City of Oak Harbor

City Council Meeting Agenda

for

May 17, 2011
6:00 p.m.

Oak Harbor City Council
REGULAR MEETING
Tuesday, May 17, 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

ROLL CALL

MINUTES 5/3/11 Regular Meeting

NON-ACTION COUNCIL ITEMS:

1. Public Comments.

COUNCIL CONSIDERATION AND ACTION ON THE FOLLOWING MATTERS:

2. Consent Agenda:

Page 12

a. Noise Permit – Rock On! 3x3, North Whidbey Soccer Club Event.

Page 15

b. Noise Permit – Soccer Fest, North Whidbey Soccer Club Event.

Page 18

c. Re-Appointment to Personnel Appeals Board – Mick Donahue.

Page 20

d. Re-Appointment to Arts Commission – Rick Lawler.

Page 21

e. Re-Appointment to Planning Commission – Bruce Neil.

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

Page 22

3. Public Hearing – Ordinance, Regulation of Adult Entertainment.

Page 51

4. Selection of Artists – Pioneer Way Improvement Project.

5. Executive Session on Pending Litigation – GMA Actions.

6. City Administrator's Comments.
7. Council Members' Comments.
   - Standing Committee Reports
8. 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.

"Make your optimism come true."
~Author Unknown

City Council Meeting
Tuesday, May 3, 2011
City Hall – Council Chambers

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

INVOCATION Bishop Mark Soptich, Church of Jesus Christ of Latter Day Saints

ROLL CALL

Mayor Jim Slowik
Seven members of the Council,
- Jim Campbell
- Scott Dudley
- Beth Munns
- Danny Paggao, Mayor Pro Tem
- Jim Palmer
- Rick Almberg
- Bob Severns

Paul Schmidt, City Administrator
Margery Hite, City Attorney
Steve Powers, Development Services Director
Cathy Rosen, Public Works Director
Eric Johnston, City Engineer
Mark Soptich, Fire Chief
Rick Wallace, Chief of Police
Mike McIntire, Senior Services Director
Renee Recker, Executive Assistant to the Mayor
Chris Sublet, Marina Manager

MINUTES

Councilmember Palmer asked if steps had been taken to respond to Ms. Gardner's sewer request. Mayor Slowik acknowledged that steps have been taken to look into her sewer issue.

MOTION: **Councilmember Palmer moved to approve the 4/19/11 meeting minutes. The motion was seconded by Councilmember Campbell. Councilmembers Paggao, Campbell, Dudley, Munns and Palmer voted in favor of the motion. Councilmembers Almberg and Severns abstained from the vote since they did not attend the 4/19/11 meeting. The motion carried.**

NON-ACTION COUNCIL ITEMS

Proclamation – Nurses Week

Councilmember Paggao read and presented this proclamation to Capt. Bonnie Bulach. Nurses Week celebrates the ways in which registered nurses strive to provide safe and high quality patient care and map out the way to improve our health care system. Capt. Bulach noted that seven nurses were named to the top 25 women in Modern Heathcare's 2011 Women in Healthcare and for eleven consecutive years the Gallop Poll has chosen the nursing profession as number one for the most trusted profession. Capt. Bulach thanked the Council for helping to celebrate Nurses Week.

Mayor Slowik reported that a Pioneer Way briefing has been added to tonight's agenda and introduced Larry Cort and Lesley McConnell.

Pioneer Way Update

Mr. Cort reported that the Pioneer Way project is on schedule and on budget and provided details about current and future construction. Lesley McConnell presented materials that have been prepared to promote the downtown with a focus on the history of Pioneer Way.

Mr. Almberg asked if staff was able to present a list of deliverables and provide a budget of what has been spent, what is left and what will be spent in the future. Ms. McConnell said that the

calendar of events is essentially the deliverables which will be refined. Mr. Johnston said that a budget is forthcoming in the near future. There was further discussion about funding restrictions, construction scheduling and complements to Strider Construction and staff for successfully accommodating Holland Happening while Pioneer Way was under construction.

Public Comments

Mel Vance, P.O. Box 2882. Mr. Vance expressed his belief that providing security gates at the Marina is a waste of money. The current gate has been adequate for many years for controlling theft problems. Adding more gates would restrict access to the public. If the public is restricted from the dock then Park Funds should not be used to help fund the Marina.

There were no other public comments.

COUNCIL CONSIDERATION AND ACTION ON THE FOLLOWING MATTERS

Consent Agenda

A. Noise Permit – Beachcomber's Bazaar.
B. Noise Permit – Mission Emanuel.
C. Noise Permit – Relay for Life of North Whidbey.
D. Noise Permit – Christ the King Community Church.
E. Agreement – ICOM.
F. Authorization to Solicit Bids – Marina Gates.
G. Bid Award – Marina Pump Out Boat.
H. Change in Council Meeting Dates – June 21 to June 28, 2011; July 5 to July 12, 2011.
I. Approval of Accounts Payable Vouchers (Pay Bills).

Councilmember Munns asked that Agenda Item F be removed.
Councilmember Severns asked that Agenda Item G be removed.

MOTION: **Councilmember Campbell moved to approve Consent Agenda Items A, B, C, D, E, H, and I with Item I paying Accounts Payable Check Numbers 145664 through 145815 in the amount of $1,252,070.90. The motion was seconded by Councilmember Palmer and carried unanimously.**

Consent Agenda Item F - Authorization to Solicit Bids – Marina Gates

Councilmember Munns asked Marina Manager Chris Sublet to explain the reasons for the security gates. Mr. Sublet explained the purpose is to protect the private boats while allowing for public use. The gates are planned for A, B, C, D, and E Docks. Mr. Powers added that the main gate will continue to be open as it is today during the regular business hours and the public will have the same access as they have today. The City takes its obligation to maintain general public access very seriously and are trying to find a balance between public access and responding to customer concerns about protecting their private assets. There was a question about whether the funding came from the General Fund or was paid for by the rate payers. Mr. Powers acknowledged that moorage rate payers are paying for the security gates. There was further discussion about the programmable keys.

MOTION: **Councilmember Munns moved to approve Consent Agenda Item F, Authorization to Solicit Bids – Marina Gates. The motion was seconded by Councilmember Campbell and carried unanimously.**

Consent Agenda Item G - Bid Award – Marina Pump Out Boat
Mr. Severns asked if the grant funds could be used to buy the two motors and if the purchase motors would be under the grant. Ms. Rosen acknowledged that the grant funds would be used to purchase the boat, motors and the pump out units.

MOTION: **Councilmember Severns moved to approve Consent Agenda Item G, Bid Award – Marina Pump Out Boat. The motion was seconded by Councilmember Munns and carried unanimously.**

Break
Mayor Slowik called for a break at 6:57 p.m. and the meeting reconvened at 7:03 p.m.

Resolution – Sewer LID
Development Services Director Steve Powers presented this agenda bill which provides information and a resolution in response to a recent submittal of a petition for an LID for sewer submitted by certain property owners within the Driftwood Beach Addition. Mr. Powers introduced Mr. Steve DiJulio of Foster Pepper, PLLC who provided further information and answered written questions submitted to the City by the Driftwood Beach/Dillard's Addition.

Mayor Slowik opened the public hearing at 7:52 p.m.

Mark Goetz, 2164 SW Dillard Lane
Mr. Goetz asked Mr. DiJulio if the whole neighborhood were to connect to the grinder pump system, would the City end up owning and maintaining the system, and could the system be financed over a period of 10, 15, or 20 years? Mr. Goetz also commented that Mr. DiJulio indicated that the grinder pump system would be less expensive than a gravity system but all the people who signed the petition disagree with that assertion because it hasn't been proven yet and the neighborhood is still trying to figure out how many potential customers are going to sign up and use a lift station if it's available.

Robyn Kolaitis, 2141 SW Dillard Lane
Mrs. Kolaitis thanked the Council for the opportunity and spoke about Mr. Almberg's question to the Driftwood Beach/Dillard's Addition residents at the previous meeting as to why the neighborhood would assess themselves since there is already an adequate system in the ground. Mrs. Kolaitis said that they don't consider what is in the ground adequate and she didn't know many that could afford to write a $16,000 check for the grinder pump system right now.

Duane Dillard, 2150 SW Dillard Lane
Mr. Dillard raised questions about the construction of the grinder pump system. His rental home's cleanout was placed 192 feet from the foundation and the system is on the backside of the house. The repair cost should be looked at before pushing the neighborhood onto the low pressure system. Mr. Slowik indicated that he didn't think this would be a question to Mr. DiJulio and asked Mr. Schmidt if that was an Engineering question. Mr. Schmidt noted that there are number of anomalies with connecting to the sewer and those would be considered depending on which system we end up with.

With no other public comments coming forth, Mayor Slowik closed the public hearing at 7:59 p.m.

Council Discussion

Mr. Dudley restated Mr. Goetz's question to Mr. DiJulio. Mr. DiJulio indicated that the City can construct and operate the system as a condition of sewer service and also finance it through the LID process whether it's a gravity system or a low pressure system. Mr. DiJulio also commented that he didn't mean to take a position on the difference in cost but that he read the Gray & Osborn report and wanted the City to be aware of the potential for challenge should the issue come up that the property owners could have connected to the low pressure system for less.

Councilmembers questioned Mr. DiJulio about whether the special benefit could change and the assessment be re-assessed if in the future the properties are developed (DiJuilo - if the property was re-assessed you would have to re-assess all of the properties on a pro rata basis and that this specific statutory authority has never been used and is highly risky); whether the lenders participate in the LID process (DeJuilo - lending institutions have no standing in LID proceedings); whether the City could grandfather the low pressure system owners (DiJulio - it is within the City's authority to mandate a particular sanitary sewer program. The more difficult question is whether or not the City would be able to charge those properties for the pro rata cost of the gravity system because of the question as to how they are specially benefited by that gravity system when they are already fully serviced by the low pressure system); if the special benefits exceed the valuation of the properties does that mean the financial responsibly the City's burden? (DiJulio - in the event that assessments are not sufficient to support the cost of the project, then the city would be left holding the ticket).

Mr. Almberg clarified his question to Ms. Kolaitis regarding why the neighborhood would assesses themselves. Mr. Almberg indicated that all things being equal he would rather have a gravity system subject to the topography, location of transport, water table and cost. If a low pressure grinder pump system cost $6,000 and there was a likelihood that an LID would cost $15,000 or $20,000 for the same purpose he would prefer to have a grinder pump system and he would prefer to pay it privately rather than go through an LID process. As Mr. DiJulio explained earlier, the cost of doing the LID in addition to the construction cost includes the finance, the bonding, the engineering, the City administration and all the process to get to that point. So it's very possible that the difference between a privately funded grinder pump could be substantially cheaper than the same grinder pump system going through the LID. Simply, why do you want to assess yourself when you are basically paying a premium to go through an LID? Mr. Almberg asked Mr. DiJulio for his analysis of the cost associated with an LID project. Mr. DiJulio acknowledged that Mr. Almberg's analysis of the cost was accurate and that State law requires that LID's be bid competitively in accordance with the public procurement process. The administrative costs for managing the process has additional cost above and beyond a typical public works project.

Mr. Almberg asked Mr. DiJulio if the assessment was included in the formula for special benefit assessment when the low pressure system was made available. Mr. DiJulio said if the City were to form an LID to finance the additional infrastructure (the connections to the low pressure system) that would be considered, but that is only one of the variables. If you're looking back at that time you have additional variables that come to mind; one is that the City didn't require connection. Second we don't know how good the septic systems were in 2006/2007. There are a number of variables that would go into the special benefit calculus, but certainly the availability of a low pressure system may constitute a special benefit to the property would be a factor in determining special benefit if the City were to acquire properties to connect and an LID was formed to assist in that program.

Mr. Almberg ask Mr. DiJulio if the City were to take out the low pressure sewer system and put in a gravity system, can you say that there is a special benefit applied to those properties? You would have to determine that there is a tangible value between the low pressure system and the gravity system and does that really calculate out in your experience? Mr. DiJulio responded that the reason he commented in his initial presentation that the City, in order to protect itself and to be able to defend its assessments, were it to proceed with the gravity system and to preclude connection to the low pressure system, is for that very reason. If property owners have the option of choosing one or the other the City may not be able to demonstrate special benefit. That is why I suggested that the City may consider undertaking improvements with respect to this particular system or area and may choose to say we are not going to allow connections to the low pressure system anymore because we are going to build a gravity system in that area. Then you forget about the special benefit attributable to the low pressure system because it's not available because the City has precluded application.

Mr. Almberg pointed out that there is a publication available to everyone which can be found at www.mrsc.org. Mr. DiJulio is a contributing writer in the manual. The publication is titled The Local and Road Improvement District Manual for Washington Sixth Edition.

Mr. Palmer commented that it is very black and white that the LID assessment cannot exceed the special benefit and that LID assessments must be proportionate to the special benefit derived and that what he has learned tonight is that a gravity system can be installed in addition to the low pressure system in theory. Mr. DiJulio said that from a regulatory standpoint, the City would have to say that only the people that are currently hooked to the low pressure system can use it. If you are going to allow property owners in that area to choose among the systems, depending on what the cost associated with those connection are, will the City be able to demonstrate special benefit and then it starts diluting the participants in the gravity system which will necessarily increase the amount of the assessment potential for those who are participating in the gravity system. A gravity system is going to have a fixed cost spread to a certain number of properties and the fewer number of properties the higher the cost per property assuming it can be justified.

Mr. Palmer said that he wasn't sure that the City could show increased benefit because a system is already there. He said that he understood Mr. DiJulio to say that it wasn't necessary to bring in a certified appraiser to help determine the benefit. Mr. DiJulio said that at this preliminary stage particularly if the City Council wants to keep a $25,000 cap on the initial expense associated with the study you may find that the appraisal effort is may be too costly for this initial phase. A more simplistic analysis may be done as many engineers do with a project, which is to calculate estimated cost of the improvements and divide it by the potential number of parcels that could be serviced by this improvement. There is nothing as a matter of law that precludes the City from using a per parcel method for calculating special benefits and if you come up with a number that says the system is going to cost X and you divide X by the number of properties that would be included in the LID and you may get a number of $40,000 to $45,000 per parcel, that may be cost prohibitive and the City Council may not go forward with it because you know that the property is not going to be able to sustain an assessment at that amount unless you are going to get aggressive and force the mandatory connection requirements. If the City doesn't enforce the mandatory connection requirements, a property owner, presumably from a public health and safety standpoint, can put in an expensive new septic system for that kind of money so why are they special benefitted to that amount.

Mr. Palmer expressed concerned about spending the more taxpayer's money on this but was not sure that an initial appraisal was not a good idea.

Mr. Campbell commented that the resolution being considered doesn't solve the problem because it only talks about a gravity system. Mr. Campbell suggested that the resolution cover information on both systems.

Ms. Munns asked about what could be done for residents that have trouble paying to hook up to the low pressure system and if there was a way to work out billing, without having to do an LID or work out payments over a period of time instead having to pay the hookup fee at once if the City requires them to hook up. Mr. DiJulio said that deferral of collection is contained in RCW 35.43.250 and the qualifying provisions for the low income, elderly and disabled is in Chapter 84.38 RCW. The question is whether the City can issue revenue bonds pledging the revenues of the entire sewer system, put the system in and then somehow collect it back from the property owners through a rate particular to that particular neighborhood and the answer is yes, but that means that the rest of the City is financing the local improvement. If it is a local improvement then it perhaps should be financed by the people who benefit specially compared to the people in other parts of the City of Oak Harbor.

There was discussion about the costs involved getting the side sewer from the main to the residents and the varying conditions. Mr. DiJulio indicated that those cost could be included in the LID. The varying site conditions could be accounted of with the on-site costs being separately accounted for and billed as the on-site cost to the property owner. This would be a separate column of property specific costs in the special assessments spreadsheet.

Mr. Severns questioned whether the City can properly study the issue for $25,000 and how will the City pay for it.

Mayor Slowik thanked Mr. DiJulio for his expertise and returned to Mr. Campbell regarding his earlier suggestion.

MOTION: **Councilmember Campbell moved to remand the resolution back to staff to include both the gravity and the low pressure sewage systems in the resolution. The motion was seconded by Councilmember Almberg.**

Mr. Palmer restated the need to have someone examine the costs thoroughly to see if the Council can move forward with either system.

Mr. Campbell reiterated that the Council needs all the data so a decision can be made.

Mr. Almberg said that staff should be able to model a gravity sewer system and the low pressure system information is known. For estimation purposes, the two systems can be costed out. Until there is benefit area Council can't really move forward effectively with costing process because it gets down to the special assessments in the end.

Mr. Dudley suggested approving the resolution and asking staff to come back with another resolution taking a look at the other system as well. Mayor Slowik indicated that the resolution was not an action item, the Council is only considering it and Mr. Campbell is asking to change the resolution for consideration.

Mr. Schmidt suggested bringing the resolution back to the Council on June 2nd. There was consensus by the Council to bring the resolution back for consideration at the June 24th meeting.

VOTE ON THE MOTION: **Councilmembers Campbell, Almberg, Severns, Paggao, Dudley and Munns voted in favor of the motion. Councilmember Palmer opposed. The motion carried.**

Break
Mayor Slowik called for a break at 8:50 p.m. and the meeting reconvened at 8:59 p.m.

Bid Award – C-Dock Roof
City Engineer, Eric Johnston presented this agenda bill which recommends awarding a contract for construction of the Marina C-Dock Roof Repair Project to Roosendaal-Honcoop Const., Inc. in the amount of $139,120.00 plus approximately $12,000 sales tax and authorize the City Engineer to administratively approve changes to the construction contract totaling not more than $20,000. Funding is covered through the City's insurance carrier.

Mayor Slowik opened the public hearing at 9:02 p.m. With no public comments coming forth, Mayor Slowik closed the public hearing.

City Council discussed the bidding process and whether the $84,000 that has already been received from the insurance carrier and whether the funds were spent on Reid Middleton. Mr. Powers said he was not sure at this stage if the entire $84,000 has been expended and there were two contracts with Reid Middleton. The initial contract was recommended by the insurance adjuster was for a structural analysis of the damage of the facility which was roughly $14,800. The second contract with Reid Middleton was in the amount of $29,000 for preparation of the contract and specifications/plans and was also initially intended to cover some construction administration costs roughly $8,000 but as indicated in the agenda bill, City staff has assumed that responsibility so there will be roughly $8,000 savings on the $29,000 contract.

Mr. Dudley noted that the Council didn't see the first or the second contract with Reid Middleton at City Council meetings for approval. Mr. Powers acknowledged that was correct because both contracts were below the $30,000 administrative authority that the Municipal Code grants to the Mayor. Mr. Dudley said that it raises an eyebrow as to why the City would end up contracting multiple contracts with the same firm that ends up putting the expenditures over $30,000 and the City Council never sees it.

Mr. Almberg asked what the start and finish dates were. Mr. Johnston said work will start in June and no construction will be done during the Race Week period in July. Work should be completed in June or August.

MOTION: **Councilmember Almberg moved to authorize the Mayor to sign a contract with Roosendaal-Honcoop Const., Inc. in the amount of $139,120 (plus applicable sales tax) for the Marina C-Dock Roof Repair Project and authorize the City Engineer to administratively approve changes to the construction contract totaling not more than $20,000. The motion was seconded by Councilmember Munns.**

Mr. Dudley commented that the multiple contracts with the same firm were not of an emergency nature as the windstorm took place on January 18, 2010. The Mayor would have entered into the first contract on June1, 2010 with the second contract to follow on December 13, 2010.

VOTE ON THE MOTION: **The motion carried unanimously.**

City Administrator's Comments
Mr. Schmidt talked about the Council meeting changes and noted that the Legislature is in special session and the he is monitoring the session.

Council Members' Comments
Council Members gave their respective standing committee and board reports.
Mr. Almberg thanked merchants and the vendor that were on Pioneer Way for Holland Happening. Mr. Almberg also suggested a workshop to look at street improvements for capital improvements associated funding mechanisms.
Mr. Dudley noted that the selection of artists for the art for the historic downtown and that it would be nice to have some of the art that tie in with the historic downtown.

Mayor's Comments
Mayor Slowik thanked the Holland Happening Committee, the Chamber of Commerce and Strider Construction, Larry Cort, and the project staff, Public Works, Fire and the Police Department but especially the community for the turn out which made the 2011 Holland Happening a special event.

ADJOURN
With no other business coming before the City Council, Mayor Slowik adjourned the meeting at 9:20 p.m.

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Kathy Gifford, Administrative Assistant

City of Oak Harbor
City Council Agenda Bill

Bill No. 1

Date: MAY 17, 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.

City of Oak Harbor
City Council Agenda Bill

Agenda Bill No. d/A 2A
Date: May 17, 2011
Subject: Noise Permit – Rock On! 3x3 North Whidbey Soccer Club

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 the North Whidbey Soccer Club for amplified sound associated with the Rock On! 3x3 soccer event at Ft. Nugent Park, May 27 – 29, 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:

The North Whidbey Soccer Club has submitted a Noise Permit request for amplified sound associated with the Rock On! 3x3 soccer tournament scheduled for Friday, May 27 – Sunday, May 29, 2011. The request states that amplified sound will consist of music playing throughout the game portion of the tournament, which will be from approximately 8:00 a.m. to 5:00 p.m., Saturday and Sunday, and there will also be a PA system set up for announcements.

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:	Rock On! 3v3 Soccer Tournament North Whidbey Soccer Club
Location of Event:	Fort Nugent Park
Dates of Event:	May 27-29, 2011
Hours of Operation:	8:00 a.m. to 5:00 p.m.
Permitted Noise:	PA system and speakers for music and announcements
Approval Conditions:	None – event not at Windjammer Park
Date of City Council Approval:	May 17, 2011

Issued this 18th day of May, 2011.

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Karen Crouch, Special Events Coordinator

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

Please post this notice on site

City of Oak Harbor
City Council Agenda Bill

Agenda Bill No. N/A 2B
Date: May 17, 2011
Subject: Noise Permit – Soccer Fest
North Whidbey Soccer Club

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 the North Whidbey Soccer Club for amplified sound associated with the Soccer Fest event at Ft. Nugent Park, June 3 – June 4, 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:

The North Whidbey Soccer Club has submitted a Noise Permit request for amplified sound associated with the Soccer Fest scheduled for Friday, June 3 – Saturday, June 4, 2011. The request states that amplified sound will consist of music playing throughout the game portion of the tournament, which will be from approximately 8:00 a.m. to 5:00 p.m., on Saturday, June 4th and there will also be a PA system set up for announcements.

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:	Soccer Fest North Whidbey Soccer Club
Location of Event:	Fort Nugent Park
Dates of Event:	June 3-4, 2011
Hours of Operation:	8:00 a.m. to 5:00 p.m.
Permitted Noise:	PA system and speakers for music and announcements
Approval Conditions:	None – event not at Windjammer Park
Date of City Council Approval:	May 17, 2011

Issued this 18th day of May, 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 Oak Harbor
City Council Agenda Bill

Bill No. 2a
Date: May 17, 2011
Subject: Re-Appointment – Personnel Appeals Board – Mick Donahue

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 Dr. Mick Donahue to the Personnel Appeals Board.

AUTHORITY

The Personnel Appeals Board is a three-member board appointed for a four-year term in accordance with OHMC 2.34.070. Members are appointed by the Mayor, and confirmed by the Council.

SUMMARY STATEMENT

Dr. Donahue was first appointed to the Personnel Advisory Board in June 2005 to complete a vacated term and was subsequently re-appointed to a three-year term in 2008. In November 2010, the Personnel Advisory Board transitioned to the Personnel Appeals Board with members at the time of adoption of the Ordinance continuing to serve on the newly created Personnel Appeals Board. This Ordinance also changed terms from three years to four years.

Dr. Donahue has confirmed that he will serve another term if re-appointed. Dr. Donahue is an active, valued member of the Board and attends meetings regularly. If re-appointed, his term will expire in June 2015.

Mayor Slowik recommends that Dr. Donahue be re-appointed to the Personnel Appeals Board.

RECOMMENDED ACTION

Approve the recommendation to re-appoint Dr. Donahue to the Personnel Appeals Board.

ATTACHMENTS

None.

MAYOR'S COMMENTS

None.

City of Oak Harbor
City Council Agenda Bill

Bill No. C/A 2D
Date: May 17, 2011
Subject: Re-Appointment – Arts Commission – Rick Lawler

FROM: Jim Slowik, Mayor

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

PS 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 Rick Lawler to the Arts Commission.

AUTHORITY

The Arts Commission is an eleven-member commission appointed for a four-year term in accordance with OHMC 2.29.010 and 2.29.050. Commissioners are appointed by the Mayor, and confirmed by the Council.

SUMMARY STATEMENT

Mr. Lawler has served on the Arts Commission since 2007 and has confirmed that he will serve another term if re-appointed. If re-appointed, his term will expire in June 2015. Mr. Lawler is an active, valued member of the Board and attends meetings regularly.

Mayor Slowik recommends that Mr. Lawler be re-appointed to the Arts Commission.

RECOMMENDED ACTION

Approve the recommendation to re-appoint Mr. Lawler to the Arts Commission.

ATTACHMENTS

None.

MAYOR'S COMMENTS

None.

City of Oak Harbor
City Council Agenda Bill

Bill No. N/A 2E
Date: May 17, 2011
Subject: Re-Appointment – Planning Commission – Bruce Neil

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 Bruce Neil to the Planning Commission.

AUTHORITY

The Planning Commission is a seven-member commission appointed for a three-year term in accordance with OHMC 18.04.020. Commissioners are appointed by the Mayor, and confirmed by the Council.

SUMMARY STATEMENT

Mr. Neil has served on the Planning Commission since 2005 and has confirmed that he will serve another term if re-appointed. If re-appointed, his term will expire in June 2014. Mr. Neil is an active, valued member of the Board; attends meetings regularly; and is currently the Chair.

Mayor Slowik recommends that Mr. Neil be re-appointed to the Planning Commission.

RECOMMENDED ACTION

Approve the recommendation to re-appoint Mr. Neil to the Planning Commission.

ATTACHMENTS

None.

MAYOR'S COMMENTS

None.

City of Oak Harbor
City Council Agenda Bill

Agenda Bill No. 3
Date: May 17, 2011
Subject: Amendment of Ordinance Licensing and Regulating Adult Entertainment

FROM: William H. Hawkins, Assistant City Attorney

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

SUMMARY STATEMENT:

Description/Purpose: This agenda bill presents an ordinance which amends Chapter 5.20 of the Oak Harbor Municipal Code and amends Ordinance 1571 to address licensing and regulation of adult entertainment establishments, managers and entertainers to:

a) Provide additional references to materials in the record from other jurisdictions that support the City's licensing and regulation of adult entertainment;
b) Clarify that the term "applicant" applies to all three types of adult entertainment licenses (premises license, manager's license, and entertainer's license);
c) Transfer responsibility for issuing adult entertainment licenses from the Development Services Department to the City Clerk;
d) Expand the list of types of businesses and organizations to which the ordinance applies;
e) Add a requirement that all applicants for an adult entertainment license shall undergo a fingerprint-based state and national background check and shall submit a passport-quality photograph of the applicant;
f) Specify that an official passport from a foreign country shall constitute an acceptable form of identification for purposes of applying for an adult entertainment license;
g) Expand the time within which an adult entertainment license must be issued, from the same business day to the second business day after a complete application has been filed;
h) Establish a continuing duty on the part of an applicant for an adult entertainment license to supplement information required, and to provide that a failure to supplement required information shall constitute grounds for suspension or revocation of a license;

i) Provide that an adult entertainment license shall be nontransferable or assignable, and to define the terms "nontransferable" and "assignable";

j) Provide that all adult entertainment licenses shall expire one year from the date of issue;

k) Define the term "crimes or offenses that directly relate to the activity for which the license is required".

Policy Considerations. Licensing and regulation of adult entertainment must be done in light of well settled decisions of the United States Supreme Court, other federal courts, and the Washington appellate courts on the subject. Because of first amendment considerations, the use is protected within established limitations. The City Council may regulate the use for negative secondary impacts. Many other jurisdictions have studied adult entertainment and determined there were negative impacts upon neighborhoods, property values and increased municipal services associated with adult entertainment establishments, in addition to associated criminal activity. The City Council may rely on the experiences of other jurisdictions and on findings in appellate court decisions in determining the existence of negative secondary impacts.

The proposed ordinance regulates and licenses adult entertainment establishments as a way of minimizing the negative secondary impacts of adult entertainment establishments.

Budget Considerations. This ordinance is not anticipated to have any budget impacts.

STANDING COMMITTEE REVIEW:
Regulation of adult entertainment was discussed at the Government Services Standing Committee on April 12, 2011 and at the Public Safety Standing Committee on April 21, 2011.

RECOMMENDED ACTION:

1. Hold public hearing.
2. Adopt proposed ordinance regulating and licensing adult entertainment.

ATTACHMENTS:
Proposed ordinance regulating and licensing adult entertainment.

MAYOR'S COMMENTS:

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ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF OAK HARBOR ADDING A NEW CHAPTER 5.20 ENTITLED "ADULT ENTERTAINMENT" TO TITLE 5 OF THE OAK HARBOR MUNICIPAL CODE

WHEREAS, adult entertainment establishments require special supervision from the public safety agencies of the City in order to protect and preserve the health, safety, morals and welfare of the patrons of such businesses as well as the citizens of Oak Harbor; and

WHEREAS, the city council find that adult entertainment establishments are frequently used for unlawful sexual activities, including prostitution and sexual liaisons of a casual nature; and

WHEREAS, licensing is a legitimate and reasonable means of accountability to ensure that operators of sexually oriented businesses comply with reasonable regulations and to ensure that operators do not knowingly allow their establishments to be used as places of illegal sexual activity or solicitation; and

WHEREAS, there is convincing, documented evidence that adult entertainment establishments because of their very nature, have a deleterious effect on both the existing businesses around them and the surrounding residential areas adjacent to them, causing increased crime and the down grading of property values; and

WHEREAS, the city council desires to minimize and control these adverse effects and thereby protect the health, safety and welfare of the citizenry, protect the citizens from increased crime, preserve the quality of life, protect the property values and character of the surrounding neighborhoods; and

WHEREAS, the city council has determined that locational criteria alone do not adequately protect the health, safety and general welfare of the people of Oak Harbor; and

WHEREAS, regulation of the adult entertainment industry is necessary because, in the absence of such regulation, significant criminal activity has historically and regularly occurred. This history of criminal activity in the adult entertainment industry has included prostitution, illegal employment of minors, narcotics, alcoholic beverage law violations, breaches of the peace, tax evasion, and the presence within the industry of individuals with hidden ownership interests and outstanding arrest warrants; and

WHEREAS, it is not the intent of this ordinance to suppress any speech activities protected by the First Amendment of the U.S. Constitution or Article I, Section 5 of the Washington State Constitution, but to enact a content-neutral ordinance which addresses the secondary effects of adult entertainment businesses;

Pursuant to the authority granted by the Constitution and the legislature of the state of Washington; now, therefore,

THE CITY COUNCIL OF THE CITY OF OAK HARBOR do ordain as follows:

Section One. There is hereby added a new Chapter 5.20 entitled "Adult Entertainment" to Title 5 of the Oak Harbor Municipal Code to read as follows:

CHAPTER 5.20
ADULT ENTERTAINMENT

Sections:

5.20.380 Permitting alarm system unlawful.
5.20.390 Exemption from Chapter

5.20.010 Findings of Fact. Based on evidence concerning the adverse secondary effects of adult uses on the community presented in hearings and in reports made available to the council, and on findings incorporated in the cases of *City of Renton v. Playtime Theaters, Inc.,* 475 U.S. 41 (1986), *Young v. American Mini Theatres,* 426 U.S. 50 (1976), *Barnes v. Glen Theatre, Inc.,* 501 U.S. 560 (1991), *City of Erie v. Pap's A.M., TDA "Kandyland"*, 529 U.S. 277 (2000), *City of Los Angeles v. Alameda Books, Inc.*, 121 S.Ct. 1223 (2001), *Wise Enterprises, Inc., v. Athens-Clarke County Georgia*, No. 99-8265 (11th Circuit Court of Appeals 2000), *Sammy's v. City of Mobile*, No. 96-7073 (11th Circuit Court of Appeals 1998), *Ino Ino, Inc., v. Bellevue,* 132 Wn.2d 103 (1997), *World Wide Video v. Tukwila*, 117 Wn.2d 382 (1991), *Kitsap County v. Kev, Inc.,* 106 Wn.2d 135 (1986), *Colacurcio v. City of Kent*, 163 F. 3d 545 (1998), *DCR, Inc., v. Pierce County*, 92 Wn.App. 660 (1998), and on studies in other communities including, but not limited to, Bellevue, Burien, Everett, Shoreline, Lynnwood, Tukwila, SeaTac, Federal Way, Tacoma, and Seattle, the council hereby adopt the following Findings of Fact:

(1) The city council has determined that locational criteria alone do not adequately protect the health, safety and general welfare of the people of Oak Harbor.

(2) The secondary effects of the activities defined and regulated in this ordinance are detrimental to the public health, safety, morals, and general welfare of the citizens of the city and, therefore, such activities must be regulated.

(3) Regulation of the adult entertainment industry is necessary because, in the absence of such regulation, significant criminal activity has historically and regularly occurred. This history of criminal activity in the adult entertainment industry has included prostitution, illegal employment of minors, narcotics, alcoholic beverage law violations, breaches of the peace, tax evasion, and the presence within the industry of individuals with hidden ownership interests and outstanding arrest warrants.

(4) Proximity between entertainers and patrons during adult entertainment performances can facilitate sexual contact, prostitution, and related crimes. Concerns about crime and public sexual activity are legitimate and compelling concerns of the city which demand reasonable regulation of adult entertainment establishments in order to protect the public health, safety, and general welfare of its citizens, including a prohibition against direct contact between entertainers and patrons, a ten (10) foot minimum distance between entertainers and patrons, restricting nude dancing to stage raised 18 inches above the floor, and a ban on direct tipping of entertainers, as evidenced in Pierce County, the City of Kent, the City of Bellevue and the County of San Diego County in particular.

(5) Licensing is a legitimate and reasonable means of accountability to ensure that operators of adult entertainment establishments comply with reasonable regulations and to ensure that operators don't knowingly allow their establishments to be used as places of illegal sexual activity or solicitation.

(6) It is necessary to license entertainers in the adult entertainment industry to prevent the exploitation of minors, to ensure that each entertainer is an adult, and to ensure that such entertainers have not assumed a false name which would make regulation of the entertainer difficult or impossible.

(7) It is necessary to have a licensed manager on the premises of establishments offering adult entertainment at such times as such establishments are offering adult entertainment, so there will at all necessary times be an individual responsible for the overall operation of the adult entertainment establishment, including the actions of patrons, entertainers, and other employees, and to ensure a design, layout and sufficient lighting to permit a manager to effectively monitor activity at all times, as evidenced in Burien, Spokane, ~~and~~ Tukwila and Garden Gove in particular.

(8) The license fees required in this chapter are necessary as nominal fees imposed as necessary regulatory measures designed to help defray the substantial expenses incurred by the city in regulating the adult entertainment industry, as evidenced in Burien in particular.

(9) Hidden ownership interests for the purpose of skimming profits and avoiding the payment of taxes have historically occurred in the adult entertainment industry in the absence of regulation. These hidden ownership interests have historically been held by organized and white-collar crime elements. In order for the city to effectively protect the public health, safety, morals, and general welfare of its citizens and effectively allocate its law enforcement resources, it is important that the city be fully apprised of the actual ownership of adult entertainment establishments and the identities and backgrounds of persons responsible for management and control of the adult entertainment establishments, as evidenced in Tukwila in particular and Burien in particular. ~~P:\LGLA\WORK\RES-ORD2010\Adult Entertainment Licensing Ord #2.docP:\LGLA\WORK\RES-ORD2010\Adult Entertainment Licensing Ord #2.doc~~

(10) Removal of doors on adult booths and requiring sufficient lighting on premises with adult booths advances a substantial governmental interest in the illegal and unsanitary sexual activity from occurring in adult entertainment establishments, as evidenced in *US v. Colacurcio, et al.*, CR09 0209 RAJ, and in Garden Grove.

(11) Requiring licensees of adult entertainment establishments to keep information regarding current employees and certain past employees will help reduce the incidents of certain types of criminal behavior by facilitating the identification of potential witnesses or suspects and by preventing minors from working in such establishments as evidenced in Burien in particular.

(12) The general welfare, health, morals and safety of the citizens of Oak Harbor will be promoted by the enactment of this ordinance.

(13) It is not the intent of this chapter to suppress or censor any expressive activities protected by the First Amendment of the United States Constitution or Article I, Section 5 of the

Washington State Constitution, but rather to enact content neutral reasonable time, place, and manner regulations which address the compelling interests of the city in mitigating the secondary effects of adult entertainment establishments.

5.20.020 Definitions. For the purposes of Chapter 5.20 OHMC, the words and phrases used in this section shall have the following meanings, unless context indicates otherwise:

(1) "Adult entertainment" shall mean any of the following:

(a) Any exhibition, performance, or dance of any type conducted in a premises where such exhibition, performance, or dance involves a person who is unclothed or in such costume, attire, or clothing as to expose any portion of the female breast with less than a fully opaque covering of any part of the nipple or areola or any portion of the pubic region, anus, buttocks, vulva, or genitals, or wearing any device or covering exposed to view which simulates the appearance of any portion of the female breast with less than a fully opaque covering of any part of the nipple or areola or any portion of the pubic region, anus, buttocks, vulva, or genitals, or human male genitals in a discernibly turgid state, even if completely and opaquely covered.

(b) Any exhibition, performance, or dance of any type conducted on a premises where such exhibition, performance, or dance is distinguished or characterized by a predominant emphasis on the depiction, description, simulation, or relation to the following specified sexual activities:

(i) Human genitals in a state of sexual stimulation or arousal;

(ii) Acts of human masturbation, sexual intercourse, or sodomy;

(iii) Fondling or other erotic touching of human genitals, pubic area, buttocks, or female breast.

(2) "Adult entertainment establishment" shall mean any commercial premises or club to which any patron is invited or admitted and where adult entertainment is provided on a regular basis or is provided as a substantial part of the premises.

(3) "Applicant" shall mean the individual or entity seeking an adult entertainment establishment premises license, manager's license or entertainer's license in the city of Oak Harbor~~business~~.

(4) "Applicant control persons" shall mean all partners, corporate officers, and directors, and any other individuals in the applicant's business organization who hold a significant interest in the adult entertainment establishment, based on responsibility for management of the adult entertainment business.

(5) "~~Development Services Department~~City Clerk" shall mean the city of Oak Harbor city clerk~~development services department~~.

(6) "Employee" shall mean any and all persons, including managers, entertainers, and independent contractors who work in or at or render any services directly related to the operation of any adult entertainment establishment.

(7) "Entertainer" shall mean any person who provides live adult entertainment, whether or not a fee is charged or accepted for such entertainment.

(8) "Manager" shall mean any person who manages, directs, administers, or is in charge of the affairs and/or the conduct of any portion of any activity involving adult entertainment occurring at any adult entertainment establishment.

(9) "Operator" shall mean any person operating, conducting, or maintaining an adult entertainment establishment.

(10) "Picture machine" shall mean any machine, instrument, or device showing moving pictures, slides, plain, colored or three-dimensional pictures, or any picture device of a similar nature depicting sexual conduct or specified anatomical areas, the operation of which is made possible by the insertion or placing of any coin, plate, disc, or slug into the slot or other receptacle, or by the payment directly or indirectly of any consideration to another for such purpose.

(11) "Sexual conduct" shall mean acts of:

(a) sexual intercourse within its ordinary meaning and occurs upon any penetration, however slight; and also means any penetration of the vagina or anus, however slight, by an object, when committed on one person by another, whether such persons are of the same or opposite sex, except when such penetration is accomplished for medically recognized treatment or diagnostic purposes;

(b) any contact between persons involving the sex organs of one person and the mouth or anus of another;

(c) masturbation, manual or instrumental, of oneself, or of one person by another.

(12) "Specified anatomical areas" shall mean and include any of the following:

(a) Human genitals, pubic region, buttocks, anus, or female breasts with less than a fully opaque covering of any part of the nipple or areola; or

(b) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

5.20.030 Adult entertainment establishment license.

(1) It is unlawful for any person to operate or maintain an adult entertainment establishment in the city of Oak Harbor unless the owner, operator or lessee thereof has obtained from the ~~development services director~~city clerk a license to do so, to be designated an "adult entertainment establishment license".

(2) It is unlawful for any person to knowingly allow the use of his or her property for the operation of an adult entertainment establishment that is not licensed under this Chapter.

(3) It is unlawful for any entertainer, employee or manager to knowingly work in or about, or to knowingly perform any service or entertainment directly related to the operation of, an unlicensed adult entertainment establishment.

5.20.040 License for managers and entertainers.

(1) It is unlawful for any person to work as a manager at an adult entertainment establishment without first having obtained from the ~~development services director~~city clerk a license to do so, to be designated as an "adult entertainment manager's license".

(2) It is unlawful for any person to work as an entertainer at an adult entertainment establishment without having first obtained from the ~~development services director~~city clerk a license to do so, to be designated as an "adult entertainer's license".

5.20.050 License fees. The license year for adult entertainment establishment licenses, adult entertainer's licenses and adult entertainment manager's licenses required under this Chapter shall be from January 1st to December 31st. All license fees shall be payable on an annual basis, which fees shall be as follows:

(1) Adult entertainment establishment license, Seven Hundred Twenty Dollars ($720.00) per year;

(2) Adult entertainer's license, One Hundred Forty-five Dollars ($145.00) per year; and

(3) Adult entertainment manager's license, One Hundred Forty-five Dollars ($145.00) per year.

5.20.060 License prohibited to certain classes. No license authorized under this Chapter shall be issued to:

(1) a natural person who has not attained the age of eighteen (18) years;

(2) a partnership, unless all of the members thereof are individually qualified to obtain a license as provided by this Chapter. Such license shall be issued to the manager of the partnership; or

(3) a corporation, limited liability company, trust, incorporated or unincorporated association, marital community, joint venture, or other entity or group of persons however organized unless all of the officers and directors thereof are individually qualified to obtain a license as provided by this chapter.

5.20.070 License applications.

(1) Adult Entertainment Establishment License. All applications for an adult entertainment establishment license shall be submitted in the name of the person proposing to conduct such adult entertainment on the establishment and shall be signed by such person and notarized or certified as true under penalty or perjury. All applications shall be submitted on a form supplied by the ~~development services director~~city clerk and shall require the following information:

(a) The name, residence address, home telephone number, date and place of birth, and social security number of the applicant;

(b) The business name, address and telephone number of the establishment;

(c) The names, residence addresses, residence telephone numbers, social security numbers and dates of births of any partners, members, corporate officers and directors;

(d) The applicant shall undergo a fingerprint-based state and national background check.

(~~d~~e) Two two-inch by two-inch color passport-quality photographs of the applicant taken within six months of the date of application showing only the full face, and ~~S~~such information as the ~~development services director~~city clerk, by rule, may require concerning the identity of corporate or other business or entity shareholders;

(~~e~~f) Addresses of the applicant for the five (5) years immediately prior to the date of application;

(~~f~~g) Whether the applicant has had a license under this Chapter or an adult entertainment-related license issued by another jurisdiction, denied, suspended or revoked within the five (5) years immediately preceding the date of the application; and, if so, the name and location of the adult entertainment business to which the denied, suspended or revoked license pertained, the date of the action, the jurisdiction that took such action, the reason for the action, and the status of any appeal of the action;

(~~g~~h) A description of the business, occupation, or employment of the applicant for the five (5) years immediately preceding the date of application;

(~~h~~i) The name of at least one (1) natural person whose name and mailing address, which shall be an address located within the state of Washington, shall appear on the adult entertainment establishment license and who shall receive notices from the ~~development services department~~city clerk;

(~~i~~j) Whether the applicant has been the subject of a bail forfeiture, adverse finding or conviction with local, state or federal criminal law, other than a parking offense or traffic infraction, within the five (5) years preceding the date of the application; and, if so, the nature of the crime and the date, location and nature of the judicial action taken.

A failure to provide information required by this subsection will constitute an incomplete application, which ~~and~~ will not be processed.

(2) Adult Entertainment Manager's or Adult Entertainer's License. All applications for an adult entertainment manager's license or adult entertainer's license shall be signed by the applicant and notarized or certified as true under penalty of perjury. All applications shall be submitted on a form supplied by the ~~development services director~~city clerk, and shall require the following information:

(a) The applicant's name, home address, home telephone number, date and place of birth, social security number, proof of U.S. citizenship or of legal residency and the right to work in Washington State, and any stage names or nicknames used in entertaining;

(b) The name and address of each adult entertainment establishment ~~business~~ at which the applicant intends to work as a manager or entertainer;

(c) The applicant shall present documentation that he or she has attained the age of eighteen (18) years. Any of the following shall be accepted as documentation of age:

(i) A motor vehicle operator's license issued by any state bearing the applicant's photograph and date of birth;

(ii) A state-issued identification card bearing the applicant's photograph and date of birth;

(iii) An official passport issued by the United States of America or another country;

(iv) An immigration card issued by the United States of America;

(v) Any other picture identification bearing the applicant's photograph and date of birth issued by a governmental agency; or

(vi) Two two-inch by two-inch color passport-quality photographs of the applicant taken within six months of the date of application showing only the full face, and ~~S~~such other form of identification as the ~~development services director~~city clerk deems, by rule, to be acceptable;

(d) The applicant shall undergo a fingerprint-based state and national background check.

(~~d~~e) Whether the applicant has had a license under this Chapter or an adult entertainment-related license issued by another jurisdiction denied, suspended or revoked within the five (5) years immediately preceding the application; and, if so, the name and location of the adult entertainment business to which the denied, suspended or revoked license pertained, the jurisdiction that took such action, the reason for the action, the date of the action and the status of any appeal of the action;

(~~e~~f) Whether the applicant has been the subject of a bail forfeiture, adverse finding or conviction in connection with local, state or federal criminal law, in this country or another country other than a parking offense or traffic infraction, within the five (5) years immediately preceding the date of the application; and if so, the nature of the crime and the date, location, and nature of the judicial action take; and

Failure to provide information required by this subsection will constitute an incomplete application ~~and~~which will not be processed.

(3) Duty to Supplement. Each license applicant for, or holder of, a license issued under this Chapter shall modify or supplement application information on file with the ~~development services director~~city clerk, within ten (10) days of a change, if the information changes materially from what is stated on the applicant or holder's license application.

5.20.080 License - Applicant investigation. The ~~development services director~~city clerk shall investigate an application for an adult entertainment establishment license required by requesting criminal records and a confirmation of zoning compliance from appropriate city agencies. The ~~development services director~~city clerk shall investigate an application for an adult entertainment manager's or adult entertainer's license by requesting criminal records from appropriate city agencies.

5.20.090 Issuance of licenses.

(1) Adult Entertainment Establishment License. Within thirty (30) days of receipt by the ~~development services director~~city clerk of a complete application for an adult entertainment establishment license, including all submittals and information required by

this Chapter, the ~~development services director~~city clerk shall issue or deny the adult entertainment establishment license. If the ~~development services director~~city clerk fails to issue or deny the license within the thirty (30) day period, the license is deemed issued on the last day of the thirty (30) day period and the applicant may operate the adult entertainment establishment for which the license was sought, subject to all other provisions of this Chapter.

(a) The ~~development services director~~city clerk shall deny the adult entertainment establishment license for any of the following reasons, and shall notify the applicant in writing of the reasons for the denial and the opportunity to appeal if the ~~development services director~~city clerk finds:

(i) the application does not meet the requirements of this Chapter;

(ii) the applicant, his or her employee, agent, partner, director, officer, or manager has knowingly made any false, misleading or fraudulent omission or statement of material fact in the application for a license, or in any report or record required to be filed with the ~~development services director~~ city clerk;

(iii) the applicant, and all employees, agents, partners, directors, officers, or managers of the applicant have not attained the age of eighteen (18) years, as provided by OHMC 5.20.060;

(iv) the applicant or his or her partner, director, or officer is currently the subject of a final adult entertainment establishment license revocation order issued pursuant to this Chapter which became final less than one (1) year prior to the pending application.

(b) If the ~~development services director~~city clerk denies an adult entertainment establishment license authorized by this Chapter, and if the applicant files a timely notice of appeal pursuant to this Chapter, the ~~development services director~~city clerk shall, upon receipt of a copy of such notice of appeal, immediately issue the applicant a temporary license which shall authorize the applicant to operate the establishment to the same requirements as if the license had been granted, pending the final outcome of the appeal. A license applicant must pay the fee for an adult entertainment establishment license as set forth in OHMC 5.20.030 at the time the temporary license is issued. The holder of a temporary license is subject to all requirements, standards and penalty provisions of this Chapter. Nothing in this section is intended to authorize activities that do not comply with other requirements of the Oak Harbor Municipal Code or other applicable law.

(2) Adult Entertainment Manager's and Adult Entertainer's Licenses. The ~~development services director~~city clerk shall issue or deny an adult entertainment manager's license or an adult entertainer's license ~~on the same business day in which a~~ by the close of the

second business day after the complete application, including all submittals and information required by this Chapter, is received.

(a) The ~~development services director~~city clerk shall deny an application for an adult entertainment manager's license or an adult entertainer's license for any of the following reasons, and shall notify the applicant in writing of the grounds for the denial and the opportunity to appeal, if the ~~development services director~~ city clerk finds:

(i) the applicant is less than eighteen (18) years old;

(ii) the applicant has failed to provide any of the submittals or information required to be supplied according to this Chapter;

(iii) the applicant has knowingly made any false, misleading or fraudulent statement or omission of material fact in the application for a license; or

(iv) the applicant is currently the subject of a final license suspension order issued pursuant to this Chapter or is the subject of a license revocation order issued pursuant to this Chapter which became final less than one (1) year before the pending application.

(b) If the ~~development services director~~city clerk denies an adult entertainment manager's license or an adult entertainer's license authorized by this Chapter, and if the applicant files a timely notice of appeal pursuant to this Chapter, the ~~development services director~~city clerk shall, upon receipt of a copy of such notice of appeal, immediately issue the applicant a temporary license which shall authorize the applicant to perform as a manager or entertainer in the same manner and subject to the same requirements as if the license had been granted, pending the final outcome of the appeal. A license applicant must pay the fee for an adult entertainment manager's license or an adult entertainer's license as set forth in OHMC 5.20.050 at the time the temporary license is issued. The holder of a temporary license is subject to all requirements, standards and penalty provisions of this Chapter. Nothing in this section is intended to authorize activities that do not comply with other requirements of the Oak Harbor Municipal Code or other applicable law.

5.20.100 Additional ~~L~~license requirements~~ – Posting and display~~.

(1) Duty to supplement. Applicants for a license under this chapter shall have a continuing duty to promptly supplement application information required in the event that said information changes in any way from what is stated in the application. The notice shall include the information required to be provided for the original adult entertainment license. The failure to supplement the application on file with the city clerk regarding such change in ownership or interest within thirty (30) days from the date of such change, shall be grounds for suspension or revocation of a license.

(2) License nontransferable. No license or permit issued pursuant to this chapter shall be assignable or transferable. For purposes of this chapter, "assignable" or "transferable" shall mean and include any of the following:

(a) Transfer with the sale, lease or sublease of a business; or

(b) The transfer of securities which constitute a controlling interest in the cabaret, whether by sale, exchange or similar means; or

(c) Transfer with the establishment of a trust, gift or other similar legal device which transfers the ownership or control of the cabaret.

(~~1~~3) Every adult entertainer shall post his or her license in his or her work area so it is readily available for inspection by city authorities responsible for enforcement of this Chapter.

(~~2~~4) Every person, corporation, partnership, limited liability company, trust, incorporated or unincorporated association, marital community, joint venture, or other entity or business group of persons however organized or association licensed under this Chapter as an adult entertainment establishment or adult entertainment manager shall post such license in a conspicuous place and manner on the licensed premises.

(~~3~~5) Each manager and/or operator shall be responsible for maintaining a daily log, on a form provided by the ~~development services director~~city clerk, of all employees, entertainers, and managers working at the adult entertainment establishment each day. The log shall list the employee's, entertainer's and manager's name as it is listed on his/her license, license number, stage name, if any, the time he/she arrived at the adult entertainment establishment, and the time he/she left the adult entertainment establishment. Each employee, entertainer and manager shall sign his/her name in the daily log each time he/she arrives and leaves the adult entertainment establishment.

(~~4~~6) It is unlawful for any person to violate any of the provisions of this section.

5.20.110 License - Denial, revocation, or refusal to renew - Grounds.

(1) Licenses shall expire one year from the date of issue.

(2) A license may be denied, suspended, revoked, or not renewed for violation of any ordinance or law that regulates licensed activity in order to further the public interest in public health, safety, and welfare. A license may also be denied, suspended, revoked, or not renewed upon a finding that any applicant or licensee, or any owner, officer or agent thereof:

(~~1~~a) has omitted to disclose any material fact necessary to make a statement not misleading, in any application for the license; or

(~~2~~b) has charges pending against her/him or has been convicted of a crime or offense that directly relates to the activity for which the license is required, and the time elapsed since the date of conviction or release from jail or prison, whichever is more recent, is less than ten (10) years; or has been convicted of several crimes including at least one (1) within the last ten (10) years; provided, however, that any licensee whose license is revoked because of charges pending against her/him may engage in the activity for which the license is required, pending a final decision on the charges; ~~or~~"crimes or offenses that directly relates to the activity for which the license is required" include Chapter 9A.44 RCW, Sex Offenses; Chapter 9A.88 RCW, Indecent Exposure; Prostitution; Chapter 9.68 RCW, Obscenity and Pornography; Chapter 9.68A, Sexual Exploitation of Children; Chapter 69.50 RCW, Washington Uniform Controlled Substances Act; or violations of similar city ordinances.

(~~3~~c) has been subject to an adverse finding in any judgment or order that directly relates to the activity for which the license is required, in any judicial or administrative proceeding in which fraud, deceit, coercion, breach of trust, unfair method of competition, unfair or deceptive trade act or practice, or assertion of unconscionable contractual provisions, or other similar act, practice, or conduct, on the part of the licensee-applicant is proven, and the time elapsed since the judgment or order is less than ten (10) years; or

(~~4~~d) has violated or failed to comply with any applicable provisions of the OHMC or rule or regulation prescribed under this subtitle; provided, that failure to obtain a license shall not be grounds for license denial; or

(~~5~~e) is in default in any payment of any fee or tax required under the Oak Harbor Municipal Code; or

(~~6~~f) has been subject to an adverse finding in any judgment or order, in any judicial or administrative proceeding for violation of any provision of a city ordinance or rule or regulation prescribed thereunder pertaining to fire, building, health, sanitation, zoning, weights and measures, consumer protection, environmental protection, or any other ordinance or law and that is applicable to the licensed activity or licensed establishment; or

(~~7~~g) has been determined to have discriminated against any person because of race, color, age, sex, marital status, sexual orientation, gender identity, political ideology, creed, religion, ancestry, national origin, or the presence of any sensory, mental, or physical handicap, in the course of licensed activity, in violation of a city ordinance, law, rule or regulation prescribed thereunder; or

(~~8~~h) has violated or failed to comply with any final order of the ~~development services director~~city clerk or hearing examiner; or

(~~9~~i) has failed to complete the application for a license as required by the OHMC; or

(~~10~~j) has failed to obtain a license or permit required by state or other law necessary to engage in the licensed activity; or

(~~11~~k) has failed to comply with Chapters 49.12 and 26.28 RCW, and rules and regulations promulgated pursuant thereto, regarding employment of minors; or

(~~12~~l) has permitted or authorized his/her agent to violate or fail to comply with any provision of the OHMC; or

(~~13~~m) has allowed the property at which the business is located to be determined by a court to be a chronic nuisance property as provided by law.

5.20.120 Additional grounds for ~~S~~suspension or revocation of establishment license. As now or hereafter amended, an adult entertainment establishment license may be suspended or revoked upon a finding that:

(1) the licensee permitted or authorized his or her employees, agents, entertainers or managers to violate any of the provisions of this Chapter; or

(2) the adult entertainment manager permitted or authorized any violation of any of the provisions of this Chapter by any person;

(3) the licensee is convicted of any crime or offense involving prostitution, promoting prostitution, or transactions involving controlled substances (as that term is defined in Chapter 69.50 RCW) committed on the premises, or there has been a conviction of any of the licensee's servants, agents, or employees of any crime or offense involving prostitution, promoting prostitution or transactions involving controlled substances (as that term is defined in Chapter 69.50 RCW) committed on the licensed premises when the licensee knew or should have known of the violations committed by the licensee's servants, agents, or employees;

(4) the Oak Harbor Fire Department, Oak Harbor Police Department, Oak Harbor Public Works Department or the Island County Health Department find that any condition exists upon the premises of an adult entertainment establishment which constitutes a threat of immediate serious injury or damage to persons or property, said official may immediately suspend any license issued under this Chapter, pending a hearing in accordance with this Chapter. The official shall issue a notice setting forth the basis for the action and the facts that constitute a threat of immediate serious injury or damage to persons or property, and informing the licensee and the ~~development services department~~city clerk of the right to appeal the suspension to the city council under the same appeal provision set forth in this Chapter; provided, however, that a suspension based on threat of immediate serious injury or damage shall not be stayed during the pendency of the appeal.

5.20.130 Filing of application.

(1) Application for an adult entertainment establishment license, adult entertainment manager's license or adult entertainer's license shall be made to the ~~development services director~~city clerk, together with a receipt from the ~~development services director~~city clerk or designee for the amount of the license in full. The license application shall include all personal identification information requested by the city including date of birth and Social Security number. The application shall also specify the business location upon which the adult entertainment establishment license, adult entertainment manager's license or adult entertainer's license will be conducted. The application fee includes the fee to cover the cost of a WATCH criminal background check, as provided in OHMC 3.64.100. Upon filing of the application and fees, the applicant(s) shall be issued a temporary license which shall expire upon the city council determination set forth in Chapter 5.20 OHMC, unless stayed by filing of a judicial appeal within thirty (30) days of the city council decision appealed.

(2) If the ~~development services director~~city clerk denies an adult entertainment establishment license, adult entertainment manager's license or adult entertainer's license authorized by this Chapter, and if the applicant files a timely notice of appeal pursuant to this chapter, the ~~development services director~~city clerk shall, upon receipt of a copy of such notice of appeal, immediately issue the applicant a temporary license which shall authorize the applicant to continue as an adult entertainment establishment or to continue to perform as a manager or entertainer in the same manner and subject to the same requirements as if the license had been granted, pending the final outcome of the appeal. A license applicant must pay the fee for an adult entertainment establishment license, adult entertainment manager's license or adult entertainer's license as set forth in this Chapter at the time the temporary license is issued. The holder of a temporary license is subject to all requirements, standards and penalty provisions of this Chapter. Nothing in this section is intended to authorize activities that do not comply with other requirements of the Oak Harbor Municipal Code or other applicable law.

5.20.140 License conditions for adult entertainment establishment license.

(1) Upon receipt of an application for an adult entertainment establishment license, the city clerk shall transmit the application to the chief of police, who shall immediately conduct a WATCH criminal background check of the applicant(s).

(2) The chief of police shall also investigate the business location to determine whether there are any features of the establishment which pose noise, traffic or other similar public health or safety concerns for the operation of an adult entertainment establishment. The chief of police may request the assistance of other city departments, including the fire department and/or the building official, in assessing the impacts of the proposed business location if used as an adult entertainment establishment.

(3) The chief of police shall report to the city council the result of his/her investigation and make recommendations concerning any conditions that should be placed upon the adult

entertainment establishment license to reduce noise, traffic or other similar public health and safety impacts. Allowable conditions may include, but are not limited to, restrictions upon the hours of operation, structural improvements to the establishment to reduce noise impacts on neighboring uses, limitations on the numbers of patrons at any one time, landscaping or other screening, and requirements for traffic control. Periodic review of the efficacy of the imposed conditions may also be a condition of the adult entertainment establishment license.

(4) The city council shall hold a public hearing with respect to the issuance of the adult entertainment establishment license. The applicant(s) shall be entitled to respond to any findings of the police chief or other city officials and any proposed conditions on the adult entertainment establishment license. Unless the applicant is restricted from holding an adult entertainment establishment license pursuant to this Chapter, the city council shall then determine whether the noise, traffic and other similar public health and safety impacts of the adult entertainment establishment require mitigation through specified conditions and, if so, shall impose such conditions on the license. In no event shall the expressive content of any music, signing or dancing be the basis for denial of an adult entertainment establishment license or any conditions placed thereon.

(5) The decision of the city council shall be the final decision of the city.

5.20.150 Violation of license conditions.

(1) A license holder who violates any license condition of his/her adult entertainment establishment license, adult entertainment manager's license or adult entertainer's license shall be subject to civil penalties and to a license suspension or revocation as follows:

(a) First violation of a license condition: Five Hundred Dollars ($500.00) fine and/or a license suspension for thirty (30) days per violation;

(b) Second violation of same license condition: Seven Hundred Fifty Dollars ($750.00) fine and a license suspension for ninety (90) days per violation;

(c) Third violation of same license condition: One Thousand Dollars ($1,000.00) fine and revocation for a third violation within any twenty-four (24) month period.

(2) Time spent serving a suspension shall not be counted in determining the twenty-four (24) month period referred to in this section.

(3) For an adult entertainment premises licensee, a violation for which an adult entertainment premises license may be suspended or revoked includes a violation of this Chapter by a manager, employee, agent, entertainer or any other person, occurring on the premises when the adult entertainment premises licensee knew of or should have known of the violation.

(4) For an adult entertainment manager's license, a violation for which an adult entertainment manager's license may be suspended or revoked includes a violation of this Chapter by an adult entertainer or other person when the adult entertainment manager knew of or should have known of the violation.

(5) If a licensee is convicted of committing a crime or offenses involving one of the following occurring on the premises of an adult entertainment establishment, the license shall be revoked:

(a) A violation of RCW 9A.88.030, 9A.88.070, 9A.88.080 or 9A.88.090;

(b) A violation of OHMC 6.05.270;

(c) A transaction involving a controlled substance as defined in Chapter 69.50 RCW or OHMC 6.05.470; or

(d) A violation of Chapter 9A.44 RCW, Sex Offenses or Chapter 9.68 RCW, Obscenity and Pornography, Chapter 9.68A RCW, Sexual Exploitation of Children, or OHMC 6.05.430.

(6) For an adult entertainment establishment licensee, a conviction for which the adult entertainment establishment license may be revoked includes the conviction of a manager, employee, agent or entertainer for a crime or offense listed in this section occurring on the premises of the adult entertainment establishment when the adult entertainment establishment licensee knew of or should have known of the crime or offense.

(7) For an adult entertainment manager's license, a conviction for which the adult entertainment manager's license may be revoked includes the conviction of an employee or entertainer for a crime or offense listed in this section occurring on the premises of the adult entertainment establishment when the adult entertainment manager licensee knew of or should have known of the crime or offense.

(8) A licensee whose license has been revoked is not eligible to reapply for any license authorized by this Chapter for one (1) year following the date the decision to revoke is final.

(9) On receipt of a notice of suspension or revocation, the license holder shall promptly deliver the license to the ~~development services director~~city clerk unless an appeal is pending under this Chapter. Upon expiration of a license suspension, the ~~development services director~~city clerk shall return the license to the license holder.

(10) For purposes of this section, a person "should have known" of a crime or offense or violation of this Chapter, when the person has information which would lead a reasonable person to believe that a crime or offense or violation of this Chapter was occurring or would occur.

(11) If the ~~development services director~~city clerk determines that a condition exists on an adult entertainment premises which constitutes a threat of immediately serious injury or damage to a person or property, the ~~development services director~~city clerk may immediately suspend an adult entertainment premises license. The ~~development services director~~city clerk shall issue a notice setting forth the basis for the action and the facts that constitute a threat of immediate serious injury or damage to a person or property.

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

(13) The fourth or greater violation of the same license provision shall constitute a misdemeanor punishable by a fine not exceeding One Thousand Dollars ($1,000.00), up to ninety (90) days in jail, or both such fine and jail time.

5.20.160 Revision of adult entertainment establishment license conditions.

(1) The city council also reserves to itself the power to revise the conditions of the adult entertainment establishment license upon information received indicating that the existing conditions are not sufficient to mitigate the noise, traffic and public health and safety impacts associated with the adult entertainment establishment location. A revision proceeding shall be initiated by an investigative report by the chief of police, fire chief, building official or other city official.

(2) In the event that such investigative report is filed, the license holder shall be sent a copy of the complaint and/or report and provided at least ten (10) days' notice of a hearing to determine whether the conditions of the license shall be modified. At a public hearing before the city council, the license holder shall have the opportunity to respond to the investigative report, and to present any evidence in opposition to a modification of conditions. The city council shall base any change in conditions on the license upon noise, traffic or other similar public health and safety impacts. In no event shall the expressive content of any music, singing or dancing be the basis for denial of an adult entertainment establishment license or any conditions placed thereon. The decision of the city council, after a public hearing on the proposed change in conditions, shall be final.

5.20.170 Appeal to court. Appeal of any final decision of the city under this Chapter shall be to Superior Court. The city's decision shall be stayed, upon appeal filed within thirty (30) days of the city council decision appealed, pending judicial review.

5.20.180 Continuation of business while complaint hearing decision pending.

(1) Except in the case of summary suspension or revocation, whenever a timely request for hearing on a complaint is filed, a licensee or an applicant for license renewal may engage in the activity for which the license is required, pending decision by the city council. An applicant not licensed in the preceding license year may not engage in the activity for which the license is required pending decision by the city council. Nothing in this section

is intended to authorize activities that do not comply with other requirements of the Oak Harbor Municipal Code or other applicable law.

(2) If the ~~development services department~~city clerk denies an adult entertainment establishment license governed by this Chapter, and if the license applicant files a notice of appeal with the city council, the ~~development services director~~city clerk shall immediately issue the license applicant a temporary license. The temporary license shall authorize the license applicant to operate an adult entertainment establishment or perform as a manager or entertainer, in the same manner as if the license had been granted, pending the city council's decision.

(a) If the city council affirms the ~~development services director~~city clerk's license denial, the temporary license shall remain in effect pending a motion for reconsideration before the city council and, in addition:

(i) if the license applicant does not timely file for judicial review, then only until the expiration of the time allowed to file an application for a writ of review under Chapter 7.16 RCW; or

(ii) if the license applicant does timely file an application for a writ of review, then only until the court either issues a writ or denies the writ application.

(b) If the city council dismisses the adult entertainment establishment license denial with prejudice, the ~~development services department~~city clerk shall immediately issue an adult entertainment license.

(c) If the city council dismisses the adult entertainment denial without prejudice, the temporary license shall remain in effect for five (5) additional business days, at the end of which time the ~~development services department~~city clerk must either reissue a denial or issue an adult entertainment establishment license. If the ~~development services director~~city clerk reissues the denial, then the temporary license will continue in effect according to the procedures set forth in subsection (2) of this section.

(d) If a license applicant is issued a temporary license, the license applicant shall pay the fee charged for an adult entertainment establishment license under this Chapter.

5.20.190 Standards of conduct and operation. The following standards of conduct must be adhered to by employees of any adult entertainment establishment:

(1) No employee or entertainer shall be unclothed or in such less than opaque and complete attire, costume, or clothing so as to expose to view any portion of the female breast below the top of the areola, or any portion of the pubic regions, anus, buttocks, vulva, or genitals, except upon a stage at least eighteen (18) inches above the immediate floor level and removed at least ten (10) feet from the nearest patron.

(2) No employee or entertainer mingling with patrons shall be unclothed or in less than opaque and complete attire, costume, or clothing as described in subsection (1) of this section, nor shall any male employee or entertainer at any time appear with his genitals in a discernibly turgid state, even if completely and opaquely covered, or wear or use any device or covering which simulates the same.

(3) No employee or entertainer mingling with patrons shall wear or use any device or covering exposed to view which simulates the breast with less than a fully opaque covering of any part of the nipple or areola, vulva, genitals, anus, or buttocks.

(4) No employee or entertainer shall caress, fondle, or erotically touch any patron. No employer or entertainer shall encourage or permit any patron to caress, fondle, or erotically touch any employee or entertainer.

(5) No employee or entertainer shall perform actual or simulated acts of sexual conduct as defined in this Chapter, or any act which constitutes a violation of Chapter 7.48A RCW, the Washington Moral Nuisances Statute.

(6) No employee or entertainer mingling with patrons shall conduct any dance, performance, or exhibition in or about the non-stage area of the adult entertainment establishment.

(7) No tip or gratuity offered to or accepted by an adult entertainer may be offered or accepted prior to any performance, dance, or exhibition provided by the entertainer. No entertainer performing upon any stage area shall be permitted to solicit, demand, accept or receive any form of gratuity offered directly to the entertainer by any patron. Any gratuity offered to any entertainer must be placed into a receptacle provided for receipt of gratuities by the adult entertainment establishment, or provided through a manager on duty on the premises. Any gratuity or tip offered to any adult entertainment establishment shall be placed into a receptacle provided by the manager, and not upon the person or into the clothing of the adult entertainer or any other employee.

(8) Separate restrooms shall be maintained for performers, entertainers, managers and employees than for customers and members of the public. Performers, entertainers, managers and employees shall not be permitted to use restrooms available for customers or members of the public, nor shall customers or members of the public be permitted to use restrooms available for performers, entertainers, managers and employees.

(9) No viewing equipment shall be installed, maintained or used in any of the restrooms located on the premises.

5.20.200 Physical layout of premises.

(1) Performance area at adult entertainment establishments. Every place offering adult entertainment shall be physically arranged in such a manner that the performance area where adult entertainment is provided shall be a stage or platform at least eighteen (18)

inches in elevation above the level of the patron seating areas, and shall be separated by a distance of at least ten (10) feet from all areas of the premises to which patrons have access. The stage and the entire interior portion of cubicles, rooms, or stalls wherein adult entertainment is provided must be visible from the common areas of the premises and at least one (1) manager's station. Visibility shall not be blocked or obstructed by doors, curtains, drapes, or any other obstruction whatsoever.

(2) Picture machines must be visible and publicly accessible. Every booth, cubicle, or partition utilized or maintained at a picture machine location as the area from which the screen of any picture machine is to be viewed shall be arranged so that any person viewing such picture machine screen shall be visible from the waist down to the floor ~~from~~ without obstruction by the viewing booth, cubicle, or partition. The licensee shall not permit any doors to any publicly accessible area on the premises to be locked during business hours. Every room or area on such premises which is open to the public shall be readily accessible at all times for inspection by any public officer charged with the enforcement of the provisions of applicable city ordinances or regulations. The licensee shall maintain sufficient illumination generally distributed in all parts of the premises at all times when the picture machine area is open or when the public is permitted to enter or remain on the picture machine premises.

(3) No activity or entertainment occurring on the premises shall be visible at any time from outside the facility or from any other public place.

(4) No alteration in the configuration or location of a manager's station may be made without the prior approval of the city.

(5) It is the duty of the licensee of the premises to ensure that at least one licensed manager is on duty and situated in each manager's station at all time that any patron is present inside the premises.

5.20.210 Permission to inspect. An adult entertainment establishment licensee and its manager shall permit the ~~development services director~~city clerk and the personnel from the Oak Harbor Police Department to conduct announced inspections, during hours that the adult entertainment establishment is open to the public, of all exterior and interior areas of the premises open to and used by members of the public and of all books and records required to be kept under this Chapter. The purpose of such inspections is to determine whether the premises are being operated in compliance with the provisions of this Chapter.

5.20.220 Public nuisance. An adult entertainment premises operated, conducted or maintained in violation of laws of the state of Washington shall be, and the same is, declared to be unlawful and a public nuisance. The city attorney may, in addition to, or in lieu of, any other remedies set forth in this Chapter, commence an action to enjoin, remove or abate such nuisance and may take such other steps and apply to such court or courts as may have jurisdiction to grant such relief as will abate or remove such public nuisance, and restrain and enjoin any person from operating, conducting or maintaining an adult entertainment premises contrary to the provisions of this chapter.

5.20.230 Non-public areas. No member of the public shall be permitted to enter into any of the non-public portions of the adult entertainment establishment, which shall include but are not limited to: the dressing rooms of entertainers or other rooms provided for the benefit of employees, and the kitchen and storage areas; except that persons delivering goods and materials, food and beverages or performing maintenance or repairs to the premises or equipment on the premises may be permitted into non-public areas to the extent required to perform their job duties.

5.20.240 Additional requirements for adult entertainment establishments. At any adult entertainment establishment, the following are required:

(1) Admission must be restricted to persons of the age of eighteen (18) years or older.

(2) No adult entertainment shall be visible outside the adult entertainment establishment, nor shall any photograph, drawing, sketch, or other pictorial or graphic representation, which includes lewd matter as defined in Chapter 7.48A RCW, or display of sexually explicit material in violation of RCW 9.68.130.

(3) Sufficient lighting shall be provided in and equally distributed in and about the parts of the premises which are open to patrons so that all objects are plainly visible at all times. A minimum lighting level of thirty (30) lux horizontal measured at thirty (30) inches from the floor on ten (10) foot centers is hereby established for all areas of the adult entertainment establishment where members of the public are admitted. It shall be the duty of the licensee and the manager to ensure that the illumination described above is maintained at all times that any patron is present in the premises.

(4) No viewing room may be occupied by more than one (1) person at a time.

(5) No licensee shall allow openings of any kind to exist between viewing rooms or booths.

(6) No person shall make or attempt to make an opening of any kind between a viewing booths or rooms. The manager shall, during each business day, regularly inspect the walls between the viewing booths to determine if any openings or holes exist.

(7) The licensee shall cause all wall coverings, floor coverings, and ceiling coverings in viewing booths to be non-porous, easily cleanable surfaces with no rugs or carpeting.

5.20.250 List of entertainments - Fees. There shall be posted and conspicuously displayed in the common areas of each place offering adult entertainment a list of any and all entertainment provided on the premises. Such list shall further indicate the specific fee or charge in dollar amounts for each entertainment listed.

5.20.260 Notice to customers. A sign shall be conspicuously displayed in a common area of the premises which shall read as follows:

"This adult entertainment establishment is regulated by the City. Entertainers are:

(1) not permitted to engage in any type of sexual conduct;

(2) not permitted to appear semi-nude or nude, except on stage;

(3) not permitted to accept tips of gratuities in advance of their performance; and

(4) not permitted to accept tips or gratuities directly from patrons while performing upon any stage area."

5.20.270 Activities not prohibited.

(1) This Chapter shall not be construed to prohibit:

(a) plays, operas, musicals, or other dramatic works which are not obscene; or

(b) classes, seminars, and lectures held for serious scientific or educational purposes that are not obscene; or

(c) exhibitions, performances or dances which are not obscene.

(2) Whether or not activity is obscene shall be judged by consideration of the following factors:

(a) Whether the average person, applying contemporary community standards, would find that the activity taken as a whole appeals to a prurient interest in sex;

(b) Whether the activity depicts or describes in a patently offensive way, as measured against community standards, sexual conduct as described in RCW 7.48A.010(2)(b);

(c) Whether the activity taken as a whole lacks serious literary, artistic, political, or scientific value.

5.20.280 Manager on premises.

(1) A licensed manager shall be on duty at an adult entertainment establishment during the adult entertainment establishment's hours of operation. The name of the manager on duty shall be prominently posted during business hours.

(2) Any adult entertainment establishment found to be operating without a manager on duty shall be immediately closed until a licensed manager arrives for duty at the adult entertainment establishment pursuant to subsection (1) above.

(3) The manager shall verify that each entertainer performing while the manager is on duty possesses a current and valid entertainer's license, as required by this Chapter. The manager shall verify that such adult entertainment license is posted in the manner required by this Chapter.

(4) A manager shall not perform as an entertainer on days during which he or she acts as a manager on duty at an adult entertainment establishment.

5.20.290 Hours of operation. It is unlawful for any adult entertainment establishment to be conducted, operated, or otherwise open to the public between the hours of two o'clock a.m. (2:00 a.m.) and ten o'clock a.m. (10:00 a.m.).

5.20.300 Persons under eighteen (18) years of age prohibited.

(1) It is unlawful for any person under the age of eighteen (18) years to be in or upon any premises for which an adult entertainment establishment license is required. Only the following types of identification will be accepted as proof of age:

(a) A motor vehicle operator's license issued by any state, bearing the applicant's photograph and date of birth;

(b) A state-issued identification card bearing the applicant's photograph and date of birth;

(c) An official passport issued by the United States of America;

(d) An immigration card issued by the United States of America;

(e) Any other picture identification bearing the applicant's photograph and date of birth issued by a governmental agency.

(2) It is unlawful for any owner, operator, manager, or other person in charge of an establishment for which an adult entertainment establishment license is required, to knowingly permit or allow any person under the age of eighteen (18) years to be in or upon such premises.

5.20.310 Locking entrance unlawful. It is unlawful for any person or persons in charge of or having the management of, or being in the employment of, or a member of or guest in, any adult entertainment establishment, either incorporated or unincorporated, to lock, bar, or in any manner obstruct, or to suffer or permit to be locked, barred or in any manner obstructed, the entrance or entrances leading to any room or place in such ~~social club wherein non-intoxicating beverage and/or tobaccos are kept for sale or facilities for social games are maintained~~adult entertainment establishment open to a member or members of the public, at any time when any person is present therein with one (1) or more persons.

5.20.320 Alarm system at entrance - Unlawful. It is unlawful for any person to construct or cause to be constructed, or to suffer or permit to continue or be maintained, any alarm or system of alarms in connection with the entrance or entrances leading to any room or place in any adult entertainment establishment.

5.20.330 Warning of approach of police - Lookouts. It is unlawful for the owner or any person having the management or control or charge of, or in the employment of the owner of, any place in the city of Oak Harbor, or where an adult entertainment establishment is maintained, to employ, station, post, keep, maintain, suffer or permit any person or persons at or near the entrance or entrances thereto, or in any place so as to command a view of the approach thereto, for the purpose or with the object of giving any advice, information or warning in any manner whatsoever that police officers are approaching, are about to enter, are entering, or have entered such place.

5.20.340 Warning that police are approaching - Unlawful. It is unlawful for any person to give any advice, information or warning, in any manner whatsoever, that police officers are approaching, are about to enter, are entering or have entered, any place in the adult entertainment establishment.

5.20.350 Presence in place where warning given. It shall be unlawful for any person to be with one (1) or more other persons in any adult entertainment establishment, when , with the knowledge of such person at such time any person is employed, stationed, kept, maintained, suffered or permitted at or near the entrance or entrances thereto or in any place so as to command a view of the approach thereto, for the purpose or with the object of giving any advice, information or warning in any manner whatsoever that police officers are approaching, or are about to enter, are entering, or have entered, such place.

5.20.360 Locking rooms. It shall be unlawful for the owner of, or any agent or other person or persons having the charge or rental of, any premises occupied by any adult entertainment establishment, to knowingly suffer or permit to be locked, barred, or in any manner obstructed, the entrance or entrances leading to any room or place in such adult entertainment establishment.

5.20.370 Presence in locked rooms. It shall be unlawful for any person to be with one (1) or more other persons in any room or place in any adult entertainment establishment, at any time when the entrance or entrances leading thereto are locked, barred or obstructed in any manner equipped with any alarm or system of alarms.

5.20.380 Permitting alarm system unlawful. It shall be unlawful for the owner of, or any agent or other person or persons having the charge or rental of, any premises occupied by any adult entertainment establishment, to knowingly suffer or permit to be constructed, or to be continued or maintained, any alarm or system of alarms in connection with the entrance or entrances leading to any room or place in such adult entertainment establishment.

5.20.390 Exemption from Chapter. No person holding an adult entertainment establishment license, and no manager or employee of any such person, and no entertainer, shall

allow alcohol on the premises except for those adult entertainment establishments properly licensed under the Washington State Liquor Control Board.

Any license issued pursuant to this Chapter shall be subject to any applicable rules or regulations of the Washington State Liquor Control Board relating to the sale of intoxicating liquor. In the event of a conflict between the provisions of this Chapter and the applicable rules and regulations of the Washington State Liquor Control Board, the rules and regulations of the Washington State Liquor Control Board shall control.

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 publication.

PASSED by the City Council this _____ day of _____, ~~2010~~2011.
APPROVED by its Mayor this _____ day of _____, ~~2010~~2011.

THE CITY OF OAK HARBOR

_____
Mayor

Attest:

_____
City Clerk

Approved as to Form:

_____
City Attorney

Published: _____

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City of Oak Harbor
City Council Agenda Bill

Bill No. 4
Date: May 17, 2010
Subject: Public Art Project – SE Pioneer Way Improvements Project

FROM: Paul Schmidt, City Administrator

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

PURPOSE

This agenda bill presents information and seeks City Council direction on the public art component of the SE Pioneer Way Improvements Project. It discusses the review process, the public input survey and the recommendation of the Oak Harbor Arts Commission on the selection of art pieces for the Pioneer Way corridor.

AUTHORITY

The Council has authority under 35A.11.020 to regulate its internal affairs, to provide for the improvement and beautification of public ways, and to render local, social and cultural services.

SUMMARY STATEMENT

Background

There have been a number of City Council actions taken regarding the SE Pioneer Way Improvements Project. Most recently, the City Council awarded the construction project on February 1, 2011. The project is underway and the construction is progressing as scheduled.

As the Council may recall, the SE Pioneer Way Improvement Project was selected by the University of Washington as a Greenroads™ Pilot Project. A Greenroads™ certified project represents a sustainability performance metric for construction of a road project. If at least a minimum of 1% of the total cost of the SE Pioneer Way Improvement Project is dedicated to a public art component, the project will receive 2 points towards a Greenroads™ certification. As part of the overall Greenroads™ project concept, the City has engaged in a process to incorporate public art along SE Pioneer Way. Four locations have been selected, and included in the project plans, for art along SE Pioneer Way. These locations are at City Beach Street, Dock Street, Ireland Street and Midway Boulevard (for a map of these locations, please see Attachment 1).

Review Process

The Oak Harbor Arts Commission was tasked with the process of soliciting and reviewing art

proposals for the project. This process was initiated in November of 2010 with a Request for Proposals (RFP) that was approved by the City Council on November 16, 2010 (please see Attachment 2 for the agenda bill from that meeting). The RFP requested proposals for four identified locations with a theme *Water – Above, Below, On and Of* and established a total budget of $80,000, which was approximately equivalent to 1% of the estimated total project cost. The Art Commission further identified the City Beach Street and the Midway Blvd. locations as prominent entryway sites and therefore proposes allocating a higher dollar amount (up to $30,000) to these locations so that the artists can design more prominent pieces. The deadline for responses to the RFP was January 14, 2011.

The City received proposals from 16 artists. Most of the artists had submitted proposals for more than one site and therefore there were a total of 43 art pieces. A summary of the schedule and process of reviewing the proposals is listed below.

Date	Actions
January 25	Arts Commission reviewed all the proposals and made an initial cut of projects based on criteria such as *Theme, Fit, Budget, Sustainability and Message/Statement.*
February 7	Artists that made the first cut presented their proposals to the Arts Commission.
February 14	The Arts Commission met to make the second cut based on the artists' presentations and other additional information.
February 22	The proposals still in the running were displayed at the Pioneer Way Office open house and public input on the pieces were gathered with the help of an informal ratings matrix.
February 28	The Arts Commission narrowed the selections down further to 11 pieces for the final list of proposals to be included in a city-wide survey that was included in the utility billing cycle.
March 21	Surveys were mailed with the utility bills.
April 11	The Arts Commission discussed the locations for the art along Pioneer Way to determine the best fit for the proposed art.
April 18	Deadline for the public input survey.
April 25	Arts Commission reviewed the survey results and formulated their recommendation to the City Council.

Public Input Survey

The Arts Commission determined that a survey would be the most effective way to engage the public for input into the selection of art for the project. A survey was included in the March utility bill that was mailed to residents and property owners. The survey was also made available online through the City's website and a blog that was created for this project. The City received 243 online responses and 399 paper responses (utility bills) for a total of 642. A copy of the survey is included as Attachment 3, while the results of the survey are included as Attachment 4.

The overall ranking of the art pieces based on the survey is listed below. The table below also includes costs for each piece as estimated by the artist for the original proposed artwork. Some

of the artists have provided an alternate estimate (primarily reductions) with slight variations to the original design to provide options to consider for budget reasons.

Art Piece	Cost estimates	Production time
1. Mermaid	$30,100 (as proposed), or $22,500 for a modified design for SR 20 site	150-180 days
2. In His Element	$20,000 (estimate on original) or $10,000 for a less intricate design	90-120 days
3. Sea Life	$30,000 (estimate on original) or $22,500 (for a slightly varied design)	
4. Salmon Window	$30,000 (estimate on original)	120 – 180 days
5. Moon Waves	$28,500 (estimate on original)	90 days
6. Fish Out of Water	$30,000 (for 3), $15,000 (for 1 large)	30-60 days
7. Water Sculpture	$1000 per feet (Currently $21,000 for 3 columns at 9,7 & 5 feet tall)	60-90 days
8. Rain Column	$10,000 (based on initial proposal)	
9. Vortex	Has been withdrawn by the artist	-
10. Clouds II	Has been withdrawn by the artist	-
11. Spouting Fish	$10,000 (latest estimate)	90 days

ARTS COMMISSION RECOMMENDATION

The Arts Commission on April 25, 2011 reviewed the survey results and formulated a recommendation to the City Council. A summary of the April 25, 2011 recommendation is provided below.

APRIL 25, 2011 Arts Commission Recommendation

Location[1]	Proposed Art Piece	Highlighted Reasons
City Beach Street (SE Corner)	In His Element	Scale and prominence
Dock Street (NW Corner)	Option 1 – Clouds II[2,4] Option II – Water Sculpture[3]	Option I - Close to utilities, interactive with pedestrians, focal point Option II – small footprint and easily moved if need for access to underground utilities
Ireland Street (South)	Option I – Water Sculpture Option II – Fish out of water	Option I – scale and fit Option II – scale and fit
Midway Blvd (NW Corner)	Moon Waves	Scale and prominence, auto oriented

[1] A map highlighting the locations and the proposed art is attachedas Attachment 5

[2] Clouds II is a kinetic sculpture that requires additional infrastructure such as water and sewer connections. The cost to extend these connections to the art piece is estimated to be approximately $5000. The monthly utility bill for the art will be approximately of $80 - $100.

[3] The Option II pieces were included by the Arts Commission to provide the Council an alternative if Option I was not favorably considered.

[4] The artist withdrew this piece from consideration subsequent to the Arts Commission recommendation.

Note: Total cost for Option 1 = $85,450 (as originally recommended by the Arts Commission) Total cost with Option II = $86,500

All artists were contacted after the April 25, 2011 meeting for additional information and latest estimates. During this process, one of the artists withdrew his proposals and some of the others changed their estimates. These changes prompted the Arts Commission to reconsider their recommendations. The Arts Commission had their regular meeting on May 9, 2011. At the meeting, the Arts Commission discussed some of the changes in estimates and withdrawals. One of the members of the public, during the public comment period, introduced a new suggestion/proposal, but the Commission decided not to include any new piece into the selection process. An audio CD of the meeting has been included as an attachment, if the Council is interested in listening to the discussion at the May 9, 2011 meeting. After much deliberation the Arts Commission amended their recommendation to the City Council. A summary of the amended recommendation is provided below.

MAY 9, 2011 Amended Arts Commission Recommendation

Location[1]	Proposed Art Piece	Highlighted Reasons
City Beach Street (SE Corner)	Water Sculpture - $1000 per feet (Currently $21,000 for 3 columns at 9,7 & 5 feet tall)	Eye catching with the multiple pieces
Dock Street (NW Corner)	Sea Life - 22,500 (for a slightly varied design)	The varied design includes seating around it and will provide a plaza type environment
Ireland Street (South)	Commission art with Georgia Gerber for bronze piece - $30,000 (Arts Commission Special Meeting on Monday, May 16, 2001 with Artist)[2]	Scale and fit
Midway Blvd (NW Corner)	Moon Waves - $28,500	Scale and prominence, auto oriented

[1] A map highlighting the locations and the proposed art is attached as Attachment 5

[2] Since this recommendation involves a proposal that has not been through the public process, it is best to commission this piece separately and not include it in the current decision for the Pioneer Way Improvement Project.

Note: Total cost as proposed by Arts Commission = $102,000; Total cost without the Ireland Street location = $72,000

The Arts Commission also recommends using funds from the Art Acquisition and Maintenance Fund to cover the costs that exceeds $80,000. The Art Acquisition and Maintenance Fund currently has approximately $57,000.

The Arts Commission also recommends that the Mermaid be considered for the SR 20 and Pioneer Way intersection, primarily to provide an interest and curiosity to people on the highway and draw them toward downtown. Since this location is outside the Pioneer Way project scope, the decision to consider art at this location will not be included in the Greenroads™ certification nor is it included in the project budget.

FUNDING AND CONTRACTS

The project budget has identified $80,000 as the intended allocation for public art. This figure is based on approximately one percent (1%) of the overall project budget as originally estimated; an amount necessary to earn the cultural outreach points for the Greenroads™ certification. With the actual construction contract amount less than the engineer's estimate, this dollar amount ($80,000) will meet and exceed the 1% threshold. The Council may amend this figure at its discretion so long as at least 1% of the total project cost is allocated towards public art.

Staff recommends that each art piece be treated as its own separate project and propose that a separate contract be executed for each piece. This approach will allow for working with different artists, for incorporating different completion and installation dates for the art, etc. The total dollar amount for all four selected art pieces will not exceed $80,000 (plus applicable taxes) unless specifically authorized by the City Council. An example of the intended contract is included with this agenda bill as Attachment 7

CITY COUNCIL REVIEW AND DECISION

The City Council is asked to take a number of actions at this meeting. The first is to specifically authorize the use of real estate excise tax (REET) funds for the acquisition and installation of public art as part of the SE Pioneer Way Improvements Project. The next is to review the input from the public involvement process and the recommendation of the Oak Harbor Arts Commission and determine which art pieces should be selected. Finally, the Council is asked to authorize the Mayor to negotiate contracts with the artists for each of the selected pieces.

RECOMMENDED ACTION

1. A motion to approve the expenditure of REET funds for the art on Pioneer Way for Greenroads certification
2. Motions approving up to four specific art pieces for the Pioneer Way Improvement Project. The locations of the approved pieces will be based on prior Arts Commission recommendations.
3. Authorize the Mayor to enter into contracts with the appropriate artists for the acquisition of the selected art pieces, with a not to exceed total of $80,000 plus any applicable taxes.

ATTACHMENTS

1. Map of Pioneer Way design concept with proposed art locations
2. City Council agenda bill from 11/16/10 (authorizing call to artists)
3. Survey
4. Survey results
5. Maps depicting the Arts Commission's recommendation of proposed art at each location
6. CD of May 9, 2011 Arts Commission meeting
7. Sample contract

MAYOR'S COMMENTS

Mayor Slowik compliments the Arts Commission on their thorough and public process in recommending public art for the Pioneer Way Project.

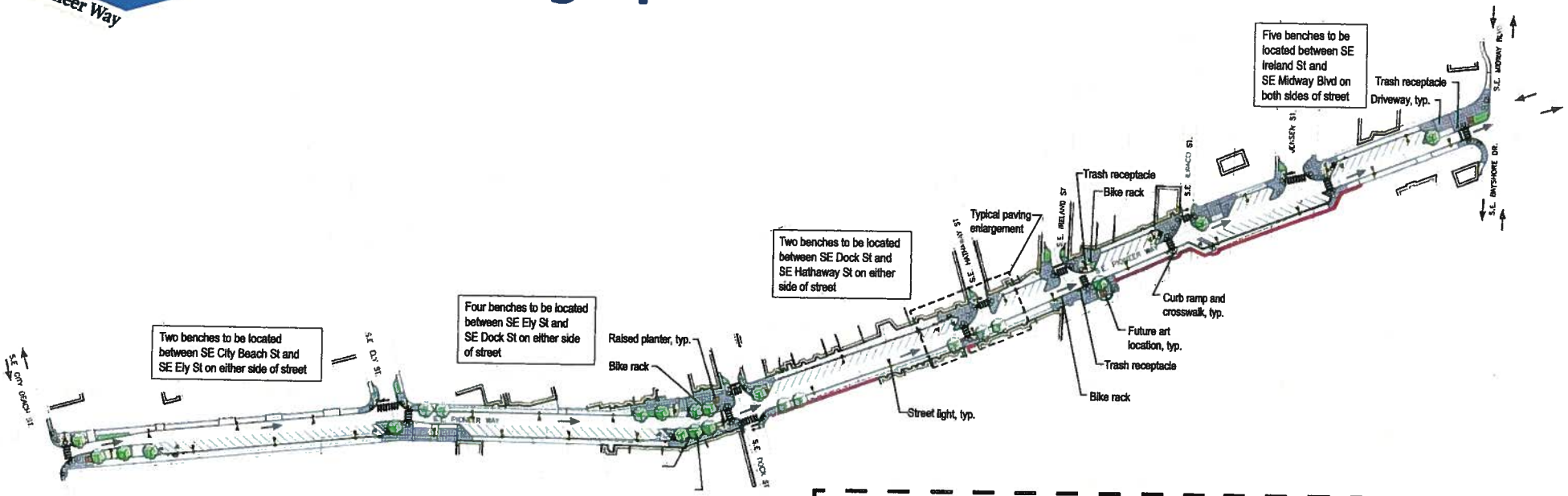
Because of the magnitude of the Project and the quality of the selections, it is entirely understandable that a final decision on a recommendation to the Council was a struggle. In fact, two Arts Commission meetings were needed to submit a recommendation and at that, it exceeds the prescribed budget and includes commissioning a new piece not yet submitted. In addition, the Arts Commission did not appear to utilize the Community Survey in their final judgment to the full degree.

Consequently, I suggest that the City Council review the recommendation under the following guidelines:

- Adhere to the $80,000 budget
- Use art that is currently submitted
- Locate art only in the Construction Zone
- Give more emphasis to the community survey

SE Pioneer Way

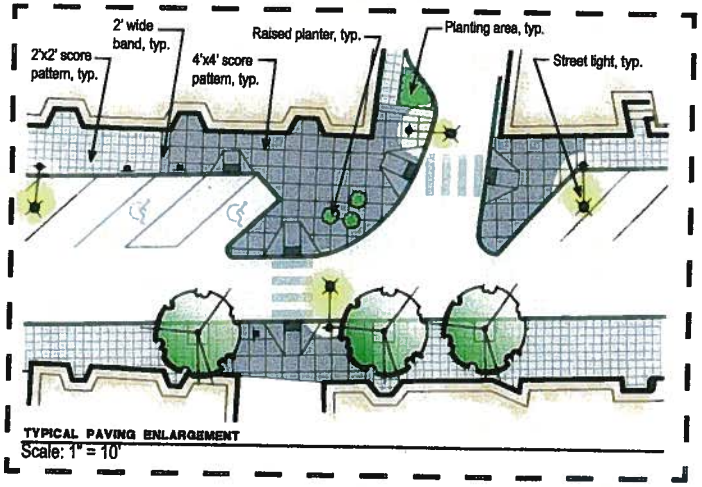
Current design plan



LEGEND

- Street Tree
- Standard Sidewalk
- Accent Sidewalk
- Landscape Area
- Street Light
- Crosswalk
- Driveway
- Existing Building
- Future Art Location
- Raised Planter
- Metal Railing

Total Parking Stalls: **123**
Total ADA Parking Stalls: **8**



NORTH

SCALE
40' 0 40' 80'
FEET

57

City of Oak Harbor

Design drop-in sessions: August 2010

City of Oak Harbor
City Council Agenda Bill

Bill No. _____
Date: November 16, 2010
Subject: Authorization for Call to Artists for the SE Pioneer Way Improvement Project

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

This agenda bill seeks authorization to advertise the Call for Public Art Proposal for the SE Pioneer Way Improvement Project.

AUTHORITY

The City has authority under RCW 35A.11.020 to regulate its internal affairs, to provide for the improvement and beautification of public ways, and to render local social and cultural services.

SUMMARY STATEMENT

The SE Pioneer Way Improvement Project is a streetscape and revitalization project that will make significant updates to Oak Harbor's historic downtown district. The street project is a key component for the City's Windjammer Plan to connect the public, merchants and tourists to the Oak Harbor Waterfront and enhance the community through sustainable projects. The project includes replacement of aging infrastructure, street and sidewalk improvements and corridor beautification and aesthetic enhancements.

As you might recall, the SE Pioneer Way Improvement Project was selected by the University of Washington as a **Greenroads™** Pilot Project, which will enable the City to receive direct assistance to construct a qualifying project (see Exhibit A). A **Greenroads™** certified project represents a sustainability performance metric for construction of a road project (see Exhibit B). If at least a minimum of 1% of the total cost of the SE Pioneer Way Improvement Project is dedicated to a public art component, the Project will receive 2 points towards a **Greenroads™** certification (see Exhibit C).

Included in the project design are four separate locations for the placement of art: 1) Pioneer Way & Midway Boulevard; 2) Pioneer Way & City Beach; 3) Pioneer Way & S.E. Dock; and 4) Pioneer Way and S. E. Ireland. The Oak Harbor Arts Commission discussed this project on five

different occasions and has chosen *Water – Above, Below, On & Of* as their recommendation to the City Council for the project's theme. With regard to style, the Arts Commissioners discussed the natural water-front beauty of the project area and what "water" means to the City of Oak Harbor. The Commissioners would like to see a variety of pieces, possibly interactive, and long-lasting art made out of materials such as natural stone, bronze and concrete. The Arts Commission recommends that the art shall be easy to maintain and vandal resistant. The Arts Commission also recommends that kinetic art and noise-producing art not be used for this project due to the location.

As a means to seek commissioned art, the Arts Commission has prepared a draft "Call for Public Art Proposals" to publish with the Mayor's and City Council consent (see Exhibit D).

STANDING COMMITTEE REPORT

This item was discussed at the November 9, 2010 Governmental Services Standing Committee meeting.

RECOMMENDED ACTION

A motion authorizing the Mayor to proceed with the advertisement of the Call for Public Art Proposals for the SE Pioneer Way Improvement Project.

ATTACHMENTS

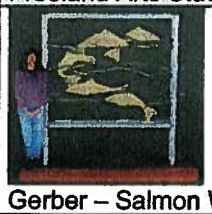
Exhibit A
Exhibit B
Exhibit C
Exhibit D

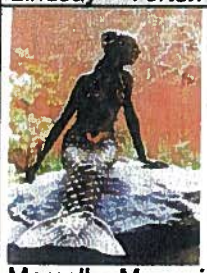
MAYOR'S COMMENTS

PIONEER WAY ARTS PROJECT

The scope of the Pioneer Way Improvement Project in downtown Oak Harbor includes locations for artwork to be placed along the street to provide cultural significance and aesthetic value to the community. Four locations within the project have been chosen for placement of art pieces. The proposed locations for the art are at the intersections of Pioneer Way and City Beach Street, Dock Street, Ireland Street, and Midway Blvd. This survey will be taken into consideration as the Arts Commission and the City Council select the art pieces. Please complete this survey and drop it off at City Hall **before April 18, 2011 by 5pm** or you can mail it to City of Oak Harbor, Attn. Pioneer Way Arts – Karen Crouch, 865 SE Barrington Drive, Oak Harbor, WA 98277. The survey can also be completed online. A link to the online survey will be on the City's website www.oakharbor.org, the Pioneer Way Arts Blog www.cohpioneerwayart.blogspot.com and on the Pioneer Way Street Improvement blog at www.pioneerway.blogspot.com.

(The order of the proposed art pieces are random and do not follow any particular rankings)

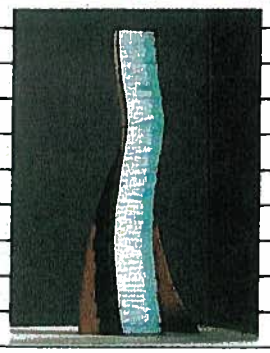
1.	**PLEASE RATE THE FOLLOWING ART PROJECTS PROPOSED FOR OAK HARBOR'S DOWNTOWN AS PART OF THE PIONEER WAY REDEVELOPMENT PROJECT**										
		Love it 10	9	8	7	6	5	4	3	2	No Thanks 1
	 *Materials: Glass and corten steel. Size: Possibly grouping 3 pieces 8ft, 6ft and 4ft Features: Stacked plate glass provides a reflective water-like effect.* Falkenhayn – water sculpture	O	O	O	O	O	O	O	O	O	O
	 *Materials: Recycled Glass and steel Size: 4ft, 5ft and 2.5ft Features: Brightly colored eye-catching 2" thick fused glass.* McJunkin – Fish out of water	O	O	O	O	O	O	O	O	O	O
	 *Material: Basalt Size: 3ft wide, 9ft tall Features: Sea life will be dark with smooth finish and background grey finish. The sculpture will darken when rain falls on it.* Freeland Arts Studio – Sea Life	O	O	O	O	O	O	O	O	O	O
	 *Materials: Bronze and steel Size : approximately 8ft tall and wide Features: Salmon in bronze and window in steel.* Gerber – Salmon Window	O	O	O	O	O	O	O	O	O	O
	 *Materials: Copper, Steel, Basalt Size : Seal's head at 6-8ft and life size Features: Seal made with strong wire frame covered with copper platting. Kelp leaves will be powder coated for natural color.* Hunt – In his element	O	O	O	O	O	O	O	O	O	O

1.	PLEASE RATE THE FOLLOWING ART PROJECTS PROPOSED FOR OAK HARBOR'S DOWNTOWN AS PART OF THE PIONEER WAY REDEVELOPMENT PROJECT										
		Love it 10	9	8	7	6	5	4	3	2	No Thanks 1
	 Lindsay – Clouds *Materials: Acrylic column, steel ship mooring buoy for base size:4ft diameter base, 8ft tall Features: A column of water mist in the cylinder that constantly interacts with the wind and billows from the top.*	O	O	O	O	O	O	O	O	O	O
	 Pettelle – Moon Waves *Material: Steel size: 10ft Features: The steel will have a textured finish that will reduce harsh reflections.*	O	O	O	O	O	O	O	O	O	O
	 Pettelle – Spouting Fish *Material: Steel Size: 7ft Features: Steel will have a textured finish to reduce reflections. The flat surface can also function as an outdoor table top.*	O	O	O	O	O	O	O	O	O	O
	 Lindsay – Vortex *Material: Acrylic column, steel ship mooring buoy for base size:5ft diameter base, 10ft tall Features: A spinning column of water that continually ascends and descends the cylinder from 1ft to 7ft.*	O	O	O	O	O	O	O	O	O	O
	 Marcell – Mermaid *Materials: Bronze and stone life size Features: Rock will have room for people to sit next to the mermaid.*	O	O	O	O	O	O	O	O	O	O
	 Freeland Arts Studio – Rain Column *Material: Basalt Size: 6 - 8ft Features: The grooves on the column are polished and will stand out against the background when dry and blend-in when wet from rain.*	O	O	O	O	O	O	O	O	O	O

Thank you for your input

Pioneer Way Arts Project
Survey Results
Counts and Percentages for each piece

Falkenhayn - Water Sculpture

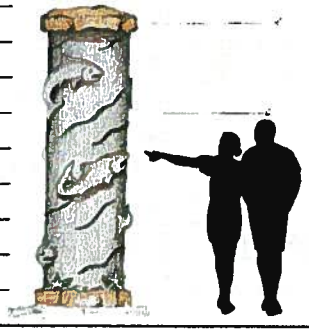


	Count	Pct
Love it (10)	57	8.88%
9	28	4.36%
8	56	8.72%
7	36	5.61%
6	42	6.54%
5	36	5.61%
4	34	5.30%
3	27	4.21%
2	24	3.74%
No Thanks (1)	258	40.19%
Total	598	93.15%
Missing	44	6.85%

McJunkin – Fish Out of Water

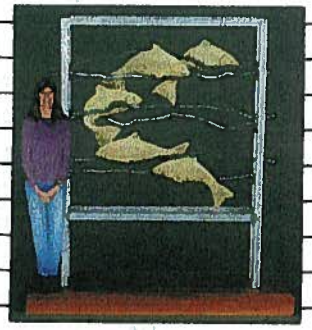
	Count	Pct
Love it (10)	57	8.88%
9	28	4.36%
8	56	8.72%
7	36	5.61%
6	42	6.54%
5	36	5.61%
4	34	5.30%
3	27	4.21%
2	24	3.74%
No Thanks (1)	258	40.19%
Total	598	93.15%
Missing	44	6.85%

Freeland Arts Studio - Sea Life



	Count	Pct
Love it (10)	110	17.13%
9	83	12.93%
8	78	12.15%
7	59	9.19%
6	33	5.14%
5	37	5.76%
4	34	5.30%
3	22	3.43%
2	26	4.05%
No Thanks (1)	131	20.40%
Total	613	95.48%
Missing	29	4.52%

Gerber - Salmon Window



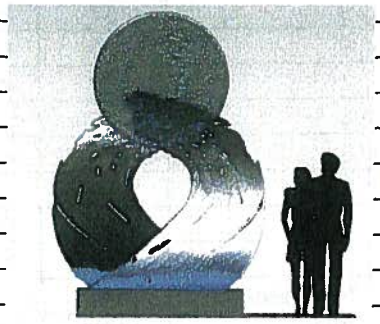
	Count	Pct
Love it (10)	94	14.64%
9	74	11.53%
8	74	11.53%
7	46	7.17%
6	52	8.10%
5	41	6.39%
4	39	6.07%
3	29	4.52%
2	20	3.12%
No Thanks (1)	139	21.65%
Total	608	94.70%
Missing	34	5.30%

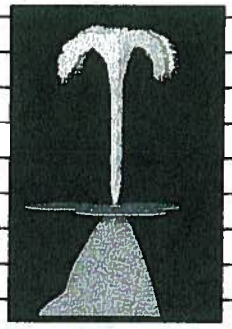
Hunt - In His Element

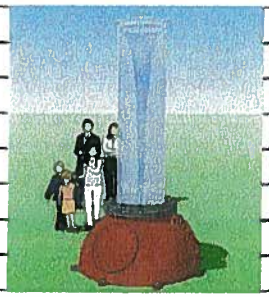
Love it (10)	176	27.41%
9	81	12.62%
8	57	8.88%
7	39	6.07%
6	33	5.14%
5	31	4.83%
4	31	4.83%
3	21	3.27%
2	16	2.49%
No Thanks (1)	134	20.87%
Total	619	96.42%
Missing	23	3.58%

Lindsay - Cloud II

	Count	Pct
Love it (10)	32	4.98%
9	28	4.36%
8	30	4.67%
7	40	6.23%
6	30	4.67%
5	32	4.98%
4	36	5.61%
3	28	4.36%
2	22	3.43%
No Thanks (1)	319	49.69%
Total	597	92.99%
Missing	45	7.01%

		Count	Pct
Pettelle - Moon Waves	Love it (10)	78	12.15%
	9	48	7.48%
	8	44	6.85%
	7	50	7.79%
	6	42	6.54%
	5	42	6.54%
	4	38	5.92%
	3	26	4.05%
	2	18	2.80%
	No Thanks (1)	222	34.58%
	Total	608	94.70%
	Missing	34	5.30%

		Count	Pct
Pettelle - Spouting Fish	Love it (10)	38	5.92%
	9	20	3.12%
	8	34	5.30%
	7	26	4.05%
	6	39	6.07%
	5	48	7.48%
	4	37	5.76%
	3	35	5.45%
	2	39	6.07%
	No Thanks (1)	282	43.93%
	Total	598	93.15%
	Missing	44	6.85%

		Count	Pct
Lindsay - Vortex	Love it (10)	51	7.94%
	9	36	5.61%
	8	39	6.07%
	7	33	5.14%
	6	28	4.36%
	5	31	4.83%
	4	26	4.05%
	3	29	4.52%
	2	22	3.43%
	No Thanks (1)	300	46.73%
	Total	595	92.68%
	Missing	47	7.32%

Marcell - Mermaid

	Count	Pct
Love it (10)	289	45.02%
9	57	8.88%
8	36	5.61%
7	31	4.83%
6	25	3.89%
5	26	4.05%
4	14	2.18%
3	19	2.96%
2	12	1.87%
No Thanks (1)	118	18.38%
Total	627	97.66%
Missing	15	2.34%

Freeland Arts Studio - Rain Column

	Count	Pct
Love it (10)	42	6.54%
9	36	5.61%
8	47	7.32%
7	50	7.79%
6	35	5.45%
5	52	8.10%
4	39	6.07%
3	31	4.83%
2	27	4.21%
No Thanks (1)	240	37.38%
Total	599	93.30%
Missing	43	6.70%

Pioneer Way Arts Project

General Stats

- Online surveys – 243
- Paper surveys – 399
- Total - 642

- Oak Harbor population – 22,075[1]
- Statistically valid sample size – 378[2]

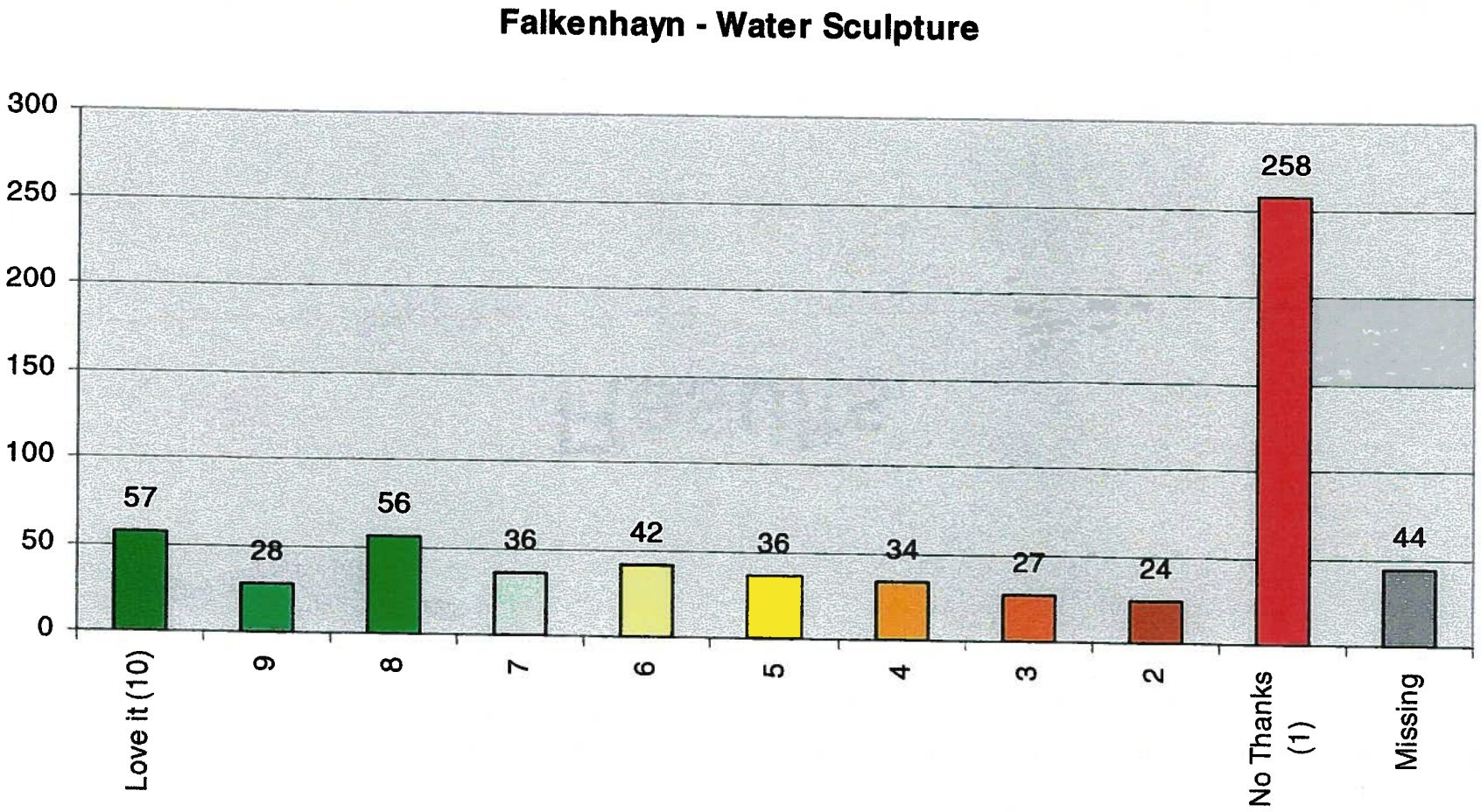
1 – 2010 Census
2 - http://www.surveysystem.com/sscalc.htm#factors

67.

ATTACHMENT 4

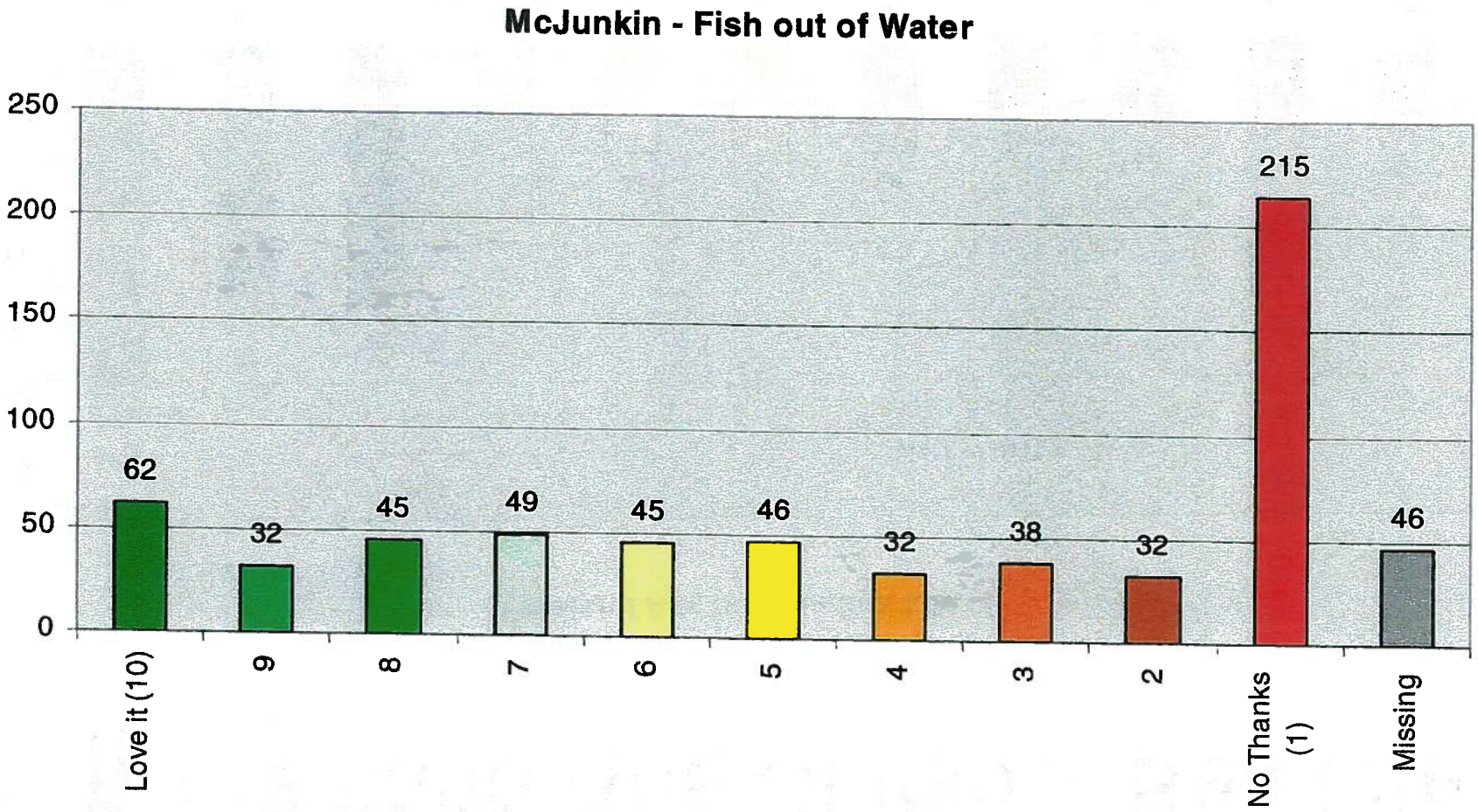
Results

Falkenhayn – Water Sculpture



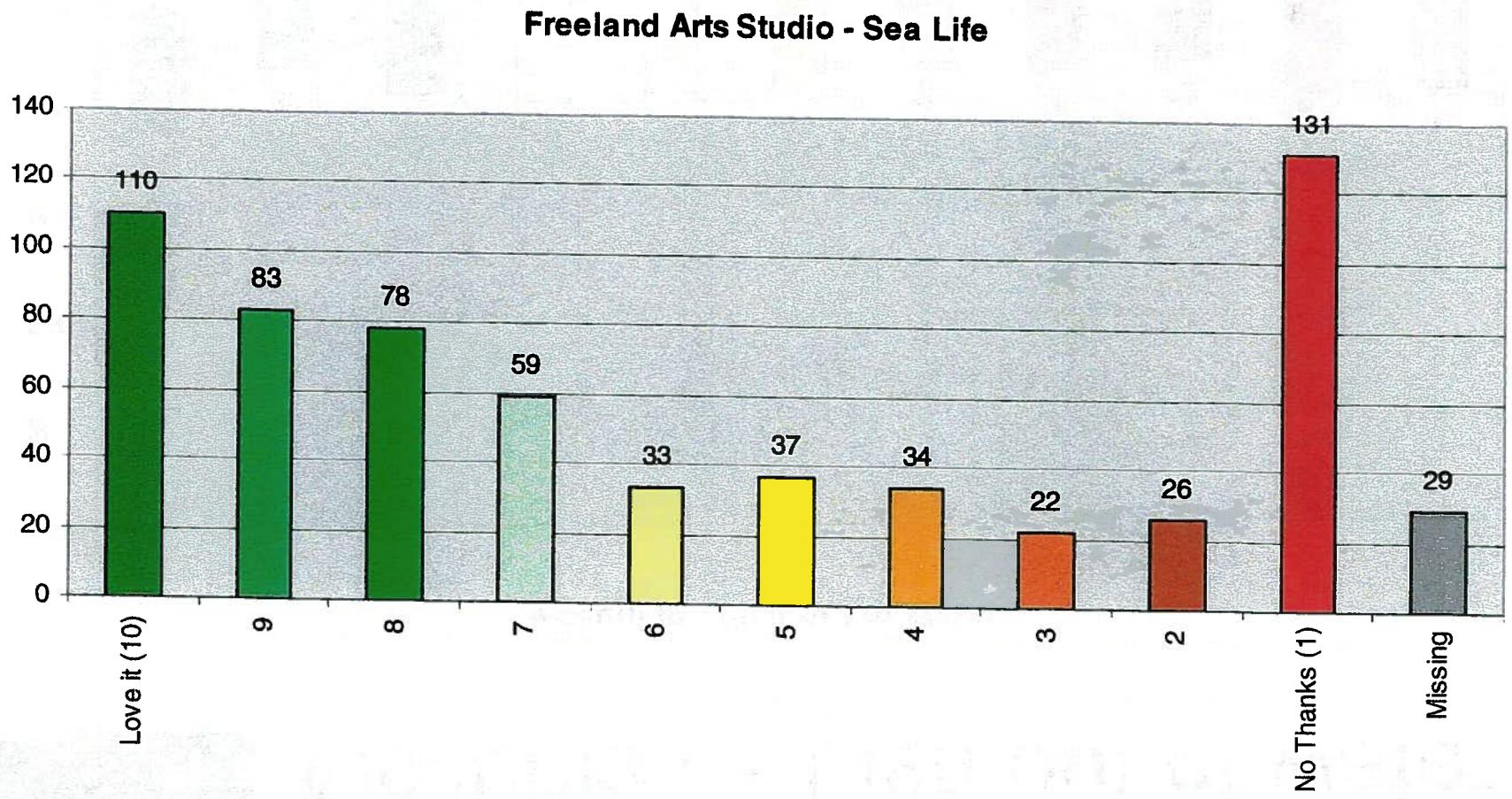
ATTACHMENT 4

McJunkin – Fish out of water



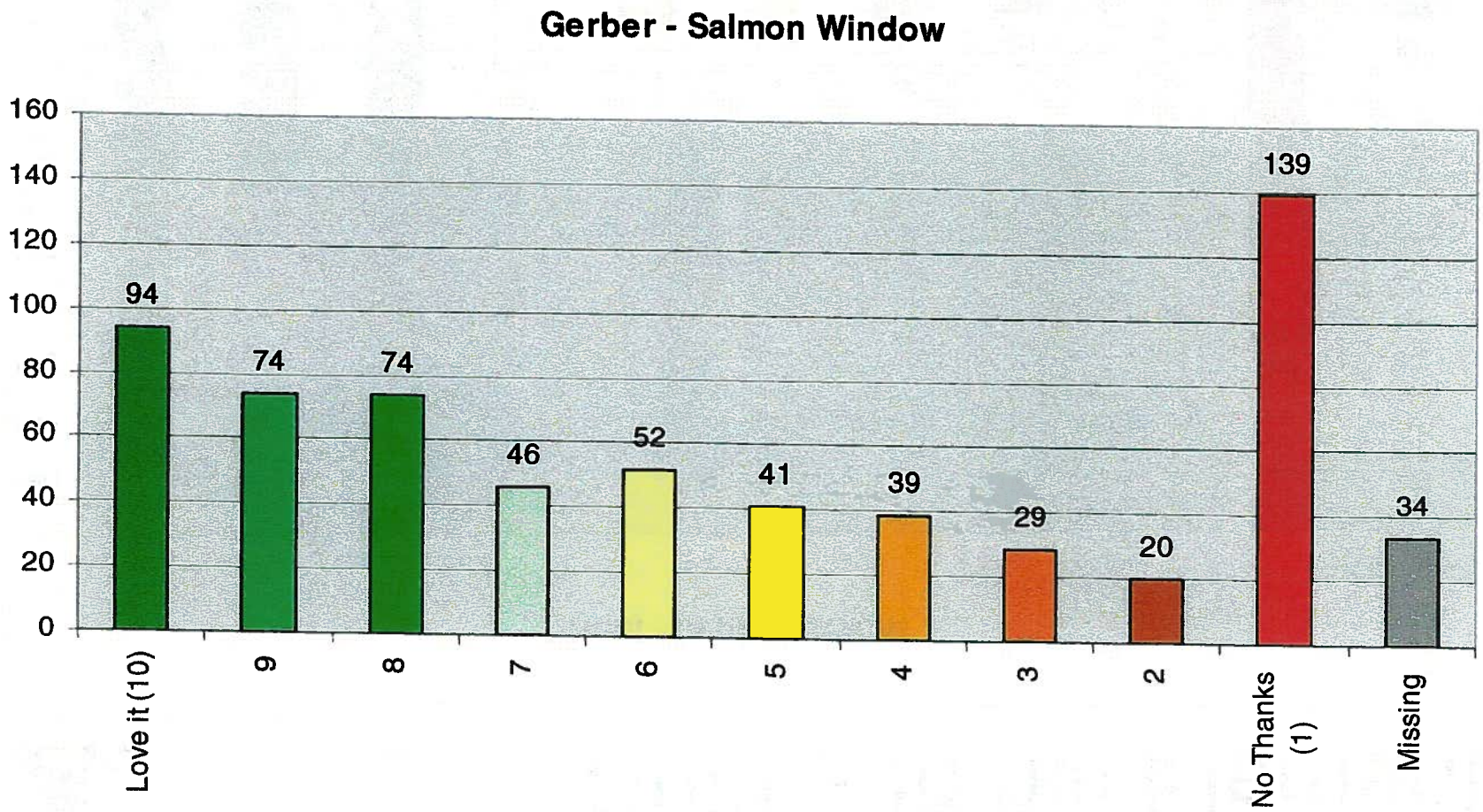
ATTACHMENT 4

Freeland Arts Studio – Sea Life



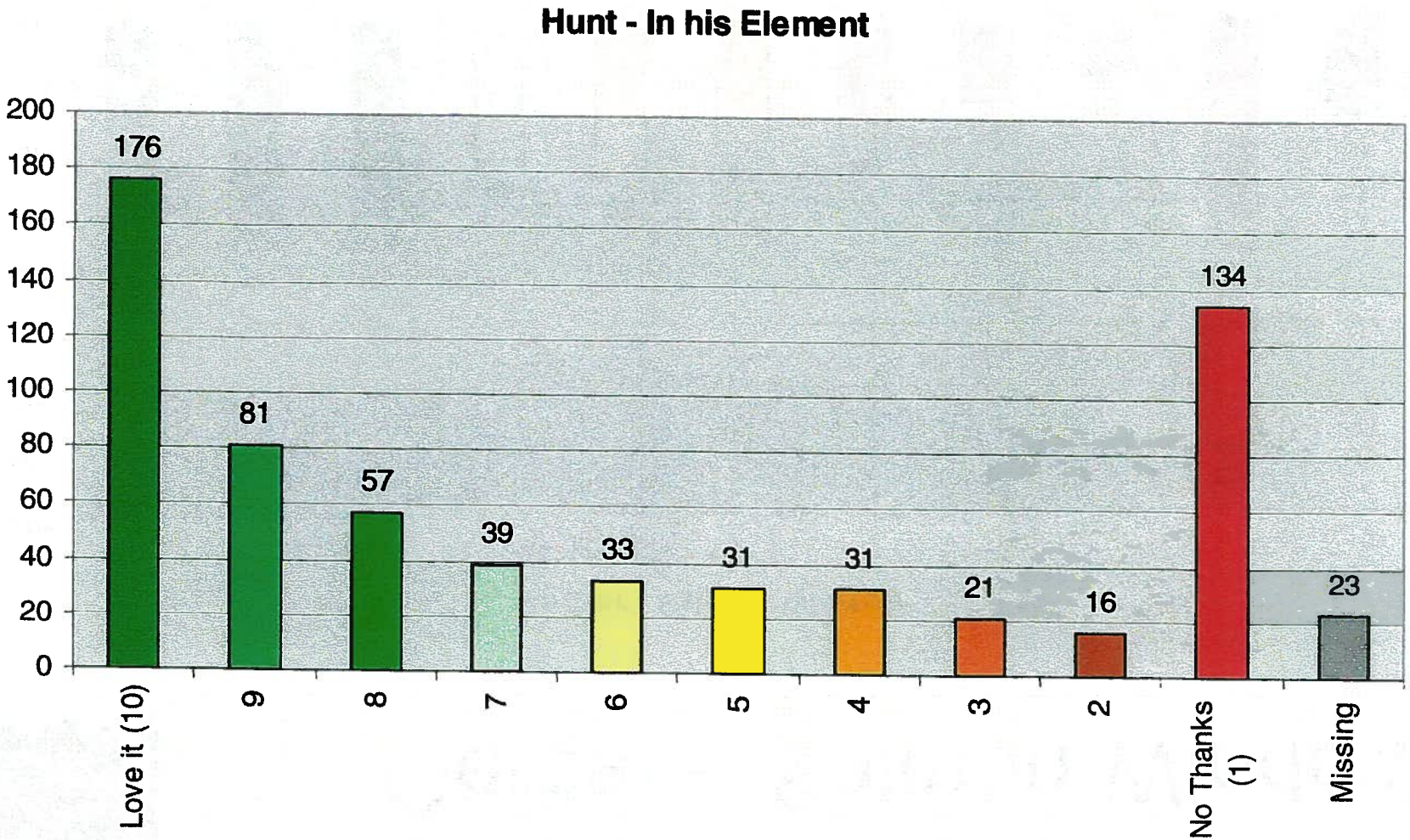
ATTACHMENT 4

Gerber – Salmon Window



ATTACHMENT 4

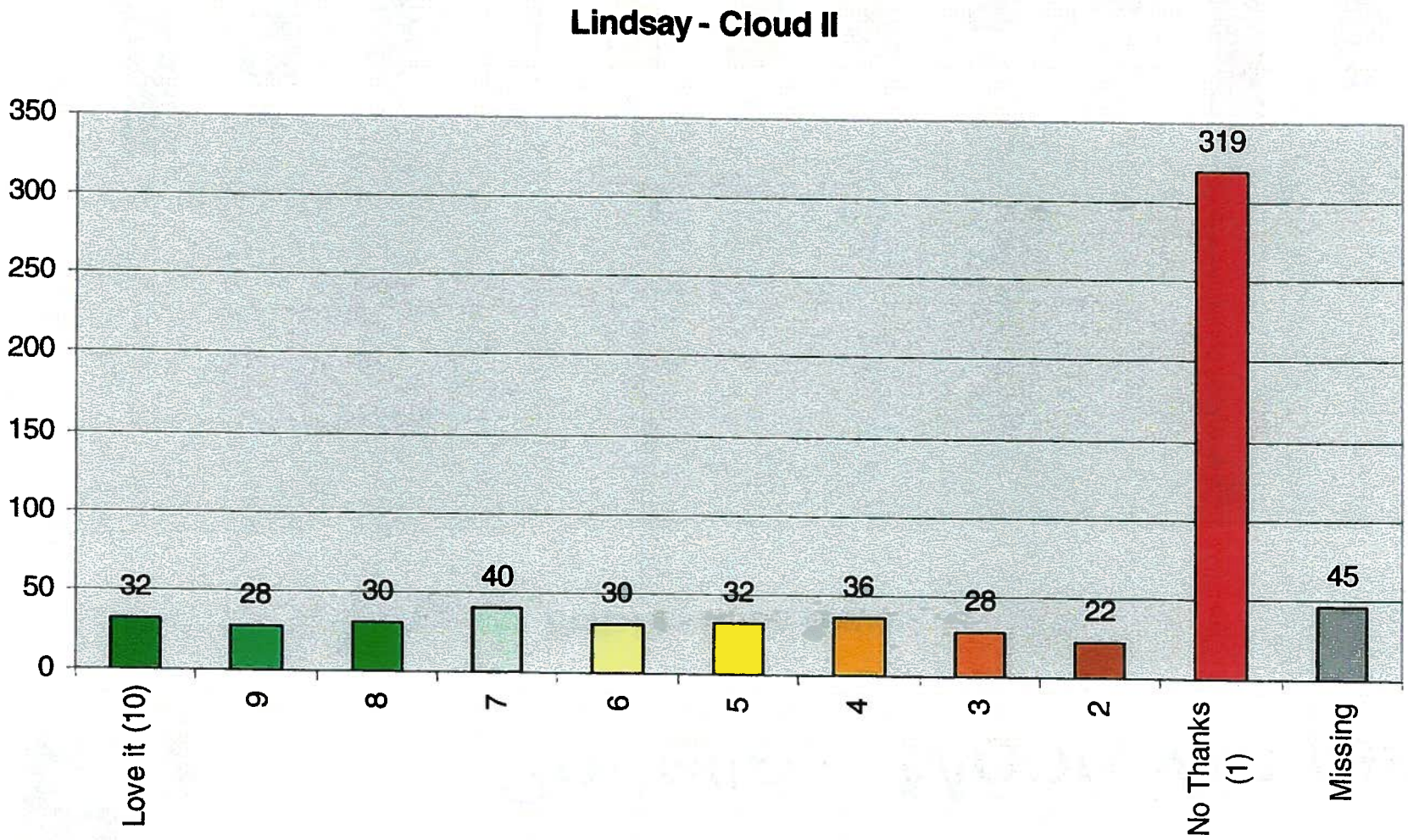
Hunt – In his Element



73

ATTACHMENT 4

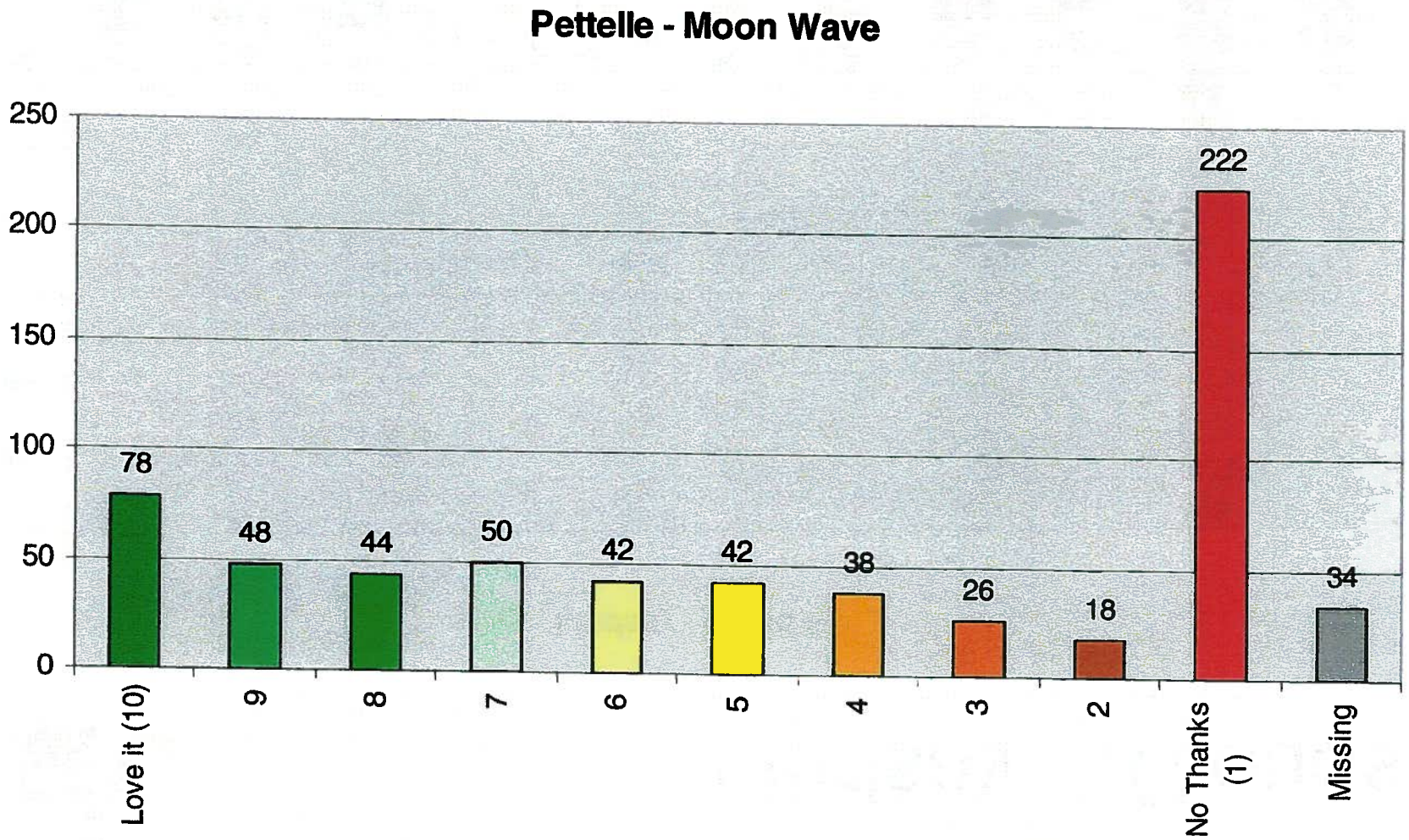
Lindsay – Clouds



74

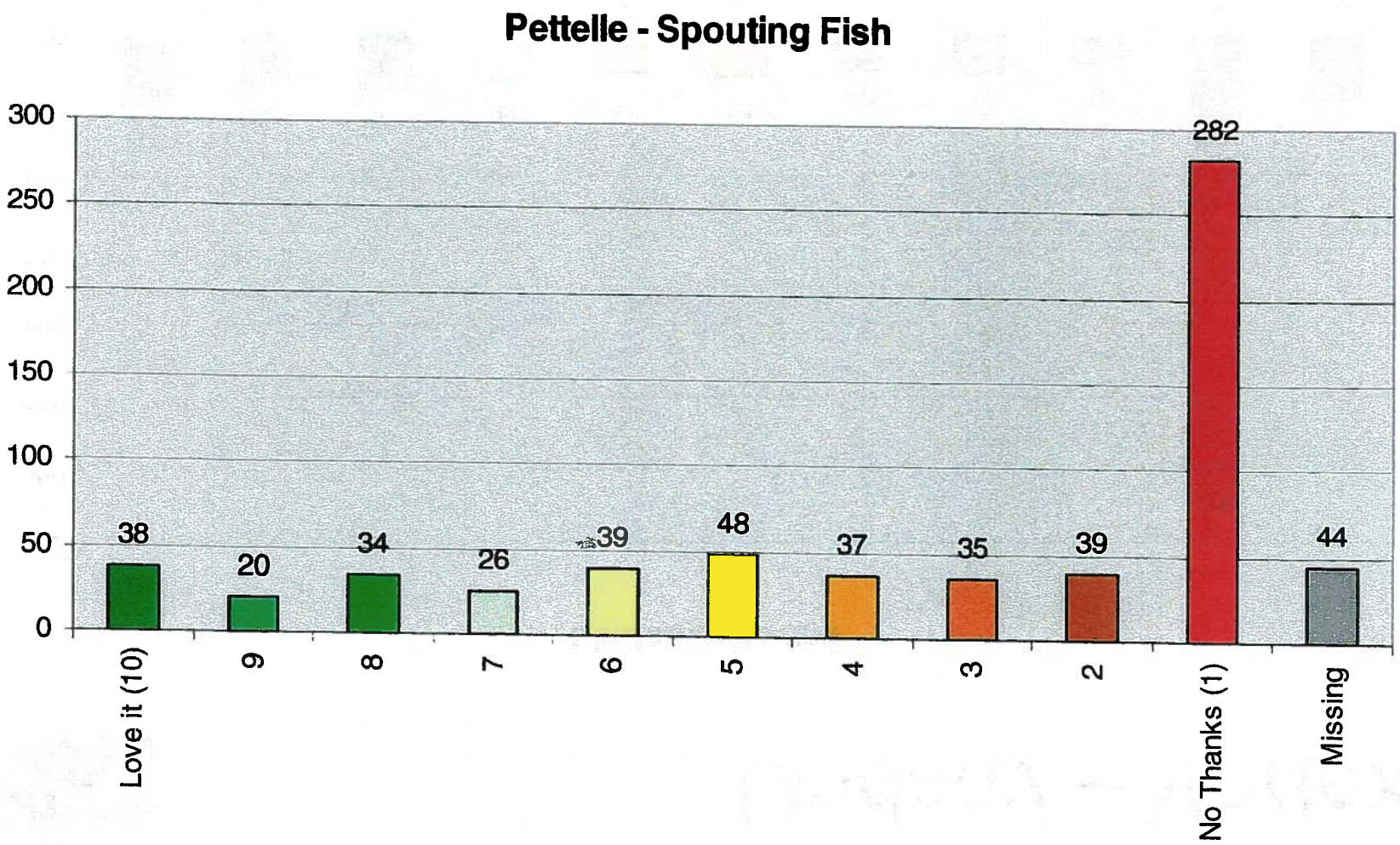
ATTACHMENT 4

Pettelle – Moon Waves



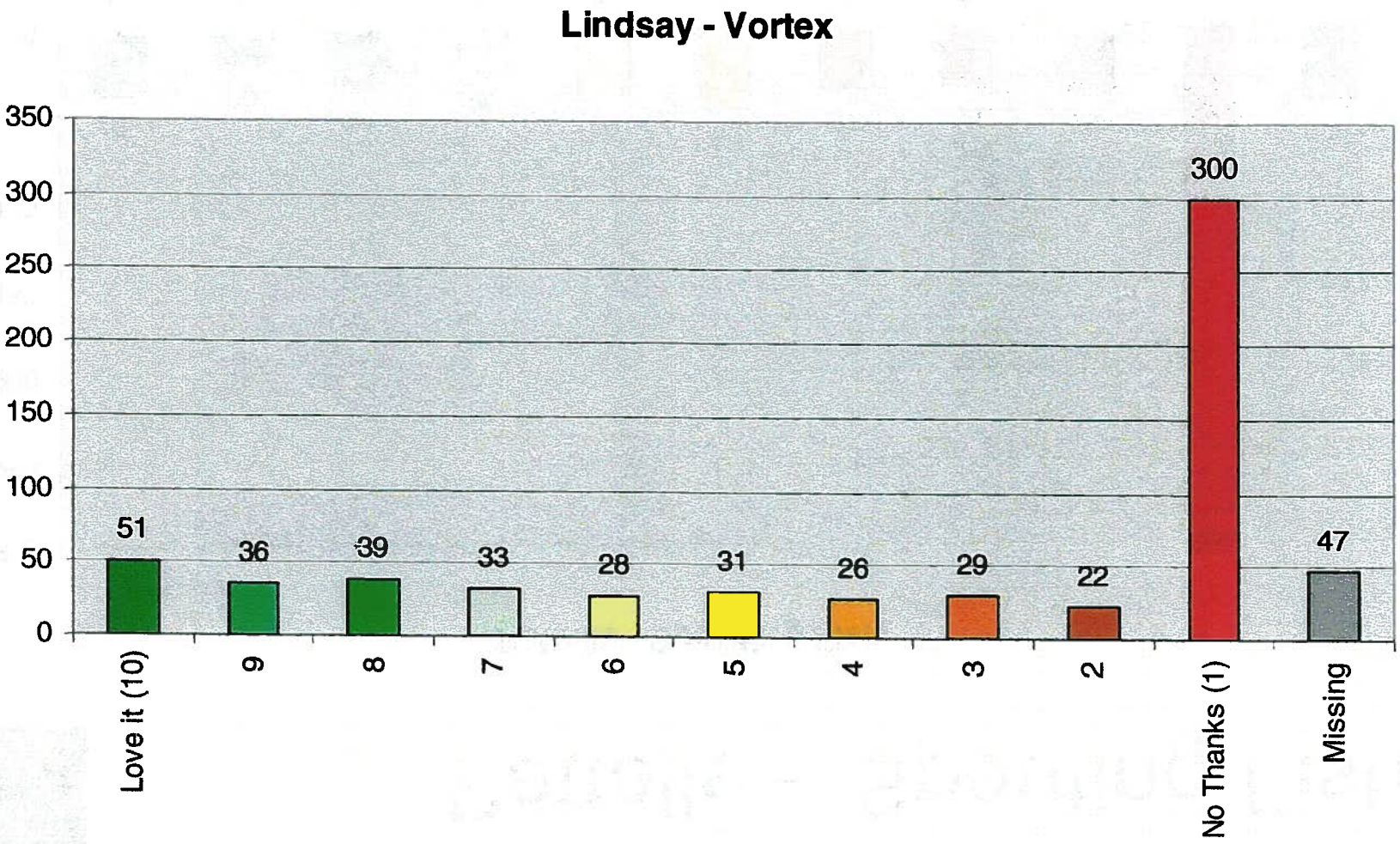
ATTACHMENT 4

Pettelle – Spouting Fish



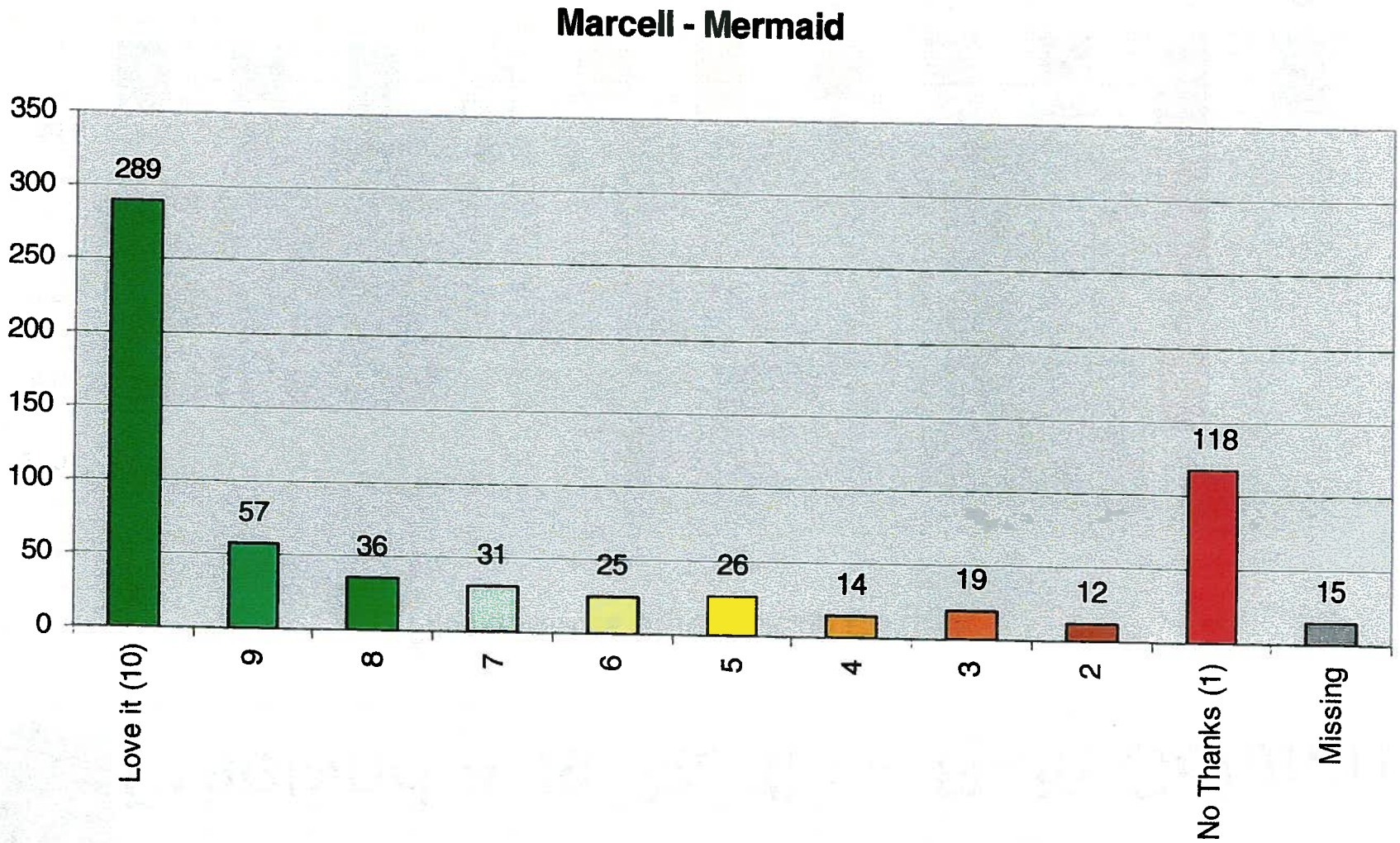
ATTACHMENT 4

Lindsay – Vortex

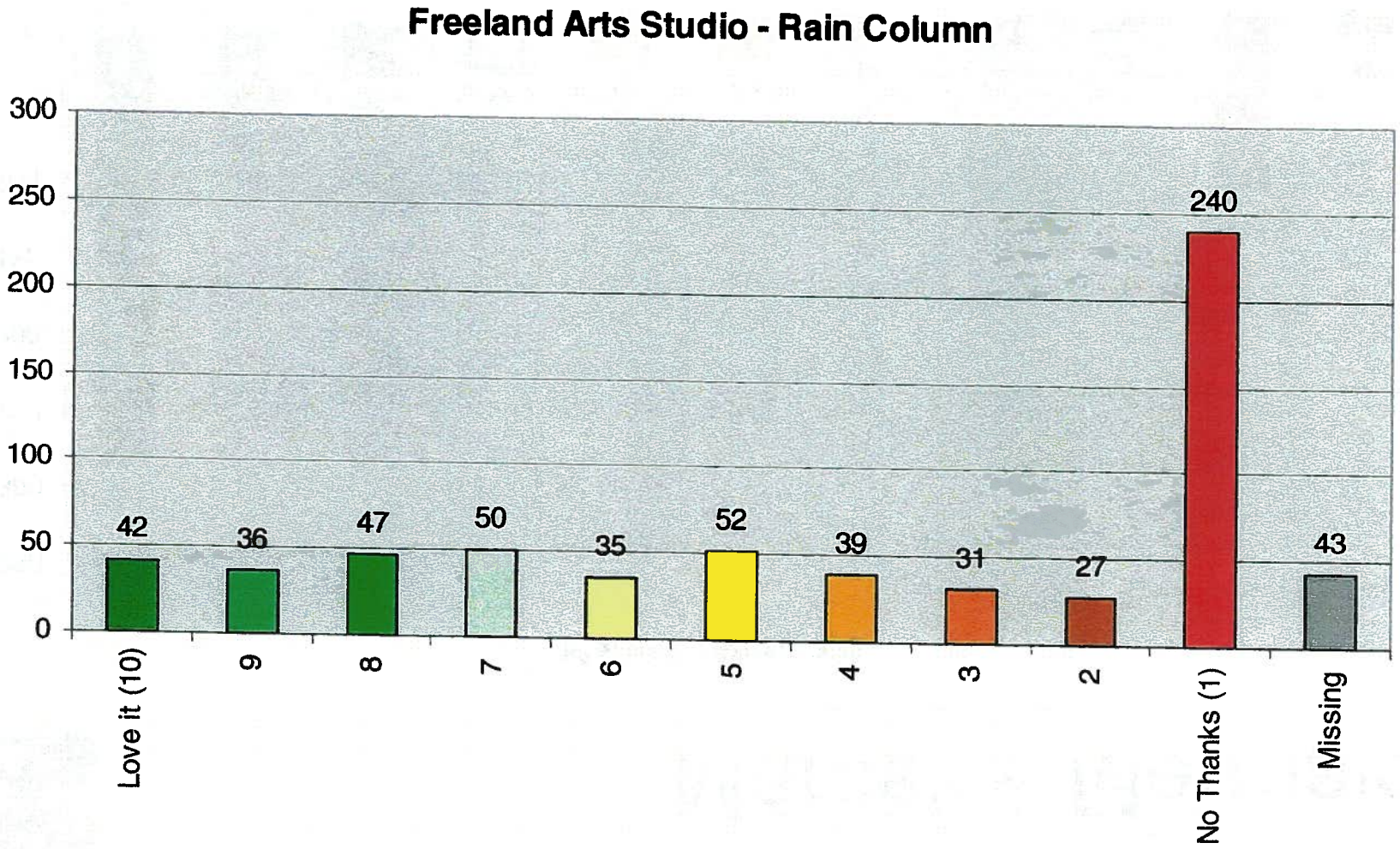


ATTACHMENT 4

Marcell – Mermaid

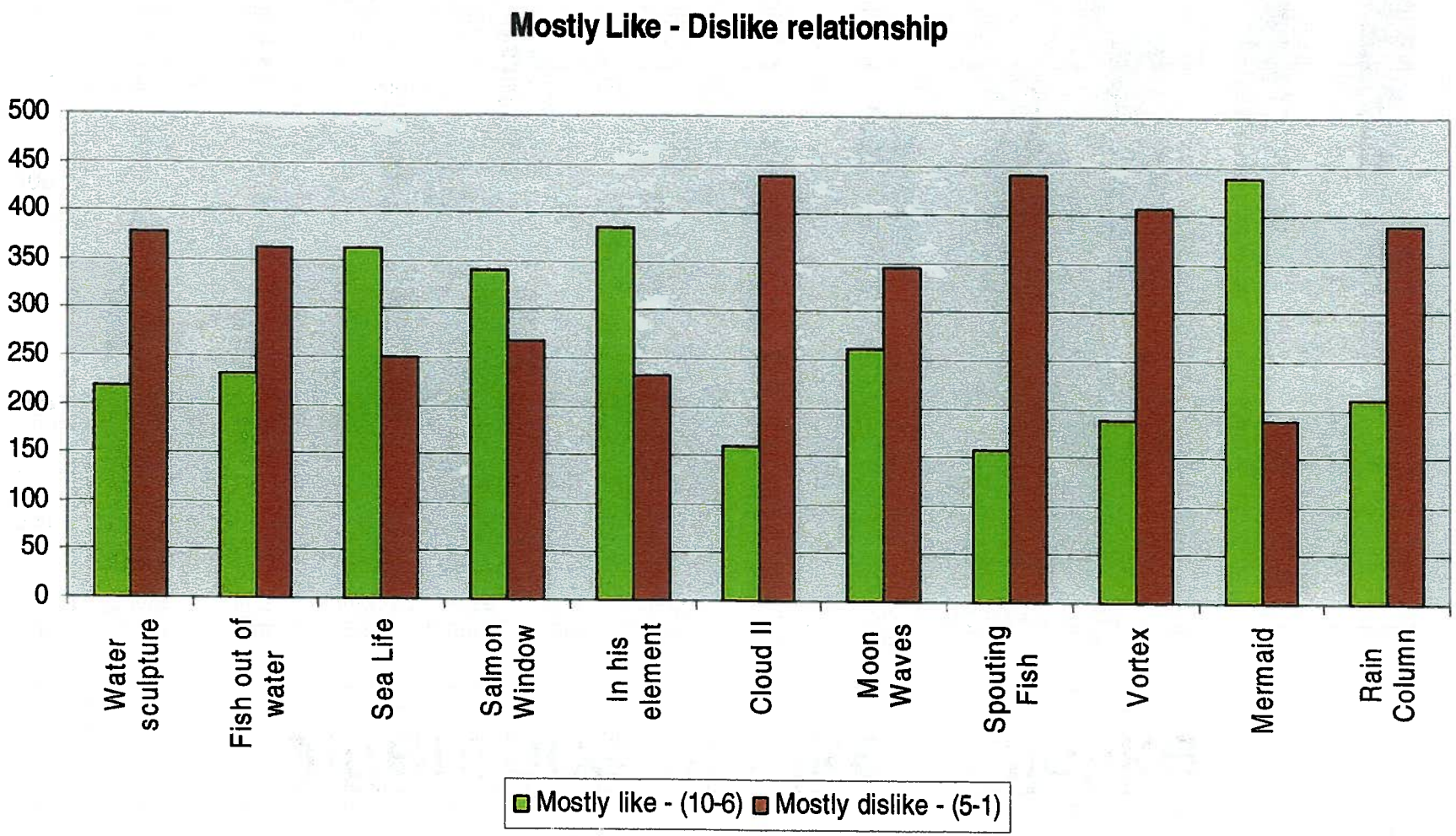


Freeland Arts Studio – Rain Column



ATTACHMENT 4

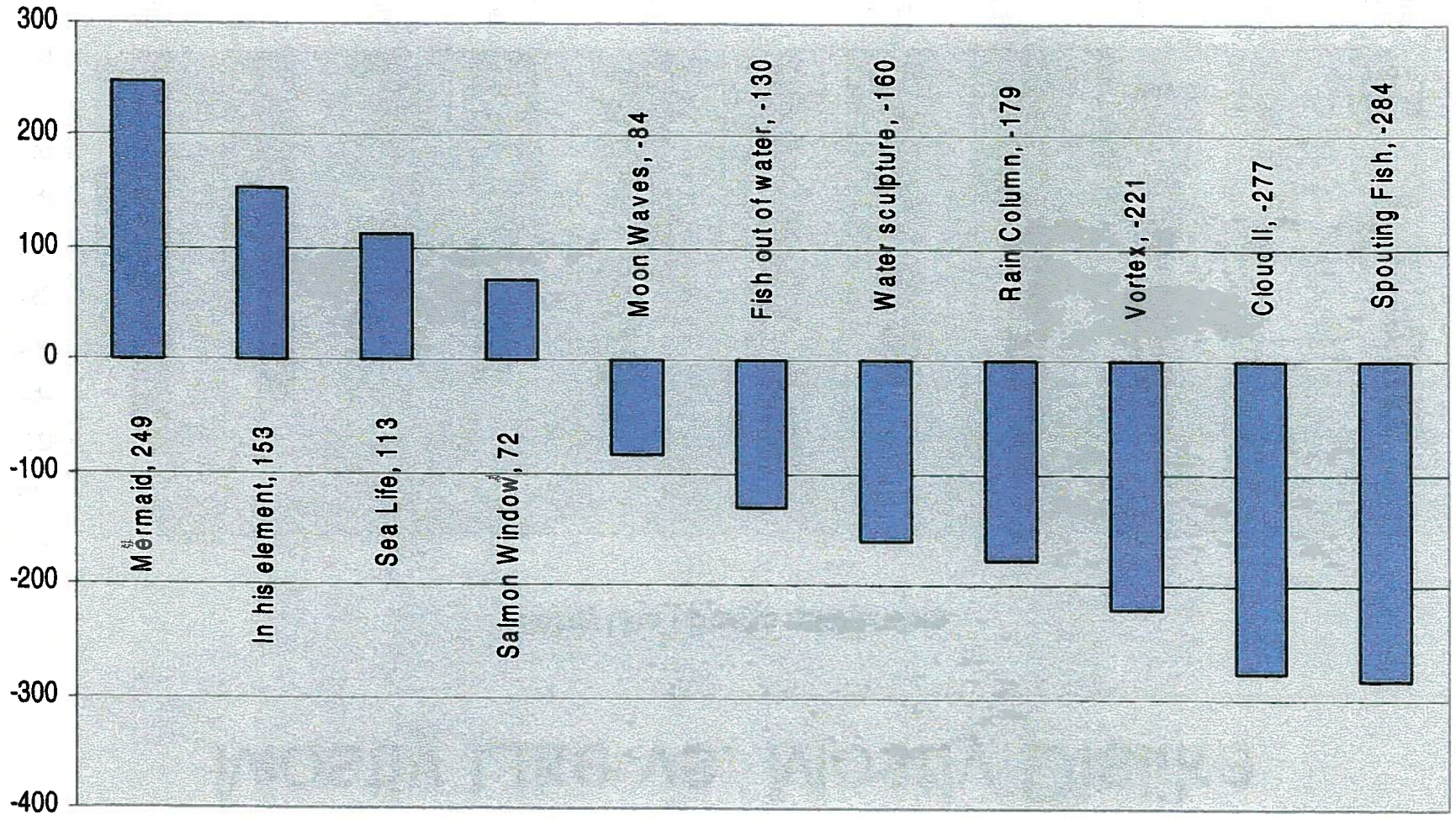
Mostly Like vs. Mostly Dislike



88

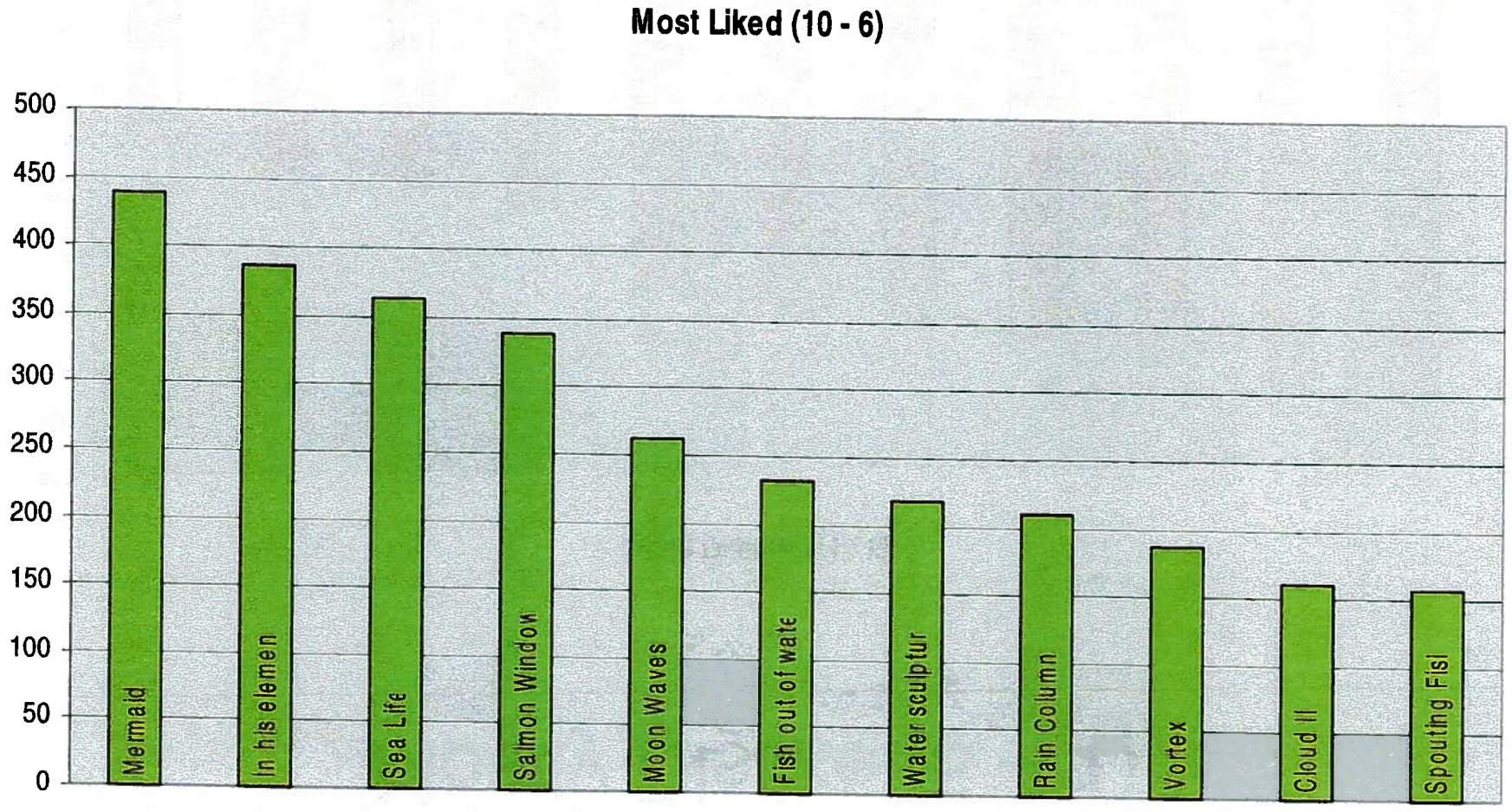
ATTACHMENT 4

Difference of Like - Dislike



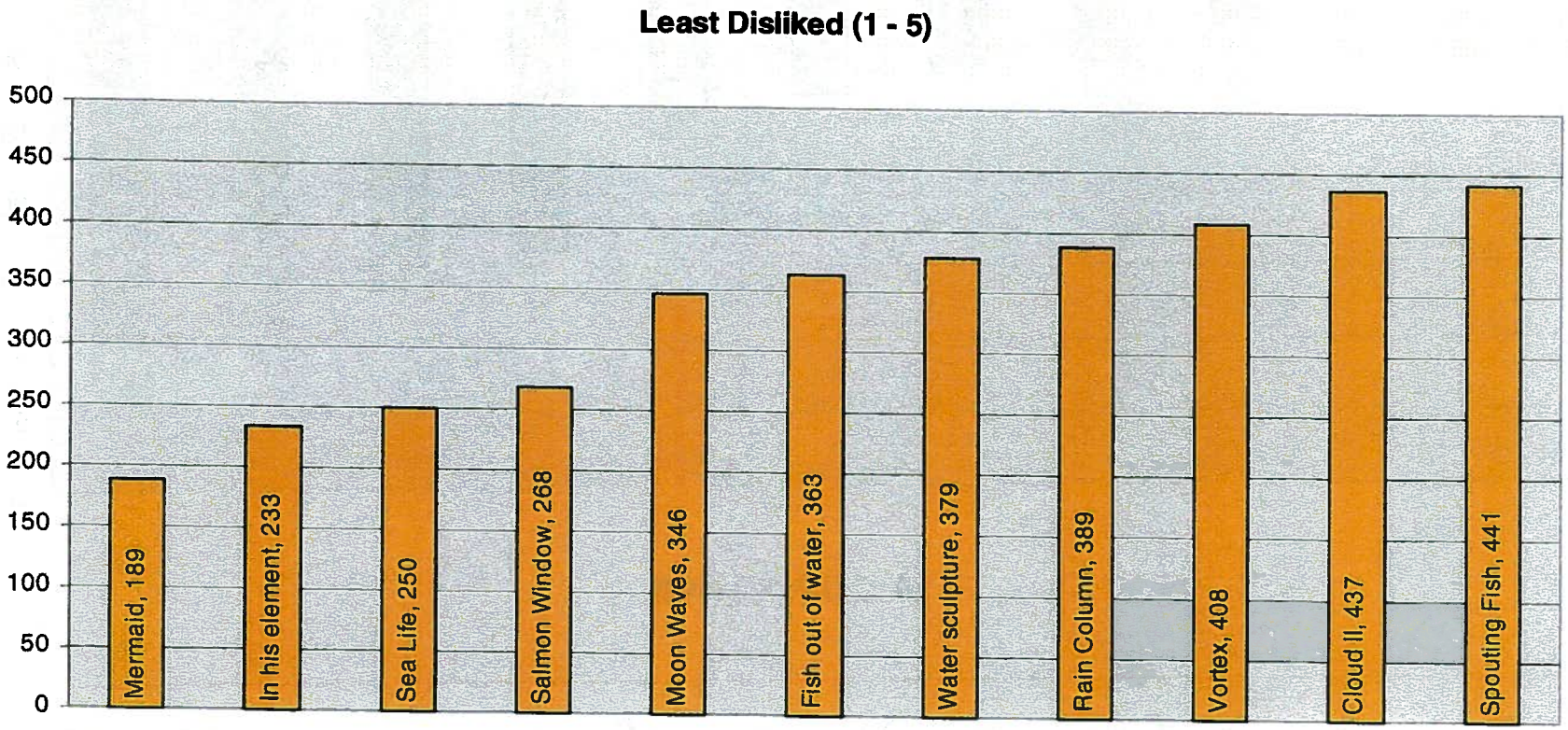
ATTACHMENT 4

Mostly Like (10 – 6)

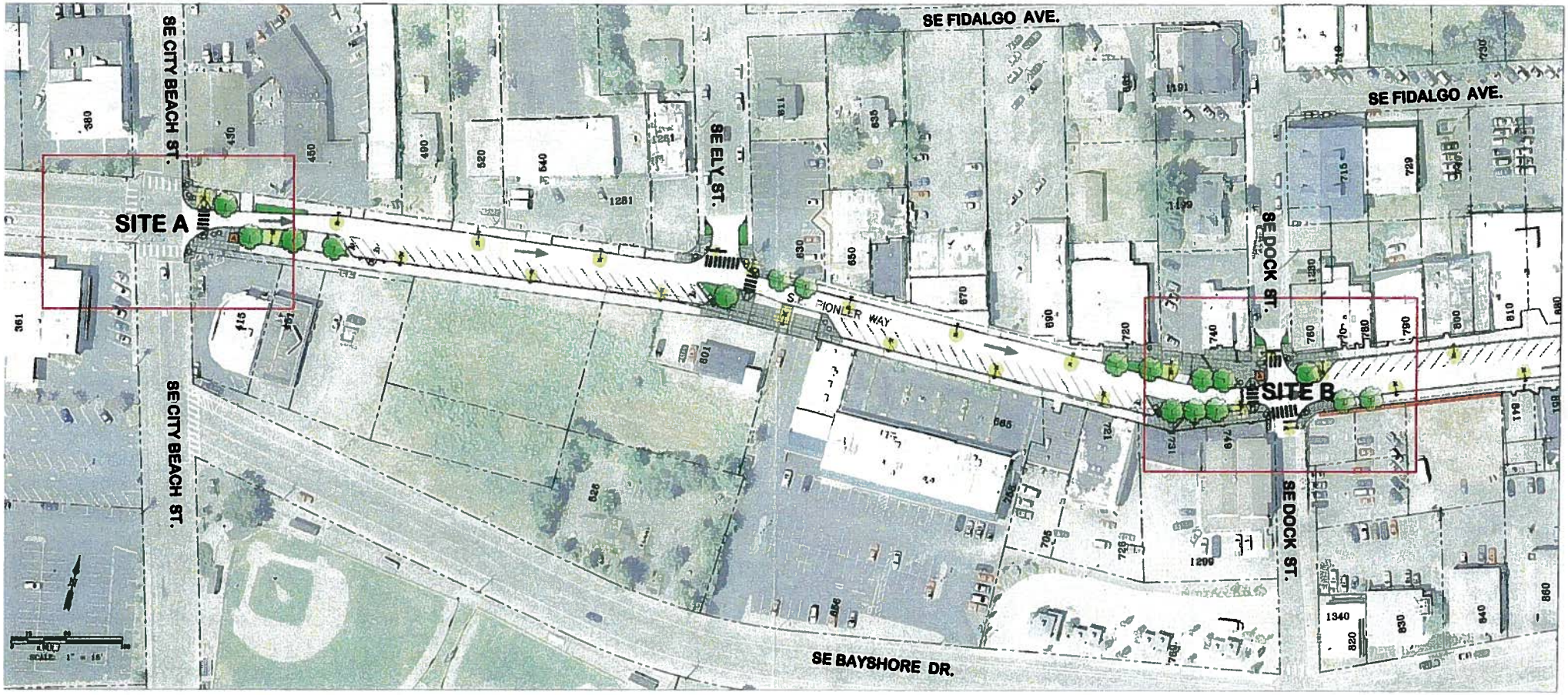


ATTACHMENT 4

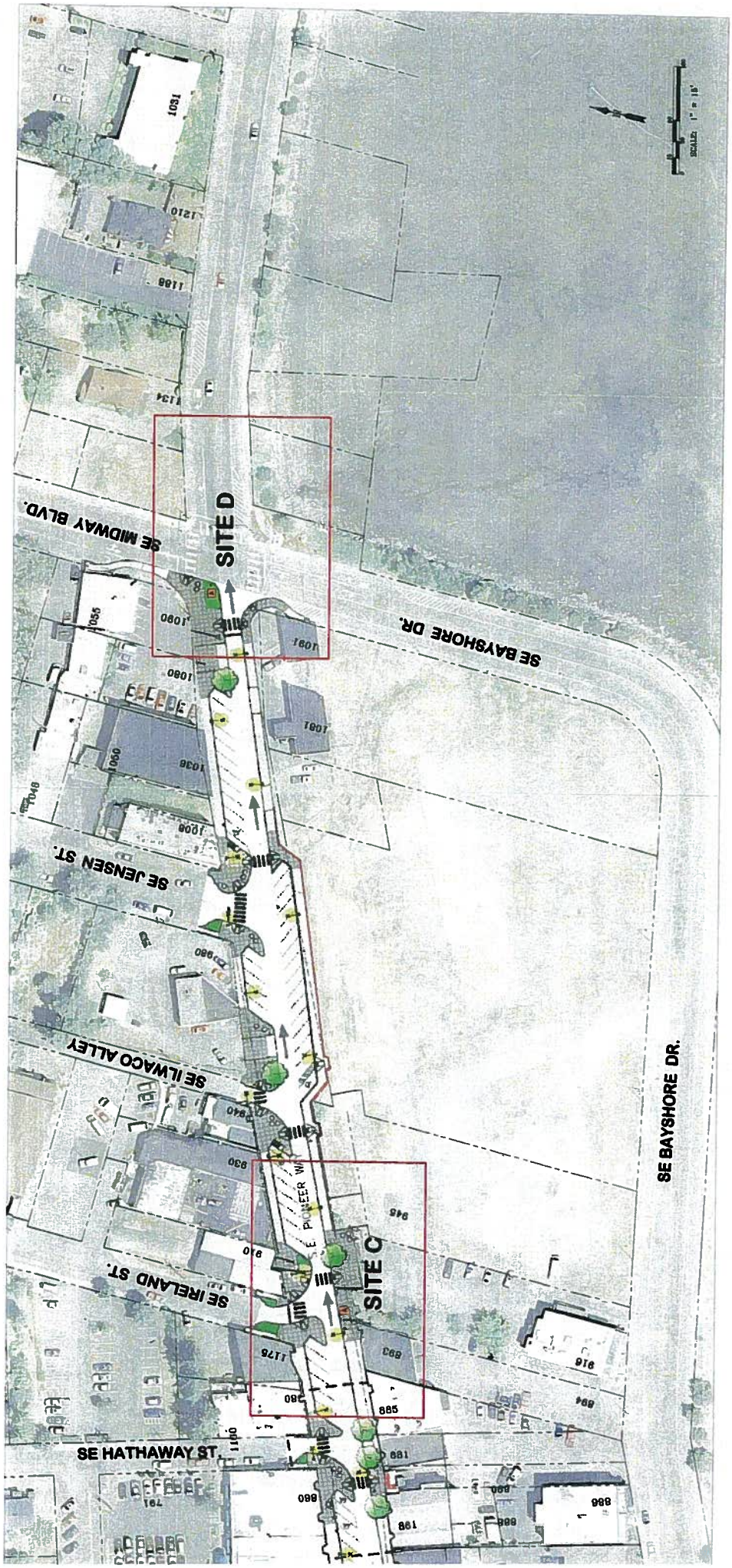
Mostly Dislike (5 – 1)



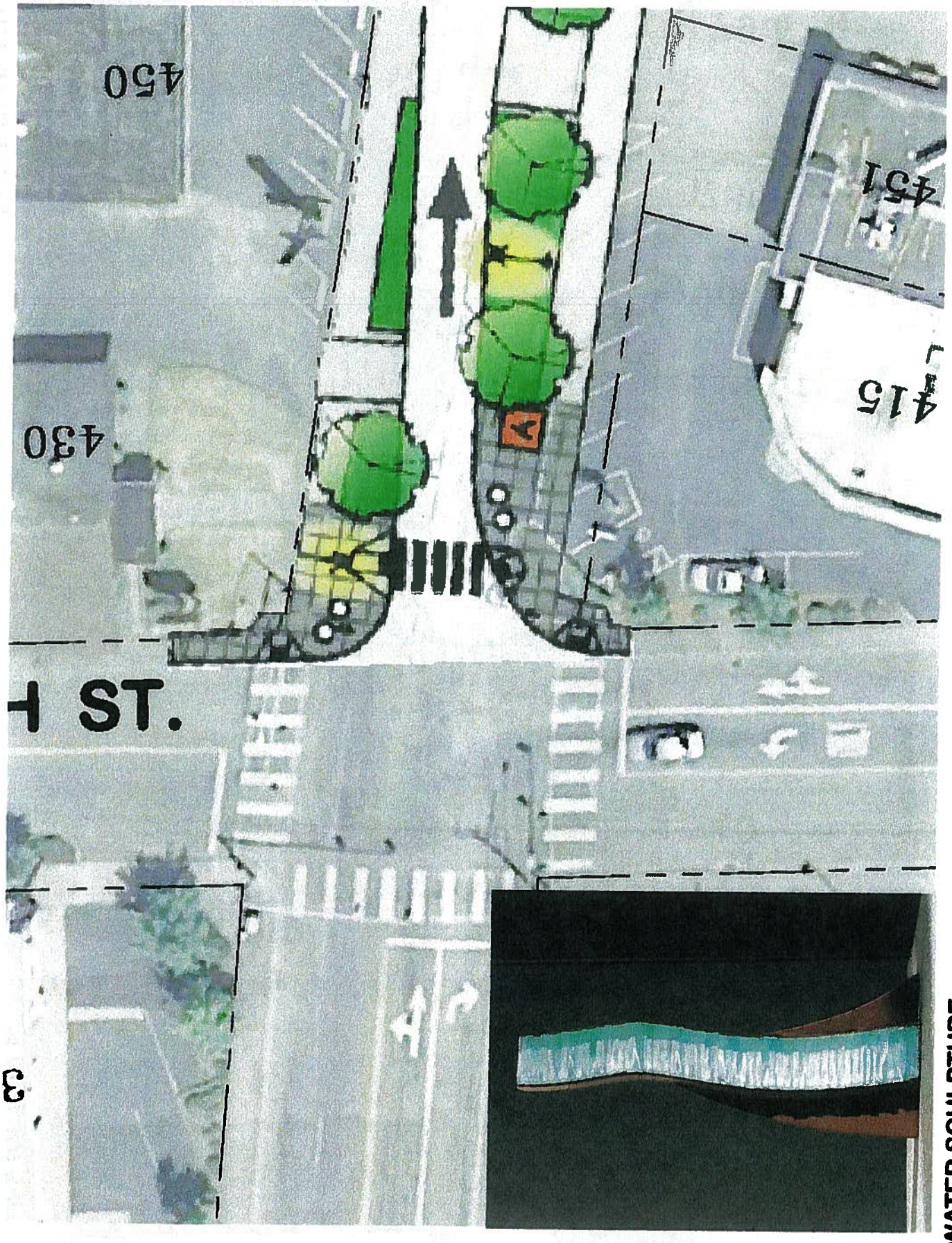
ATTACHMENT 4

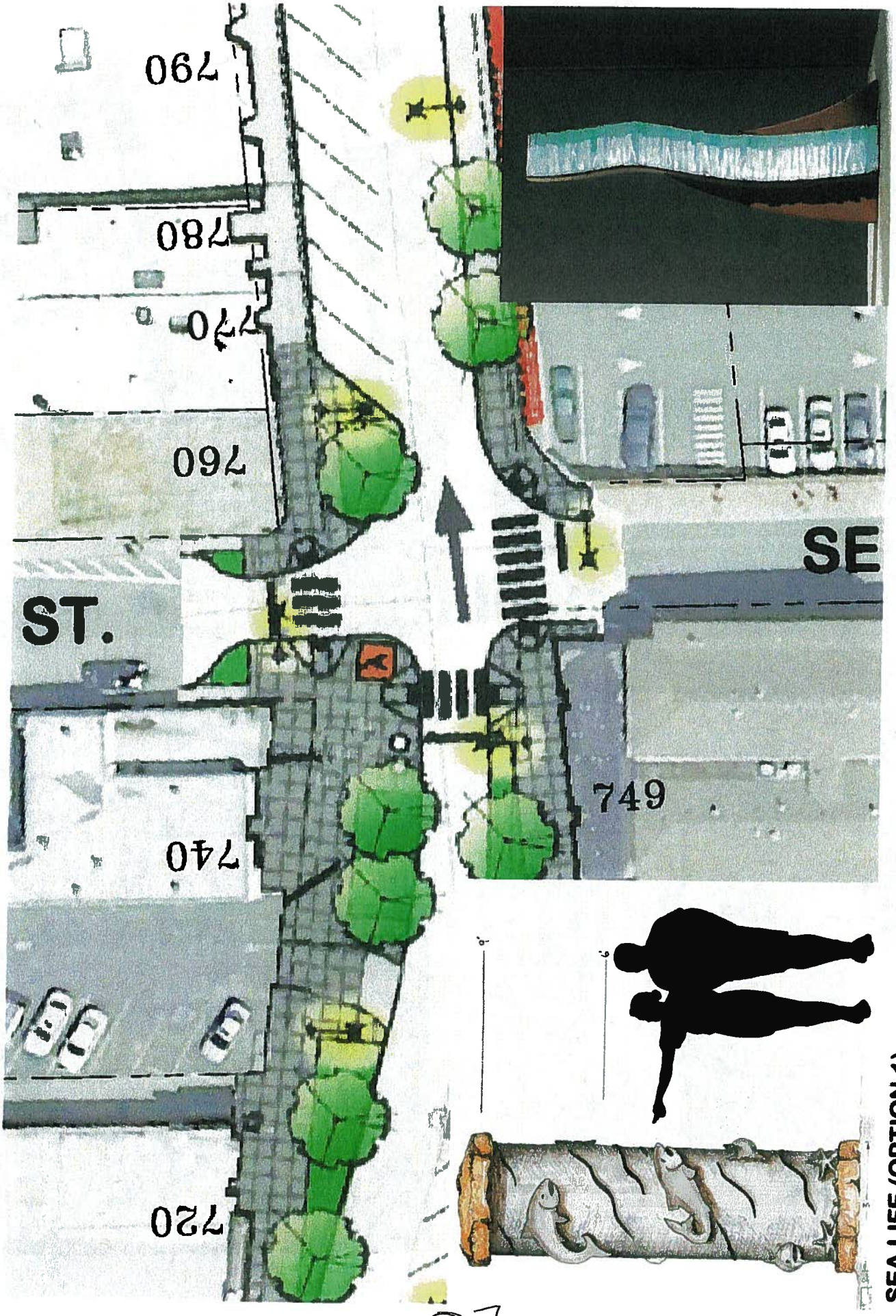

SE FIDALGO AVE.
SE FIDALGO AVE.
SE CITY BEACH ST.
SE CITY BEACH ST.
SE ELY ST.
SE DOCK ST.
SE DOCK ST.
SITE A
SITE B
SE BAYSHORE DR.

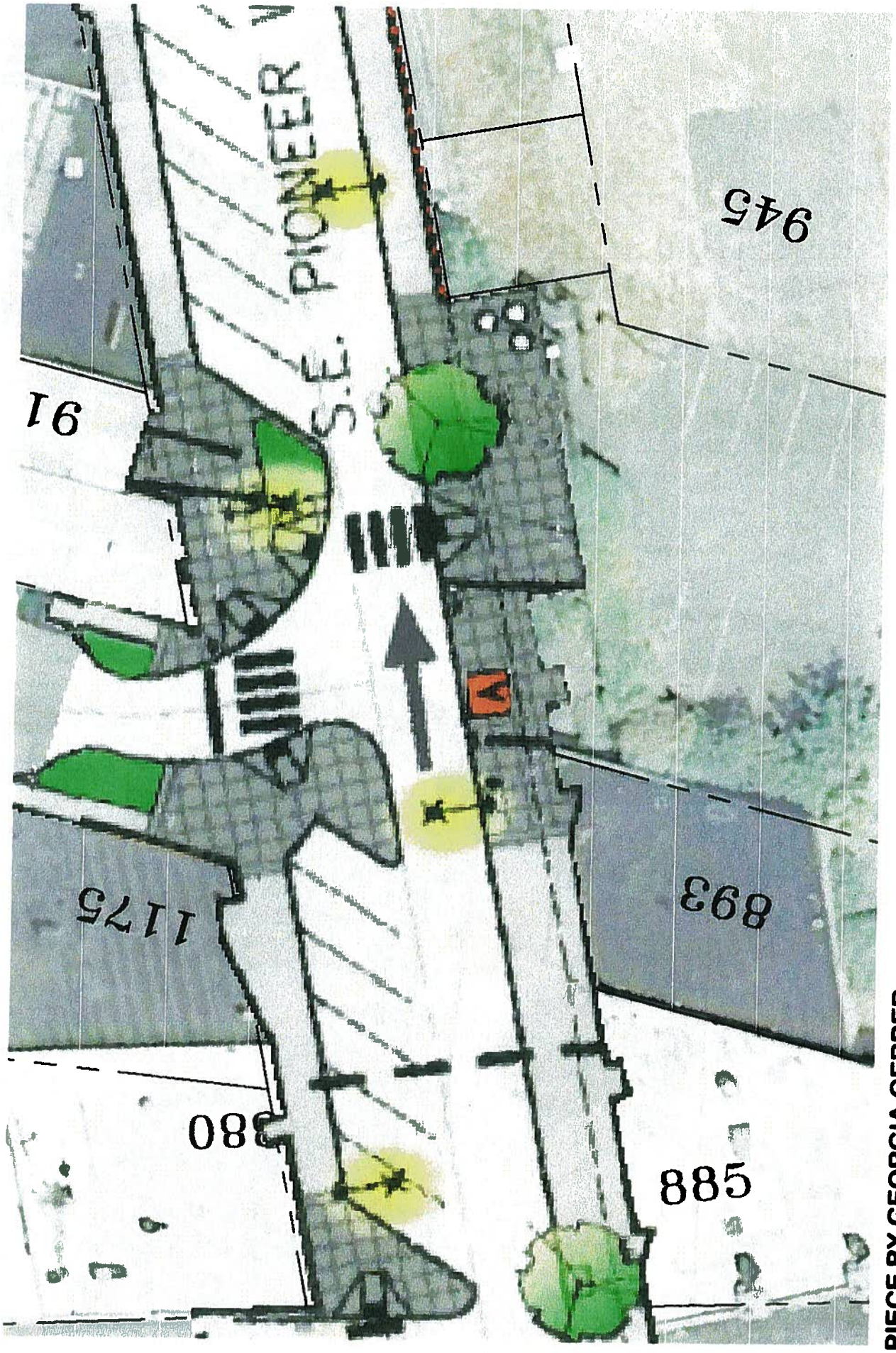
ATTACHMENT 5



28

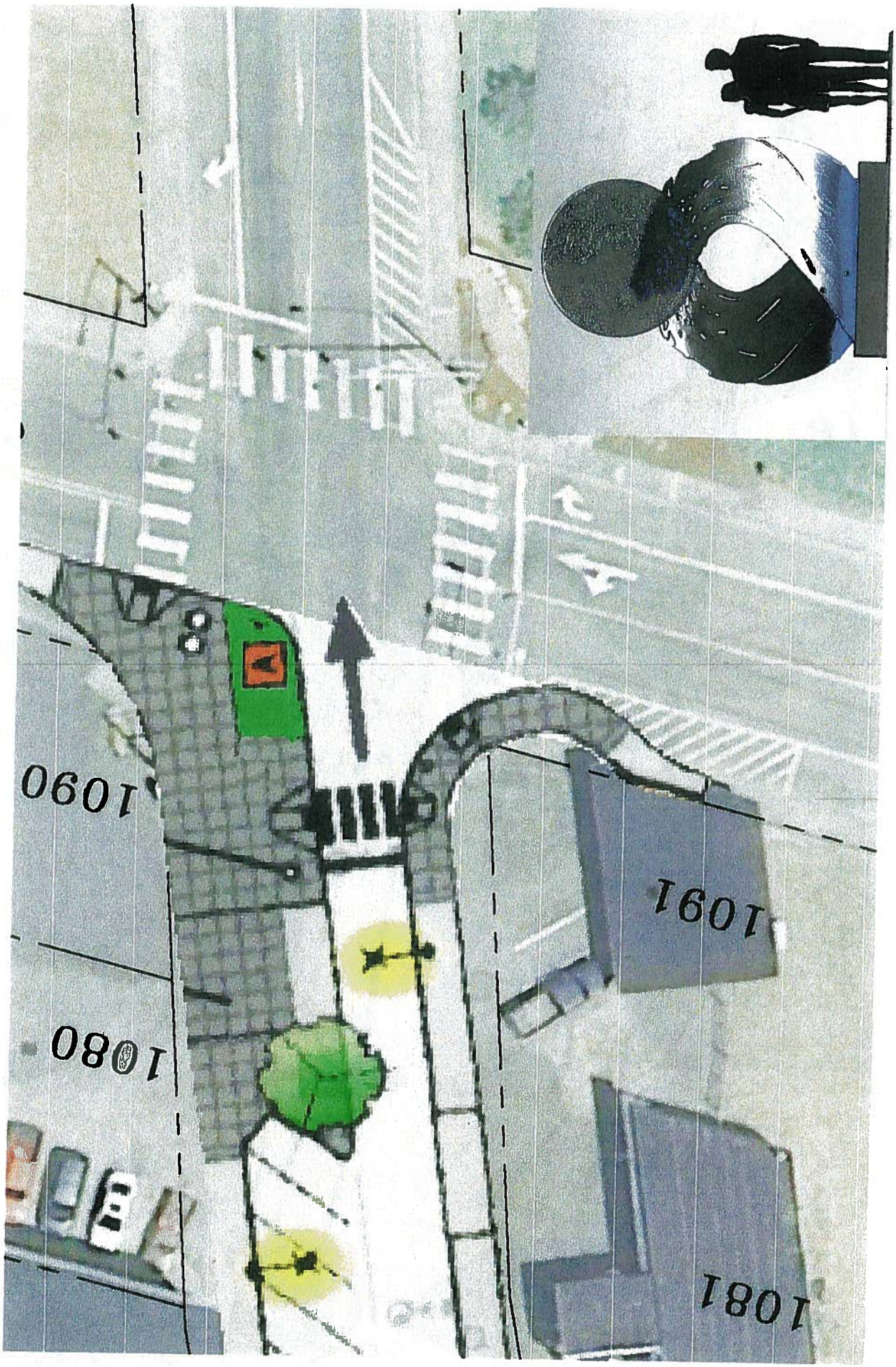

SITE A
WATER SCULPTURE
H ST.
450
430
451
415
3


790
780
770
760
ST.
SE
749
740
720
WATER SCULPTURE
(OPTION 2)
SITE B
SEA LIFE (OPTION 1)



SITE C

PIECE BY GEORGIA GERBER



MOON WAVES

SITE D

CITY OF OAK HARBOR
PROFESSIONAL SERVICES
AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, _____, between the CITY of Oak Harbor Washington, hereinafter called the "CITY", and_____, hereinafter referred to as the "ARTIST".

WITNESSETH THAT:

WHEREAS, the provision of art in public places, whether in the form of freestanding pieces such as sculptures or memorials, architectural embellishments, or other forms incorporated into areas accessible to the public makes the CITY more interesting and vibrant for its residents and visitors; and

WHEREAS, the CITY desires to facilitate the provision of art in a public place; and

WHEREAS, the CITY has selected the ARTIST to be commissioned to create and install an original and appropriate work of art, all as described in this Agreement; and

WHEREAS, the ARTIST is qualified and able to perform the services, and is willing to accept the commission as described in this Agreement; and

WHEREAS, the CITY desires to own and maintain such work of art as provided herein;

NOW, THEREFORE, in consideration of the mutual undertakings and covenants contained herein, the CITY and ARTIST, hereby agree as follows:

Part I. Term and Termination

1.01 This Agreement shall not become effective until signed by all parties.

1.02 This Agreement shall terminate upon the issuance of a written notice of acceptance by the CITY and transfer of ownership of the Artwork to the CITY pursuant to Part IV of this Agreement, unless earlier terminated as provided herein.

1.03 Prior to acceptance of the artwork, a waiver of certain rights and conditions attributed to the artist, in the Visual Artists Rights Act 106A, must be signed by the ARTIST as described in Exhibit A.

1.04 If the ARTIST fails to fulfill any of his/her obligations under this Agreement in a timely or proper manner, or if the ARTIST violates any of the covenants, agreements, or stipulations of this Agreement, the CITY thereupon shall have the right to terminate this Agreement by giving the ARTIST written notice of termination at least ten (10) days before the effective date of termination. The termination date and reasons for the

termination shall be stated in the notice. In such event, all finished or unfinished drawings, specifications, models, portions of the Artwork, supplies, or other objects which have been prepared by the ARTIST under this Agreement shall at the option of the CITY become the CITY's property, and the ARTIST shall be entitled to receive just and equitable compensation for any work completed under this Agreement to the satisfaction of the CITY. The ARTIST shall be liable to the CITY for damages sustained by virtue of any breach of this Agreement by the ARTIST. The CITY may withhold any payments to the ARTIST for the purposes of set-off until such time as the exact amount of damages due the CITY fro m the ARTIST is determined. Damages shall include all amounts paid pursuant to the Agreement. In addition thereto, the CITY has the right to recover attorney's fees, costs and expenses.

Part II. Engagement of the ARTIST; Designation of the Artwork; Community Involvement

2.01 Subject to the terms and conditions of this Agreement, the CITY engages the ARTIST, and the ARTIST agrees to be so engaged, to design, fabricate, create and install the Artwork (collectively, hereinafter "the Work") as described in "Exhibit B", attached hereto and incorporated herein by reference. The ARTIST, at his/her sole expense, shall provide all labor, materials, and supplies necessary to complete the Work.

2.02 The ARTIST shall perform the Work in a satisfactory and competent manner, consistent with the best standards in the ARTIST'S field, and the Artwork shall be designed, fabricated and installed in a manner that is structurally sound. If the ARTIST employs or engages a person or firm to perform a part of the Work, the ARTIST shall ensure that each such person or firm shall agree to perform such part of the Work in a satisfactory and competent manner, consistent with the best standards in such person's or firm's field. Notwithstanding the ARTIST'S employment of a person or firm to perform a part of the Work as permitted under this Agreement, the ARTIST shall remain responsible to the CITY for the faithful performance, when due, of the Work, and no delegation or subcontracting of a part of the Work shall relieve the ARTIST of his or her duties under this Agreement.

2.03 Throughout the process of the Work, the CITY and the ARTIST shall advise and cooperate with each other with respect to any alteration or revision of the Artwork, including but not limited to a variation in component materials, method of construction, size, and/or appearance, from that which is provided in Exhibit B, or any alteration or revision to the proposed installation site. The ARTIST acknowledges that if the Work is materially altered or revised from that which is provided in Exhibit B and the ARTIST has failed to advise or cooperate with the CITY as provided herein, the CITY may terminate this Agreement without penalty to the City.

Part III. <u>Independent Contractor Relationship</u>.

3.01 The ARTIST shall at all times be an independent contractor and not an employee of the CITY and shall not be entitled to compensation or benefits of any kind except as specifically provided herein.

3.02 The ARTIST shall not be covered by any CITY benefit programs, such as health and welfare, benefit plans, social security, workers compensation or unemployment compensation, and shall not be treated as an employee for federal tax purposes or any other purpose. The ARTIST shall be responsible for paying all taxes related to payments the CITY makes to the ARTIST, including federal income taxes, self employment (social security and Medicaid) taxes and state business and occupation taxes, and the CITY is not responsible for withholding for or paying any of those taxes.

3.03 ARTIST shall indemnify and hold harmless the CITY from and against any and all costs (including attorney's fees incurred in defense) or liabilities (including payroll taxes penalties or interests) arising out of any breach of the above representations and warranties or any assertion that the ARTIST is not an independent contractor.

Part IV. Installation of the Artwork

4.01 The Artwork shall be installed and incorporated into a public site that has been agreed to and designated by the CITY; such site is identified and described in Exhibit C, attached hereto and incorporated herein by reference. The ARTIST shall provide to the CITY a written description of the manner in which the Artwork shall be installed, including a statement of details regarding the Artwork as described in the Detailed Artwork Report – Part 1 attached hereto as Exhibit D.

4.02 The CITY shall cooperate with the ARTIST in the preparation of the site prior to installation.

4.03 The ARTIST and the CITY shall consult and agree to the date and time for delivery of the Artwork to the site. The ARTIST shall be responsible for and bear the costs of transportation and installation of the Artwork. See also 7.03.

Part V. Final Acceptance; Title of the Artwork to Vest in the CITY

5.01 Upon the completion of the Work and installation of the Artwork to the ARTIST'S satisfaction, the CITY shall inspect the work and present the ARTIST with a detailed listing of any observed flaws. When the CITY is satisfied with the Work, they shall provide written notice to the ARTIST of their final acceptance of the Work, which notice shall state that the Work has been completed and the Artwork has been installed as agreed to by the parties and to the satisfaction of the CITY.

5.02 Upon final acceptance, title to the Artwork shall pass from the ARTIST to, and vest in, the CITY as described in Exhibit E. The ARTIST hereby transfers to the CITY the ARTIST'S rights of ownership, title, and interest in and to the Artwork, as defined in Exhibit B, except those limited by this Agreement,. Thereafter, the CITY shall retain all written documentation regarding the Artwork, and shall have, for maintenance and historical documentation purposes only, the right to a copy of all drawings, sketches and designs of the Artwork produced prior to final acceptance of the Work.

5.03 Upon final acceptance, the ARTIST shall be given notice and an opportunity to be available for a public dedication of the Artwork; and, the CITY, and the ARTIST, shall provide appropriate, on-site signage to identify the Artwork by the ARTIST'S name, the year of fabrication, and other information deemed appropriate by the CITY.

Part VI. <u>Schedule of Performance, Compensation and Method of Payment</u>.

6.01 The CITY shall pay to the ARTIST for performance of the Work and for the Artwork as provided in this Part of the Agreement; however, in no event shall the ARTIST be paid an amount in excess of the sum of $_____. This amount shall constitute full and complete compensation for the ARTIST'S Work and Artwork; the ARTIST shall be solely responsible for all expenses necessary for the performance of this Agreement, including any cost overruns.

6.02 Upon approval of the completed preliminary design, the ARTIST shall proceed with the execution of the Work and the CITY agrees to pay the total purchase price of $_____

a. An initial payment of _____ will be made to the ARTIST for materials within 30 days of invoice.

b. The balance of the purchase price ($) will be paid to the ARTIST within 30 days of the completed installation. The Work, will be completed and installed no later than _____.

6.03 The above-stated purchase price includes the cost of materials necessary to create the Work and the cost of any additional labor services necessary to create the WORK, including workers' compensation coverage for employees.

Part VII. Warranty; Indemnification; and, Release

7.01 The ARTIST represents and warrants to the CITY that:

a. He or she is the sole creator of the Artwork and that the ARTIST has full power and authority to make this Agreement;

b. The Artwork does not infringe upon any copyright or violate any property right or other rights; and,

c. No lien or encumbrance exists against the Artwork and that following the transfer of title to the Artwork to the CITY, no individual or entity will have any right or interest in the Artwork that is prior or superior to the CITY's right and interest.

The ARTIST further represents and warrants that the Artwork, as fabricated and installed, will be structurally sound and free of defects in material and workmanship, including any defects consisting of "inherent vice" or qualities which cause or accelerate deterioration of the Artwork, and shall be designed so as routinely not to require extensive or extraordinary maintenance or conservation measures. The parties agree and acknowledge that the Work will remain outside and exposed to the elements and climate changes and

will not be stored, or otherwise provided special protection during cold or severe weather conditions. These warranties shall be in effect for a period of one (1) year after final acceptance of the Artwork under Part IV of this Agreement and transfer of ownership to the CITY.

7.02 The ARTIST agrees to defend, indemnify, and hold harmless the CITY, and their respective officials, agents, and employees from and against any and all claims, actions, suits, or proceedings of any kind brought against such parties for or on account of any matter arising from performance of the Work performed by the ARTIST pursuant to this Agreement.

7.03 Unless otherwise provided, the ARTIST acknowledges that until the ownership of the Artwork is transferred to the CITY pursuant to Section 5.02 of this Agreement, any injury to property or persons caused by the Artwork or any damage to, theft of, vandalism to, or acts of God affecting the Artwork are the sole responsibility of the ARTIST, including but not limited to any loss occurring during the creation, storage, transportation, delivery or installation of the Artwork, regardless of where such loss occurs.

Part VIII. Insurance

8.01 The ARTIST shall procure and maintain during the life of this Agreement such comprehensive general liability insurance as will protect the ARTIST, and the CITY, and each of their respective officers, agents, employees and subcontractors performing any of the Work covered by this Agreement, from claims for damages for personal injury including accidental death, as well as from claims for property damages, which may arise from operations or work under this Agreement, whether such operations or work be by the ARTIST or the CITY, or any of their respective officers, agents, employees and subcontractors performing any of the Work. The amounts of insurance shall be not less than One Million Dollars ($1,000,000) combined single limit for any one occurrence covering both body injury and property damage, including accidental death.

8.02 The insurance policy or policies procured as required by Section 8.01 shall name the CITY as additional insured parties, and shall require a thirty-day mandatory cancellation notice.

8.03 ARTIST 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 ARTIST before commencement of the work.

Part IX. Copyright and Reproduction Rights

9.01 The ARTIST expressly reserves every right available to the ARTIST under the Federal Copyright Act and other applicable statutes to control the making or dissemination of copies or reproductions of the Artwork, except the rights which are limited by this Agreement.

9.02 The ARTIST certifies that the Artwork created pursuant to this Agreement is a unique work of art and has not been and will not be substantially duplicated by the ARTIST without the prior written permission of the CITY. Should the ARTIST decide to reproduce the Artwork in an edition or in any other way, the ARTIST shall first obtain the written permission of the CITY.

9.03 The CITY retains the right to publish and distribute photographs, drawings or other forms of reproductions of the Artwork as installed and formally accepted by the CITY, for reference, promotional, educational and scholarly purposes. The CITY agrees to make no commercial use of the Artwork without the ARTIST'S written consent. If such consent is obtained from the ARTIST, all reproductions of the Artwork by the CITY shall contain a credit to the ARTIST that states the ARTIST'S name and year of creation,

9.04 The ARTIST agrees to include on or in any form of reproduction of the Artwork initiated or authorized by the ARTIST, a credit to the CITY, stating that the Artwork was commissioned and is owned by the CITY.

Part X. Maintenance, Repair, and Restoration

10.01 If, within the time period specified in Section 7.01 of this Agreement, the Artwork exhibits any structural or cosmetic defect or flaw in violation of the ARTIST'S warranty, the ARTIST shall repair the Artwork or replace any defective component of the Artwork at no cost to the CITY. All repairs or cures to defects shall be consistent with professional conservation standards.

10.02 Except as provided in Section 10.01, after the written notice of final acceptance has been issued and transfer of ownership has occurred, the CITY shall maintain and protect the Artwork as it reasonably determines, being responsible for the care, custody, maintenance and security of the Artwork. Any required maintenance of the Artwork shall be carried out by the CITY with the intention of protecting the value, integrity, and authenticity of the Artwork.

10.03 After the expiration of the warranty period, the CITY will make a reasonable effort to consult with the ARTIST in all matters concerning repairs and restoration of the Artwork.

10.04 The ARTIST shall provide to the CITY a written description of as-built information of the artwork and installation/foundation as described in the Detailed Artwork Report – Part 1I attached hereto as Exhibit F.

Part XI. Relocation or Removal of the Artwork

11.01 Upon final acceptance and transfer of title to the Artwork to the CITY, the CITY shall have the authority and sole discretion thereafter to remove, or remove and relocate, the Artwork from the original installation site.

Part XII. Non-Destruction, Alteration, or Modification of the Artwork

12.01 To the extent required by applicable federal law or other applicable laws and regulations, the CITY shall not intentionally destroy or modify the Artwork in any way whatsoever during the ARTIST'S lifetime without first making a reasonable effort to locate and inform the ARTIST, and to obtain the ARTIST'S written permission, if possible; however, this section shall not apply to modifications caused by the passage of time, the inherent nature of the materials or the result of conservation, lighting or placement in connection with public presentation.

12.02 If any significant modification occurs to the Artwork after final acceptance by the CITY under Section 5.02 of this Agreement, whether such change is intentional, unintentional, or malicious, and if the ARTIST makes a written request to the CITY that the Artwork no longer be represented as the work of the ARTIST, then the Artwork shall no longer be so.

Part XIII. General Provisions

13.01 The ARTIST, 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.

13.02 The CITY is an equal opportunity employer.

13.03 In the performance of this Agreement, the ARTIST will not discriminate against any employee or applicant for employment on the grounds of race, creed, color, national origin, sex, marital status, age or the presence of any sensory, mental or physical handicap provided that the prohibition against discrimination in employment because of handicap shall not apply if the particular disability prevents the proper performance of the particular worker involved. The ARTIST 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.

13.04 The ARTIST 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 ARTIST 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.

13.05 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.

13.06 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.

13.07 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 receive 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.

13.08 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.

13.09 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.

13.10 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.

13.11 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.

Section XIV. Entire Agreement.

The parties agree that this Agreement is the complete expression of the terms hereto and any oral representations or understandings not incorporated here 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 material breach of contract and 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 executed the day and year first hereinabove written.

CITY:

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

_____
Jim Slowik, Mayor

ATTEST:

_____
Connie Wheeler, CITY Clerk

SERVICE PROVIDER:

_____

_____

_____

EXHIBIT A

ARTIST WAIVER OF RIGHTS

On this date, _____, in Oak Harbor, Washington, _____ (Artist name), artist, in consideration of being retained as an artist to complete art associated with the Pioneer Way Improvement Project, hereby voluntarily releases and waives all artist rights to the artwork described as:

DESCRIPTION OF ARTWORK, and
USES OF THAT WORK

This Waiver has been executed by artist _____, voluntarily and with full knowledge of the rights afforded him/her under the Visual Artist Right's act, Section 106A of Title 17 of the United States Code.

Dated: _____ _____
ARTIST

EXHIBIT D
DETAILED ARTWORK REPORT – PART I

1. Artwork Summary (check all that apply)

☐ Sculpture (3D Work) ☐ Wall Hanging/Relief (2D Work) ☐ Interior ☐ Exterior

☐ Integrated Work ☐ Site Specific ☐ Permanently Installed ☐ Assembled Onsite

☐ Removable Components ☐ Kinetic

Material/Composition of Artwork (check any that apply; do not include mounting hardware or pedestal information)

☐ Acrylic Paint ☐ Oil Paint ☐ Paint (other) ☐ Patina

☐ Canvas/Woven Fabric ☐ Textile (Hand-made) ☐ Paper ☐ Wood

☐ Ceramic/Clay ☐ Concrete/Cement ☐ Stone ☐ Glass

☐ Metal (Ferrous) ☐ Metal (Non-Ferrous) ☐ Plastic/Resin/PVC ☐ Bone/Ivory

☐ Photography ☐ Video ☐ Electricity/Motor ☐ Light (integral to work)

☐ Digital Media/Software ☐ Sound Media/Implements ☐ Terrazzo ☐ Other:

Method of Display for Artwork (check any that apply and briefly describe material, e.g. imbedded in concrete, suspended by cable, mounted to brick wall)

☐ Pedestal: ☐ Ground Level:

☐ Suspended: ☐ Wall Mounted:

2. Dimensions/Weight

Overall/Spatial Dimensions of artwork: Height: in☐/ft☐ Width: in☐/ft☐ Depth: in☐/ft☐

Approximate Weight of the entire artwork: lbs ☐/grams ☐

How many individual components comprise the artwork?

Individual/Dissimilar Component Information: Major portions of an artwork are considered components, even if they have several dissimilar materials within each component. Please list components that are not the same, for example 100 stainless steel cutouts of a fish could be considered one component if each fish is exactly the same. If there are more than 8 dissimilar components, attach a separate sheet with dimensional information for each additional component.)

3. Artwork Detail (Materials/Composition of Artwork/Fabrication Techniques)

Provide proper and common names of all materials and components. Include alloy numbers, brand names, manufacturer name and contact information, supplier name and contact information, and any information that can be used to distinguish the material from other similar products. (For instance, a cast bronze component could have the proper name Bronze alloy CDA. #876, and also have the common name Herculoy Silicon Bronze.)

2D – Wall Hanging/Flat Artwork/Relief

A. Support material (base or foundation).

B. Ground material (primer, gesso, etc., used to isolate media from support). Include approximate number of applied layers if known.

C. Materials/media used in painting, drawing, collage, etc. Include specific information to colors/palette (brand, names, color names, mediums, and texture). Include the method(s) of application, e.g. brush, roller, sponge, sprayer. (Enter material information and manufacturer and supplier information)

D. Varnish or protective coating (e.g. natural, paint color and type, glaze, sealer, patina, fire retardant, etc.). Include method(s) of application and number of applications. (Enter material information and manufacturer and supplier information).

E. Materials used in the presentation of the artwork (e.g. composition of pedestal, deck, vitrine, frame, and assembly hardware, etc.) Enter material information and manufacturer and supplier information

F. Mounting/hanging hardware (e.g. sheetrock mollies, ¼" x 3" galvanized steel lag screws, galvanized d-rings, nooses of stainless steel braided wire, type of cable and fittings, etc.). Enter material information and manufacturer and supplier information

G. Are there mechanical components (e.g. motors, moving parts, sound implements) incorporated into or as part of the artwork? ☐ Yes ☐ No
If Yes, fill in section C in the following section '3D-Sculpture/Integrated Works'.

H. Are there technological components (e.g. digital media, solar panels, lighting, sound media, video) incorporated into or as part of the artwork? ☐ Yes ☐ No
If Yes, fill in sections D, E, and F in the following section '3D-Sculpture/Integrated Works'.

I. Was digital media used to create any portion of the artwork? (e.g. digital files for porcelain enamel, cut-files for CNC machinery) ☐ Yes ☐ No
If Yes, fill in section G in the following section '3D-Sculpture/Integrated Works'.

J. Are there landscaping components incorporated into or as part of the artwork? ☐ Yes ☐ No
If Yes, fill in section H and I in the following section '3D-Sculpture/Integrated Works'.

K. List all vendors, contractors, or persons that had a significant role in the creation, fabrication, materials, and/or installation of the artwork that have not been identified in this section. Include contact information.

3D – Sculpture/Integrated Works

A. Materials and fabrication techniques used in each component of artwork. For each component entry include materials, manufacturer and/or supplier information, fabrication techniques, and fabricator information.

B. Components that received colorants[1], sealants, or protective coatings. Provide detailed information about the type and application of these coatings, including chemical composition. Attach Material Safety Data Sheets (MSDS) and manufacturer's instructions for each product.

C. Describe the location and delivery of power and/or water supplies to or near the artwork that are utilized for the artwork. Provide detailed information about underground conduit, electrical panels and breakers, or connections to a power source.

[1] 'Colorants' can include paints, primers, colored waxes, patina chemicals, dyes, pigments, and oxides.

D. Describe any mechanical components, their placement, and their intended use as they pertain to the artwork.

E. Describe any technological components, their placement, and their intended use as they pertain to the artwork.

F. List any digital media (e.g. e.g. digital files for porcelain enamel, cut-files for CNC machinery) used to create or produce the artwork. Identify artwork components and the type, size, and quality (e.g. dots per inch or pixels) of the digital media files that correspond.

G. Are there landscape elements that are considered part of the artwork? ☐ Yes ☐ No
List the names of specific plants, rocks, or natural objects that are considered part of the artwork and describe the aesthetic and/or conceptual factors that determined their use. Also include information regarding the long term intent of the landscape components. (Attach a site map with specific locations of these landscape elements.)

I. As the work ages, landscape elements can alter drastically and compromise the integrity of other components of the artwork, or possibly even the entire site. Conversely, some landscape components may not develop as intended. Identify any aesthetic or conceptual issues the City of Oak Harbor should consider for reduction or replacement of landscape components.

J. List all vendors, contractors, or persons that had a significant role in the creation, construction, and fabrication of the artwork that have not been identified in this section. Include contact information.

EXHIBIT E

TITLE
and
CERTIFICATE of AUTHENTICITY

NAME OF ARTWORK
DATE

This certifies that the _____ (artwork) that was installed _____(location, Oak Harbor, Washington is an original concept and personally created by

NAME OF ARTIST
ADDRESS

This transfer of title gives the City of Oak Harbor all rights of ownership, except copyright. The artist retains copyright as permitted under the Federal copyright Act of 1974. The title of ownership is transferable, but conditions set forth here remain in effect for any new owners. The owner has non-commercial rights, such as photographs for publication purposes and other rights set forth in the Professional Services Contract.

Dated: _____

_____
ARTIST

EXHIBIT F

DETAILED ARTWORK REPORT – PART II

As-Built Information (Artwork Detail)

A. Is the artwork design, materials, fabrication, or location different from the final proposal?

☐ Yes ☐ No

If yes, please describe which portions of the final proposal are different than the completed artwork.

1. Installation/Foundation

A. Is the artwork permanently installed? ☐ Yes ☐ No

B. Can the artwork be deinstalled without being damaged? ☐ Yes ☐ No

C. Explain the process of deinstallation that would allow for the least amount of damage to the artwork.

D. Describe the footing, support structure, mounting, or suspension system for the artwork. Include material type, trade name, composition, hardware specifics, vendor, etc.

E. List the dimensions of the footing, support structure, etc.

F. Are there elements of the footing, support structure, or mounting system that are considered part of the artwork?

☐ Yes ☐ No

G. List the components or portions of the footing, support structure, or mounting system that are considered part of the artwork.

H. List all vendors, contractors, or persons that had a significant role in the installation of the artwork that have not been identified in this section. Include contact information.

As-Built Information (Installation/Foundation)

A. Is the completed artwork installation, footing, support structure, or mounting system different from the final proposal? ☐ Yes ☐ No
If yes, please describe which portions of the final proposal are different than the completed artwork. If the engineering requirements have been revised, please include original sets of all stamped engineering revisions.

2. Conservation/Maintenance

A. Were additional replacement components provided to the City of Oak Harbor for future maintenance and conservation purposes? ☐ Yes ☐ No

List the additional components, material of components, dimension, quantity.

B. Was a mold or dye custom produced for any component of this artwork? ☐ Yes ☐ No

Will the artist provide the City of Oak Harbor with the molds/dyes and consent to allow pieces to be produced from the molds/dyes for the sole purpose of replacing missing or broken components of the artwork? ☐ Yes ☐ No

Will the molds/dyes remain in the artist's possession after the warranty period? ☐ Yes ☐ No

C. Provide recommendations for annual (routine) maintenance for each material type that comprises the artwork. Include information about any specialized tools or equipment required to perform maintenance.

D. Provide recommendations for specialized (cyclical) maintenance for each material type that comprises the artwork. Include information about any specialized tools or equipment required to perform maintenance.

E. Describe what may be acceptable in form, surface, texture, coloration as related to the natural aging, public exposure, or use of each material.

F. Describe conceptual elements of the artwork that need to be considered for future conservation, restoration, or re-siting efforts (e.g. position related to solstice shadow, facing magnetic North)

3. Documents Checklist

Supplemental documentation is required for specific portions of this report. Below is a convenient checklist that will indicate which information is provided by the artist or representative working on the artist's behalf.

- ☐ **A manual or booklet has been created to serve as a supplement to this Detailed Artwork Report.**
- ☐ **MSDS (Material Safety Data Sheets), manufacturer's technical information and instructions for all colorants, sealants, and protective coating systems (with exception to powder coating and porcelain enamel).**
- ☐ **Schematics, drawings, and/or instructions detailing the process of dismantling or deinstalling the artwork.**
- ☐ **Site plan detailing the specific location of all components, including landscape components, that are considered part of the artwork.**
- ☐ **Manufacturers' instruction manuals for all 'off-the-shelf' mechanical and technological components.**
- ☐ **Backup copies of software and digital media files used in the creation of artwork components, as part of the artwork technology, and/or as the artwork itself.**
- ☐ **Photographic documentation of installation, during and after the process.**