesk.ohsd.net>. Having tickets in the helpdesk system helps document problems and solutions for further reference as well as provides a tracking system to resolve the problem. These tickets will be prioritized by helpdesk personnel through communication with city employees.
3. When major outages take place, IS staff will notify city staff by e-mail or telephone when the problem is recognized and will last for more than an hour. At a minimum, updates will be communicated twice a day until the problem is resolved.
4. Department heads are responsible for authorizing and initiating upgrades to software their department uses. The IS director or his designee will ensure that the equipment or software involved meets the minimum standards for that upgrade before the upgrade will take place. Preferably, minor upgrades will be requested with two weeks notice. Major upgrades should be planned at least a month out.
5. Computer and Hardware upgrades and purchases will be communicated by Department heads through the equipment coordinator. Installations should be scheduled well in advance of the equipment's arrival – not at the time it is delivered.
6. Equipment Standards:
 - 3.0 GHZ Processor
 - 2GB Random Access Memory
7. Minimum Software Package:
 - Windows XP Service Pack 3
 - Microsoft Office 2007
 - Eden
 - GBA
 - Adobe Flashplayer
 - Adobe Acrobat Reader
 - Quicktime
 - Adobe Shockwave

Police Department:

- Spillman

Fire Department:

- RMS5

Legal:

- Prolaw

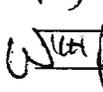
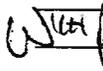
**City of Oak Harbor
City Council Agenda Bill**

Bill No.
Date:
Subject:

CJA 3E
September 20, 2011
Excused Absence Request
Councilmember Jim Palmer

FROM: Jim Slowik
Mayor

**INITIALED AS APPROVED FOR
SUBMITTAL TO THE COUNCIL BY:**

 Paul Schmidt, City Administrator
 Doug Merriman, Finance Director
 Margery Hite, City Attorney as to form

Mr. Merriman was attending the
WFOA Annual Conference in Spokane
and was unable to review this agenda bill.
- Connie Wheeler

PURPOSE

The purpose of this agenda bill is to present and approve Councilmember Jim Palmer's excused absence request for the October 4, 2011 City Council meeting.

AUTHORITY

Per RCW 35A.12.060: ...*A council position shall become vacant if the councilmember fails to attend three consecutive regular meetings of the council without being excused by the council.*

SUMMARY STATEMENT

Councilmember Palmer has submitted an excused absence request for the October 4, 2011 City Council meetings.

STANDING COMMITTEE REPORT

N/A

RECOMMENDED ACTION

Approve Councilmember Palmer's excused absence for the October 4, 2011 City Council meeting.

ATTACHMENTS

None

MAYOR'S COMMENTS

1. Introduction
2. Background
3. Methodology
4. Results
5. Conclusion

Page
No.



Page No.

**City of Oak Harbor
City Council Agenda Bill**

Bill No. 44
Date: September 20, 2011
Subject: SWCA Contract Amendment

**FROM: Cathy Rosen, Public Works Superintendent
Eric Johnston, City Engineer**

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

 Jim Slowik, Mayor
 Paul Schmidt, City Administrator
 Doug Merriman, Finance Director
 Margery Hite, City Attorney, as to form

Mr. Merriman was attending the
WFOA Annual Conference in Spokane
and was unable to review this agenda bill.
- Connie Wheeler

PURPOSE:

The purpose of this agenda bill is to authorize the Mayor to sign a contract amendment to the professional services agreement with SWCA for archaeology services as requested by the Washington State Department of Archaeology and Historic Preservation per Permit No. 2011-33 issued to the City of Oak Harbor on July 28, 2011.

AUTHORITY:

Oak Harbor Municipal Code states:

2.310.050 Professional service contracts.

Contracts for professional services, including contracts for legal and consulting services, are not subject to the bidding requirements of Chapters 2.310 through 2.390 OHMC. The mayor or his/her designee shall promulgate procedures and standards for the approval of such contracts. Contracts for architectural and engineering services shall be awarded in accordance with Chapter 2.350 OHMC and Chapter 39.80 RCW. For purposes of this section, "professional services" are those services involving skill, education and special knowledge and where the work is predominately mental and intellectual, rather than physical and mechanical. The mayor shall establish guidelines and procedures for obtaining professional services. Professional service contracts in excess of \$30,000 shall require approval by the city council. Contracts for professional services under \$30,000 shall be reviewed by the finance director or the city attorney prior to signing to assure compliance with the Oak Harbor biannual budget, provisions of Chapter 2.390 OHMC and purchasing policies promulgated by the mayor. (Ord. 1470 § 2, 2006).

FUNDING

Budget amount: \$7,745,000

Funds required: \$ 120,000

Appropriation Requested: \$ 120,000

Appropriation Source: Fund#401/402/404/311/312

SUMMARY STATEMENT:

On August 16, 2011, the City Council authorized a contract with SWCA for archaeology services associated with the SE Pioneer Way Improvements Projects. Copies of the agenda bill and the executed contract are attached.

The work required for completion of the archaeology, required by the permit, has taken significantly more effort than originally envisioned. The budget authorized under the contract has been fully used for the work completed to date. While the remaining work falls within the original scope of work, the large amount of archeological significant materials and additional discoveries of human remains has taken greater time than estimated at the time of contract execution. In order to finish the archaeology additional time and funds are needed. Completion of the archaeology is required to complete street improvements.

The amount of time and effort needed to complete the project will be dependent on the second consultation meeting with affected Tribes, the Washington State Department of Archaeology and the City. Assuming that an additional month of effort is needed, the proposed amendment will increase the contract amount by \$120,000.

The archaeology work on SE Pioneer Way will be paid for within the previously authorized project funding plan outlined by Council Resolution.

RECOMMENDED ACTION:

Authorize the Mayor to sign the attached contract amendment with SWCA for additional archaeological work on SE Pioneer Way increasing the contract a maximum of \$120,000.

ATTACHMENTS:

1. Contract amendment form
2. Agenda bill from 8/15 council meeting
3. Executed contract

MAYOR'S COMMENTS:

Professional Services Agreement Amendment Number <u>1</u>	Organization and Address	
Original Agreement Title: Pioneer Way Archaeological Recovery Project	City of Oak Harbor 865 SE Barrington Drive Oak Harbor, WA 98239 Phone: 360-279-4539	
Project Number: ENG- 08-07	Execution Date 8/18/2011	Completion Date (Prior) 12/31/2012
Project Title SE Pioneer Way Improvements	New Maximum Amount Payable \$ <u>231,029</u>	
Description of Work Archaeological recovery and monitoring conforming to DAHP permit 2011-33		

The City of Oak Harbor
desires to supplement the agreement entered into with SWCA
and executed on 8/18/2011 and identified as _____

All provisions in the basic agreement remain in effect except as expressly modified by this supplement

The changes to the agreement are described as follows:

SCOPE OF WORK is hereby amended to add the following:
NO AMENDMENT

SCOPE OF WORK is hereby changed and supplemented with the following:
NO CHANGE.

PROJECT COMPLETION DATE AMENDED TO: _____
TIME OF COMPLETION – SCOPE OF SERVICES: _____

PAYMENT shall be amended as follows:

Amendment reflects an increase in time necessary to complete the work required under the permit. The increase in the effort required is related to the amount of materials recovered and the effort required to process said materials as required by the permit. The maximum amount payable under the contract is increased by \$120,000, from \$111,029 to \$231,029

Payment shall be made in accordance with the terms and conditions described in the original contract.

If you concur with this amendment and agree to the changes as stated above, please sign in the appropriate spaces and return to this office for final action.

By: _____

By: _____

Consultant Signature

Approving Authority Signature

Date

**City of Oak Harbor
City Council Agenda Bill**

Bill No. 1
Date: August 16, 2011
Subject: Archaeology Contract

FROM: Paul Schmidt
City Administrator 

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:
 Jim Slowik, Mayor
 Doug Merriman, Finance Director
 Margery Hite, City Attorney, as to form

PURPOSE

The purpose of this agenda bill is to enter into a professional service agreement with Northwest Archaeological Associates/SWCA to perform archaeology services as requested by the Washington State Department of Archaeology and Historic Preservation per Permit No. 2011-33 issued to the City of Oak Harbor on July 28, 2011.

AUTHORITY

Oak Harbor Municipal Code states:

2.310.050 Professional Service Contract. Contracts for professional services, including contracts for legal and consulting services, are not subject to the bidding requirements of Chapters 2.310 through 2.390 OHMC. The mayor or his/her designee shall promulgate procedures and standards for the approval of such contracts. Contracts for architectural and engineering services shall be awarded in accordance with Chapter 2.350 OHMC and Chapter 39.80 RCW. For purposes of this section, "professional services" are those services involving skill, education and special knowledge and where the work is predominately mental and intellectual, rather than physical and mechanical. The mayor shall establish guidelines and procedures for obtaining professional services. Professional service contracts in excess of \$30,000 shall require approval by the city council. Contracts for professional services under \$30,000 shall be reviewed by the finance director or the city attorney prior to signing to assure compliance with the Oak Harbor biannual budget, provisions of Chapter 2.390 OHMC and purchasing policies promulgated by the mayor.

FUNDING

Budget Amount: \$ 7,745,000

Funds Required: \$ 140,000

Appropriation Requested: \$ 150,000

Appropriation Source: Fund #104/401/402/404

R

City of Oak Harbor City Council Agenda Bill

SUMMARY STATEMENT

On June 16, 2011, human remains were inadvertently discovered during excavation work associated with the SE Pioneer Way construction project. Consistent with State law, the discovery was reported to the Island County Coroner, who determined that the remains were non-forensic, and the Washington State Department of Archaeology and Historic Preservation (DAHP) was contacted. The State Physical Anthropologist made the determination that the remains were Native American in origin.

Following the discovery, DAHP requested that the City obtain the services of a professional archaeologist to monitor further excavation within the project area. The City selected Northwest Archaeological Associates (NWAA)/SWCA to perform the archaeological monitoring. This firm is well-respected, well-qualified and has sufficient human resources available to adapt to the City's needs.

A NWAA/SWCA monitor was on the jobsite beginning the next day, June 17, 2011. On June 21, 2011, the archaeological monitor identified isolated pockets of shell midden and more human remains immediately east of the original discovery. All further excavation was halted, the City notified DAHP and the second discovery site and exposed midden deposits were secured. On June 20, 2011, DAHP recommended that the City prepare a plan for recovery and documentation of archaeological resources within the project area, in addition to the recovery of archaeological resources within the spoils piles located at a gravel pit just north of Oak Harbor.

State law requires that a qualified archaeologist be either the applicant or a co-applicant on any permit application for archaeological excavation. Northwest Archaeological Associates/SWCA prepared the Excavation Permit for Pioneer Way and Permit No. 2011-33 was issued by DAHP on July 28, 2011. The scope of the permit covers testing, site delineation, recovery of four partially *in situ* burials and screening of piles for human remains, grave goods and artifacts. The proposed contract is inclusive of this general scope of work and the specific requirements of Permit No. 2011-33.

STANDING COMMITTEE REPORT

N/A

RECOMMENDED ACTION

Motion to authorize the Mayor to enter into a professional services agreement with Northwest Archaeological Associates/SWCA Environmental Consultants to perform archaeology services as requested by the Washington State Department of Archaeology and Historic Preservation per Permit No. 2011-33 issued to the City of Oak Harbor on July 28, 2011.

ATTACHMENTS

Exhibit A – Draft SWCA Contract

COPY

received
8/24/11 CHW

cc: E. JOHNSTON
L. COET
D. SCHMIDT



a division of

SWCA
ENVIRONMENTAL CONSULTANTS

5418 - 20th Ave NW, Suite 200
Seattle, WA 98107
(206) 781-1909

August 22, 2011

Ms. Connie Wheeler
City Clerk
City of Oak Harbor
Whidbey Island, WA 98277-4092

Dear Ms. Wheeler:

Enclosed you will find a signed contract for the "Professional Services Agreement Archaeological Services - Pioneer Way Archaeological Recovery Project". Northwest Archaeological Associates/SWCA Environmental Consultants have kept one for our files.

If you have any questions, please contact Christian J. Miss, Senior Archaeologist, Office Director.

Best regards,

Betty T. Arens

Enclosure

cmiss@swca.com

PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into in duplicate this 18th day of ~~August~~, 2011, by and between the CITY OF OAK HARBOR, a Washington municipal corporation, hereinafter referred to as the "CITY" and SWCA ENVIRONMENTAL CONSULTANTS, hereinafter referred to as the "ARCHAEOLOGIST".

WHEREAS, the CITY desires to have certain services and/or tasks performed as set forth below requiring specialized skills and other supportive capabilities; and

WHEREAS, sufficient CITY resources are not available to provide such services; and

WHEREAS, the ARCHAEOLOGIST represents the ARCHAEOLOGIST is qualified and possesses sufficient skills and the necessary capabilities, including technical and professional expertise in the field of archaeology, to perform the services and/or tasks set forth in this Agreement; and

WHEREAS, the ARCHAEOLOGIST is the co-holder of the emergency archaeological excavation permit with the CITY from the Washington State Department of Archaeology and Historical Preservation (the "DAHP")

NOW, THEREFORE, in consideration of the terms, conditions, covenants and performance contained herein, the parties hereto agree as follows:

1. Scope of Services.

The scope of services to be performed pursuant to this Agreement is intended to encompass all the archaeological services identified in Emergency Archaeological Excavation Permit #2011-33 issued by the Washington State Office of Archaeology and Historical Preservation dated July 28, 2011 (the "Permit").

The ARCHAEOLOGIST shall perform such services and accomplish such tasks, including the furnishing of all materials and equipment necessary for full performance thereof, as are identified and designated as ARCHAEOLOGIST responsibilities throughout this Agreement and as detailed in Exhibit "A" attached hereto and incorporated herein (the "Project").

2. Term.

The Project began on August 1, 2011, and shall be completed no later than December 31, 2012, unless sooner terminated according to the provisions herein.

3. Compensation and Method of Payment.

- 3.1 Payments for services provided hereunder shall be made following the performance of such services, unless otherwise permitted by law and approved in writing by the CITY. The ARCHAEOLOGIST shall submit invoices monthly, supported by records indicating the basis for the charges. The CITY shall pay properly supported invoices within thirty (30) days of receipt.
- 3.2 No payment shall be made for any service rendered by the ARCHAEOLOGIST except for services identified and set forth in this Agreement, including all referenced exhibits.
- 3.3 The CITY shall pay the ARCHAEOLOGIST for work performed under this Agreement on a Time and Materials basis with total compensation established at a not-to-exceed (NTE) amount of \$150,000. Payment for ARCHAEOLOGIST services shall accord with the schedule of hourly rates attached hereto as Exhibit "B". (Excluding amounts already paid pursuant to the earlier agreement.)

4. Reports and Inspections.

- 4.1 The ARCHAEOLOGIST at such times and in such forms as the CITY may require, shall furnish to the CITY such statements, records, reports, data, and information as the CITY may request pertaining to matters covered by this Agreement.
- 4.2 The ARCHAEOLOGIST shall at any time during normal business hours and as often as the CITY or State Auditor may deem necessary, make available for examination all of its records and data with respect to all matters covered, directly or indirectly, by this Agreement and shall permit the CITY or its designated authorized representative to audit and inspect other data relating to all matters covered by this Agreement. The CITY shall receive a copy of all audit reports made by the agency or firm as to the ARCHAEOLOGIST'S activities. The CITY may, at its discretion, conduct an audit at its expense, using its own or outside auditors, of the ARCHAEOLOGIST 'S activities that relate, directly or indirectly, to this Agreement.

5. Independent Contractor Relationship.

- 5.1 The parties intend that an independent contractor relationship will be created by this Agreement. The CITY is interested primarily in the results to be achieved; subject to paragraphs herein, the implementation of services will lie solely with the discretion of the ARCHAEOLOGIST. No agent, employee, servant or representative of the ARCHAEOLOGIST shall be deemed to be an employee, agent, servant or representative of the CITY for any purpose, and the employees of the ARCHAEOLOGIST are not entitled to any of the benefits the CITY provides for its employees. The ARCHAEOLOGIST will be solely and entirely

responsible for its acts and for the acts of its agents, employees, servants, subcontractors or representatives during the performance of this Agreement.

5.2 In the performance of the services herein contemplated, the ARCHAEOLOGIST is an independent contractor with the authority to control and direct the performance of the details of the work, however, the results of the work contemplated herein must meet the approval of the CITY and shall be subject to the CITY'S general rights of inspection and review to secure the satisfactory completion thereof.

6. Service Provider Employees/agents.

The CITY may at its sole discretion require the ARCHAEOLOGIST to remove an employee(s), agent(s) or servant(s) from employment on the scope of services under this Agreement. The ARCHAEOLOGIST may, however, employ that (those) individual(s) on non-CITY related projects.

7. Hold Harmless/Indemnification.

7.1 ARCHAEOLOGIST shall defend, indemnify and hold the CITY, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the ARCHAEOLOGIST in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

7.2 Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the ARCHAEOLOGIST and the CITY, its officers, officials, employees, and volunteers, the ARCHAEOLOGIST'S liability hereunder shall be only to the extent of the ARCHAEOLOGIST'S negligence. For purposes of this indemnification and hold harmless agreement, the ARCHAEOLOGIST waives any immunity that may be granted to it under the Washington State Industrial Insurance Act, Title 51 RCW. The parties expressly agree that this waiver of workers' compensation immunity has been negotiated. The provisions of this section shall survive the expiration or termination of this Agreement.

7.3 No liability shall attach to the CITY by reason of entering into this Agreement except as expressly provided herein.

8. Insurance.

The ARCHAEOLOGIST shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the ARCHAEOLOGIST, its agents, representatives, or employees.

8.1 Minimum Scope of Insurance. ARCHAEOLOGIST shall obtain insurance of the types described below:

- a. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.
- b. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors and personal injury and advertising injury. The City shall be named as an insured under the SERVICE PROVIDER'S Commercial General Liability insurance policy with respect to the work performed for the City.
- c. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.
- d. Professional Liability Insurance appropriate to the ARCHAEOLOGIST 'S profession.

8.2 Minimum Amounts of Insurance. ARCHAEOLOGIST shall maintain the following insurance limits:

- a. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of One Million Dollars (\$1,000,000) per accident.
- b. Commercial General Liability insurance shall be written with limits no less than One Million Dollars (\$1,000,000) each occurrence, Two Million Dollars (\$2,000,000) general aggregate.
- c. Professional Liability insurance shall be written with limits no less than One Million Dollars (\$1,000,000) per claim and One Million Dollars (\$1,000,000) policy aggregate limit.

- 8.3 Other Insurance Provisions. The ARCHAEOLOGIST'S Automobile Liability and Commercial General Liability insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:
- a. The ARCHAEOLOGIST'S insurance coverage shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the ARCHAEOLOGIST'S insurance and shall not contribute with it.
- 8.4 Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.
- 8.5 Verification of Coverage. ARCHAEOLOGIST shall furnish the City with original certificates and a copy of the amendatory endorsements including, but not necessarily limited to, the additional insured endorsement, evidencing the insurance requirements of the ARCHAEOLOGIST before commencement of the work.
- 8.6 Notice of Cancellation. The ARCHAEOLOGIST shall provide the CITY with written notice of any policy cancellation, within two business days of their receipt of such notice.
- 8.7 Failure on the part of the ARCHAEOLOGIST to maintain the insurance shall constitute a material breach of contract, upon which the CITY may, after giving five business days notice to the ARCHAEOLOGIST to correct the breach, immediately terminate the contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to the CITY on demand, or at the sole discretion of the CITY, offset against funds due the ARCHAEOLOGIST from the CITY.
- 8.8 No Limitation. ARCHAEOLOGIST'S maintenance of insurance as required by the agreement shall not be construed to limit the liability of the ARCHAEOLOGIST to the coverage provided by such insurance, or otherwise limit the CITY'S recourse to any remedy available at law or in equity.
9. Treatment of Assets.
- Title to all property furnished by the CITY shall remain in the name of the CITY and the CITY shall become the owner of the work product and other documents, if any, prepared by the ARCHAEOLOGIST pursuant to this Agreement, subject to any requirements under the Permit for reporting to the Department of Archaeology and Historical Preservation ("DAHP").

10. Compliance with Laws.

- 10.1 The ARCHAEOLOGIST, in the performance of this Agreement, shall comply with all applicable federal, state or local laws and ordinances, including regulations for licensing, certification and operation of facilities, programs and accreditation, and licensing of individuals, and any other standards or criteria as described in this Agreement to assure quality of services.
- 10.2 The ARCHAEOLOGIST specifically agrees to pay any applicable business and occupation (B&O) taxes that may be due on account of this Agreement.

11. Nondiscrimination.

- 11.1 The CITY is an equal opportunity employer.
- 11.2 Nondiscrimination in Employment. In the performance of this Agreement, the ARCHAEOLOGIST will not discriminate against any employee or applicant for employment on the grounds of race, creed, color, national origin, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental or physical disability, or the use of a trained dog guide or service animal by a person with a disability; provided that the prohibition against discrimination in employment because of disability, or the use of a trained dog guide or service animal by a person with a disability, shall not apply if the particular disability prevents the proper performance of the particular worker involved. The ARCHAEOLOGIST shall ensure that applicants are employed, and that employees are treated during employment without discrimination because of their race, creed, color, national origin, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental or physical disability or the use of a trained guide dog or service animal by a person with a disability. Such action shall include, but not be limited to: employment, upgrading, demotion or transfers, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and programs for training including apprenticeships. The ARCHAEOLOGIST shall take such action with respect to this Agreement as may be required to ensure full compliance with local, state and federal laws prohibiting discrimination in employment.
- 11.3 Nondiscrimination in Services. The ARCHAEOLOGIST will not discriminate against any recipient of any services or benefits provided for in this Agreement on the grounds of race, creed, color, national origin, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental or physical disability or the use of a trained guide dog or service animal by a person with a disability.

11.4 If any assignment and/or subcontracting has been authorized by the CITY, said assignment or subcontract shall include appropriate safeguards against discrimination. The ARCHAEOLOGIST shall take such action as may be required to ensure full compliance with the provisions in the immediately preceding paragraphs herein.

12. Assignment/subcontracting.

12.1 The ARCHAEOLOGIST shall not assign its performance under this Agreement or any portion of this Agreement without the written consent of the CITY, and it is further agreed that said consent must be sought in writing by the ARCHAEOLOGIST not less than thirty (30) days prior to the date of any proposed assignment. The CITY reserves the right to reject without cause any such assignment.

12.2 Any work or services assigned hereunder shall be subject to each provision of this Agreement and proper bidding procedures where applicable as set forth in local, state and/or federal statutes, ordinances and guidelines.

12.3 Any technical/professional service subcontract not listed in this Agreement, must have express advance approval by the CITY.

13. Changes.

Either party may request changes to the scope of services and performance to be provided hereunder, however, no change or addition to this Agreement shall be valid or binding upon either party unless such change or addition be in writing and signed by both parties. Such amendments shall be attached to and made part of this Agreement.

14. Maintenance and Inspection of Records.

14.1 The ARCHAEOLOGIST shall maintain books, records and documents, which sufficiently and properly reflect all direct and indirect costs related to the performance of this Agreement and shall maintain such accounting procedures and practices as may be necessary to assure proper accounting of all funds paid pursuant to this Agreement. These records shall be subject at all reasonable times to inspection, review, or audit, by the CITY, its authorized representative, the State Auditor, or other governmental officials authorized by law to monitor this Agreement.

14.2 The ARCHAEOLOGIST shall retain all books, records, documents and other material relevant to this Agreement, for six (6) years after its expiration. The ARCHAEOLOGIST agrees that the CITY or its designee shall have full access and right to examine any of said materials at all reasonable times during said period.

15. Termination.

Because both parties are necessary participants in the archaeological work allowed under the Permit, neither party may terminate this Agreement without first attempting to negotiate an amendment to this Agreement which would allow the work under the Agreement to go forward. Such negotiations shall be initiated by the party seeking an amendment by written notice to the other party. Upon receipt of such notice, the receiving party shall schedule a meeting within five (5) working days which both parties shall attend. Should the parties fail to reach agreement, the party terminating the Agreement shall bear the burden of showing good cause why that party is not able to comply with the terms of this Agreement or shall be liable for damages for breach of its obligations under this Agreement.

16. Notice.

Notice provided for in this Agreement shall be sent by certified mail to the addresses designated for the parties on the last page of this Agreement.

17. Attorneys Fees and Costs.

If any legal proceeding is brought for the enforcement of this Agreement, or because of a dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the prevailing party shall be entitled to recover from the other party, in addition to any other relief to which such party may be entitled, reasonable attorney's fees and other costs incurred in that action or proceeding.

18. Jurisdiction and Venue.

18.1 This Agreement has been and shall be construed as having been made and delivered within the State of Washington and it is agreed by each party hereto that this Agreement shall be governed by laws of the State of Washington, both as to interpretation and performance.

18.2 Any action of law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any provisions thereof shall be instituted and maintained only in any of the courts of competent jurisdiction in Island County, Washington.

19. Severability.

19.1 If, for any reason, any part, term or provision of this Agreement is held by a court of the United States to be illegal, void or unenforceable, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular provision held to be invalid.

19.2 If it should appear that any provision hereof is in conflict with any statutory provision of the State of Washington, said provision that may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provisions.

20. Entire Agreement.

The parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated herein are excluded. Further, any modification of this Agreement shall be in writing and signed by both parties. Failure to comply with any of the provisions stated herein shall constitute a material breach of contract and be cause for termination. Both parties recognize time is of the essence in the performance of the provisions of this Agreement. It is also agreed by the parties that the forgiveness of the nonperformance of any provision of this Agreement does not constitute a waiver of the provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed the day and year first hereinabove written.

CITY:

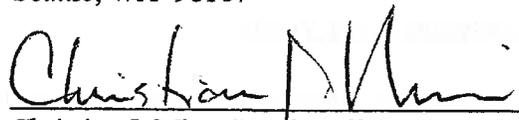
CITY OF OAK HARBOR
865 SE Barrington Drive
Oak Harbor, WA 98277



Jim Stowik, Mayor

ARCHAEOLOGIST:

SWCA ENVIRONMENTAL CONSULTANTS
5418 20th Avenue NW, Suite 200
Seattle, WA 98107



Christian J. Miss, Seattle Office Director

Attest:



Connie Wheeler, City Clerk

Exhibit A
SCOPE OF SERVICES

**SWCA Environmental Consultants
Pioneer Way Archaeological Recovery Project**

PURPOSE OF SERVICES:

SWCA Environmental Consultants (the "ARCHAEOLOGIST") will provide professional archaeological services to meet the requirements of DAHP Emergency Archaeological Excavation Permit #2011-33 (the "Permit") and the needs of the City in completing construction of road, sidewalk and utility improvements known as the Pioneer Way Improvement Project. ARCHAEOLOGIST is a co-holder of the Permit issued for this work and is authorized by DAHP to perform the archaeological work as provided in the Permit.

All services performed under this Agreement shall be responsive to and consistent with the Permit and with professional standards for archaeological work. Oversight and final approval of all work is the responsibility of the City of Oak Harbor Project Specialist Larry Cort, or as otherwise assigned by the City Administrator, Paul Schmidt.

SCOPE OF SERVICES:

The scope of work under the Permit Services shall fall generally into the categories of Project Management, Historic Research, Field Services, Training and Monitoring Construction Personnel, Plan Development, Consultation and Coordination with Tribes, and Reports and Record-keeping. Extra Services may also be authorized pending outcomes of the work.

The following services will be performed by the ARCHAEOLOGIST:

1. **Project Management.** The ARCHAEOLOGIST will provide project management services associated with the Permit. Said services shall include monitoring of Permit conditions, quality assurance and quality control of all activities related to the Permit, administration of all paperwork required to document the work under the Permit and maintenance of all provisions of this Agreement.
2. **Historic Research.** To the extent not already completed pursuant to earlier agreement with the City (Professional Services Agreement dated July 29, 2011), the ARCHAEOLOGIST will undertake historic research in local and regional archives to collect information about Native American presence in the Oak Harbor vicinity and produce a narrative history of the site as set forth in the Permit.

3. **Field Services.** In accordance with protocols established in the Permit, the ARCHAEOLOGIST shall perform all archaeological tasks set forth in the Permit related to human remains, grave goods, non-human bones and artifacts. This shall include, but not be limited to, all archaeological work described in the application for the Permit now incorporated into the Permit and also:
 - the archaeological testing described in Special Condition #3 and #9;
 - response to the discovery of any additional human remains as set forth in Special Condition #5;
 - screening of soil piles, transportation of recovered resources or human remains, and storage of those items, in compliance with Special Condition #6 and #8; and
 - in coordination with the City, establish a chain of custody for all human remains in accordance with the protocols of the State Physical Anthropologist as required by Special Condition #7.

4. **Plan Development.** To assist the City in meeting its obligations under the Permit to develop plans, ARCHAEOLOGIST shall provide professional advice to City employees assigned to develop such plans. This shall include advice concerning the burial plan required by Special Condition # 13 and the Draft Cultural Resources Management Plan and Inadvertent Discovery Plan for 45IS45 required by Special Condition #12.

5. **Training and Monitoring of Construction Personnel.** Pursuant to Special Condition #2 of the Permit, the ARCHAEOLOGIST shall conduct and/or supervise training of construction personnel on the proposed archaeological work and appropriate procedures before resuming construction. The ARCHAEOLOGIST shall also prepare the draft Agenda of the Training Session required by Special Condition #2 and document that it has been distributed as required under the Permit.

The ARCHAEOLOGIST shall also monitor all construction activities as required by Special Condition #2.

6. **Consultation and Coordination with Tribes.** There are various requirements in the Permit for consultation and coordination with the affected Tribes. Six Tribes have been identified as being affected by the Permit work. These are the Swinomish, the Tulalips, the Stillaguamish, the Samish, the Squamish and Upper Skagits (the "Tribes"). The City has consulted with the Tribes to ensure proper respect for the Tribal interest in the human remains and other ancestral resources affected by the Permit, and such consultation is ongoing. The ARCHAEOLOGIST shall participate in consultation with the Tribes by the City and shall conduct all archaeological work consistent with agreements reached between the City and the Tribes.

In addition, the City and the Tribes will contract for Tribal services monitoring and handling human ancestral remains and archaeological resources affecting Tribal interests. The ARCHAEOLOGIST shall coordinate archaeology work with the Tribes consistent with the Permit, including but not limited to such requirements in Special Condition #5, #7, #8, #13, #16, #17 and #18, and any agreements reached between the Tribes and the City in this regard.

6. **Reports and Record-keeping.** The Permit and Special Conditions impose additional reporting and record-keeping requirements related to the archaeological work done pursuant to that Permit. The ARCHAEOLOGIST shall be responsible for preparing and distributing all reports including those required by Special Condition #4, #9, #10, #11, #14, #15. The ARCHAEOLOGIST shall also participate with the City in meeting the requirements for presentations in Special Condition #17 and #18.
7. **Extra Services.** If additional archaeological services are necessary, the ARCHAEOLOGIST shall work with the City to identify the scope of services and the projected cost. At the City's request, the ARCHAEOLOGIST and the City may enter into an amendment to this Agreement to include additional services.

**Exhibit B
Schedule and Deliverables**

Oak Harbor Recovery		Project Management / QA/QC		Safety / Admin		Task 01		Tasks 2 & 3		
Phase 01: Downtown Recovery		Permit Preparation				Historic Research		Field Effort (Includes Monitor)		
Project Start (est.): 7/5/2011										
Project End (est.): 9/1/2011										
Project Role	Name	Rate	Hours	Charge	Hours	Charge	Hours	Charge	Hours	Charge
Anthropologist	Elizabeth Perry	\$ 225.00								
Project Director	Christian Miss	\$ 173.00	40.00	6,920					8.00	\$ 1,800
Project Manager	Amber Earley	\$ 89.00	40.00	3,560					24.00	\$ 2,160
Historian	Sharon Boswell	\$ 131.00			4.00	356			80.00	\$ 7,120
Project Archaeologist	Ross Smith	\$ 89.00	40.00	3,560						
Project Osteologist	Jamie Emmick	\$ 79.00			4.00	356				
Asst Field Director	Yonara Carrillo	\$ 79.00							120.00	\$ 10,680
Field Tech	George Bishop	\$ 47.00							144.00	\$ 11,376
Field Tech	Sara Timm	\$ 47.00							120.00	\$ 5,640
Field Tech	Renee Small	\$ 47.00							120.00	\$ 5,640
Field Tech	Colin Lohrop	\$ 47.00							40.00	\$ 1,880
Field Tech	Celia Mikorel	\$ 47.00							40.00	\$ 1,880
Field Tech	Dave Hedberg	\$ 47.00							40.00	\$ 1,880
Field Tech	Sam Crocket	\$ 47.00							40.00	\$ 1,880
Field Tech	TBD	\$ 47.00							80.00	\$ 3,760
Field Tech	TBD	\$ 47.00							80.00	\$ 3,760
Clerical	Beth Arens	\$ 68.00							8.00	\$ 544
GIS/Production	Johanna Shea	\$ 100.00	16.00						8.00	\$ 800
Labor Subtotal			136.00	14,040	8.00	712	88.00	11,280	1,320.00	85,464
Communication Fee - % of Labor		3%		421		21		338		2,564
Labor Total			136.00	14,461.20	8.00	733.36	88.00	11,618.40	1,320.00	88,027.92
EXPENSES										
Description	Unit	Rate	# Units	Charge	# Units	Charge	# Units	Charge	# Units	Charge
Car Rental	per day	\$ 75.00								
Copies (B&W)	per page	\$ 0.10							5.00	\$ 375
Lodging	per night	\$ 70.00							250.00	\$ 17,500
Mileage	per mile	\$ 0.56							2.00	\$ 1.12
Per Diem	per day	\$ 46.00							200.00	\$ 9,200
Supplies	enter rate/units or lump	\$ 200.00							2.00	\$ 400
Radiocarbon Date	enter rate/units or lump	\$ 565.00							1.00	\$ 565
Botanical Analysis	enter rate/units or lump	\$ 150.00							2.00	\$ 300
Ferry RT	enter rate/units or lump	\$ 31.00							1.00	\$ 31
Misc.	enter rate/units or lump								12.00	\$ 372
Expenses Subtotal										
Markup		15%								
Expenses Total										
Project Phase Totals				\$ 14,461		\$ 733		\$ 12,078		\$ 23,001

Note: Communication expense is not subject to 15% administrative fee.

TOTAL THIS PHASE	
SWCA Labor Total	114,841
Expenses Total	23,461
Subcontractors Total	-
Total Phase	138,302
Tax Total	-
Total Including Taxes	138,302

Enter Tax Rate	0.00%
Tax	-
Total with Tax	-

Enter Tax Rate	0.00%
Tax	-
Total with Tax	-

Enter Tax Rate	0.00%
Tax	-
Total with Tax	733

Enter Tax Rate	0.00%
Tax	-
Total with Tax	14,461

**City of Oak Harbor
City Council Agenda Bill**

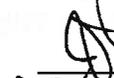
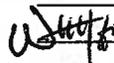
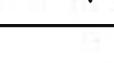
Bill No. 5

Date: September 20, 2011

Subject: Reimbursement for Services Agreement between Swinomish Indian Tribal Community and City of Oak Harbor

**FROM: Cathy Rosen, Public Works Superintendent
Eric Johnston, City Engineer**

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

 Jim Slowik, Mayor
 Paul Schmidt, City Administrator
 Doug Merriman, Finance Director
 Margery Hite, City Attorney, as to form

Mr. Merriman was attending the WFOA Annual Conference in Spokane and was unable to review this agenda bill.
- Connie Wheeler

PURPOSE:

The purpose of this agenda bill is to authorize the Mayor to sign a contract for reimbursement for services rendered by the Swinomish Indian Tribal Community at archaeological site 45IS45 in order to facilitate the City’s compliance with certain conditions of Archaeological Emergency Excavation Permit No. 2011-33 issued to the City of Oak Harbor on July 28, 2011 for the Pioneer Way Redevelopment Project and/or any extension of that permit by the Washington State Department of Archaeology and Historical Preservation (DAHP) (hereinafter “the Permit”).

AUTHORITY:

Oak Harbor Municipal Code states:

2.310.050 Professional service contracts.

Contracts for professional services, including contracts for legal and consulting services, are not subject to the bidding requirements of Chapters 2.310 through 2.390 OHMC. The mayor or his/her designee shall promulgate procedures and standards for the approval of such contracts. Contracts for architectural and engineering services shall be awarded in accordance with Chapter 2.350 OHMC and Chapter 39.80 RCW. For purposes of this section, “professional services” are those services involving skill, education and special knowledge and where the work is predominately mental and intellectual, rather than physical and mechanical. The mayor shall establish guidelines and procedures for obtaining professional services. Professional service contracts in excess of \$30,000 shall require approval by the city council. Contracts for professional services under \$30,000 shall be reviewed by the finance director or the city attorney prior to signing to assure compliance with the Oak Harbor biannual budget, provisions of Chapter 2.390 OHMC and purchasing policies promulgated by the mayor. (Ord. 1470 § 2, 2006).

FUNDING

The Budget amount for the Pioneer Way Redevelopment Project is \$7,745,000. The estimated cost of reimbursing the Swinomish Indian Tribal community for services rendered pursuant to this Agreement is \$145,380. The Agreement also provides a not-to-exceed cost of \$160,000 without a written agreement executed by the parties.

SUMMARY STATEMENT:

On July 28, 2011, as requested by the City of Oak Harbor, DAHP issued an Archaeological Emergency Excavation Permit at site 45IS45. The terms of the permit require the City to consult with the interested Indian tribes. By agreement among the tribes, the Swinomish Indian Tribal Community has taken the lead in providing the required services to the City.

The permit requires the city to consult with the Tribe regarding: 1) removal of human remains, 2) Tribal preference for either recovery or protection in place of human remains, 3) location of any secure facility closer to the archaeological site than the City facility at 1400 NE 16th to which any recovered grave goods, artifacts, bone, or human remains could be transported; 4) development of a reburial plan for those human remains removed from or recovered from site 45IS45, and 5) the possibility of public presentations regarding archaeological work performed under the permit. The permit also provides the Tribe shall transport any recovered grave goods, artifacts, bone or human remains to either the secure City facility or to another secure facility closer to the archaeological site, and requires the City to work with the Tribe on presentations to any other affected tribes, should they wish a presentation.

A cost breakdown of the work required for completion of the services required by the permit is provided in detail in the proposed agreement. Completion of the archaeology and consultation with the Swinomish Tribe are required to complete street improvements.

The amount of time and effort needed to complete the project will be dependent on the second consultation meeting with affected Tribes, the Washington State Department of Archaeology and the City currently scheduled for September 15, 2011. The cost figures set forth in the Agreement assume project completion by Thanksgiving.

The archaeology work on SE Pioneer Way will be paid for within the previously authorized project funding plan outlined by Council Resolution.

RECOMMENDED ACTION:

Authorize the Mayor to sign the attached Reimbursement for Services Agreement Between Swinomish Indian Tribal Community and City of Oak Harbor for services required by the terms of the Archaeological Emergency Excavation Permit at site 45IS45 located at SE Pioneer Way.

ATTACHMENTS:

1. Reimbursement for Services Agreement form
2. Archaeological Emergency Excavation Permit Application- Pioneer Way site
3. Archaeological Emergency Excavation Permit- Pioneer Way site

MAYOR'S COMMENTS:

**REIMBURSEMENT FOR SERVICES AGREEMENT
BETWEEN SWINOMISH INDIAN TRIBAL COMMUNITY
AND CITY OF OAK HARBOR**

This Agreement is made and entered into this ____ day of _____, 2011, by and between the Swinomish Indian Tribal Community ("Tribe"), a federally recognized Indian Tribe organized pursuant to Section 16 of the Indian Reorganization Act of 1934 (25 U.S.C. § 476), acting under the authority of its Constitution and Bylaws, and the City of Oak Harbor ("City"), a Noncharter Code City and political subdivision of the State of Washington with authority to act pursuant to 35A.12 RCW, acting under the authority of the Interlocal Cooperation Act, Chapter 39.34 RCW, and other applicable law.

For and in consideration of the promises, covenants and agreements contained herein, the Parties recognize, affirm, and agree as follows:

1. PURPOSE AND SCOPE OF WORK:

The sole purpose of this agreement is to obligate the City to reimburse the Tribe for expenditures related to work that the Tribe has or will perform at archaeological site 45IS45 in order to facilitate the City's compliance with certain conditions of Archaeological Emergency Excavation Permit No. 2011-33 for the SE Pioneer Way Redevelopment Project and/or any extension of that permit granted to the City by the department of Archaeology and Historical Preservation (DAHP) (hereinafter "the Permit").

The permit requires the City to consult with the Tribe regarding: 1) removal of human remains, 2) Tribal preference for either recovery or protection in place of human remains, 3) location of any secure facility closer to the archaeological site than the City facility referenced below to which any recovered grave goods, artifacts, bone, or human remains could be transported, 4) development of a reburial plan for those human remains removed or recovered from site 45IS45, and 5) the possibility of public presentations regarding archaeological work performed under the Permit. The Permit also provides that the Tribe shall transport any recovered grave goods, artifacts, bone, or human remains to either the secure City facility at 1400 NE 16th or to another secure facility closer to the archaeological site, and requires the City to work with the Tribe on presentations to any other affected tribes, should they wish to have a presentation.

This agreement does not create new or supersede existing law; waive, limit or settle any rights or causes of action under existing law; create any new causes of action under existing law; waive any defenses or immunities under existing law; or imply that the Tribe's interests are not protected under or derived from federal, state, local, tribal, and/or common law. This agreement confers on the City the benefit of securing the services of the Tribe which are necessary for the City to satisfy certain of its obligations under the Permit and certain of its legal obligations regarding proper handling and reburial of grave goods, artifacts, bone, or human remains, and confers on the Tribe the contractual right to have Tribal spiritual leaders, monitors and handlers monitor and assist archaeological work and excavation, handle human remains, and consult with the City.

2. RESPONSIBILITIES:

As required by the Permit, at the Tribe's direction and under the Tribe's control, Tribal spiritual leaders, Tribal handlers, and Tribal monitors have and will continue to monitor and assist archaeological work and excavation and handle human remains at the above-identified site and consult with the City regarding the above-referenced site. The City agrees to reimburse the Tribe for work that has been or will be performed by Tribal spiritual leaders at the above-identified site at the rate of \$25/hour and to reimburse the Tribe for work that has been or will be performed by Tribal handlers and/or monitors at the above-identified site at the rate of \$18/hour. The City also agrees to reimburse the Tribe for benefits and indirect costs at the rate of 40% of the total wages earned by Tribal spiritual leaders, handlers, and monitors. See Section 4, below.

At the Tribe's direction and under the Tribe's control, the Tribe's consulting archaeologist, Kelly Bush and Equinox Research and Consulting, Inc. ("ERCI"), has performed and will continue to perform archaeological monitoring at and consultation with the Tribe regarding the above-identified site. The City agrees to reimburse the Tribe for work that has been or will be performed by ERCI at the above-identified site at the rate of \$85/hour. See Section 4, below.

Certain expenses are associated with work that has been or will be performed by the Tribe and/or its representatives. The City agrees to reimburse the Tribe for the following expenses related to the Tribe's work at the above-identified site: mileage from the Swinomish Indian Reservation or from the ERCI office to the above-identified site at the rate of \$0.51/mile; bankers boxes, which are needed to temporarily store human remains and archaeological resources, at the rate of \$25/case; and cedar boxes, which are needed to rebury human remains and grave goods, at the rate of \$225/box. See Section 4, below.

3. TERM OF AGREEMENT:

This contract shall become effective upon being approved by the Oak Harbor City Council and the Swinomish Indian Senate and upon recordation with the Island County

Auditor pursuant to RCW 39.34.040. The term of this Agreement shall be from June 16, 2011 until the expiration of the Permit and any extensions of the Permit granted to the City by DAHP, unless extended by written agreement executed by the parties hereto.

4. MANNER OF FINANCING:

The City agrees to reimburse the Tribe for all of the work performed and expenses incurred by the Tribe and/or its representatives in accordance with the rates established in Section 2 above. Such payment shall be full compensation for services rendered or expenses incurred under this agreement, but shall not be or be deemed to be full compensation for or satisfaction of any other damages sustained by the Tribe that are not the subject of this agreement. The Tribe shall submit all invoices to the City on a monthly basis for all reimbursements authorized by this Section, supported by detailed statements of hours expended and costs incurred at the rates established in Section 2 above. The City shall pay all properly supported invoices within thirty (30) days of receipt. No payment shall be made under this agreement for any service rendered by the Tribe under this agreement except for services identified and set forth in this agreement.

The estimated costs associated with the work and expenses described in Section 2 above are:

Work/Expense	Description	Approximate Cost
Tribal spiritual leaders	84 days x 8 hours x 1 position x \$25/hour	\$16,800
Tribal handlers/monitors	84 days x 8 hours x 5 positions x \$18/hour	\$60,480
Benefits and indirect costs	40% of wages	\$30,912
ERCI monitoring & consultation	250 hours x \$85/hour	\$21,250
Mileage	((84 days x 2 cars x 55 miles) + (26 days x 1 car x 115 miles)) x \$0.51/mile	\$6,238
Bankers boxes	84 days x 4 boxes/day x \$2.08/box	\$700
Cedar boxes	40 boxes x \$225/box	\$9,000
TOTAL ESTIMATED COST		\$145,380

The parties understand that the above figures represent only estimates of the numbers of hours that will be required to complete the project. In consideration of these estimates, the parties agree that the total amount of compensation pursuant to this contract shall not exceed the amount of \$160,000 without a written agreement executed by the parties hereto. In the event that actual costs exceed the above-estimated costs and the actual costs are supported by properly supported invoices submitted to the City,

the parties agree to modify the agreement to reflect the actual costs incurred. The City agrees to act in good faith when negotiating any proposed amendment to the not-to-exceed amount of this agreement.

5. ADMINISTRATION:

The following individuals are designated as representatives of the respective parties. The representatives shall be responsible for administration of this agreement and for coordinating and monitoring performance under this agreement. In the event such representatives are changed, the party making the change shall notify the other party in writing.

5.1 The City's representative shall be:

Paul Schmidt, City Supervisor
City of Oak Harbor
865 SE Barrington Drive
Oak Harbor, WA 98277
Tel: (360) 279-4501 Fax: (360) 279-4507
Email: pschmidt@oakharbor.org

5.2 The Tribe's representative shall be

Charlie O'Hara, Planning Director
Swinomish Indian Tribal Community
11404 Moorage Way
La Conner, WA 98257
Tel: (360) 466-7203 Fax: (360) 466-1615
Email: cohara@swinomish.nsn.us

6. TREATMENT OF ASSETS AND PROPERTY:

No fixed assets or personal or real property will be jointly or cooperatively acquired, held, used, or disposed of by the parties pursuant to this agreement.

7. CHANGES, MODIFICATIONS, AMENDMENTS AND WAIVERS:

This agreement may be changed, modified, amended or waived only by written agreement executed by the parties hereto. Waiver or breach of any term or condition of this agreement shall not be considered a waiver of any prior or subsequent breach.

8. TERMINATION:

This agreement may be terminated by written agreement executed by the parties hereto. In the event of a failure of appropriation on the part of the City, the City shall promptly provide notice of the failure of appropriation to the Tribe, and the City shall not be deemed in breach of the Agreement. In such an event, the City shall reimburse the Tribe for services performed and costs incurred by the Tribe prior to receipt of notification of the failure of appropriation.

9. DISPUTE RESOLUTION:

If a dispute concerning the making, formation, validity, obligations under or breach of this agreement arises between the Tribe and the City, both parties agree that they will attempt to resolve the dispute through negotiation. In the event that the parties are not able to resolve the dispute through negotiation within thirty (30) days from the date a party requests negotiation in writing, the parties agree to engage in non-binding mediation to attempt to resolve the dispute. Mediation may be requested in writing by either party. The parties shall attempt to jointly select a mediator, but if they are unable to agree, each party may select a mediator, both of which shall jointly appoint a third person to conduct the mediation. The parties agree to share the costs of mediation equally, provided, however, that each party shall bear its own attorney's fees. If the parties are unable to resolve the dispute through mediation within thirty (30) days from the date a party requests mediation in writing, each party is free to pursue its interests independent from the other party.

10. SEVERABILITY:

In the event any term or condition of this agreement or application thereof to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions or applications of this agreement which can be given effect without the invalid term, condition, or application. To this end the terms and conditions of this agreement are declared severable.

11. ENTIRE AGREEMENT:

This Agreement contains all the terms and conditions agreed upon by the parties regarding the subject matter of this Agreement. All items incorporated herein by reference are attached. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

12. NO PARTNERSHIP OR JOINT VENTURE:

No partnership and/or joint venture exists between the parties, and no partnership and/or joint venture is created by and between the parties by virtue of this Agreement.

No agent, employee, contractor, subcontractor, consultant, volunteer, and/or other representative of the parties shall be deemed an agent, employee, contractor, subcontractor, consultant, volunteer, or other representative of the other party.

13. NO THIRD PARTY BENEFICIARIES:

This Agreement is not intended to nor does it create any third party beneficiary or other rights in any third person or party, including, but not limited to, the general public, property owners or residents, or any other organization or entity, or any agent, contractor, subcontractor, consultant, employee, volunteer, or other representative of any party.

IN WITNESS WHEREOF, the parties have executed this Agreement this ____ day of _____, 2011.

SWINOMISH INDIAN TRIBAL COMMUNITY:

BY: Brian Cladoosby
Name: BRIAN CLADOOSBY
Title: CHAIRMAN

CITY OF OAK HARBOR:

BY: _____
Name: _____
Title: _____

**ARCHAEOLOGICAL EMERGENCY
EXCAVATION PERMIT APPLICATION**

**ARCHAEOLOGICAL EMERGENCY EXCAVATION PERMIT
APPLICATION FOR THE SE PIONEER WAY
REDEVELOPMENT PROJECT AND SITE 45IS45, WHIDBEY
ISLAND, ISLAND COUNTY, WASHINGTON**

Submitted to the

**Washington State Department of Archaeology and Historic Preservation
P.O. Box 48343
Olympia, WA 98504-8343**

By

**Northwest Archaeological Associates/SWCA
5418 20th Ave NW, Suite 200
Seattle, WA 98107**

On behalf of

**The City of Oak Harbor
865 SE Barrington Drive
Oak Harbor, WA 98277**

June 27, 2011

CONTAINS CONFIDENTIAL INFORMATION – NOT FOR GENERAL DISTRIBUTION

**NORTHWEST ARCHAEOLOGICAL ASSOCIATES / SWCA
5418 20th Avenue NW, Suite 200
Seattle, Washington 98107**

ARCHAEOLOGICAL EMERGENCY EXCAVATION PERMIT APPLICATION
FOR THE
SE PIONEER WAY REDEVELOPMENT PROJECT AND SITE 45IS45,
WHIDBEY ISLAND, ISLAND COUNTY, WASHINGTON

On June 16, 2011, human remains were inadvertently discovered during road construction along SE Pioneer Way in downtown Oak Harbor on Whidbey Island in Island County (Figure 1). The discovery is on property adjacent to the recorded location of site 45IS45, a pre-contact/contact era settlement. Site 45IS45 was recorded in 1953 on the basis of informant's reports; however, the original investigator did not verify the location of archaeological deposits and reported that the site was completely destroyed by downtown development (Bryan 1953). Subsequent efforts to relocate the site could not confirm its existence or condition (Wessen 1988). This permit application is for activities related to the recovery of any additional human remains or artifacts in the vicinity of the original discovery, and for archaeological investigation to determine the extent and condition of archaeological deposits at site 45IS45 within the roadway improvement project. Northwest Archaeological Associates / SWCA Environmental Consultants (NWA/SWCA) has been retained by the City of Oak Harbor to prepare the application and conduct the work proposed herein.

The Washington State Archaeological Sites and Resources Act (RWC 27.53) prohibits excavation of an archaeological site without obtaining a written permit. The State has defined the requirements for an archaeological excavation and removal permit (chapter 25-48 WAC) and the following pages present the Archaeological Excavation Permit Application and the explanatory attachments required to accompany it.

WAC 25-48-060 1 (a-q):

Attachment (a). Sufficient background information and summary of previous field investigation, research and data gaps about the site(s) proposed for excavation such that the reviewers have a comprehensive understanding of the site(s) and current research questions to be able to review the proposal as a complete document.

Attachment (b). The nature and extent of the work proposed, including how and why it is proposed to be conducted and the methods proposed for excavation and recovery, number and placement of excavation units, proposed excavation volumes, proposed time of performance, locational maps, and a completed site inventory form.

Attachment (c). Summary of the environmental setting and depositional context, with an emphasis on vegetation, past and present available natural resources, geomorphology and formation processes, and their relationship to the archaeological deposits.

Attachment (d). An artifact inventory plan detailing the character of the expected data categories to be recovered including the proposed methods of inventorying the recovered data and proposed methods of cleaning, stabilizing, and curating of specimens and recovered data consistent with the Secretary of the Interior's standards for archaeological curation in 36 CFR Part 79.

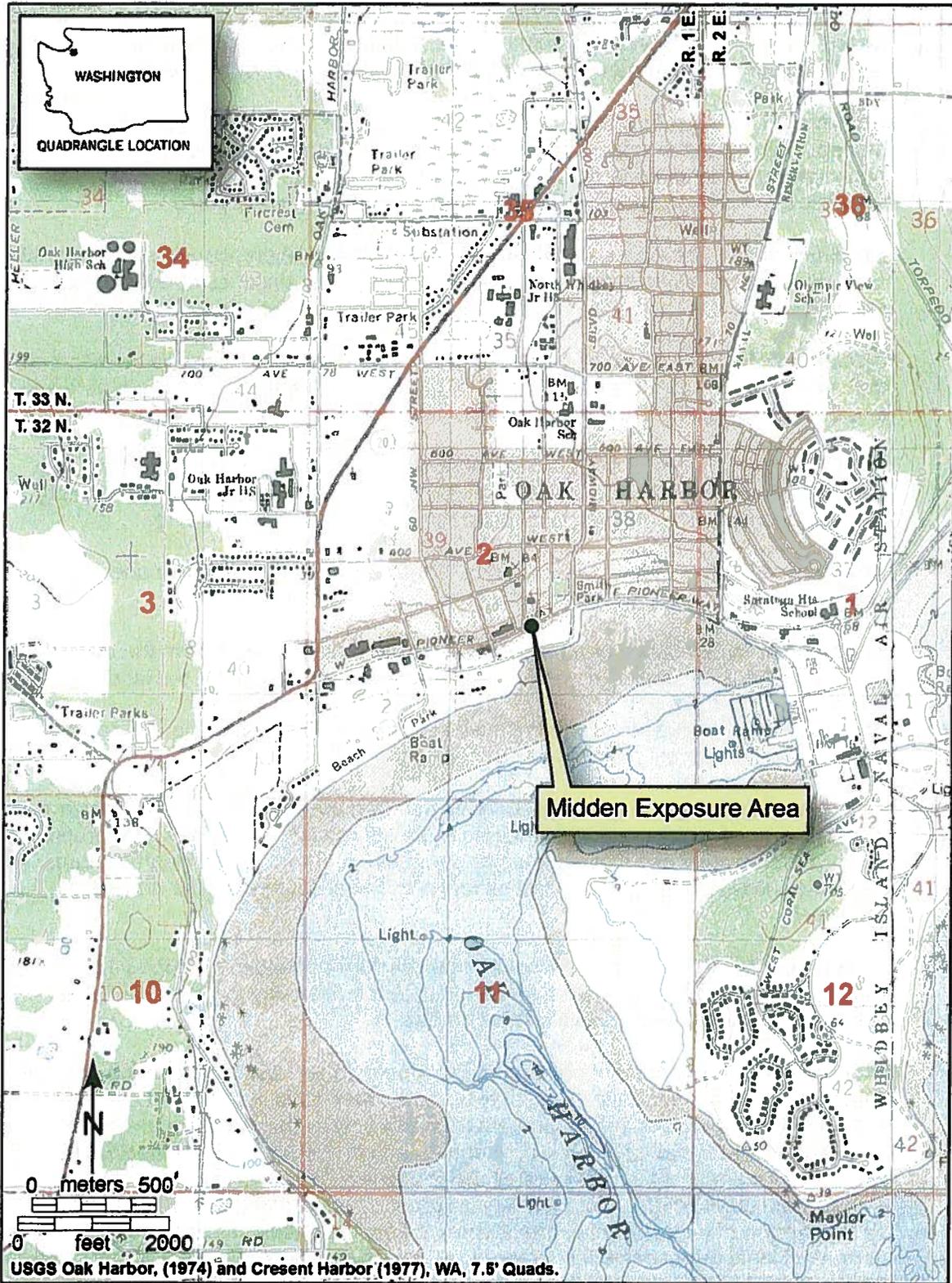


Figure 1. Location of discovery area.

Attachment (e). If human remains are proposed for recovery, a plan for their removal and disposition must be provided; if human remains are not proposed for recovery, a plan for responding to the inadvertent discovery of human remains must be provided.

Attachment (f). A professional, scientific research design, including research questions, demonstrating that the work and reporting will be performed in a scientific and technically acceptable manner utilizing methods and techniques designed to address current scientific research questions and cultural resource management plans.

Attachment (g). The name and address of the individual(s) proposed to be responsible for conducting the work, institutional affiliation, if any, and evidence of education, training, and experience in accord with the minimal qualifications listed in this chapter.

Attachment (h). The name and address of the individual(s) proposed to be responsible for carrying out the terms and conditions of the permit, if different from the individual(s) enumerated under (g) of this subsection.

Attachment (i). Financial evidence of the applicant's ability to initiate, conduct, and complete the proposed work, including evidence of logistical support and laboratory facilities and evidence of financial support for analysis and report writing.

Attachment (j). A plan for site restoration following excavation activities and evidence of plans to secure bonding to cover the cost of site restoration.

Attachment (k). Evidence of an agreement for the proposed work from the owner, agency, or political subdivision with management responsibility over the land.

Attachment (l). A site security plan to assure the protection of the site and its contents during the public permit review and excavation process.

Attachment (m). A public participation plan detailing the extent of public involvement and dissemination of project results to the public, as appropriate. Examples of appropriate public dissemination can include, but not be limited to: Archaeology Month lectures, slide shows, anthropological conferences, school presentations, newspaper articles, if warranted.

Attachment (n). A completed environmental checklist as required by WAC 197 11 100 to assist the department in making a threshold determination and to initiate SEPA compliance. **Not Applicable - No Attachment.**

Attachment (o). Evidence of abandonment: Abandonment will be presumed where the applicant presents information that thirty or more years have elapsed since the loss of the resource. If it appears to the department from any source that the resource has not been abandoned or may not have been abandoned, and in the case of all United States government warships, aircraft, or other public vessels, the department will find that the presumption does not arise and will require proof of abandonment. Proof may be satisfied by submission of a statement of abandonment from the owner, his or her successors, assigns or legal representatives, or through final adjudication by a court of law. **Not Applicable - No Attachment.**

Attachment (p). Disclosure by the applicant of any previous violation of this chapter or any federal or state law regulating archaeological objects or sites, historic archaeological resources, glyptic or painted records, or native Indian cairns or graves. The applicant shall disclose any such violation by the applicant, by the individual(s) proposed to be responsible for conducting the work, or by the individual(s) proposed to be responsible for carrying out the terms and conditions of the permit, and shall provide details, dates, and circumstances of each violation. **Not Applicable - No Attachment.**

Attachment (q). Disclosure by the applicant of outstanding archaeological excavation permits issued by the department to the applicant.

Attachment 2. Where the application is for the excavation and/or removal of archaeological resources on public lands, the name of the Washington university, museum, repository or other scientific or educational institution meeting the Secretary of the Interior's standards for archaeological curation in 36 CFR Part 79, in which the applicant proposes to store all collections, and copies of records, data, photographs, and other documents derived from the proposed work other than human skeletal remains and funerary objects. The applicant shall submit written certification, signed by an authorized official of the institution, of willingness to assume curatorial responsibility for the collections, records, data, photographs and other documents and to safeguard, preserve, and allow for the future scientific access to these materials as property of the state. **Not Applicable - No Attachment.**

Attachment 3. Where the application is for the excavation and/or removal of archaeological resources on private land, the name of the university, museum, repository, or other scientific or educational institution in which the applicant proposes to store copies of records, data, photographs, and other documents derived from the proposed work and all collections in the event the landowner wishes to take custody of the collection. The applicant shall submit written certification from the landowner stating this intention. If the landowner does not wish to take custody of the collection, the name of the university, museum, repository, or other scientific or educational institution in which the collection will be curated. The applicant shall submit written certification, signed by an authorized official of the institution, of willingness to assume curatorial responsibility for the collections, if applicable, and/or the records, data, photographs, and other documents derived from the proposed work and to safeguard, preserve, and allow for the future scientific access to these materials. **Not Applicable - No Attachment.**

Attachment 4. An applicant may temporarily curate a collection identified in subsection (2) or (3) of this section in a repository that meets the Secretary of the Interior's standards for archaeological curation in 36 CFR Part 79 until the appropriate Indian tribe has available facilities meeting the Secretary of the Interior's standards for archaeological curation in 36 CFR Part 79 into which the collection may be curated.

Attachment 5. Where the application is for the excavation and/or removal of a historic archaeological resource that is an historic aircraft, the name of the Washington museum, historical society, nonprofit organization, or governmental entity that proposes to assume curatorial responsibility for the resource. The applicant shall submit written certification, signed by an authorized official of the institution, of willingness to assume curatorial responsibility for the resource and all associated records, data, photographs and other documents derived from the proposed work and to safeguard, preserve, and allow for the future scientific and public access to these materials. **Not Applicable - No Attachment.**

After review of the application, the department may require additional information to properly evaluate the proposed work and shall so inform the applicant. Field investigation or research may be required of the applicant or conducted by the department at the applicant's cost. A bond in an amount specified by the department may be required of the applicant to ensure payment of the professional expenses incurred by the department. Advance notice of any anticipated cost shall be given to the applicant.

Attachment (a). Sufficient background information and summary of previous field investigation, research and data gaps about the site(s) proposed for excavation such that the reviewers have a comprehensive understanding of the site(s) and current research questions to be able to review the proposal as a complete document.

In 1953 Alan Bryan recorded site 45IS45 as a shell midden extending for approximately ½ mile along the "top of a low bank (ca. 10-15' high) under the buildings between Oak Harbor main street (old Indian trail) and beach" (Bryan 1953). Bryan noted that the site had been completely destroyed by the development of downtown. A map was not included with the original site survey record and the site was plotted by the Department of Archaeology and Historic Preservation based on the limited physical description of the site (Appendix A). The area was visited in 1988 in an attempt to relocate the site, however, no unequivocal evidence of 45IS45 was found (Wessen 1988).

On June 16, 2011, construction workers excavating the road grade along SE Pioneer Way between the Ireland Street and Illwaco Street found human skeletal remains in association with shell midden deposits. Construction in the vicinity was stopped and the area protected. The City contacted the Island County Coroner, Robert Bishop, who determined that the remains were non-forensic (not crime related) and were Native American. At the same time the City notified the DAHP of the discovery. On June 18th, Guy Tasa, Washington State Physical Anthropologist, and Gretchen Kaehler, Assistant State Archaeologist, visited the construction site and identified the remains of at least three individuals associated with intact archaeological deposits and spoils excavated from the location. Human remains were also identified in an offsite storage yard located at the Concrete Nor'west property where spoils from construction grading and excavation were deposited.

Following the discovery, DAHP requested that the City obtain the services of a professional archaeologist to monitor excavation within the project area. An NWAA archaeological monitor was on the jobsite beginning June 17, 2011. On June 21, 2011 the archaeological monitor identified isolated pockets of shell midden and another human remain during excavation of the road grade east of the original discovery site. All excavation was halted, the City notified DAHP, and the second discovery site and exposed midden deposits were secured. In a letter dated June 20, 2011, DAHP recommended that the City prepare a plan for data recovery and documentation of archaeological resources identified within the project area and for the treatment of archaeological materials that were inadvertently removed to the Concrete Nor'west property.

On June 22, 2011 representatives of DAHP, the Swinomish Indian Community, the Tulalip Tribes, the Suquamish Tribe, and the Stillaguamish Tribe met in Oak Harbor to review the discovery. This plan incorporates recommendations from the Tribes and DAHP that resulted from this meeting and is focused on removing additional human remains from the discovery area, establishing site boundaries, and resolving the existing street closure. Recovery of remains associated with the spoils piles located on the Concrete Nor'west property is the subject of a separate permit. DAHP halted excavation north of the discovery on June 22 and on June 23 issued a letter halting all construction for the project.

Currently there are three areas of midden exposure labeled A, B and C along SE Pioneer Way between SE Ireland Street and SE Midway Boulevard (Figure 2). Areas A and B are associated with human remains and host spoils piles from scraping of the surface nearby (Figures 3 and 4). Area C is an area of additional midden exposure where construction was halted by the archaeological monitor. Grading took place in this portion of the project area just before DAHP halted all construction activities within the project area on June 23, 2011.

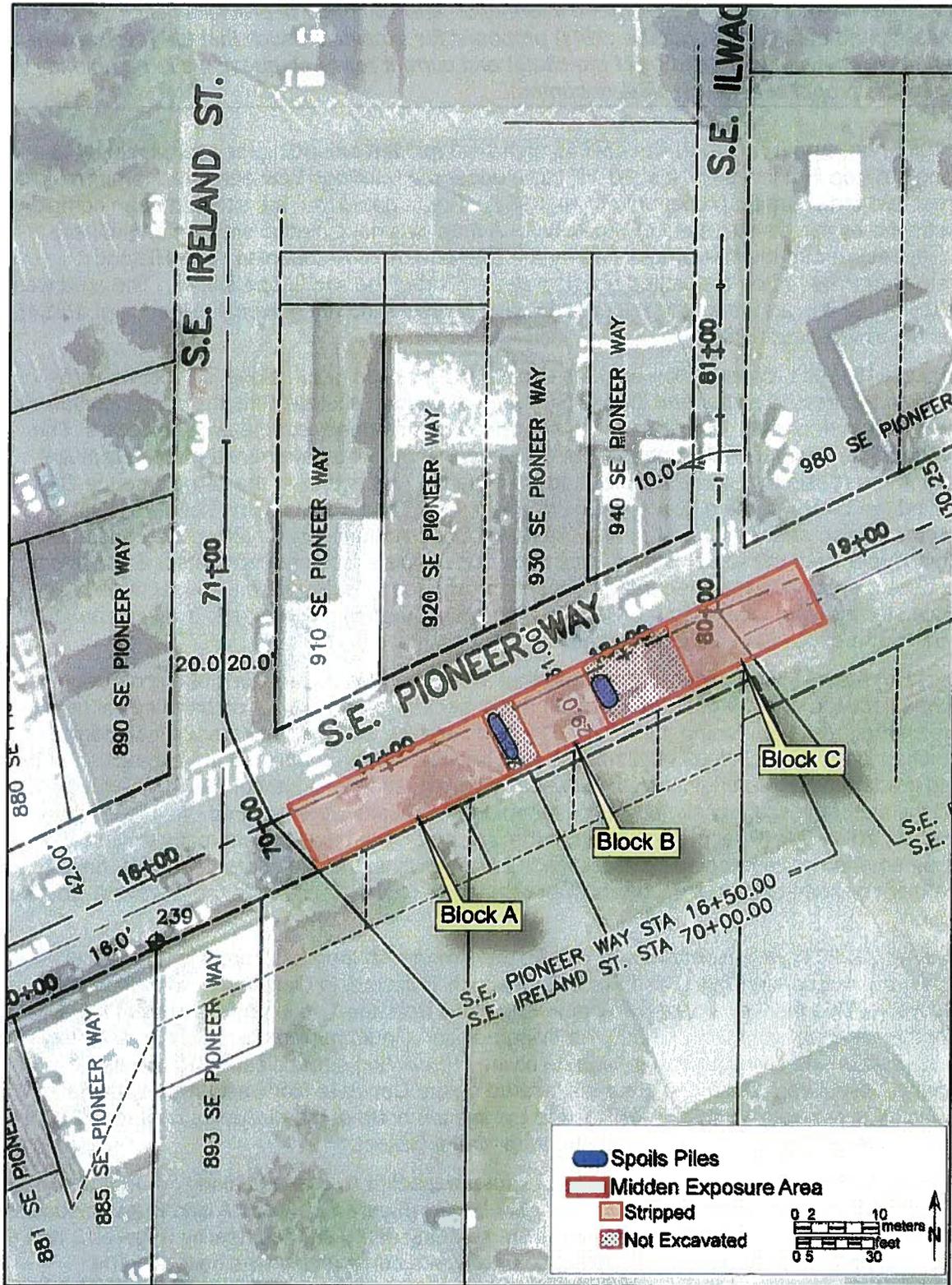


Figure 2. Midden exposure areas and spoils piles.



Figure 3. Overview of inadvertent discovery area (Area A) in the south lane of SE Pioneer Way east of the SE Ireland Street intersection, view to the east.



Figure 4. Overview of partially excavated road grade (Area B) along the south lane of SE Pioneer Way west of the SE Ilwaco Street intersection, view to the west.

Block C is an area of additional midden exposure where construction was halted by the archaeological monitor. Ground disturbing excavations within this portion of the project were only partially complete when DAHP halted all construction activities within the project area on June 23, 2011 (no work had been performed in Blocks A and B since the first discovery on June 16, 2011 or in Block C since the second discovery on June 21, 2011). The following describes the current state of the construction project east of Dock Street:

1. **Dock to Ireland (west of Block A)** – All underground utility work is complete with exception of several utility boxes (handholes) located within the future sidewalks and irrigation and landscaping within planter islands and tree locations. Street excavation is complete and approximately 90% of curbs and gutters have been poured.

COMPLETED WORK:

CIPP sewer main
Side Sewers
Water services and meters
Fire Hydrants
Storm Drainage
Joint Utility Trench
JUT conversions
Roadway Excavation
Irrigation sleeving
Light pole bases
Poured curb and gutter

REMAINING ITEMS:

Pour Light pole bases
Irrigation and landscaping
Set Frontier Handholes
Prep and Pour sidewalks
Warm Mix Asphalt roadway
Striping and signage
Pull PSE power and heat up
Demo overhead wires and poles
Set Luminaires
Punch List miscellaneous items

2. **Ireland to Ilwaco (Blocks A, B and C)** - All mainline underground utility work is complete with exception of the irrigation and landscaping sleeving planned for the northern edge of the right of way. In addition, small utility boxes are yet to be installed within the sidewalk areas on both sides of the right of way. With the exception of the discovery areas in the south half of the right of way, no further street excavation has been started in this section.

COMPLETED WORK:

CIPP sewer main
Side Sewers
Water services and meters
Fire Hydrants
Storm Drainage
Joint Utility Trench
Light Pole Bases
25% Roadway Excavation

REMAINING ITEMS:

75% Roadway Excavation
Irrigation sleeving
JUT conversions
Prep and pour curb and gutter
Pour Light pole bases
Irrigation and landscaping
Set Frontier Handholes
Prep and Pour sidewalks
Warm Mix Asphalt roadway
Striping and signage
Pull PSE power and heat up
Demo overhead wires and poles
Set Luminaires
Punch List miscellaneous items

3. **Ilwaco to Midway (east of Block C)** – All mainline underground utility work is complete with exception of the irrigation and landscaping sleeving planned for the northern edge of the right of way. In addition, small utility boxes are yet to be installed on both sides of the right of way. Street excavation between Jensen and Midway is complete under the supervision of an archaeologist.

COMPLETED ITEMS:

CIPP sewer main
 Side Sewers
 Water services and meters
 Fire Hydrants
 Storm Drainage
 Joint Utility Trench
 JUT conversions
 Roadway Excavation
 Light pole bases
 Wall 3
 25% Curb and gutter prep

REMAINING ITEMS:

Storm drain at 1036 Pioneer Way
 Irrigation sleeving
 JUT conversions
 Prep and pour curb and gutter
 Pour Light pole bases
 Irrigation and landscaping
 Set Frontier Handholes
 Prep and Pour sidewalks
 Warm Mix Asphalt roadway
 Striping and signage
 Pull PSE power and heat up
 Demo overhead wires and poles
 Set Luminaires
 Punch List miscellaneous items
 One light pole base at Jensen
 Wall 3 handrail
 Pedestrian bases at Midway

Research and Data Gaps

Before work can resume on SE Pioneer Way, two issues must be resolved: 1) human remains at the original discovery site must be removed and protected, and 2) the extent and condition of the 45IS45 needs to be established in the area where additional project development is planned. If archaeological materials are present in areas that will be damaged by completion of the project, then additional work would be undertaken under this permit to remove any additional human remains and to salvage information important to understanding this badly damaged site.

Attachment (b). *The nature and extent of the work proposed, including how and why it is proposed to be conducted and the methods proposed for excavation and recovery, number and placement of excavation units, proposed excavation volumes, proposed time of performance, locational maps, and a completed site inventory form.*

The proposed work will be completed in four parts: Task 1 includes historic research necessary to understanding the current condition of the area; Task 2 will focus on the recovery of human remains from the exposed archaeological deposits and onsite spoil materials; Task 3 investigations will focus on defining the boundaries and extent of the archaeological deposits at 45IS45 within the project area; and Task 4 will involve any additional archaeological investigations needed to complete the SE Pioneer Way project. All human remains will be placed in a secure repository provided by the City and will not be removed from Whidbey Island.

Task 1. Historic Research

Historic research will be undertaken in local and regional archives to collect more information about Native American presence in the Oak Harbor vicinity and activities in the site area. Any information about the site or its past inhabitants offered by Tribal historic preservation personnel or other knowledgeable individuals will be incorporated into a narrative of the history of the site. Old photographs and other pertinent land records will be examined to determine the nature and extent of historic modifications to the site vicinity.

Task 2. Recovery of Human Remains

Task 2 investigations will begin with screening of on-site spoils piles followed by hand excavation of human remains exposed on the surface of the excavated grade in blocks A and B (Figure 2). A 1 x 1-meter grid will be established across the surface of each block and each of the human remains will be manually excavated along with adjacent sediments to culturally-sterile deposits with provenience established by unit and level. Adjoining units will be excavated until units with no human remains are completed. The excavated sediments from these units will be passed through ¼-inch mesh hardware cloth to recover any additional human remains, or associated cultural materials. Excavation will be documented on unit level forms with scaled drawings, photographs and written descriptions. A block plan map will record the location of all material found in place. Collected material will be labeled by provenience and brought to the laboratory for analysis. Fire-modified rock will be weighed, recorded, and disposed of in the. Each unit will be mapped with a GPS and have its deepest elevation marked by addition of marker material, for example modern coins and a metal tag, before backfilling. Cultural features will be bisected with half of the sediment bagged for additional analysis, and the other half brought to the lab for analysis. Profiles of at least two excavation side walls will be photographed and illustrated. Standard unit level field forms, bag catalogues, and photo logs will be maintained throughout the excavation.

Task 3: Boundary Delineation

The goal of delineation is to document the horizontal and vertical extent of the archaeological deposits and to determine where they are intact within the project. Site delineation will be completed through auger probes spaced at a maximum 10-meter (33-foot) interval with additional probes placed at the discretion of the field director. Auger testing will begin away from the known material and progress from west to east toward the known archaeological deposits, and again from Midway west to the discovery area. Auger probes will be excavated to

a depth of at least 50 centimeters (20 inches) below surface, or until Pleistocene-age glacial deposits are encountered. Excavated sediments will be removed in 20 cm (8 inch) intervals and passed through ¼ -inch mesh hardware cloth. Cultural material will be tabulated by level. Fire modified rock (FMR) will be counted, weighed and returned to the auger probe when it is backfilled. Other cultural material will be placed in labeled bags and collected for further analysis.

Task 4: Data Recovery

If archaeological deposits are identified by Task 3 in areas where additional excavation is required and design of the project cannot be adjusted to avoid them, then the deposits will be excavated using archaeological methods to ensure that any artifacts or human remains are not damaged and are treated in a respectful manner. The excavated materials will be screened through ¼ -inch mesh hardware cloth and artifacts, faunal remains and other samples will be collected in the field and brought to the laboratory for analysis. Human remains will be conveyed to secure storage in or near Oak Harbor for safekeeping until re-burial.

NWAA /SWCA proposes to mobilize a crew of field archaeologists directed by a field supervisor and complete Tasks 2 and 3 of the fieldwork in two weeks (10 days). Additional fieldwork may be required for Task 4 pending the results of the site delineation and potential engineering redesigns. A letter report summarizing results of field work will be prepared within 30 days of Task 3. An addendum to the existing site form with new site boundaries will also be prepared at that time. Detailed draft and final reports will be contingent on results of the off-site spoils screening and any additional Task 4 excavation. Documentation of the human remains will be in an appendix to the final report with restricted distribution separate from the report to provide additional confidentiality.

Artifacts and human remains will be securely stored on Whidbey Island by the City in condition and setting approved by the consulting Tribes until final disposition is negotiated. Tribal monitors are welcome on site at all times. Crews will stand aside for any spiritual work needed as determined by the consulting Tribes.

Attachment (c). *Summary of the environmental setting and depositional context, with an emphasis on vegetation, past and present available natural resources, geomorphology and formation processes, and their relationship to the archaeological deposits.*

The 45IS45 site is located along the top of a 10-15 foot high bluff that marks the northern shoreline of Oak Harbor prior to historic filling of the native tidelands. Archaeological deposits were identified in association with a buried A-soil horizon formed over glacial drift sediments. The resulting landform provided a stable environment for human habitation above a productive marine shoreline. Residential and commercial development along what would become Pioneer Way was well underway by the late 1930s.

Attachment (d). *An artifact inventory plan detailing the character of the expected data categories to be recovered including the proposed methods of inventorying the recovered data and proposed methods of cleaning, stabilizing, and curating of specimens and recovered data consistent with the Secretary of the Interior's standards for archaeological curation in 36 CFR Part 79.*

Expected data categories from the archaeological deposits include faunal remains, lithic debitage and formed objects, charcoal and other botanical remains and fire-modified rock. Groundstone artifacts and utilized and formed bone, shell, or antler may also be found. Charcoal may be collected from intact cultural features such as fire hearths or rock ovens or collected from excavation profiles and submitted for botanical and radiocarbon analysis. Fire-modified rock will be recorded in terms of physical characteristics and weight, then discarded. All artifacts and unmodified non-human bone and other faunal samples recovered from excavation units will be taken to the lab for further analysis (e.g. botanical, faunal, and possible radiocarbon analyses). No intensive cleaning or direct marking of artifacts will be undertaken in case residue analysis of an artifact is undertaken at a later date. After laboratory analysis, artifacts and samples will be individually packaged in archival bags and boxes and arranged for storage. A catalogue tabulating the contents of each excavation unit and probe will be created and entered into a database. Consulting Tribes will review all recovered artifacts and faunal materials to identify funerary objects/materials for reburial with recovered human remains and these materials will be treated in a manner agreed upon by the consulting tribes and DAHP. The remaining archaeological materials will be curated at a facility agreed upon by the consulting Tribes and DAHP. NWAA /SWCA will package this material as directed by the selected curation facility and deliver all records, samples, and artifacts at the conclusion of the investigation

Attachment (e). *If human remains are proposed for recovery, a plan for their removal and disposition must be provided; if human remains are not proposed for recovery, a plan for responding to the inadvertent discovery of human remains must be provided.*

The recovery of human remains is part of Tasks 2 through 4 (see attachment b). NWAA will provide daily updates to DAHP and tribal cultural resources departments or committees via telephone, e-mail, or fax. The Swinomish Tribal Community, the Tulalip Tribes, the Suquamish Tribe, and the Stillaguamish Tribe will guide the treatment, recovery and disposition of the remains. The City will provide a safe repository for human remains that accommodates tribal requests and spiritual requirements until they can be re-united with the original discovery fragments now located in Olympia. All human remains will be re-interred at a location decided upon by the consulting tribes.

Attachment (f). *A professional, scientific research design, including research questions, demonstrating that the work and reporting will be performed in a scientific and technically acceptable manner utilizing methods and techniques designed to address current scientific research questions and cultural resource management plans.*

The proposed archaeological excavation presents an opportunity to more thoroughly examine Native American occupation along the shore of Oak Harbor, and Whidbey Island. The majority of what we know about settlement in the area comes from archaeological surveys and a limited number of systematic archaeological excavations. Preliminary observations suggest that 45IS45 would generate archaeological data pertaining to the formation of the site, the chronology of Native American occupation at this site, and the nature of the local Native American subsistence economy. Geologic processes, such as earthquakes, isostatic rebound, and associated sea level changes may have affected the stability of local landforms and archaeological deposits within the project area. Site 45IS45 is also on a portion of Oak Harbor that was extensively modified by tideland filling. Portions of this site have been excavated and redeposited and the effects of these activities must be considered in the analysis of archaeological data obtained from 45IS45.

The following sections present selected research domains, specific research questions and the expected archaeological data classes used to address them.

Site Formation Processes

The study of site formation processes examines patterning in an archaeological site resulting from the operation of natural and cultural processes (Schiffer 1996). The human use of landforms has direct and indirect effects on artifact arrangement and overall site structure as people modify their immediate environs. The following questions have been developed to focus data collection and analysis on the role of site formation processes with respect to the archaeological record at 45IS45:

- What is the history of the landform?
- Has the landform been modified by long-term geologic processes (i.e. eustatic sea level change) or short-term processes (i.e. earthquakes)?
- Are stratified deposits present?
- How complete is the stratigraphic record?
- How have geomorphic and soil-forming processes affected the preservation of the archaeological materials?
- How have Native American occupation activities affected the site deposits?
- What have been the effects of historical land use and development on the cultural and natural deposits investigated? Specifically, how has previous construction along Pioneer Way affected the preservation of archaeological materials at 45IS45?

Data classes from 45IS45 that may be applied to these questions include the characteristics of natural and cultural strata (i.e., sediment grain size characteristics, pre-contact artifacts and faunal remains, and intrusive historic debris), the boundaries between stratigraphic units, evidence of sediment deformation (i.e. flame structures), faulting, rapid vertical movement and deposition (i.e. tsunami sand sheets).

Chronology

Analysis of regional settlement systems requires the placement of sites or site components within a temporal framework. Specific questions within this research domain include:

- Are datable organic materials present at 45IS45?
- Can age ranges be derived from temporally diagnostic artifacts?
- Do archaeological materials occur in the context of stratified deposits that provide temporally discrete analytic units?
- Are chronologically significant stratigraphic markers present at 45IS45?

Applicable data classes for addressing these chronological questions include: organic materials (i.e. charcoal or shell) for radiometric analysis; temporally diagnostic technologies, artifacts, or stylistic designs; sediment deposits or features associated with dated geologic events (i.e., tephra layers, tsunami sand sheets, liquefaction features, or faulted strata).

Subsistence

Midden deposits at 45IS45 containing the remains of mammals, birds, fish, and shellfish obtained in and around Oak Harbor represent a record of Native American subsistence that can be used to examine the relative roles of different terrestrial and marine animal resources. Faunal and botanical remains from cultural contexts can contribute to understanding site function, the season of occupation, and the site's role in the settlement system. The differential distribution of faunal remains, both vertically among archaeological strata, and horizontally within a site can be used to examine changes in resource use or discard practices through time and across space. Native American subsistence practices at 45IS45 maybe examined through the following questions:

- What faunal and botanical resources were utilized at 45IS45?
- Are there changes in resource utilization between or among components or occupations?
- Can seasonality be inferred from faunal remains present at 45IS45?
- Does this site represent a segment of the annual subsistence round and how does this compare to ethnographic and historic accounts?
- How does the faunal assemblage from this site compare with other similar sites around Oak Harbor and the east side of Whidbey Island?

Data classes that can be used to address these questions include the characteristics of cultural strata, particularly the presence of identifiable faunal remains from terrestrial, avian, and marine taxa (i.e., the remains of migratory taxa, or immature individuals), preserved insects, and charred botanical remains.

Reporting

Draft and final reports would conform to the format and style guidelines of the professional archaeological journal, *American Antiquity*. The report would describe the methods and results of the excavation and analyses, synthesize the data, directly address the research questions posed in this research design, and suggest possibilities for further research in the region. Reporting will be delayed until all efforts to recover human remains, both from 45IS45 and from the spoils disposal area.

Attachment (g). *The name and address of the individual(s) proposed to be responsible for conducting the work, institutional affiliation, if any, and evidence of education, training, and experience in accord with the minimal qualifications listed in this chapter.*

Please see attached resumes. Christian J. Miss will serve as Project Director, Amber Earley will serve as Project Manager, Ross Smith will be the Project Archaeologist, and Elizabeth Perry will oversee the osteological analyses to ensure that the human remains are grouped as individuals to the extent possible.



STATE OF WASHINGTON
DEPARTMENT OF ARCHAEOLOGY & HISTORIC PRESERVATION
1063 S. Capitol Way, Suite 106 • Olympia, Washington 98501
Mailing address: PO Box 48343 • Olympia, Washington 98504-8343
(360) 586-3065 • Fax Number (360) 586-3067 • Website: www.dahp.wa.gov

ARCHAEOLOGICAL EXCAVATION PERMIT
NO: 2011-33

Archaeological site(s): 45IS45-Pioneer Way Site

Individuals Responsible for carrying out the terms and conditions of the permit: Eric Johnston
City of Oak Harbor

Individuals responsible for over-seeing field investigations: Chris Miss
NWAA/SWCA

Nature of work: Testing, boundary delineation, recovery of four partially *in-situ* burials; screening of piles for human remains, grave goods and artifacts

Repository in which collected records and data shall be deposited: Affected Tribes, City and DAHP will develop a permanent curation plan

Date fieldwork permitted to begin: August 1, 2011

Date fieldwork shall end: December 31, 2011

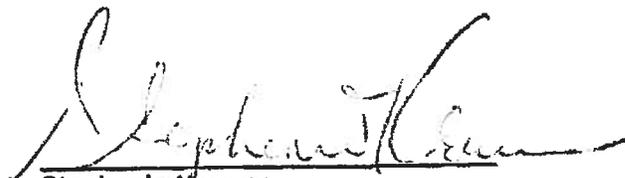
Period of analysis: Concurrent through July 31, 2012

Date final report due: No later than July 31, 2012; but see Special Condition #15

SPECIAL CONDITIONS:

See Attached

Issued this 28th day of July 2011.



Stephenie Kramer
Assistant State Archaeologist

ARCHAEOLOGICAL EXCAVATION PERMIT NO: 2011-33
SPECIAL CONDITIONS:

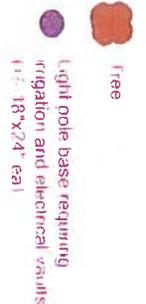
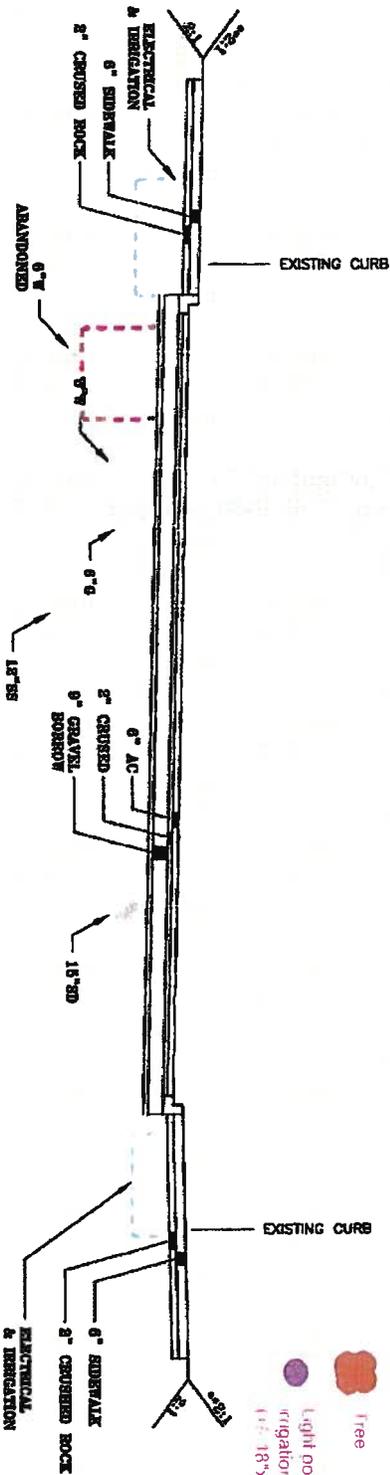
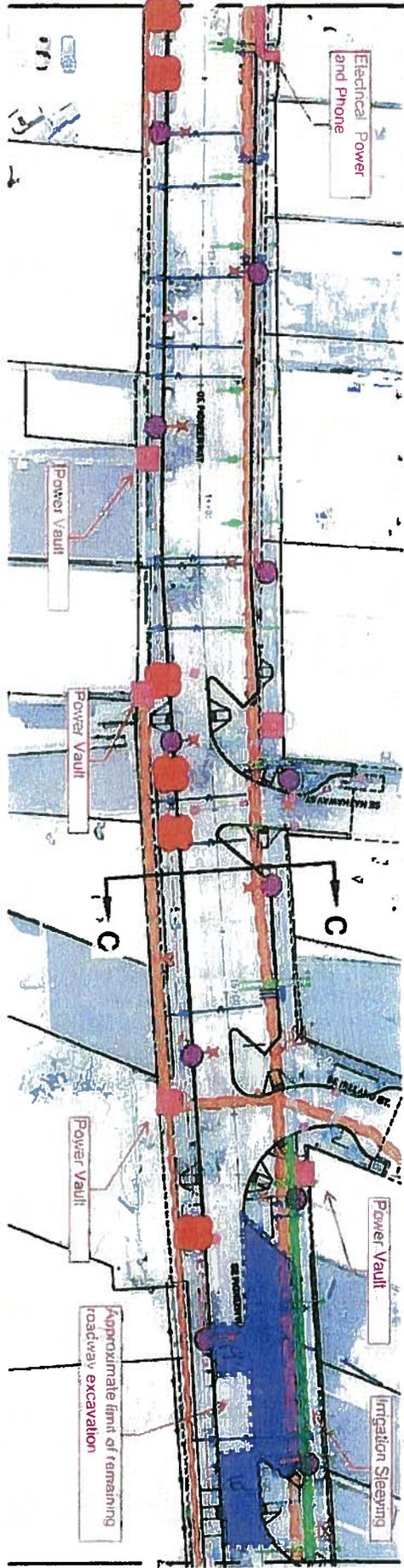
1. Follow protocols stated in permit application of 6/27/11 with the following changes:
2. All construction personnel will be trained on proposed archaeological work and appropriate procedures before resuming construction. A draft Agenda of the Training Session will be provided to DAHP and the affected Tribes prior to implementation. All construction activities must be monitored by the project archaeologists.
3. Archaeological Testing of the "purple area" only on Pioneer Way as depicted on page 20 of map provided by City of Oak Harbor on July 26, 2011 (Attachment A) shall be conducted using trowels and/or shovels, using 50x50s square units at 1m intervals.
4. An interim summary report shall be delivered to all consulting parties within 7 business days of completion of testing work described in Condition #3 to allow for further consultation on data recovery efforts and/or monitoring needs in the purple area.
5. If additional human remains are revealed in any 50x50s, they shall be left in place, protected from exposure and the Permit Holders shall immediately notify the State Physical Anthropologist. Removal of any new human remains shall not occur until DAHP conducts tribal consultation and tribal preference for either recovery or protection in place.
6. All soil piles on Pioneer Way shall be screened at 100% for human remains, grave goods and artifacts; any recovered grave goods, artifacts, bone, or human remains shall be transported by designated tribal members to a secured City Facility at 1400 NE 16th on a daily basis for interim storage. Re-association will be conducted by DAHP. If the Permit Holders are able to arrange for a secure facility closer to the archaeological site, the Permit Holders shall initiate consultation with DAHP and the affected Tribes regarding this possibility.
7. The Permit Holders shall establish with State Physical Anthropologist a chain of custody for all human remains prior to any transportation to the secured City Facility. The State Physical Anthropologist shall make periodic visits to the secure facility to inventory and re-associate the human remains. Tribal representatives may be present during re-association if they so wish.
8. Removal of the first four sets of human burials as documented by State Physical Anthropologist on June 18 and 22, 2011 is permitted; the human remains shall be transported daily by designated tribal members to a secured City Facility at 1400 NE 16th following the protocol established by Condition #7. The Permit Holders will provide a visual barrier for archaeological work. If the Permit Holders are able to arrange for a secure facility closer to the archaeological site, the Permit Holders shall initiate consultation with DAHP and the affected Tribes regarding this possibility.
9. For small works from Ireland Street westward, and Ilwaco Street eastward, hand dug shovel probes shall be used to confirm presence/absence of cultural materials or human remains in tree wells, lightpole, landscape, utility service connection trenches, irrigation service trenches, and curb areas. Upon negative findings, the City may complete work in those areas in accordance with the Pioneer Way construction plans. These negative findings shall be incorporated into the final report and conveyed daily to DAHP and the affected Tribes under Condition 10. Positive identification

**ARCHAEOLOGICAL EXCAVATION PERMIT NO: 2011-33
SPECIAL CONDITIONS (CONTINUED):**

shall require further consultation and may require an amendment to this permit for removal or cultural resources or human remains.

10. Daily status reports shall be submitted via email to DAHP, City and affected Tribes, using email list.
11. An updated Site Form shall be submitted to DAHP by October 31, 2011 in pdf format.
12. A Draft Cultural Resources Management Plan and Inadvertent Discovery Plan for 45IS45 shall be submitted to DAHP and affected Tribes by July 30, 2012 for a 30 day comment period. The Permit Holder shall address all comments from Tribes and DAHP before submitting final by December 31, 2012.
13. The City and affected Tribes will meet and craft a re-burial plan. If a reburial plan cannot be achieved, DAHP shall be notified and DAHP, in consultation with the Permit Holders and affected Tribes will develop a mediation strategy to achieve a consensus based outcome.
14. Reference permit number & append artifact catalog (if applicable) to report.
15. All copies of all interim and final reports shall be provided to the City, affected Tribes, & DAHP. A Draft Final Report for all permitted activities at 45IS45 shall be permitted to DAHP and affected Tribes by May 31, 2012 for a 30-day comment period. The Permit Holder shall address all comments from Tribes and DAHP before submitting final by December 31, 2012.
16. If the Permit Holders need to make a change to the permit, or are requested to make changes, the Permit Holders shall consult with DAHP and all affected Tribes before making changes.
17. The Permit Holders shall work on a plan in consultation with the affected Tribes for potential public presentations. The content of the presentation shall be determined through consultation with the affected Tribes.
18. Upon completion of the project, the Permit Holders, in conjunction with the affected Tribes, will work on presentations to the affected tribes, should the affected Tribes wish to have a presentation.

**ATTACHMENT A
MAP DEPICTING "PURPLE AREA"**



SECTION C-C
SCALE: 1" = 5'

SE Pioneer Way Reconstruction Project
Underground Utility Analysis
Dock Street to Iwaco Street
Remaining Underground Work

**City of Oak Harbor
City Council Agenda Bill**

Bill No. LD
Date: September 20, 2011
Subject: Multimodal Facility:
Project Status Resolution

FROM: Steve Powers *SP*
Development Services Director

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

[Handwritten initials] Jim Slowik, Mayor
[Handwritten initials] Paul Schmidt, City Administrator
[Handwritten initials] Doug Merriman, Finance Director
[Handwritten initials] Margery Hite, City Attorney, as to form

PURPOSE

This agenda bill presents a resolution for City Council consideration that clarifies the status of the Multimodal Facility project through the withdrawal of its shoreline substantial development permit, the return of its Federal funding and its deletion as a City project.

AUTHORITY

The City Council has authority under RCW 35A.11.020 to regulate its internal affairs in a variety of ways; specific to this matter such powers may be exercised in regard to the improvement or beautification of real property of all kinds.

SUMMARY STATEMENT

On July 12, 2011 the City Council considered, in a quasi-judicial proceeding, the matter of approving a shoreline substantial development permit for the proposed Multimodal Facility at Flintstone Park. During the course of the closed record hearing the Council accepted testimony from interested citizens and staff. While a number of issues were discussed, the majority of the public comment and Council questions were in the following areas: the possible impact of the project on surrounding property owners; the estimated, overall cost of the facility; and the City's ability to provide matching funds for the Federal Transit Administration grant intended to provide the majority of the project funding. Upon closing the public hearing the Council deliberated for a considerable period of time. At the close of the deliberations, a motion to approve the shoreline substantial development permit was unanimously opposed and the motion failed. No additional action was taken by the Council on this item that evening. While not specifically stated, it appeared that the motion failed not because the project was deemed to be inconsistent with the City's Shoreline Master Program, but because of other project concerns. A copy of the minutes from that meeting is included as Attachment 1 to this agenda bill.

DISCUSSION

The defeat of the motion to approve the shoreline substantial development permit leaves the status of the Multimodal Facility project unclear. There are three aspects of the project that should be clarified:

1. The status of the shoreline substantial development permit
2. The status of the Federal Transit Administration grant funding
3. Its status as a project in the City's various policy and capital project plans

The following briefly addresses each one of the above items.

Shoreline Substantial Development Permit

The review of a shoreline substantial development permit is a quasi-judicial matter. The City's adopted Shoreline Master Program requires both the Planning Commission and City Council to conduct a public hearing and make findings of fact (Shoreline Master Program Section 10.06.2.a and 10.07.1.b, respectively). For the Planning Commission the findings must support their recommendation to the City Council. Their recommendation of approval was based on findings of fact that the project was consistent with the Shoreline Master Program. The Council must "make findings and thereupon take action to grant or deny applications for permits in full compliance with the City of Oak Harbor's Shoreline Master Program, the Shoreline Management Act, and regulations and requirements adopted pursuant thereto." It appears the Council's non-approval of the permit on July 12th was based on factors not related to the project's consistency with the Shoreline Master Program. Since the Council's action seemed more related to the issue of project funding (as opposed to a finding that it was inconsistent with the Shoreline Master Program) it is appropriate for the Council to withdraw the permit rather than to take a separate action to deny the permit.

Federal Transit Administration Grant Funding

In August of 2005, the City secured a SAFETEA-LU Federal Transit Administration grant for the Multimodal Project in the amount of \$1,045,000 (total). The grant would provide \$836,000 to the City, while we would be required to provide a match of \$209,000. It is a reimbursable grant (i.e. the City would pay for the project costs up front and seek reimbursement from the Federal Transit Administration). Any project costs exceeding the authorized grant would be solely borne by the City. At this time the architect's estimate for the project is approximately \$1,400,000. This means the City would be responsible for funding the balance of approximately \$564,000. While the grant does not have an expiration date, staff has been led to believe by Federal Transit Administration staff that if the project is not underway by the end of 2011, the City will be asked to return the grant.

At the July 12th meeting the City Council expressed significant concerns with the project funding. These concerns focused primarily on the overall cost of the project, the source of the project funding match and the City's possible obligation to repay previous Federal grants expended for this project. Without a shoreline substantial development permit the project cannot proceed to construction. If the project does not proceed to construction in the near future it is likely the City will be asked to return the Federal grant. In light of this situation the Council may

wish to return the grant to the Federal Transit Administration.

Waterfront Planning Documents

The Multimodal Facility (aka the Municipal Pier) has been part of the City's waterfront planning efforts since at least 1998. The project is included in the Comprehensive Plan, the Transportation Plan, the Park and Recreation Plan, the Capital Improvement Plan, and the Transportation Improvement Program. While the first three plans may be viewed as setting the policy direction to pursue the project, the last two indicate more of a commitment to fund and construct the project.

In addition to the funding discussion, a review of the July 12th minutes found some Council question and conversation regarding the project design. Public comment received also questioned certain aspects of its design (as well as the scope and need for the project). There was no specific City Council discussion as to whether or not the project should still be included in the City's capital project list. If the Council believes the concerns raised on July 12th are sufficient enough to determine that the City should no longer pursue this project at all, staff should be directed to begin the process of deleting it from the referenced plans. This process would start with staff preparing the required revisions to each of the plans. The City Council would then consider each of the revisions separately during the scheduled update to each of the plans. On the other hand, if the Council believes the project should still be pursued, but either not at this time or only after undergoing a redesign, then staff should not be directed to delete reference to the project from the various planning documents.

Assumptions for Resolution

It was necessary for staff to make certain assumptions in order to draft the resolution for City Council review and possible action. These assumptions are the City Council wishes to 1) withdraw the shoreline substantial development permit, 2) return the Federal Transit Administration grant funding, and 3) no longer pursue the Multimodal Project as a City project. The draft resolution was written using these assumptions. If any or all of the assumptions do not fit the City Council's vision for this project, staff can revise the resolution accordingly.

STANDING COMMITTEE REPORT

This item was reviewed by the Public Works Standing Committee at their September 1st meeting and by the Governmental Services Committee at their September 13th meeting.

RECOMMENDED ACTION

Consider Resolution No.11-12.

ATTACHMENTS

Attachment 1: City Council minutes from July 12, 2011 meeting
Attachment 2: Draft Resolution No.11-12.

MAYOR'S COMMENTS

MOTION: Councilmember AlMBERG moved to table the Low Impact Development Proposed Code Amendments and remand this back to the Planning Department. The motion was seconded by Councilmember Dudley and carried unanimously.

No date was given for return to City Council.

Mayor Slowik talked about the Sustainable Whidbey Coalition of which he is a member and that Oak Harbor is the only agency on Whidbey that is this far along; the others are looking to Oak Harbor for leadership on LID and this issue. The City is a member of SICBA and we all feel a responsibility to answer SICBA. Remanding back to the Planning Department is a positive action. Mayor Slowik recognized and thanked Mr. Spoo for all of the work he has done on LID and the proposed Code amendments.

In response to an earlier Council question regarding the nature of recommended actions and if every part of ordinance title must be read into the action, City Attorney Hite noted that if a document is attached, Council can move to adopt the attached ordinance or document. Sometimes there are strictly-spoken motions, though. If Council makes a motion for something that is not written out, then the motion must provide greater specificity.

Public Hearing – Multi-Modal Facility Project Shoreline Substantial Development Permit

Development Services Director Steve Powers presented this agenda bill and application for a Shoreline Substantial Development Permit (SSDP) by the City of Oak Harbor to construct uplands improvements associated with the Multimodal Facility Project in Flintstone Park. Since this was a quasi-judicial proceeding, City Attorney Hite talked about the need for Councilmembers to each determine whether the appearance of fairness doctrine requires that the Councilmember recuse himself or herself from sitting on the quasi-judicial matter, and if the matter is a land-use decision and this is the City's own application, each Councilmember shall identify the following for this proceeding:

1. If they own property within 300 feet of the subject property.
2. If they stand to gain or lose any financial benefit as a result of the outcome of the hearing.
3. If they have any personal, family or other connection to any party such that their ability to be impartial might be called into question.
4. Whether they can hear and consider the application in a fair and objective manner.

Councilmember Dudley answered no to 1 through 3, and to number 4 he could consider the application in a fair and object manner.

Councilmember Severns stated that he has a 1/3 interest in property within 300 feet and asked to be recused from this discussion.

Councilmember AlMBERG answered no to 1 through 3, and to number 4 he could consider the application in a fair and object manner.

Councilmember Paggao answered no to 1 through 3, and to number 4 he could consider the application in a fair and object manner.

Councilmember Campbell answered no to 1 through 3, and to number 4 he could consider the application in a fair and object manner.

Councilmember Munns answered no to 1 through 3, and to number 4 she could consider the application in a fair and object manner.

Upon disclosure of any of the above potential appearance of fairness concerns, the public was given an opportunity to object to any Councilmember sitting on the quasi-judicial matter based on the appearance of fairness doctrine. There were no objections from the public.

Ms. Hite then discussed ex parte contacts which are contacts about the quasi-judicial matter occurring outside of the open public hearing at which it is decided. Every Councilmember shall disclose any ex parte contact(s) he or she had and describe them on the record prior to the quasi-judicial hearing. Unless the Councilmember feels that the ex parte contact(s) have affected his or her ability to be fair, the fact that the Councilmember has had ex parte contact(s) shall not disqualify a Councilmember provided that the Councilmember discloses those contacts on the record prior to the quasi-judicial proceeding. In any case in which a Councilmember has disclosed ex parte contact(s), any party to the quasi-judicial hearing shall be allowed to rebut the substance of the ex parte contact(s) either prior to or during the quasi-judicial hearing.

Councilmember Dudley stated that he had a conversation with Finance Director Doug Merriman last Thursday regarding the financing of this project. Mr. Dudley also had a conversation with Paul Brewer about the financing of this project. Mr. Dudley talked about standing committee discussions where three Councilmembers are in attendance and how the City will pay for this \$1.4 million project with \$800,000 in grant funds and \$600,000 needed from the City. In the conversation with Mr. Merriman, it does not sound like REET funds can be used. This is what Mr. Dudley said to Mr. Brewer; how can we spend money we don't have, how can we move forward on this project. Councilmember Dudley said this would have no effect on his ability to be fair.

Councilmember AlMBERG said he had talked with staff to refresh his understanding of the global Windjammer Park Project and the downtown redevelopment plan. Mr. AlMBERG also had an on-street conversation with Paul Newman and the Multimodal Facility Project was discussed. Councilmember AlMBERG said this would have no effect on his ability to be fair. City Attorney Hite asked about the substance of these conversations. Mr. AlMBERG, with regard to staff (Mr. Powers and Mr. Johnston), noted that what is before us is a shoreline substantial development permit and he asked about the length of time for this permit and if there is an expiration date and/or ability to renew the permit. Mr. AlMBERG noted that his conversation with Mr. Johnston was more technical in nature with regard to the Windjammer Plan. Mr. AlMBERG stated that he had the same course of conversation with Mr. Newman, talked about the condition of the existing restroom, and did not support a stand-alone building that is only a restroom. Mr. Newman summarized his Sound Off article and, when looking at it as a stand-alone, felt the funds should be returned which would make a statement.

Councilmember Paggao had no ex parte contacts.

Councilmember Campbell had a short conversation with a person who uses that area to feed the homeless. Councilmember Campbell said this would have no effect on his ability to be fair.

Councilmember Munns had no ex parte contacts.

Councilmember Dudley also noted a conversation with Councilmember Campbell after the Public Works Standing Committee meeting and briefed him on what I disclosed.

There was no public rebuttal to the ex parte contacts as stated above.

Development Services Director Powers noted that this evening's presentation is for the Shoreline Substantial Development Permit and is not an authorization for bid or project construction. As noted in the agenda bill's timeline, this project has been subject to a lot of review over the years with a large amount of public involvement. The Pier Committee, Parks Board, Planning Commission, and City Council have taken a number of actions related to this project.

Mayor Slowik opened the public hearing at 9:45 p.m.

Billie Cook, 651 SE Bayshore Drive, Oak Harbor. I do hope when financing comes forward the Council looks toward how to fund beyond the grant. I don't think it is in compliance with current shoreline practices. I cannot see the water with this building in place. This is a small park and there is too much development for it. 90-person capacity for the building and only 12 parking spaces. This is not consistent with good practices to have so much in a small area.

Carla Dozier, 830 SE Bayshore Drive, Oak Harbor. This is directly in front of my building and I've been in business for 30 years. The waterfront is one of our last resources. I never thought that a public park would change my view to the water. I have concerns with parking and the increase of traffic on Bayshore. With 100 people at an event, where are you going to park?

Helen Chatfield-Weeks, 1415 SE 9th, Oak Harbor. We have members of the Park Board here, we are talking about the shoreline permit and we take seriously the Planning Commission's suggestion to say yes.

Paul Brewer, 225 NE Ernst, Oak Harbor. When this first came up, the Pier Project was in mind and this was a passenger ferry ticket office. It has grown beyond its intent. We went out for the grant money for the Pier Project, not for this. We already have problems with Element Nightclub and will have the same with events in this building. Who is going to pay for the maintenance of that facility? The \$600,000 in matching funds, where are we going to get it? This is just another project that we are pushing through. I don't want to see the condominium residents complaining like those around Element. Is it zoned for an events center? The pier will never be built. Do we want to throw more money into a bad project or send the grant funds back.

Paul Newman, 886 SE Bayshore Drive, Oak Harbor. The project will not affect my view, but I would like to mention three more things:

Public honesty. All of Mr. Powers slides said Municipal Pier Project which was the genesis; not an events center. It has indeed changed.

Secondly, Noise. I have been impacted by Element Nightclub and my fence has been wrecked. An event with 100 people will impact parking and traffic. It is not needed. Finally, there are not that many vest pocket parks in Oak Harbor. Refurbish, don't demolish. Don't change the character of this park for something that never was the genesis.

Sandy Peterson, 964 NW Longview, Oak Harbor. I don't live near this park. If you put a larger building on that park land, you will change what will flow into the bay. We don't have much shoreline. If we run dirt into it, we have to pay to clean it up. You can make the park pretty without impacting the land so much.

Dr. Dawn Keith-Madeiras, 840 SE Bayshore Drive. I will be partially impacted by the loss of my view. I haven't seen what will come to fruition until the downtown is settled. Parking cannot be accommodated and the Pioneer Way Project was not dealing with cars. This is ahead of itself and not financially viable.

Mel Vance, P.O. Box 2882, Oak Harbor. If it is decided to build a smaller project, do we have to go through the permit process again? Scaling back, could we use part of the grant and give the rest back. A lot of questions need to be answered especially in light of what is happening on Pioneer Way. Save the money toward what is happening there.

Break

Mayor Slowik called for a break at 10:00 p.m. and the meeting reconvened at 10:10 p.m.

Council Discussion

Councilmember Dudley asked Finance Director Doug Merriman why he did not initial the agenda bill. Mr. Merriman responded that he had concerns about the project itself and the project's funding issues even though this agenda bill is for the shoreline substantial development permit. I want us to talk about funding now. Mr. Merriman was asked about his concerns. Mr. Merriman said that he needed to set aside political and future needs and look at the numbers. Back when this started we were looking at grant funds and what we would get back. Looking at the history of this project, the City's out-of-pocket costs have lessened our rate of return from \$4.00 to \$1.25 now. We have not had a lot of staff discussion about where that City money is coming from. Prior to the concept of the ferry evaporating, we took out \$493,000 in grants and if the project is not completed, we would have to pay the grants back. Right now today, two aspects will cost us \$900,000 out-of-pocket cash: \$600,000 and \$300,000 to pay back the initial grant. To improve what we have is about \$600,000. Today, \$300,000 of out-of-pocket money is paying for the multimodal project. Is it prudent to spend funds for a project that, in the future, may not be done? Consider the law of escalation: we need to have these discussions before we get too far into the project.

Council discussion followed about the \$606,000 from REET funds which was presented to the Public Works Standing Committee and where that funding would come from. Mr. Merriman noted that a significant portion was committed to Pioneer Way. Our bidding came in less than expected. Our savings would return some of that money back to the REET fund. Mr. Merriman also talked about a meeting held yesterday (which was after

the agenda packet's distribution) that identified three funding sources. Council discussion followed about Mr. Merriman's concerns, noting that this was new information and brings considerable doubts. Is there a timeline for when the funds have to be spent? City Administrator Schmidt responded that there is a timeline but he did not have the exact date. Council asked for the "drop dead" date and funding conditions (i.e., could funds be used to dredge an existing channel accessing the floating dock). Mr. Schmidt noted that these funds must specifically augment the public transit facility on the other side of the street; that is what originated transit funds as a source. Council asked if the transit funds could be co-mingled with Federal funds for transient moorage improvements downtown and Mr. Schmidt responded that he did not know if the grant funds would be convertible. Those funds were specific to Island Transit's facility; that is how these funds were acquired and the City would be held to that scope. Mr. Powers was asked if the permit application is approved, could he determine the expiration date. Mr. Powers noted that it could be extended: the project would have to begin within two years of the effective date – the date that the Department of Ecology takes action. The City can then extend by one year. The project has to be completed within five years, but there could a one-year extension from that date, as well. Discussion followed about the circulation design as shown in the site plan and if the City is bound by that design. This circulation pattern allows for a lot of traffic. Could the pattern be changed under this permit? Emergency access could be accommodated with other surfaces. What is the compelling reason for having asphalt and parking so close to the Waterfront Trail? Mr. Powers noted that the project's genesis goes back to some level of improvement for existing circulation and parking. The site plan in the agenda bill is intended for more formalized parking, and the use of the building as an event center would necessitate parking to work with that building. Mr. Powers, in response to whether the City would be bound to the design, noted there is room for variations in that plan, but there would be additional design costs to redo the design drawings. Council talked about the scale of the asphalt which seems out-of-scale for this small site, and whether the permit is ready for submittal. The City has already invested in that process and if approved tonight or at a future date, would be submitted to the Department of Ecology which then has 30 days to approve the permit. The Flintstone Car would remain onsite. Council discussion followed about future opportunity for review of the design, budget, and authorization for the bidding process. It was clarified that this evening's agenda bill is only presenting the Shoreline Substantial Development Permit for Council's consideration. Future meetings would address design, budget, authorization for bidding, and contract award. The Shoreline Substantial Development Permit would still be needed in spite of any design changes and further project research.

MOTION: Councilmember Munns moved to approve the Shoreline Substantial Development Permlt. The motion was seconded by Councilmember Paggao.

Continued Discussion

Discussion followed about the \$2,118 application fee (the City charges itself this fee since it is City property), concern over funding for this project, and the desire to see the project's financing before moving forward.

VOTE ON THE

MOTION: Council unanimously opposed this motion and the motion failed.

Councilmember Severns returned to the meeting.

Public Hearing – Ordinance amending OHMC re: Temporary Political Signs (Interim).

Development Services Director Steve Powers led this agenda bill which presented an Interim ordinance amending OHMC 19.36.080(8), the portion of the City's sign code dealing with temporary political signs. Legal review raises concerns about the enforceability of the provision limiting the placement of campaign signs to the 60-day period immediately preceding an election. The recommendation is to eliminate the language limiting the campaign sign period to 60 days pre-election but not to modify the other existing provisions. This ordinance was proposed as an interim ordinance while undergoing Planning Commission and Department of Commerce review. This matter was prompted by a citizen complaint requesting enforcement of the City's temporary political signs ordinance. Mr. Powers noted that the American Civil Liberties Union of Washington had sent an email and commenting letter this afternoon (July 12, 2011 at 4:31 p.m.) which is attached to these minutes as Exhibit E.

Mayor Slowik opened the public hearing at 10:45 p.m.

Shane Hoffmlre, 50 SW 8th Avenue, Oak Harbor. Act tonight for full and immediate repeal. Don't be misled by staff any longer. This ordinance is ridiculous and unnecessary. Do what is constitutionally obligated. I speak for my beloved community.
Paul Brewer, 225 NE Ernst, Oak Harbor. I would like to see this ordinance repealed. Political signage is selectively enforced by the City, County, and State. Freedom of speech is vital and that is the issue. You should be allowed to put up signs when you first file.

Mel Vance, P.O. Box 2882, Oak Harbor. When it comes to candidates, there are State regulations that come into play, and they should be adopted. This is an ordinance about issues. Bumper stickers are on cars year round. The proposed wording is better than what I was going to ask for.

Sandy Peterson, 964 NW Longview Drive, Oak Harbor. We should be careful about being too far-reaching. People have a right to know who is running; freedom of speech should ring out.

With no other comments coming forth, Mayor Slowik closed the public hearing at 10:50 p.m.

Council Discussion

Council discussion noted that the ordinance is not being repealed, there is a section change within the OHMC addressing temporary and special signs 19.36.080 (8) Political Signs on Private Property not a Headquarters. Using an interim ordinance will allow the City time for Planning Commission and Department of Commerce review. Mr. Powers noted that striking all of the language leaves nothing saying that political signage is an

RESOLUTION NO. 11-12

A RESOLUTION OF THE CITY OF OAK HARBOR WITHDRAWING SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT # PLN-11-00002, REQUESTING THE FEDERAL TRANSIT ADMINISTRATION WITHDRAW FTA FUNDS IN THE AMOUNT OF \$836,000 AND REMOVING THE MULTIMODAL PROJECT FROM THE CURRENT 2011-2016 CAPITAL IMPROVEMENT PLAN, THE 2012-2017 TRANSPORTATION IMPROVEMENT PLAN, THE COMPREHENSIVE PLAN, THE TRANSPORTATION PLAN AND THE PARKS, RECREATION AND OPEN SPACE PLAN.

WHEREAS, the Multimodal Project (aka the Municipal Pier Project) has been an important part of the City's waterfront planning over the past decade; and

WHEREAS, the City Council of the City of Oak Harbor is deeply grateful for the citizen volunteers who so freely donated of their time to try to help this project become a reality; and

WHEREAS, the City Council is likewise appreciative of the efforts of United States Congressman Rick Larson who has tirelessly and successfully lobbied for federal funding for this project on behalf of the citizens of Oak Harbor; and

WHEREAS, the City Council acknowledges that after conducting a public hearing, the Oak Harbor Planning Commission concluded the project is consistent with the City's Shoreline Master Program and therefore recommended its approval; and

WHEREAS, during their public hearing on this matter on July 12, 2011 the City Council expressed strong concern regarding the City's ability to provide a funding match for the Federal Transit Administration grant that is intended for this project; and

WHEREAS, at that same public hearing the City Council accepted public testimony, some in support of the project and some that raised project design and scope concerns; and

WHEREAS, while the City Council believes the project could play an important part in the redevelopment of Oak Harbor's waterfront, Council is concerned with the fiscal responsibility of undertaking a new capital project at this time and especially a project that could require an approximate \$600,000 match of City funds; and

WHEREAS, the City Council does not believe it is appropriate to continue with the shoreline permitting process at this time given project funding concerns; and

WHEREAS, rather than consider a motion to deny the permit, the City Council believes it more appropriate to withdraw the permit; and

WHEREAS, without a shoreline substantial development permit the project cannot proceed to construction; and

WHEREAS, if the project cannot proceed to construction in the very near term it is appropriate for the City to return the Federal Transit Administration grant; and

WHEREAS the Multimodal Facility Project is referenced in the Oak Harbor Comprehensive Plan, the Transportation Plan, the Parks and Recreation Plan, the Capital Improvement Plan and the Transportation Improvement Plan; and

WHEREAS, the continued reference to this project in the City's planning and capital project planning documents is no longer appropriate given the Council's desires that this project not be undertaken at this time;

NOW, THEREFORE BE IT RESOLVED by the City Council of the City of Oak Harbor as follows:

1. The Shoreline Substantial Development Permit for the Multimodal Facility (Permit No. PLN-11-00002) shall be withdrawn and the Development Services Department shall take the necessary steps to complete this action.
2. The Mayor is directed to take the necessary steps to return the transportation grant in the amount of \$836,000 to the Federal Transit Administration.
3. The Development Services Department is directed to prepare the necessary revisions to those plans containing reference to the Multimodal Project (aka the Municipal Pier Project), that would delete the project from the current 2011-2016 Capital Improvement Plan, the 2012-2017 Transportation Improvement Plan, the Comprehensive Plan, the Transportation Plan and the Parks, Recreation and Open Space Plan, and to process those revisions at the appropriate time to update each of the referenced plans.

PASSED and approved by the City Council this 20th day of September, 2011.

THE CITY OF OAK HARBOR

Jim Slowik
Mayor

Attest:

City Clerk

Approved as to form:

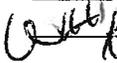
Margery Hite
City Attorney

**City of Oak Harbor
City Council Agenda Bill**

Bill No. 7
Date: September 20, 2011
Subject: Resolution- Wastewater Facility
Plan

**FROM: Cathy Rosen, Public Works Director
Eric Johnston, City Engineer**

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

 Jim Slowik, Mayor
 Paul Schmidt, City Administrator
 Doug Merriman, Finance Director
 Margery Hite, City Attorney, as to form

Mr. Merriman was attending the WFOA Annual Conference in Spokane and was unable to review this agenda bill.
- *Connie Wheeler*

PURPOSE

This agenda bill proposes adoption of a resolution related to three candidate sites for a new wastewater treatment facility.

AUTHORITY

The City has authority under RCW 35A.11.020 to render governmental services including operating and supplying of utilities and municipal services commonly or conveniently rendered by cities or towns. Planning for those services as may be required under WAC 173-240 is included in this authority.

SUMMARY STATEMENT

On July 27, 2011 a workshop with the City Council was held to present and discuss the status of the wastewater facility planning process and to present three sites for further consideration. As discussed during the workshop, a resolution would be presented for consideration and adoption by the Council. The resolution authorizing and directing the project team to proceed with the three candidate sites presented during the workshop is attached.

A public forum was also held on August 24, 2011 at which the information presented at the Council workshop was presented and public input was sought.

Information presented at both the public forum and Council workshop was made available to the public via the project website. Videos of both the forum and the workshop were broadcast on Channel 10.

STANDING COMMITTEE REPORT

This item was presented to the entire City Council at a workshop held on July 27, 2011.

RECOMMENDED ACTION

Adopt the resolution 11-10.

ATTACHMENTS

Exhibit A - Resolution 11-10.

Exhibit B - Council workshop presentation slides

Exhibit C - Public forum presentation slides

MAYOR'S COMMENTS

RESOLUTION NO. 11-10

A RESOLUTION OF THE CITY OF OAK HARBOR DIRECTING THE EVALUATION OF POTENTIAL SITES FOR A FUTURE WASTEWATER TREATMENT FACILITY.

WHEREAS, the 2008 City of Oak Harbor Comprehensive Sewer Plan identifies the need for a new wastewater treatment facility to meet future growth needs and to replace aging and at-risk infrastructure; and

WHEREAS, recognizing that the City of Oak Harbor is connected to the pristine waters of Puget Sound, specifically Oak Harbor Bay and Crescent Harbor Bay, the City's goal is to obtain the highest level of water quality practical while recognizing the limitations of the rate payers of the City to fund the improvements; and

WHEREAS, the City of Oak Harbor Capital Improvement Plan of 2010-2015 specifically lists the Wastewater Treatment Plant Facilities Plan as a prioritized public project to be undertaken within the capital improvement plan time period; and

WHEREAS, on August 4, 2010 the City Council authorized the Mayor to enter into a contract with Carollo, Inc. for development of the aforementioned Facilities Plan required by RCW 90.48.110 and Chapter 173-240 WAC for a new wastewater treatment facility; and

WHEREAS, public input was sought, received and considered on potential wastewater treatment plant locations resulting in the identification of 13 potential locations; and

WHEREAS, input from the U.S. NAVY was sought, received and considered on potential wastewater treatment plant locations; and

WHEREAS, public input was sought, received and considered on the evaluation criteria to be used; and

WHEREAS, input from various stakeholder groups including the U.S. Navy, the Washington State Department of Ecology, Washington State Department of Health, was sought and incorporated into the evaluation criteria; and

WHEREAS, based on input from the public, various stakeholder groups, technical staff, engineering professionals and City staff, five equally weighted categories, being Social, Technical, Environmental and Financial, were developed for the evaluation of all potential site locations, and

WHEREAS, the Social criteria are as follows: 1) Protect Public Health and Safety, 2) Preserve/Enhance Public Amenities, and 3) Minimize Neighborhood Impacts; and

WHEREAS, the Environmental criteria are as follows: 1) Produce Best Water Quality, 2) Protect Environmental Sensitive Areas, and 3) Minimize Carbon Footprint; and

WHEREAS, the Technical criteria are as follows: 1) Reliable Performance, 2) Ease of Construction, and 3) Overall System Efficiency; and

WHEREAS, the Financial criteria are as follows: 1) Low Capital Cost, 2) Low Life Cycle Cost, and 3) Protect Assets for Future Development; and

WHEREAS, as directed by City Council Resolution 11-07, the 13 candidate sites were narrowed to 5 candidate sites; and

WHEREAS, Carollo Inc., provided a report to the Council, on July 27, 2011 comparing the 5 candidate sites; and

WHEREAS, public input has been sought, received and incorporated in the analysis of the 5 sites; and

WHEREAS, Carollo Inc has evaluated outfall locations to West Beach, Crescent Harbor Bay, and Oak Harbor Bay and has recommended that Oak Harbor Bay is the preferred location for a treated wastewater effluent outfall; and

WHEREAS, Carollo Inc has evaluated both membrane bioreactor and activated sludge treatment process and found that the membrane bioreactor process presents the best means of meeting the goals of City in provide the highest quality water and that the membrane bioreactor process is best suited to meet the goals of the community as determined from public input through forums, surveys, comment letters; and

WHEREAS, in order to efficiently and cost effectively study alternatives further it is necessary to narrow from five candidate sites to three candidate sites; and

WHEREAS, after applying the aforementioned criteria there are three candidate locations that best meet the City's goal and objectives;

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Oak Harbor as follows:

1. That Carollo, Inc., acting on behalf of the City and under the management of the City Engineer, is directed to evaluate three locations for further consideration as part of the wastewater treatment facility planning process.
2. That the three locations to be evaluated further are generally shown on Exhibit A and are referred to as:
 - a. Windjammer Park
 - b. Old City Shops
 - c. Crescent Harbor
3. That the Membrane Bioreactor (MBR) treatment process will be considered at all three sites.
4. That an effluent outfall to Oak Harbor Bay will be considered for all three sites.
5. That additional public input will be sought and incorporated in the analysis and development of all three alternative sites.
6. That a report will be provided to the City Council comparing the three candidate sites together with a recommendation for a preferred site.
7. That, as appropriate, additional sites, outfall locations and processes may be considered as may be directed by the City.

PASSED and approved by the City Council this 20th day of September, 2011.

THE CITY OF OAK HARBOR

_____, Mayor

Attest:

City Clerk
Approved as to Form:

City Attorney

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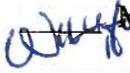
City of Oak Harbor City Council Agenda Bill

Bill No. 8
Date: September 20, 2011
Subject: Feasibility Study – Funding of
Private Shipyard Enterprise

FROM: Paul Schmidt
City Administrator



INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

 Jim Slowik, Mayor
 Doug Merriman, Finance Director
 Margery Hite, City Attorney, as to form

Mr. Merriman was attending the WFOA Annual Conference in Spokane and was unable to sign this agenda bill. He did provide text for the summary statement.
- Connie Wheeler

PURPOSE

The purpose of the agenda bill is from a motion by Councilmember Dudley and second by Councilmember Campbell to discuss the possibility of the City of Oak Harbor contributing to a feasibility study to secure a new Nichols Brothers boat assembly operation on the Seaplane Base.

AUTHORITY

OHMC 1.04.020(3)

Public Notice for full council agenda – Introduction of action.

(3) Matters introduced by a councilmember which are seconded by another councilmember and not on the agenda shall be set over to another full council meeting for consideration and action, if any. Every councilmember-initiated agenda item shall be stated by the initiating councilmember for the agenda in the form of a proposed action item such as council discussion, a motion, resolution or ordinance. As an exception to the provision of this subsection, the following matters after motion and second may be considered and acted upon during the same meeting they are introduced:

- (a) Matters declared an emergency;
- (b) Directions to staff to prepare documents or reports or both for consideration; or
- (c) Scheduling of meetings. (Ord. 1578 § 4, 2010; Ord. 1115 § 1, 1997; Ord. 1031 § 1, 1996; Ord. 817 § 1, 1988).

City of Oak Harbor City Council Agenda Bill

FISCAL IMPACT DESCRIPTION

Funds Required: Estimated at \$40,000.

Appropriation Source: To be determined.

SUMMARY STATEMENT

During the public comments period of the September 6, 2011 City Council meeting, Jill Johnson, Executive Director of the Greater Oak Harbor Chamber of Commerce felt an impasse between the County, Navy, and Nichols Brothers had been reached toward funding a feasibility study. If Council wishes to consider this proposal, what City funding source would be considered, in part or in whole, for a feasibility study to locate a private boatbuilding enterprise on Federal property.

Use of City funds for this specific purpose could be called into question by the State Auditor. Possibly a more acceptable approach would be to authorize the Mayor to bring back a report to City Council outlining the economic development potential and means to secure the use of Federally owned property through the formation of public/private partnerships.

City Council may amend the 2011/2012 Annual Budget to appropriate the funds for this purpose.

STANDING COMMITTEE REPORT

N/A

RECOMMENDED ACTION

Further direction from City Council on requesting a report to study the economic development potential of securing Federal owned property through the formation of public/private partnerships.

ATTACHMENTS

None.