



## SPECIAL WORKSHOP MEETING NOTICE OAK HARBOR CITY COUNCIL

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**NOTICE IS HEREBY GIVEN** that the Oak Harbor City Council will hold a Workshop Meeting on:

**Date:** Wednesday, March 25, 2015

**Time:** 3:00 p.m. – 5:00 p.m.

**Location:** City Hall Council Chambers, 865 SE Barrington Drive, Oak Harbor, WA 98277

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### AGENDA

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**1. Introduction of New Employees**

**2. Departmental Briefings**

- a. FEMA – Revised Flood Insurance Rate Maps & Flood Insurance Study - DS

**3. Pending Agenda Items**

- a. Cronin Forestry Contract (4/21) – PW
- b. Wastewater Treatment Plant Outfall - GMP Amendment No. 2 to Contract (4/07) – PW
- c. Ordinance 1725: 2015-2016 Biennial Budget Amendment for Lighting Project (4/07) – Finance
- d. Resolution 15-06: Interfund Loan to Fund Ameresco Lighting Project (4/07) – Finance
- e. Ordinance 1726: Marina Spectator Rate (4/07) – DS
- f. Purchase Authorization – Fuel Pump Upgrades (4/21) – PW
- g. Freund Marsh Restrictive Covenant (4/07) – PW
- h. Snyder Annexation (4/21) – DS

**4. iPad Orientation for City Council**

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Anna M. Thompson

City Clerk

Posted on March 20, 2015

POSTED: City Hall Bulletin Boards

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Mayor Scott Dudley

Oak Harbor City Council

Directors

REMOVE:

After March 25, 2015

The City Council may meet informally in workshop sessions (open to the public) to do concentrated strategic planning, to review forthcoming programs of the City, receive progress reports on current programs or projects, or receive other similar information from the City Administrator, provided that all discussions and conclusions thereon shall be informal. Council shall make no disposition of any item at a workshop meeting. Public comment is not normally allowed at workshop meetings, although Council may allow, or request participation.

**Please contact the City Clerk at 360-279-4539 within 24 hours advance notice for special accommodations.**



# Workshop Item

## **Pending Agenda Items**

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**Item 3.a Cronin Forestry Contract**

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**Cathy Rosen, Public Works Director**

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## **Attachments**

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Agenda Bill and Attachments

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

Bill No. \_\_\_\_\_

Date: April 21, 2015

Subject: Report from Cronin Forestry

**FROM: Cathy Rosen, Public Works Director**

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

- Scott Dudley, Mayor
- Larry Cort, City Administrator
- Doug Merriman, Finance Director
- Nikki Esparza, City Attorney, as to form

**RECOMMENDED ACTION**

Motion to approve an agreement with Cronin Forestry.

**BACKGROUND / SUMMARY INFORMATION**

The purpose of this agenda bill is to give an update to the City Council regarding Cronin Forestry's lumber cruise, completed on City owned properties at Sleeper Road (40 acres) and at the end of NE 16th Avenue and Goldie Road (3.39 acres).

**LEGAL AUTHORITY**

**FISCAL IMPACT**

**PREVIOUS COUNCIL / BOARD / CITIZEN INPUT**

On August 6, 2014, the City Council authorized staff to hire Cronin Forestry to conduct a forest cruise of City owned properties. Mr. Cronin was also instructed to have three different logging scenarios available for consideration: clear cut, 50% thinning and 75% thinning, along with projected values for each, so that Council might have options to decide from.

Mr. Cronin has also included some information on permitting as well as possible restrictions that may be placed on the properties depending upon which option the Council chooses.

This Report was discussed at the January 28 and the March 25, 2015 City Council Workshops.

**ATTACHMENTS**

1. [Report from Cronin Forestry](#)

Cronin Forestry  
 371 Hidden Trails Road  
 Port Townsend, WA 98368  
 360-385-5454

[cronin@broadstripe.net](mailto:cronin@broadstripe.net)

# Unit 1 Cruise Summary

November 17, 2014

**Landowner:** City of Oak Harbor, Department of Public Works.

Island County Parcels R13324-461-2980 & R13324-461-3620

Approximately 40 acres located in Section 24, T33N, R1E. W.M. near Oak Harbor, WA.

With the void areas deducted the **net cruise acreage = 34 acres**

**Cruise method:** Variable Plot cruise at BAF 33.61 with 36 plots on a grid of 264' x 165'.

Cruised and graded in 32' logs. Minimum cruise tree = 20 BF. Combined S.E. = 6.2

Species...	average diameter...	# trees...	form factor...	gross volume...	net volume
DF	13.5"	5066	75	619 MBF	564 MBF
WH	13.6	852	78	112	103
LP	11.8	333	78	24	21
RC	22.8	145	59	34	28
RA	14.4	141	80	16	13
<b>Total</b>	<b>14.0</b>	<b>6,537</b>		<b>805 MBF</b>	<b>729 MBF</b>

### Grade/sort summary:

**DF, Douglas fir ...** 12"+ SL = 118 MBF, 8"+ SL = 215 MBF, 8-11, 5" + C&S/SL= 197 MBF, pulp = 34 MBF

**WH, Western hemlock...** 12"+ SL = 10 MBF, 8-11"SL = 14 MBF, 5"+ C&S = 25 MBF, Pulp = 9 MBF

**RC, Red cedar...** # 3SL = 25 MBF, # 4SL = 3 MBF

**LP, Lodgepole pine...** 8-11" SL = 6 MBF, 5"+ C&S = 10 MBF, pulp = 5 MBF

**RA, Red Alder...** 12" + SL = 8 MBF, 8-11" SL = 3 MBF, Pulp = 2 MBF

### **Cruiser Notes:**

1. Some of the hemlock has indications of frost crack which is prevalent in this area. If this defect is worse than expected, a higher percentage of low value pulp may result.
2. These parcels have not been recently surveyed and some question of exact property line locations may arise.
3. On the north end of the west line of the west parcel an old wire fence was noted. This remnant fence runs north to a steel cover embedded in SR 20 and aligned with the CL of Sleeper Road. This may or may not be a survey monument for the NW corner.
4. A maintained fence corner with no survey monument found is located at the SE corner of the east parcel. This is believed to be the corner.

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[cronin@broadstripe.net](mailto:cronin@broadstripe.net)

## Unit 2 Cruise Summary

December 12, 2014

**Landowner:** City of Oak Harbor, Department of Public Works.

Island County Parcel R13326-009-2990

Approximately 3.3 acres located in the city of Oak Harbor, WA. on the West side of the junction of NE Goldie ST and NE 16<sup>th</sup> Ave.

**Cruise method:** 20% strip cruise with 4 strips of 33' run E-W through parcel.  
Cruised and graded in 32' logs. Minimum cruise tree = 20 BF.

Species...	average diameter...	# trees...	form factor...	gross volume...	net volume
DF	15.8"	480	74	86 MBF	81 MBF

### Grade/sort summary:

DF, Douglas fir ... 12"+ SL = 35 MBF, 8"+ SL = 23 MBF, 5" + C&S/SL = 20 MBF,  
pulp = 3 MBF

### **Cruiser Notes:**

A rebar and cap survey monument is located at the SE parcel corner with an old flag line running west along the south parcel boundary. Pink flagging was added to this south line. A 4"x4" concrete survey monument was located at the SW parcel corner. The west line is marked by a fence line assumed to be correct.

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## City of Oak Harbor Timber Value

12/10/14

### Considerations in estimating Oak Harbor timber sale values:

A November 2014 negotiated price for similar quality DF on Whidbey Island private landowner = \$675.00/MBF. Estimating a total production cost of \$200.00/MBF and a Profit/Risk of 10% the stumpage value for DF =  $\$675.00 - 200.00 = \$475.00 - 10\% = \$427.50$  estimated stumpage value in November 2014.

WADNR NW Region (Sedro Wooley office) timber sales sold in October and November average:

Appraised value per MBF = \$335.00 Average bid value = \$483.00/MBF = 44% overbid

Minimum bid for appraisals of DNR NW Region timber sales proposed for May 2015 average = \$289.50/MBF

This indicates a projected 14% reduction in market value from November 2014 sales. This predicted market softening is consistent with industry projections for 2015.

Estimated average stumpage value for DF dominated, mixed conifer timber to be sold in 2<sup>nd</sup> qtr. 2015 = \$390.00/MBF

The appraised value and resultant minimum bid for this timber sale should be consistent with DNR sales of similar timber within NW Region and it will be somewhat less than the expected bid value.

With approved class 3 FPA and no restrictions beyond required WRTs and GRTs (wildlife trees).

#### Total timber on both parcels may be expected to yield:

729 MBF Unit 1 @ average projected bid stumpage of \$390.00 = \$284,310.00

81 MBF Unit 2 @ average projected bid stumpage of \$390.00 = \$ 31,590.00  
**\$315,900.00**

If Unit 2 is not included with the larger sale the expected value of this small unit will be substantially reduced.

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## City of Oak Harbor Timber Value

12/10/14

### Harvest Intensity Considerations

No streams, significant wetlands or other sensitive areas were found on either site. The small ponded water area on the Sleeper Road unit should not require a significant buffer zone. Until the FPA is approved it is not possible to be 100% sure of possible harvest restrictions.

**Clearcut (or even-aged management) harvest** of all legally available timber will yield the highest return and can be done under a Class 3 FPA. This harvest type requires retaining a minimum of 3 Wildlife Reserve Trees (WRTs) and 2 Green Recruitment Trees (GRTs) per acre. WRTs are dead dying and or defective trees and GTRs can be selected from low value trees also so that the timber value left is minimal.

This harvest type requires reforestation in the form of hand planting tree seedlings or a natural regeneration plan approved by WADNR. A natural regeneration Plan requiring well distributed seed trees may be a better option than planting seedlings likely to be destroyed by a future landowner. Some opposition by neighbors and/or environmental interest groups can be anticipated.

Total timber value = \$315,900.00 - \$13,500.00 planting cost = **\$302,400.00 total option value.**

**50% Thinning** Variable density or uniform thinning with 50% of the timber removed on all parcels. Logging costs as well as administrative costs will be higher.

Some reforestation would be needed to restock the voids created. Aesthetic impacts will be significantly reduced from those of the CC option.

Opposition by neighbors and/or environmental interest groups will likely be low or non-existent

Total timber value = \$315,900.00 x 50% = \$157,950.00 less 20% increase in harvest and sale prep/adm. costs = approximately \$126,360.00 - \$4,000.00 planting cost = **\$122,360.00 total option value.**

**75% Thinning** Variable density or uniform thinning intended to remove 75% of net timber volume would be best done by patch cutting 75% of the area and excluding 25% rather than by evenly distributing the harvest throughout the parcels. Reforestation would be required and a thinning of this intensity would need to be permitted as "even-aged management" would require reforestation. Aesthetic impacts will be somewhat reduced from those of the clearcut option. Opposition by neighbors and/or interest groups is anticipated to be similar to that of the clearcut option.

Total timber value = \$315,900.00 x 75% = \$236,925.00 less 15% increase in harvest and sale prep/adm. costs = approximately \$201,386.00 - \$10,125.00 planting cost = **\$191,261.00 total option value.**

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## City of Oak Harbor Timber Value

12/11/14

### Permitting considerations

A Forest Practices Application (FPA) is required to harvest timber in Washington State. The FPA can be a standard class 2 or 3 application whereby the landowner makes no mention of future land use change or a conversion application (class 4 general) issued when the landowner indicates a pending change of land use from forestry.

If the landowner states no plans for converting the land to another use incompatible with growing trees and there are no threatened and endangered species associated with the site, the standard class 2 or 3 FPA fee is \$100.00 and WADNR is the lead agency. These permits usually take 30 days for approval and are valid for 3 years. No reforestation is required after harvest under a Conversion FPA.

If the landowner states that they intend to "convert" the land regardless of the current tax designation, the permit is a class 4. These conversion permits involve the county as well as WADNR and require no reforestation. In the case of the City 3.3 acre parcel a conversion permit would be issued by the City of Oak Harbor rather than by Island County.

Class 4, conversion permits may be either standard conversion or the abbreviated "Conversion Option Harvest Plan" (COHP) the COHP often used when a landowner wants to clear a part of the parcel to facilitate home construction. These COHPs are a little less expensive but usually restrict timber harvest to approximately 50% of the current timber volume. Standard, class 4 conversion permits for these 2 units would cost \$3,000.00 or more and likely take several months for approval. The County or City requirements must be met prior to submitting the application to DNR.

Timber harvest done under a class 3 FPA usually results in a "Moratorium" of 6 years being placed on the parcel(s). This means the County will not issue a building permit or other development type permit for 6 years after the harvest. As with most restrictions there is a process for a landowner to "buyout" or pay penalties to have this moratorium lifted. It is not clear how expensive this process is. Reforestation of the site by hand planting or through an approved Natural Regeneration Plan is required after harvest under a class 3 FPA. If the parcels are clearcut, planting costs are estimated at \$300.00 to \$400.00 per acre. Total cost to plant both units to minimal legal standards is estimated at \$13,500.00. A Natural Regeneration Plan will require the landowner to leave  $\geq$  8 well-formed seed trees per acre distributed across the harvest unit so that no harvested area is greater than 400 feet from a seed tree. These seed trees must be marked ahead of permit approval and DNR must certify the successful regeneration of the site before these trees can be removed. The Landowner must also commit to control of competing vegetation after harvest to insure that the natural seedlings are not suppressed by brush.

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## City of Oak Harbor Timber Harvest

### EXECUTIVE SUMMARY

(12/11/14)

The two parcels located along Sleeper Road are referred to as Unit 1 and the 3.3 acre parcel located within the City is referred to as Unit 2.

MBF = Thousand Board Feet

FPA = Forest Practices Application

Total net timber value before (timber tax and administrative costs) on both units under a Class 3 FPA, and a lump sum, public timber sale = approximately \$315,900.00

Permitting both units as Class 3 FPAs would cost of approximately \$800.00 and take 30 days after submittal for an FPA good for three years. Restrictions on timber harvest are not expected. Reforestation is required and a six year moratorium on development permits may result.

Permitting both units as class 4 conversions might cost \$5,000.00 and could take several months for County and City approval. Restrictions on harvest of timber may result. Reforestation is not required and no moratorium on future development permits will result.

The net timber value noted above will be achieved through a public timber sale using a sealed bid, lump sum format with 10-20% due on day of sale and remaining payments due prior to timber cutting. This is similar to WADNR timber sale. This is the most legally defensible method of selling public timber.

Use of the Class 3 FPA will reduce the uncertainty of timber harvest restrictions and likely result in a better net return even after reforestation costs are deducted. The 6 year moratorium may or may not have adverse impacts on the post-harvest land value. Hand planting seedlings is financially preferable to the uncertain cost of a Natural Regeneration Plan.

Clearcut harvest (referred to as even-aged management in the FPA) of all merchantable timber leaving only non-merchantable and required wildlife trees will return the most revenue and remove the need for a future landowner to go through the FPA process again.

Thinning harvest plans will result in a lower value per MBF due to increased operational costs. They will also require a future landowner to reapply for FPAs before beginning site development.



# Workshop Item

## **Pending Agenda Items**

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**Item 3.f Ordinance 1726: Marina Spectator Rate**

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**Steve Powers, Director of Development Services**

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## **Attachments**

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Agenda Bill and Attachments

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

Bill No. \_\_\_\_\_  
Date: April 7, 2015  
Subject: Ordinance 1726: Marina  
Spectator Rate

**FROM: Steve Powers, Development Services Director**

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

- Scott Dudley, Mayor
- Larry Cort, City Administrator
- Doug Merriman, Finance Director
- Nikki Esparza, City Attorney, as to form

**RECOMMENDED ACTION**

Adopt Ordinance No. 1726 and establish a spectator event moorage rate category at the Oak Harbor Marina.

**BACKGROUND / SUMMARY INFORMATION**

This agenda bill presents an ordinance for City Council consideration that amends Oak Harbor Municipal Code 6.36.024, "Special Case Moorage Rates" creating a spectator event moorage rate category.

Oak Harbor Municipal Code Section 6.36.024 establishes special case moorage rates. Five special categories currently exist with the most commonly known and used applying to moorage rates for the annual Whidbey Island Race Week.

Given the popularity of the community's waterfront for hosting events (e.g. Independence Day fireworks and the Oak Harbor Hydroplane Races) the guest slips and patios of F dock have become attractive places for viewing events, for both visitors and existing Marina moorage customers. The attached Marina map shows the location of F dock (Attachment A).

As a public facility that operates as an enterprise fund, it is appropriate that rent (moorage) be charged for the use of these slips. A use fee was established by staff last year for the inaugural hydroplane race by interpreting the existing code language and then by applying the standard transient moorage rate (\$0.89 per foot per night). In preparation for this summer's events staff reviewed last year's approach and fees with the Marina Advisory Committee. The Committee determined it best to create a new, spectator event moorage rate and they provided staff guidance as to what they believed to be an appropriate use policy and fee. This new rate category would apply to those boaters that view an event from their boats on F dock.

The proposed 2015 Spectator Event moorage rate for Marina guests (those boaters who are not Oak Harbor Marina tenants) is \$3.00 per foot per night with a minimum charge for 40'. The proposed 2015 Spectator Event moorage rate for Oak Harbor Marina tenants is \$2.00 per foot per night with a minimum

charge for 40'. Ordinance No. 1726 (Attachment B) will amend OHMC Section 6.36.024, Special Case Moorage Rates, and create the new rate category of Spectator Event Moorage and allow the proposed rates to be included in the City's Master Fee Schedule. The Marina's portion of this schedule is shown in Attachment C.

### **LEGAL AUTHORITY**

### **FISCAL IMPACT**

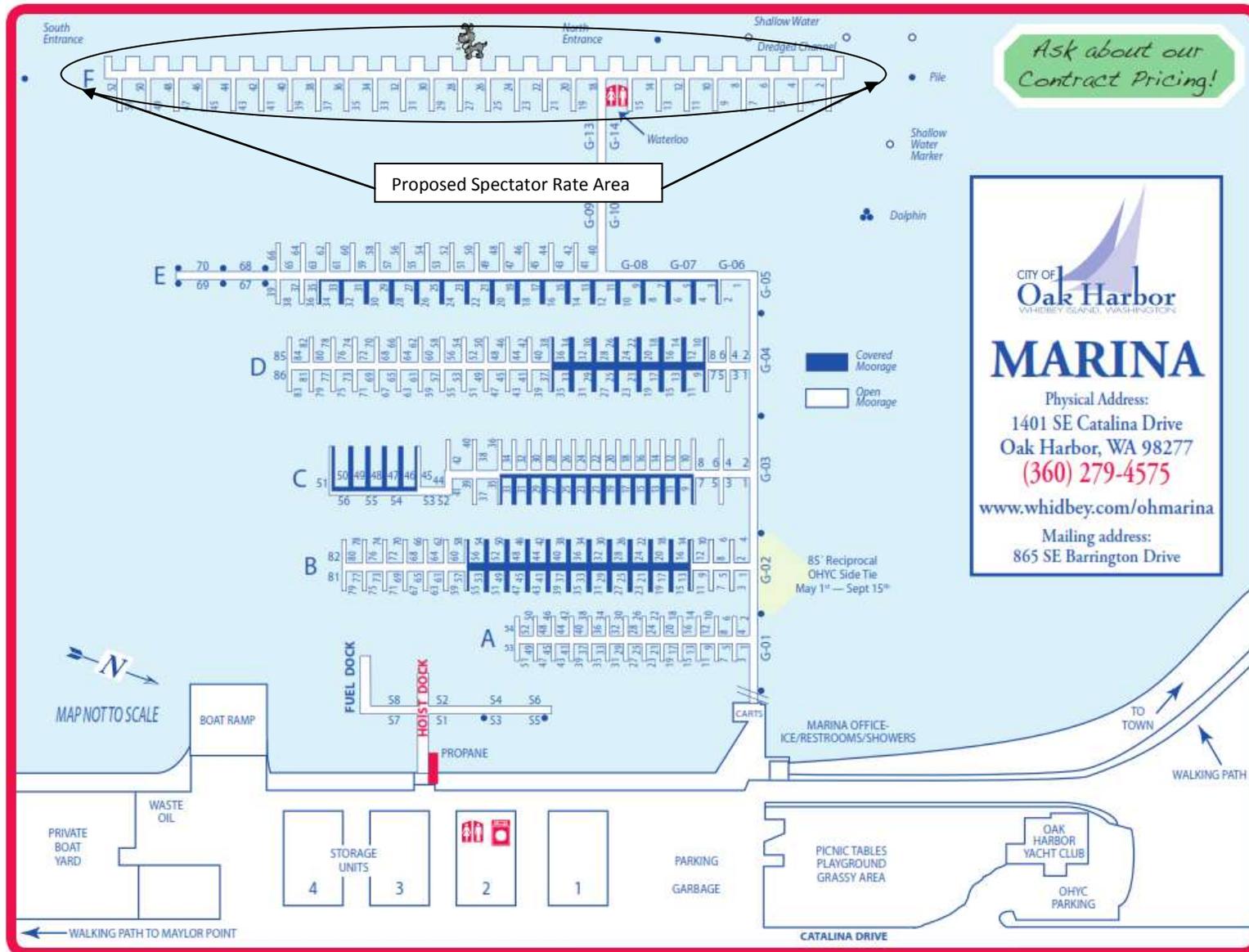
N/A

### **PREVIOUS COUNCIL / BOARD / CITIZEN INPUT**

This item was initially discussed with the Marina Advisory Committee at their January 2015 meeting. The conversation was concluded at their February meeting with the Committee recommending approval of this approach to the City Council. The Council was briefed on this item at their March 25, 2015 meeting.

### **ATTACHMENTS**

1. [Marina Map](#)
2. [Ordinance No. 1726](#)
3. [Master Fee Schedule, Marina](#)



ORDINANCE NO. 1726

AN ORDINANCE OF THE CITY OF OAK HARBOR AMENDING CHAPTER 6.36.024 OF THE OAK HARBOR MUNICIPAL CODES ENTITLED “SPECIAL CASE MOORAGE RATES.”

WHEREAS, Oak Harbor Municipal Code Section 6.36.024 establishes special case moorage rates; and

WHEREAS, the popularity of the community’s waterfront for hosting events has increased; and

WHEREAS, the Marina Advisory Committee recommended creating a new, spectator event moorage rate which will apply to boaters that view an event from their boats on F dock;

NOW, THEREFORE, the City Council of the City of Oak Harbor do ordain as follows:

**Section One.** Section 6.36.024 of the Oak Harbor Municipal codes entitled “Special case moorage rates” last amended by ordinance 710 (1985) is hereby amended to read as follows:

Special consideration regarding moorage rates will be given as follows, at the discretion of the harbormaster:

- (1) Commercial Fishing Vessels. Commercial fishing vessels which normally depart in the spring and return in the fall and do not occupy permanent moorage in the marina, may upon the customer’s request and the discretion of the harbormaster, be kept on an open account. These special case tenants will be charged the monthly rate for the size of the vessel, on a pro rata basis, only for the time they actually occupy moorage. Electricity will be charged per the meter, if the slip is metered, and otherwise at the published flat rate.
- (2) Sailing Race Moorage. Boats which come from outside moorage to participate in the regularly scheduled summer sailing races will be allowed to occupy moorage as available, for very limited periods (normally two to three days for each race), and will be charged the normal monthly rate, prorated for the number of days they occupied marina moorage.
- (3) Coast Guard and Customs. U.S. Coast Guard, U.S. Customs Service and similar vessels which occupy marina moorage will not normally be charged moorage fees for visits of short duration.

- (4) Emergency. In the case of vessels which occupy marina moorage solely because of mechanical failure, illness, emergency conditions or similar misfortune which makes it impossible or dangerous to proceed on to the planned destination, the harbormaster may waive fees for short periods of time.
- (5) Race Week. Race Week moorage rates will be established for each year's event by the harbormaster and the marina committee. A flat rate will be charged, regardless of boat size, for the period beginning the Sunday prior to the first race day, and ending on Saturday following the final race day. Race boats or tenders arriving earlier or remaining beyond this period will be charged normal guest moorage rates for those days in excess. (Ord. 963 § 5, 1993; Ord. 710 § 2, 1985).
- (6) Spectator Event Rates. Spectator Event moorage rates charged to view events from the marina docks shall be outlined in the Master Fee Schedule adopted by resolution of the city council. There will be two categories for rates, "marina tenants" and "guests." Guests will pay the full "Spectator Event Rate" while marina tenants will pay a reduced "Spectator Event Rate." Vessels arriving earlier or remaining beyond the event will be charged normal guest moorage rates for those days in excess.

**Section Two. Severability.** If any provision of this Ordinance or its application to any person or circumstance is held invalid, the remainder of the Ordinance or the application of the provision to other persons or circumstances is not affected.

**Section Three. Effective Date.** This Ordinance shall be in full force and effect five days after publishing.

PASSED by the City Council this 7<sup>th</sup> day of April 2015.

CITY OF OAK HARBOR

\_\_\_\_\_  
SCOTT DUDLEY, MAYOR

Attest:

Approved as to Form:

\_\_\_\_\_  
Anna Thompson, City Clerk

\_\_\_\_\_  
Nikki Esparza, City Attorney

Date of Publication: \_\_\_\_\_

Effective Date: \_\_\_\_\_

ORDINANCE NO. 1722 – Page 2 of 2

Attachment B

## MASTER FEE SCHEDULE MARINA

6.36	MOORAGE REGULATIONS	FEE
6.36.023(1)	<u>Extended guest moorage.</u> • Seasonal Rate – Between June 1 <sup>st</sup> and September 1 <sup>st</sup> of each year	The standard applicable monthly rate times a factor of one and one-half
New - 6.36.024 (6)	<u>Spectator Rate</u> Rate charged per foot per night to view events from the marina docks. There is a 40' minimum charge per night.	Marina Tenant - \$2.00 Marina Guest - \$3.00
6.36.025	<u>Liveaboards.</u> • Fee for living aboard a vessel for periods in excess of 3 days in any 7-day period. This fee is in addition to all other applicable moorage charges, taxes and electricity charges.	\$50.00 per month
6.36.032	<u>Gate cards.</u> • One gate card • Additional cards	\$5.00 \$5.00 each
6.36.033	<u>Change of moorage.</u> • Fee to change moorage locations	\$15.00
6.36.034	<u>Waiting list deposit.</u> • Nonrefundable annual fee for reserving and maintaining a place on the waiting list for moorage	\$25.00
6.36.036(1)(a)	<u>Marina late fees and charges.</u> • Late charge on all accounts in excess of 30 days delinquent	12% per year
6.36.036(1)(b)	<u>Marina late fees and charges.</u> • Service charge imposed when notice of delinquency is mailed by certified mail	\$25.00
6.36.036(1)(c)	<u>Marina late fees and charges.</u> • Service charge imposed when the vessel is chained or otherwise secured	\$25.00
6.36.036(1)(d)	<u>Marina late fees and charges.</u> • Service charge imposed when council action is required to sell a vessel	\$25.00
6.36.036(1)(e)	<u>Marina late fees and charges.</u> • Service charge imposed when it is necessary to inventory a vessel or storage space	\$25.00
6.36.036(2)	<u>Marina late fees and charges.</u> • Employee's time spent on collection	\$20.00 per hour
6.36.072(1)(a)	<u>Fees.</u> • License fee	5% of gross receipt to

		be earned by person conducting the commercial activity
6.36.072(1)(b)	<u>Fees.</u> • Temporary moorage fee  • Moorage for the whole service dock	\$0.50 per day per foot of the boat \$1,000.00 per month
6.36.072(1)(c)	<u>Fees.</u> • Electrical utility service for boats not on a regular moorage contract	\$10.00 per month
6.36.072(1)(d)	<u>Fees.</u> • Assistance of city staff in moving a boat	\$15.00 per move
<b>Chapter 6.40</b>	<b>MARINA REGULATIONS</b>	<b>Fee</b>
6.40.170(2)	<u>Exclusion of persons from the marina or portions of the marina.</u> Filing fee for appeal from the decision	\$10.00



# Workshop Item

## Pending Agenda Items

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**Item 3.h Freund Marsh Restrictive Covenant**

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**Cathy Rosen, Director of Public Works**

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## Attachments

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Agenda Bill and Attachments

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

Bill No. \_\_\_\_\_  
Date: April 7, 2015  
Subject: Freund Marsh Restrictive  
Covenant Revision

**FROM: Cathy Rosen, Public Works Director**

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

- Scott Dudley, Mayor
- Larry Cort, City Administrator
- Doug Merriman, Finance Director
- Nikki Esparza, City Attorney, as to form

**RECOMMENDED ACTION**

A motion to approve the revised Freund Marsh Restrictive Covenant, authorize the Mayor to sign the document and have it recorded.

**BACKGROUND / SUMMARY INFORMATION**

This Restrictive Covenant replaces the original land deed of the Freund Marsh property, approximately 7.52 acres (as described in Exhibit A), located on SW Bayshore Drive, which was donated by Carl Freund to the City of Oak Harbor in 2005.

The City intended to commit the wetland and wetland buffer portion of the property as mitigation areas. The previous owner, Carl Freund, was obligated by the Department of Ecology to ensure that vegetation was healthy and thriving for a period of ten years. The DOE has approved the Restrictive Covenant and has confirmed that the condition has been met.

The revised Restrictive Covenant includes language committing the parcel as “protected property”, in fulfillment of a DOE condition, and that this covenant shall run with the land and be retained forever in its natural open-space condition. The City agrees to identify, preserve and protect in perpetuity the native species and habitat within the wetland area and wetland buffer located on the protected property.

Permitted uses of the protected property include, but are not limited to, passive recreational activities such as nature enjoyment, bird watching and educational walks. Existing improvements, such as the pedestrian walkway, benches and interpretive signs will be allowed to remain on the property.

Prohibited uses include, but are not limited to, construction or alteration of the land, removal of trees and other vegetation or harvesting of native plants, hunting or wildlife disruption.

**LEGAL AUTHORITY**

**FISCAL IMPACT**

**PREVIOUS COUNCIL / BOARD / CITIZEN INPUT**

The City Council accepted the donated property from Carl Freund in 2005.

**ATTACHMENTS**

1. [Freund Marsh Restrictive Covenant Revision](#)

After Recording Return to:

Weed, Graafstra and Benson, Inc., P.S.  
21 Avenue A  
Snohomish, WA 98290

### RESTRICTIVE COVENANT

Grantor: CITY OF OAK HARBOR  
Grantee: Public  
Legal Description: Lot 2, City of Oak Harbor SP #04-00002 Add'l on p. 6  
Tax Parcel ID#: R13203-069-5000

WHEREAS, the CITY OF OAK HARBOR, a municipal corporation of the State of Washington (the "City"), is the owner in fee simple of that certain real property (hereinafter the "Property") in Island County, Washington, totaling approximately 7.52 acres, more particularly described in **EXHIBIT A** attached hereto and incorporated herein by this reference; and

WHEREAS, the City commits the wetland and wetland buffer portion of the Property depicted and identified as mitigation areas on the SW Bayshore Dr. Conceptual Buffer and Mitigated Area Plan dated 7/02/02, prepared by Fakkema & Kingma Inc., drawing no. 4149, on file with the Department of Ecology under Order No. 02SEANR-4620 (the "Protected Property") to use as a wetlands mitigation site to compensate for work authorized under Washington State Department of Ecology ("DOE") Order Number 02SEANR-4620; and

WHEREAS, the City expressly intends that this covenant run with the land, as provided by law, and shall be binding on all parties and all persons claiming under the City, including all current and future owners having any interest in the Protected Property; NOW, THEREFORE,

For the reasons stated above, and in fulfillment of a condition of DOE Order Number 02SEANR-4620, the CITY OF OAK HARBOR hereby voluntarily imposes, places, and restricts the use and occupancy of the Protected Property in accordance with

the terms and conditions hereinafter enumerated, subject only to the limitations set forth herein.

It is the purpose of this Restrictive Covenant to assure that the Protected Property will be retained forever in its natural open-space condition and to prevent any use of the Protected Property that will significantly impair or interfere with the conservation values of the property. The City of Oak Harbor hereby covenants and agrees as follows:

1. **IDENTIFICATION AND PROTECTION:** The wetland mitigation and preservations areas within the Protected Property are “waters of the state.” City agrees to identify, preserve, and protect in perpetuity the native species and habitat within the wetland area and wetland buffer located on the Protected Property.
2. **INJUNCTION AND RESTORATION:** City shall enjoin any activity on, or use of, the Protected Property which is inconsistent with this Restrictive Covenant, including trespasses by members of the public, and to undertake or cause to be undertaken the restoration of such areas or features of the Protected Property as may be damaged by activities contrary to the provisions hereof.
3. **PROHIBITED USES:** Except as expressly permitted under “Permitted Uses” below, any use of, or activity on, the Protected Property inconsistent with the purposes of this Restrictive Covenant is prohibited, and the City acknowledges and agrees that it will not conduct, engage in or permit any such use or activity, including, but not limited to:
  - (a) **Construction.** The placement or construction of any buildings, structures, or other improvements of any kind (including, without limitation, fences, roads, docks, floats and parking lots) on the Protected Property except as deemed necessary to preserve, protect or effectuate the purposes of this Restrictive Covenant .
  - (b) **Alteration of Land.** The alteration of the surface of the Protected Property, including, without limitation, the excavation or removal of soil, sand, gravel, rock, peat, or sod, except as deemed necessary by the City to preserve, protect or effectuate the purposes of this Restrictive Covenant.
  - (c) **Erosion or Water Pollution.** Any use or activity that causes or is likely to cause significant soil degradation or erosion or significant pollution of any surface or subsurface waters of the Protected Property.
  - (d) **Alteration of Water Courses.** The draining, filling, dredging, ditching, or diking of wetland areas, the alteration or manipulation of ponds and water courses, or the creation of new wetlands, water impoundments, or water

courses, except as deemed necessary by the City to preserve or protect the conservation values of the Protected Property.

- (e) Removal of Trees and Other Vegetation. The pruning, cutting down, or other destruction or removal of live and dead trees and other vegetation located in the Protected Property, except as deemed necessary by the City to protect the public safety, or to preserve or protect the conservation values of the Protected Property, such as the removal of invasive exotic (non-native) plant species, or to conduct educational or research activities consistent with the purpose of this Restrictive Covenant.
- (f) Waste Disposal. The disposal or storage of rubbish, garbage, debris, unregistered vehicles, abandoned equipment, parts thereof, or other unsightly offensive, or hazardous waste or material on the Protected Property.
- (g) Utilities. The above- or below-ground installation of new utility systems or extensions of existing utility systems, including, without limitation, water, sewer, power, fuel, and communication lines and related facilities on the Protected Property except as deemed necessary to preserve, protect or effectuate the purpose of this Restrictive Covenant.
- (h) Signs. The placement of commercial signs, billboards, or other advertising material on the Protected Property.
- (i) Hunting. Hunting or trapping, except to the extent determined necessary to preserve or protect the conservation values of the Protected Property.
- (j) Mining. The exploration for or development and extraction of minerals and/or hydrocarbons on or below the surface of the Protected Property.
- (k) Wildlife Disruption. The disruption of wildlife breeding and nesting activities on the Protected Property.
- (l) Domestic Animals. The keeping of domestic animals on the Protected Property.
- (m) Introduced Vegetation. The introduction of non-native vegetation on the Protected Property, or the planting or introduction of any species of vegetation, except as deemed necessary to enhance the conservation values of the Protected Property.
- (n) Harvesting of Native Plants. The gathering, picking, taking, or harvesting of native plants on the Protected Property.

- (o) Motorized Vehicles and Excessive Noise. The operation of motorcycles, dune buggies, snowmobiles, or other type of off-road motorized recreational vehicles or the operation of other sources of excessive noise pollution on the Protected Property.

4. PERMITTED USES:

- (a) Existing Improvements. Notwithstanding any provision hereof, the pedestrian walkway, benches, interpretive signs and all other improvements installed on the Protected Property on the date of execution of this Restrictive Covenant (“Existing Improvements”) and the public use thereof shall not be deemed to violate or be inconsistent with this Restrictive Covenant. The City shall have no obligation to modify or remove the Existing Improvements or restrict the use thereof. The City shall have the perpetual right to maintain, repair, restore, replace and/or remove the Existing Improvements, in its sole discretion.
- (b) Other Reserved Rights. City reserves for itself and its heirs, successors, and assigns, any use of, or activity on, the Protected Property which is not inconsistent with the purposes of this Restrictive Covenant and which is not prohibited herein. Without limiting the generality of the foregoing, the City specifically reserves for itself and its heirs, successors, and assigns, the following uses and activities:
  - i. Recreational. To conduct passive recreational activities such as nature enjoyment, bird watching, educational walks, etc. on the Protected Property, provided that such activities are conducted in a manner and intensity that does not adversely impact plant and wildlife habitat on the Protected Property. No motorized vehicles or other activities that could disrupt the wildlife or destroy essential habitat are allowed in the Protected Property, except vehicles of the City and its contractors used for exercise of the rights and obligations stated herein.
  - ii. Emergencies. To undertake other activities as deemed necessary by the City to protect public health or safety on the Protected Property, or which are actively required by and subject to compulsion of any governmental agency with authority to require such activity, provided that any such activity shall be conducted so that interference with the conservation values of the Protected Property is avoided to the maximum extent possible.

5. **SUBSEQUENT TRANSFERS:** Owner agrees (1) to incorporate the terms of this Restrictive Covenant in any deed or other legal instrument by which it divests itself of any interest in all or a portion of the Protected Property, including without limitation, a leasehold interest, and (2) to describe this Restrictive Covenant in and append it to, any executory contract for the transfer of any interest in the Protected Property. The failure of the owner to perform any act required by this paragraph shall not impair the validity of this Covenant or limit its enforceability in any way.
  
6. **SEVERABILITY:** If any provision of this Covenant, or the application thereof to any person or circumstance, is found to be invalid, the remainder of the provisions of this Covenant, or the application of such provision to persons or circumstances other than those as to which it is found to be invalid, as the case may be, shall not be affected thereby.
  
7. **SUCCESSORS:** The covenants, terms, conditions, and restrictions of this Restrictive Covenant shall be binding upon, and inure to the benefit of, the parties hereto and their respective personal representatives, heirs, successors, and assigns, and shall continue as a servitude running in perpetuity with the Protected Property.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2015.

CITY OF OAK HARBOR

By \_\_\_\_\_  
SCOTT DUDLEY, Mayor

STATE OF WASHINGTON    )  
  )ss.  
COUNTY OF ISLAND     )

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

DATED this \_\_\_\_ day of \_\_\_\_\_, 2015.

\_\_\_\_\_  
\_\_\_\_\_  
(Legibly print name of notary)  
NOTARY PUBLIC in and for the State of  
Washington, residing at \_\_\_\_\_  
My commission expires \_\_\_\_\_

**EXHIBIT A**  
**CITY PROPERTY DESCRIPTION**

Lot 2 of CITY OF OAK HARBOR SHORT PLAT NO. 04-00002 as approved July 27, 2005, and recorded August 3, 2005, in Volume 4 of Short Plats, page 113, under Auditor's File No. 4142852, records of Island County, Washington; being a portion of Lot 3 of CITY OF OAK HARBOR SHORT PLAT NO. 97-2, recorded in Volume 3 of Short Plats, pages 208 and 209, under Auditor's File No. 98012391, records of Island County, Washington, and a portion of U. Freund Donation Land Claim, Sections 3 and 10, Township 32 North, Range 1 East of the Willamette Meridian.

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Situated in Island County, Washington.