City of Oak Harbor

City Council Agenda

For

July 12, 2011

6:00 p.m.

Race Week

July 15th—23rd, 2011

Oak Harbor City Council
REGULAR MEETING, Tuesday, July 12, 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

NON-ACTION COUNCIL ITEMS:

1. Employee Recognition – Marianne Ledgerwood, 10 years.
2. Proclamation – Christmas in July.
3. Report – Whidbey Island Marathon.
4. Public Comments.

COUNCIL CONSIDERATION AND ACTION ON THE FOLLOWING MATTERS:

5. Consent Agenda:

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a. Noise Permit – Rotary Club Car Show.

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b. Noise Permit – Island Classic Mustang Club.

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c. Noise Permit – Fidalgo Avenue Merchants Association.

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d. Noise Permit – North Whidbey Island Sunrise Rotary Club – Challenge Series.

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e. Noise Permit – Gizmo's Boardshop.

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f. Noise Permit – Event Planning Committee for Rick D. Almberg.

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g. Appointment – Arts Commission, Peggy Darst Townsdin.

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h. Bid Award – Senior Center HVAC.

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i. Safe Routes to School Project.

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j. SE Pioneer Way Project Construction Agreement –Frontier Communications Northwest.

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k. Excused Absence Request – Rick Almberg 8/3/11 and 9/20/11 Council Meetings.

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l. Agreement with Island County – State Homeland Security Grant.

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

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6. Public Hearing – 2010 Comp Plan Rezonings.

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7. Public Hearing – Oak Harbor Municipal Code Revisions – Low Impact Development.

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8. Public Hearing – Multimodal Facility Project Shoreline Substantial Development Permit.

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

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10. Referral to Lodging Tax Advisory Committee – Change in the Use of Lodging Taxes.

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11. Outreach Funding Discussion.

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12. WAIF Discussion.

13. City Administrator's Comments.

14. Council Members' Comments.

- Standing Committee Reports

15. 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.

Life loves to be taken by the lapel and told: "I am with you kid. Let's go."
~Maya Angelou

City Council Meeting
Tuesday, June 28, 2011, 6:00 p.m.
City Hall – Council Chambers

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

INVOCATION Chaplin Eric Gerber, Christ the King Church

ROLL CALL

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

Paul Schmidt, City Administrator
Margery Hite, City Attorney
Doug Merriman, Finance Director
Steve Powers, Development Services Director
Cathy Rosen, Public Works Director
Eric Johnston, City Engineer
Larry Cort, Project Manager
Rick Wallace, Chief of Police
Mark Soptich, Fire Chief
Mike McIntyre, Senior Services Director
Renée Recker, Executive Assistant to the Mayor

MINUTES

Councilmember Munns moved to approve the 6/7/11 meeting minutes. The motion was seconded by Councilmember Campbell and carried unanimously.

ADDITION TO AND DELETION FROM THE AGENDA

Councilmember Palmer moved to add the Pioneer Way Recovery Zone Update to this evening's agenda and remove the Percich Annexation Agenda Bill from the agenda. The motion was seconded by Councilmember Campbell and carried unanimously.

Pioneer Way Recovery Zone

Development Services Director Steve Powers began the presentation and talked about the efforts that have been underway since the discovery of Native American remains. A meeting between representatives of the City of Oak Harbor, the Washington State Department of Archaeology & Historic Preservation (DAHP), the interested affected Tribes (Swinomish, Tulalip, Suquamish and Stillaguamish), and the City's archaeological consultant (Northwest Archaeological Associates/SWCA) was held on Wednesday, June 22, 2011. The purpose of the meeting was to determine how best to respond to the City's discovery of Native American human remains within the Pioneer Way project area. The meeting took place in three locations: on Pioneer Way, at the property where dumping of excavated material is occurring and at the City's project offices on Pioneer Way. The meeting was generally led by Ms. Allyson Brooks, Ph.D. (DAHP). The site visits involved various individuals examining and discussing the excavation site in Pioneer Way and at the property where dumping of excavated material is placed. City staff responded to questions regarding work completed to date, work planned for the future, and project design details. Discussions were generally in

small groups, with no on-site large group discussion regarding the situation. After the site visits, the group convened in the City offices for a 'roundtable' discussion. Ms. Brooks led off the conversation, stating what she saw as the four main questions to be addressed:

1. How should the human remains and/or artifacts still located in Pioneer Way be dealt with?
2. How should the human remains and/or artifacts located in the excavation dump piles be dealt with?
3. What should the plan be with respect to continued work within the discovery area on the south side of Pioneer Way?
4. What should the plan be with respect to continued work near the discovery area on the north side of Pioneer Way?

While there was much discussion, it can be summarized as follows:

1. The Tribes will determine how they wish to deal with the human remains that still remain in Pioneer Way. Options appear to be leaving them in place or removing them to a separate location for appropriate burial.
2. The piles from the excavation will need to be sifted through in order to discover what remains have accidentally been removed from the project site. The appropriate method(s) for this work still need to be determined. The City's archaeologist will propose the method(s) as part of a plan to be approved by DAHP. The City will provide a jobsite trailer at the excavation dump site for use by the City's archaeologist and by the Tribes during this sifting process.
3. There was concurrence amongst those with knowledge in this area that a monitoring approach (i.e. having a trained observer monitoring excavation activities) is no longer feasible for our project. This appears to be due primarily to the depth and frequency at which remains were discovered. As an alternative, the City's consultant will prepare a testing plan to be approved by DAHP after consultation with the Tribes. Implementation of this plan will likely involve the scraping off of the surface layer of material and the digging of selected test holes to determine where there may be additional sensitive materials. If any additional remains are discovered they will be handled in a manner approved by DAHP and the Tribes. Subsequent to the meeting, DAHP issued a letter stating that work on the project requiring "excavation, filling, or placement of impervious surfaces along SE Pioneer Way must cease until an archaeological testing plan and permit application have been received, and an archaeological excavation permit issued by our agency."
4. Approval of the two separate plans noted above will result in the issuance of two separate permits by DAHP: one for the Pioneer Way site and one for the excavation dump site. As part of their approval process they seek input from the Tribes on the City's proposed plans.
5. No firm timelines for the completion of the permitting process are available. The City's consultant submitted the permit for the Pioneer Way site yesterday. Both DAHP and those tribal representatives who spoke seemed committed to reviewing and commenting on our plans in a timely fashion.

The City's intention is to treat this project site with a great deal of respect.

Project Manager Larry Cort talked about the State's June 23, 2011 order to cease work on any activity involving excavation, filling or placement of impervious surfaces. Strider Construction was told to cease work and curbs and gutters were finished as best they could be. Northwest Archeological Associates distributed their report to the Tribes today. The Washington State Department of Archaeology and Historic Preservation (DAHP) will distribute the application with their comments by close of business on July 5th for the Tribes' response to the permit application. There will be no further work on the site until then in accordance with the State's orders. The State has responded quickly with substantive comments from the State to the Tribes. This allows our archeological consultant time to review these comments while the Tribes prepare their comments. Where does that leave our contractor and schedule? The State did make an exception to allow utility trenching work on Dock Street between Pioneer Way and Bayshore Drive. No further remains were uncovered. Strider can continue to work on handrails on walls one and two, and the irrigation testing. Most critically and of concern to the businesses and customers, a special request has been made to the State to allow us to place small amounts of crushed gravel at business entrances and at either side of curbs and gutters. Strider will begin this work tomorrow and will shut down over the four-day holiday weekend. We will regroup and keep Strider apprised of how the permitting goes with the State and these four major efforts:

1. Get the second permit application in for the pit site.
2. Continue to cooperate with the State and Tribes to the best of our ability.
3. Focus on timely and comprehensive responses from the State and Tribes.
4. Make special efforts to keep the merchants fully informed.

Council Discussion

Discussion continued regarding use of NW Archeological Associates without prior approval from Council (within the project's budget and this consultant was used on the 42-inch outfall project; the City needed to respond quickly), whether the State will provide an observer (the City will have an observer onsite), and that if more human remains are found, the State's archeologist will be required to come to the site and perform testing to determine origin. Discussion continued about DNA testing, the County's road work which was separately dumped at the Pit Road site and delineation of the City and County Pit Road material. Discussion followed about the impact of this delay on Strider's other projects and how they can distribute their personnel and equipment. Dr. Cort responded that, when the permit is approved and the go-ahead is issued from the State, Strider will have a couple of days to reinvigorate and repopulate their crew and equipment and re-schedule their sub-contractors. Council concern ran to any obligation to pay Strider for the delay (still under review). The City's construction management firm, KBA, Inc., is reviewing the timeliness of response and moving forward and more information should be forthcoming on July 12th. Discussion followed about turning this into a "positive" and using this as an opportunity to memorialize Native American heritage and community heritage. Discussion continued about how the Tribes will determine which Tribe the remains are from, that it is the combination of evidence that associates remains with a particular Tribe including the oral tradition within the Native American Tribal communities which is kept alive by the current generation. Council asked about comments from the State archeologist to the Tribes and what the comments are. Dr. Cort noted that they are fairly technical issues related to protocol in collection and interpretation of evidence.

Councilmember Dudley asked, in looking back at the project, what could have been done differently. Mr. Powers noted that the City initiated the project and contact with the DHAP office and, as with Mayor Slowik's statement, we want to figure out what went wrong and how we can improve, but for now, we are just trying to address the current situation. At the staff level, and with time to prepare a report, we can come back to Council. Council asked about the possible different scenarios: The City will need the response from the State and Tribes, and then determine the scale, timing, and contract questions. The City does not want to speculate, at this time, on what might happen. The area could also be rich in discovery and the project would have to adjust. From another perspective, the remains may be limited to what has been found. Council asked City Attorney Hite if the City could be held liable if negligence is shown. Ms. Hite responded that this requires more research than we have had an opportunity to do and then talked about the Native American Graves Protection and Repatriation Act. Councilmember Dudley asked if a cost breakdown with new costs would be available on July 12, 2011. Mr. Powers responded that the State has a regulatory timeframe but the State is responding in a very timely manner and making this a priority. If the City does not have more information by July 12th, it would be the same response. Mr. Dudley then asked, if the City has not heard back from the State, what would ongoing costs become; a report on that based on what is known. Mr. Powers noted that project staff will be in consultation with KBA, Inc.: What is the appropriate response time for the contract, incurred costs, and hard costs. It is our goal to keep the Council fully informed, but it may be incremental information. Mayor Slowik added that the City of Oak Harbor is certainly in unchartered waters.

Public Comments

Paul Brewer, 225 NE Ernst, Oak Harbor. During my last twelve years on Council, I remembered that Ryan Goodman, the City's Engineer then, never wanted to dig up Pioneer Way. Are there records from Mr. Goodman; especially the area at Cathay Palace? I think we have lost sight. The businesses on Pioneer Way are hurting and near bankrupt. Forgo their utility bills until the project is completed and they can get back on their feet. I understand we cannot gift them, but open an account for them.

Shane Hoffmir, 50 SW 8th Avenue, Oak Harbor. I am tired of being portrayed in a miserable light due to the actions of certain elected officials that are supposed to represent us. They don't represent us because the people of Oak Harbor are great people. We don't go in a store front and remove a sign that does not belong to us. I guess that deed having won a Schrammie, would imply that most of us don't. Now these same City officials are attempting to enforce an ordinance that any second grader would know is unconstitutional; an ordinance limiting freedom of speech, the right to a public forum. and the right of political expression. I am tired of my community being made to look bad by individuals whom apparently don't care about the will of the people. Rectify this situation by repealing this ordinance immediately and review all other City ordinances insuring that we are in compliance with the United States Constitution. Thank you for your time and prompt consideration

Robyn Kolaitis, 2141 SW Dillard Lane. I read with great disappointment the article in the Whidbey News Times titled, "Oak Harbor ignored warning of possible bones at road construction site." I am concerned for the downtown businesses and the cost to taxpayers and any additional delays this might cause. More than disappointed and concerned, I am downright angry. Ms. Kolaitis' full public statement is attached to these minutes as Exhibit A.

Gray Giordan, 651 SE Bayshore, Oak Harbor. Prevent the misuse of public funds and do your jobs to protect public property. You propose tearing down Flintstone Park structures, adding new facilities and an overwhelming amount of concrete. The proposed plan moves the picnic structure closer to Bayshore and its view is then blocked by the ticket waiting room. All of this is being done for a room that will not be used for its intended use for years. Keep it simple; do not over-develop it. There is a huge failure on Council's part to fund necessary maintenance of buildings and there is extensive maintenance needed at Windjammer Park. Mr. Giordan distributed a photographic handout to each Councilmember detailing maintenance needed at Windjammer Park (attached to these minutes as Exhibit B). Mr. Giordan also talked about minor damage to the Flintstone Car, adding park benches to the Waterfront Trail, and Oak Harbor's great shoreline and parks.

Gerry Oliver, 740 SE Pioneer Way, Oak Harbor. I moved downtown because I believed and continue to believe in the Pioneer Way Project. Councilmember Almberg hit the nail on the head: from a Council and Mayoral standpoint, lead through all of this. Thanks to Larry Cort and Rhonda Severns for being down there. I have always been a huge supporter of downtown revitalization. Not everyone is bankrupt down there. You should be the face, not staff as the face. Get it fixed, get it done, and get the project finished.

Colleen Ladwig, no address given. There is a lack of leadership to the Oak Harbor community by the Mayor and Council and there is misuse of funds. I have been here my whole life. My background: I was born and raised here, my dad was an electrical engineer at NASWI and he set up every single building. I am related to, or shirttail related to, most people on the north end. I had a business downtown, I was president of the downtown association for five years. I was involved with the parking lot swap, involved with the clock tower project, and the pier project. I worked with the Navy Exchange on their expansion. I have been a Chamber of Commerce member for over thirty years and have chaired many Chamber committees (Fourth of July co-chair, NASWI Air Show co-chair where one of my main jobs was traffic flow). I have been on the Washington State Tourism Commission and the Washington State Transportation Commission. With my travel agency business, I traveled extensively. I have been concerned with the one-way situation. I emailed all of the Councilmembers but without response. I did meet with Councilmember Dudley and Councilmember Palmer. I met with the Mayor and found that very lacking on your part. My question to the Mayor and each Councilmember: when was your last purchase on Pioneer Way? There is no way to stop the project at this point, but it has become a joke. To Mayor Slowik: you promised me my two time capsules. Lesley McConnell is gone (regarding the PR process), there are problems with the project, and there is misuse of funds. Local cities with one-way streets had to reverse these streets. Pioneer Way will have to be changed back and you have cost the taxpayers way too much. You need to step down as Mayor and we will take action to remove you from office.

With no other public comments coming forth, Mayor Slowik closed the comment period at 7:00 p.m.

Consent Agenda

A. Noise Permit - VAQ-130
B. Noise Permit – Whidbey Island Race Week
C. Noise Permit – Fleet Readiness Command Picnic
D. Noise Permit – Pioneer Automotive Services and Whidbey Cruzers Car Show
E. Noise Permit – Living Faith Christian Center
F. Noise Permit – Chamber of Commerce, 4th of July
G. Noise Permit – Family Bible Church
H. Re-Appointment – Lodging Tax Advisory Committee, Rhea Nelson
I. Re-Appointment – Lodging Tax Advisory Committee, John Platt
J. Appointment – Lodging Tax Advisory Committee, Danielle Callendar
K. Appointment – Library Board, Margaret Grunwald
L. Excused Absence – Councilmember Jim Palmer from the 7/12/11 Council Meeting
M. Introduction – Island Disposal Franchise, Goldie Road Annexation
N. Approval of Accounts Payable Vouchers

MOTION: Councilmember Campbell moved to approve Consent Agenda Items A through N with item N paying Accounts Payable check numbers 146234 – 146424 in the amount of $395,947.07, Payroll check numbers 94784 – 94795 in the amount of $405,763.46, Payroll check numbers 94796 – 94824 in the amount of $590,970.56, and Payroll check numbers 94825 – 94858 in the amount of $103,412.30. The motion was seconded by Councilmember Severns and carried unanimously.

LID Proposal – Driftwood Beach Addition

Development Services Director Steve Powers introduced Steve DiJulio of Foster Pepper, PLLC, and Doug Jacobson from Gray and Osborne, Inc., who were present to answer legal and engineering questions. Mr. Powers summarized the agenda bill noting that its purpose is to continue to provide information regarding the proposal to form a Local Improvement District for sanitary sewer improvements for the Driftwood Beach Addition.

At the May 3, 2011 City Council meeting, a motion was approved stating "to remand the resolution back to staff to include both the gravity and the low pressure sewage systems in the resolution." It was then further clarified by consensus to bring back the sewer information for the proposed Dillard sewer improvements for the June 28, 2011 City Council meeting. Given that direction by City Council, Staff retained the engineering firm of Gray and Osborne, Inc., to review and update the engineering information they provided to the City in 2007 concerning costs estimates for a gravity sewer system and low pressure sewer system for the Dillard neighborhood. The updated information was presented in two, separate spreadsheets and attached to the agenda bill: one for a gravity system and one for a low pressure system. The spreadsheets provided a comparison of the total cost to install all of the improvements necessary in the public

right of way to result in a complete gravity sewer system or a complete grinder pump/pressure system. Gray and Osborne noted that the costs summarized do not include the work the property owners would need to undertake to construct a side sewer on their own property and abandon their existing septic tank. Those costs should be the same whichever alternative is chosen. The City's Development Services Department updated the Dillard neighborhood sewer map and corresponding property owner information, which can be considered as a possible benefit area for the LID formation which was also attached to the agenda bill. Additional information pertaining to the possible benefit area, as found in a letter from the State Auditor, was also attached to the agenda bill. Finally, staff provided the updated information to Mr. Steve DiJulio of Foster Pepper, PLLC, to revise the original Resolution #11-10 to reflect the additional information that City Council requested which was the final attachment to the agenda bill.

Mr. DiJulio gave the complete background beginning with December 2007 and the adoption of Ordinance 1521 and the deferral of mandatory connection to allow residents an opportunity for formation of a Local Improvement District (LID). The City had mandatory sewer connection standards which were suspended for five years by Ordinance 1521 and now is back before the Council for consideration. Mr. DiJulio reviewed the basics of an LID which were presented in detail at Council's May 3, 2011 meeting (those minutes were also attached to this evening's agenda as an exhibit). To put this in context, Council has a number of options: do nothing and allow the provisions of Ordinance 1521 to carry out with mandatory connection at the end of 2012, continue use of the low pressure sewage system, or create an LID for a gravity system. All of these options remain available. Mr. DiJulio noted that, after Mr. Jacobson's presentation, he could continue to talk about the process for an LID if it is of continued interest.

Doug Jacobson of Gray and Osborne then addressed Council and talked about his qualifications (Public Works Director with the Cities of Bothell and Mill Creek) but noted he was not involved with the work done for Oak Harbor in 2007. He did review the 2007 cost estimates and basic layout for the gravity system. The only significant change is to what is envisioned for the lift station which would be more sophisticated and larger today. The cost estimates attached to the agenda bill, for both the pressure system and the gravity system, included individual cost estimates. The bidding climate can change by next fall and spring. Mr. Jacobson reiterated that the cost estimates only reflect the public right of way costs and not work on private property.

Mr. DiJulio continued this discussion. The step that Council may next consider is, if you have sufficient information to go forward with a project, then you would direct staff to prepare a preliminary assessment role which is necessary for the notice that would be given for the hearing on an LID. Traditionally, the Council would adopt a resolution setting a hearing date (thirty days in advance for both published and mailed noticing). That requires that that property owners be given an estimate of that assessment and the time and date of the hearing. It is not binding on the City; only an estimate, but you cannot start without it. The formation hearing is then conducted, then a formation ordinance is adopted, an LID would be formed, and then the project could go forward. Mr. DiJulio has seen recent cases where cities have gone to bid, obtained costs, and

have gone to a final assessment role before awarding the contract. An alternative is to build the project and engage in interim financing, go to assessments, and issue the LID bonds for project financing. The first assessment would not be due for twelve months. Returning to the beginning of this process, Council is at the stage of which direction you prefer, how you want the LID to look (provide for a gravity system or provide for a pressure system; assessments will differ with each), and the special benefit to property (special benefit will differ between gravity and pressure systems). Typically, you have a project design and how costs will be spread to the property owners. With Freeland, the special benefit study found insufficient special benefits to proceed without State grant funds. Decision points for Council at this stage: do we go forward with cost estimates or appraisal and special benefits analysis? These are observations from a practical perspective having reviewed Mr. Jacobson's numbers and having years of experience working with LIDs.

Discussion continued, for both gravity and pressure systems, about costs that would be property specific, how ERUs will be calculated, and which number of ERUs will be used. Concerning the gravity system, unless the City would finance this system internally, it would be difficult to sell bonds when 70 percent of the bonds are on undeveloped property. It could become a risky LID even if the underwriting community would accept it and would include higher interest rates which, in turn, would mean all property owners would pay higher interest rates on the installments. One property owner could stop the City by protesting the formation of an LID, and the formation and feasibility of issuing bonds on raw land. It is difficult today to clearly state, from the engineering preliminary estimate(s) of probable cost, that one system or the other could facilitate sewer for the Dillard's Beach Addition. Regarding the pressure system, attractions include the fact that it is in place, there are lower upfront capital costs, individual grinder pump connection costs are $8,000 per grinder pump, 2007 exhibited dependability, and there is power support to keep it operating. Mr. DiJulio noted that he held no opinion on how Council should proceed; there are different considerations on how to go forward. In summary, for Council to proceed if Council chooses to proceed: the special benefit consideration prepared by staff, prepare a preliminary assessment based on a particular system, and staff would return with numbers. Does Council want to move forward with setting a hearing date (gravity or pressure), conduct the public hearing, and then decide whether to form an LID. This still leaves exits up to the point of construction and a dollar commitment.

Mr. Powers had no additional comments.

Mayor Slowik opened the meeting to public comments at 7:25 p.m.

Mark Goetz, 2164 SW Dillard, Oak Harbor. I sent an email to the Mayor and Council outlining (my concerns). When we came here, you said you would watch and oversee and not let staff run amuck. One specific item in the agenda bill – the letter from the State Auditor – "additional information pertaining to the possible benefit area is found in the letter from the State Auditor" (agenda bill's text). Per Mr. Johnston, and the map provided us of the area, the wetlands next to Dillard's cannot be built on, removing 100 potential units based on that letter. This is more run-around by the City Council. Mr. Johnston's email (2006, attached to Mr. Goetz's handout) talks about the possibility of a

new RV park. How can they lie; we know about mitigation. And the site map; the City needs to put something on there and make it totally not developable. We are still hearing two stories from the same person in same city. Estimates are wonderful but worthless if based on the same set of parameters. Divide by 196 units; you cannot trust the City staff.

Mayor Slowik interjected that we do trust the City staff and that is whom we use.

Mr. Goetz continued: This is more of the same. We are still getting the same goofy answers. Two bids from $500,000 to $640,000 for Mr. Anderson, now Mr. Jacobson has it up over $1 million in spite of construction costs being down. The Council ought to have more oversight. We turned in a petition for a gravity system, not a grinder pump system; gravity only per the petition. We feel confident it will be the lowest cost system. If Council would ask Mr. DiJulio: If we disagree with the proposed benefit area, what do we appeal? Mr. Goetz's handout is attached to these minutes as Exhibit C.

Mayor Slowik responded that no decision has been made; this just gets the ball rolling.

Paul Brewer, 225 NE Ernst, Oak Harbor. I remember when I was on Council how this was forced upon the Dillard's (residents). They were against it then and had no choice and now we want to add another section of 80 units that can override. I don't think it should move forward. It should be a separate LID for the upper 80 units. We always change the rules. We have to listen to the people. They need a voice and they don't have one right now.

Duane Dillard, 2150 SW Dillard Lane, Oak Harbor. Council authorized $25,000 in preparatory costs for Dillard's. Tonight's agenda packet indicates that Gray and Osborne has looked at both low pressure and gravity systems. We are still within the expenditure cap. We still have no cost benefit analysis. When we presented the petition, we asked for an honest and impartial process. Installation costs do not matter until we know the overall cost benefit. Tonight's report is incomplete. I do share the frustration and we have been lied to by staff. It is the same staff. On page 91, it was labeled as "signature not received, but family relation has signed." I am the family relation and also an owner along with my two brothers. Prior to my signing, they were notified and agreed to the LID petition. Mr. Dillard's complete remarks are attached to these minutes as Exhibit D.

Shane Hoffmir, 50 SW 8th Avenue, Oak Harbor. Aren't the Driftwood Beach Addition residents paying for sewer hookup twice?

Robyn Kolaitis, 2141 SW Dillard Lane, Oak Harbor. I sent my letter to the Mayor and Council and it will be in the record (attached to these minutes as Exhibit E). We've been here. When this all started four and a half years ago, Mr. Schmidt told us a story about Cheney and a developer there who chose to go to a grinder pump system. We shouldn't be scared; I called Cheney. They (the developer) didn't build with grinder pumps. They put in gravity with a pump system. When Council first looked at preliminary approval with a force main in the ground, Mr. Brewer asked if the homeowners were in agreement. Mr. Schmidt said the homeowners weren't involved. The agenda bill is lacking some serious information. Gray and Osborne did not include the force main. Provision for 60 ERUs, does it only serve Dillard's, there are a lot of unanswered questions in the agenda packet. Where is the force main? We don't want

the installation as it is. We don't want grinder pumps, the smell, and we forwarded questions early so we would have answers. We need honest information. Since day one, instead of telling staff to keep working on it, find an outside firm without input from City staff.

Mel Vance, P.O. Box 2882, Oak Harbor. Estimates for backup of a grinder system are needed. You talked about bonding which could be blocked by one property owner. Property owners should have the option to withdraw LID requests.

With no other comments coming forth, Mayor Slowik closed public comments at 7:55 p.m.

Council Discussion

Councilmember Dudley asked Mr. DiJulio to answer Mr. Goetz's questions: As we go through the process, the cost benefit analysis and the number of units, how do property owners appeal the benefit area? Mr. DiJulio gave an example of a challenge in superior court: at the time of the ordinance – did the city include all benefited properties. Mr. Dudley continued: if we use an unbiased outside firm, would that fall to them? Mr. DiJulio responded that the City could use an appraisal or engineering firm to do this; what would be the special benefit to the property by having sewer available. Mr. DiJulio talked about the Freund properties, 25 and 26, as identified in the list, which is vacant land. The property would be worth more with sewer and there would be a special benefit to those properties. You would not know the actual assessment number until you do the analysis. Whether using an appraiser or outside engineer, that firm will still have to talk with planning staff. They then would determine how sewer would benefit; cannot make a determination on whether property will be developed or not developed. If 60% from the assessment evaluation protest the formation of a gravity LID, it would defeat it but not the compelling of connection. We are talking about an LID formation. The City can pay for any or all of this (a Local Improvement District). Additionally, if the City property is benefited, it can be included and assessed accordingly. City property is included in the LID, the value of the City property is not counted. The City cannot protest its own LID. It doesn't preclude someone from defeating the system, but then, what is the property that is specially benefited? You decide as a Council.
Councilmember Dudley asked if, in reference to the City-owned property, if a gravity system goes in and the City benefits (an RV park), then the City can put the onus on private property owners? Mr. DiJulio: No, any State or local property benefited by the improvement is to be assessed in the same manner as all properties. If it is benefited by the sewer, then it has to be included. Councilmember Dudley: Are there instances where litigation occurs, when a council fails to act, or doesn't count the City property? Mr. DiJulio talked about a case with the City of Edmonds a number of years ago where there were insufficient protests and the court said the city could not count itself. There are fewer challenges at the formation stage. Mr. Dudley stated that he was in favor of moving forward with an LID for a gravity system, use of a non-biased independent firm, and that we have an opportunity to bring in and embrace the property owners.

Mr. Powers brought up the slide showing the Dillard Area Sewer Boundaries map and talked about lots 2 and 3 which were short-platted a number of years ago: Lot 2 as City property, wetlands mitigation of another project, the second wetland was for the Bayshore Drive area as part of the approval and then land was deeded over as open

space. There is confusion about the number of units and the RV park. The Windjammer Plan was conceptual and the size of the existing wetland was grossly under-shown and showed a much larger RV park than could be accommodated. When we talk about a private RV park or relocation of the RV park, it is the 60 ERUs area – lot 3. This site map was based on the short plat. In response to a question from Councilmember Severns, Mr. Powers noted that of lots 1 and 2, lot 2 is City property. Lot 1 is privately-owned. The manmade wetlands do affect the entire property which will be encumbered by those wetland issues and is not developable. There is a combination of wetland and buffer within lot 2 which is one piece of open space property and not developable. Councilmember Severns asked about the number of ERUs for the Freund property. It was noted that if we participate in an LID, the Freund properties are not potentially attractive for a bond market and would elicit a higher interest rate. We have seven owners who are a '"no" and not included. How are they affected? Mr. Powers noted that there are properties connected via private sewer who did not sign the petition and we do not have an answer regarding what this will mean for them. Mr. Powers and Mr. Jacobson were asked about the force main. Mr. Jacobson noted that Gray and Osborne was asked to prepare a cost estimate for completing a pressure system or constructing a gravity system. The force main is not included in the cost estimate. It is Council's decision whether to include it as part of an LID formation. Mr. DiJulio added that the force main is already built and there. What Mr. Jacobson is saying is, the City can factor in the costs of an existing system as part of overall costs of an improvement. Cities, unlike districts, can include costs of an existing system. Mr. Severns asked about the public comments on a separate LID and if costs wouldn't be substantially higher then. Yes, they would be higher by spreading costs to a smaller number of properties.

Councilmember Almberg asked who would determine the benefit area right now. Mr. DiJulio responded the Council determines it by what properties would be served and thereby benefit from the availability of sewer. There are limitations to the north from dedicated wetlands which are held for public use. The west is not available with the existing park and the bay. There is a narrow area that would be available for system service and benefited by sewer. Mr. Almberg asked if there are neighboring properties in the vicinity if the benefit area is expanded. Mr. Powers responded no, to the best of his knowledge. We have limitations from Freund Marsh, Windjammer Park, frontage along SR-20 which is furnished by SR-20. Whidbey Island Bank and the condominiums are all served by sewer in SR-20. Lot 1 is awkwardly positioned and we want to avoid crossing the open space area. Mr. Powers thought it could be served by a pump, but it is difficult to determine how to serve lot 1. Mr. Almberg asked Mr. DiJulio: If we go forward, can we have an assessment benefit value added to properties if they have City sewer. Mr. DiJulio noted that is one option, but not the only option. There was a similar project on Bainbridge Island and they did not engage an assessment or how costs were spread over the entire system. Or, some agencies hire an appraiser. Mr. Almberg reiterated that we would look at the value of the highest and best use of the analysis and property to see if it would be benefited by sewer; what the property would be worth with City sewer. Mr. DiJulio concurred, but if it is constrained property, sewer will not do it any good; there is reasonable probability. Mr. Almberg asked if, there is existing sewer, is that taken into account. Yes, but it is difficult to find a special benefit from that property. Mr. Almberg asked about the engineer's estimate and if it would include legal

fees, the bond, interim financing, side sewers? Mr. DiJulio responded that the preliminary assessment would not include the property-specific charges. The costs of staff or consultant time would be a policy decision. The City can pay for all or part of project at any time. Mr. Almberg asked if the City could then allocate costs back to the property owner. Mr. DiJulio noted that the City's sewer utility has far greater market strength than a small LID. Councilmember Almberg framed a potential motion to allow staff to proceed with the preliminary estimate for a special benefit area. What is the value being added to their property?

Councilmember Palmer added that, when Council voted on May 3, 2011 he felt that it was backward. Mr. Palmer re-read a part of the May 3rd, minutes regarding increased benefits and felt an outside source should be used; expert appraisal analysis or an engineering estimate.

Councilmember Paggao asked, if the City moves forward with an LID and an appraiser is used for the benefit of affected properties, would this include the seven property owners currently being served by City sewer? Mr. DiJulio responded that there is no opportunity to opt in or opt out of an LID. Whether they signed or did not sign the petition is irrelevant. But, if served by City sewer, they can be asked to connect to the gravity system. However, Mr. DiJulio felt it is unlikely that the property would reap a special benefit by being connected to the gravity system. The City already has a policy for mandatory hookup that was suspended for this area.

Councilmember Campbell asked for clarification of the area being discussed: Lot 3, the Dillard's Addition, and the 3 ERUs property, and felt that a solution had not been found. Mr. Campbell did concur with obtaining an outside engineering firm for the gravity system and then return to Council.

Councilmember Munns, in listening to the comments, noted that some residents signed the petition to get more information. Whether they have their own private system or are on the City system, Ms. Munns could not see compelling those seven property owners since their system is working. They paid for it; why should they be forced into this? The twenty properties on septic would mean fewer properties for the LID and would make it unaffordable. An assessment may be over our $25,000 limit, as well. Mr. DiJulio concurred that it may difficult to get an appraisal within the existing budget, but the expense will also depend on the parameter given to the appraiser. What properties will the system serve along with City policy would define the parameter. Ms. Munns asked if a commitment is needed from the owner of lot 3 or would you exclude them? Mr. DiJulio responded that you would have to conclude that lot 3 would be specially benefited. If that property owner says "no" and will not pay for the LID, that saves the City money along with the process.

Councilmember Almberg framed language toward a potential motion for the City to proceed with a preliminary special benefit estimate and to do it incrementally:

- To take a look at selection of an appraiser who will do this
- After reviewing a list of qualified appraisers, then request their proposals
- Submit the proposal for selection by City Council
- Once the proposal is chosen, then authorize a contract to do a special benefit estimate
- Create an engineers estimate to factor in that cost

Consider both a gravity and low pressure sewer system for the appraisal.

A more concise motion then came forward.

MOTION: Councilmember Almberg moved that the City proceed with the development of a preliminary special benefit report in phases:
Phase 1: An RFQ to identify qualified firms.
Phase 2: A Request for Proposals for Council consideration and award of contract.
Councilmember Campbell seconded the motion.

Break
Mayor Slowik called for a break at 9:00 p.m. and the meeting reconvened at 9:05 p.m.

Discussion continued about using the lowest bidder (Mr. Schmidt clarified that it would be the most qualified bidder), what the additional cost would be for a special benefits analysis for both a gravity and pressure system, and the need to have a definite plan for what the appraiser will do.

VOTE ON THE
MOTION: The motion carried unanimously.

Council will come back to the resolution at a later time.

Public Hearing – Element Nightclub Quarterly Review
City Attorney Margery Hite noted that this is quasi-judicial procedure since it is a license revision hearing. Prior to the staff presentation of a quasi-judicial matter, Councilmembers shall each determine whether the appearance of fairness doctrine requires that the Councilmember recuse himself or herself from sitting on the quasi-judicial matter. As a non-land use quasi-judicial matter, City Attorney Hite asked each Councilmember to identify:

1. If they stand to gain or lose any financial benefit as a result of the outcome of the hearing.
   Councilmember Severns is on the board of Whidbey Island Bank but does not know if the bank has any interest in Element Nightclub.
   Councilmembers Almberg, Dudley, Campbell, Munns, Paggao, Palmer, and Severns each answered no (with the above statement from Mr. Severns).
2. If they have any personal, family or other connection to any party such that their ability to be impartial might be called into question.

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

3. If there is any reason why they could not be fair and impartial in deciding this matter.
   Councilmembers Almberg, Dudley, Campbell, Munns, Paggao, Palmer and Severns each answered that they could be fair and impartial.

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

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

Ms. Hite then asked each Councilmember about ex parte contacts.
Councilmember Dudley – I talked to a condominium resident walking in this evening. I did the talking and mentioned that it is concerning. I am concerned about the impact of Element on homeowners across the street. We, as a City have an obligation to maintain a quality of life, and Element is impacting their quality of life and their property value. This does not affect my ability to be fair.
Councilmember Severns – No contacts.
Councilmember Almberg – No contacts.
Councilmember Palmer – Yes, from one person across the street who gave a suggestion to me, and I stated I would not do their suggestion which was a general proposal on how to deal with noise and stronger rules; a general conversation to control noise and insure safety of people near a nightclub. Nothing new was brought forward. This does not affect my ability to be fair.
Councilmember Paggao – No contacts.
Councilmember Campbell – I had a conversation this evening about dampening the noise. This does not affect my ability to be fair.
Councilmember Munns – No contacts.

Ms. Hite noted that anyone can respond or rebut these comments during the course of this presentation.

Police Chief Wallace gave the informational presentation and statistics regarding activities at Element Nightclub during March, April and May of 2011. This report included information on all calls for police service to that business but paid specific attention to the calls for service that may pertain to the conditions of the Element Nightclub license as set by the Council. Chief Wallace's recommendation is to

maintain the existing license conditions, as they are sufficient to mitigate the noise, traffic and public health and safety impacts associated with the Element Nightclub. Mike Kummerfeldt, Element Nightclub Owner, had sent a letter to Mayor and Council which is attached to these minutes as Exhibit F.

Mayor Slowik opened the public hearing at 9:25 p.m.

Kathy Harbour, 651 SE Bayshore Drive, Oak Harbor. Ms. Harbour thanked Chief Wallace for meeting with the condominium owners, but thought there would be more to this evening's report than the statistical report. What has been done to solve the problem? Maybe it should be seen through the eyes of more than law enforcement. My neighbor's younger daughter was visiting and also was bothered by the noise. On 11/20/2007, Chief Wallace stated that residents may be affected by loud noise and noise from the patrons leaving the parking lot. Not enough is done with the noise ordinance. I think we should be citing those causing these problems. If Element went away, I never want to see another nightclub in that building space. Change the type of business that would go in that building. You need a feather in your cap after tonight's meeting. Get started on doing something.

Billie Cook, 651 SE Bayshore Drive, Oak Harbor. I have spoken to you before about mitigating the ongoing noise. We do not have animosity towards Mr. Kummerfeldt or his clients; we just want to live in peace and quiet in our homes. His profitable business operates at our expense. I feel sure he would like this issue to go away and he is doing his best to mitigate, but we are truly being disturbed by noise, mostly from the parking lot, and when alcohol sales cease at 2:00 a.m. in the morning. We have had condominium renters move away due to the noise. We are concerned about our falling property values. Since my 2007 purchase, I have sustained a 36% decrease in property value and I attribute it to the nightclub. We are anxious about the threatened violence so close to our homes. There have been two incidents with firearms related to the club. Mike takes no responsibility for contributing to these incidents. I thank the staff and Council members for meeting with us and for your interest, courtesy, and time. My primary concern is that this situation is going to continue indefinitely. Take some definitive action tonight to permanently mitigate the noise and violence at the nightclub.

Richard Everett, 651 SE Bayshore Drive, Oak Harbor. I am a retired naval officer and I want to talk about two of the residents who face Bayshore Drive. One refuses to live in his home and cannot get the rest necessary to improve his health. Another resident has had major surgery and their health is not good because of sleep disruption. There is noise in the parking lot every night that they are open. I have no complaints about the business; I don't hear them during the evening. But between 1:30 a.m. and 2:30 a.m., it turns into a zoo. My thanks to Chief Wallace, but I disagree that he cannot do anything about it. Councilmember Dudley came down and listened to the noise. In the summer, when you open the windows for ventilation, it is impossible. In discussion with Chief Wallace, what level of noise is objectionable? When the police are called, they stay in their patrol cars, do not go into the parking lot, and do not enforce noise violations. Chief Wallace felt it would be more problematic to have an officer go into the crowd. It is hard to believe that we are not going to enforce some reasonable regulation on noise. Chief Wallace said he wants to maintain his present course.

Gray Giordan, 651 SE Bayshore, Oak Harbor. Thanks for trying to help us with this problem. You referred this matter to staff during the last report. Since then, we have come together and signed petitions asking the City to enforce the codes. The petitions are attached to the minutes as Exhibit G. A conditional use permit was granted with conditions based on the ordinance and periodic review of the effectiveness of these conditions. Chief Wallace is a good guy; he set up a meeting with us, and the Element owner to mediate this problem. Mr. Kummerfeldt did not show up. We have to use white noise machines and we are being charged for Mr. Kummerfeldt's success. Mr. Giordan distributed a photographic handout showing smoking by security staff outside of the club in violation of the 25-foot distance from the entry. It is attached to these minutes as Exhibit H. We come to you because there hasn't been a solution. A provision of the license conditions is that: *The city council also reserves to itself the power to revise the conditions of the nightclub 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 nightclub business location. A revision proceeding shall be initiated by an investigative report by the chief of police, fire chief, building official or other city official.* Tighten up the laws. I would like to see Mr. Kummerfeldt feel that you have an effect on his business. Until I had surgery six months ago, I used to sleep well, but now, no, and that is attributable to the noise even with a white noise machine.

Faye Konapik, 651 SE Bayshore Drive. I live directly across from Element. My bedroom faces the club and my sleep is disturbed. How do you measure disturbance of the peace? It is hard to get back to sleep once awakened. I see nightclub clients that worry me. There are impaired drivers. I am concerned about the safety of the patrons.

Mel Vance, P.O. 2882, Oak Harbor. This parking lot is not exclusive to the Element Nightclub. Some of the problems are caused by the clientele from Seven West. Is it reasonable for someone to live in a business district and then complain about the noise? I have more noise in my residential district for longer periods of time than I've experienced from Element. The planes are noisy; I cannot expect them to move. The noise I hear is not rising to the level of a noise complaint and security does what it legally can do to mitigate safety. To be fearful of gun shot, there was a shooting close to my house years ago. Just because you live near a nightclub, does not mean you are in more danger. You can be in danger in a residentially-zoned neighborhood, too. I believe the Element Nightclub is doing what they can to be a good neighbor. A business at closing time will have loud patrons being loud and slamming car doors. I don't know what else can be done.

With no other comments coming forth, Mayor Slowik closed the public hearing at 10:00 p.m.

Council Discussion

Discussion followed regarding other nightclubs and if they have the same type of noise (Chief Wallace responded that Element has the most customers now since Lava Lounge closed and there are more people coming in and out of the club), the number of security personnel (the club usually has more than required on Friday and Saturday nights) and what constitutes a violation of the noise ordinance (need to see the specific person; cannot cite the crowd of 50 to 100 people who do not exit at the same time).

Councilmember Dudley asked to add an additional ex parte contact: A Comcast employee in his home noticed he was running for mayor and said we should be doing something to improve Element. He had a relative living rent-free who gave up the condominium because of the noise and impact on his child and family. Mr. Dudley continued that, he did not think that prolonging this is workable; I encourage us to all go down and experience the noise. What we are allowing to go on is detrimental to their lifestyle and property values. Councilmember Dudley agreed with Councilmember Almberg about using uniformed officers to mitigate the noise issue in the parking lot. Mr. Dudley asked if the club's business hours could be regulated and City Attorney Hite responded that it would have to be researched.

Councilmember Campbell expressed concern that if this is imposed on Element it would have to be imposed on all nightclubs in town. Councilmembers Munns and Paggao also felt corrective steps need to be taken, but within legal boundaries and rules.

Mayor Slowik asked Chief Wallace to work with the Law Department and return to Council with a report by the end of summer.

Break
Mayor Slowik called for a five-minute break at 10:35 p.m. and the meeting reconvened at 10:40 p.m.

Public Hearing – 2011 Solid Waste Franchise Ordinance (Seaplane Base) and Franchise Agreement with Island Disposal
Public Works Director Cathy Rosen presented this agenda bill and ordinance to provide a solid waste franchise to Island Disposal for areas subject to private contract with the Navy's housing contractor, Forest City, L.L.C. The accompanying franchise agreement settles the outstanding utility tax liability of Island Disposal for solid waste services provided on the Seaplane Base prior to January 2011 in the sum of $52,679.02.

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

Paul Brewer, 225 NE Ernst, Oak Harbor. Mr. Brewer felt the City should not enter into a ten-year agreement with Island Disposal in order for Oak Harbor to pursue its own transfer station. The franchise with Island County ends in 2012 and the City would receive the revenue rather than Island Disposal. Wait until the City knows if the transfer station can be built.
Mel Vance, P.O. Box 2882, Oak Harbor. Mr. Vance suggested looking at the agreements between the City and Navy. Are there other franchises that need to be collected? Look at contracting with the Navy for future trash collection.

Councilmember Dudley asked Ms. Rosen to address these comments. Ms. Rosen noted that, at the end of 2012, the City's agreement with Island County will expire (hauling to Island County's transfer station). The proposed ten-year franchise is similar to what Council has seen and approved for other areas. Over the last three years, Island Disposal has made a significant investment in equipment to collect on the Seaplane Base. This will allow them to recover those costs. Councilmember Dudley

Chief Wallace noted that what the officers are reporting is that, in most of the cases, it is not an individual yelling and screaming – the security staff handles that fairly well. Officers express their frustration at the fact that they cannot cite one person for the entire crowd. It's the noise in the parking lot from 1:30 a.m. to 2:30 a.m. My problem is that it is not a single individual. We cannot hold the nightclub responsible for conversation in the parking lot. If the nightclub was causing the noise, if it was the music, or the club itself, they can be cited. I have to defend the officers – they are not standing there doing nothing and I have talked to the officers about our expectations. I am quickly coming to the conclusion that the police cannot regulate this type of noise. We can only pursue an individual committing a specific crime. A more aggressive ordinance may not be constitutional. We would like to solve this, but I am not sure what the solution is. Discussion continued about the type of business (the City cannot simply say we do not like your business) with City Attorney Hite noting that is a different kind of remedy. The noise ordinance was made as strong as possible. The City cannot ask a legal business to leave. Mr. Kummerfeldt has done everything the City has asked. Discussion followed regarding Mr. Kummerfeldt's letter, signage about smoking, security and crowd noise, and that the nightclub is located in a commercial business district and is a permitted use in that zoning. Council noted that, in spite of Councilmember Dudley being mentioned, other Councilmembers have been to Element to observe noise inside and outside of the nightclub.

Councilmember Palmer asked about using a surplus patrol vehicle to sit at the club as a "ghost car" which would become a visible deterrent.

Councilmember Almberg noted that, when people buy property they buy with the intent of quiet enjoyment of their property. Complaints against Element are lopsided to complaints against the condominiums. Spokane's HoopFest has thousands of people on the street, a law enforcement presence, and a portable jail (it was noted that this is an annual event; not ongoing in impact). Discussion continued regarding an ordinance that would require a set number of uniformed officers at the club's expense, the use of off-duty officers, and Chief Wallace's concern that OHPD does not have enough officers to accomplish this. Chief Wallace would have to create a regulation that the only officers who could volunteer do not have to work the next day. The logistics are not there: ¼ of the officers are on-duty, ¼ just got off work, and ½ of the PD officers are off. Discussion followed about the use of other law enforcement agency personnel, the nightclub's responsibility for officer use, and the constitutionality of not letting the club open if there are not enough officers on the premises. Other complications are officers wearing an OHPD uniform but acting as an off-duty officer, and making the use of officers a requirement if officers are not available. Chief Wallace could research available resources; but officers cannot be compelled to do this and there is an overtime issue. If an off-duty officer makes an arrest, then it is on the City's time, there is court time, and Chief Wallace had concerns. Continuing discussion noted that it is the time the noise occurs and not the number of security personnel, not to wait another three months for suggested solutions, with Chief Wallace adding that it is not uncommon to hire outside security staff rather than use the club's staff as security personnel.

asked about seven years versus ten years. City Attorney Hite noted our standard annexation franchise is for seven years with the three years added for measurable damages, but this is not an annexation. The agreement is dependent on the ordinance. Councilmember Campbell asked if Island Disposal's contract with Forest City would create issues. Ms. Hite noted there is that potential. Councilmember Munns noted a difference in the agenda bill's dates and the agreement's dates.

MOTION: **Councilmember Munns moved to adopt the franchise agreement settling Island Disposal's tax liability for the period from December 2007 through December 2010. The motion was seconded by Councilmember Dudley and carried unanimously.**

MOTION: **Councilmember Munns moved to adopt the ordinance granting a franchise for solid waste disposal services to Island Disposal for a period of ten (10) years on the Seaplane Base. The motion was seconded by Councilmember Palmer and carried unanimously.**

Percich Annexation – THIS ANNEXATION REQUEST HAS BEEN WITHDRAWN AT THE APPLICANT'S REQUEST.

Mitigation Proposal – For Pioneer Way Improvement Project
City Administrator Paul Schmidt presented this agenda bill to help provide a means to mitigate the impacts of the SE Pioneer Way Improvement Project to the owners of property and businesses located on SE Pioneer Way during the construction of the improvements planned for the summer of 2011. This was again before City Council by a motion and second to the motion at Council's June 7, 2011 meeting.

Mayor Slowik opened the meeting for public comment.

Kristi Jensen, 1380 SE 8th, Oak Harbor. There is confusion about funding for downtown. Back in December, we kept meeting on what to do toward marketing the downtown. The Chamber put together a marketing package to keep moving toward marketing through the construction process; not to market individual stores, but to market events. At the March City Council meeting, $167,500 was approved to help market through construction process (mitigate the construction impacts). We kept approving things through the committee, but in the first three months, we didn't get anything approved other than a map. Lesley McConnell departed and we were left with no funds to use on events downtown. Then we were told these funds were REET funds. The projects that we had planned were fun and did not promote specific businesses. We are confused. We did get $1,000 to put tee-shirts out, but we need some clarification now.
Mel Vance, P.O. Box 2882, Oak Harbor. I understand that REET, stormwater, and sewer funds cannot be used. But the project also got economic development funds through the County. Why can't those funds be used? Now reality has reared its ugly head and funding can be eaten up quickly. I understand that the merchants need to be desperately helped, but some of these funds may need to be directed toward the project now.

Paul Brewer, 225 NE Ernst, Oak Harbor. Did we hire a company to monitor the funds? Did we pay them and they did not fulfill the contract? If they are no longer employed by the City, what happened to the money?
Mercy Speth, 890 SE Pioneer Way, Oak Harbor. Businesses are struggling and there is misunderstanding about the funding.

There were no other public comments.

Discussion followed about the business owners' concerns, the downtown meetings, the choice to not do night construction, the mitigation proposal and communications specialist position to help offset construction impacts, and the $167,500 budgeted toward mitigation of construction impacts. Councilmember Dudley exhibited full-page print advertisements and asked if, REET funds cannot be used, why these ads were running in the Whidbey News Times. Discussion followed about where and how funds are being spent, and how best to mitigate the impact of the SE Pioneer Way construction.

City Administrator Schmidt spoke to the history leading to the mitigation proposal, Lesley McConnell's position, and the general scope and program approach that accompanied that position. Mr. Schmidt agreed with the merchants and noted that Ms. McConnell knew how to promote and market but with the approach of unlimited restrictions. This type of campaign cannot be used in light of funding restrictions. Mitigation funding must be tied to the project. Discussion followed about saving these funds if they cannot be used to benefit the businesses and finding another direction to assist the businesses through the project. With further discussion about the print ads (advertorials and Q and A ads), they are related to the project, but Council can make a decision regarding their continuation. In response to Mr. Brewer's remarks, it was noted that the City did have a contract with a firm for outreach and that contract was fulfilled; Ms. McConnell was a temporary employee for this project.

Mr. Merriman noted that we have looked at everything regarding a funding source under existing laws; what discretionary leeway can be used and still remain in compliance with the State Auditor. The full page advertisements are the City's first attempt to connect the project to the funding source. Mr. Merriman is now communicating directly with the State Auditor's Office and a representative from the Auditor's Office will be here Friday, June 30, 2011, to talk with Mr. Merriman. Mr. Merriman noted that this is completely up to the State Auditor.

MOTION: Councilmember Dudley moved to cease the mitigation spending and looks forward to hearing back from the Finance Director. Councilmember Almberg seconded the motion.

Councilmember Dudley talked about hearing back from Mr. Merriman, talking with the merchants, and finally, a return to City Council. Mr. Dudley felt the City is not promoting the businesses and the print advertising (advertorials) and commercials only promote the project and should stop. Mayor Slowik noted the limited number of City Council meetings in July and August which could delay a return to Council. Council discussion continued with concern about total elimination of advertising, what plan the merchants

will have, the "boots on the ground" outreach which is being done by Rhonda Severns and Larry Cort (Mr. Merriman clarified that funding for their activity has been incorporated into other budgets), the effect on wayfinding signage and reader boards, where the line should be drawn, and the end result. City Administrator Schmidt talked about the intent of the original mitigation proposal. Mayor Slowik asked Mr. Merriman if a memorandum could be sent to Council after meeting with the State Auditor to show how best to move forward with assistance to the merchants.

AMENDMENT TO THE MOTION: **Councilmember Dudley moved to amend the original motion to stop the print advertisements, commercials, radio advertisements, and T.V. advertisements which are promoting the project. The amendment to the motion was seconded by Councilmember Almberg.**

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

VOTE ON THE ORIGINAL MOTION AS AMENDED: **Councilmembers Almberg, Campbell, Dudley, Paggao, and Severns voted in favor of the original motion as amended. Councilmembers Munns and Palmer opposed. The original motion, as amended, carried.**

Councilmember Almberg asked to be excused from the remainder of this meeting.

City Administrator's Comments
City Administrator Schmidt talked about upcoming meeting/workshop dates.

Council Members' Comments
Council Members gave their respective standing committee reports. Councilmember Campbell asked about the late addition of the agenda bill regarding OHMC 19.36.080 - Political Signage to Council's July 12, 2011 pending agenda. Councilmember Palmer asked, as Chair of the Finance Committee, if he could attend the meeting on Friday with the State Auditor. Councilmember Munns gave an AWC update; it is important for Washington's 281 cities to have one voice.

MOTION: **Councilmember Dudley moved to have WAIF added to the July 12, 2011 Council agenda, the motion was seconded by Councilmember Campbell.**

Mayor's Comments
Mayor Slowik noted that he had met with WAIF this week, and he had also given a report during the Navy Community Forum about WAIF, costs, and base housing. Mayor Slowik also talked about Pioneer Way and the significance of this archeological event which is close to the heart of the Native American Tribes. He asked the community to see the historical significance of the archeological, cultural, and heritage issues that we have not had in the past, and the notable oral history of this area. These important points can be conveyed to the Arts Commission, as well. Mayor Slowik also talked about John Allgire's passing and Mr. Allgire's great public service to the community; our hearts go out to his family.

ADJOURN
With no other business coming before the City Council, the meeting was adjourned at midnight.

_____
Connie T. Wheeler
City Clerk

Exhibit A

Bones found

I read with great disappointment the article in the WNT titled- **Oak Harbor ignored warning of possible bones at road construction site.** I am **concerned** for the downtown businesses and the cost to taxpayers any additional delays this might cause.

More than disappointed and concerned, however, I am downright angry. Despite the fact that I have told you for years that your staff bald-faced lied to me and the former council, despite the fact that we documented those lies, I have had to hear over and over from some of you how important it is to trust your staff.

Clearly, again, there are some on your staff you cannot trust. They cut corners and then, again, "misspoke" in a futile attempt to cover it up. He we are, again, left with a mess to clean up because we did not do the right thing to begin with.

We warned you that if you did not investigate what happened in Dillard's Addition and then fix the problem, it would happen again and cost the taxpayers even more. You did not listen. You, in fact questioned our integrity.

Instead of blindly trusting your staff, shouldn't you make sure your staff is, indeed trustworthy?

More important, we did not elect you to protect your staff. We elected you to protect us from the unilateral decisions made by an unelected staff.

Finally, we deserve more than some yellow-bellied, weak kneed, milk-toast answer to this debacle. We need accountability in this City, starting from the top. If the mere appearance of impropriety forced a later exonerated Mac Funk out, we expect the same standard to apply to all of the responsible department heads for this snafu.

You didn't want to dig up the past in Dillards, I suggest an objective, outside investigation into this matter.

If not, if you choose to continue to bury your heads in the sand and pretend that this was just a simple, minor paperwork mishap, then you all deserve to lose your jobs. The taxpayers, who in the end always end up paying for staff incompetence, deserve better representation.

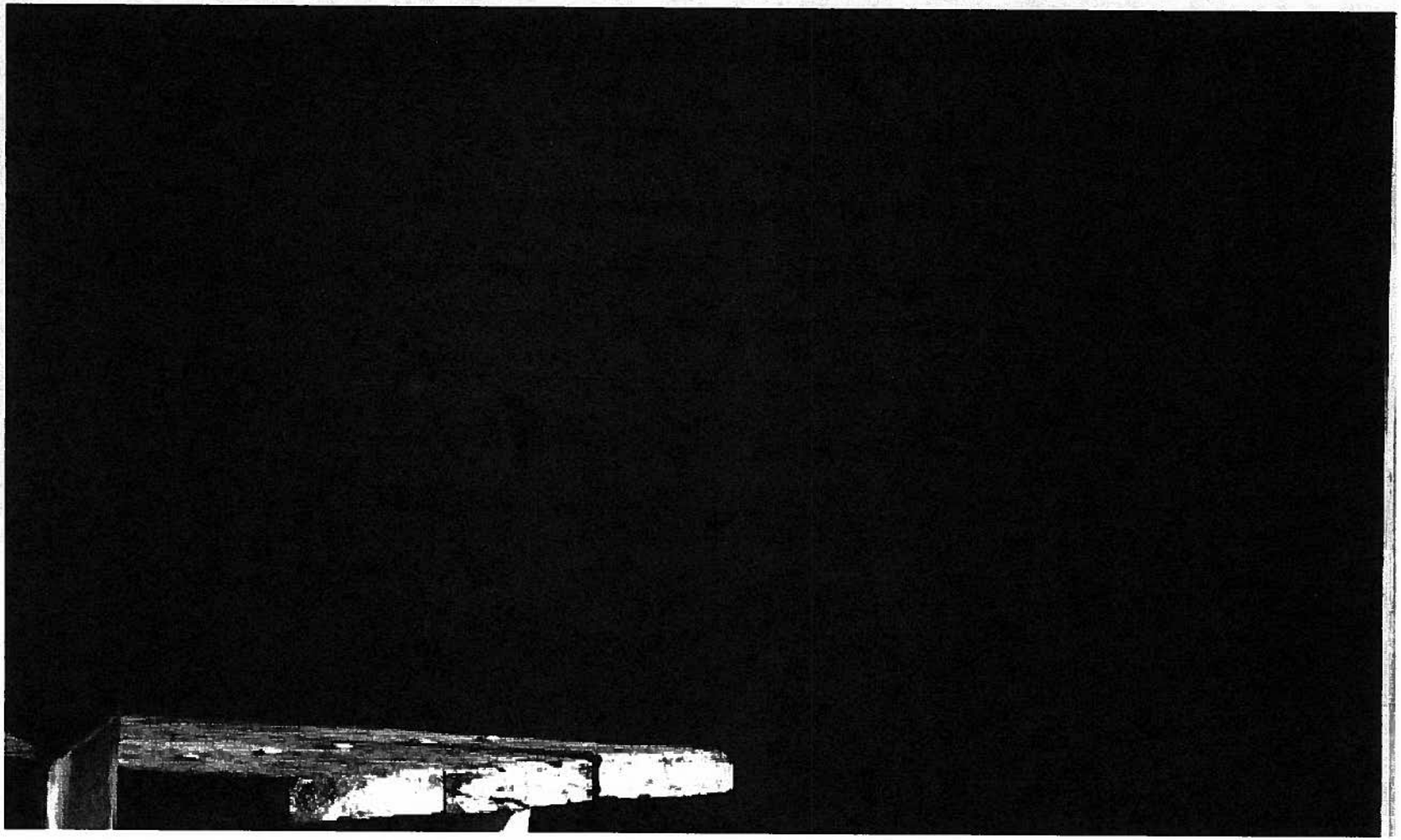
25 Robyn Kolatis

Windjammer Park Facilities

Exhibit B

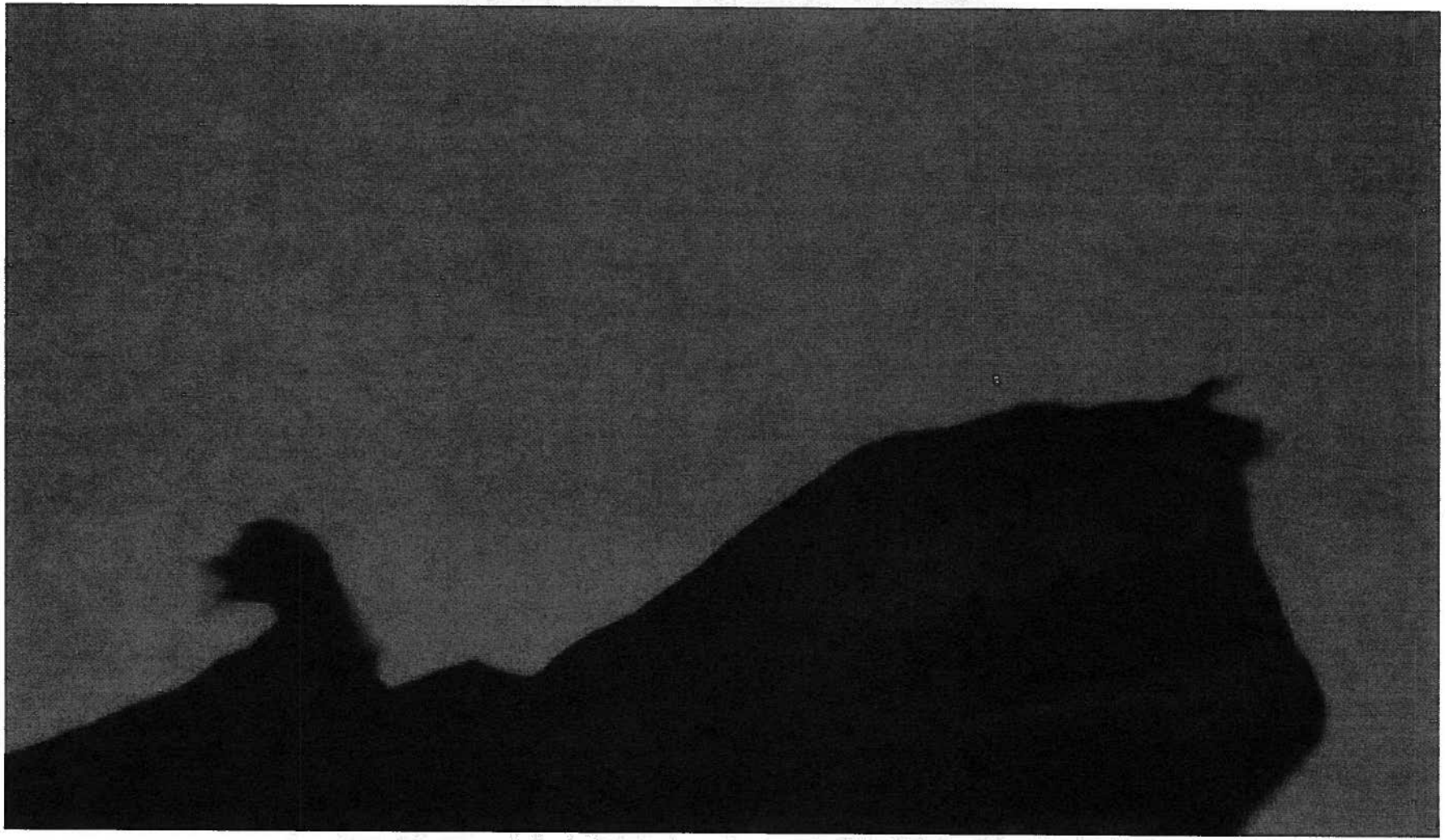
Windjammer Park picnic tables

- Damaged Siding

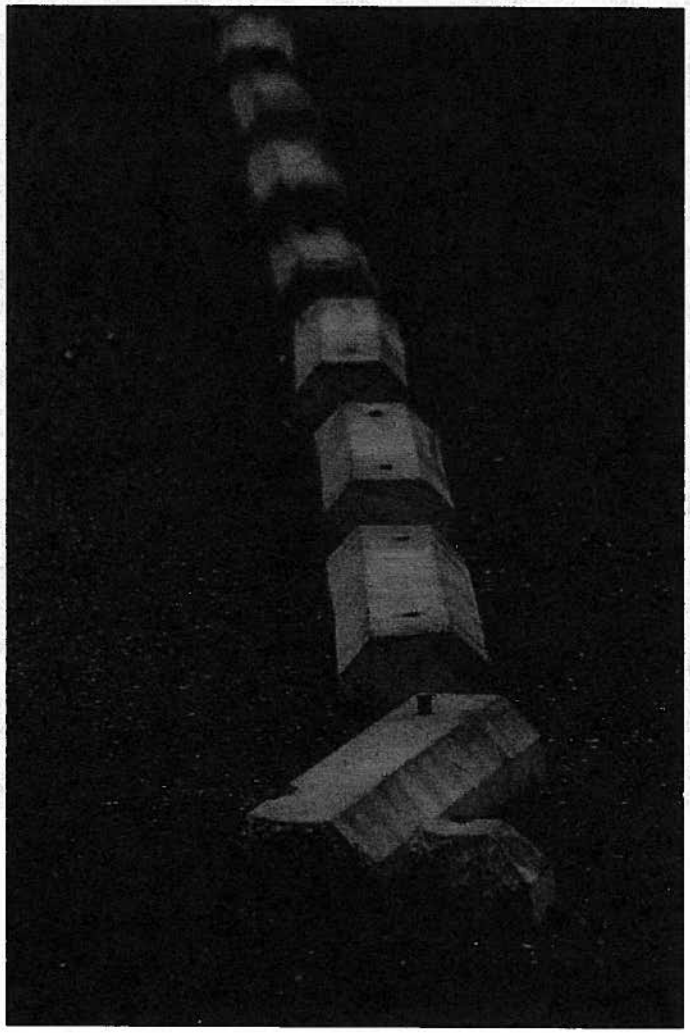


LD

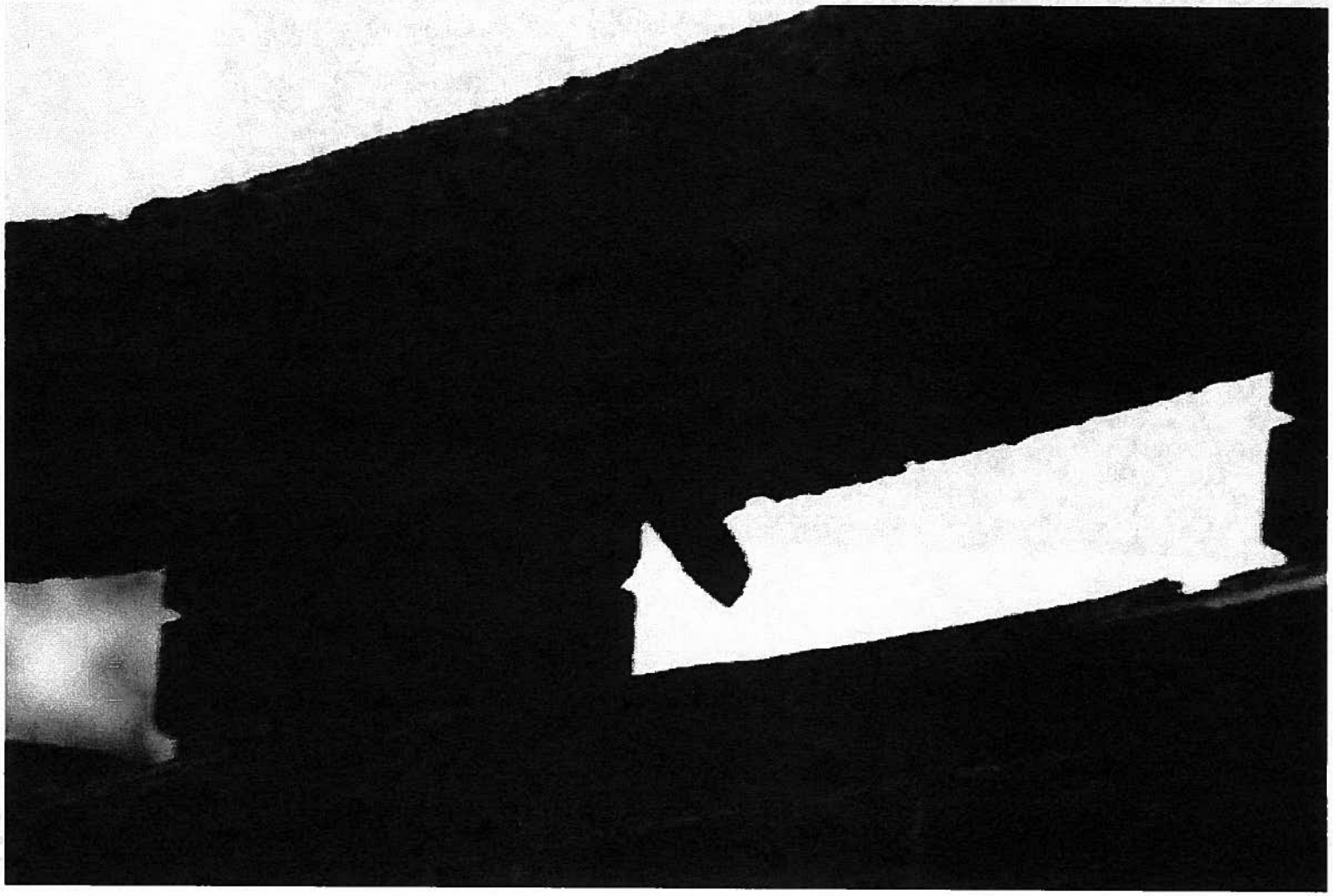
Frayed flags



Less than 2 years old

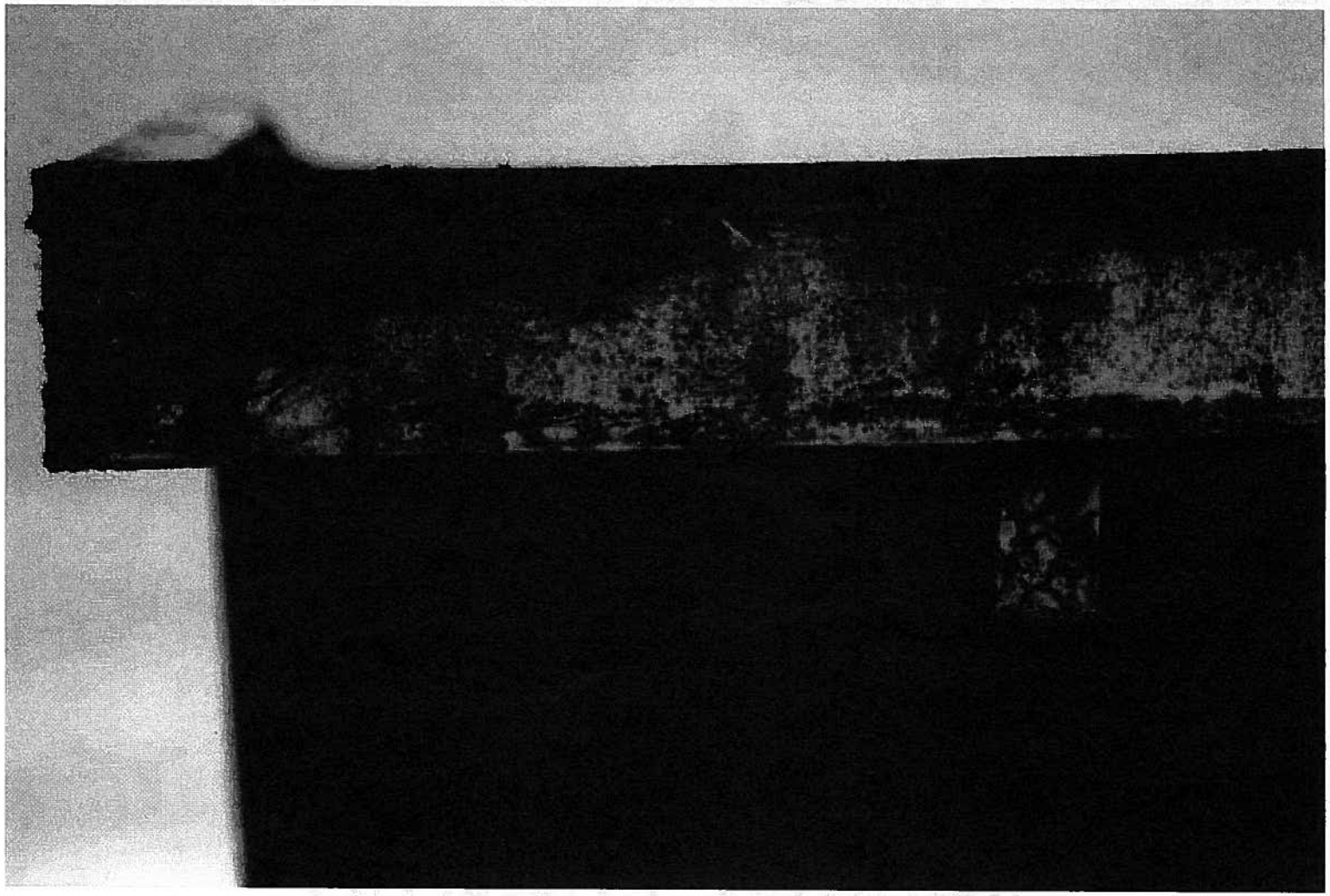


Broken Chimney

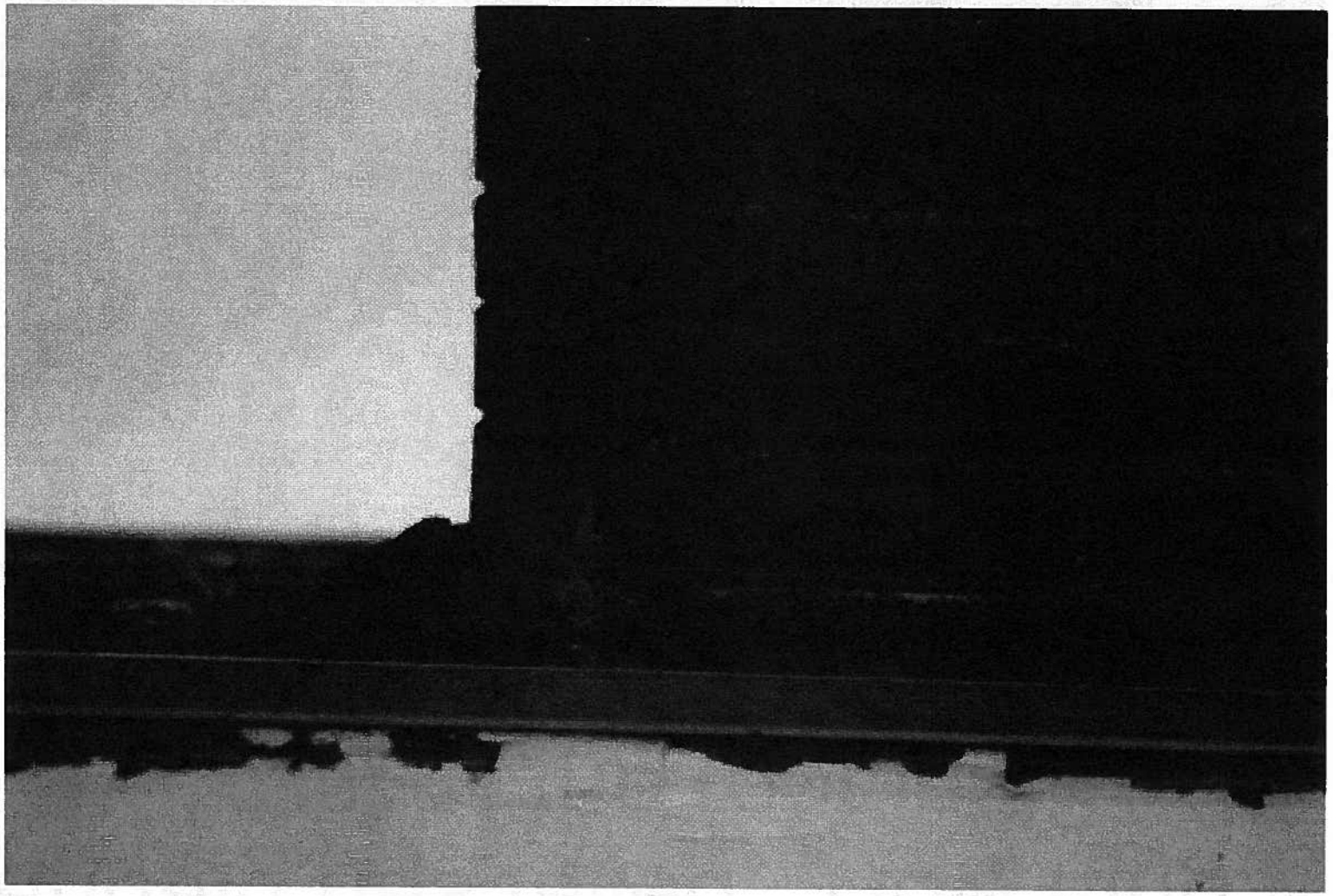


8

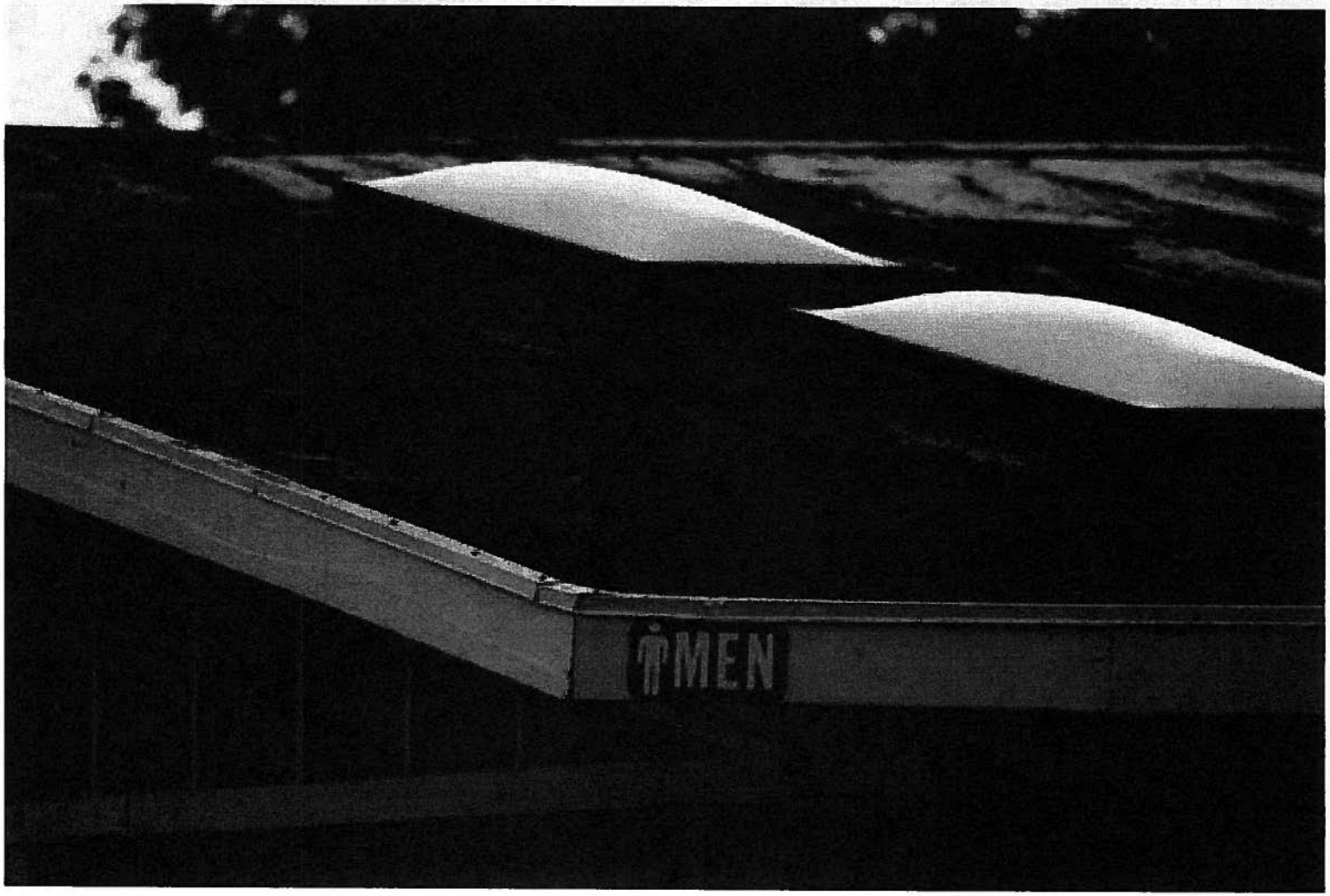
Flashing failure and rot aren't pretty



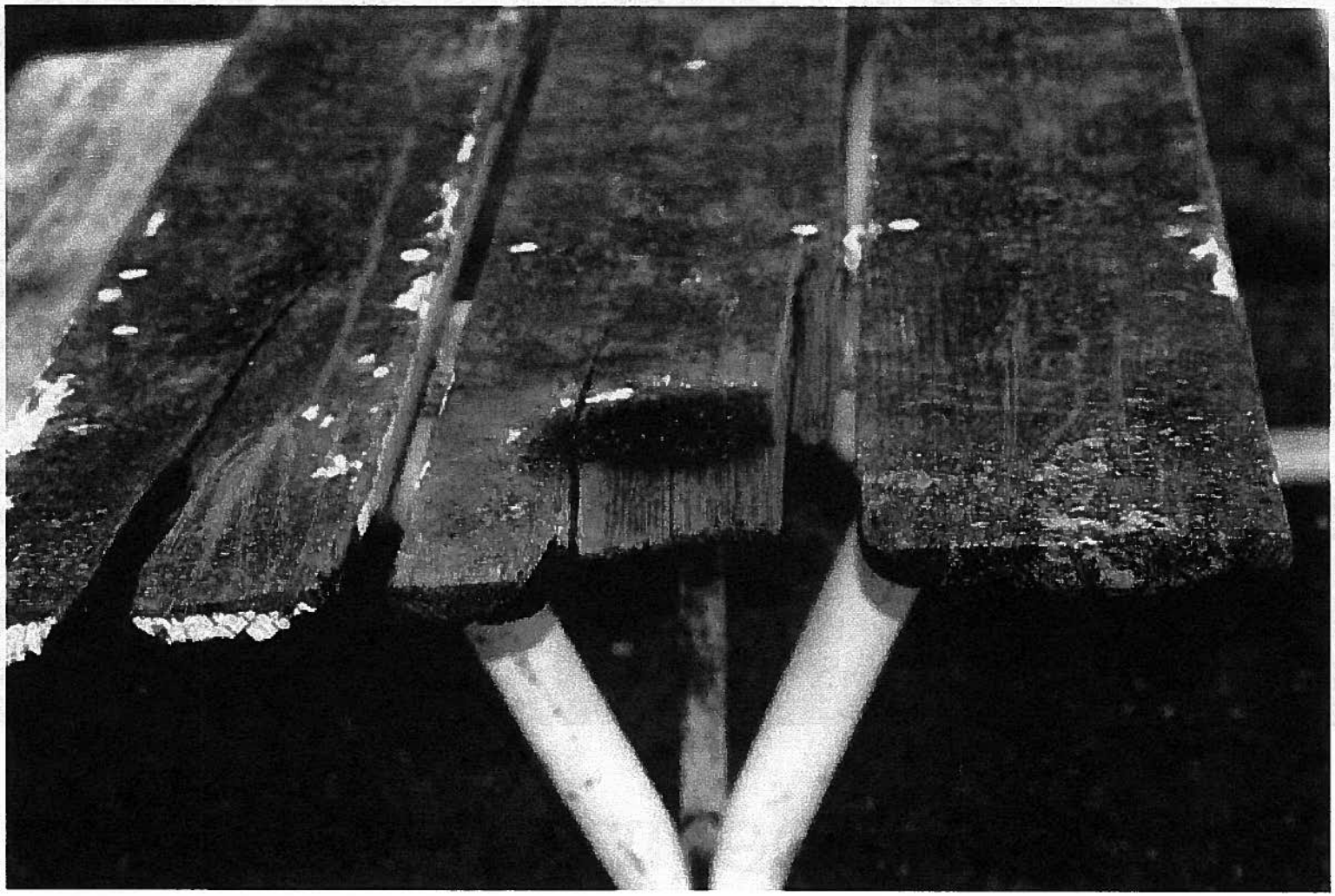
Flashing and roof failure



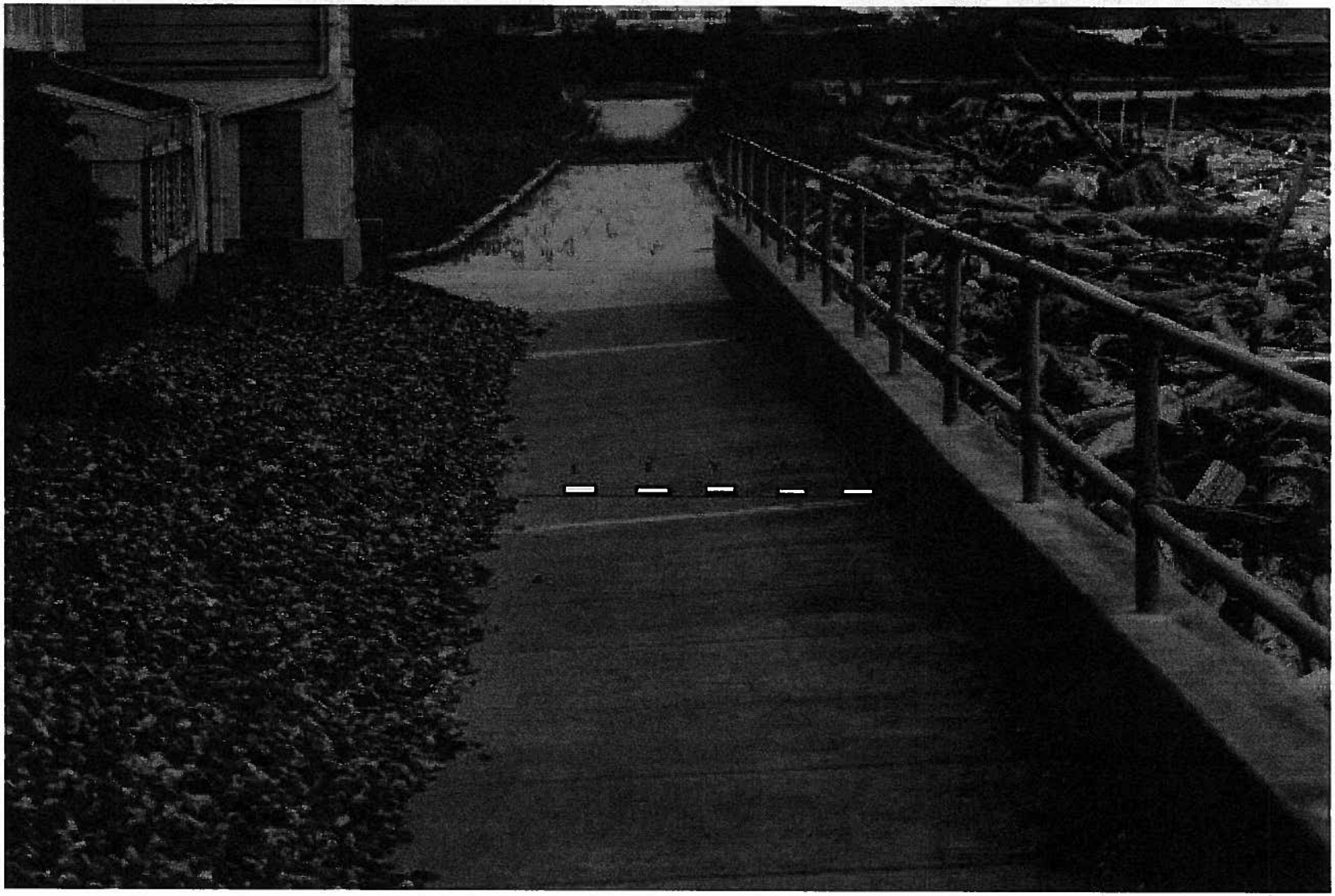
Bandaid has failed. How long will rest of the roof last?



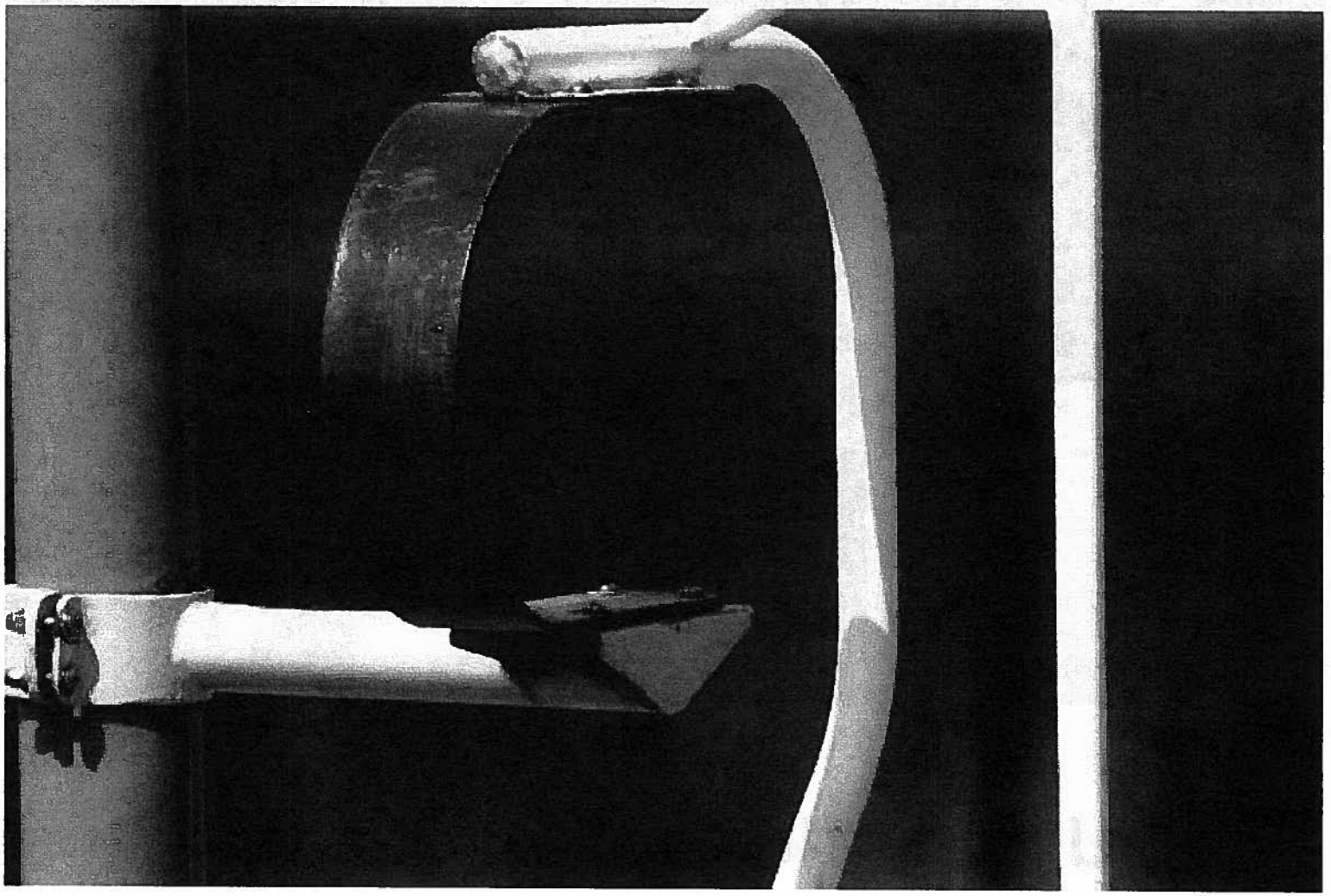
Windjammer Park item 11



Dangerous tilted walkway



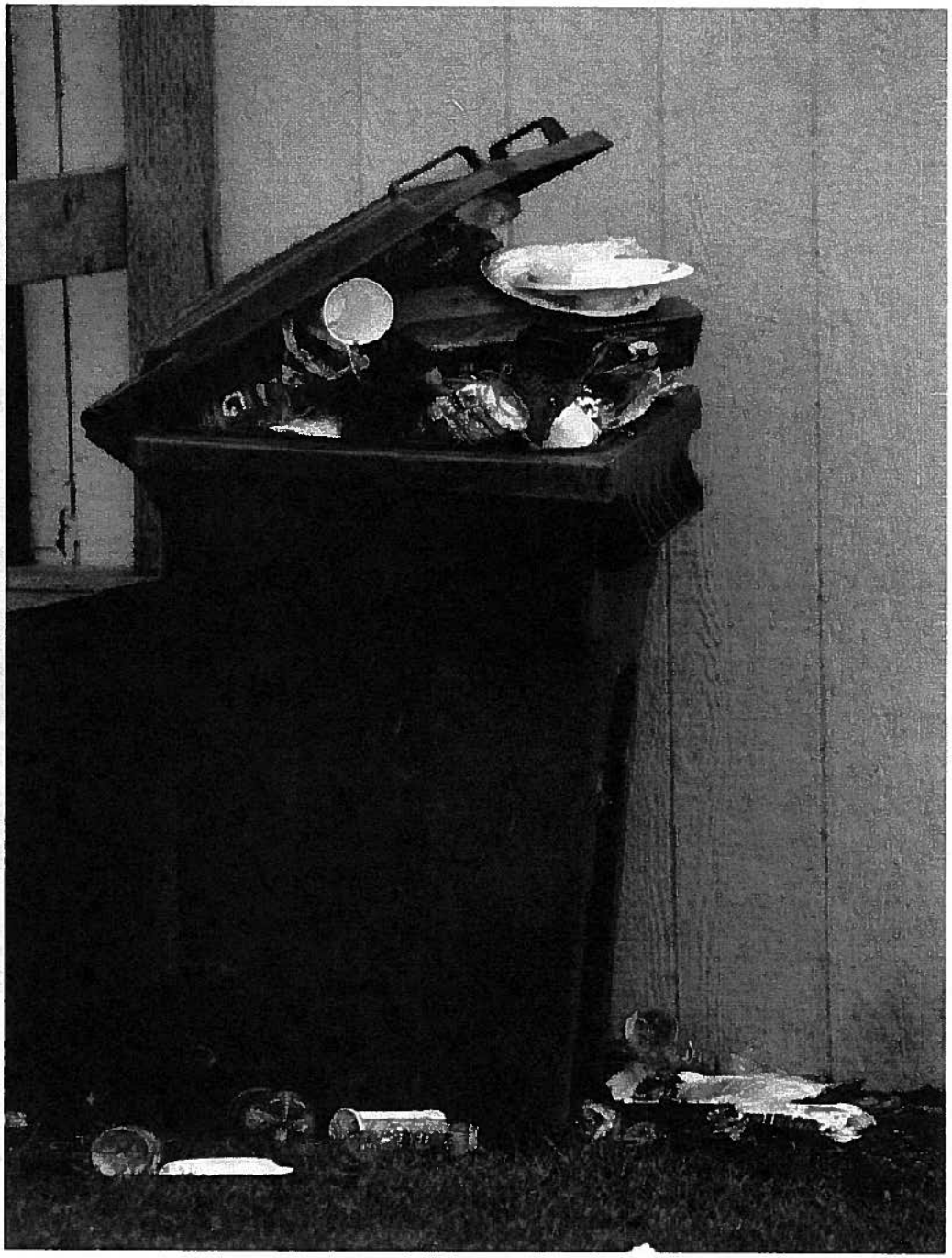
Tension spring will fail under load



Unexpected maintenance

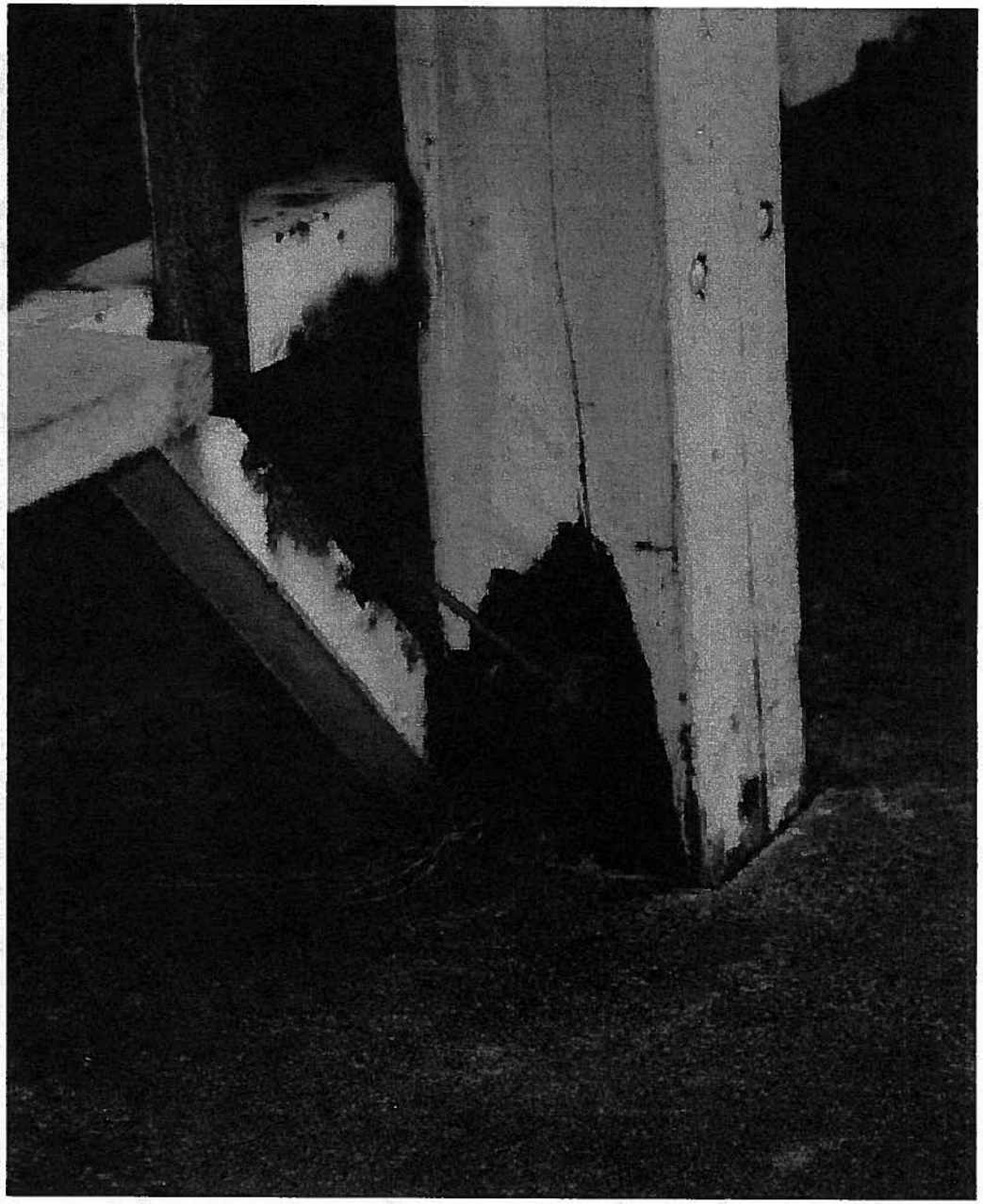
Regular maintenance

How many are there?



Built with tax dollars, not maintained using tax dollars then demolished with tax dollars.

Yes you can see thru that support post.



Do these work?

Exhibit C

June 28, 2011

Mayor Slowick:
City Council Members:

I stated early on the most important engineering fact we needed to establish was the number of possible participants in the sewer basin who would share in the benefit and cost of a new sewer. With this number we could easily use the estimates already gathered and easily determine if a gravity with lift station system would be feasible or not. I also expressed my opinion that the city staff does not have any credibility to generate this information without bias. Over this objection, city leaders have again directed city staff to manipulate this issue.

After four years and 120 days, Paul Schmidt, is proposing to answer that question by stating on page 74 of the agenda bill that based on a letter from the State Auditor lots 1 and 2 owned by the city were wetlands, and could not be included in the total count. Development Services Department created a map he offers as the possible benefit area for the proposed LID. Not understanding why the state auditor would determine a sewer benefit area or a have the credentials necessary to make a wetland determination, I looked a bit deeper to find the source or basis of the auditor's information for this claim. The auditor identified as "HDM", in his or her investigation notes states, "Eric provided us with a map of the city and showed us where the sewer main reached in relation to the Dillard area. The city owns wetlands next to the Dillard's Addition area, and per Eric, these two wetland areas cannot be built on so the city would not benefit from the sewer system." Mr. Sontag, used this information in his summary.

The science and logic presented behind this determination can only be based on the fact the city staff must believe the citizens are stupider (sic) than the city staff. Using the same logic, the city administrator should suggest to Chief Williams that he should question every person he arrests and if they claim not to be guilty, he should let them go.

I have previously provided a picture of the proposed city owned Staysail RV Park and Resort, to be constructed on the city owned wetland, complete with water features, ponds, RV spaces, and baths. I also have previously submitted an e-mail from the same Eric, describing the same land as a future RV park. There is an issue with the truth here.

The LID petitioners are aware of the word "mitigation", and are aware the city can easily move forward to develop this land if it wants. The ONLY way to remove this acreage from the benefit list would be for the City to place a native growth or conservation protection easement on it to guarantee no future development can occur. The city either needs to put this in writing or include this land area in the calculations. Sorry, "per Eric" does not meet the smell test. Mr. Johnston's and Mr. Schmidt's heavily documented disregard for the truth does not make them reliable leaders for this task. My expectations have been realized.

Until we agree on a number of possible participants, all other efforts are mostly wasted.

Moving on, the city staff is submitting new revised construction cost estimates. They decided it would be a good idea to rehire the same consultant they already paid to provide misleading information to the city council once before. The first consultant, Ken Enns, admitted his report was contrary to his understanding of the law and regulations but that he only was allowed to do what the city staff directed him to consider.

The revised estimate, now provided by Mr. Jacobson, at Gray and Osborne, is estimating the gravity system will now cost $1,002,208.99. The estimate is based on Mr. Anderson's 2006 gravity design submitted to the city. Sniff. Mr. Anderson stated in his testimony and in writing to the council he had solicited two bids from local contractors which were "in the ½ million dollar range." Next Ken Enns, revised that figure up to $640,000 in his manipulated independent report. (Mr. Anderson, stated in the record he did not understand why the estimate was raised. I could offer a guess.) Today the same project is estimated to be more than a million dollars. At the same time, in the rest of the world, construction costs are actually down 25 to 50 per cent from the bids received in 2006. Again this has a funny smell.

Mr. Jacobson, also appears to be adjusting the grinder pump cost estimate to conform with state law and design standards which were ignored in the last attempt by the city. He proposes to locate all the wet wells and grinder pumps in the city right of way, thus avoiding easement costs, property restoration costs and venting the wet well through the household plumbing systems. I am surprised he did not suggest putting two or three homes on each wet well and grinder pump, as this is sometimes done and would lower costs and maintenance and long term replacement expenses. He includes a generator for a backup power source. I will refrain from additional comments regarding this estimate because it is not the system the LID is requesting. But let's apply the smell test.

Right behind high initial cost, and high maintenance costs the third most negative comment made regarding grinder pumps is they can actually smell like an overflowing pit toilet. Almost every installation guide suggests the wet wells and pumps should be installed next to a house, so the sewer gases can be vented through the home plumbing system and not directly into the ground level air we breathe or worse yet smell. Unless some advancement towards resolving the "stink" problem can be found, this is a major drawback to his estimate and proposal. We all want to clean up the bay, but putting the stink in the air is not the solution. (On sunny days, the winds in Oak Harbor are generally from the north, and the stink would actually float across the bay towards a home at the center of Scenic Heights, thus with this proposal, the smell would actually return to its original source. Good karma.)

The new proposal is suggesting the possible number of benefitting properties will include the 60 units from Lot 3 on Beeskma Drive owned by Freunds; three units on the waterfront west of Driftwood Beach Addition, also owned by Freunds; twenty properties currently served with septic systems, one undeveloped residential lot, four properties

connected to public sewer with private pumps, who have previously signed No-Protest Agreements and would be required to connect to a gravity system if one becomes available; for a total of 87 units. (This does not include possible units or connections for the community owned waterfront property, or for the three homes connected to the city owned grinder system, or the one yet undeveloped lot owned by Mr. Anderson.

If I divide $1,002,208.99 by 87, I come up with a cost per unit of $11,519.64 for the gravity with lift station system.

Just for the fun of it if we divide the cost by 196 units, (including the land Eric, claims he will not develop) , wow, golly, gewizz, it goes down to $5,113.31 per connection unit.

On page 91, Exhibit C, there is an asterisk (*) behind my name, with the notation it stands for "not shown as the owner in assessors records, but is likely a family relation of owner." I can visualize the city staff jumping up and down thinking, we caught him and let's highlight this fact to further embarrass him. Sniff. But for the benefit of the city staff some who obviously cannot read past one line on the assessment report, I submit attached to this letter a copy of the assessors report showing in fact, I am an owner of record, and not just a snippy family relation as suggested in this letter. This mistake can easily be revised, or be stored away in the missing document and asterisk file.

Another much discussed, but again overlooked in the new revised project estimates is the issue of long term maintenance and replacement costs issues. Simple math based previous models suggest after 50 years the added cost to maintain the grinder system would be $3,000,000 and the gravity lift station to be $500,000. Of course I realize these cost will be passed on to the customers, but think about the savings to the city if 75% of the cost are on city owned properties and the city will have to pay them.

Once given reliable starting assumptions and data are given to the engineering consultant, her responsibility is to determine the alternative with the lowest life cycle costs, (construction plus operation and maintenance). When the real data is processed, I believe gravity will be the best alternative.

Please remember the petition for Driftwood Beach LID specifically states it is for a gravity sewer.

"The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so they may retain control over the instruments they have created."

Marc A. Goetz *

* property owner: 2164 SW Dillard Lane

form was submitted on 9/27/07. We reviewed the list of construction costs submitted to Anderson by the contractor and then given to the city for review. We saw Eric Johnston's notes on the invoice copy, which he explained to us was his review. We also noted that he required Anderson to remove an item from the costs due to it not being a part of the Latecomer's Agreement.

- We reviewed with Eric Johnston the extent of the sewer line to determine if it was reasonable. Dillard residents were questioning the extension to the sewer line which extends past the main line RO Anderson needed to get the public line to his property. Residents did not want to pay for costs benefiting only Anderson. We examined three small extensions made outside Mr. Anderson's original scope. Two were requested by residents and the third because the residents would have to extend the line at a later date due to being within 200 feet of the main line. Code requires residents to hook up if within 200 feet of the sewer main. Per Eric Johnston, the grinder pump main is a system in which if the entire main was not done at one time, there would have to be shut downs to install extensions to the line. Per our understanding this explanation appears reasonable, and the extensions were planned from the beginning with costs being included in the total cost of the project.
- The constituent was concerned the City had plans to develop next to Dillard's, and the City would benefit from the sewer installation. Eric provided us a map of the City and showed us where the sewer main reached in relation to the Dillard area, the nearby City Beach Park and wetland area. The city owns wetlands next to the Dillard's Addition area, and per Eric, these two wetland areas cannot be built on, so the City would not benefit from the sewer system. Also, the Park has an existing sewer system so this would not benefit the City either. The Park has functioning rest rooms and sites for motor home hook ups.

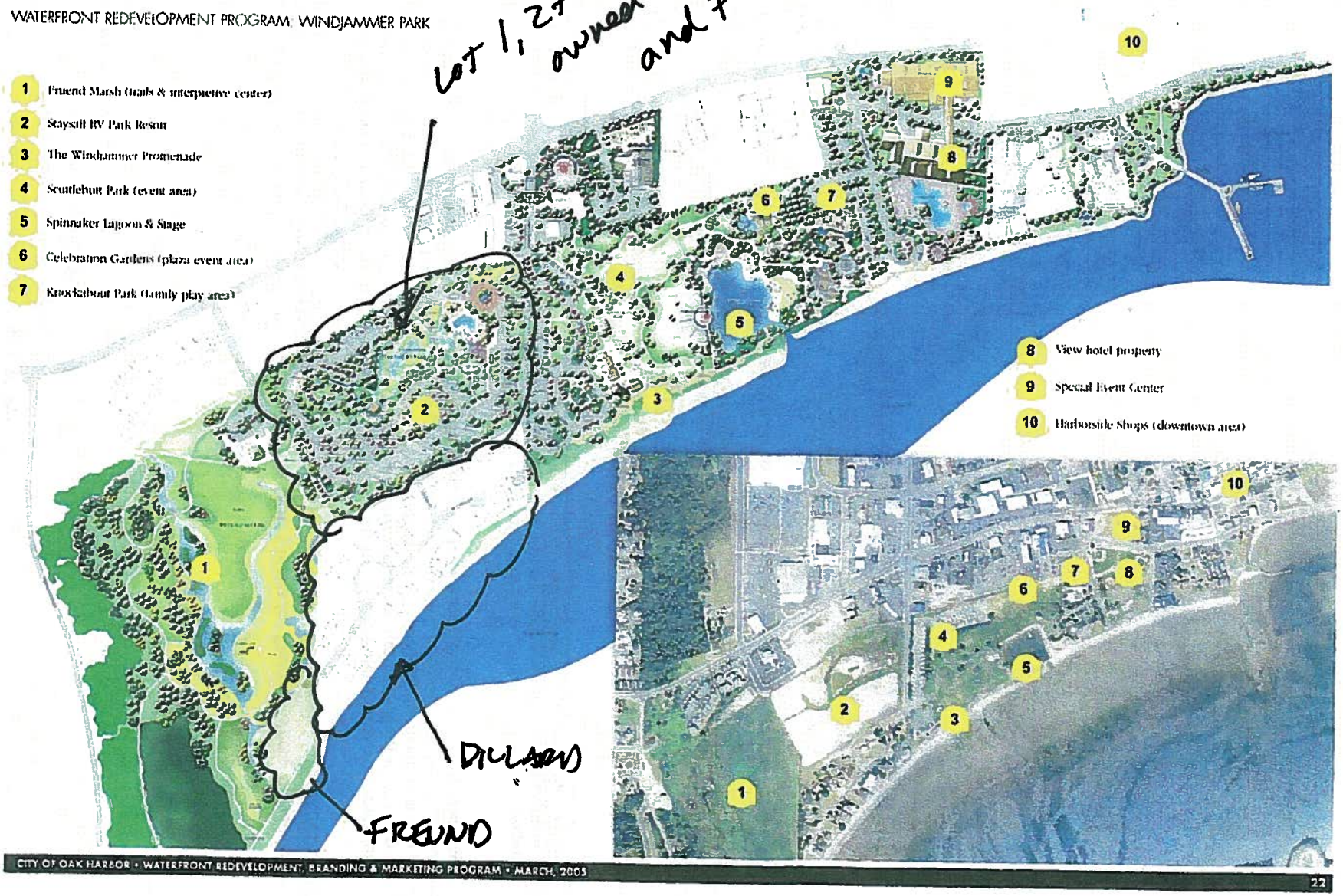
HMD Notes:

Auditors Report

10/24/2007

WATERFRONT REDEVELOPMENT PROGRAM: WINDJAMMER PARK

Lot 1, 2 + 3 owned by OH. city and Freund



47

Eric Johnston

From: Eric Johnston
Sent: Thursday, February 09, 2006 6:27 PM
To: 'randerson@ROAnderson.com'
Subject: Oak Harbor pump station
Attachments: 9837.pdf; header.htm

Rob,

Rob,

Since we have had a hard time connecting I figured I would put a couple of thoughts in an email.

I wanted to make sure you had a copy of this reference. The DOE Criteria for Sewage Works Design "orange book" (so called because the cover is orange) is the basis for the design of sewers in this area. Most of my review comments will be based on the requirements included in this reference.

The orange book recommends using 100gppd (which includes I&I) for in flow with peaking factors determined on the service population. In the case of Dillard's addition we have a high water table and most if not all of the gravity sewers will be below sea level and may experience high I&I over the life of the system. I would recommend that you use the average per capita water consumption for the city of 65gppd and a very conservative estimate for the I&I. The peaking factor (most likely 4.0) then gets applied only to the waste water. Regardless the peak design flow for this lift station is still fairly low.

We will be requiring a minimum 4-inch force main for sewer service to this area. The 4-inch FM is needed to 1) to pass a 3-inch solid as required by the DOE and 2) to allow for future capacity. While there are only 28 existing residences now there is a possibility of a new RV park or possibly several acres of R-2 development just north of the existing neighborhood at full build out.

However, in order to maintain a minimum 3 fps velocity (minimum) in the force main we need a 125gpm pumping rate. Even with the addition of the potential developed area, conservative estimates of I&I and a high peaking factor, the highest Qpeak that I can calculate is around 50-65gpm. We have seen similar situations in Oak harbor in the past. One possible solution to choose a pump with pumping rate of 125 gpm with low head and let the pump be inefficient. The cost of an inefficient pump is much less than having to deal with high maintenance costs for low diameter force mains and grinder pumps. The trick is to get the wastewater out to the gravity main before it goes septic.

I will be available Monday (2/13) at either 11:00 am or 4:00 pm. I will try calling you then.

Have great weekend.

Eric Johnston, PE
City of Oak Harbor
Engineering Division
ph: 360-279-4522
fx: 360-279-4519

7/27/2007

Island County Assessor & Treasurer

Property Search Results > 245684 BOUSH, JAN M for Year 2010 - 2011

Property

Account

Property ID:	245684	Legal Description:	DRIFTWOOD BCH LOT 3
Geographic ID:	S6500-00-00003-0	Agent Code:	
Type:	Real		
Tax Area:	100 - City of Oak Harbor	Land Use Code	11
Open Space:	N	DFL	N
Historic Property:	N	Remodel Property:	N
Multi-Family Redevelopment:	N		
Township:		Section:	
Range:			

Location

Address:	2164 SW DILLARD LN OAK HARBOR, WA 98277	Mapsco:	
Neighborhood:	VIEW NORTH WHID EXCELLENT	Map ID:	119
Neighborhood CD:	1WEE		

Owner

Name:	BOUSH, JAN M	Owner ID:	199599
Mailing Address:	MARC A GOETZ, JEFFREY P GOETZ 16007 LARCH WAY LYNNWOOD, WA 98087-2640	% Ownership:	100.0000000000%
		Exemptions:	

OWNER

Pay Tax Due

Select the appropriate checkbox next to the year to be paid. Multiple years may be selected.

Year - Statement ID	Tax	Assessment	Interest	Penalty	Total Due
2011 - 16508 (Balance)	$2339.30	$2.50	$0.00	$0.00	$2341.80

Total Amount to Pay: $

Credit CardCheck

*Convenience Fee not included

Taxes and Assessment Details

Property Tax Information as of 06/26/2011

Amount Due If Paid on: NOTE: If you plan to submit payment on a future date, make sure you enter the date and click RECALCULATE to obtain the correct total amount due.

Year	Statement ID	Taxing Jurisdiction	First Half Base Amt.	Second Half Base Amt.	Penalty	Interest	Base Paid	Amount Due
2011	16508	ST - State School	$546.88	$546.88	$0.00	$0.00	$546.88	$546.88
2011	16508	ISLANDCO - Island County Current Expense	$150.82	$150.79	$0.00	$0.00	$150.82	$150.79
2011	16508	CIOKHRB - City of Oak Harbor	$592.65	$592.65	$0.00	$0.00	$592.65	$592.65
2011	16508	PRKRECNWHDBY - Park & Recreation N Whidbey	$39.99	$39.99	$0.00	$0.00	$39.99	$39.99
2011	16508	SCH201 - School 201 Oak Harbor	$689.03	$689.03	$0.00	$0.00	$689.03	$689.03
2011	16508	CEM1 - Cemetery #1 North Whidby	$1.98	$1.98	$0.00	$0.00	$1.98	$1.98
2011	16508	LIB - Library Sno-Isle Regional	$116.86	$116.87	$0.00	$0.00	$116.86	$116.87
2011	16508	HOSPEMS - Hospital - EMS Island County	$129.66	$129.67	$0.00	$0.00	$129.66	$129.67
2011	16508	HOSP - Hospital Whidbey Island	$58.21	$58.21	$0.00	$0.00	$58.21	$58.21
2011	16508	CF - Island County Conservation Futures	$13.23	$13.23	$0.00	$0.00	$13.23	$13.23
2011	16508	WDBYCNV - Whidbey Conservation District	$2.50	$2.50	$0.00	$0.00	$2.50	$2.50

COUNCIL MEETING 6-28-11

THE COUNCIL HAS PREVIOUSLY AUTHORIZED $25,000 IN PREPARATORY COSTS FOR THE DRIFTWOOD BEACH ADDITION SEWER L.I.D.

I DO APPRECIATE THAT.

I SEE IN TONIGHT'S AGENDA PACKET THAT GRAY AND OSBORNE, INC. WAS AGAIN CALLED IN TO LOOK AT ESTIMATED COSTS OF BOTH A LOW PRESSURE SYSTEM AND GRAVITY SYSTEM.

I ALSO NOTICED THAT, AS OF JUNE 17, 2011, WE ARE STILL WITHIN THE EXPENDITURE CAP OF $25,000 DIRECTED BY CITY COUNCIL.

MY CONCERN IS THAT WE HAVE NO COST BENEFIT ANALYSIS YET. TO ME THIS IS THE BIGGEST PART OF THE PUZZLE.

WHEN WE PRESENTED THE L.I.D. PETITION ON MARCH 1, 2011 WE ASKED FOR AN HONEST AND IMPARTIAL PROCESS. IT SEEMS AS IF THE STAFF AGAIN IS MANIPULATING INFORMATION AND DRAGGING THEIR FEET.

THE COSTS OF INSTALLATION DOES NOT MATTER UNTIL WE KNOW THE OVERALL COST BENEFIT TO THE "*ENTIRE*" SEWER BASIN. TONIGHT'S REPORT TO COUNCIL IS INCOMPLETE.

ARE WE GOING TO HAVE A COMPLETE REPORT BEFORE THE $25,000 CAP IS REACHED?

IF NOT, IT WILL NOT BE THE FAULT OF THE RESIDENTS OF THE DILLARD/ DRIFTWOOD NEIGHBORHOOD.

FOR THE COUNCIL'S KNOWLEDGE, ON PAGE 91 OF THE AGENDA I EARNED A DOUBLE ASTERISK LABELED "SIGNATURE NOT RECEIVED, BUT FAMILY RELATION HAS SIGNED".

I AM NOT ONLY THE FAMILY RELATION BUT ALSO AN OWNER, WITH MY TWO BROTHERS, OF THE PROPERTY LISTED #15. AND YES, PRIOR TO MY SIGNING, THEY WERE NOTIFIED AND AGREED TO THE L.I.D. PETITION.

THANK YOU FOR YOUR ATTENTION,

DUANE G. DILLARD

Exhibit E

Robyn Kolaitis
2141 SW Dillard Lane
Oak Harbor WA 98277
360-675-4045 (Home) 360-929-4196 (Cell)

Sunday, June 26, 2011

Dear Mayor Slowik and City Council Members,

I wanted to take a moment to thank you for your time invested in the ongoing LID process for the Driftwood Beach Area. Certainly this process has been complicated through no fault of your own, and I hope you are realizing these complications are also not due to any actions of the vast majority of residents of the Area. Though many of you were not on the Council at the time, there was much testimony to the fact that many residents had approached the City over the last decade hoping that sewer could be brought to the area and were abruptly told "no". Had we known this process was available, certainly we could have embarked on this path much earlier, without the extra complications currently involved.

That being said, the reality is that extra complications exist and must be addressed and resolved. I have reviewed the Agenda packet for the June 28, 2011 meeting and as my questions abound, I thought it would be best to provide my feedback and questions in writing. It is good for the public record, helpful to Ms. Wheeler and I believe beneficial for the Council's preparation. I also noted that both Mr. Dijulio and a representative from Gray and Osborne might be able to attend the meeting, and some forward notes might be beneficial to them as well.

I hope you were not discouraged by the large numbers you saw in the packet. I can assure you, we are not and we will continue to push forward with this project. It is imperative that we as a community work together to solve these difficult issues and provide a template to address Sewer LIDs as they continue to come forward throughout the City. Driftwood is just one neighborhood in this City still relying on septic systems and with a new treatment plant on the horizon, I believe it is very important that unlike the meltdown we saw with the Scenic Heights LID proposal, we as a City have a successful sewer LID template. Why not tackle the most difficult one first?

As, I am sure was a money saving effort, the City chose to consult with Gray and Osborne once again in relation to this Sewer issue. In case you missed it – Gray and Osborne was the last consultant to work on this issue, with questionable results, and was in my opinion rewarded for their loyalty to our City Engineer with a $200,000 project bestowed on them directly afterword by Eric Johnston. Certainly, anyone knowing the history here would question the validity of re-hiring this firm, for this specific project. Some details of our position on the Gray and Osborne report were provided to you by Marc Goetz in March, 2011.

Moving forward.....After several meetings and proposed resolutions, the Staff has not quite gotten to the "cost benefit analysis". Hopefully, we will see that come forward at the next Council meeting. Some costs have been estimated and revised-which I will get too, but the final question as to

how that cost is distributed has still not yet been addressed. The number of benefiting properties has not been adequately addressed, and the benefit to each of those properties has not yet been addressed at all.

Then, there are many factors when considering the numbers provided to date-For example –

The numbers would be a more *honest representation* if the pressure system improvement estimate actually represented the cost to properly install a force main simultaneous to the grinder pumps to service the entire area with the same number of connections and benefitted area as the gravity system estimate represents. We are working off the recommendation of Mr. DiJulio to codify that only the people currently connected to the existing force main can use it, and we need an honest representation of what a low pressure sewer system, designed to service the **entire** area, installed legally using best possible practices will cost. The numbers in the agenda packet still only address a portion of the benefit area and are not inclusive of all system components and costs.

- The grinder pump estimate includes only 25 grinder pumps and once again, apparently from a consultant who did not come down to the neighborhood and actually look at the area, or consult with property owners – how many grinder pumps will be added for the undeveloped properties and does this scenario include adjusting the current force main to service a larger area and more connections?
- The grinder pump estimate includes using the existing force main? Does it include the cost of the force main? The cost to bring the force main to property lines? The cost to adjust stub-outs running from the existing force main to the correct sides of homes/driveways ? How will all of these costs be addressed with the additional properties?
- What do the "3ERU" and "60 ERU" notations on the map in the Agenda Packet represent?
- How are the best possible practices put forth in the attached "Beach Drive" papers achieved in this scenario?
- What Brand/model grinder pumps were used for this estimate?
- Marc Goetz has provided several additional items to be considered when looking at costs associated with the grinder pump system – were these taken into consideration? Why/why not?
- Does the full width overlay referred to for the gravity system mean they will overlay the pavement for the whole street? If this is so – did they rely on the mapping for that estimate, as certainly this street was platted for some reason with very wide streets, this street is not paved as wide as was platted.
- Gray and Osborne was previously employed in part to provide a life-cycle cost analysis for the two systems. We know that the operation and maintenance costs of grinder pumps are sometimes passed on to the user through increased monthly utility fees. Is this an option for the City of Oak Harbor and how much will the O & M on these pumps increase the life-cycle cost for the end-user?

- Is the City prepared to Maintain these pumps as set forth in the Orange book?(Attachment #1)
- Aren't easements normally required from the property owner allowing access for repairs? Is there a cost associated with securing those easements? It appears that the plan is to install this system in the City right of way, with City power – how does this look? And is there a new method to cure the odor associated with this type of installation?
- How Does the installation of 25 grinder pumps address the needs of the adjacent, currently un-sewered properties?
- ***Shouldn't a Benefiting area and corresponding number of potential connections been established before any "public" sewer system was installed?***

I am not a sewer expert. I rely on Marc Goetz' vast experience in this area. I am, however, a contractor and I have to say, an Engineer's Estimated Cost means little when actually bidding a job. I have seen projects bid for double the engineer's estimate and I have seen bids come in far below the estimate, so I put little weight on these preliminary cost estimates. Quite frankly, in this situation, I have to consider the source.

On page 74 of your agenda packet, Mr. Schmidt states, "The spreadsheets provide a comparison of the total cost to install all of the improvements necessary in the public right of way to result in a complete gravity sewer system or a complete grinder pump/pressure system." For the reasons stated above, I find this a very *misleading* statement – in no way is the grinder pump estimate included in your packet a definitive picture of a "complete" grinder pump sewer system for the entire benefit area. The Grinder pump estimate included in the packet does not address the need for a sewer system capable of servicing the entire benefit area nor does it address the actual costs associated with the complete installation.

Mr. Schmidt goes on to state, "Additional information pertaining to the possible benefit area is found in a letter from the State Auditor (see Exhibit D)." Exhibit D, pages 92-93 of your packet, is a letter addressed to me from the State Auditor's office. In it, the auditor states, "We learned the City owns two wetland areas and a park next to Dillard's Addition. We determined that the two wetland areas cannot be built on....." ***What Mr. Schmidt failed to mention*** was **how** the State Auditor made that determination. I have attached (Attachment #2) the portion from the State Auditor's file addressing that question. The Auditor's file states, "Eric [Johnston] provided us a map of the City and Showed us where the sewer main reached in relation to the Dillard Area, the nearby City Beach Park and wetland area. The city owns wetlands next to the Dillard's Addition area, and per Eric, these two wetland areas cannot be built on." ***Seems to me the City Staff needs to stop playing "Round Robin" with the facts, and finally determine the ultimate benefit area so that a proper Benefit Analysis can be performed.*** As the City has project files that show possible build-out on those lots, clearly something is amiss. Until the City puts, in writing, that those lots are never going to be developed, they should be included in the benefiting area. *For the record, the majority of the working papers relating to the Auditor's office's supposed audit are similarly "investigated". The sources for nearly all of their "investigation" were solely information provided to them from interviews with City Staff. I would happily provide all of them upon*

request. It was evident upon examination that the State representatives "investigating" these issues not only did not completely understand the nature of several of our complaints, but relied almost solely on the information provided to them by the very people we charge were dishonest regarding these issues in the first place!

I will note that I did have a conversation with Mr. Almberg, and would like to address some of his questions and concerns and thought it would be beneficial if that information was provided to the entire Council in case they too had similar concerns. I know that all of this information can be very taxing. I appreciate your continued commitment to the details. Mr. Almberg questioned whether or not "temporary" sewer connections exist, he asked where I got the word "temporary" when discussing the existing private sewerage system in the area - the Skinner/Saugen/Donnell line. That word comes directly from City Code 14.03.290 (attachment #3). This seems the more appropriate designation for the system currently installed in the Driftwood area as the force main currently installed does not provide for service to the larger community as a whole, is not a complete system, was not installed using best possible practices, does not front the properties, contains misplaced stub-outs that will require excessive extra cost to homeowners, did not obtain the required shoreline permit for its installation and was designed for cheap, less desirable, less reliable pumps. The fact that this system was not installed as a temporary system was of direct financial benefit to a few wealthy and influential property owners in the area. Had this temporary standard been applied to the current force main, we would not be faced with the myriad of complications the permanent, larger, better planned system we seek today has encountered. *Once again, shouldn't the benefit area have been determined before a so-called "Public" system was installed, and shouldn't that system have been designed to serve the entire area?*

As Mr. Almberg and I briefly discussed Mr. Schmidt's admittance that the current force main was not installed using best possible practices, I have also attached copies of the "Beach Drive" papers (attachment #4) relating to the best possible practices of low pressure sewer system installations for these grinder pump /septic/sewer conversions. It doesn't take much reading to realize how poorly the current installation in the Driftwood Beach area measures up to a properly planned, implemented system inclusive of homeowner involvement and the additional problems created when property owners are not involved from the very initial stages of design and development.

Clearly, there is still a lot of work ahead of us, but it must get done. If Mr. DiJulio's statement is accurate that it would not be out of line to see a $20,000-$30,000 benefit per property with the addition of Public Sewer, then I think, even with these very preliminary numbers, we are definitely on track to see a complete sewer system installed to benefit the entire area. I look forward to continuing this process and having the opportunity for an open dialogue, resolving these issues and addressing some of these very difficult tasks. Thank you again for your time and commitment to seeing this matter through to the end. Please, feel free to call or e-mail me with any questions or concerns you might have.

Robyn Kolaitis

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Emergency power backup shall be provided to operate the vacuum pumps and all pumping station equipment under the maximum load.

Each vacuum pump exhaust shall be individually vented to the outside of the building. Consideration should be given to odor control measures to scrub the exhausted air from the vacuum pumps.

E. Sewage Pumps at the Vacuum Station

Dual pumps, each capable of handling the peak flows, shall be provided.

Emergency power backup shall be provided to operate the sewage pumps and all pumping station equipment under the maximum load.

The sewage pumps shall be capable of meeting the positive suction head requirements and of pumping the sewage flow at the desired rate.

Shutoff valves shall be provided so that each pump may be isolated for repairs.

The discharge piping shall incorporate check valves and gate valves consistent with requirements.

C1-10.4 Maintenance Provisions

C1-10.4.1 Maintenance Program

Agencies operating alternative forms of wastewater collection shall implement a maintenance program as outlined in the O&M manual.

C1-10.4.2 Personnel Qualifications

Agencies operating alternative forms of wastewater collection shall employ staff members who are qualified in maintenance of alternative forms of wastewater collection. Agencies are encouraged to provide continued education and training to its employees in the operation and maintenance characteristics of alternative forms of wastewater collection.

C1-10.4.3 Operation and Maintenance

Agencies shall have an O&M manual for the type of system installed on file for use by staff members.

C1-10.4.4 System Monitoring

Each STEP, SDG, or GP unit shall be monitored at least once every three years. Monitoring shall include equipment checks and scum and sludge levels for STEP and SDG tanks. The STEP or SDG tank shall be pumped when the liquid level between the scum and sludge level is reduced to one-third of the total liquid volume.

C1-10.4.5 Easements for Municipalities

Agencies or municipalities that operate alternative forms of collection on private property shall secure an easement from the property owner that allows, at a minimum, access onto the property to:

- Monitor and provide routine maintenance.
- Repair or replace defective components.

form was submitted on 9/27/07. We reviewed the list of construction costs submitted to Anderson by the contractor and then given to the city for review. We saw Eric Johnston's notes on the invoice copy, which he explained to us was his review. We also noted that he required Anderson to remove an item from the costs due to it not being a part of the Latecomer's Agreement.

- We reviewed with Eric Johnston the extent of the sewer line to determine if it was reasonable. Dillard residents were questioning the extension to the sewer line which extends past the main line RO Anderson needed to get the public line to his property. Residents did not want to pay for costs benefiting only Anderson. We examined three small extensions made outside Mr. Anderson's original scope. Two were requested by residents and the third because the residents would have to extend the line at a later date due to being within 200 feet of the main line. Code requires residents to hook up if within 200 feet of the sewer main. Per Eric Johnston, the grinder pump main is a system in which if the entire main was not done at one time, there would have to be shut downs to install extensions to the line. Per our understanding this explanation appears reasonable, and the extensions were planned from the beginning with costs being included in the total cost of the project.
- The constituent was concerned the City had plans to develop next to Dillard's, and the City would benefit from the sewer installation. Eric provided us a map of the City and showed us where the sewer main reached in relation to the Dillard area, the nearby City Beach Park and wetland area. The city owns wetlands next to the Dillard's Addition area, and per Eric, these two wetland areas cannot be built on, so the City would not benefit from the sewer system. Also, the Park has an existing sewer system so this would not benefit the City either. The Park has functioning rest rooms and sites for motor home hook ups.

Attachment #3

14.03.290 Variances from standards.

(1) Variance from standards may be allowed by the city engineer when:

(a) Location and topography of the property to be serviced makes it impossible or extraordinarily costly to meet city standards; or

(b) Temporarily it makes economic sense to delay hook-up to the sewer system by a standard means when at a later time to be specified a larger and more economically viable system may be built.

(2) Nonstandard systems shall be allowed only when:

(a) The public health, welfare and safety are protected;

(b) An agreement as approved by the city engineer is signed by the property owner agreeing to maintain such system to public system standards as is required by state law and meet other requirements of this section and applicable sections of this code;

(c) The property owner shall terminate the nonstandard system when the time for temporary system permit is expired or when the system is no longer being maintained properly;

(d) The property owner at his/her own expense will make the standard connection as required by the city engineer; and

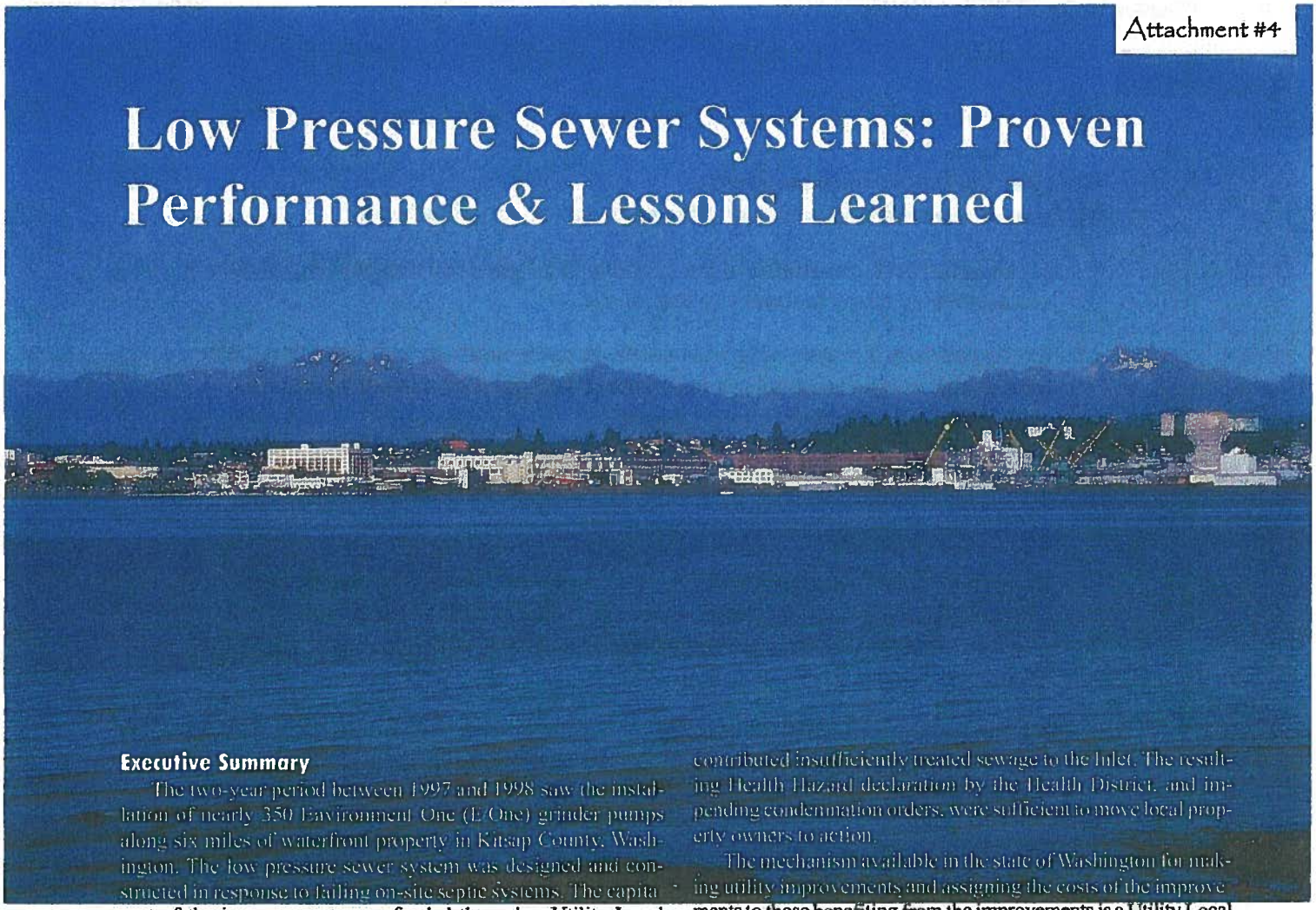
(e) The property owner shall agree to pay his/her proportionate share of a public system to serve the area designated under standards for such system.

(3) Appeal of a variance is a Type I review process.

(4) No variance shall be granted for a failed or failing septic system. (Ord. 1323 § 30, 2002).

Attachment #4

Low Pressure Sewer Systems: Proven Performance & Lessons Learned



Executive Summary

The two-year period between 1997 and 1998 saw the installation of nearly 350 Environment One (E One) grinder pumps along six miles of waterfront property in Kitsap County, Washington. The low pressure sewer system was designed and constructed in response to failing on-site septic systems. The capital cost of the improvements was funded through a Utility Local Improvement District (ULID). A ULID is a funding mechanism for property owners whereby an opportunity is afforded to vote on the proposed improvements and assess their property to pay for the project costs.

The sewer system was installed under two separate ULID formations and, as a result, was competitively bid and awarded to two different contractors. Beach Drive was the first project and included the installation of 295 grinder pumps and about five miles of high-density polyethylene (HDPE) pressure main. Watauga Beach was the second project and included 52 grinder pumps and one mile of HDPE pressure main. The Watauga Beach system connects directly to the upstream end of the Beach Drive system.

As construction on Beach Drive proceeded and the formation of the Watauga Beach ULID began, it became obvious that some design changes and installation practices needed to be modified to address some of the problems on Beach Drive. This paper will quantify the performance and repair history of the two projects, offer explanations for the differences and summarize the lessons learned.

Project Background

The mandate to sewer waterfront properties in Port Orchard began with the local Health District conducting on-site sanitary surveys for the hundreds of World War II era homes located along Sinclair Inlet. The results of their testing implicated 21 percent of the 215 homes as having failing on-site septic systems that contributed insufficiently treated sewage to the Inlet. The resulting Health Hazard declaration by the Health District, and impending condemnation orders, were sufficient to move local property owners to action.

The mechanism available in the state of Washington for making utility improvements and assigning the costs of the improvements to those benefiting from the improvements is a Utility Local Improvement District (ULID). Through a voting process, each property owner may approve or disapprove of the proposed improvements. If more than 50 percent of the land area approves of the project and the estimated costs, the ULID is created. To the District, a ULID is an attractive method to finance sewer improvements because it provides a way for those benefiting from the improvements to pay for their benefit. The current ratepayers in the District do not have to subsidize improvements for growth or new connections. A ULID is also attractive to many property owners because it provides a way for the District to secure funding (normally at much better interest rates than private loans or home refinancing) and provide the option of paying for the improvements with annual installments over 20 years.

Forming a ULID introduces one interesting element into a project – direct involvement with property owners in making decision on the outcome of the improvements. Since a ULID is formed by a vote of the property owners and they are going to pay for the improvements through property assessments, they want to be involved in the process of planning and design of the project. The property owner's motivation is to minimize the capital cost of the project. This approach will best serve them in the end. The District's motivation is to minimize operation, maintenance and repair costs following the construction and turn over of the system to the District. These competing interests resulted in an engineering analysis of four different sewer collection systems for Beach Drive – gravity collection, low pressure grinder pumps, vacuum system and STEP system. Each system was evaluated

based on topography, waterfront conditions (including groundwater considerations) and water quality issues (odor, septage strength, etc.) and an estimated cost assigned for capital costs and ongoing O&M costs as shown in Table 1.

Once consensus was reached by property owners and the District's design engineer to use the low pressure grinder pump system, the District chose to use the Environment One (E/One) grinder pump. The E/One pump was the only grinder pump that could meet the head conditions (maximum 140 feet TDH) of the system and there was an extensive track record available from which to estimate future maintenance and repair costs.

Table 1: Sewer Collection System Alternatives

System Alternative	Estimated Construction Cost	Estimated Annual O&M Cost
Gravity Sewer System (including three lift stations)	$8,420,000	$25,000
STEP System	$2,336,000	$12,600
Vacuum System (with two vacuum stations)	$2,222,000	$14,700
Grinder Pump System	$1,912,000	$10,710

Proven Performance

The District's design engineer used data from previous E/One projects, where maintenance and repair records were kept, to provide budgetary estimates to the District for annual repair costs after completion of the project. Table 2 identifies the previous E/One projects that were available for review in 1996 to estimate annual O&M costs.

Pre-Construction Maintenance Cost Estimates

Considering the age of comparable systems, technological advancements since previous projects were installed, economies of scale and personal experience, the design engineer estimated that the District should budget $38/year/pump for O&M. Since the District would not have operating costs for the pumps (electricity for the pumps is provided by the homeowner), the average annual expense for each pump consists of service calls (labor) and repairs (parts).

A reasonable way to project maintenance and labor costs is to calculate the *mean-time between service calls (MTBSC)*. The MTBSC represents the average time between service calls on any given pump in the system.

$$\text{MTBSC} = \frac{(\#\ \text{Pumps}) \times (\text{Years in Service})}{\#\ \text{Service Calls}}$$

Again, based on previous projects, the designer estimated that the District could expect a MTBSC of 10 years, or about 3 service calls per month. It should be noted that not every service call results in a repair. Some service calls are for alarm situations or conditions that the technician can troubleshoot in the field and resolve without bringing the pump core back to the shop for repairs.

Post-Construction Maintenance Costs

The District carefully compiled data on service calls and repairs, including expenses for labor and parts, over the last seven years. The actual maintenance and repair costs for both projects combined is $23/pump/year and the MTBSC is 22 years. Table 3 shows a comparison between the pre-construction *estimates* and the *actual* post-construction data for the E/One sewer system.

Maintenance Costs: Grinder Pumps vs. Lift Stations

At one point during the design process for the Beach Drive project, the Board of Commissioners for the District considered a rate surcharge on grinder pump customers to cover what was *projected* to be higher maintenance costs than the District's existing customers. The decision was made to not charge grinder pump customers extra, but rather, wait and gather the data prior to making that decision.

The District operates and maintains 11 large sewage lift stations throughout its collection system. The District's engineer compiled the annual operating and repair costs for these lift stations and compared them to the grinder pump system on an ERU basis. An ERU represents one equivalent residential unit, a common denominator between residential and commercial usage of the sewer system. Interestingly, the District found that the annual maintenance and repair of the grinder pump system amounted to $26/year/ERU. The annual O&M (including repairs) on the major lift stations amounted to $53/year/ERU – twice as much as the low pressure sewer system. The District has since resolved to *not* charge their grinder pump customers an additional monthly fee to cover maintenance costs.

Beach Drive Project

The Beach Drive project was completed in May 1998 and had a total of 295 grinder pumps installed through 2004. The average age of the pumps is seven years and the number of service calls during that period was 111. Therefore, the MTBSC for the Beach Drive Project for the period from 1998 through 2004 is 19 years. After seven years of operation, the MTBSC was nearly double the *estimated* MTBSC projected prior to the project.

The most common causes of service calls and repairs on Beach Drive were worn stators, electrical problems stemming from damage to direct bury cables or flooding of the pump accessway (the dry well portion of the pump station) and bearing failures. These types of service calls and repairs were directly attributed to problems with design and construction. The only cause of failure that can be attributed to the pump manufacturer is premature bearing failures, which accounted for 19 service calls. However, due to the high percentage of bearing failures on Beach Drive (6 percent on Beach Drive as opposed to 2 percent on Watauga Beach), there is some consensus that some of the bearing failures were not the primary mode of failure.

Table 2: Historical E/One Projects

Location	Number of Grinder Pumps	Average Age of Pumps	Annual O&M $/Pump
Cuyler, New York	41	17	$53.00
Fairfield Glade, Tennessee	955	16	$36.07
Pooler/Bloomingdale, Georgia	998	11	$13.24
Pierce County, Washington	900	9	$51.00
Sharpsburg/Keedysville, Maryland	780	5	$18.00

Note: Data taken from "Onsite Wastewater Treatment," Dec. 11–13, 1994, American Society of Agricultural Engineers

Watauga Beach Project

The Watauga Beach project was completed in November 1998 and had a total of 52 grinder pumps installed through 2004. The average age of the pumps is 6.5 years and there were eight service calls during that period. That equates to a MTBSC for Watauga Beach of 42 years! Obviously a MTBSC of 42 years is longer than the pump station life, but it indicates that significant improvement was made during the installation of the two grinder pump projects, so that the number of service calls made during the first 6.5 years of the system's life was very low.

One of the service calls on Watauga Beach was from a faulty core repair from Beach Drive and another one was a bearing failure. The remaining six service calls were the result of installation.

Lessons Learned

What did the District learn from these two projects? It became obvious in the early stages of construction on the Beach Drive project that several things needed to be done differently to reduce the number of service calls and the amount of time and money spent on repairs due to poor installation practices. Many of the installation problems could be attributed to design issues while others were simply the result of the actual construction. The following practices were identified as causes of excessive service calls and action was taken during the design and construction of the Watauga Beach project to minimize their effects.

Sewer Lateral Connections

The Beach Drive project provided for the District's contractor to install the grinder pump station on private property and install the pressure discharge line to the main in the street. The project made provision for the 4" sewer lateral installation between the home and the grinder pump station the responsibility of the homeowner. This was done primarily as a cost-cutting measure for the homeowners, giving them the option of hiring a local plumber or installing the lateral themselves. Many of these sewer laterals ran long distances, depending on the configuration and direction of their existing plumbing and the location of the grinder pump in the yard. This provision resulted in widespread poor quality installation that allowed sandy soil to migrate into the grinder pump sump. The granular material accelerated wear on the rubber stator. This was a very common service call within the first year of operation on Beach Drive.

Ensure a Watertight System

There were three causes of pump failures/service calls on the Beach Drive project that were attributable to water getting into the electrical components of the pump, 1) in-field manufacture of accessway extensions; 2) breaching the integrity of the direct-bury cable between the pump and the control panel on the house; and 3) backups from the wet well to the accessway.

The vertical distance between the top of the pump station (which is installed slightly above grade) and the invert of the inlet pipe is a critical measurement. The District pre-ordered the grinder pump stations with a total height of 58". If the sewer line from a house was lower than 24" below grade, an extension of the accessway was required to lower the inlet elevation. Approximately two dozen field extensions were required. Several of the field joints created by the extensions ended up leaking groundwater, resulting in water contacting the "breather patch" (an opening in the power cable in the accessway that allows atmospheric pressure to the motor housing). The result was pump motor failures and service calls.

The power cable installed between the pump stations and the

Table 3: Pre- and Post-Construction Maintenance and Repair

	Pre-Project Estimate	Actual Post-Construction	Savings
MTBSC	10 Years	22 Years	12 Years
Average Number of Service Calls/Year	35 Calls	16 Calls	19 Calls
Average Maintenance $/Year	$13,186	$9,009	$4,177

Note: This data is for the combined Beach Drive and Watauga Beach systems.

control panel on the wall of each home had a direct bury rating and was installed as such. There were several cases were it was determined that either during installation or subsequent yard work by some homeowners, that the cable sheathing had been nicked and water vapor was allowed into the wiring and wicked back into the motor housing. The result was pump motor failures and service calls.

The primary cause of service calls was attributable to worn stators that prematurely failed due to the introduction of abrasive material (sandy soil) into the pump station during the installation of the sewer lateral. When a stator is worn down, the capacity of the pump diminishes and an alarm is set off. The responsibility to call the District in an alarm situation lies with the homeowner. If the homeowner fails to contact the District in a timely manner, the water from the wet well backs up through the influent sewer line and through the wet well vent pipe. The 2" PVC vent pipe has a friction fit through the plastic lid. As water backs up the vent pipe and spills onto the ground, some water also runs down the outside of the vent pipe back into the accessway, flooding the breather patch and allowing water into the motor housing. The result was pump motor failures and service calls.

These electrical failures became obvious in the first six months of installation and use by the homeowners. The design for the Watauga Beach project was under way at the time and several changes were made to prevent the same problems on the Watauga Beach project.

Applying the Lessons Learned

The first change made during the design of the Watauga Beach system was to eliminate all homeowner involvement in the construction, thus preserving the integrity of the work by holding the contractor for the District accountable for meeting the District's specifications for installation, cleaning, testing and startup. The District's contractor was required to plumb all pipe on the project, even if the contractor had to go under the house and redirect the plumbing to the new grinder pump station.

The District also pre-ordered the pump stations for the Watauga Beach project. The pump stations were ordered with a taller accessway to accommodate lower sewer line elevations, eliminating the need to add accessway and field joints during construction. In addition, the District required the direct bury cable to be installed in conduit for protection and had each vent pipe silicone caulked at the interface with the pump station lid.

Based on these changes, the District estimates that service calls were reduced on the Watauga Beach project by 20 percent, representing about a $5,300 savings on the project. In hindsight, the District realizes that, had these lessons been known prior to the Beach Drive project, the potential savings could have been $30,000.

The District also recognized the need to educate the new customer. This education included such instruction as what *not* to flush down the drain, to be careful not to get beach sand into the sewer system and not put raised gardens over the top of the pump station lid. We had to help the customer recognize that when the alarm goes off, they should silence it and immediately call the District office for service. Often, working with the customer was most difficult because they simply didn't understand how the system worked or didn't care. The District has developed ways to work closely with homeowners by sending periodic newsletters explaining how the system works and what should be avoided. The maintenance crew also helps explain problems to homeowners when service calls are made so that the problem will not happen again. These ongoing efforts have helped reduce the number of service calls.

Summary

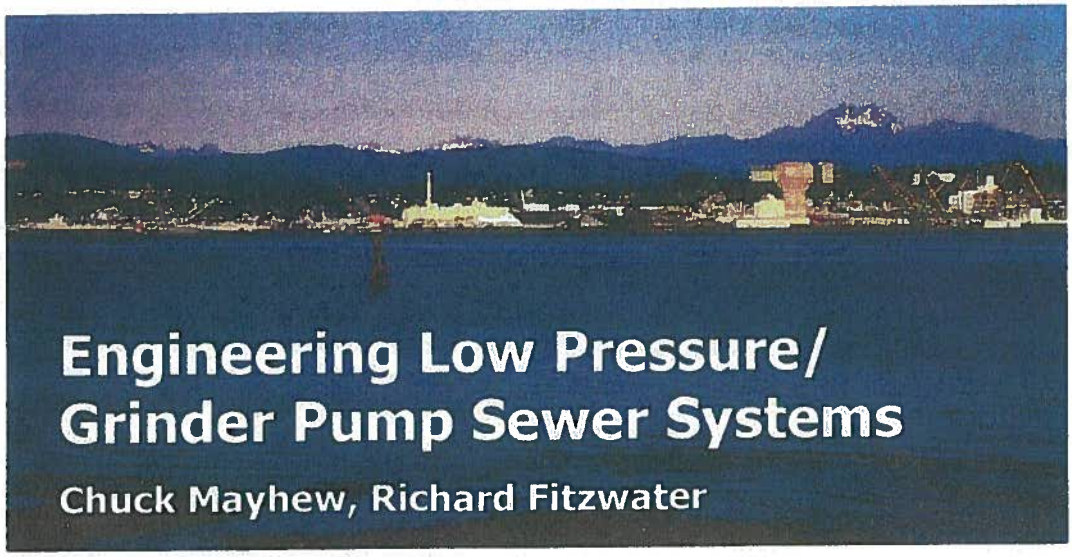
The Beach Drive and Watauga Beach projects were designed to solve an environmental health and safety problem. Failing septic systems were polluting Sinclair Inlet and posing health risks to homeowners whose failed systems often left raw sewage pooling in their yards.

The ULID process and the District's cooperation with property owners resulted in a successful capital improvement that resolved the health hazard. After seven years of operation, the District has increased the MTBSC for the pump stations and reduced the annual maintenance costs. The District has also learned several key lessons that facilitated even greater savings on the Watauga Beach project. As a result, three key elements are recommended to others embarking on the design and construction of a grinder pump system:

1. **Interview and qualify a design engineer that has completed these types of projects before.** Find an engineer that knows the latest developments and improvements in these systems. This alone will potentially save tens of thousands of dollars in construction changes and much more in long-term maintenance and repair costs.
2. **Carefully apply local regulations and applicable bidding laws to obtain a *qualified* and *conscientious* contractor.** The quality of the work is important in keeping the system clean and problem free. Often, even though the low bidder must be accepted, a partnering relationship can be established when the Owner or Engineer make special efforts to help the contractor understand prior to the start of the project, the need to work together to avoid the types of problems outlined in this paper.
3. **Have an experienced inspector on site!** The District found that the inspector made all the difference. He knew just what to look for and where to give the contractor special instructions. In addition, the District's inspector inevitably got to know the homeowners and this helped to develop the ongoing relationship that will exist between the District and the homeowners.

About the Author

Chuck Mayhew, PE, is the district engineering for Karcher Creek Sewer District. This paper was originally presented at the Hawaii Water Environment Association Annual Conference, February 2005.



Engineering Low Pressure/ Grinder Pump Sewer Systems

Chuck Mayhew, Richard Fitzwater

The Beach Drive area, located directly across Sinclair Inlet from the Bremerton Naval Shipyard, is an area of magnificent water and mountain views.

Project Background

The science of civil engineering involves identifying problems, evaluating alternatives, and providing solutions that effectively meet the needs of those involved. Civil engineers are particularly interested in solving problems to improve the way people live and work and protect the integrity of the environment.

Kennedy/Jenks Consultants was recently asked to solve a common waterfront problem – failing septic systems. The Puget Sound region of western Washington includes hundreds of miles of private saltwater and lakefront property. In 1993, the Bremerton-Kitsap County Health District (Health District) began sanitary survey tests along a 5-mile stretch of coastline known as Beach Drive. The results of the testing revealed failing septic systems in 21 percent of the existing 215 homes. In some cases, a septic tank or drain field did not even exist, and the homeowner's sewage discharged directly to the bay. The Health District estimates a typical failure rate of 5 percent in areas served by septic systems; the 21% failure rate constituted a public health emergency.

The high percentage of failing septic systems was attributed to a number of factors:

1. The average age of the septic systems along Beach Drive was approximately 50 years. Some systems had been rehabilitated, and newer homes typically possessed more elaborate, pumped systems, but most of the systems had never been improved.

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2. The geographic and topographic conditions along Beach Drive are not conducive to adequate treatment by traditional septic systems. Although the soil conditions along Beach Drive range from clay to solid rock, clay is the predominant soil type on private property. The homes with failing systems were located along the beach against a very steep hillside that contributed copious runoff.

3. The average annual precipitation in the Bremerton-Port Orchard area is 51 inches per year, resulting in saturated soil conditions many months of the year.

4. Many homeowners had not maintained their septic tanks and drainfields.

The combination of these factors resulted in the unusually high failure rate.

The Health District subsequently declared a public health hazard and mandated that homeowners with failing systems either make the necessary repairs to their existing system or connect to the public sewer system. The homeowners with failed systems faced repair bills of $15,000 to $18,000 to replace the septic tanks and drainfields according to local codes or to install new high-tech filtration units. Many homeowners recognized that connection to the public sewer was an affordable alternative that would provide a long-term health benefit to the area. Fortunately, the jointly owned Port Orchard-Kitsap County Sewer District No. 5 secondary treatment facility was located at one end of the Health District's test area.

Formation of Utility Local Improvement District

A handful of proactive homeowners assembled to form the Beach Drive Sewer Committee. The Committee's goal was to rally the community in an effort to build a public sewer to serve the properties along the waterfront. With the treatment plant located adjacent to Beach Drive and in sight of many homes, the Committee anticipated a quick, relatively inexpensive sewer project. However, when the Committee approached the Kitsap County Sewer District No. 5 (District) about connecting to the public sewer, they encountered a number of significant hurdles:

1. The Washington State Growth Management Act (GMA) prohibits the extension of urban services (including sewer collection systems) into designated rural areas such as Beach Drive. This statute prohibited various state and local agencies from approving design and construction of the sewer system along Beach Drive.
2. Because the entire area proposed for sewer service was located outside the current District boundary, the entire area would have to undergo a lengthy annexation.
3. Substantial capital costs were required to plan, design and build the system.

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The Sewer District cooperated with the community and was willing to provide sewer service to the Beach Drive area if the problems could be solved. The District recommended that the Committee work closely with the District Engineer, Kennedy/Jenks Consultants, to resolve the problems confronting the project. Kennedy/Jenks Consultants helped the Committee obtain a GMA statutory exemption for a declared health hazard.

The Engineer also assisted the citizen's Committee with the petition process for annexing and creating a utility local improvement district (ULID) to finance the sewer project's capital costs. Washington State statute provides legislation enabling formation of a ULID to allow capital facilities to be built. The ULID statute requires the landowners within the ULID to assess themselves the costs of planning, designing, and building the improvements. The ULID is enclosed within a specified boundary, and creation of the ULID (by the petition method) requires the signatures of at least 51 percent of the area landowners. The petition requesting creation of the Beach Drive ULID was signed by 71 percent of the landowners.

Analysis of Sewer System Alternatives

Prior to creation of the ULID, the Committee asked Kennedy/Jenks Consultants to examine the various sewer system alternatives available for use in the Beach Drive area. Because the homeowners were assessing themselves for the capital costs of the project, the primary reason for the alternative analysis was to find the alternative with the least expensive construction cost. However, as the District Engineer, Kennedy/Jenks Consultants' responsibility was to find the alternative with the lowest life cycle costs [construction plus operation and maintenance (O&M)] for the District. The District had committed its resources to the sewer project early in the process and was responsible for preserving the community's public health. At the same time, the homeowners were under a mandate from the Health District to correct their failing systems or face court-ordered fines and condemnation.

The Engineer evaluated four systems for the Beach Drive area: 1) gravity sewer system that required three pump stations, 2) septic tank and effluent pumping (STEP) system, 3) vacuum system, and 4) low pressure/grinder pump system. Each system could be reasonably designed and constructed and they were each evaluated based on the District's needs (minimizing capital and long-term O&M costs) and the homeowners' needs (minimizing capital costs). Minimizing capital costs was critical to the District as well, because the properties within the ULID could not be assessed capital costs in excess of the sewer connection's assessed benefit to the property. In other words, if the capital cost assessment for a particular property was $15,000, but its appraised value increased by only $10,000, the District would be legally required to assume the $5,000 difference.

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Construction cost estimates for each alternative were as follows:

System Alternative	Estimated Construction Cost	Estimated Annual O&M Cost
Gravity Sewer System (including three pump stations)	$8,420,000	$25,000
STEP System	$2,336,000	$12,600
Vacuum System	$2,222,000	$14,700
Grinder Pump System	$1,912,000	$10,710

The Engineer recommended the grinder pump system because it offered the lowest capital cost to the homeowner, minimized O&M costs, and reduced the risk of assumption of capital cost in excess of assessments to the District.

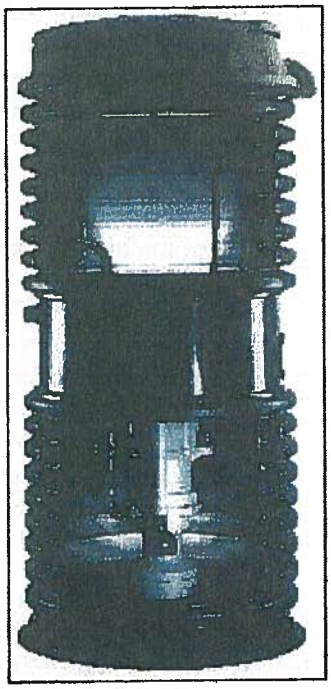
Selection of Environment One Grinder Pumps

Kennedy/Jenks Consultants had previously designed several grinder pump projects. Together, these projects involved more than 1,000 grinder pumps from three different manufacturers. Based on that experience and the O&M data collected, the Engineer recommended that the District use Environment One (E-1) grinder pumps. The E-1 grinder pumps had a proven track record of exceptional reliability and serviceability. Moreover, the E-1 pump was the only grinder pump that could efficiently satisfy the head requirements along Beach Drive.

Environment One Grinder Pump

The Environment One grinder pump is characterized by:

- A self-contained unit with integral wet well/dry well
- Field adjustable accessway to accommodate varying sewer invert and grade elevations
- Simple core design that allows replacement and/or service in the field
- A progressing cavity pump that produces a nearly constant flow rate over a wide range of head conditions
- A standard 1 hp motor that is interchangeable on any E-1 model
- Pressure switches as opposed to float switches
- Stainless steel discharge piping.



Cutaway view of E-1 Model 2010 grinder pump

© 1998 Kennedy/Jenks Consultants

Operation and Maintenance (O&M) Costs

In 1986, Kennedy/Jenks Consultants designed more than 900 E-1 grinder pumps for installation around four lakes south of Tacoma, Washington. Based on data collected by Pierce County Utility, annual maintenance costs for this system averaged $51 per pump per year between 1990 and 1994. Pierce County also had 46 centrifugal grinder pumps in a different system with average annual maintenance costs of $243 per pump during the same period. The utility attributes the difference in maintenance costs between the centrifugal and progressive cavity (E-1) pumps to the need for regularly scheduled maintenance for the float switches in the centrifugal grinder pump units. A major factor in the low maintenance costs for the E-1 pumps is the 11-year average mean time between service calls (MTBSC).

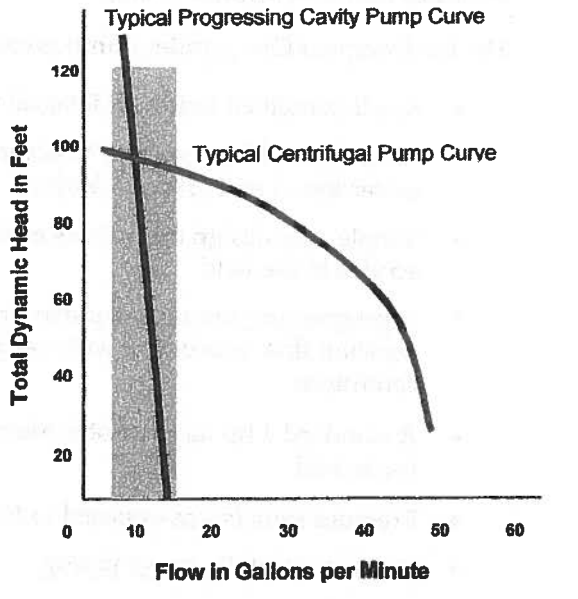
Serviceability

Simple removal and installation of the "core" to service the pump and grinder is inherent to the design of the E-1 grinder pump. The grinder pump unit consists of a high-density polyethylene (HDPE) housing and a suspended core that includes the pump, grinder, controls, and other operating parts. After the grinder pump is installed, the core can be repaired by disconnecting the electronic quick disconnect (EQD) and removing six stainless steel bolts in the accessway. District maintenance personnel can then troubleshoot the core in the field or install a replacement core and take the damaged one back to the shop for testing and repair. The homeowner experiences minimum downtime, and the District can repair and test the damaged core at its convenience in the shop.

Minimum Preventive Maintenance

One of the biggest benefits of the E-1 grinder pump is the use of pressure switches instead of float switches. Float switches are notorious for fouling with grease, and preventive maintenance is typically required for the pump to operate properly. By incorporating a sensing bell and air pressure column to actuate level controls, E-1 minimizes the need for preventive maintenance.

The E-1 grinder pump uses a progressing cavity pump rather than a centrifugal pump. The typical pump curve (right) shows that a progressive cavity pump has a nearly constant discharge rate over a wide range of



Centrifugal vs. Progressing Cavity Pump Curves

© 1998 Kennedy/Jenks Consultants

head conditions, including negative head conditions. As a result, the cleansing velocity created by the reduced flow area at the point of blockage flushes sedimentation from the piping network. Typical operating pressures of the Beach Drive system range from 20-60 psi and shutoff for the pumps is 160 psi. The smaller the area in the pipe, the higher the velocity of the liquid because of the progressing cavity pump. Periodic maintenance and flushing of the force main are essentially eliminated.

System Design

The entire project consisted of:

- 26,900 feet of 3"to 8" forcemain;
- 22,400 feet of 1-1/4" to 2" pressurized discharge piping on private property; and
- 210 grinder pumps installed on private property;

Force Main Design

The entire system was hydraulically modeled on the computer to ensure that proper velocities were maintained and that no point in the system exceeded the maximum recommended pressure of 80 psi for the E-1 pump. The model calculated the total dynamic head (TDH) for each pump based upon the pipe sizes, number of pumps, and elevations of pipe mains and grinder pumps.

PRELIMINARY PRESSURE SEWER - PIPE SIZING AND BRANCH ANALYSIS
Watauga Beach Sewer Project

Oct-15-98

Prepared By:
Chuck Mayhew

Zone Number	Number Of Cores In Zone	Accumulated # Of Cores In Zone	Max # Of Simultaneous Operations	Max Flow In GPM	Pipe Size (Inch)	Max Velocity (FPS)	Length Of Main This Zone	Friction Loss Factor (Ft/100Ft)	Friction Loss This Zone	Accumulated Friction Loss (Feet)	Max Main Elevation	Minimum Pump Elevation	Static Head (Feet)	Total Dynamic Head (Ft)
This spreadsheet was calculated using pipe diameters for: SDR17HDPE										Friction loss calculations were based on a Constant for inside roughness of "C" = 130				
1.00	9	9	3	33	2.00	3.57	650	2.52	16.38	128.11	40	10	30	158.11
2.00	9	18	4	44	3.00	2.19	650	0.65	4.22	111.73	40	10	30	141.73
3.00	12	30	5	55	3.00	2.74	1,000	0.98	9.82	107.51	60	15	45	152.51
4.00	20	50	6	66	4.00	1.99	950	0.41	3.85	97.69	60	10	50	147.69
5.00	30	80	7	77	4.00	2.32	2,400	0.54	12.95	93.84	35	15	20	113.84
6.00	5	85	8	88	4.00	2.65	1,100	0.69	7.60	80.89	70	25	45	125.89
7.00	4	4	3	33	3.00	1.64	900	0.38	3.43	76.72	30	19	11	87.72
8.00	15	104	8	88	4.00	2.65	1,000	0.69	6.91	73.29	28	24	4	77.29
9.00	13	13	4	44	3.00	2.19	500	0.65	3.25	69.63	14	14	0	69.63
10.00	0	117	9	99	5.00	1.95	400	0.31	1.23	66.38	15	15	0	66.38
11.00	9	9	3	33	3.00	1.64	850	0.38	3.24	68.39	20	10	10	78.39
12.00	17	143	9	99	5.00	1.95	2,400	0.31	7.36	65.15	14	11	3	68.15
13.00	4	4	3	33	3.00	1.64	550	0.38	2.10	59.89	45	42	3	62.89
14.00	11	158	10	110	5.00	2.17	1,300	0.37	4.84	57.79	10	8	2	59.79
15.00	18	176	10	110	5.00	2.17	1,000	0.37	3.73	52.95	12	9	3	55.95
16.00	32	208	11	121	5.00	2.39	2,600	0.84	11.56	49.22	12	9	3	52.22
17.00	32	240	12	132	5.00	2.60	2,200	0.52	11.49	37.66	27	12	15	52.66
18.00	32	272	13	143	6.00	1.99	3,000	0.26	7.76	26.17	12	10	2	28.17
19.00	11	283	14	154	6.00	2.14	1,200	0.30	3.56	18.41	8	8	0	18.41
20.00	3	3	2	22	3.00	1.10	500	0.18	0.90	15.75	8	10	-2	13.75
21.00	24	310	14	154	6.00	2.14	2,400	0.30	7.12	14.85	8	8	0	14.85
22.00	32	342	15	165	6.00	2.29	2,100	0.34	7.08	7.73	8	8	0	7.73
23.00	0	342	15	165	8.00	1.35	700	0.09	0.65	0.65	22	8	14	14.65

Typical model output for designing a low pressure, grinder pump system.

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Grinder Pump Design

An essential phase in the design of the grinder pump system was to meet with each homeowner at the property. The visit was crucial to address homeowner questions and concerns and to lay out the grinder pump and discharge piping locations. In many cases, homeowners were planning to remodel their homes after sewer installation. By discussing how the grinder pump works and explaining some constraints associated with the grinder pump location, the homeowner and engineer could select a location that would prevent numerous, costly change orders during construction if grinder pumps had to be relocated. The engineer designed and drafted the site plan on a laptop computer in the field. The site plan was later reproduced on 11"x17" sheets for use by the contractor during construction.

Typically, the grinder pump was located near, or occasionally inside, the existing septic tank, making the plumbing of the existing house sewer to the grinder pump more efficient. The design could not have been completed successfully without these property visits to determine the location of the existing sewer hookup at the house. Although the property visits were time consuming, they were far more beneficial to the project than the cost, because change orders constituted less than 1 percent of the project cost.

Conclusion

The Beach Drive Sewer Project was a unique application of an alternative technology. The needs of both the public agency providing sewer service and system maintenance, and the homeowners who were required to pay for the capital cost of the project, were satisfied. The District, homeowners, and Kennedy/Jenks Consultants successfully embraced a philosophy of working closely together to provide a sound design with analysis of alternatives and frequent coordination of efforts to meet the needs of all involved.

Chuck Mayhew is a senior staff engineer with Kennedy/Jenks Consultants in Federal Way, WA.

Richard Fitzwater is General Manager of Kitsap County Sewer District No. 5 in Port Orchard, WA.

This report is available on the Kennedy/Jenks Consultants' website at www.kennedyjenks.com.

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ELEMENT NIGHTCLUB
REPORT
Letter received 6/28/11 from Mike Kummerfeldt for Council's 6/28/11 Meeting.

Saturday, June 25, 2011

Exhibit F

Honorable Mayor and Council members,

Please forgive me for my absence from this meeting but I have a preexisting business trip to Goshen, Indiana that has been in place for over a month. I will be returning Friday, but unfortunately I am unable to attend this meeting in person. I would also like to apologize again to Chief Wallace and the Waterside Condo members who showed up to the early Monday morning meeting that I missed a couple of months ago. I pride myself on being a very responsible person, but I totally forgot to set an alarm the night before and for that I am very sorry.

I would like to begin by stating that I am not doing anything wrong or illegal in operating my business in the appropriately commercial zoned area. I am not violating or breaking any law or ordinance. I fully cooperate with the Oak Harbor Police Department, the City of Oak Harbor, the Washington State Gambling Commission, and the Washington State Liquor Control Board. I do, however, believe in being a good neighbor and I really do care about my neighbors' reasonable concerns.

I had originally come up with an idea to build a high noise blocking barrier just before the sidewalk on Bayshore Drive. The more I pursued this idea the more it became apparent that this was a better theory than an actuality. Maintenance, project cost, building codes restrictions, and the fact that I share my building with multiple tenants that may be economically harmed by the lack of street exposure, all lead to the downfall of my barrier idea.

With the barrier idea scrapped I turned my attention to a different approach. My patrons are not bad people, they just seem to forget or not be aware that people are sleep in the condos across the street. Until very recently we have used a reactive approach, i.e. when someone has there stereo too loud, or shouts out to their friend that is 20 yards away, we tell them to keep their voices down and the noise stops. This takes care of the unwanted noise, but as my neighbors keep stating it is now too late because the noise has already awaken them. To combat this issue we have recently started posting signs to make aware and educate our customers of the noise issue.

The idea for this occurred to me after our landlord and the building owner Mr. Rob Sebo asked if I could try keep our customers from smoking outside by the church next door. I instructed my security staff to politely ask anyone that they see smoking out the left side of our doors to please smoke on the opposite side. This was too retroactive because our customers had to be doing something undesirable for us to correct them. I then posted a sign with an arrow instructing customers to smoke to the right of our doors and we witnessed positive results right away. The super majority of people saw the sign and automatically went to the right. We now only have to remind people every once in awhile, as compared to all the time.

With the compliance much higher on the smoking issue I have recently tried to use the same approach for the noise in the parking lot. I have changed the signs to explain the need to keep voices and stereos to a minimum while exiting our parking lot. It is still too early to tell if it has had a positive effect, but I will continue to strive to make reasonable improvements to my business, for the better of our patrons, ourselves, and our neighbors.

Thank you for taking the time to read this letter. I would also like to thank you Mayor Slowik and Chief Wallace. It is very easy to lead in an adverse free environment, but both of your leadership skills come to light when there are conflicting oppositions. Of course in my perfect world you both would politely tell my commercially-zoned living neighbors to just roll over and go back to sleep, but I comprehend that that is not reasonable. I recognize that you have the same obligation to the peace and quiet of our town as to maintaining a business friendly environment. Mayor Slowik, I appreciate your hard work and dedication to public service. I totally understand how you can be trying your hardest to do the right thing and to make a better town for your fellow neighbors / constituents and still have the same people that you are trying to help calling for your head. I think you have done a very good job in dealing with this and many other issues and I look forward to you being our Mayor for the next few years to come.

Sincerely,

Mike Kummerfeldt
Element Nightclub & Bayside Casino

Tell Oak Harbor City Council to Protect Our Property Values

By signing below, we the undersigned respectfully encourage the City of Oak Harbor City Council to use its full legal power to enforce;

> **Chapter 6.56 PUBLIC NUISANCE NOISE provision**
> 6.56.020 Unnecessary noise prohibited.
> It is unlawful for any person to make, continue, or cause to be made or continued any excessive, unnecessary or unusual loud noise or any noise which either annoys, disturbs, injures or endangers the comfort, repose, health, peace or safety of others, within the city of Oak Harbor. (Ord. 597 § 2, 1981).

with regards to all businesses in Oak Harbor and specifically with regards to the operation of the Element Nightclub.

In the event that the City Council cannot devise effective measures to assist the Element Nightclub in the enforcement of the above law, we further encourage the City Council to take the next step to resolve a problem that has occurred since the opening of this business.

> **5.22.090 Revision of license conditions.**
> The city council also reserves to itself the power to revise the conditions of the nightclub 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 nightclub business location.

Print Name	Signature	Address
BRAINARD	Jolyn V. Brainard	651 SE Bayshore Dr
BRAINARD	Hugh Brainard	651 SE Bayshore Dr.
Warnock	Helen L. Warnock	651 SE Bayshore Dr.
WARNOCK	Robert J. Warnock	651 SE Bayshore Dr.
Dennis	Mardi Dennis	651 SE Bayshore
CAROL GLOVER	Carol Glover	651 S.E Bayshore
Faye Konopik	Faye Konopik	651 SE. Bayshore Dr
CLIFF LAING		651 SE. BAYSHORE DR.
WILLIAM ROEHM	W. Roehm	651 SE BAYSHORE DR
THOMAS SULLIVAN	Thomas E Sullivan	651 SE BAYSHORE DR
CATHLEEN SULLIVAN	Cathleen Sullivan	651 SE BAYSHORE DR
MARY MATTSON	Mary Mattson	651 SE BAYSHORE DR
Bruce D. Mattson	Bruce D. Mattson	651 SE Bayshore Dr.
~~Mary Jane Boughner~~	Mary Jane Boughner	651 SE Bayshore Dr.
STEVE BOUGHNER		651 SE BAYSHORE DR.
Richard Everett	Richard A. Everett	651 SE BAYSHORE DR
~~Gray Gordan~~		
Gray Gordan		651 SE Bayshore #A303

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with regards to all businesses in Oak Harbor and specifically with regards to the operation of the Element Nightclub.

In the event that the City Council cannot devise effective measures to assist the Element Nightclub in the enforcement of the above law, we further encourage the City Council to take the next step to resolve a problem that has occurred since the opening of this business.

> **5.22.090 Revision of license conditions.**
>
> The city council also reserves to itself the power to revise the conditions of the nightclub 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 nightclub business location.

Print Name	Signature	Address
Kathy Harbour	Kathy Harbour	675-6302
Ruth Seeley	Ruth Seeley	679-9506
Sheana Wade	Sheana Wade	918-9158
Norman Myers	N L Myers	682-6552
Susan D. Myers	Susan D Myers	682-6552
Wilma Patrick	WILMA PATRICK	678-3911
CASEY ELBARE		818-494-9544
RUTH WILLIAMS	Ruth Williams	679-0937
DIANA FEDELE	Diana Fedele	679 9793
DONALD W. TORCASO	Donald W. Torcaso	651 SE Bay shore Dr D102 Oak Harbor, WA 98277
Coetta D. Engel	D/202	679-3915
FRED E WALRATH	711 SE BAYSHORE DR.	
Fred E Walrath		
Barbara K Walrath	711 SE Bayshore Dr.	
Barbara K. Walrath		

651 SE. Bayshore Drive. Oak Harb

701 SE BAYSHORE

651 SE Bayshore Drive

Print Name	Signature	Address
JoAnn Sample	JoAnn Sample	651 S.E. Bayshore Dr #D101 Oak Harbor, WA 98277

Tell Oak Harbor City Council to Protect Our Property Values

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with regards to all businesses in Oak Harbor and specifically with regards to the operation of the Element Nightclub.

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Print Name	Signature	Address
CHARLES L. FAGAN	Charles L Fagan	651 S.E. BAYSHORE DR. B105
Kevin D. Fagan	Kevin D Fagan	651 S.E. Bayshore Dr.
Jean Bright	Jean Bright	651 " " " ~~B~~ 86
Roy Sundberg	Roy Sundberg	651 S.E. "
Doris M. Hansen	Doris M. Hansen	651 S.E. Bayshore Dr.
VAHOR W MULLD	V W Mulld	651 SE BAYSHORE DR
Billie Cook	Billie Cook	651 SE BAYSHORE DR.
Ronny S. SIMMONS	Ronny S Simmons	651 SE BAYSHORE DR UB
Richard DiBonedetto	Richard DiBonedetto	651 SE Bayshore Oak Harbor Dr
STEVEN MCDONELL	Steven McDonell	651 SE BAYSHORE DR. OAK HARBOR

Exhibit H

OPEN

City of Oak Harbor
City Council Agenda Bill

Bill No. 1
Date: July 12, 2011
Subject: Employee Recognition – Marianne Ledgerwood

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

To recognize City employees for 10 years of service or more.

AUTHORITY

It is the practice of the City to recognize dedicated employees who have completed 10 years or more of service.

SUMMARY STATEMENT

The Mayor and City Council will recognize the following employee for her 10 years of service with the City:

- Marianne Ledgerwood of the Legal Department

STANDING COMMITTEE REPORT

None

RECOMMENDED ACTION

Congratulate Ms. Ledgerwood for her 10 years of service.

ATTACHMENTS

None

MAYOR'S COMMENTS

None

City of Oak Harbor

OFFICE OF THE MAYOR
JIM SLOWIK
MAYOR

PROCLAMATION IN RECOGNITION OF

CHRISTMAS IN JULY

HELP HOUSE FOOD AND FUND DRIVE

WHEREAS, North Whidbey Help House is a local non-profit food bank that serves northern Whidbey Island; and

WHEREAS, in response to the annual slow down of donations during the summer months, the Christmas in July Food and Fund Drive was developed to help keep the shelves stocked; and

WHEREAS, through May 2011, North Whidbey Help House had distributed 2,502 food baskets that have fed 6,037 people, an increase of 57 food baskets and 288 people fed over the same time last year; and

WHEREAS, with food and cash donations down and an average of five new applicants daily, donations are needed now more than ever; and

WHEREAS, on Saturday, July 16th, volunteers from Soroptimist International of Oak Harbor, Kiwanis Club of Oak Harbor, Oak Harbor Lions Club and NAS Whidbey Island, will be staged at local grocery stores and Wal-Mart asking shoppers to contribute to the Help House Christmas in July Food and Fund Drive.

NOW, THEREFORE, WE, Jim Slowik, Mayor, and Council members of the City of Oak Harbor do hereby proclaim **July 16, 2011** as **Christmas in July** and urge all citizens of our City to support North Whidbey Help House and its effort to provide assistance to those in need.

Signed this 12th day of July, 2011

Jim Slowik, Mayor

City of Oak Harbor
City Council Agenda Bill

Bill No. 4

Date: JULY 12, 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 5A
Date: July 12, 2011
Subject: Noise Permit – Rotary Club Car Show

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 Rotary Club of Oak Harbor for amplified sound associated with the 26th Annual North Whidbey Car Show scheduled for August 13, 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 Rotary Club of Oak Harbor has submitted a Noise Permit request for amplified sound associated with the 26th Annual North Whidbey Car show scheduled for August 13th, 2011. The amplified sound will consist of a sound system for announcements and recorded music.

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

STANDING COMMITTEE REVIEW:

Not required.

RECOMMENDED ACTION:

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

ATTACHMENTS:

Noise Permit.

MAYOR'S COMMENTS:

CITY OF OAK HARBOR

NOISE PERMIT

Name of Organization:	Oak Harbor Rotary Club
Location of Event:	Windjammer Park between the treatment plant and west parking lot
Date of Event:	August 13, 2011
Hours of Operation:	7:00 a.m. to 6:00 p.m.
Permitted Noise:	PA system and speakers for music and announcements
Approval Conditions:	Face speakers away from the campground
Date of City Council Approval:	

Issued this day of July, 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

Agenda Bill No. d/A 5B
Date: July 12, 2011
Subject: Noise Permit – Island Classic Mustang Club

FROM: Paul Schmidt, City Administrator

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

Jim Slowik, Mayor

Doug Merriman, Finance Director

for 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 Island Classic Mustang Club for amplified sound associated with the Island Classic Mustang Car Show scheduled for September 10, 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 Island Classic Mustang Club of Oak Harbor has submitted a Noise Permit request for amplified sound associated with their upcoming car show scheduled for September 10, 2011. The amplified sound will consist of a sound system for announcements and a DJ.

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

STANDING COMMITTEE REVIEW:

Not required.

RECOMMENDED ACTION:

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

ATTACHMENTS:

Noise Permit.

MAYOR'S COMMENTS:

CITY OF OAK HARBOR

NOISE PERMIT

Name of Organization:	Island Classic Mustang Club
Location of Event:	Windjammer Park - Gazebo and surrounding area
Date of Event:	September 10, 2011
Hours of Operation:	7:00 a.m. to 5:00 p.m.
Permitted Noise:	PA system and speakers for a DJ and announcements
Approval Conditions:	Face speakers away from the campground
Date of City Council Approval:	

Issued this day of July, 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

Agenda Bill No. CJA 5c
Date: July 12, 2011
Subject: Noise Permit – Fidalgo Avenue Merchants Association

FROM: Paul Schmidt, City Administrator

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

Jim Slowik, Mayor

Doug Merriman, Finance Director

for 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 Fidalgo Avenue Merchants Association for amplified sound associated with a block-party community event scheduled for August 14, 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 Fidalgo Avenue Merchants Association has submitted a Noise Permit request for amplified sound associated with a block-party community event scheduled for August 14th, 2011. The amplified sound will consist of a sound system for two live bands and 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:	Fidalgo Avenue Merchants Association
Location of Event:	Fidalgo Avenue between Dock & Hathaway
Date of Event:	August 14, 2011
Hours of Operation:	Noon – 7:00 p.m.
Permitted Noise:	PA system and speakers for 2 live bands and announcements.
Approval Conditions:	None
Date of City Council Approval:	

Issued this day of July, 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

Agenda Bill No. CA 5D
Date: July 12, 2011
Subject: Noise Permit – North Whidbey Island Sunrise Rotary Club - Challenge Series

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 Island Sunrise Rotary Club for amplified sound associated with the 19th Annual Challenge Series event scheduled for August 27, 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 Island Sunrise Rotary Club has submitted a Noise Permit request for amplified sound associated with the 19th Annual Challenge Series event scheduled for August 27th, 2011. The amplified sound will consist of a sound system 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:	North Whidbey Island Sunrise Rotary Club – Challenge Series
Location of Event:	Barrington Drive from Island Thrift to Dutchmaid Laundry
Date of Event:	August 27, 2011
Hours of Operation:	8:00 a.m. to 2:00 p.m.
Permitted Noise:	Sound system for announcements
Approval Conditions:	None
Date of City Council Approval:	

Issued this day of July, 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

Agenda Bill No. dlA 5e
Date: July 12, 2011
Subject: Noise Permit – Gizmo's Skateshop

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 Gizmo's Skateshop for amplified sound associated with Gizmo's 9th annual barbecue/skate jam scheduled for July 16th, 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:

Gizmo's Skateshop has submitted a Noise Permit request for amplified sound associated with Gizmo's 9th annual barbecue/skate jam scheduled for July 16th, 2011. The amplified sound will consist of a sound system 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: Gizmo's Skateshop

Location of Event: Skateboard Park

Date of Event: July 16th, 2011

Hours of Operation: Noon – 3:00 p.m.

Permitted Noise: Sound system for announcements

Approval Conditions: None

Date of City Council Approval:

Issued this day of July, 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

Agenda Bill No. NA 5F
Date: July 12, 2011
Subject: Noise Permit – Event Planning Committee for Rick D. Almberg

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 Event Planning Committee for Rick D. Almberg for amplified sound associated with a 'Sunset & Sweets' event scheduled for July 28, 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 Event Planning Committee for Rick D. Almberg has submitted a Noise Permit request for amplified sound associated with a 'Sunset & Sweets' event scheduled for July 28th, 2011. The amplified sound will consist of a sound system for live music.

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

STANDING COMMITTEE REVIEW:

Not required.

100

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:	Event Planning Committee for Rick D. Almberg
Location of Event:	Go-Realty Parking Lot 740 SE Pioneer Way
Date of Event:	July 28, 2011
Hours of Operation:	7:00 p.m. to 9:00 p.m.
Permitted Noise:	Sound system for live music
Approval Conditions:	None
Date of City Council Approval:	

Issued this day of July, 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. CJA 59
Date: July 12, 2011
Subject: Appointment – Arts Commission – Peggy Darst Townsdin

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 appointment of Peggy Darst Townsdin to the Arts Commission.

AUTHORITY

The Arts Commission is an eleven-member board appointed for a four-year term in accordance with OHMC 2.29.050. A majority of the commission must either reside or work within the city. Members are appointed by the Mayor, and confirmed by the Council.

SUMMARY STATEMENT

Mayor Slowik recommends the appointment of Ms. Darst Townsdin to the Arts Commission. Ms. Darst Townsdin is a local historian who has an office within the city. If appointed, Ms. Darst Townsdin's term would commence immediately and expire June 2015.

RECOMMENDED ACTION

Approve the recommendation to appoint Ms. Darst Townsdin to the Arts Commission.

ATTACHMENTS

Ms. Darst Townsdin's biography form.

MAYOR'S COMMENTS

None.

Biography Form

Recommended Board Appointment for: Art Council

Name: Peggy Darst Townsdin Date: June 30th 2011

Address: (1199 S.E. 9th Ave #303 Oak Harbor) for Off. condo-
But any mail goes to: Wa. 98277
City, State, Zip: 810 N. El-Cine St
Coupeville, Wa. 98239

Telephone Number: 360-678-5970 Email Address: pctownsdin@gmail.com
cell 360-672-2720

Mailing Address (if different from above):

810 N. El-Cine St. Coupeville, Wa. 98239

Resident of Oak Harbor/Whidbey Island for: 56 years/months

Occupation and Place of Employment (if retired, reference previous occupation):

- self-employed author-historian-sales
- Past sale's manager for 20+ years

Local Group or Civic Affiliations: Board of the Island County Historical Society, Wa. State daughter's of the Pioneers, Harbor Pride

Special Interests: Historical issues, markers, writing about & Photographing Whidbey Island, Promotion of Island tourism

Other General Comments: & educating on island history and stories through my Photo/history books, as well as color island notecards. Farmers Market vender. Community volunteer

City of Oak Harbor
City Council Agenda Bill

Bill No. 11A 5H
Date: July 12, 2011
Subject: Bid Award-Senior Center HVAC

FROM: Cathy Rosen, Public Works Director

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 recommends awarding a contract for the purchase and installation of a new HVAC system to Johnson Controls, Inc. in the amount of $38,825.11.

AUTHORITY

Oak Harbor Municipal Code Chapter 2.330.010 provides for the contracting for Public Works and Improvements as follows:

Except as otherwise authorized by Chapters 39.04 and 39.28 RCW, or RCW 35.22.620, relating to emergency public works, or other applicable general state law, as now enacted or as hereafter amended, all public works and improvements shall be done by contract pursuant to public notice and call for competitive bids in accordance with this chapter whenever the estimated cost of such public work or improvement, including the cost of materials, supplies, equipment and labor, will exceed the sum of $30,000 if more than one craft or trade is involved with the public works project, or in excess of $20,000 if only a single craft or trade is involved with the public works project or the public works project is street signalization or street lighting; provided, the city may use a small works roster pursuant to RCW 35.22.620. It is further provided, that the council may authorize public works construction projects without bid up to the bid limitation in RCW 35.22.620 as now in effect or as hereafter amended.

SUMMARY STATEMENT

Included in the 2011-2012 biennial budget is the purchase and installation of a new HVAC system for the Senior Center in the amount of $75,000.00.

The City of Oak Harbor Senior Center's HVAC system is 24 years old and is experiencing

increasing equipment failures requiring expensive repairs and maintenance. Repair parts are difficult to locate since the current system has been out of manufacturing for 14 years. The annual maintenance costs have been increasing and beginning in 2008 preventive maintenance visits were increased to four times per year due to the reliability of the units.

DISCUSSION:

The project was advertised for bidding in the Whidbey News Times. In addition, the project was posted to the Builders Exchange of Washington Online Plan Center.

Amount of the Contract: Staff received and opened 5 sealed bids on May 19, 2011. The bid totals are tabulated below (amounts include Washington State Sales Tax in the amount of 8.7%):

Contractor	Location	Bid Total
Johnson Controls	Bothell, WA	$ 38,825.11
Blythe	Bellingham, WA	$ 53,665.19
Right Way	Sedro-Wooley, WA	$ 56,415.30
DK Systems Inc	Burlington, WA	$ 64,251.48
P&L General Contractor	Oak Harbor, WA	$ 91,104.73

Engineer's Estimate	*Oak Harbor, WA*	*$75,000.00*

Staff reviewed the bid prices and is knowledgeable of the qualifications and experience of the low bidder. It is recommended that a contract in the amount of $38,825.11 be awarded to Johnson Controls, who is the lowest responsible bidder.

City staff will retain responsibility for the construction administration and inspection.

Construction Contingency: Most construction projects involve change orders and modifications to the contract plans. Delays in processing change order requests can result in costly delay claims against the City. To minimize the possibility of delays and the resulting claims, staff requests that the City Engineer be authorized to administratively approve up to $5,000.00 approximately 10% of the contract amount, for change orders.

Funding: The funding for the project is covered through the Equipment Rental Replacement and Senior Center funds.

Justification: The project is needed to upgrade outdated equipment.

STANDING COMMITTEE REPORT

The Public Works Standing Committee reviewed this item at their meeting on June 2, 2011.

RECOMMENDED ACTION

Authorize the Mayor to sign a contract with Johnson Controls in the amount of $38,825.11 and authorize the City Engineer to administratively approve changes to the construction contract totaling not more than $5,000.00.

ATTACHMENTS

Bid Tabulation
Contract Agreement

MAYOR'S COMMENT

Contractor	Mobilization	Equipment	Installation	Other	Subtotal	Sales Tax	Total Cost	
Johnson Controls	$ 533.33	$ 22,415.07	$ 12,769.27	$ -	$ 35,717.67	$ 3,107.44	$ 38,825.11	
Blythe	$ 620.00	$ 25,050.00	$ 8,800.00	$ 14,900.00	$ 49,370.00	$ 4,295.19	$ 53,665.19	
Right Way	$ 500.00	$ 30,000.00	$ 19,850.00	$ 1,550.00	$ 51,900.00	$ 4,515.30	$ 56,415.30	
DK Systems Inc	$ 581.14	$ 32,892.86	$ 17,635.00	$ 8,000.00	$ 59,109.00	$ 5,142.48	$ 64,251.48	
P&L General Contractor	$ 2,452.00	$ 29,002.00	$ 25,936.00	$ 26,423.00	$ 83,813.00	$ 7,291.73	$ 91,104.73	**

**error in math

Bid Proposal
$ 38,825.11
$ 53,665.19
$ 56,415.30
$ 64,251.48
$ 90,995.00

AGREEMENT

THIS AGREEMENT is entered into by and between the CITY OF OAK HARBOR (hereinafter called the Owner) and _____ (hereinafter called the Contractor).

The Owner and the Contractor agree as follows:

ARTICLE 1. WORK.

The City of Oak Harbor proposes to make improvements to an existing HVAC system at their Senior Center Facility. The project involves removal of old units and installation of new units. The current system is made up of five roof mounted units (two 3 ton, two 5 ton and one 7.5 ton unit). The existing five heat pump units are twenty five years old and have passed their serviceable life expectancy. The installation of the units must ensure that all materials are well built and of high quality. Contractors must be factory certified to install and maintain the equipment they propose to install. In addition, all contractors are required to have a location within 70 miles of the Oak Harbor Senior Center. All works shall be in conformance with the Contract Plans, Contract Provisions, and Standard Specifications.

ARTICLE 2. CONTRACT TIME.

The Contractor shall physically complete the Work within sixty (60) calendar days (the Physical Completion Date) of a date specified in the Notice to Proceed.

ARTICLE 3. ROAD CLOSURE

ARTICLE 4. LIQUIDATED DAMAGES.

The Owner and the Contractor recognize that time is of the essence of this Agreement and that the Owner will suffer financial loss if the Work is not completed within the Contract Time, plus any extensions thereof allowed in accordance with the Contract Documents. They also recognize the inconvenience, expense, and difficulties involved a legal proceeding to prove the actual loss suffered by the Owner if the Work is not completed within the Contract Time. Accordingly, the Owner and the Contractor agree that as liquidated damages for delay, and not as a penalty, the Contractor shall pay the Owner $200.00 (US) for each working day beyond the Physical Completion Date that the Contractor achieves physical completion of the Work.

ARTICLE 5. CONTRACT PRICE.

The Owner shall pay the Contractor the amount(s) set forth in the Proposal (in United States dollars) for completion of the Work in accordance with the Contract Documents.

AGREEMENT – Continued

ARTICLE 6. CONTRACT DOCUMENTS.

The Contract Documents, which comprise the entire agreement between the owner and the Contractor concerning the Work, consists of the following:

- This Agreement;
- The Call for Bids;
- The Contractor's Proposal including the bid, bid schedule(s), information required of bidder, and all required certificates and affidavits;
- The performance bond and the labor and material payment bond;
- The Plans (or drawings) as listed in the index on sheet 1 of the Plans:
- The Special Provisions;
- WSDOT Standard Specifications for Road, Bridge and Municipal Construction, 2008 edition;
- Amendments;
- Change Orders and written Change directives issued after the effective date of this Agreement;
- City of Oak Harbor Standard Details;
- WSDOT Standard Plans;
- Affidavit of Industrial Insurance
- Certificate of Insurance
- Insurance Coverage Questionnaire
- Letter of Employment of Subcontractor
- Indemnification Addendum
- Appendices

There are no Contract Documents other than those listed in this Article 6. The Contract Documents may be amended only in writing by Change Order or Change Directive as provided in the Contract Documents.

ARTICLE 7. MISCELLANEOUS.

The Contractor specifically waives its immunity under applicable worker's compensation statues, including, but not limited to RCW Title 51, which is specifically acknowledged by the Contractor. _____ (Contractor's initials)

No assignment of any of the Contractor's rights under or interests in the Contract Documents, including but not limited to rights to payment, will be allowed without the prior written consent of the Owner. Unless specifically stated in a written consent to an assignment, no assignment will release or discharge the Contractor-assignor from any duty or responsibility under the Contract Documents.

The Contract Documents are binding upon the Owner and the Contractor, and their respective partners, successors, assigns and legal representatives.

ARTICLE 8. INDEMNIFICATION

The contractor shall defend indemnify and hold the City, its officers, officials, employees and volunteers harmless from any claims, injuries, damages, losses or suits including attorney fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115 then, in the event of liability for damages arising out of bodily injury to persons or damages to property caused by or resulting from the concurrent negligence of the Contractor and the City, its officers, officials, employees, and volunteers, the Contractor's liability hereunder shall be only to the extent of the Contractor's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Contractor's waiver of immunity under Industrial Insurance, Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties. The provisions of this section shall survive the expiration or termination of this agreement.

IN WITNESS WHEREOF, Owner and Contractor have caused this Agreement to be executed the day and year first above written.

CITY OF OAK HARBOR	**CONTRACTOR**
By_____	By_____
Date_____	Title_____
	Attest_____

Address for giving notices

_____

License No. _____

Agent for service of process:_____

A-4

City of Oak Harbor
City Council Agenda Bill

Bill No. CJA 51
Date: July 12, 2011
Subject: Safe Routes to School

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

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE
This agenda bill recommends rejecting all bids received for the Safe Routes to School Construction Project.

AUTHORITY
Council has authority under OHMC 2.320.040 to reject bids at its discretion.

SUMMARY STATEMENT
This project includes the installation of physical improvements such as pedestrian activated, solar powered in-roadway-warning light and warning sign systems, and sidewalk and curb ramp improvements to eight street crossings, as identified in the project plans.

At the June 7, 2011 City Council meeting, the City Council authorized staff to advertise for bids for the Safe Routes to School Project. Requests for bids were placed in the Whidbey News Times and the Daily Journal of Commerce. One bid was received from C. Johnson Construction in the amount of $639,000.

The engineer's estimate for the construction of the project was $412,000 with up to $310,925 coming from Oak Harbor School District through an interlocal reimbursement agreement and the remainder coming from the Transportation Improvement Fund 105.

As the single construction bid from C. Johnson Construction for the Safe Routes to School Project exceeded the engineer's estimate by $227,000, staff is recommending Council reject all bids.

Staff contacted the bidder to identify the reason for the discrepancy between the engineer's estimate and the bidder's cost estimate. It was indicated that the increased cost of the solar lighting materials was a primary reason for the discrepancy.

STANDING COMMITTEE REPORT
The item was discussed at the July 7, 2011, Public Works Standing Committee meeting.

RECOMMENDED ACTION
A motion to reject all bids for the Safe Routes to School Construction Project.

ATTACHMENTS
Bid Tabulation

MAYOR'S COMMENTS

SAFE ROUTES TO SCHOOL

Project No. ENG 07-02

C. Johnson Construction's Bid Tabulation

Crosswalk Improvements at the Intersection of:	Cost:
Loerland Drive & Roeder Drive	$81,000.00
SW Heller Street & SW 8th Avenue	$80,000.00
W Whidbey Avenue & Jib Street	$82,000.00
W Whidbey Avenue & Fairhaven Drive	$87,000.00
E Whidbey Avenue & NE Izett Street	$86,000.00
151 SE Midway Boulevard	$79,000.00
SE Regatta Drive & E Whidbey Avenue	$72,000.00
NE Regatta Drive & NE 5th Avenue	$72,000.00
Total Estimate:	**$639,000.00**
City of Oak Harbor Engineer's Estimate:	$412,000.00
Difference	$227,000.00

City of Oak Harbor
City Council Agenda Bill

Bill No. 8/A 5J
Date: July 12, 2011
Subject: SE Pioneer Way Project
Construction Agreement with Frontier

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

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

This agenda bill requests approval of the Construction Agreement with Frontier Communications Northwest for work associated with the relocation of overhead communication lines and conversion to an underground system.

AUTHORITY

The authority to enter into agreements for improvements or use of real property is granted to the City of Oak Harbor under RCW 35A.11.020.

SUMMARY STATEMENT

This Agreement establishes the respective responsibilities of Frontier Communications and the City of Oak Harbor relating to the conversion of Frontier's existing overhead system to an underground system.

The total estimated cost to the City to underground Frontier Communication facilities is $222,500, and includes design, materials, conduit installation, vaults, and wire. Of this total, the City has already paid a $5,000 deposit to Frontier for design engineering of the underground conversion. In addition, the City will receive a $36,784.77 credit for the cost of purchasing conduit and vaults that were included in the City's contract with Strider Construction. With these two deductions, the estimated net balance to be paid by the City to Frontier is 180,715.23. Upon completion of the conversion, final costs will be determined based on actual construction costs.

City staff have been working together for over a year on the effort to underground Frontier's facilities and are satisfied that the agreement, proposed costs, and schedule are consistent with the project schedule and are within the project funding levels previously approved by the

Council.

Justification: The City Council has determined the conversion to underground power and communications is desired as part of the Pioneer Way Street Improvements Project.

Amount of contract: The total estimated cost to the City to underground Frontier facilities is $222,500, minus a credit for $36,784.77 that is part of the City's contract with Strider Construction.

Funding: Resolution 10-16 and Resolution 9-26 outline the funding plan for the Pioneer Way Street Improvements Project and Table 2. In summary, the project is funded through a combination of REET Funds totaling $5,500,000; Island County Economic Development Grants totaling $1,000,000; Sewer Funds totaling $1,000,000; Storm Drain Funds totaling $650,000; and, Water Funds totaling $200,000. Funding for the utility relocation comes from these designated funds.

STANDING COMMITTEE REPORT

This item was presented to the Public Works Standing Committee on May 5, 2011 and the General Government Standing Committee on May 20, 2011.

RECOMMENDED ACTION

A motion authorizing the Mayor to execute the Construction Agreement with Frontier Communications for construction work associated with the relocation of overhead communication lines and conversion to an underground system.

ATTACHMENTS

Agreement with Frontier Communications Northwest Inc

MAYOR'S COMMENTS:

AGREEMENT BETWEEN
CITY OF OAK HARBOR AND FRONTIER COMMUNICATIONS NORTHWEST, INC.
Business District Improvement - Pioneer Way

THIS AGREEMENT is made and entered into this _____ day of _____, 2011, by and between CITY OF OAK HARBOR, a political subdivision of the State of Washington (hereafter "CITY"), and FRONTIER COMMUNICATIONS NORTHWEST, INC., a Washington corporation (hereafter "FRONTIER").

WHEREAS, the CITY'S Pioneer Way Business District Improvement (hereafter "PROJECT") is located along Pioneer Way; and

WHEREAS, the CITY is the lead agency for the PROJECT; and

WHEREAS, the CITY has entered into a contractual agreement with Strider Construction, Inc., Bellingham, Washington (the "Construction Contractor"), for construction services; and

WHEREAS, the CITY has determined to convert the existing overhead telecommunication distribution system to a comparable underground telecommunication distribution system, as more specifically described in the scope of work furnished to Frontier by the city; and

WHEREAS, Frontier is a public service company engaged in the sale and distribution of telecommunication services, and pursuant to rights from the CITY currently locates telecommunications facilities within the City of Oak Harbor; and

WHEREAS, the CITY has requested conversion of FRONTIER's existing overhead distribution system to a comparable underground telecommunication system as more specifically described herein, and that FRONTIER perform certain engineering designs service and otherwise work cooperatively with the CITY to develop a mutually acceptable PROJECT plan for the conversion project in accordance with and subject to the terms and conditions of this Agreement; and

WHEREAS, the CITY has requested under separate agreement that FRONTIER, working cooperatively with the CITY, perform certain engineering design functions necessary for the conversion, and the CITY has incorporated said designs into the project plans and specifications for the SE Pioneer Way Street Improvement project; and

WHEREAS, FRONTIER finds that it is in the best interest of the public for FRONTIER to work jointly with the CITY on the PROJECT and to include necessary items of work in the CITY'S construction contract proposed for this PROJECT; and

WHEREAS, the CITY finds that it is in the best interest of the public for the CITY to work jointly with FRONTIER to accomplish its road improvement project;

NOW, THEREFORE, it is mutually agreed as follows:

I. PURPOSE

The purpose of this Agreement is to provide for contracting of FRONTIER'S utility installation project within PROJECT. This Agreement will facilitate installation of FRONTIER'S utility facilities, to be located within CITY rights-of-way and/or easements held by the CITY in the PROJECT area, and to set forth the terms and conditions of the CITY'S engineering, inspection, and contract administration services.

II. DURATION OF AGREEMENT

This Agreement shall become effective immediately upon the execution of all parties and shall remain in effect until there has been acceptance of the work performed by FRONTIER, unless terminated sooner, as provided herein. It is anticipated that this PROJECT will be completed in its entirety by December 31, 2011 with a target for substantial completion of the CITY's work by its Contractor of September 2, 2011.

III. CITY'S RESPONSIBILITIES

A. The CITY will undertake a business district improvement project along Pioneer Way. The CITY reserves the right to determine not to undertake the PROJECT or to discontinue the PROJECT at any time. In the event that the CITY determines not to undertake the PROJECT, it shall provide written notice to FRONTIER of the same, which shall terminate this Agreement. In the event that the CITY determines to discontinue the PROJECT, the rights and responsibilities of each party upon such termination shall be as provided in Section VII below.

B. The CITY shall act as the lead agency on this PROJECT and will be responsible for compliance with the Local Agency Guidelines (LAG) under certification acceptance authority during the Design and Construction phases of the PROJECT. The CITY'S Project Manager shall act as the administrator of this cooperative undertaking.

C. The CITY will include FRONTIER'S plans and specifications for the installation of FRONTIER'S underground conduit and vault system, and other associated facilities, hereinafter referred to as "utility system" (work order number = 2260-8P0A0AS), with the CITY'S road improvement plans and specifications for the PROJECT. FRONTIER'S plans and specifications shall be consistent with the scope of work attached hereto as Exhibit "A" and by this reference made a part of this Agreement.

D. The CITY shall be responsible for the competitive bidding, award and administration of the construction PROJECT, and may enter into a contract with the successful bidder, administer the contract and make payments to the Contractor on behalf of the CITY and FRONTIER.

E. As required by State law, award of the bid shall be to the lowest responsible bidder submitting a responsive bid for the entire PROJECT which shall include the utility system work as a base bid item.

F. The CITY represents, warrants and covenants to Frontier as specified in EXHIBIT "B", hereto.

G. The CITY shall perform all inspections and acceptance of the construction work on behalf of the CITY and FRONTIER for conformance of the work with the PROJECT plans and specifications. Inspection of construction activities shall not constitute a guarantee or warranty of the adequacy of performance.

H. Daily Inspection reports completed by the CITY will be available in the construction site job trailer for daily inspection and copying by FRONTIER. The CITY will keep as-built record drawings for submission to FRONTIER at the completion of the PROJECT.

I. The CITY shall keep a reasonably itemized and detailed work record covering the cost of construction and consulting services performed during construction on behalf of FRONTIER pursuant to this Agreement.

J. The CITY shall provide FRONTIER a reproducible copy of the "as built" plan sheets showing its completed utilities, provided that construction of said utilities has been completed under the terms of this Agreement. The CITY will retain and file the original plan sheets.

K. The CITY reserves the right to review and reject plans and specifications for installation of utility facilities not in compliance with CITY standards or not in conformance with the CITY'S plans and specifications for the PROJECT. It is the CITY'S responsibility to ensure the proposed horizontal and vertical locations of FRONTIER'S installation do not conflict with the existing or proposed utilities and proposed PROJECT Improvement installations.

L. The CITY will provide all conduit, manholes, vaults and handholes and associated materials necessary for the conduit system designed by FRONTIER and incorporated into the project plans issued for bidding by the City of Oak Harbor.

IV. FRONTIER'S RESPONSIBILITIES

A. FRONTIER contract specifications for the utility system shall be set forth in the PROJECT bid documents.

B. FRONTIER shall provide the necessary engineering and design standards and specifications required for the CITY to incorporate the work into the PROJECT.

C. FRONTIER reserves the right to review and reject plans and specifications for installation of utility facilities not in compliance with FRONTIER'S design standards and

specifications. Ultimate responsibility for accuracy and completeness of the utility system design plans rests with FRONTIER.

D. FRONTIER shall provide the CITY with timeframes to include the Contractor's schedule for installing FRONTIER'S work. This information will be included in the construction contract used by the Contractor to develop its construction schedule.

E. The Contractor shall prepare a schedule of the work in accordance with the plans and specifications and for the CITY to review. FRONTIER shall review and provide comments within ten (10) days of receipt. If FRONTIER does not provide the CITY with comments within ten (10) days, the schedule shall be considered accepted by FRONTIER. FRONTIER shall complete its work in accordance with the Contractor's schedule.

F. FRONTIER shall cooperate with the CITY in facilitating utility installation and inspection assistance as detailed in Exhibit "A". FRONTIER may, if it desires, furnish an inspector on the PROJECT. All contact between said inspector and the CITY'S Contractor shall be through the CITY'S representative. FRONTIER'S inspector shall be on site during the verification and acceptance phase of work.

G. FRONTIER will provide all wiring, electronic components, manpower, materials, equipment and other appurtenances, not otherwise provided by the CITY pursuant to the terms of this Agreement.

H. FRONTIER shall, within fifteen (15) calendar days after receipt of written notification of completion of installation of the utility facilities, issue written notification of any deficiencies or issue written notification of acceptance. The CITY'S Contractor will correct the deficiencies. If, after the fifteen (15) day period, notification has not been received by the CITY, or on the first date on which FRONTIER puts any portion of the utility facilities into operation, whichever occurs first, the utility installation shall be considered complete and accepted by FRONTIER. Acceptance shall not affect any warranty rights of FRONTIER.

I. Upon acceptance by the CITY of the utility system, and once existing aerial-fed customers' new underground paths are created within public right of way or easements held by the City of Oak Harbor, FRONTIER will begin its aerial to underground conversion.

The underground conversion will require: (1) cable placement into the new duct system from end to end and to customers within the project limits that are being converted from aerial to underground; (2) cold splicing (new cable to new cable); (3) cut over (splicing) of the existing customers from the aerial plant into the new underground plan. FRONTIER anticipates the majority of these cut-overs to be accomplished in normal working hours but some conversions will require off hours work (night work). Upon successfully converting the customers from aerial to underground, FRONTIER shall remove aerial cable.

J. All FRONTIER work shall be completed within ninety (90) days of written notice from the CITY that the construction of the joint utility trench and all customers' underground paths within public right of way or easements held by the City of Oak Harbor are completed.

K. FRONTIER shall maintain any utility facilities constructed under this Agreement from the date of acceptance of the facilities by FRONTIER. The cost of any future improvements and/or maintenance, repairs, or corrections to any utility facilities covered under the terms of this Agreement shall be the exclusive responsibility of FRONTIER in accordance with this Agreement.

V. PAYMENT

A. All conversion costs associated with the relocation of overhead utilities owned by FRONTIER within public right of way or easements held by the City of Oak Harbor will be borne by the CITY.

B. A thirty percent (30%) deposit of the Adjusted City Conversion Cost, Exhibit "C", will be paid to FRONTIER prior to cables being ordered once the "in right of way" utility system is completed.

C. During the progress of the construction and for a period not less than six (6) years following completion of all records pertaining to the PROJECT and accounting and in the possession of either party shall be kept available for inspection and audit by the State and for public disclosure, and copies of all records, accounts, documents or other data pertaining to the PROJECT will be furnished upon request. If any litigation, claim, or audit is commenced, the records and accounts along with supporting documentation shall be retained until all litigation, claim or audit finding has been resolved even though such litigation, claim, or audit shall continue past the six (6) year retention period.

VI. HOLD HARMLESS AND INDEMNIFICATION

FRONTIER shall hold harmless, indemnify and defend the CITY, its officers, appointed and elected officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages and judgments of any nature whatsoever, including costs and attorney's fees in defense thereof, for injury, sickness, liability or death to persons or damage to property or business, caused by or arising out of FRONTIER'S negligent or intentional acts, errors or omissions in the performance of this Agreement and arising by reason of FRONTIER'S participation in this PROJECT. PROVIDED, that in the event of the concurrent negligence of the parties, FRONTIER'S obligations hereunder shall apply only to the extent of negligence of FRONTIER, its officers, officials, employees or agents.

The CITY shall hold harmless, indemnify and defend FRONTIER, its officers, appointed and elected officials, employees and agents, from and against any and all claims, actions, suits, liability, loss, expenses, damages and judgments of any nature whatsoever, including costs and attorney's fees in defense thereof, for injury, sickness, liability or death to persons or damage to property or business, caused by or arising out of the CITY'S negligent or intentional acts, errors

or omissions in the performance of this Agreement and arising by reason of the CITY participation in this PROJECT. PROVIDED FURTHER, that in the event of the concurrent negligence of the parties, the CITY'S obligations hereunder shall apply only to the extent of negligence of the CITY, its officers, officials, employees or agents.

VII. CHANGES TO THE SCOPE OF THE CONSTRUCTION WORK

A. The parties understand that during the course of construction of the PROJECT, there may be unforeseen conditions requiring immediate resolution during the construction phase of this Agreement such as construction disputes and claims, changed conditions and changes to the PROJECT. A modification, change order or extra work order affecting the cost of installing the utility system requires written approval by both the CITY and FRONTIER duly authorized representative of each party.

B. Where an unforeseen condition arises, the CITY will notify FRONTIER of the request for a contract modification, change order or extra work order. Upon receipt of such written notice, FRONTIER shall respond to the CITY within twenty-four (24) hours. If the amount of the requested change if Five Hundred Dollars ($500) or greater, a change order signed by duly authorized representatives of the CITY and FRONTIER must be secured prior to commencement of work. If a requested change of design or installation is greater than Five Hundred Dollars ($500), notice must be given to FRONTIER and acceptance to the notice must be secured by FRONTIER in writing, within five (5) calendar days.

C. Each party, in the event of a claim by the Construction Contractor, shall be responsible for its share of a claim filed by the Contractor arising out of that party's portion of the Scope of Work.

VIII. DISPUTE RESOLUTION

In the event the CITY and FRONTIER disagree over whether the Contractor has fulfilled his obligations under the contract, the CITY reserves the right to make the final decision as to the acceptability of the work.

If a dispute arises between FRONTIER and the CITY, both parties mutually agree that they will attempt to resolve the issues through mutual negotiation. In the event that the parties are not able to reach an agreement through such negotiation, the parties agree to engage in mediation in order to resolve the dispute. Mediation may be requested by either party, and shall be attempted prior to the institution of any lawsuit arising under the Agreement. The parties agree to share the costs of mediation equally.

This Agreement has been made pursuant to, and shall be construed according to the laws of the State of Washington. In the event that mediation is unsuccessful and either party finds it necessary to institute legal proceedings to enforce any provision of this Agreement, such proceedings may only be brought in the Superior Court of Island County, Washington. In the

event that a lawsuit is instituted to enforce any provision of this Agreement, the prevailing party shall be entitled to recover all costs of such a lawsuit, including reasonable attorney's fees.

IX. DISPOSITION OF ASSETS

All personal property acquired during the course of this PROJECT under the Exhibit "A" items that list "FRONTIER" shall be owned by FRONTIER. All other personal property acquired during the course of this PROJECT shall be owned by the CITY.

X. NOTICES

Unless otherwise directed in writing, notices, reports and payments shall be delivered to each party as follows:

For the CITY:

Attn: City Clerk
City of Oak Harbor
865 SE Barrington Drive
Oak Harbor, WA 98277

For FRONTIER:

Attn: Henry Van
Frontier Communications Northwest, Inc.
595 Pease Road
Burlington, WA 98233

With a copy to:

Associate General Counsel-West Region
Frontier Communications Corporation
9260 E. Stockton Blvd.
Elk Grove, CA 95758

Notices mailed by either party shall be deemed effective on the date mailed. Either party may change its address for receipt of reports, notices, or payments by giving the other written notice of not less than five (5) days prior to the effective date.

XI. CONFLICTS BETWEEN ATTACHMENTS AND TEXT

Should any conflicts exist between any attached exhibit or schedule and the text of this Agreement, the text shall prevail.

XII. ENTIRE AGREEMENT

These provisions represent the entire agreement of the parties and may not be modified or amended except as provided herein. Any understanding whether oral or written which is not incorporated herein, is expressly excluded.

IN WITNESS WHEREOF, the parties hereby have executed this Agreement as of the day and year first written above. The signatories below represent and warrant they possess the authority to execute this contract and bind their respective entities.

CITY OF OAK HARBOR

By_____
Jim Slowik, Mayor

Dated: _____

ATTEST:

_____
Connie Wheeler, City Clerk

Dated: _____

FRONTIER COMMUNICATIONS NORTHWEST INC.

APPROVED:

By_____
Brian Peterson, Vice President
West Region

Dated:_____

APPROVED AS TO FORM:

_____
Phyllis A. Whitten, Assoc. General Counsel
West Region

Dated:_____

EXHIBIT "A"

SCOPE OF WORK
PLANS AND SPECIFICATIONS

FRONTIER'S utility system element of the PROJECT consists of the installation of FRONTIER'S underground system. FRONTIER'S underground system will comprise a telecommunication system and a fiber optic system. In general this Contract includes the trenching, placing and restoration, for the installation of manholes and conduits as identified in the PROJECT Bid Documents Plans and Specifications. It is understood the general construction window for FRONTIER'S installation begins after the CITY'S Contractor has installed the path infrastructure including conduit, hand holes and manholes in the existing road right of way and all permanent sub-grade materials are in place. This includes grading and filling to reach the required subgrade horizontal and vertical controls as specified by the CITY'S "Plans and Specifications". It is further agreed FRONTIER'S installation is to be completed prior to CITY'S Contractor placing any permanent hard surface (i.e., Asphalt Treated Base [ATB], concrete, curb, sidewalk, etc) materials.

The Plans and Specifications compiled by FRONTIER are for the installation of FRONTIER'S utility system only. The only correlation between the CITY'S plans and FRONTIER'S is FRONTIER'S use of the Project Stationing with reference to Horizontal Controls. The CITY is responsible for actual Horizontal and Vertical controls in accordance to the "National Electrical Code Specifications (NECS) and the Washington State - "Standard Specifications for Road, Bridge and Municipal Construction" Manual.

The type of backfill material to be used for FRONTIER'S trench line and manhole installation will be determined by the CITY inspector.

FRONTIER will promptly order all materials necessary for the conversion described herein upon execution of this agreement. FRONTIER will provide verification via email or other means that materials have been ordered. FRONTIER may at its discretion phase ordering of materials to correspond with the phased construction.

EXHIBIT "B"

WARRANTY REGARDING UTILITY SYSTEM

(a) Contractor shall represent, warrant, and covenant to FRONTIER that:

(1) All work will be completed in strict accordance with the Plans and all other Contract Documents and in accordance with all applicable laws, codes, ordinances, orders, rules and regulations of local, state and federal governments and agencies and instrumentalities including, but not limited to, applicable wage and hour, safety and environmental laws, and all standards and regulations of appropriate regulatory commissions and similar agencies.

(2) All work performed by Contractor shall be performed (i) in a diligent, efficient and skillful manner, (ii) to the best of Contractor's ability and (iii) to the highest levels of performance available in the engineering and construction services industry.

(3) All materials furnished by Contractor (i) will be free from faults or defects of any kind and (ii) will be new and of good quality and will be fit for the purposes for which they are intended to be used. Upon payment to Contractor of the amounts due from FRONTIER under the applicable Contract for Work, valid title to such underground system, free and clear of all liens, security interests, encumbrances, claims or liabilities of any kind or character, will vest in FRONTIER.

(4) If within the Covered Period, defined below, any defect exists or arises, then, in each such case upon receipt of notice of such defect, Contractor will promptly cause such defect to be repaired or remedied at Contractor's sole cost and expense. If Contractor fails to commence immediate repairs, then FRONTIER shall have the right, without prejudice to any other rights or remedies available to it, to make such repairs and, at its option, offset the cost against any amounts owed or to be paid by FRONTIER or by the County on behalf of FRONTIER to Contractor or bill Contractor for the cost to make such repairs. FRONTIER shall also be entitled to proceed against Contractor to enforce any right or remedy at law or in equity. The term "Covered Period" means one year from the date of acceptance.

(b) All representations, warranties and covenants of Contractor shall continue for the term of this Contract and shall survive its termination.

(c) All representations, warranties and covenants of Contractor contained in this Exhibit shall be in addition to and not in limitation of any obligation imposed upon Contractor in the Contract Documents (including any special guarantees required by the specifications) or as otherwise prescribed by law.

EXHIBIT "C"
AERIAL TO UNDERGROUND CONVERSION
PIONEER WAY - WITHIN CITY RIGHT OF WAY
ESTIMATED PROJECT COSTS

City's Joint Trench Labor	$10,750.96
City Provided material (Duct, Vaults)	$26,033.81
City's Utility System Costs	$36,784.77
Frontier estimated material (Cable, closures, etc.)	$51,860.60
Frontier estimated placing cost	$44,210.44
Frontier estimated splicing/Cutover cost	$56,128.87
Frontier estimated removal cost	$11,230.32
Frontier estimated Engineering and Inspection cost	$22,285.00
Total Frontier cost	$185,715.23
Total estimated project cost	$222,500.00
City's initial Engineering deposit	-5,500.00
Adjusted City's Conversion Cost	$217,000.00
City's Utility System costs - credit	-36,784.77
30% payment per Section IV. "C"	-65,100.00
Final payment of City Conversion Costs (Payment to Frontier)	$115,115.23

City of Oak Harbor
City Council Agenda Bill

Bill No. CA 5K
Date: July 12, 2011
Subject: Excused Absence Request
Councilmember Rick Almberg

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 present and approve Councilmember Rick Almberg's excused absence requests for the August 3, 2011 and September 20, 2011 City Council meetings.

AUTHORITY

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

SUMMARY STATEMENT

Councilmember Almberg has submitted an excused absence request for the August 3, 2011 and September 20, 2011 City Council meetings.

STANDING COMMITTEE REPORT

N/A

RECOMMENDED ACTION

Approve Councilmember Almberg's excused absences for the August 3, 2011 and September 20, 2011 City Council meetings.

ATTACHMENTS

None

MAYOR'S COMMENTS

City of Oak Harbor
City Council Agenda Bill

Bill No. 11A 51
Date: July 1, 2011
Subject: **State Homeland Security Grant Agreement with Island County**

FROM: **Mark Soptich, Fire Chief** MS

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

The purpose of this agenda item is to consider approval of the attached agreement between the City of Oak Harbor and Island County. The agreement would authorize the city to receive $25,000 from the State Homeland Security Grant Program.

AUTHORITY

Oak Harbor Municipal Code 2.310.040 states:

2.310.040 Grants.

(1) Nothing in this chapter shall prevent the city from complying with the terms and conditions of any grant, gift or bequest which is otherwise consistent with law.

(2) The mayor or his/her designee is authorized to apply for grants in any amount and to execute grant contracts for grants of not more than $30,000. The mayor or his/her designee shall notify the city council periodically of such grant applications and grant contract approvals.

(3) Grant contracts in excess of $30,000 shall require council approval.

SUMMARY STATEMENT

Formalizing the City's Department of Emergency Services through the State of Washington, has made us eligible to apply for and receive funding from grants sources. The Department of Homeland Security (DHS), Office of Grants and Training, is one grant that provides funds to enhance the capability of state and local government to prevent, deter, respond to, and recover from incidents of terrorism. This grant is provided to nine Regional Homeland Security Districts (Regions) to address unique equipment, exercise, training, planning, and administrative needs of local emergency responders.

The grant is based on the city's population and totals $25,000.00 for the period of 1 August 2009 through 31 March 2012. This agreement is required with Island County and utilizes the vetting and reimbursement process to receive the funds.

These funds will make improvements in the city's Emergency Operations Center and a mobile command unit enhancing our ability to maintain interoperable communications during emergencies.

STANDING COMMITTEE REVIEW

This grant has been discussed at the Public Safety Standing Committee meeting.

RECOMMENDED ACTIONS

- Authorize the Mayor and the Director of Emergency Services to sign the agreement with Island County.

ATTACHMENTS

Sub recipient Agreement between Island County and the City of Oak Harbor State Homeland Security Grant Program.

MAYOR'S COMMENTS

Snohomish County
AMENDMENT

1. Contractor Name and Address:	2. CONTRACT NUMBER:	3. AMENDMENT NUMBER:
Island County - Department of Emergency Management P.O. Box 5000 Coupeville, WA 98239	**E10-206**	**B**
4. Contractor's Contact Person, phone number: **William E. Oakes, PE (360) 679-7331**	5. Region 1 STAFF CONTACT, NAME/TELEPHONE: **Tammy Jones, Region 1 Coordinator 425-388-5072**	
6. TIN or SSN: **91-6001321**	7. CATALOG OF FEDERAL DOMESTIC ASST. (CFDA) # **97.067**	8. FUNDING SOURCE NAME/AGREEMENT #: **2009 SS-T9-0015**

9. FUNDING AUTHORITY:
Department of Homeland Security (DHS), -Office of Grants & Training (OGT); **Washington State Military Department–Emergency Management Division** (EMD), and **Snohomish County - Department of Emergency Management** (County).

10. DESCRIPTION/JUSTIFICATION OF AMENDMENT, MODIFICATION, OR CHANGE ORDER:
The U.S. Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA) is providing funds to enhance the capability of state and local units of government to prevent, deter, respond to, and recover from catastrophic and/or terrorist events through the FFY 09 Homeland Security Grant - State Homeland Security Program (SHSP). The funding is being provided to address the unique exercise, training, planning, equipment, organization, and management and administration needs of emergency responders.

Snohomish County as the Region 1 lead contractor requested and received an extension to allow more time to meet the SHSP FFY 09 grant contract deliverables within Region 1 which includes Island County.

Amendment A extends the performance period for the SHSP FFY 09 grant to Island County. The overall SHSP FFY 09 award to Island County remains unchanged.

11. AMENDMENT TERMS AND CONDITIONS:

1. **Change** the contract expiration date from **October 31, 2011 to March 31, 2012.**
2. The contract amount of **$166,133 remains unchanged.**

No other changes are required. All other terms and conditions of the original contract and any previous amendments thereto remain in full force and effect.

Snohomish County and Contractor acknowledge and accept the terms of this contract amendment and attachments hereto and have executed this amendment as of the date and year written below. The rights and obligations of both parties to this contract are governed by this Contract Amendment Face Sheet and other documents incorporated herein by reference or attached and identified in the original contract document. A copy of this contract amendment shall be attached to and incorporated into the original agreement between the Department and the Contractor. Any reference in such contract to the "contract" shall mean "contract as amended."

IN WITNESS WHEREOF, the parties hereto have executed this amendment as of the date and year last written below:

FOR SNOHOMISH COUNTY:

Signature Date: 6/14/11
Aaron Reardon, Snohomish County Executive

Signature for 6/10/11
John Pennington, Director DEM Date

CONTRACT FORM ONLY
Reviewed and Approved: 8/30/10
Gordon W. Sivley Deputy Prosecuting Attorney

FOR THE CONTRACTOR:

Signature 6-6-11 Date
Angie Homola, Chair

Signature 6-6-11 Date
Helen Price Johnson, Member

Signature 6-6-11 Date
Kelly Emerson, Member

Board of County Commissioners
Island County, Washington

SUBRECIPIENT AGREEMENT
BETWEEN ISLAND COUNTY AND THE CITY OF OAK HARBOR
STATE HOMELAND SECURITY GRANT PROGRAM

This subrecipient agreement is entered into by Island County, a political subdivision of the State of Washington, and the City of Oak Harbor (City), a municipal corporation, to fulfill the terms of the State Homeland Security Grant Program agreement between Snohomish County and Island County (SHSGP Grant).

A. The period of this subrecipient agreement is the same as the time period of the SHSGP Grant, August 1, 2009 through 31 March 2012.

B. As subrecipient of the SHSGP Grant, the City will:
1. Comply with all the terms and conditions with which Island County must comply under the attached SHSGP Grant attached hereto marked Attachment "A"
2. Request approval of the use of the SHSGP Grant funds for up to $25,000.00 for approved equipment, through Bill Oakes, Director, Island County Department of Emergency Management; and
3. Submit the City's pay vouchers for approved use of the SHSGP Grant funds to Bill Oakes, Director, Island County Department of Emergency Management, no later than October 22, 2012.

C. Island County will:
1. Process the City's request or requests for approval of the use of the SHSGP Grant funds for training exercises and equipment;
2. Process the City's pay vouchers and submit them to Snohomish County for reimbursement; and
3. Reimburse the City the amount of funds provided by Snohomish County from the SHSGP Grant for the City's approved training exercises and equipment.

D. Each party to this agreement shall assume the risk of, be liable for, and pay all damages, losses, costs and expenses caused by its officers, officials, and employees arising out of any duty performed, or not performed, while acting in good faith within the scope of its responsibilities of this agreement.

City of Oak Harbor

By:_____ _____
Jim Slowik, Mayor Date

_____ _____
Mark Soptich, Director Date
Oak Harbor Emergency Services

Board of County Commissioners
Island County, Washington

By:_____ _____
Angie Homola, Chair Date

Snohomish County
AMENDMENT

1. Contractor Name and Address:	2. CONTRACT NUMBER:	3. AMENDMENT NUMBER:
Island County - **Department of Emergency Management** **P.O. Box 5000** **Coupeville, WA 98239**	**E10-206**	**A**

4. Contractor's Contact Person, phone number:	5. Region 1 STAFF CONTACT, NAME/TELEPHONE:
Dave Hollett, (360) 679-7370	**Tammy Jones, Region 1 Coordinator 425-388-5072**

6. TIN or SSN:	7. CATALOG OF FEDERAL DOMESTIC ASST. (CFDA) #	8. FUNDING SOURCE NAME/AGREEMENT #:
91-6001321	**97.067**	**2009-SS-T9-0015**

9. FUNDING AUTHORITY:
Department of Homeland Security (DHS), -Office of Grants & Training (OGT); **Washington State Military Department–Emergency Management Division** (EMD), and **Snohomish County - Department of Emergency Management** (County).

10. DESCRIPTION/JUSTIFICATION OF AMENDMENT, MODIFICATION, OR CHANGE ORDER:
The U.S. Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA) is providing funds to enhance the capability of state and local units of government to prevent, deter, respond to, and recover from catastrophic and/or terrorist events through the FFY 09 Homeland Security Grant - State Homeland Security Program (SHSP). The funding is being provided to address the unique exercise, training, planning, equipment, organization, and management and administration needs of emergency responders.

Amendment A reallocates the SHSP FFY 09 budget for Island County. The overall SHSP FFY 09 award to Island County remains unchanged at $166,133.

11. AMENDMENT TERMS AND CONDITIONS:

1. **Replace** the Budget Sheet, Exhibit C with the attached "Budget Sheet, Exhibit C – Amendment A"
2. **No change** the contract expiration date of **October 31, 2011.**
3. **No change** the overall contract amount of **$166,133**.

No other changes are required. All other terms and conditions of the original contract and any previous amendments thereto remain in full force and effect.

Snohomish County and Contractor acknowledge and accept the terms of this contract amendment and attachments hereto and have executed this amendment as of the date and year written below. The rights and obligations of both parties to this contract are governed by this Contract Amendment Face Sheet and other documents incorporated herein by reference or attached and identified in the original contract document. A copy of this contract amendment shall be attached to and incorporated into the original agreement between the Department and the Contractor. Any reference in such contract to the "contract" shall mean "contract as amended."

IN WITNESS WHEREOF, the parties hereto have executed this amendment as of the date and year last written below:

FOR SNOHOMISH COUNTY:

Signature for Date 11/5/10
Aaron Reardon, Snohomish County Executive

Signature for Date 10/27/10
John Pennington, Director DEM

CONTRACT FORM ONLY
Reviewed and Approved: 8/30/10
Gordon W. Sivley Deputy Prosecuting Attorney

FOR THE CONTRACTOR:

Signature Date 10-11-10
Helen Price Johnson, Chair

Signature Date 10-11-10
Angie Homola, Member

Signature Date 10-11-10
John Dean, Member
Board of Island County Commissioners

Island County - DEM
BUDGET SHEET
FFY 2009 State Homeland Security Program

PLANNING			
	Salaries & Benefits		
	Consultants/Sub-Contracting	$	41,533
	Goods & Services	$	2,000
	Travel & Per Diem		
	Total	$	43,533
TRAINING			
	Salaries & Benefits	$	-
	Overtime		
	Consultants/Sub-Contracting	$	-
	Goods & Services	$	1,067
	Travel & Per Diem	$	-
	Total	$	1,067
EXERCISE	Salaries & Benefits	$	-
	Overtime	$	5,000
	Consultants/Sub-Contracting	$	-
	Goods & Services	$	-
	Travel & Per Diem	$	-
	Total	$	5,000
MANAGEMENT & ADMINISTRATION			
	Goods & Services	$	-
	Travel & Per Diem	$	-
	Pass Thru	$	-
	Total	$	-
EQUIPMENT		$	91,533
	Pass Thru	$	25,000
	Total	$	116,533
TOTAL BUDGET		$	166,133

1. Expenditures may only occur within the categories and sub-categories listed above. However, cumulative changes of up to 10% of the total contract award can be made without prior approval from the County (unless otherwise restricted). Changes that exceed 10% will require the Contractor submit a budget change request to the County for approval.
2. Salaries & Benefits are restricted, and will be limited to meet the Region 1 approved personnel cap.
3. Federal grant program requirements affirm that federal funds will be used to supplement existing funds, and will **not replace (supplant)** funds that have been appropriated for the same purpose.
4. Management and Administration (M&A) expenditures are restriced. M&A reimbursement must be approved by the County in writing.

S HOMISH COUNTY CONTRACT FACE SHE

1. Contractor Name and Address:	2. Contract Amount:	3. Contract Number
Island County - Department of Emergency Management P.O. Box 5000 Coupeville, WA 98239	**$ 166,133**	**E10-206**
4. Contractor's Contact Person, phone number:	5. Contract Start Date:	6. Contract End Date:
Dave Hollett, (360) 679-7370	**August 1, 2009**	**October 31, 2011**
7. County's Regional Coordinator /phone number:	8. DUNS #:	9. UBI # (state revenue):
Tammy Jones, (425) 388-5072	**193740040**	**313-014-461**

10. Funding Authority:
Snohomish County (County), **Washington State Military Department** (Department) and the **U.S. Department of Homeland Security** (DHS)

11. Funding Source Agreement #:	12. Program Index # & OBJ/SUB-OJ:	13. CFDA # & Title:	14. TIN or SSN:
2009-SS-T9-0015	**N/A**	**97.067 SHSP**	**91-6001321**

15. Service Districts:	16. Service Area by County(ies):	17. Women/Minority-Owned, State Certified?:
(BY LEGISLATIVE DISTRICT) 10 (BY CONGRESSIONAL DISTRICT): 2	**Island County**	X N/A ☐ NO ☐ YES, OMWBE #_____

18. Contract Classification:	19. Contract Type (check all that apply):
☐ Personal Services o Client Services X Public/Local Gov't ☐ Collaborative Research ☐ A/E ☐ Other_____	X Contract X Grant ☐ Agreement X Intergovernmental (RCW 39.34) ☐ Interagency
20. Contractor Selection Process:	**21. Contractor Type (check all that apply)**
X "To all who apply & qualify" ☐ Competitive Bidding ☐ Sole Source ☐ A/E RCW ☐ N/A ☐ Filed w/OFM? ☐ Advertised? ☐ YES ☐NO _____	☐ Private Organization/Individual ☐ For-Profit X Public Organization/Jurisdiction X Non-Profit ☐ VENDOR X SUBRECIPIENT ☐ OTHER

22. BRIEF DESCRIPTION:
The U.S. Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA) is providing funds to enhance the capability of state and local units of government to prevent, deter, respond to, and recover from catastrophic and/or terrorist events through the FFY09 Homeland Security Grant, State Homeland Security Program. This funding is being provided to address the unique exercise, training, planning, equipment, organization, and management and administration needs of emergency responders.

The County and Contractor acknowledge and accept the terms of this contract and attachments hereto and have executed this contract as of the date and year written below. This contract consists of the following: Contract Face Sheet; Special Terms and Conditions; Exhibit A, General Terms and Conditions; Exhibit B, Statement of Work; Exhibit C, Budget; and Exhibit D, Bi-Annual Progress Report which govern the rights and obligations of both parties to this contract.

In the event of an inconsistency in this contract, unless otherwise provided herein, the inconsistency shall be resolved by giving precedence in the following order:

(a) **Applicable Federal and State Statutes and Regulations**
(b) **Statement of Work**
(c) **Special Terms and Conditions**
(d) **General Terms and Conditions, and if attached,**
(e) **Any other provisions of the contract incorporated by reference.**

This contract contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this contract shall be deemed to exist or to bind any of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have executed this contract this 19 day of APRIL, 2010.

FOR THE COUNTY:

Signature — Date
Aaron Reardon, Snohomish County Executive

PETER B. CAMP
Executive Director
5/14/10

Signature — Date
John Pennington, Director Snohomish County DEM

CONTRACT FORM ONLY
Reviewed and Approved:
Gordon W. Sivley
Deputy Prosecuting Attorney
3/15/10
Date

FOR THE CONTRACTOR:

Signature — Date
Helen Price Johnson, Chair

Signature — Date
Angie Homola, Commissioner

Signature — Date
John Dean, Commissioner
Board of Island County Commissioners

SPECIAL TERMS AND CONDITIONS

ARTICLE I -- COMPENSATION SCHEDULE:
This is a fixed price, reimbursement contract. Within the total contract amount, travel, subcontracts, salaries and wages, benefits, printing, equipment, and other goods and services or other budget categories will be reimbursed on an actual cost basis unless otherwise provided in this contract. Any travel or subsistence reimbursement allowed under the contract shall be paid in accordance with rates set pursuant to RCW 43.03.050 and RCW 43.03.060 as now existing or amended and in agreement with federal rates. Original receipts and/or backup documentation for any approved budget line items including travel related expenses that are authorized under this contract must be maintained by the Contractor and be made available upon request by the County.

Cumulative changes to budget categories in excess of 10% of the contract award will not be reimbursed without the prior written authorization of the County. Budget categories are as specified or defined in Exhibit C, the budget sheet of the contract.

ARTICLE II -- REPORTS:
In addition to the reports as may be required elsewhere in this contract, the Contractor shall prepare and submit the following reports to the County's Key Personnel:

Financial	#/Copies	Due Date
Invoices	1	**Within 30 days** after the end of the period in which the work was performed.

Invoices must be submitted no more often than monthly, but at least quarterly. Failure to submit invoices in a timely manner may cause the County to hold all requests for equipment approval until invoices are submitted.

Final Invoice (shall not exceed overall contract amount, unless approved in writing by County's Key Personnel)	1	**No later than 30 days** following the contract end date

Technical	#/Copies	Due Date
Bi-Annual Progress Report	**Electronic**	**January 10 and July 10,** of each year of the contract period
Close Out Report	**Electronic**	**No later than 30 days** following the contract end date
NIMS Compliance Progress Reports	**Electronic**	**September 30** of each year of the contract performance period

Failure to meet all of the reporting and invoicing deadlines will prohibit the Contractor from being reimbursed and will prevent vetting of equipment requests while contract requirements are outstanding.

All contract work must end on the contract end date, including receipt of supplies and equipment, however the Contractor has up to **30** days after the contract end date to submit all final reports, invoices and/or deliverables.

The Bi-Annual Progress Report and the Close-out Reports will be submitted electronically to the County utilizing the State EMD reporting template for the Region-wide submission to the Department.

ARTICLE III -- KEY PERSONNEL:
The individuals listed below shall be considered key personnel. Each party must notify the other of any substitution in writing.

COUNTY:	CONTRACTOR:
Tammy Jones, Region 1 Coordinator	Dave Hollett, Director Island Co. DEM
Bill Ekse, Region 1/UASI Coordinator	

ARTICLE IV -- ADMINISTRATIVE REQUIREMENTS:

The Contractor shall comply with all financial and procurement guidance, including competitive processes and other procurement requirements, to include but not limited to: Office of Management and Budget (OMB) Circulars, A-87 (Cost Principles for State, local and Indian Tribal Governments), A-102 (Grants and Cooperative Agreements with State and Local Governments), A-122 (Cost Principles for Non-Profit Organizations), A-133 (Audits of States, Local Governments, and Non-Profit Organizations), The Federal Emergency Management Agency's codified regulations, 44 Code of Federal Regulations (CFR), and the U.S. Department of Homeland Security's Financial Management Guide. Local and state procurement and contracting regulations take precedence over these requirements when local and state regulations are more stringent.

ARTICLE V -- ADDITIONAL SPECIAL CONDITIONS AND MODIFICATION TO GENERAL CONDITIONS:

1. Funds are provided by the U.S. Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA) solely for the purpose of enhancing the capability of state and local units of government to prepare for, prevent, deter, respond to, and recover from catastrophic incidents resulting from man-made and natural events. The Contractor shall use the funds to perform tasks as described in the Statement of Work and Budget portions of this contract.
2. The Contractor agrees that to receive any federal preparedness funding, all Environmental and Historical Protection (EHP) Program compliance requirements outlined in applicable guidance must be met. The Contractor is advised that all projects that involve disturbing earth, communication towers, physical security enhancements, new construction, renovation, and modifications to buildings and structures that are 50 years old or older require EHP review. All other projects, including training and exercise activities, must be evaluated to determine impact. If impact is identified they must also go through an EHP review.
3. The Contractor agrees that to receive any federal preparedness funding, all National Incident Management System (NIMS) compliance requirements outlined in applicable guidance must be met.
4. Grant funds may not be used to replace or supplant existing funding.
5. The Contractor will provide a match of $0 of non-federal origin.
6. The Contractor acknowledges that since this contract involves federal funding, the period of performance described herein will likely begin prior to the availability of appropriated federal funds. The Contractor agrees that it will not hold the Department, the State of Washington, or the United States liable for any damages, claim for reimbursement, or any type of payment whatsoever for services performed under this contract prior to distribution of appropriated federal funds.

   The Contractor agrees that it will not hold the Department, the State of Washington, or the United States liable for any damages, claim for reimbursement or any type of payment if federal funds are not appropriated or are not appropriated in a particular amount.

ARTICLE VI – PROCUREMENT AND FINANCIAL MANAGEMENT:

1. All sole source contracts over $100,000 must be reviewed and approved by the County prior to execution of a contract. This requirement must be passed on to all of the Contractor's subcontractors, at which point the Contractor will be responsible for reviewing and approving their subcontractors' sole source justifications.
2. All contracts with individual consultants that are not competitively bid, and where the consultant will be charging an excess of $450 per day (excluding travel and subsistence) must be approved by the County before the contract is executed. This requirement must be passed on to all of the Contractor's subcontractors, at which point the Contractor will be responsible for reviewing and approving their subcontractors' contract.
3. No costs will be reimbursed in advance of their being incurred by the Contractor.
4. No costs will be reimbursed until the items have been received by the Contractor and invoiced by the vendor.
5. Each A-19 will be accompanied by a spreadsheet detailing the expenditures. Copies of supporting financial documents and invoices must be provided by the Contractor prior to reimbursement (including EHP reviews if applicable). Originals must be made available upon request to the County, Department, and local, state, or federal auditors.
6. Requests for reimbursement of equipment purchases must include a copy of the vendor's invoice and

packing slip or a statement **signed** and **dated** by the Contractor's authorized representative that states "all items invoiced have been received in good working order, are operational, and have been inventoried according to contract and local procurement requirements".

7. No travel or subsistence costs, including lodging and meals, reimbursed with federal funds may exceed federal maximum rates which can be found at http://www.gsa.gov.

ARTICLE VII – EQUIPMENT MANAGEMENT:

1. The Contractor or a Subcontractor shall submit all proposed equipment purchases to the County for submission to the Committee on Homeland Security, Subcommittee on Equipment to ensure that the requested equipment is on the Authorized Equipment List, is aligned with the statewide equipment purchasing strategy, and meets all statewide interoperability and standardization requirements. No reimbursement for equipment costs will occur until the appropriate approvals have been obtained.
2. The Contractor or Subcontractor shall ensure full compliance with FEMA's Environmental and Historic Preservation (EHP) Program requirements as outlined in the applicable grant guidance.
3. All equipment purchased under this contract, by the Contractor or a subcontractor, will be recorded and maintained in the Contractor's equipment inventory system, unless specific de-obligated funds are contracted directly between a county, or other entity, and the State, in which case the contracted county maintains the equipment records.
4. Upon successful completion of the terms of this contract, all equipment purchased through this contract will be owned by the Contractor, or a recognized subcontractor/subgrantee for which a contract, subgrant agreement, or other means of legal transfer of ownership is in place.
5. The Contractor, or a recognized subcontractor/subgrantee, shall be responsible for any and all operation and maintenance expenses and for the safe operation of their equipment including all questions of liability.
6. The Contractor shall maintain equipment records that include: a description of the equipment; the manufacturer's serial number, model number, or other identification number; the source of the equipment, including the Catalogue of Federal Domestic Assistance (CFDA) number; who holds title; the acquisition date; the cost of the equipment and the percentage of Federal participation in the cost; the location, use and condition of the equipment at the date the information was reported; and disposition data including the date of disposal and sale price of the equipment.
7. Records for equipment shall be retained by the Contractor for a period of six years from the date of the disposition, replacement or transfer. If any litigation, claim, or audit is started before the expiration of the six year period, the records shall be retained by the Contractor until all litigations, claims, or audit findings involving the records have been resolved.
8. For the purpose of inventory and disposal of equipment purchased under this contract the 44 CFR Section 13.3 definition of equipment will be used. It defines equipment as a tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. This definition will be used for equipment purchased with contract funds, unless local or state regulations are more restrictive.
9. The Contractor shall take a physical inventory of the equipment and reconcile the results with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the records shall be investigated by the Contractor to determine the cause of the difference. The Contractor shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.
10. The Contractor shall develop a control system to ensure adequate safeguards to prevent loss, damage, unauthorized use and theft of equipment, to include small and attractive items. Any loss, damage or theft shall be investigated and a report generated.
11. The Contractor will develop adequate maintenance procedures to keep the equipment in good condition.
12. If the Contractor is authorized or required to sell the equipment, proper sales procedures must be established to ensure the highest possible return.
13. When original or replacement equipment is no longer needed for the original project or program or for other activities currently or previously supported by a Federal agency, disposition of the equipment will be made as follows:

a. Items of equipment with a current per-unit fair market value of less than $5,000 may be retained, sold or otherwise disposed of by the Contractor with no further obligation to the awarding agency.
b. Items of equipment with a current per-unit fair market value of more than $5,000 may be retained or sold and the Contractor shall compensate the Federal-sponsoring agency for its share.

14. Equipment purchased with funds from DHS grant programs should be marked with "Purchased with funds provided by the U.S. Department of Homeland Security" whenever possible.
15. As subgrantees of federal funds, the Contractor must pass on equipment management requirements that meet or exceed the requirements outlined above for all subcontractors, consultants, and subgrantees who receive pass-through funding from this contract.

ARTICLE VIII – SUBRECIPIENT MONITORING

The County will monitor the activities and equipment acquisition of the Contractor from award to closeout and for the life of equipment purchased under this contract. The goal of the County's monitoring activities will be to ensure that agencies receiving federal pass-through funds are in compliance with federal and state audit requirements, federal grant guidance, applicable federal and state financial regulations.

Monitoring activities may include:

- review of performance reports and documentation of contract deliverables completion;
- documentation of phone calls, meetings, e-mails and correspondence;
- review of reimbursement requests to ensure allowablity and consistency with contract budget and contract deliverables;
- observation and documentation of contract related activities, such as planning, exercises, training, funded events and equipment demonstrations;
- on-site visits to review equipment records and inventories, verify source documentation for reimbursement requests and performance reports and verify completion of deliverables.

As sub-grantees of federal funds, the Contractor is required to meet or exceed the monitoring activities, as outlined above, for all sub-contractors, consultants, and sub-grantees who receive pass-through funding from this contract.

GENERAL TERMS AND CONDITIONS

1. **DEFINITIONS**

As used throughout this contract, the following terms shall have the meaning set forth below:

a. **"Department"** shall mean the Washington Military Department, as a state agency, any division, section, office, unit or other entity of the Department, or any of the officers or other officials lawfully representing that Department.

b. **"County"** shall mean Snohomish County, Washington, a political subdivision of the State of Washington, acting as the lead agency for Region One. Region One consists of Island, San Juan, Skagit, Snohomish and Whatcom Counties, including the federal recognized tribes within those counties.

c. **"Contractor"** shall mean that firm, organization, group, individual, or other entity performing services under this contract, and shall include all employees of the Contractor. It shall include any subcontractor retained by the prime Contractor as permitted under the terms of this contract. "Contractor" shall be further defined as one or the other of the following and so indicated on face sheet of the contract.

1) "***Subrecipient***" shall mean a contractor that operates a federal or state assistance program for which it receives federal funds and which has the authority to determine both the services rendered and disposition of program funds.

2) "***Vendor***" shall mean a contractor that agrees to provide the amount and kind of service or activity requested by the Department and that agrees to provide goods or services to be utilized by the Department.

d. **"Subcontractor"** shall mean one, not in the employment of the Contractor, who is performing all or part of those services under this contract under a separate contract with the Contractor. The terms "subcontractor" and "subcontractors" mean subcontractor(s) in any tier.

e. **"Recipient"**– a nonfederal entity that expends federal awards received directly from a federal awarding agency to carry out a federal program.

f. **"Pass-Through Entity"** means the Washington State Military Department as it is applied to this contract. As found in SAAM 50.30.30 – "A nonfederal entity that provides a federal award to a subrecipient to carry out a federal program."

g. **"Nonfederal Entity"** is defined as a state local government or nonprofit organization (as defined in federal Circular A-133).

h. **"Cognizant State Agency"** shall mean a state agency that has assumed the responsibility of implementing single audit requirements and coordinating audit follow-up for a particular grantee by virtue of providing the majority of federal assistance. If funds are received from more than one state agency, the cognizant state agency shall be the agency who contributes the largest portion of federal financial assistance to the subrecipient unless the designation has been reassigned to a different state agency by mutual agreement.

i. **"Federal Financial Assistance"** – Assistance that nonfederal entities receive or administer in the form of grants, loans, loan guarantees, property (including donated surplus property), cooperative agreements, interest subsidies, insurance, food commodities, direct appropriations or other assistance. It does not include amounts received for provision of vendor services to federal agencies or reimbursement for services rendered directly to individuals.

j "**Grant**" - For the purposes herein, the term "grant" may be used to mean "contracts" or "grants" or "agreements".

k. "CFDA Number" – The five-digit number assigned to a federal assistance program in the federal Catalog of Federal Domestic Assistance (CFDA) or, in the absence of a catalog defined number, the number defined by instructions from the federal audit clearinghouse.

l. "CFR" – Code of Federal Regulations

m. "OMB" – Office of Management and Budget

n. "RCW" - Revised Code of Washington

o "WAC" - Washington Administrative Code.

2. **SUBRECIPIENT MONITORING**

a. The County and the Department, as a Recipient and/or Pass-Through Entity, receive federal financial assistance under federal programs and are charged with maintaining compliance with federal and state laws and regulations regarding the monitoring, and documentation of subrecipient grant activities using federal financial assistance. Management and implementation guidelines for the federal programs ensure compliance with statutes, grant guidelines, the sub-award agreement, Office of Management and Budget (OMB) circulars (including OMB Circular A-133), subrecipient audits, and other guidance found in the Federal Register. The Department shall adhere to its Subrecipient Monitoring Policy (Finance Policy 02-006-06) and the Subrecipient Monitoring Procedures (Finance Procedure 02-006-06).

b. The Contractor shall perform under the terms of the contract and the County has responsibility for reasonable and necessary monitoring of the Contractor's performance. The County and the Department shall conduct contract monitoring activities on a regular basis. Monitoring is defined as any planned, ongoing, or periodic activity that measures and ensures contractor compliance with the terms, conditions, and requirements of a contract.

Monitoring involves prudent collection of information about Contractor operations and is not limited to site visits or the completion of formal reviews. Monitoring may include periodic Contractor reporting to the County, County review of audit reports, invoice reviews, onsite reviews and observations, and surveys. Adequate documentation is essential for effective contract monitoring and will include copies of letters, meeting notes, and records of phone conversations as evidence that conscientious monitoring has occurred during the period of the contract. Subrecipient monitoring will occur throughout the year rather than relying solely on a once-a-year audit. The Contractor agrees to cooperate with all monitoring activities and to comply with reporting requirements.

The County and Department as the Recipient and/or Pass-Through Entity will conduct on-site visits as appropriate and required by contract for "for-profit" subrecipients, since the A-133 Single Audit does not apply to "for-profit" organizations.

3. **RECORDS, MONITORING AND AUDIT ACCESS**

a. The Contractor shall cooperate with and fully participate in all monitoring or evaluation activities that are pertinent to this contract.

b. Access to public records-The Contractor acknowledges that the County is subject to the Public Records Act, Chapter 42.56 RCW, and that records prepared, owned, used or retained by the County relating to the conduct of government or the performance of any governmental or proprietary function are available for public inspection and copying, except as exempt under RCW 42.56 or other statute which exempts or prohibits disclosure of specific information or records.

c. The Contractor shall maintain all books, records, documents, data and other evidence relating to this contract and the provision of any materials, supplies, services and/or equipment under this contract herein, including, but not limited to, records of accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this contract. At no additional cost, these records, including materials generated under the contract, shall be subject at all reasonable times to inspection, review and audit by personnel duly authorized by the County, the Department, the Washington State Auditor's Office, and federal officials so authorized by law, rule, regulation, or contract. The Contractor will retain all books, records, documents, and other materials relevant to this contract and make them available for inspection, review or audit for six (6) years from the end date of this contract, date of final payment or conclusion of services performed under this contract, whichever is later. If any litigation, claim or audit is started before the expiration of the six (6) year period, the records shall be retained until final resolution of all litigation, claims, or audit findings involving the records.

d. Contractor shall provide right of access to its facilities and records to the County, the Department and any other authorized agent or official of the state of Washington or the federal government, at all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.

4. **SINGLE AUDIT ACT REQUIREMENTS (INCLUDING ALL AMENDMENTS)**

Non-federal entities as subrecipients that expend **$500,000** or more in one fiscal year of federal funds from all sources, direct and indirect, are required to have a single or a program-specific audit conducted in accordance with the Office of Management and Budget (OMB) Circular A-133-Audits of States, Local Governments, and Non-Profit Organizations (revised June 27, 2003, effective for fiscal years ending after December 31, 2003). Non-federal entities that spend less than **$500,000** a year in federal awards are exempt from federal audit requirements for that year, except as noted in Circular No. A-133. Circular A-133 is available on the OMB Home Page at http://www.omb.gov and then select "Grants Management" followed by "Circulars".

Contractors required to have an audit must ensure the audit is performed in accordance with Generally Accepted Auditing Standards (GAAS) as found in the Government Auditing Standards (the Revised Yellow Book) developed by the Comptroller General and the OMB Compliance Supplement. The Contractor has the responsibility of notifying the Washington State Auditor's Office and requesting an audit. Costs of the audit may be an allowable grant expenditure.

The Contractor shall maintain auditable records and accounts so as to facilitate the audit requirement and shall ensure that any subcontractors also maintain auditable records.

The Contractor is responsible for any audit exceptions incurred by its own organization or that of its subcontractors. Responses to any unresolved management findings and disallowed or questioned costs shall be included with the audit report. The Contractor must respond to County or Department requests for information or corrective action concerning audit issues or findings within 30 days of the date of request. The County and the Department reserve the right to recover from the Contractor all disallowed costs resulting from the audit.

Once the single audit has been completed, the Contractor must send a full copy of the audit to the County and a letter stating there were no findings, or if there were findings, the letter should provide a list of the findings. The Contractor must send the audit and the letter no later than nine (9) months after the end of the Contractor's fiscal year(s) to:

Snohomish County - Department of Emergency Management
Attn: Homeland Security -Regional Coordinator
3509 109th St. SW
Everett, WA 98204

In addition to sending a copy of the audit, the Contractor must include a corrective action plan for any audit findings and a copy of the management letter if one was received.

The Contractor shall include the above audit requirements in any subcontracts.

5. **RECAPTURE PROVISIONS**

In the event that the Contractor fails to expend funds under this contract in accordance with applicable state and federal laws and/or the provisions of this contract, the County reserves the right to recapture funds in an amount equivalent to the extent of the noncompliance in addition to any other remedies available at law or in equity.

Such right of recapture shall exist for a period not to exceed six (6) years following contract termination or audit resolution, whichever is later. Repayment by the Contractor of funds under this recapture provision shall occur within 30 days of demand. In the event that the County or the Department may be required to institute legal proceedings to enforce the recapture provision the County or the Department shall be entitled to recover its costs thereof, including reasonable attorney's fees, from the Contractor.

6. **COMPLIANCE WITH APPLICABLE LAW**

The Contractor and all subcontractors shall comply with all applicable federal, state, tribal government, and local laws, regulations, and policies.

This obligation includes, but is not limited to, compliance with Ethics in Public Service (RCW 42.52); Covenant Against Contingent Fees (48 C.F.R. § 52.203-5); Public Records Act (RCW 42.56); Drug-Free Workplace Act of 1988 (41 U.S.C. § 701 et seq. and 15 C.F.R. Part 29); Lobbying Restrictions (31 U.S.C. § 1352 and 15 C.F.R. Part 28); and safety and health regulations. The County and the Department are not responsible for advising the Contractor about, or determining the Contractor's compliance with, applicable laws, regulations and policies.

In the event of the Contractor's or a subcontractor's noncompliance or refusal to comply with any applicable law, regulation or policy, the County may rescind, cancel, or terminate the contract in whole or in part. The Contractor is responsible for any and all costs or liability arising from the Contractor's failure to comply with applicable law, regulation or policy.

7. **NONDISCRIMINATION**

During the performance of this contract, the Contractor shall comply with all federal and state nondiscrimination statutes and regulations. These requirements include, but are not limited to:

a. Nondiscrimination in Employment: The Contractor shall not discriminate against any employee or applicant for employment because of race, color, sex, sexual orientation, religion, national origin, creed, marital status, age, Vietnam era or disabled veterans status, or the presence of any sensory, mental, or physical handicap. Such action shall include, but not be limited to, the following: Employment, upgrading, demotion, or transfer, recruitment or recruitment selection for training, including apprenticeships and volunteers. This requirement does not apply, however, to a religious corporation, association, educational institution or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution or society of its activities.

b. Nondiscrimination laws and policies (such as RCW 49.60, Washington's Law Against Discrimination, and Title VII of the Civil Rights Act).

8. **AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336**, 42 U.S.C. § 12101 et seq. and 28 C.F.R Part 35 and other implementing regulations. The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunication.

9. **UTILIZATION OF MINORITY AND WOMEN BUSINESS ENTERPRISES (MWBE)**

The Contractor is encouraged to utilize firms that are certified by the Washington State Office of Minority and Women's Business Enterprises as minority-owned and/or women-owned in carrying out the purposes of this contract.

10. **PUBLICITY**

The Contractor agrees to submit to the County or the Department all advertising and publicity relating to this contract wherein the County's or the Department's name is mentioned or language used from which the connection of the County's or the Department's name may, in the County's or the Department's judgment, be inferred or implied. The Contractor agrees not to publish or use such advertising and publicity without the prior written consent of the County or the Department.

11. **DISCLOSURE**

The use or disclosure by any party of any information concerning the County or the Department for any purpose not directly connected with the administration of the County's or the Department's or the Contractor's responsibilities with respect to services provided under this contract is prohibited except by prior written consent of the County or the Department or as required by law.

12. **CERTIFICATION REGARDING DEBARMENT SUSPENSION OR INELIGIBILITY**
Federal funds are the basis for this contract, therefore the Contractor certifies that neither the Contractor nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this contract by any federal department or agency. If requested by the Department, the Contractor shall complete and sign a Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion form. Any such form completed by the Contractor for this contract shall be incorporated into this contract by reference.

Further, the Contractor agrees not to enter into any arrangements or contracts related to this grant with any party that is on the "General Service Administration List of Parties Excluded from Federal Procurement or Non-procurement Programs" which can be found at www.epls.gov.

13. **CERTIFICATION REGARDING NIMS COMPLIANCE**
Federal funds are the basis for this contract, therefore the Contractor certifies it is in compliance with the NIMS requirements. If requested by the County, the Contractor shall complete and sign a certification regarding NIMS compliance. Any such form completed by the Contractor for this contract shall be incorporated into this contract by reference.

Further, the Contractor agrees not to enter into any subcontracts related to this grant with any party that is not NIMS compliant.

14. **LIMITATION OF AUTHORITY**
The signatories to this contract represent that they have the authority to bind their respective organizations to this contract. Only the person authorized by each party to execute this contract, or the delegate of that authorized person, which delegation shall be in writing and made prior to action by the delegate, shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this contract. Furthermore, any alteration, amendment, modification, or waiver of any clause or condition of this contract is not effective or binding unless made in writing and signed by the authorized persons.

15. **CONTRACTOR NOT EMPLOYEE – INDEPENDENT STATUS OF CONTRACTOR**
The parties intend that an independent contractor relationship will be created by this contract. The Contractor and/or employees or agents performing under this contract are not employees or agents of the County or the Department in any manner whatsoever, and will not be presented as nor claim to be officers or employees of the County, the Department or of the State of Washington by reason hereof, nor will the Contractor and/or employees or agents performing under this contract make any claim, demand, or application to or for any right, privilege or benefit applicable to an officer or employee of the County, the Department or of the State of Washington, including, but not limited to, Worker's Compensation coverage, unemployment insurance benefits, social security benefits, retirement membership or credit, or privilege or benefit which would accrue to a civil service employee under Chapter 41.06 RCW.

If the Contractor is an individual currently employed by a Washington State agency, the County shall obtain proper approval from the employing agency or institution. A statement of "no conflict of interest" shall be submitted to the County.

16. **NONASSIGNABILITY**
This contract, the work to be provided under this contract, and any claim arising thereunder, are not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

17. **SUBCONTRACTING**
Neither the Contractor nor any subcontractor shall enter into subcontracts for any of the work contemplated under this contract without obtaining prior written approval of the County. Contractor shall use a competitive process in award of any contracts with subcontractors that are entered into after original contract award. All subcontracts entered into pursuant to this contract shall incorporate this contract in full by reference. In no event shall the existence of the subcontract operate to release or reduce the liability of the Contractor to the County or the Department for any breach in the performance

of the Contractor's duties. The County or the Department may request a copy of any and/or all subcontracts for work being completed under this contract.

18. **CONTRACT MODIFICATIONS**
The County and the Contractor may, from time to time, request changes to the contract or grant. Any such changes that are mutually agreed upon by the County and the Contractor shall be incorporated herein by written amendment to this contract. It is mutually agreed and understood that no alteration or variation of the terms of this contract shall be valid unless made in writing and signed by the parties hereto, and that any oral understanding or agreements not incorporated herein, unless made in writing and signed by the parties hereto, shall not be binding.

19. **SEVERABILITY**
In the event any term or condition of this contract, any provision of any document incorporated by reference, or application of this contract to any person or circumstances is held invalid, such invalidity shall not affect other terms, conditions, or applications of this contract which can be given effect without the invalid term, condition, or application. To this end, the terms and conditions of this contract are declared severable.

20. **ADVANCE PAYMENTS PROHIBITED**
The County shall make no payments in advance or in anticipation of goods or services to be provided under this contract. Contractor shall not invoice the County in advance of delivery of such goods or services.

21. **TAXES, FEES AND LICENSES**
Unless otherwise provided in this contract, the Contractor shall pay for and maintain in current status all taxes, unemployment contributions, fees, licenses, assessments, permit charges and expenses of any other kind for the Contractor or its staff required by statute or regulation that are necessary for contract performance.

22. **TRAVEL AND SUBSISTENCE REIMBURSEMENT**
Unless the contract specifically provides for different rates, any travel or subsistence reimbursement allowed under the contract shall be paid in accordance with rates set pursuant to RCW 43.03.050 and RCW 43.03.060 as now existing or amended. The Contractor may be required to provide to the County or the Department copies of receipts for any travel related expenses other than meals and mileage that are authorized under this contract.

23. **GOVERNING LAW AND VENUE; WAIVER OF IMMUNITY**
a. This contract shall be construed and enforced in accordance with, and the validity and performance hereof shall be governed by, the laws of the state of Washington. The parties agree that any lawsuit arising out of or relating to the performance, breach or enforcement of this contract shall be first commenced in the Federal District Court for the Western District of Washington. In the event that the federal court determines that it lacks subject matter jurisdiction to resolve the dispute between the County and the Contractor, the parties agree to venue in the Superior Court of Snohomish County, Washington. The parties agree that the matter shall not be pursued in superior court unless there is a federal court determination that it lacks subject matter jurisdiction.

b. Any judicial award, determination, order, decree or other relief, whether in law or equity or otherwise, resulting from the action shall be binding and enforceable upon the parties.

c. The parties each hereby waive sovereign immunity as necessary to give effect to this section. This waiver is only for the benefit of the Contractor and the County, and shall not be enforceable by any third party or by any assignee or delegate of the parties.

24. **LEGAL RELATIONS**
Each party to this contract shall be responsible for injury to persons or damage to property resulting from negligence on the part of itself, its employees, agents, officers, or subcontractors. Neither party assumes any responsibility to the other party for the consequences of any act or omission of any third party.

25. **WAIVER OF DEFAULT**

Waiver of any default or breach shall not be deemed to be a waiver of any other or subsequent default or breach. Any waiver shall not be construed to be a modification of the terms of this contract unless stated to be such in writing signed by the County and attached to the original contract.

26. **DISPUTES**

The parties shall make every effort to resolve disputes arising out of or relating to this contract through discussion and negotiation. Should discussion and negotiation fail to resolve a dispute arising under this contract, the parties shall select a dispute resolution team to resolve the dispute. The team shall consist of a representative appointed by each party and a third representative mutually agreed upon by both parties. The team shall attempt, by majority vote, to resolve the dispute.

Both parties agree that this disputes process shall precede any action in a judicial or quasi-judicial tribunal. Nothing in this section shall preclude the parties from mutually agreeing to a different dispute resolution method in lieu of the procedure outlined above.

27. **ATTORNEY'S FEES**

In the event of litigation or other action brought to enforce contract terms, or alternative dispute resolution process, each party agrees to bear its own attorney's fees and costs.

28. **LOSS OR REDUCTION OF FUNDING**

In the event funding from state, federal, or other sources is withdrawn, reduced, or limited in any way after the effective date of this contract and prior to normal completion, the County may reduce its scope of work and budget or unilaterally terminate all or part of the contract as a "Termination for Cause", without providing the Contractor an opportunity to cure. Alternatively, the parties may renegotiate the terms of this contract under "Contract Modifications" to comply with new funding limitations and conditions, although the County has no obligation to do so.

29. **TERMINATION OR SUSPENSION FOR CAUSE**

In the event the County, in its sole discretion, determines the Contractor has failed to fulfill in a timely and proper manner its obligations under this contract, is in an unsound financial condition so as to endanger performance hereunder, is in violation of any laws or regulations that render the Contractor unable to perform any aspect of the contract, or has violated any of the covenants, agreements or stipulations of this contract, the County has the right to immediately suspend or terminate this contract in whole or in part.

The County may notify the Contractor in writing of the need to take corrective action and provide a period of time in which to cure. The County is not required to allow the Contractor an opportunity to cure if it is not feasible as determined solely within the County's discretion. Any time allowed for cure shall not diminish or eliminate the Contractor's liability for damages or otherwise affect any other remedies available to the County. If the County allows the Contractor an opportunity to cure, the County shall notify the Contractor in writing of the need to take corrective action. If the corrective action is not taken within ten (10) calendar days or as otherwise specified by the County, or if such corrective action is deemed by the County to be insufficient, the contract may be terminated in whole or in part.

The County reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds during investigation of the alleged compliance breach, pending corrective action by the Contractor, if allowed, or pending a decision by the County to terminate the contract in whole or in part.

In the event of termination, the Contractor shall be liable for all damages as authorized by law, including but not limited to, any cost difference between the original contract and the replacement or cover contract and all administrative costs directly related to the replacement contract, e.g., cost of administering the competitive solicitation process, mailing, advertising and other associated staff time. The rights and remedies of the County provided for in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

If it is determined that the Contractor: (1) was not in default or material breach, or (2) failure to perform was outside of the Contractor's control, fault or negligence, the termination shall be deemed to be a "Termination for Convenience".

30. **TERMINATION FOR CONVENIENCE**

Notwithstanding any other provisions of this contract, the Contractor may terminate this contract by providing written notice of such termination to the County's Key Personnel identified in the contract, specifying the effective date thereof, at least thirty (30) days prior to such date.

Except as otherwise provided in this contract, the County, in its sole discretion and in the best interests of the County, may terminate this contract in whole or in part by providing ten (10) calendar days written notice, beginning on the second day after mailing of the notice to the Contractor. Upon notice of termination for convenience, the County reserves the right to suspend all or part of the contract, withhold further payments, or prohibit the Contractor from incurring additional obligations of funds. In the event of termination, the Contractor shall be liable for all damages as authorized by law. The rights and remedies of the County provided for in this section shall not be exclusive and are in addition to any other rights and remedies provided by law.

31. **TERMINATION PROCEDURES**

In addition to the procedures set forth below, if the County terminates this contract, the Contractor shall follow any procedures specified in the termination notice. Upon termination of this contract and in addition to any other rights provided in this contract, the County may require the Contractor to deliver to the County any property specifically produced or acquired for the performance of such part of this contract as has been terminated.

If the termination is for convenience, the County shall pay to the Contractor the agreed upon price, if separately stated, for properly authorized and completed work and services rendered or goods delivered to and accepted by the County prior to the effective date of contract termination, and the amount agreed upon by the Contractor and the County for (i) completed work and services and/or equipment or supplies provided for which no separate price is stated, (ii) partially completed work and services and/or equipment or supplies provided which are accepted by the County, (iii) other work, services and/or equipment or supplies which are accepted by the County, and (iv) the protection and preservation of property.

Failure to agree with such amounts shall be a dispute within the meaning of the "Disputes" clause of this contract. If the termination is for cause, the County shall determine the extent of the liability of the County. The County shall have no other obligation to the Contractor arising from the termination. The County may withhold from any amounts due the Contractor such sum as the County determines to be necessary to protect the County against potential loss or liability.

The rights and remedies of the County provided in this contract shall not be exclusive and are in addition to any other rights and remedies provided by law.

After receipt of a notice of termination, and except as otherwise directed by the County in writing, the Contractor shall:

a. Stop work under the contract on the date, and to the extent specified, in the notice;

b. Place no further orders or subcontracts for materials, services, supplies, equipment and/or facilities in relation to this contract except as may be necessary for completion of such portion of the work under the contract as is not terminated;

c. Assign to the County, in the manner, at the times, and to the extent directed by the County, all of the rights, title, and interest of the Contractor under the orders and subcontracts so terminated, in which case the County has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;

d. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the County to the extent the County may require, which approval or ratification shall be final for all the purposes of this clause;

e. Transfer title to the County and deliver in the manner, at the times, and to the extent directed by the County any property which, if the contract had been completed, would have been required to be furnished to the County;

f. Complete performance of such part of the work as shall not have been terminated by the County in compliance with all contractual requirements; and

g. Take such action as may be necessary, or as the County may require, for the protection and preservation of the property related to this contract which is in the possession of the Contractor and in which the County has or may acquire an interest.

Statement of Work
FFY 2009 State Homeland Security Program

INTRODUCTION: The Washington State Military Department Emergency Management Division's (Department) Homeland Security Section is responsible for programs designed to prepare and improve the State's ability to prepare for, prevent, protect against, respond to and recover from terrorist attacks and other major disasters through the U.S. Department of Homeland Security (DHS), Federal Emergency Management Agency (FEMA). The FFY09 State Homeland Security Program is providing funds to enhance the capability of state and local units of government to make measurable progress towards the achievement of the National Preparedness Guidelines by addressing the unique exercise, training, planning, organization, equipment, and administration needs of local emergency responders; to strengthen improvised explosive device (IED) attack deterrence, prevention, and protection capabilities; and to strengthen preparedness planning.

Washington State is subdivided into nine (9) Homeland Security Regions. Within each of the nine regions a Regional Homeland Security Coordinating Office (RHSCO) has been identified.

Snohomish County Department of Emergency Management is the Region 1 RHSCO. Snohomish County Region 1 consists of Snohomish County, Skagit County, Island County, Whatcom County and San Juan County, and the tribal governments located within the established region.

Island County - Emergency Management (herein known as the Contractor) agrees to the following.

GENERAL PROGRAM REQUIREMENTS:

1. Work closely with the established Regional Homeland Security Council to develop a strategy and subsequent budget for the use of these funds. The implementation of the projects or activities associated with these funds will be coordinated with the counties, cities, and the tribal governments located within the established region.
2. Activities under this contract must have a clear correlation to the goals, objectives, and priorities identified in the Washington State Strategic Plan and corresponding Investment Justifications submitted in the FFY09 grant application.
3. Plan and implement equipment purchases, exercises, training, planning and management & administration activities in accordance with the FFY09 Homeland Security Grant Program Guidance, which can be found at http://www.fema.gov/government/grant/hsgp/index.shtm, as well as all subsequent policy changes.
4. Ensure that all subcontractors and subgrantees are in compliance with the FFY09 Homeland Security Grant Program Guidance through monitoring of expenditures and periodic reviews of activities.
5. Provide the County any requested expenditure details to assist in the timely submission of the Region 1 Bi-Annual Strategy Implementation Report (BSIR), to the County via e-mail address: Bill.Ekse@co.snohomish.wa.us or Tammy.Jones@co.snohomish.wa.us
6. Submit a Bi-Annual Progress Report to the County via e-mail address: Bill.Ekse@co.snohomish.wa.us or Tammy.Jones@co.snohomish.wa.us as required in the contract Reporting.
7. Submit at a maximum monthly and a minimum quarterly, signed and approved, invoice vouchers with copies of supporting documents (vendor invoices, timesheets, cost reports) and a EMD Reimbursement Spreadsheet to the County for costs incurred, and EHP approvals if applicable.
8. If purchasing equipment, the Contractor must meet the following requirements:
   - Equipment must be in compliance with the FEMA Authorized Equipment List (AEL), as detailed at: http://www.rkb.us/.
   - Determine whether or not it is in the best interest of the Contractor to make purchases using its own procurement process or ask the Department to make purchases on its behalf. This will necessitate an amendment to the County's contract with the Department, so prior written approval by the County is required. If approved, the Department will pay the vendor directly and all items will be drop shipped to a location designated by the Contractor.
   - Requests for reimbursement of equipment purchases will include a copy of the vendor's invoice and packing slip or a statement signed and dated by the Contractor's authorized representative that states "all items invoiced have been received in good working order, are operational, and have been inventoried according to contract and local procurement requirements".

9. Exercises that are implemented with grant funds must meet the requirements of the FFY09 Homeland Security Grant Program Guidance, be threat and performance based, and should evaluate performance of critical prevention and response tasks required of the exercise scenario. Upon completion of the exercise, an After Action Report and an Improvement Plan must be prepared and submitted to the FEMA portal within 60 days of completion of the exercise. Reimbursements for exercise related expenditures can not be made until this requirement has been met.
10. The FFY09 SHGP grant stipulates the following caps, thresholds and limitations. These limitations were established by DHS and incorporated into the County's FFY09 SHGP contract award. These limitations were considered when establishing the Contractor's budget.
    - A minimum of 25% of the contract award must be spent on preparedness planning activities.
    - A minimum of 25% of the contract award must be spent on law enforcement terrorism prevention activities.
    - Costs which qualify for both the preparedness planning/IED minimum requirement and the Law Enforcement terrorism prevention activities minimum requirement may be counted against both requirements.
    - Limitations on personnel costs, which includes sustainment, consultants, instructors, overtime and backfill (salary cap) were established by DHS and incorporated into the County's FFY09 SHGP contract award.
    - Management and Administration expenditures are limited to 3% of the total contract award.

CONTRACTOR TASKS:

1. Manage and administer the FFY09 SHSP Grant Program activities in accordance with the 25% earmarking thresholds, salary cap and other limitations to successfully meet the requirements and intent of the FFY 09 SHSP grant within Region One.
2. Attend and participate in the Region One Council meetings.
3. Prepare Contractor invoice vouchers and submit them to the County in accordance with the General Program Requirements (Exhibit B) and Budget (Exhibit C).
4. The Contractor may not request reimbursement for personnel costs in excess of the Budget (Exhibit C) unless pre-approved by the County in writing.
5. Report accomplishments on project deliverables, which include documentation of expenditures that meet the grants earmarking thresholds. Additional project deliverables if applicable may include but are not limited to:
    a. NIMS/NRP compliance and implementation;
    b. Regional Coordination preparedness, prevention, response and recovery plans and annex updates;
    c. Incident Management Teams plans and procedures, participants, trainings, exercises and interlocal agreements completed;
    d. Interoperability Communications equipment purchased, installed, trainings conducted and exercises completed;
    e. Outreach provided and number of contacts reached;
    f. Trainings completed and number of participants trained;
    g. Exercises completed and number of participants;
    h. Equipment purchased.
6. If necessary, hire a Subcontractor to assist in accomplishing the contract tasks.

THE COUNTY AGREES TO:

1. Assist the Contractor to successfully meet the requirements and intent of the FFY 09 SHSP grant.
2. Provide technical assistance, expertise, and coordination with the Department and DHS where necessary.
3. Prepare Regional invoice vouchers (State invoice form A-19) and submit them to the Department and reimburse the Contractor no later than 15 days from the County's receipt of reimbursement from the Department.

Island County - DEM
BUDGET SHEET
FFY 2009 State Homeland Security Program

PLANNING			
	Salaries & Benefits	$	41,533
	Consultants/Sub-Contracting	$	35,000
	Goods & Services	$	2,000
	Travel & Per Diem	$	-
	Pass Thru		
	Total Planning	$	78,533
TRAINING			
	Salaries & Benefits	$	-
	Overtime		
	Consultants/Sub-Contracting	$	-
	Goods & Services		
	Travel & Per Diem	$	1,067
	Pass Thru		
	Total Training	$	1,067
EXERCISE	Salaries & Benefits	$	-
	Overtime	$	5,000
	Consultants/Sub-Contracting	$	-
	Goods & Services	$	-
	Travel & Per Diem	$	-
	Pass Thru	$	25,000
	Total Exercise	$	30,000.00
MANAGEMENT & ADMINISTRATION			
	Salaries & Benefits	$	-
	Consultants/Sub-Contracting	$	-
	Goods & Services	$	-
	Travel & Per Diem	$	-
	Pass Thru	$	-
	Total M&A	$	-
EQUIPMENT			
	Equipment - Law Enforcement	$	41,533
	Equipment	$	15,000
	Total Equipment	$	56,533
	Total Budget	$	166,133

1. Federal grant program requirements affirm that federal funds will be used to supplement existing funds, and will **not replace (supplant)** funds that have been appropriated for the same purpose.
2. Expenditures may only occur within the categories and sub-categories listed above. However, cumulative changes of up to 10% of the total contract award can be made without prior approval from the County (unless otherwise restricted). Changes that exceed 10% will require the Contractor submit a budget change request to the County for approval.
3. Salaries & Benefits are restricted, and will be limited to meet the Region 1 approved personnel cap.
4. Management and Administration (M&A) expenditures are restriced. M&A reimbursement must be approved by the County in writing.

Island County -DEM
BI-ANNUAL PROGRESS REPORT
FFY 2009 State Homeland Security Program

Please complete this form for <u>each</u> proposed project. Regional contracts will be developed using the information supplied in this form. Requests for reimbursement under the subsequent contract(s) must be tied to a project linked directly to the contract. After the project is funded under a contract, use this completed form to submit Bi-Annual Progress Reports. Using the "rolling report format" following this first form page, detail challenges, successes and status of each project, adding to the project history every six months through completion.

- Regional Leads must submit Project Report Forms for projects for each of the counties within their Region.

Jurisdiction: Island County - DEM	**REGION ONE**		
Contact Name: Dave Hollett, DEM Director	Phone: 360-679-7370	Email: daveh@co.island.wa.us	
Funding Source (check all that apply):	☐ CCP ☐ MMRS ☐ SHSP ☐ UASI		
Project Title:			
National Target Capability:			
WA State/UASI Strategic Goal:			
FY09 Investment Justification Title			
This Project meets the following Overarching SHSP FFY09 Priorities:		Preparedness Planning $ __	Law Enforcement $ __
Overall Project Budget:	$ __		
Budget Categories:	Planning $ __	Organization* $ __	M&A $ __
	Equipment $ __	Exercise $ __	Training $ __
Project Description:			
Project Impact Statement:			
Project Time Frame (phased, contingent, ongoing, one year, two year, or three years):			
Project Subgrantees & Funding Amounts:			

Bi-annual Progress Report – Page 2
Project Report Form - Rolling Progress

Please address the following items in the designated reporting period box below (as applicable)

- Explain significant successes or challenges to date;
- Explain significant challenges that can be foreseen for the future;
- Explain issues expected to prevent completion of projects by the contract end date;
- Explain deviations from established project plan milestones & funding sources and their impacts.

Project Reporting Period 1 Contract execution - June 2010 Progress to Date Due 7/10/2010	
Actual Funds Expended:	
Project Reporting Period 2 July 2010 – December 2010 Progress to Date Due 1/10/2011	
Actual Funds Expended:	
Project Reporting Period 3 January 2011 – June 2011 Progress to Date Due 7/10/2011	
Actual Funds Expended:	
Project Reporting Period 4 - Closeout July 2011 – October 2011 Progress to Date Due 11/30/2011	
Actual Funds Expended:	

City of Oak Harbor
City Council Agenda Bill

Bill No. 6
Date: July 12, 2011
Subject: 2010 Comprehensive Plan Amendments Rezonings

FROM: Steve Powers, Development Services Director

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 ordinances for City Council consideration that would implement the 2010 Comprehensive Plan Land Use Map Amendments. Approval of the ordinances will rezone those properties that were previously approved for land use map changes. Because of the one-to-one relationship between the Comprehensive Plan Land Use Map designations and the official zoning map zoning districts, the zoning map changes proposed here are a necessary part of the Comprehensive Plan Land Use Map changes made in 2010. The rezonings proposed with this agenda bill are legislative, not quasi-judicial, in nature.

AUTHORITY

The authority to establish land use control is provided by Chapter 36.70A.040. The Growth Management Act requires the City to plan and to have development regulations (as defined by RCW 36.70A.040) that are consistent with the Comprehensive Plan.

SUMMARY STATEMENT

The City Council approved the 2010 Comprehensive Plan Amendments on December 7, 2010. The Comprehensive Plan amendments included three requests for Land Use Map changes. The three properties and the associated changes are listed below:

1. R13210-527-3480 – Scenic Heights Trailhead site - zoning change from R-1, Single Family Residential to PF, Public Facilities.
2. R14437-231-3630 – Water Reservoir Site near Gun Club Road – zoning change from PBP, Planned Business Park to PF, Public Facilities.
3. R13325-500-2250, R13325-470-2250, R13325-444-2220, R13325-455-2550 – SE corner of SR 20 and Fakkema Road – zoning change from C4, Highway Service Commercial to OS, Open Space.

More details of the properties, their locations and effects of the zoning change can be found in the Planning Commission report that has been attached to the agenda bill (Attachment 1).

REVIEW PROCESS AND CRITERA

Oak Harbor Municipal Code (OHMC) Chapter 18.20.270 establishes that rezones made in conjunction with yearly updates to the Comprehensive Plan are Review Process V decisions that are legislative in nature. As was noted in the 'Purpose' section, the rezones proposed with this agenda bill would implement the Comprehensive Plan Land Use Map changes approved by the Council in 2010. The review criteria found OHMC 19.75, Map Amendments and Contract Rezones, may be used to review the proposed, legislative rezones (OHMC 19.75.010). OHMC 19.75.020(4) lists the decision criteria to be used when reviewing a zoning map amendment. The staff report to the Planning Commission reviewed each of the proposed rezonings against the applicable criteria.

PLANNING COMMISSION REVIEW

The Planning Commission conducted a public hearing on the proposed rezonings on April 26, 2011 in accordance to OHMC 18.20.270 (1). At the conclusion of the public hearing, the Planning Commission recommended to the City Council approval of the proposed rezonings. A copy of the minutes from that meeting are attached as Attachment 2

STANDING COMMITTEE REPORT

This item was presented to the Government Services Committee at their May 10, 2011 meeting.

CITY COUNCIL REVIEW

Review Process V decisions are those that require a legislative decision by the City Council. Per OHMC 18.20.270(1) the City Council may conduct a public hearing on theses legislative matters. As the City Council has typically done so, this item has been advertised as a public hearing. At the conclusion of the public hearing the Council is asked to approve a separate ordinance for each property that approves the change to the zoning map.

RECOMMENDED ACTION

- Conduct the Public Hearing.

- Adopt the ordinance that will approve the rezoning of Island County parcel number R13210-527-3480 – Scenic Heights Trailhead site - R-1, Single Family Residential to PF, Public Facilities (Attachment 3).

- Adopt the ordinance that will approve the rezoning for the Island County parcel number R14437-231-3630 – Water Reservoir Site near Gun Club Road –from PBP, Planned Business Park to PF, Public Facilities (Attachment 4).

- Adopt the ordinance that will approve the rezoning for the Island County parcel numbers R13325-500-2250, R13325-470-2250, R13325-444-2220, R13325-455-2550 – SE corner of SR 20 and Fakkema Road – from C4, Highway Service Commercial to OS, Open Space (Attachment 5).

ATTACHMENTS

Attachment 1 Planning Commission report dated April 26, 2011
Attachment 2 Minutes from April 26, 2011 Planning Commission meeting
Attachment 3 Ordinance approving rezoning of Scenic Heights Trailhead site
Attachment 4 Ordinance approving rezoning of Water Reservoir site
Attachment 5 Ordinance approving rezoning of SR-20/Fakkema Road site

MAYOR'S COMMENTS

City of Oak Harbor
Report to the Planning Commission

Date: April 19, 2011
Subject: 2010 Comprehensive Plan Rezonings

FROM: **Cac Kamak, AICP**
Senior Planner

Summary

The three proposed rezonings before the Planning Commission would implement land use changes approved as part of the 2010 Comprehensive Plan Amendments. The Planning Commission has reviewed each of these proposals as part of that process. The Comprehensive Plan Amendments were approved by the City Council in December 2010. This rezoning process follows through the land use amendments and, if approved by the City Council, will officially amend the zoning map to implement the changes to the Comprehensive Plan

The rezoning process requires the Planning Commission to hold a public hearing. At the conclusion of the public hearing it will be necessary for the Planning Commission to forward recommendations to the City Council.

Public Notice and Comment

Public notices of the hearing before the Planning Commission were executed as per the requirements of the Oak Harbor Municipal Code Chapter 18.20. These notices included site posting, letters sent to the affected property owners and owners of properties within 300 feet of the affected properties, and publishing in the local newspaper.

Background

The 2010 Comprehensive Plan Amendments included three land use changes and an annual update to the Capital Facilities Plan. The Planning Commission held a public hearing on these amendments on October 26, 2010. After review and deliberation, the Planning Commission forwarded the Amendments to the City Council with a recommendation for approval. The City Council held a public hearing on the Amendments and approved the 2010 Comprehensive Plan Amendments on Dec 7, 2010.

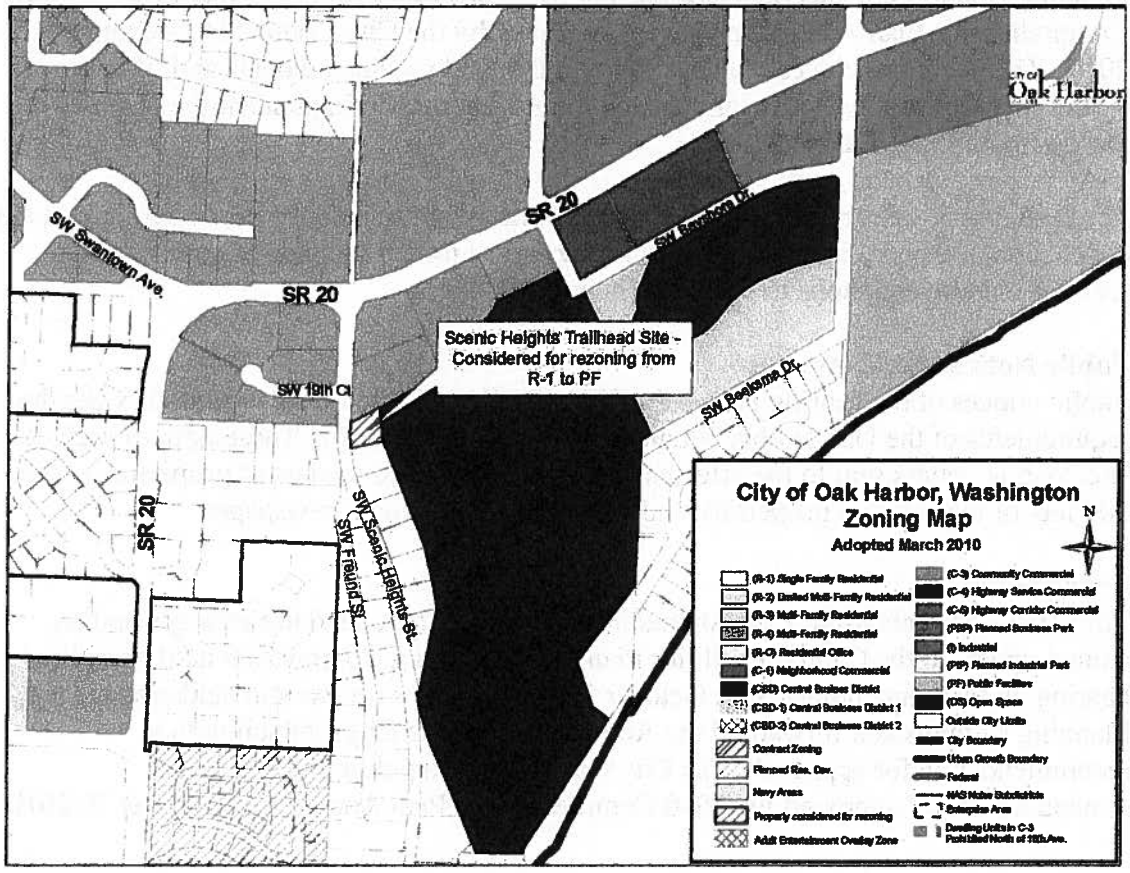
Site Information and Analysis

While the long term land use vision of each of the proposed sites is embodied in the Future Land Use Map designation of the Comprehensive Plan, the specific zoning of each site must be changed to correspond with this vision. Staff has reviewed each property against the criteria listed in OHMC 19.75.020.

Scenic Heights Trailhead site

At this meeting the Planning Commission will conduct a public hearing to consider changing the zoning for Island County parcel number R13210-527-3480 from R-1, Single Family Residential to PF, Public Facilities. This property is located on the east side of Scenic Heights Road and south and east of the SW 19th Court.

The property was purchased by the City to ensure connection of the waterfront trail to the pedestrian sidewalk system of Oak Harbor. This site also serves as a trailhead to the Freund Marsh area.



Existing Zoning: R-1, Single Family Residential
Proposed Zoning: PF, Public Facilities

Rezoning criteria: The proposed zoning change is evaluated by the criteria provided in OHMC 19.75 (4) d.

(i) The proposed rezone is in the best interest of the residents of the city;

The property was purchased with Conservation Futures funds to assure that the waterfront trail that connects to the Freund Marsh trail can be extended to connect with the City's sidewalk system and eventually provide an opportunity to extend the trail to the western edges of the City. The property has been developed as a trailhead park with a conditional use permit. The zoning change will reflect the current use of the property as a "permitted use".

(ii) The proposed rezone is appropriate because either:

(A) Conditions in the immediate vicinity of the subject property or within the city have so significantly changed since the property was given its present zoning that, under those changed conditions, a rezone is within the public interest; or

(B) The rezone will correct a zone classification or zone boundary that was inappropriate when established; or

(C) The proposed rezone is consistent with the comprehensive plan; or

This criteria is more applicable than the other criteria since the Comprehensive Plan was amended in December 2010 and this process is following through with the City Council's approval and implementing the zoning based on the amended land use.

(D) The proposed rezone is consistent with all applicable provisions of this title including any specific design criteria;

(iii) The proposed rezone bears a substantial relation to the public health, safety, and welfare;

As mentioned earlier, the property was purchased to ensure a trail connection and implement the Parks and Recreation Plan's goal to provide active recreation and connections to future trails around the City. The zoning change will designate this property as PF, Public Facilities which is similar to the other parks in Oak Harbor.

(iv) A site plan of the proposed project, if considered, is designed to minimize all significant adverse impacts on other properties;

The property was developed with a conditional use permit and therefore provided an opportunity for site plan review. It also identified potential impacts and the relevant mitigation measures to minimize significant adverse impacts.

(v) A site plan, if considered, is designed to minimize impacts upon the public facilities, services and utilities;

The property was developed with a conditional use permit.

(vi) The proposal is not inconsistent with the surrounding area;

The property is developed as a park that is normally surrounded by residential zoning and is therefore not considered as inconsistent with the surrounding area.

(vii) If applicable, that there is a means of developing, preserving, and maintaining open space;

The site is developed as a park and therefore provides open space.

(viii) All conditions necessary to lessen any impacts of the proposed use can be monitored and enforced.

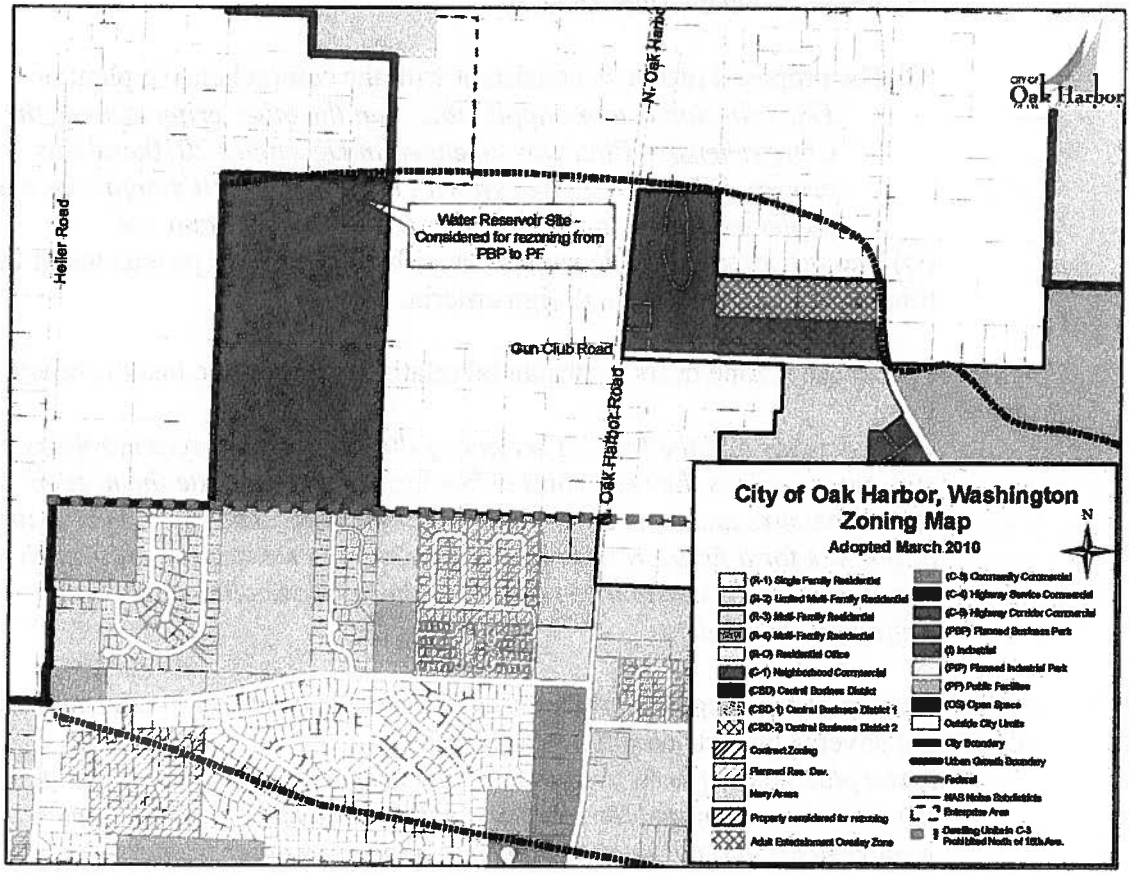
Parks are compatible uses in residential neighborhoods. However, any impacts of the use can be mitigated with screening and enforcement similar to all other parks in the City.

Staff recommendation: Given the previous approval of the Comprehensive Plan Land Use designation changes for the subject sites, and the above criteria, staff recommends approval of the zoning change.

Water Reservoir Site

At this meeting the Planning Commission will conduct a public hearing to consider changing the zoning for the Island County parcel number R14437-231-3630 – Water Reservoir Site near Gun Club Road –from PBP, Planned Business Park to PF, Public Facilities. This 5 acre tract is located north of Gun Club Road west of the Gun Club.

This property is the future site of a reservoir that will serve Oak Harbor's water system. The property is currently served by an access easement. Development of the surrounding property will eventually extend infrastructure to serve the property.



Rezoning criteria: The proposed zoning change is evaluated by the criteria provided in OHMC 19.75 (4) d.

(i) The proposed rezone is in the best interest of the residents of the city;
This property is the future site of a water reservoir that will serve Oak Harbor. The location for the reservoir is based on the design of the water system. The proposed PF, Public Facilities zoning designation will permit

the intended use to be built by right (as a permitted, rather than a conditional use).

(ii) The proposed rezone is appropriate because either:

(A) Conditions in the immediate vicinity of the subject property or within the city have so significantly changed since the property was given its present zoning that, under those changed conditions, a rezone is within the public interest; or

(B) The rezone will correct a zone classification or zone boundary that was inappropriate when established; or

(C) The proposed rezone is consistent with the comprehensive plan; or

This criterion is more applicable than the other criteria since the Comprehensive Plan was amended in December 2010 and this process is following through with the City Council's approval and implementing the zoning based on the amended land use.

(D) The proposed rezone is consistent with all applicable provisions of this title including any specific design criteria;

(iii) The proposed rezone bears a substantial relation to the public health, safety, and welfare;

The efficiency and the level of service of the City's water system relies on structures such as the reservoirs at key locations to provide the needed water pressure and meet other safety requirements. Therefore the location of this site for a future reservoir and the rezoning to accommodate such a structure bears a substantial relation to the public health, safety and welfare of its residents.

(iv) A site plan of the proposed project, if considered, is designed to minimize all significant adverse impacts on other properties;

A site plan has not been prepared for the property. When a site plan for the project is submitted for review, it will need to meet the development requirements and mitigate any adverse impacts to other properties.

(v) A site plan, if considered, is designed to minimize impacts upon the public facilities, services and utilities;

No site plans have been submitted for review.

(vi) The proposal is not inconsistent with the surrounding area;

The properties to the north are residential and the property to the east is the Gun Club. The properties to the south and west are in the City and zoned PBP, Planned Business Park. The subject property will

accommodate a public facility that is essential to provide services to the community. There are several reservoirs currently in the City and located adjacent to residential uses and are considered compatible in these zoning districts and is therefore not considered as inconsistent with the surrounding area.

(vii) If applicable, that there is a means of developing, preserving, and maintaining open space;

The site plan will be reviewed at the time of development and zoning requirements associated with landscaping and buffers will be required to maintain the space around the facility..

(viii) All conditions necessary to lessen any impacts of the proposed use can be monitored and enforced.

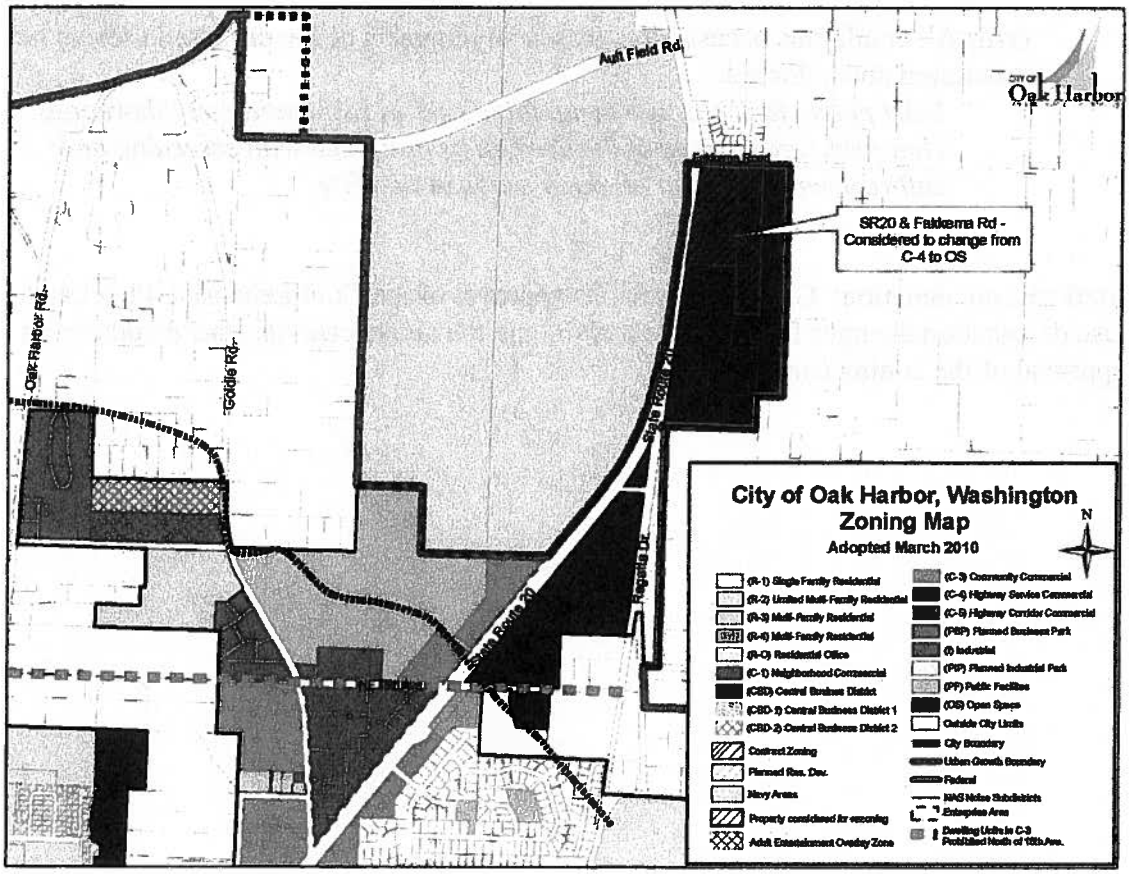
Most public facilities are compatible uses in residential neighborhoods. However, any impacts of the use can be mitigated with screening and enforcement similar to all other parks in the City.

Staff recommendation: Given the previous approval of the Comprehensive Plan Land Use designation changes for the subject sites, and the above criteria, staff recommends approval of the zoning change.

SE corner of SR 20 and Fakkema Road

At this meeting the Planning Commission will conduct a public hearing to consider changing the zoning for the Island County parcel numbers R13325-500-2250, R13325-470-2250, R13325-444-2220, R13325-455-2550 –from C4, Highway Service Commercial to OS, Open Space.

This property was jointly acquired by the City, County and NAS Whidbey to limit the development potential of the property due to its location in the Accident Potential Zone (APZ) of Ault Field's operations. The Parks and Recreation Plan recommends that the property be developed as a Garry Oak grove.



Rezoning criteria: The proposed zoning change is evaluated by the criteria provided in OHMC 19.75 (4) d.

(i) The proposed rezone is in the best interest of the residents of the city;

The proposed zoning and the eventual intended use is in accordance with the adopted Parks and Recreation Plan. Since the property was jointly purchased by the City, County and Navy to limit development potential,

the proposed zoning designation will ensure that the property stays as open space.

(ii) The proposed rezone is appropriate because either:

(A) Conditions in the immediate vicinity of the subject property or within the city have so significantly changed since the property was given its present zoning that, under those changed conditions, a rezone is within the public interest; or

(B) The rezone will correct a zone classification or zone boundary that was inappropriate when established; or

(C) The proposed rezone is consistent with the comprehensive plan; or

This criterion is more applicable than the other criteria since the Comprehensive Plan was amended in December 2010 and this process is following through with the City Council's approval and implementing the zoning based on the amended land use.

(D) The proposed rezone is consistent with all applicable provisions of this title including any specific design criteria;

(iii) The proposed rezone bears a substantial relation to the public health, safety, and welfare;

Rezoning the property to Open Space and limiting development potential of the property is primarily intended to promote public health, safety and welfare since it removes the opportunity to put people and structures in a location that has a higher potential of accidents from the Ault Field operations.

(iv) A site plan of the proposed project, if considered, is designed to minimize all significant adverse impacts on other properties;

No site plans have been prepared for the site and none will be required if it remains as open space. If any facilities are proposed on the property, it will have to meet the development requirements and mitigate any adverse impacts to other properties.

(v) A site plan, if considered, is designed to minimize impacts upon the public facilities, services and utilities;

No site plans have been submitted for review.

(vi) The proposal is not inconsistent with the surrounding area;

The properties to the north, east and west are minimally developed and will not be impacted by preserving this property with an Open Space designation. The property to the south is developed with commercial uses

and will not be impacted by preserving the subject property as open space.

(vii) If applicable, that there is a means of developing, preserving, and maintaining open space;

The rezoning request for the property is to maintain it as open space.

(viii) All conditions necessary to lessen any impacts of the proposed use can be monitored and enforced.

Open Spaces are compatible uses to most zoning districts. However, any impacts of the use can be mitigated with screening and enforcement similar to all other open spaces in the City.

Staff recommendation: Given the previous approval of the Comprehensive Plan Land Use designation changes for the subject sites, and the above criteria, staff recommends approval of the zoning change.

Recommendations

1. Conduct public hearings for each of the items presented.
2. Forward recommendations of approval for each item to City Council.

Attachments: (from Oak Harbor Municipal Code, Chapter 19.20)

Exhibit A: Article XV. PF – Public Facilities
Exhibit B: Article XVI. OS – Open Space
Exhibit C: Public comment letter dated April 12, 2010

Article XV. PF – Public Facilities

19.20.770 Purpose and intent.

The PF public facilities district is intended to accommodate public facilities and institutional land uses, including but not limited to public parks, schools, churches, governmental offices, public works yards, utility structures, hospitals, and other similar public and quasi-public uses. The zone was established to aid the city in planning for public facilities, while preventing conflicts between incompatible land uses. (Ord. 1573 § 1, 2010; Ord. 1555 § 8, 2009).

19.20.775 Principal permitted uses.

In a PF district, the following are principal permitted buildings and uses:

(1) Public parks and recreational facilities, including, but not limited to, regional parks, city parks and play fields, public golf courses, historic landmarks, indoor recreation centers, swimming pools and marinas;

(2) Government facilities, including, but not limited to, administrative offices, postal stations, police stations, fire stations, parking lots, public water wells, storm drainage facilities, water and sewer pump stations, and family health/resource centers;

(3) Community services, including, but not limited to, libraries, museums, community centers and senior centers and adult day care;

(4) Churches and other religious institutions;

(5) Public and private schools providing education at the preschool level or higher, excluding commercial trade schools;

(6) Public utilities, except as regulated in OHMC 19.20.785;

(7) Quarters for a caretaker, guard or the person whose permanent residency on the premises is required for operational safety or protective purposes;

(8) Landfill reclamation to improve steep, low or otherwise unusable land. (Ord. 1573 § 1, 2010; Ord. 1555 § 8, 2009).

19.20.780 Accessory permitted uses.

(1) A use customarily incidental and subordinate to a principal use permitted outright.

(2) On-site hazardous waste treatment and storage facilities as an accessory use to any activity generating hazardous waste and lawfully allowed in this zone; provided, that such facilities meet the state siting criteria adopted pursuant to the requirements of RCW 70.105.210.

(3) Parking areas operated in conjunction with permitted uses. (Ord. 1573 § 1, 2010; Ord. 1555 § 8, 2009).

19.20.785 Conditional uses permitted.

The following principal uses and their accessory uses may be permitted in a PF district when authorized by the board hearing examiner in conformance with Chapter 19.67 OHMC:

(1) Electric substations, treatment plants, public works yards, public telecommunications towers, and other similar uses. Distribution or collection line rights-of-way and easements are exempt from the requirements of the PF district;

(2) Private lodges and clubs, fraternal organizations, and commercial establishments when ancillary to a permitted use;

(3) Child day care when ancillary to a permitted use. (Ord. 1573 § 1, 2010; Ord. 1555 § 8, 2009).

19.20.790 Prohibited uses.

The following uses are expressly prohibited by this chapter:

(1) Permanent, transient and temporary dwelling units, except as allowed under OHMC 19.20.775(7);

(2) Private lodges and clubs, fraternal organizations, private golf courses, and other similar clubs, except as allowed under OHMC 19.20.785;

(3) Private radio, television and communications stations. (Ord. 1573 § 1, 2010; Ord. 1555 § 8, 2009).

19.20.792 Manufactured home structures.

A manufactured home (mobile home) is authorized to be placed within this district for a temporary time period, not to exceed five years, to serve nonresidential uses as provided for in permitted and conditional use code sections (OHMC 19.20.775 and 19.20.785). A two-year extension may be approved by separate application. Development is subject to all other provisions of this code the same as on-site construction. Manufactured homes shall not be authorized for use predominantly as storage. Manufactured homes shall not be permitted in a public facilities district where the public facility zone is adjacent to central business district zones. All applications for manufactured home structures, including time extensions, must be approved by the planning commission. (Ord. 1573 § 1, 2010; Ord. 1555 § 8, 2009).

19.20.795 Density provisions.

(1) Minimum lot area: No limitation.

(2) Minimum lot width: No limitation.

(3) Minimum lot depth: No limitation.

(4) Minimum front yard: 35 feet.

(5) Minimum side yard: No limitation, except when buildings abut a residentially zoned property, then 12 feet each side. For corner lots, a side yard abutting a public street shall be 35 feet.

(6) Minimum rear yard: No limitation except:

(a) When abutting a public street, then 35 feet;

(b) When abutting a residential zone, then 12 feet.

(7) Maximum building height: 35 feet. For manufactured home structures: single story of 25 feet.

(8) Maximum lot coverage: No limitation.

(9) Exemptions. Public parking lots are exempt from the density provisions of the PF zone; provided, that other provisions of this title shall apply. (Ord. 1573 § 1, 2010; Ord. 1555 § 8, 2009).

19.20.800 Landscaping requirements.

(1) Design shall be in accordance with the provisions of the Oak Harbor design guidelines.

(2) Landscaping and buffers shall be constructed and maintained in accordance with the provisions of Chapter 19.46 OHMC. (Ord. 1573 § 1, 2010; Ord. 1555 § 8, 2009).

19.20.805 Site plan and design review required.

Site plan and design review shall be required as defined in Chapter 19.48 OHMC. (Ord. 1573 § 1, 2010; Ord. 1555 § 8, 2009).

Article XVI. OS – Open Space, Recreation and Agriculture

19.20.810 Purpose and intent.

The OS open space, recreation and agriculture district is intended to allow the retention of natural, rural character, open space areas within the city of Oak Harbor, and to allow for annexation of lands to the city without forcing immediate development, and generally conserve the land, water and other natural resources of the city. Further, the OS district is intended to help prevent development of special community resources such as golf courses, wetlands, forest land and farming areas having scenic and other environmental value. Except for special circumstances, it is anticipated that this district will be used only for land brought into the city by annexation or for which special tax considerations are already provided by Island County. (Ord. 1573 § 1, 2010; Ord. 1555 § 8, 2009).

19.20.815 Principal permitted uses.

In the OS district, the following are principal permitted buildings and uses:

(1) Agriculture land;

(2) Forest land;

(3) Outdoor recreation lands such as golf courses, shooting ranges left in natural vegetative state;

(4) Wetlands and wildlife habitat dedicated to open space. (Ord. 1573 § 1, 2010; Ord. 1555 § 8, 2009).

19.20.820 Accessory permitted uses.

In the OS district the following are accessory permitted uses:

(1) For an agricultural use, a set of farm buildings including a single-family residence. Nothing herein shall be construed as authorizing the keeping of domestic livestock beyond what is otherwise authorized by ordinance.

(2) For forest land, a storage building in which to store items needed for tree management.

(3) For recreation land, such as a golf course, storage buildings, signs, club house and caretaker's residence.

(4) Single-family residence otherwise permitted by law. (Ord. 1573 § 1, 2010; Ord. 1555 § 8, 2009).

19.20.825 Conditional uses permitted.

The following principal uses and their accessory uses may be permitted in an OS district when authorized by the hearing examiner:

(1) Private club or lodge on tracts or lots of more than four acres. More than 60 percent of the area must not be hard-surfaced (paved) in building or both building and hard-surfaced area. Areas not hard-surfaced must be in natural vegetation;

(2) Campground on tracts or lots of more than two acres. More than 80 percent of the area must not be hard-surfaced (paved) or in buildings or both

EXHIBIT B

such buildings and hard-surfaced areas. Areas not hard-surfaced in a building must be in natural vegetation;

(3) Radio or television tower where 80 percent of the area must not be hard-surfaced (paved) or in buildings or both such buildings and hard-surfaced areas. Areas not hard-surfaced in a building must be in natural vegetation. (Ord. 1573 § 1, 2010; Ord. 1555 § 8, 2009).

19.20.830 Density provisions.

In an OS district, the following density provisions apply:

(1) Setbacks for any structure shall be 25 feet from any property line;

(2) One dwelling unit per five acres, where residential use is permitted. (Ord. 1573 § 1, 2010; Ord. 1555 § 8, 2009).

19.20.835 Conditions governing permitted uses.

(1) As a condition to continued designation as "open space," for any use other than agricultural and residential, the owner shall enter into an agreement with the city allowing public or semi-public access under mutually agreed terms and conditions.

(2) Any hard surface parking or roads must be accessory to a permitted use. (Ord. 1573 § 1, 2010; Ord. 1555 § 8, 2009).

19.20.840 Site plan and design review required.

Site plan and design review shall be required as defined in Chapter 19.48 OHMC. (Ord. 1573 § 1, 2010; Ord. 1555 § 8, 2009).

ATTACHMENT 1

CITY OF
Oak Harbor
WHIDBEY ISLAND, WASHINGTON

Fax to City of Oak Ht.

April 11, 2011

NOTICE TO ADJACENT PROPERTY OWNERS

You are receiving this notice since you reside or own property within 300 feet of properties that are being considered for rezoning. The properties are listed below:

1. R13210-527-3480 – Scenic Heights Trailhead site - Land use change from Low Density Residential to Public Facilities
2. R14437-231-3630 – Water Reservoir Site near Gun Club Road – Land use change from Planned Business Park to Public Facilities
3. R13325-500-2250, R13325-470-2250, R13325-444-2220, R13325-455-2550 – SE corner of SR 20 and Fakkema Road – Land use change from Auto/Industrial Commercial to Open Space

The land use designations for these properties were amended in the 2010 Comprehensive Plan Amendment cycle. The consideration to change the zoning is a follow up on the land use change.

The Planning Commission will hold a public hearing on the rezoning at 7:30pm at City Hall Council Chambers on April 26, 2011.

You can submit written comments to:
Development Services
865 SE Barrington
Oak Harbor, WA 98277

We favor this.

If you have any question please call me at 360-279-4514.

Rajesh "Cac" Kamak, AICP
Senior Planner

Harbor Lands Co.
Coachman Inn / Pacific Resources Inc.
APR 12 2011
APPROVED
Joel Douglas 360-734-8191
Fax 360-647-9223
Initial

173

865 S.E. Barrington Drive • Oak Harbor, Washington 98277–4092 • City Hall (360) 279-4500

EXHIBIT C

PLANNING COMMISSION
REGULAR MEETING
CITY HALL – COUNCIL CHAMBERS
April 26, 2011

ROLL CALL: **Present:** Bruce Neil, Keith Fakkema, Kristi Jensen, Jeff Wallin, Greg Wasinger and Jill Johnson. **Absent:** Gerry Oliver. **Staff Present:** Senior Planner, Cac Kamak.

Chairman Neil called the meeting to order at 7:35 p.m.

MINUTES: **MR. FAKKEMA MOVED, MR. WALLIN SECONDED, MOTION CARRIED TO APPROVE THE MARCH 29, 2011 MINUTES AS PRESENTED.**

PUBLIC COMMENT: No members of the public were present for comment.

CHANGING ZONING DESIGNATIONS TO CORRESPOND WITH COMPREHENSIVE PLAN LAND USE MAP– Public Hearing

Chairman Neil opened the public hearing.

Mr. Kamak reported that the three proposed rezonings before the Planning Commission would implement land use changes approved as part of the 2010 Comprehensive Plan amendments. The Planning Commission has reviewed each of the proposals as part of the Comprehensive Plan amendment process. The Comprehensive Plan amendments were approved by the City Council in December 2010. This rezoning process follows through with the land use amendments and, if approved by the City Council, will officially amend the zoning map to implement the changes to the Comprehensive Plan.

Mr. Kamak explained the relationship between the land use map and the zoning map.

Mr. Kamak reviewed the three sites that are being considered for a change in zoning designation as follows:

Scenic Heights Trailhead Site
Existing Zoning: R-1, Single Family Residential
Proposed Zoning: PF, Public Facilities

The property is located on the east side of Scenic Heights Road and south and east of the SW 19th Court. The property was purchased by the City to ensure connection of the waterfront trail to the pedestrian sidewalk system of Oak Harbor. This site also serves as a trailhead to the Freund Marsh area.

Water Reservoir Site
Existing Zoning: PBP, Planned Business Park
Proposed Zoning: PF, Public Facilities

The property is located north of Gun Club Road west of the Gun Club. The property is the future site of a reservoir that will serve Oak Harbor's water system.

SE corner of SR 20 and Fakkema Road
Existing Zoning: C-4, Highway Service Commercial
Proposed Zoning: OS, Open Space

The property was jointly acquired by the City, County and NAS Whidbey to limit the development potential of the property due to its location in the Accident Potential Zone (APZ) of Ault Field's operations. The Parks and Recreation Plan recommend that the property be developed as a Garry Oak grove.

Mr. Kamak also noted that the staff report details criteria for evaluating rezoning requests.

Chairman Neil closed the public hearing.

ACTION: MR. FAKKEMA MOVED, MS. JENSEN SECONDED, MOTION CARRIED TO RECOMMEND THAT THE CITY COUNCIL APPROVE THE SCENIC HEIGHTS TRAILHEAD SITE ZONING DESIGNATION CHANGE FROM R-1, SINGLE FAMILY RESIDENTIAL TO PF, PUBLIC FACILITIES.

ACTION: MR. JENSEN MOVED, MR. WALLIN SECONDED, MOTION CARRIED TO RECOMMEND THAT THE CITY COUNCIL APPROVE THE WATER RESERVOIR SITE ZONING DESIGNATION CHANGE FROM PBP, PLANNED BUSINESS PARK TO PF, PUBLIC FACILITIES.

MOTION: MS. JENSEN MOVED TO RECOMMEND THAT THE CITY COUNCIL APPROVE THE SE CORNER OF SR 20 AND FAKKEMA ROAD ZONING DESIGNATION CHANGE FROM PBP, PLANNED BUSINESS PARK TO PF, PUBLIC FACILITIES, MR. FAKKEMA SECONDED THE MOTION.

Discussion:
Ms. Johnson said that she would vote no due to her concern about locking one of the most viable commercial properties that the City has into Open Space zoning permanently. Once Garry Oaks are on the property the community won't allow them to be removed and if the Navy's mission changed, the property would be locked into the Open Space designation.

Mr. Wasinger asked how difficult it would be to change the zoning designation. Mr. Kamak reported that the Navy's representative spoke with him and the Navy's concern was that the proposed zoning permits a clubhouse recreation amenity. Mr. Kamak said that he had explained to the Navy representative that there are three levels of restrictions on the property. Restriction one; the property is in the Accident Potential Zone (APZ), restriction two; the City owns the property and restriction three; there are deed restrictions that restrict development on the property. As far as changing the zoning; if the Navy's changes its operations and the APZ goes away. The deed restrictions would have to be removed so the County, the City and the Navy would have to come together and agree that the restrictions don't apply to the property anymore. A Comprehensive Plan amendment would have to be done to zone the property back to Commercial. Mr. Kamak acknowledged that Ms. Johnson was correct that it would be more difficult to change the zoning to Commercial once Garry Oaks are on the property.

Mr. Neil asked who would have to make the request to rezone. Mr. Kamak said that any one of the property owners could make the request or members of the public who could demonstrate that there was enough public support could request a change in zoning.

Mr. Fakkema asked if Gerry Oaks were planted would the trees be planted in rows. Mr. Kamak said that they would be planted in a way that would provide the most natural environment along with other native species to sustain that environment for the trees. In prior conversation with the County and the Navy they have said it is okay to have a trail and a couple of picnic tables for public access.

There was some discussion about the potential leasing of the property should the property revert back to commercial use.

VOTE: THE MOTION CARRIED BY A VOTE OF 4 IN FAVOR AND 1 OPPOSED.

ADJOURN: 8:04p.m.

ORDINANCE NO. _____

AN ORDINANCE REZONING CERTAIN PROPERTY FROM R-1 (SINGLE FAMILY RESIDENTIAL) TO PF (PUBLIC FACILITIES).

WHEREAS, The City of Oak Harbor has initiated rezoning to the properties in question, to reflect the land use designation of said properties as per the Land Use Designation Map of the 2010 Comprehensive Plan; and

WHEREAS, a SEPA checklist that included the proposed land use changes was submitted on September 20, 2010 with appropriate notice to the public; and

WHEREAS, a SEPA Determination of Nonsignificance was issued on October 8, 2010 with a 14 day appeal period ending on October 25, 2010, which received no substantive comment; and

WHEREAS, a public hearing was held before the Planning Commission of the City of Oak Harbor on April 26, 2011, and said hearing was published as required by law; and

WHEREAS, the zone change has been recommended for approval by the Planning Commission on April 26, 2011; and

WHEREAS, the City Council of the City of Oak Harbor held a hearing and has considered the records of the City of Oak Harbor concerning the rezone recommendation of the various parties and the application,

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

Section One: The following described property situated in the County of Island, State of Washington, is rezoned from R-1 (Single Family Residential) to PF (Public Facilities):

Legal Description
LOT 1 of OH-SP 97-2, Oak Harbor, Island County.

Section Two: The official zoning map shall be changed accordingly.

Section Three: Effective Date. This ordinance shall be in full force and effect five days after the date of publication.

PASSED by the City Council and approved by its Mayor this 12th day of July, 2011.

CITY OF OAK HARBOR

Approved ( ) _____
Vetoed ( ) Jim Slowik, Mayor

_____
Date

ATTEST:

_____
City Clerk

Approved as to Form:

_____
City Attorney

Published:_____

ORDINANCE NO. _____

AN ORDINANCE REZONING CERTAIN PROPERTY FROM PBP (PLANNED BUSINESS PARK) TO PF (PUBLIC FACILITIES).

WHEREAS, The City of Oak Harbor has initiated rezoning to the properties in question, to reflect the land use designation of said properties as per the Land Use Designation Map of the Comprehensive Plan; and

WHEREAS, a SEPA checklist that included the proposed land use changes was submitted on September 20, 2010 with appropriate notice to the public; and

WHEREAS, a SEPA Determination of Nonsignificance was issued on October 8, 2010 with a 14 day appeal period ending on October 25, 2010, which received no substantive comment; and

WHEREAS, a public hearing was held before the Planning Commission of the City of Oak Harbor on April 26, 2011, and said hearing was published as required by law; and

WHEREAS, the zone change has been recommended for approval by the Planning Commission on April 26, 2011; and

WHEREAS, the City Council of the City of Oak Harbor held a hearing and has considered the records of the City of Oak Harbor concerning the rezone recommendation of the various parties and the application,

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

Section One: The following described property situated in the County of Island, State of Washington, is rezoned from PBP (Planned Business Park) to PF (Public Facilities):

Legal Description
(Parcel No. R14437-231-3630)

That portion of the northwest Quarter of the Southeast Quarter of Section 27, Township 33 North, Range 1 East of the Willamette Meridian, further described as follows:

Beginning at the Northeast corner of the Northwest Quarter of the Southeast Quarter of Section 27, Township 33 North, Range 1 East of the Willamette Meridian, said point beginning the true point of beginning;

Thence West along the north line of said Southeast Quarter of Section 27 466.69 feet;

Thence South 466.69 feet;

Thence East 466.69 feet to the east line of said Northeast Quarter of the

Northwest
Quarter of the Southeast Quarter of Section 27;
Thence North 466.69 feet along said line to the true point of beginning.

Section Two: The official zoning map shall be changed accordingly.

Section Three: Effective Date. This ordinance provided hereby, shall be in full force and effect five days after the date of publication as required by law.

PASSED by the City Council and approved by its Mayor this 12th day of July, 2011.

CITY OF OAK HARBOR

Approved ( ) _____
Vetoed ( ) Jim Slowik, Mayor

_____
Date

ATTEST: Approved as to Form:

_____ _____
City Clerk City Attorney

Published:_____

ORDINANCE NO. _____

AN ORDINANCE REZONING CERTAIN PROPERTY FROM C-4, (HIGHWAY SERVICE COMMERCIAL) TO OS (OPEN SPACE).

WHEREAS, The City of Oak Harbor has initiated rezoning to the properties in question, to reflect the land use designation of said properties as per the Land Use Designation Map of the Comprehensive Plan; and

WHEREAS, a SEPA checklist that included the proposed land use changes was submitted on September 20, 2010 with appropriate notice to the public; and

WHEREAS, a SEPA Determination of Nonsignificance was issued on October 8, 2010 with a 14 day appeal period ending on October 25, 2010, which received no substantive comment; and

WHEREAS, a public hearing was held before the Planning Commission of the City of Oak Harbor on April 26, 2011, and said hearing was published as required by law; and

WHEREAS, the zone change has been recommended for approval by the Planning Commission on April 26, 2011; and

WHEREAS, the City Council of the City of Oak Harbor held a hearing and has considered the records of the City of Oak Harbor concerning the rezone recommendation of the various parties and the application,

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

Section One: The following described property situated in the County of Island, State of Washington, is rezoned from C-4 (Highway Service Commercial) to OS (Open Space):

Legal Description
(Parcel No. R13325-444-2220, Parcel No. R13325-455-2550, Parcel No. R13325-470-2250, Parcel No., R13325-500-2250)

Parcel A:

The North 520 feet, as measured perpendicular to and parallel with the north line of the following described tract of land:

That portion of the Northwest quarter of Section 25, Township 33 North, Range 1 E,W.M., Island County Washington, described as follows:

Beginning at a point on the East line of said Northwest quarter of Section 25, lying South 01 °08'03" West 20.00 feet from the Northeast comer thereof, said point being also on the South right of way margin of Fakkema Road;
Thence North 88°23'20" West along said south margin, being parallel with and 20.00 feet

distant from the North line of said Northwest quarter of Section 25, a distance of 615.94 feet to a point on the East right of way margin of S. R. 20, said East margin being a curve with a radial line from said point bearing North 89°08'16" West to the radius point;
Thence Southerly along said curve, being to the right and having a radius of 1,190.92 feet, through a central angle of 08°04'48" an arc distance of 167.95 feet;
Thence continuing along said east margin South 08°56'32" West 842.71 feet to a point lying 300.00 feet northerly from the intersection of said East margin and the South line of the Northeast quarter of said Northwest quarter of Section 25;
Thence South 88°29'35" East parallel with the South line of said Northeast quarter of the Northwest quarter of Section 25, a distance of 500.00 feet;
Thence South 00°38'28" West parallel with the East line of said Section 25, a distance of 477.23 feet to the North line of the South 1,138.00 feet of the Southeast quarter of said Northwest quarter of Section 25;
Thence South 88°04'26" East along said North line, being parallel with the south line of said Southeast quarter of the Northwest quarter of Section 25, a distance of 237.36 feet to the East line of said Northwest quarter of Section 25;
Thence North 01 °08'03" East along said East line, a distance of 1480.96 feet to the point of beginning.

Except the East 241.44 feet, as measured perpendicular to and parallel with the East line thereof.

Also, except that portion as deeded to Island County for road purposes by instrument recorded under Auditor's File No. 88008985 and 88008986.

Parcel B:

The South 182.48 feet of the North 702.48 feet, as measured perpendicular to and parallel with the North line, of the following described tract of land:

That portion of the Northwest quarter of Section 25, Township 33 North, Range 1 East, Willamette Meridian, Island County, Washington, described as follows:

Beginning at a point on the East line of said Northwest quarter of Section 25, lying South 01°08'03" West 20.00 feet from the Northeast comer thereof, said point being also on the south right of way margin of Fakkema Road'
Thence North 88°23'20" West along said south margin, being parallel with and 20.00 feet distant from the North line of said Northwest quarter of Section 25, a distance of 615.94 feet to a point on the east right of way margin of S. R. 20, said east margin being a curve with a radial line from said point bearing North 89°08'16" west to the radius point;
Thence Southerly along said curve, being to the right and having a radius of 1,190.92 feet, through a central angle of 08°04'48" an arc distance of 167.95;
Thence continuing along said east margin South 08°56'32" West 842.71 feet to a point lying 300.00 feet northerly from the intersection of said East margin and the South line of the Northeast quarter of said Northwest quarter of Section 25;
Thence South 88°29'35" East parallel with the South line of said Northeast quarter of the Northwest quarter of Section 25, a distance of 500.00 feet;

Thence South 00°38'28" West parallel with the East line of said Section 25, a distance of 477.23 feet to the North line of the South 1,138.00 feet of the Southeast quarter of said Northwest quarter of Section 25;
Thence South 88°04'26" East along said North line, being parallel with the South line of said Southeast quarter of the Northwest quarter of Section 25, a distance of 237.36 feet to the East line of said Northwest quarter of Section 25;
Thence North 01°08'03" East along said east line, a distance of 1480.96 feet to the point of beginning.

Except the East 241 .44 feet, as measured perpendicular to and parallel with the East line thereof.

Parcel C:

That portion of the Northwest quarter of Section 25, Township 33 North, Range I E,W.M., Island County, Washington, described as follows:

Beginning at a point on the East line of said Northwest quarter of Section 25, lying South 01 °08'03" West 20.00 feet from the Northeast comer thereof, said point being also on the South right of way margin of Fakkema Road;
Thence North 88°23'20" West along said South margin, being parallel with and 20.00 feet distant from the North line of said Northwest quarter of Section 25, a distance of615.94 feet to a point on the East right or way margin of S. R. 20, said East margin being a curve with a radial line from said point bearing North 89°08'16" West to the radius point;
Thence Southerly along said curve, being to the right and having a radius of 1,190.92 feet, through a central angle of08°04'48", an arc distance of 167.95 feet;
Thence continuing along said East margin South 08°56'32" West 842.71 feet to a point lying 300.00 feet northerly from the intersection of said East margin and the South line of the Northeast quarter of said Northwest quarter of Section 25;
Thence South 88°29'35" East parallel with the South line of said Northeast quarter of the Northwest quarter of Section 25, a distance of 500.00 feet;
Thence South 00°38'28" West parallel with the East line of said Section 25, a distance of 477.23 feet to the North line of the South 1,138.00 feet of the Southeast quarter of said Northwest quarter of Section 25;
Thence South 88°04'26" East along said North line, being parallel with the South line of said Southeast quarter of the Northwest quarter of Section 25, a distance of237.36 feet to the East line of said Northwest quarter of Section 25;
Thence North 01 °08'03" East along said East line, a distance of 1480.96 feet to the point of beginning.

Except the North 702.48 feet, as measured perpendicular to and parallel with the North line thereof.

Also except the East 241.44 feet, as measured perpendicular to and parallel with the East line thereof.

Parcel D:

The East 241.44 feet, as measured perpendicular to and parallel with the East line, of the following described tract of land:

That portion of the Northwest quarter of Section 25, Township 33 North, Range 1 E,W.M., Island County, Washington, described as follows:

Beginning at a point on the East line of said Northwest quarter of Section 25, lying South 01°08'03" West 20.00 feet from the Northeast comer thereof, said point being also on the south right of way margin of Fakkema Road;
Thence North 88°23'20" West along said south margin, being parallel with and 20.00 feet distant from the North line of said Northwest quarter of Section 25, a distance of 615.94 feet to a point on the east right of way margin of S. R. 20, said east margin being a curve with a radial line from said point bearing North 89°08'16" West to the radius point;
Thence southerly along said curve, being to the right and having a radius of 1,190.92 feet, through a central angle of 08°04'48", an arc distance of 167.95 feet;
Thence continuing along said East margin South 08°56'32" West 842.71 feet to a point lying 300.00 feet Northerly from the intersection of said East margin and the South line of the Northeast quarter of said Northwest quarter of Section 25;
Thence South 88°29'35" East parallel with the South line of said Northeast quarter of the Northwest quarter of Section 25, a distance of 500.00 feet;
Thence South 00°38'28" West parallel with the East line of said Section 25, a distance of477.23 feet to the North line of the South 1,138.00 feet of the Southeast quarter of said Northwest quarter of Section 25;
Thence South 88°04'26" East along said North line, being parallel with the South line of said Southeast quarter of the Northwest quarter of Section 25 a distance of237.36 feet to the East line of said Northwest quarter of Section 25;
Thence North 01°08'03" East along said East line, a distance of 1480.96 feet to the point of beginning.

Except that portion, if any, lying within the following described tract of land;

That portion of the Northwest quarter of Section 25 Township 33 North, Range 1 E,W.M., described as follows:

Beginning at a point on the south line of the Northeast quarter of the Northwest quarter of said Section 25, at an intersection with the East line of State Highway 20;
Thence Northerly along said East line a distance of 300 feet;
Thence East parallel with the South line of said Northeast quarter of the Northwest quarter a distance of 500 feet;
Thence South parallel to the East line of said Section 25, a distance of 500 feet;
Thence West parallel to the South line of said Northeast quarter of the Northwest quarter to the East line of State Highway 20;
Thence Northerly along said East line to the point of beginning.

Except that portion as deeded to Island County for road purposes by instrument recorded under Auditor's File No. 88008985.

Section Two: The official zoning map shall be changed accordingly.

Section Three: Effective Date. This ordinance provided hereby, shall be in full force and effect five days after the date of publication as required by law.

PASSED by the City Council and approved by its Mayor this 7th day of June, 2011.

CITY OF OAK HARBOR

Approved ( ) _____
Vetoed ( ) Jim Slowik, Mayor

_____
Date

ATTEST:

_____
City Clerk

Approved as to Form:

_____
City Attorney

Published:_____

7

City of Oak Harbor
City Council Agenda Bill

Date: July 12, 2011
Subject: Low Impact Development – Proposed Code Amendments

FROM: Steve Powers, Development Services Director RSP
Ethan Spoo, Senior Planner

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 code amendments to City Council affecting Titles 11, 19, and 21. The amendments will promote and establish a review process for the use of Low Impact Development (LID) stormwater treatment techniques. This item was originally scheduled for the June 7, 2011 City Council meeting.

AUTHORITY

Amendments to the City's code are Review Process V Decisions per Chapter 18.20 OHMC. Under this process, the Planning Commission is required to form a recommendation with City Council designated as the final decision-making authority. Additionally, RCW 36.70.A.040 gives the city "legislative body" the authority to adopt development regulations.

BACKGROUND

What is LID?

LID is a set of stormwater practices which mimic natural water flow and filtration processes. Conventionally, stormwater has been treated by capturing it in pipes and conveying to a stormwater pond or to regional water bodies, such as the Puget Sound. More recently, the thinking on stormwater has gravitated from conveyance (the old method) to emphasize infiltration/LID (the new method). Thus, LID attempts to infiltrate stormwater into the ground where pollutants can be filtered by vegetation and natural processes in the soil. Studies show LID more effectively removes these pollutants from stormwater. For this reason, it has been promoted by the Federal Government, State of Washington and the environmental community. Examples of LID practices include, raingardens, pervious surfaces, green roofs, narrow roads, native vegetation areas, and careful grading techniques.

LID has generally been found in studies to be cost competitive with conventional stormwater infrastructure. A 2007 study conducted by the U.S. Environmental Protection Agency found that use of LID techniques reduced overall stormwater development costs.

A study by ECONorthwest, an economics firm, came to a similar conclusion. While there is very little information on the maintenance costs of LID, anecdotal evidence suggests that maintenance costs can be higher for LID, depending on the specific LID practice used.

Project History
In 2007, the City of Oak Harbor was awarded a technical services grant from the Puget Sound Partnership (PSP) to help us identify barriers in the municipal code to the implementation of LID. PSP did not identify barriers in the City's code preventing applicants from using LID techniques in the City. In fact, the City has allowed LID practices to be installed on a site-by-site, case-by-case basis in the past with the approval of the City Engineer.

PSP's consultant, AHBL, working with the City in 2008, suggested revisions to our code, and provided the City draft code language in 2009. In 2010, staff worked with Planning Commission in a series of work sessions to further craft and refine the code to meet our local conditions. Having received a recommendation of approval from the Planning Commission on March 29, 2011, staff present the draft code to Council for your review, with Planning Commission's comments incorporated.

NPDES Phase II Permit
Aside from the immediate history of this project, it is also important to note the broader regulatory and policy context for LID. The City's NPDES Phase II permit, condition S5.C.4(a)iv states that the City is required to adopt code provisions which:

> *"...allow non-structural preventive actions and source reduction approaches such as Low Impact Development Techniques (LID), measures to minimize the creation of impervious surfaces and measures to minimize the disturbance of native soils and vegetation. Provisions for LID should take into account site conditions, access and long-term maintenance."*

Therefore, the City is required at a minimum, to allow for LID stormwater treatment techniques by the NPDES Phase II permit. It is expected that the next version of this permit may require the use of LID as the treatment type of choice. The City amended Title 12 (Stormwater) in 2010 to meet the above condition in the municipal stormwater permit. The new LID code (Titles 11, 19, and 21), if adopted, will give staff a basis by which to review new LID facilities.

DISCUSSION

Proposed Amendments
The draft code amendments affect three titles of the municipal code: Titles 11 ("Streets and Sidewalks"), Title 19 ("Zoning"), and Title 21 ("Subdivisions"). Although there are a large number of changes in these titles, the amendments can be boiled down to four basic LID concepts:

1. **LID Streets.** The draft code proposes two new local residential street sections. Both street sections make use of bio-retention (raingarden) facilities

outside of the public right-of-way to capture and treat stormwater. The first street section has a 50-foot right-of-way, with no on-street parking. The second street section has a 60-foot right-of-way with one lane of on-street parking. These two, new street sections are shown in Attachment 1. The two new street sections will result in changes to Titles 11 and 21.

2. **LID Parking.** In an effort to reduce the amount of stormwater-generating impervious surface, the draft code places a maximum limit on the number of parking spaces for new uses. Parking spaces in excess of 125% of the minimum are required to be a pervious surface or treat this stormwater runoff using another LID technique (i.e., raingardens). An administrative variance is necessary for any parking spaces exceeding 150% of the minimum number. The parking maximum is 200% of the minimum required number of spaces. The above parking requirements apply to all uses with fifty (50) spaces or more. Parking code changes will affect Chapter 19.44 of the municipal code.

3. **Native vegetation areas.** Native vegetation areas are undisturbed portions of a site that reduce impervious area and treat stormwater naturally. The draft code proposes that between five percent (5%) and fifteen percent (15%) of the site area for new developments be preserved as native vegetation areas. The native vegetation area concept will incorporate the tree retention concept already in place. Staff believe native vegetation areas will create better results for the community and more flexible regulations for applicants than the existing tree retention code. In the past, the tree retention concept has resulted in scattered remnant trees on a site which are susceptible to blown down during storms. The native vegetation concept promotes groups of trees, rather than scattered specimens, promoting healthier trees and conferring greater benefits (air quality, water quality, buffering) to the community. Furthermore, native vegetation areas can be placed anywhere on a site, including within critical areas and required landscape areas. In contrast, under the present code applicants have less flexibility in the location of tree retention areas since these areas cannot overlap with critical areas or site landscaping.

4. **Clearing and grading practices.** Environmentally-friendly clearing and grading practices are a central tenant of LID. The manner in which a site is cleared and/or graded can have significant impacts on stormwater quality due to erosion and sediment movement into waterways. The draft code proposes to adopt a suite of clearing and grading practices meant to reduce erosion and more effectively capture sediments. These clearing and grading practices include the following:

   - The ability for the Director to require additional erosion controls if the initial ones are not working;
   - Protection of native soils, where feasible;
   - Protection of critical areas during construction;
   - Protection of cut and fill slopes;
   - Seasonal grading requirements; and
   - Protection of native vegetation areas during construction.

Implementation of Amendments
Just as important as the LID concepts themselves is the issue of whether the City establishes them as mandatory, incentive-based, or voluntary. The following table illustrates what is proposed under the draft code:

LID Concept	Mandatory	Incentive-based	Voluntary
LID Streets		X	X
LID Parking	X		
Native vegetation areas	X	X	
Clearing and grading practices			X

After an introduction to the concept by staff, the Planning Commission expressed a desire to see the use of mandatory parking maximums in order to limit the size of large commercial parking areas that see infrequent use. Large retailers may choose to build more parking than is required to serve their customers on typical shopping days. The excess parking may only be used during peak holiday shopping periods a few times per year, but remain unused otherwise. There is a tradeoff between having this additional, infrequently used parking and creating more stormwater runoff which leads to the need for more public infrastructure. To help reduce the amount of hard surface and curb public stormwater costs, the Planning Commission recommended parking maximums, a concept which is being used in other jurisdictions across the country.

The use of native vegetation areas is proposed to be mandatory because they would replace mandatory tree retention requirements now in existence. The draft code also offers up incentives in the form of variable setbacks and reduced minimum parking requirements to accommodate native vegetation areas.

The proposed clearing and grading practices are voluntary with implementation based on feasibility. Staff and Planning Commission recognized that each site is unique when it comes to grading challenges. The new grading and clearing practices, if adopted, will help staff review proposed grading plans against the "ideal situation", but allow for adjustments where full implementation of the ideal is not possible.

The use of LID streets is voluntary. It is possible that built-in incentives exist since construction of an LID street is anticipated to be less expensive than that of a standard street. Until maintenance procedures, costs, and street design have been vetted with real-life examples, staff and Planning propose to make LID streets voluntary.

PLANNING COMMISSION:
At its March 26, 2011 meeting, the Planning Commission recommended approval of the draft code with one revision. The revision was to include language that the parking maximum requirements apply to all projects with a value of sixty percent (60%) or more of the assessed property value. Building remodels, site retrofits or redevelopment which amount to less than sixty percent (60%) of the assessed property value would not be

required to meet these requirements. This threshold will allow some level of property improvements to be made without requiring reconstruction of the parking lot. As requested, staff have inserted language to this effect in Section 19.44.105 and it is this version of the code which has been presented to the City Council.

STANDING COMMITTEE REPORT:

The Governmental Services Standing Committee was briefed on these code amendments on April 12 and May 10, 2011. The Public Works Standing Committee was briefed on these code amendments on April 7 and May 5, 2011.

At the Public Works and Governmental Services standing committee meetings, members raised an issue regarding how the pervious parking requirement and the parking maximums work together. More specifically, committee members wanted to know why a parking maximum of 200% is necessary to reduce impervious surfaces, if the draft code requires that all spaces above 125% of the minimum be pervious? In other words, what is the public interest in setting a parking maximum if hard surface area is already limited by the pervious surface requirement? The answer to this question lies in the feasibility of installing pervious surfaces. The new code, in section 19.44.105, requires pervious parking for all spaces above 125% of the minimum number, "*wherever soil conditions make infiltration feasible.*" In some cases, soils do not drain well and it is not feasible to require applicants to use pervious surfaces. In such instances, the parking maximum of 200% will serve as a backstop in limiting the total amount of hard surface on a site.

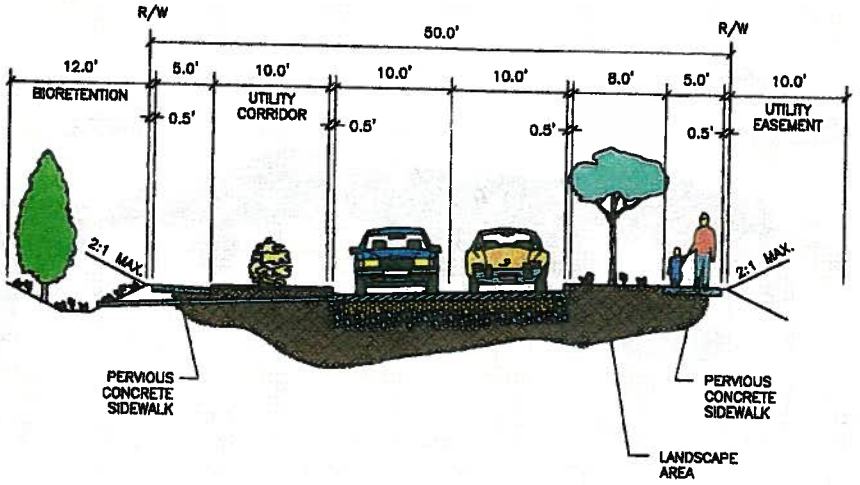
RECOMMENDED ACTION:

1. Conduct the public hearing.
2. Approve the proposed amendments to Titles 11, 19, and 21 promoting the use of LID stormwater management techniques, as recommended by the Planning Commission.

ATTACHMENTS:

- Attachment 1 – LID Street Sections
- Attachment 2 – Draft code amending Title 11 "Streets and Sidewalks"
- Attachment 3 – Draft code amending Chapter 19.44 "Parking"
- Attachment 4 – Draft code amending Chapter 19.46 "Landscaping and Screening"
- Attachment 5 – Draft code amending Chapter 19.47 "Land Clearing"
- Attachment 6 – Draft code amending Title 21 "Subdivisions"
- Attachment 7 – Planning Commission Minutes from January 25, February 22, and March 29, 2011.

"LOW IMPACT DEVELOPMENT" STREETS



NOTES:

1. "LOW IMPACT DEVELOPMENT" STREETS ARE INTENDED TO SERVE AREAS WITH ZONING LESS THAN R-8 CLASSIFICATION.
2. SPECIFIC TREATMENT TO BE USED REQUIRES APPROVAL FROM PUBLIC WORKS DEPARTMENT.

City of Oak Harbor
ENGINEERING DEPARTMENT
865 SE Barrington Drive
Oak Harbor, WA 98277

TYPICAL STREET SECTION
LOW IMPACT DEVELOPMENT
50' ROW

REVISED 3-22-11

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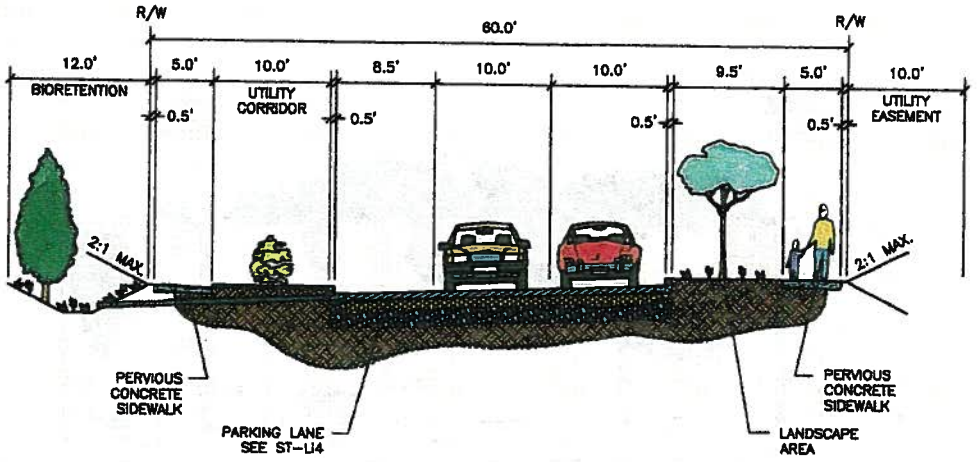
ATTACHMENT 1

"LOW IMPACT DEVELOPMENT" STREETS



NOTES:

1. "LOW IMPACT DEVELOPMENT" STREETS ARE INTENDED TO SERVE AREAS WITH ZONING LESS THAN R-8 CLASSIFICATION.
2. SPECIFIC TREATMENT TO BE USED REQUIRES APPROVAL FROM PUBLIC WORKS DEPARTMENT.

City of Oak Harbor
ENGINEERING DEPARTMENT
865 SE Barrington Drive
Oak Harbor, WA 98277

TYPICAL STREET SECTION
LOW IMPACT DEVELOPMENT
60' ROW

REVISED 3-22-11

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ATTACHMENT 1

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF OAK HARBOR AMENDING CHAPTER 11.17 OF THE OAK HARBOR MUNICIPAL CODE ENTITLED "STREET DESIGN STANDARDS" INCORPORATING LOW IMPACT DEVELOPMENT STORMWATER MANAGEMENT PRACTICES IN STREET DESIGNS.

WHEREAS, the City of Oak Harbor's Comprehensive Plan in Environment Policy 2(h) says "the City should provide incentives to utilize Low Impact Development techniques for new development and redevelopment projects that will further promote resource protection and stewardship. Such incentives may include density credits, street width and/or parking requirement reductions, stormwater fee credits, landscape/park requirement credits, and/or expedited permit review processing. The City should also provide educational materials through pamphlets or web links to the public to educate the public on low impact development" and;

WHEREAS, the City of Oak Harbor finds that Low Impact Development is a non-structural approach for managing stormwater from new and redeveloped sites which has been found by multiple professional and academic studies to have less impact on the environment, especially water quality, than conventional approaches for treating stormwater and;

WHEREAS, the City of Oak Harbor finds that Low Impact Development techniques are, in most cases, cost competitive or less expensive to install than conventional stormwater infrastructure and;

WHEREAS, the City finds that Low Impact Development techniques promote higher property values by using vegetated raingardens, native vegetation areas, and pervious pavements which are considered to be more aesthetically appealing than conventional stormwater techniques and;

WHEREAS, the City of Oak Harbor finds that the Oak Harbor Municipal Code currently does not have standards for incorporating Low Impact Development in site designs, that having such standards will further promote the use of Low Impact Development stormwater treatment techniques, and will help City staff review these projects more efficiently and;

WHEREAS, the City of Oak Harbor conducted seven (7) work sessions on the proposed code updates with the Planning Commission which were open to the public on the following dates: October 27, 2009, November 24, 2009, January 26, 2010, February 23, 2010, March 23, 2010, April 27, 2010, and May 25, 2010 and;

WHEREAS, the City of Oak Harbor conducted a public meeting before the Planning Commission on January 24, 2010 and opened a public hearing on February 22, 2011 which was closed on March 29, 2011, and;

WHEREAS, the Oak Harbor Planning Commission recommended approval of the subject ordinance to the City Council and;

WHEREAS, the City of Oak Harbor issued Notice of Application on February 12, 2011 and Determination of Non-Significance (DNS) on March 11, 2011 for a SEPA Environmental Checklist in accordance with Chapter 43.21 RCW and;

WHEREAS, the City of Oak Harbor provided a 60-day comment period which began on March 17, 2011 and ended on May 17, 2011 to the Washington State Department of Commerce in accordance with Section 36.70A.106 RCW

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

Section One. Chapter 11.17 of the Oak Harbor Municipal Code, last amended by Section one of Ordinance 1430 in 2005, is hereby amended to read as follows:

Chapter 11.17
STREET DESIGN STANDARDS
Sections:

11.17.010 General requirements.
11.17.020 Standard specifications.
11.17.030 Inspection and fees.
11.17.040 ~~Required improvements.~~ Minimum required improvement standards
11.17.050 Clearing and grading.
11.17.060 Monuments.
11.17.070 Street and block layout.
~~11.17.075 North Whidbey Enterprise Area street standards.~~
11.17.080 ~~Other standards.~~Right-of-way requirements
11.17.090 ~~Variance~~North Whidbey Enterprise Area street standards.
11.17.100 Street geometry.
11.17.110 Other standards[casi].
11.17.120 Variance

11.17.010 General requirements.

(1) These street standards shall apply to all development within the city of Oak Harbor. The improvements specified under this chapter are necessary prior to issuance of a building permit for any lot, parcel or tract which has access to such street. Bond or equivalent assurances pursuant to the Oak Harbor Municipal Code (OHMC) may be provided in lieu of construction so long as the required improvements are in place prior to occupancy of the premises for which the building permit is provided.

(2) Building permits may be issued without complying with the provisions of this chapter:

(a) For lots or parcels with frontage on streets that:

(i) Were constructed and dedicated to the city prior to October 1, 2004; and

(ii) Met minimum street standards at the time of construction.

(b) Building permits for remodeling, repair or restoration of existing buildings not exceeding 60 percent of the assessed valuation of the structure may be issued without compliance with this chapter.

(3) Exception authorized under subsection (2) of this section shall not apply when:

(a) Street improvements are required by concurrency requirements of the Oak Harbor Municipal Code or by SEPA analysis;

(b) The regulations under the Oak Harbor Municipal Code requires sidewalks as a pedestrian amenity for the development; or

(c) Required by Local Improvement District ~~LID~~[eas2] assessment.

(4) If street improvements are required by this chapter or Chapter 11.16 OHMC and before any building permit is issued, the property owner shall submit to the city engineer to obtain city approval of plans and profiles of the proposed street, drainage plans and profiles, sewer and water plans and profiles, and right-of-way section drawings, including utility line placement. All design drawings and construction inspections shall be completed under the supervision of the developer's engineer, as defined in this title.

11.17.020 Standard specifications.

The adopted DOE standards and standard specifications for municipal public works construction prepared by the Washington State chapter of the American Public Works Association and standard specifications in accordance with the latest edition of the Oak Harbor water systems plan, comprehensive Oak Harbor sewer system plan and Oak Harbor comprehensive plan shall be hereinafter referred to as the "standards" and said standards together with the laws of the state of Washington and the ordinances of the city of Oak Harbor, so far as applicable, shall apply except as amended or superseded by special provisions.

11.17.030 Inspection and fees.

The engineering department shall be responsible for approving all engineering drawings, the final inspection and acceptance of all street improvements. A charge for staff review, inspection and administrative time shall be prepared by the city engineer and billed to the developer. The charge shall be based on the city's hourly cost plus fringe benefits as a percentage of the hourly labor rate.

11.17.040 ~~Required improvements.~~ Minimum required improvement standards[eas3]

(1) Minimum improvements along contiguous arterials and one-half of all other abutting streets shall consist of paved streets, curbs, gutters, sidewalks, monuments, sanitary and storm sewers, street lights, water mains, street name signs and all appurtenances thereto in accordance with specifications approved by the city engineer or adopted by OHMC 11.17.020[eas4].

(2) The city engineer shall determine the minimum required improvements. At a minimum, streets shall be constructed in accordance with their classification as determined by the comprehensive plan transportation element. The city engineer may require the submission of a professionally prepared traffic impact analysis to assist in determining the minimum street improvements required of any development. It is further provided that improvements of adjoining streets shall be

required only if there is substantial use of the street by the development in question.

(3) Low Impact Development (LID) best management practices, such as permeable surfacing alternatives and on-site stormwater management facilities, are encouraged for street improvements~~;~~ where site and soil conditions make LID feasible. Permeable surfacing and LID stormwater management facilities shall be constructed in accordance with the LID Technical Guidance Manual for Puget Sound (January, 2005 edition) and the manufacturer's recommendations. Permeable surfacing includes, but is not limited to: paving blocks, turf block, pervious concrete, porous asphalt, and other similar approved materials. Alternative surfacing methods may be approved for parking areas, emergency parking areas, private roads, road shoulders, bike paths, walkways, patios, driveways, and easement service roads unless site constraints make use of such materials detrimental to water quality. Use of permeable surfacing methods shall meet the imposed load requirements for fire apparatus, and shall be subject to review and approval by the Oak Harbor Public Works Department (Engineering Division) and the Fire Marshal[eas5].

11.17.050 Clearing and grading.

All streets, roads and alleys shall be graded to their full width so that pavement and sidewalks can be constructed on the same plane. Before grading is started, the entire right-of-way area shall be cleared of all stumps, roots, brush, other objectionable materials, and all trees not intended for preservation.

11.17.060 Monuments.

~~Concrete~~ Brass monuments in cases shall be set at controlling corners and points of curvature in each street, and at all street intersections. All surveys shall be of third order accuracy. The use of state plane coordinates is encouraged.

11.17.070 Street and block layout

~~(1) The street layout should provide for the following:~~

~~(a) The location of all principal, collector and minor arterials must conform to the circulation element of the Oak Harbor comprehensive plan, as now in effect or hereafter adopted;~~

~~(b) Continuity and continuation of adjoining streets and arterials;~~

~~(c) Access generally extended to boundaries of the tract;~~

~~(d) Streets generally parallel with contour lines where practicable;~~

~~(e) Streets intersecting at right angles or as nearly as possible and T-intersection design shall be utilized insofar as practical;~~

~~(f) All streets dedicated shall be full width except along the boundary lines of the property. Half-width streets may be permitted along the boundaries of a development upon approval therefor and if traffic study demonstrates that more is not needed. Dedication shall be required if use is made of the street by the property being developed;~~

(g) Alleys shall be a minimum of 20 feet wide and paved. Alleys may be required in residential areas and to service all properties abutting arterials. Alleys may be required in all commercial and industrial areas; and

(h) Access and utility easements for residential areas may be permitted in lieu of alleys. All utility easements shall contain access provisions for purpose of maintenance.

(2) Where possible, blocks shall have sufficient width to provide for two rows of lots, each of which shall have a minimum depth of 90 feet.

(a) Pedestrian walkways seven feet in width may be required to provide circulation of pedestrians. These are to be paved in concrete.

(b) The number of intersecting streets with major arterials of all classes shall be held to a minimum.

(3) Street Grades.

(a) The minimum grade on any street shall be 0.50 percent unless otherwise approved by the city engineer.

(b) Maximum grades shall not exceed the following grades unless otherwise approved by the city engineer:

(i) Residential streets: 10 percent;

(ii) Collector arterials: 10 percent;

(iii) Minor arterials: 10 percent;

(iv) Principal arterials: eight percent.

(4) Street Right-of-Way Requirements.

	Right-of-Way Width (in feet)	Width of Pavement (in feet)	Sidewalk Width (in feet)	
			Residential	Commercial
Principal Arterials	60	44	6	6
Collector Arterials	60	44	5	6
Neighborhood Streets	50 - 60	36 - 44	5	
Alleys	20	16		

(a) Increased Right-of-Way Requirements. The city engineer may require that street widths be increased from suggested street width above to provide for traffic movement and to reduce or eliminate traffic congestion.

(b) Horizontal Curves. Where a deflection angle of more than 10 degrees in the alignment of a street occurs, a curve of reasonably long radius shall be introduced on streets 60 feet or more in width, the centerline radius of curvature shall be not less than 300 feet; on other streets, not less than 100 feet subject to review and approval by the engineering department.

(c) Vertical Curves. All changes in grade shall be connected by vertical curves of a minimum length of 200 feet unless otherwise specified by the engineering department.

~~(d) Tangents. A tangent of at least 200 feet in length shall be provided between reverse curves for principal and minor arterials; 150 feet for collector streets; and 100 feet for residential access streets. The city engineer may authorize the modification of the above requirement when it can be shown that the minimum tangents would be impractical and where there would be no impact on traffic safety standards.~~

~~(e) Street intersections with centerline-to-centerline offsets of less than 125 feet shall not be allowed.~~

~~(f) Streets that end within a subdivision which will be extended in the future must be designed at least 200 feet beyond the limits of the subdivision.~~

~~(5) Dead-end streets may be permitted where the proposed dead-end street will not adversely affect the traffic flow and circulation within the area. Dead-end streets shall terminate in a circular turnaround at least 80 feet in diameter. Recommended maximum length is 300 feet. The maximum allowable length is 400 feet, measured from center of intersection to center of cul-de-sac.~~

~~(6) Alleys or easements for utilities or pedestrian access having a total width of 20 feet may be required along rear or side lot lines.~~

~~(7) At street intersections, property line corners shall be rounded by an arc, the minimum radius of which shall be 20 feet. No rounding shall be required for the intersection of an alley with a street[eas6].~~

The standards in this section address pedestrian, vehicular and bicycle traffic flow on a site as it relates to surrounding sites. These provisions create continuous, multimodal connections across properties and developments of different ownership. In so doing, these standards facilitate the efficient and safe movement of pedestrians, bicycles and vehicles, giving each mode multiple route choices from origins to destinations.

(1) Streets, sidewalks, pedestrian or bike paths, shall be linked within and between neighborhoods to create a continuous and interconnected network of roads and pathways;

(2) Local Streets, Arterials and Collectors shall be extended to the boundary of the development, unless an exceptional circumstance of topography, critical areas or existing development prohibits the extension. Provided, that if an adjacent property has a reasonable likelihood of redeveloping in the future, the City Engineer may require a street stub. Streets that end within a proposed development which will be extended in the future must be designed at least 200 feet beyond the property boundary of the proposed development and shall be shown on the preliminary plat document.

(3) The location of all Principal Arterials, Minor Arterials, and Collectors must conform to the Transportation Element of the Oak Harbor Comprehensive Plan;

(4) All streets dedicated shall be full-width except along the boundary lines of the property. Half-width streets may be permitted along the boundaries of a development upon approval and in compliance with 11.17.040 OHMC where reasonably necessary as a direct result of the proposed development.

(5) The number of intersecting streets with Principal or Minor arterials shall be held to a minimum.

(6) Street intersecting at right angles or as nearly as possible and T-intersection

design shall be utilized insofar as practical.

(7) Alleys provide secondary access to an abutting property. Alleys may be considered as a design solution to provide vehicular or service access to residential, commercial, and industrial properties according to the following provisions:

(a) When alleys are proposed, they may be publicly dedicated and maintained or privately owned and maintained. All alleys which are dead-ends and do not provide a through connection to the other side of the block shall be privately owned and maintained.

(b) The dimensions of alleys must conform to Table 11.17-2.

(c) Alleys may be required by the city engineer as a design solution to serve residential properties which front on Arterials and Collectors and to minimize the number of driveway accesses on these streets. Alleys may also be required by the city engineer in commercial and industrial areas.

(d) Where private alleys are proposed, access and utility easements for residential areas may be permitted in lieu of public dedication. All utility easements shall contain access provisions for purpose of public utility maintenance[eas7].

~~**11.17.075 North Whidbey Enterprise Area street standards**~~

~~(1) The standards contained in this section apply to the North Whidbey Enterprise Area as identified in Exhibit C of the Urban Growth Area Interlocal Agreement between Island County and the city of Oak Harbor, a copy of which is on file with the city clerk and available for public inspection.~~

~~(2) Street Right-of-Way Requirements.~~

	~~Right-of-Way Width (in feet)~~	~~Width of Pavement (in feet)~~	~~Sidewalk Width (in feet)~~
~~Industrial Arterial~~	~~60~~	~~46~~	~~None~~
~~Industrial Collector~~	~~50~~	~~30~~	~~None~~
~~Industrial Local~~	~~50~~	~~30~~	~~None~~

~~The city engineer may increase the right-of-way requirements for cut slopes or other engineering needs when recommended by a traffic study.~~

~~(3) Typical street cross-sections for uses within the North Whidbey Enterprise Area and incorporating the requirements of subsection (2) of this section are on file with the city clerk[eas8].~~

~~**11.17.080 Other Standards**~~

~~(1) Sidewalks.~~

~~(a) Sidewalks shall be installed on both sides of all streets, along dead-end streets and around cul-de-sacs. No physical obstructions such as poles and fire hydrants shall be constructed in the sidewalk. Sidewalks shall be a minimum of five feet wide and four inches thick. Where rolled curb has~~

~~been approved by the city engineer all sidewalks adjacent will be a minimum thickness of six inches.~~

~~(b) On streets where a proposed subdivision adjoins an existing subdivision or existing street dedication and the existing subdivision or existing street dedication does not meet city standards, the developer shall, as a minimum, be responsible for installing sidewalks on both sides of all streets within the proposed subdivision and on one side on streets around the perimeter of the proposed subdivision.~~

~~(c) All sidewalks shall be completed prior to an occupancy permit being granted for any new building.~~

~~(2) Other Utilities.~~

~~(a) Street light standards and fixtures shall be provided to supply adequate lighting for the safety and convenience of the public.~~

~~(b) Other utilities which are within a reasonable distance to the platted area shall be installed to provide electricity, natural gas, telephone, television cable, and other services to the platted area. Said utilities shall be restricted to underground installation.~~

~~(c) All utilities (water, sewer, and electrical, and if available, gas and TV cable) shall be installed to the property line prior to acceptance of the public improvements.~~

~~(3) Traffic Control Devices. The developer shall install street name signs and traffic control signs and/or improvements and devices other than traffic signals to the satisfaction of the city engineer. The city may install such signs and devices at the expense of the developer.~~

~~(4) All utilities except water, sewer and storm sewer will be installed behind the sidewalk~~[cas9]~~.~~

11.17.080 Right-of-Way requirements

Table 11.17-2 gives the minimum required dimensional standards for each functional street type listed in the Transportation Element of the Oak Harbor Comprehensive Plan. All newly proposed public streets must conform to the requirements in Table 11.17-2, unless an alternative Local Residential Street design has been approved per sections 21.60.070 or 21.60.080 OHMC.

Table 11.17 – 2. Required Street Improvements

Street Type	Right-of-way width *	Face of curb to-face of curb width	Sidewalk width each side	Landscape strip width each side	Bike lane width each side
Principal Arterial, 4-lane	97 - 105 feet	52 feet without bike lanes, 60 feet with bike lanes. Landscaped median is 12 feet.	8 feet	12 feet	4 feet.

Minor Arterial, 2-lane	80 feet	47 feet, with 11 foot center turn-lane	5 feet	10.5 feet	5 feet
Minor Arterial, Industrial	60 feet	38 feet	none	6 feet (bioswale)	4 feet
Collector w/ bike lanes	66 feet	48 feet	5 feet	3 feet	5 feet
Collector, Industrial	50 feet	26 feet	none	6 feet (bioswale)	4 feet, one side
Local, Residential - Narrow	50 ft	28 feet with one parking lane. Or 28 feet including two 4-foot bike lanes and no parking	5 feet	5 feet	4 feet, optional
Local Residential, Wide	60 feet	36 feet parking on both sides. Or 36 feet with parking on one side and 4-foot bike lanes on both sides.	5 feet	5 feet	4 feet, optional.
Local LID Street #1	50 feet	20 feet (two 10-foot travel lanes).	5 feet	8-foot planter strip on elevated side. 10-foot utility corridor on basin side. Bioretention outside of right-of-way	none
Local LID Street #2	60 feet	28.5 feet, with one, 8.5-foot parking parking lane on basin side of street.	5 feet	9.5 foot planter strip on elevated side. 10-foot utility strip on basin side.Bioretention	none

				outside of right-of-way.	
Alley	20	19 feet.**	none		none

* All street types include a 6-inch strip at the outside edge of the physical improvements, but within the right-of-way, with the exception of the "Minor Arterial, Industrial" which has a 1-foot strip on the outside edge of right-of-way, the "Collector, Industrial" which has a 4 foot strip on the outside edge of right-of-way , and the Local LID Street #2 which has a 1-foot strip on the outside edge of right-of-way.
**16-foot width pavement sections may be used as approved on alleys by the city engineer.
Note: All streets include 6-inch curbs not shown in the dimensions above, with the exception of alleys which do not have curbs.

(1) Where landscape strips are required on Local Residential streets within the public right-of-way, they are to be maintained by the property owner whose property is adjacent to the landscape strip. Such landscape strips shall contain one hundred percent (100%) groundcover in the form of drought-tolerant grass or turf.

(2) Intersection spacing of less than one hundred twenty five feet (125') is not allowed.

(3) For land division of commercial or industrial property, dead-end streets may be permitted where the proposed dead-end street will not adversely affect the traffic flow and circulation within the area. Dead-end streets shall terminate in a turnaround approved by the city engineer. The maximum allowable length for dead-end streets is four hundred feet (400'), measured from the center of intersection to the dead-end terminus. Requirements for dead-end streets in residential subdivisions or short subdivisions are contained in OHMC section 21.60.110.

(4) Increased right-of-way requirements: the city engineer may require that street widths be increased from the minimum width in Table 11.17-2 to provide for traffic movement, to reduce or eliminate traffic congestion and for safety reasons[eas10].

~~**11.17.090 Variance.**~~

~~(1) Ay developer can make application for a variance provided the request is received concurrently with the proposed development application. Such application shall include any and all details necessary to support the application. Variances may be granted under the following circumstances:~~

~~(a) Because of the size of the lot or parcel to be developed, its topography, the condition or nature of adjoining streets, or the existence of unusual physical conditions, strict compliance with the provisions of this chapter would cause unusual and unnecessary hardship on the developer; or~~

~~(b) The requirements for right-of-way dedication and street construction are not roughly proportional to the burdens imposed by the development on the street system; or~~

~~(c) Alternative street designs will further circulation and urban design goals and policies of the comprehensive plan.~~

~~(2) Variances are a Type II review process.~~

~~(3) Such conditions may be required which may achieve, insofar as practicable, the objectives of the requirements for which a variance is authorized~~[eas11]~~.~~

11.17.090 North Whidbey Enterprise Area street standards.

(1) The standards contained in this section apply to the North Whidbey Enterprise Area as identified in Exhibit C of the Urban Growth Area Interlocal Agreement between Island County and the city of Oak Harbor, a copy of which is on file with the city clerk and available for public inspection.

(2) Street Right-of-Way Requirements.

Table 11.17-1 North Whidbey Enterprise Area Street Standards			
	Right-of-Way Width (in feet)	Width of Pavement (in feet)	Sidewalk Width (in feet)
Industrial Arterial	60	46	None
Industrial Collector	50	30	None
Industrial Local	50	30	None

The city engineer may increase the right-of-way requirements for cut slopes or other engineering needs when recommended by a traffic study.

(3) Typical street cross-sections for uses within the North Whidbey Enterprise Area and incorporating the requirements of subsection (2) of this section are on file with the city clerk[eas12].

11.17.100 Street geometry.

(1) Horizontal Curves. Where a deflection angle of more than 10 degrees in the alignment of a street occurs, a curve of reasonably long radius shall be introduced on streets 60 feet or more in width, the centerline radius of curvature shall be not less than 300 feet; on other streets, not less than 100 feet subject to review and approval by the engineering department.

(2) Vertical Curves. All changes in grade shall be connected by vertical curves of a minimum of 200 feet unless otherwise specified by the engineering department.

(3) Tangents. A tangent of at least 200 feet in length shall be provided between reverse curves for principal and minor arterials; 150 feet for collector streets; and 100 feet for residential access streets. The city engineer may authorize the modification of the above requirement when it can be shown that the minimum tangents would be impractical and where there would be no impact on traffic safety standards.

(4) The minimum grade on any street shall be 0.50 percent unless otherwise approved by the city engineer. Maximum grades shall not exceed the following grades unless otherwise approved by the city engineer:

(a) Residential streets: 10 percent
(b) Collectors: 10 percent
(c) Minor arterials: 10 percent
(d) Principal arterials: 8 percent

(5) At street intersections, property line corners shall be rounded by an arc, the minimum radius of which shall be 20, except as provided for in 21.50.100 OHMC. No rounding shall be required for the intersection of an alley with a street[eas13].

11.17.110 Other standards.

(1) Sidewalks.

(a) Sidewalks shall be installed on both sides of all streets, along dead-end streets and around cul-de-sacs. No physical obstructions such as poles, fire hydrants, utility boxes, utility vaults, or mailboxes shall be constructed in the sidewalk or overhang the sidewalk from zero to eight (8) feet above grade. Sidewalks shall be a minimum of five feet wide and four inches thick. Where rolled curb has been approved by the city engineer all sidewalks adjacent will be a minimum thickness of six inches.

(b) On streets where a proposed subdivision adjoins an existing subdivision or existing street dedication and the existing subdivision or existing street dedication does not meet city standards, the developer shall, as a minimum, be responsible for installing sidewalks on both sides of all streets within the proposed subdivision and on one side on streets around the perimeter of the proposed subdivision. These provisions may be amended for LID projects, when approved by the city engineer and development services director.

(c) All sidewalks shall be completed prior to an occupancy permit being granted for any new building.

(2) Other Utilities.

(a) Street light standards and fixtures shall be provided to supply adequate lighting for the safety and convenience of the public.

(b) Other utilities which are within a reasonable distance to the platted area shall be installed to provide electricity, natural gas, telephone, television cable, and other services to the platted area. Said utilities shall be restricted to underground installation.

(c) All utilities (water, sewer, and electrical, and if available, gas and TV cable) shall be installed to the property line prior to acceptance of the public improvements.

(3) Traffic-Control Devices. The developer shall install street name signs and traffic control signs and/or improvements and devices other than traffic signals to the satisfaction of the city engineer. The city may install such signs and devices at the expense of the developer.

(4) All utilities except water, sewer and storm sewer will be installed behind the sidewalk[cas141].

(5) Visibility triangles. Visibility triangles shall be provided as per AASHTO standards for local roads except where connections to state highways require a different standard.

11.17.090 Variance.

(1) Any developer can make application for a variance provided the request is received concurrently with the proposed development application. Such application shall include any and all details necessary to support the application. Variances may be granted under the following circumstances:

(a) Because of the size of the lot or parcel to be developed, its topography, the condition or nature of adjoining streets, or the existence of unusual

physical conditions, strict compliance with the provisions of this chapter would cause unusual and unnecessary hardship on the developer; or

(b) The requirements for right-of-way dedication and street construction are not roughly proportional to the burdens imposed by the development on the street system; or

(c) Alternative street designs will further circulation and urban design goals and policies of the comprehensive plan.

(2) Variances are a Type II review process.

(3) Such conditions may be required which may achieve, insofar as practicable, the objectives of the requirements for which a variance is authorized.

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 (5) days after its publication.

PASSED by the City Council this ___ day of _____ 2011.

CITY OF OAK HARBOR

Approved ( )
Vetoed ( )

_____
Mayor

_____
Date

ATTEST:

_____
City Clerk

Approved as to Form:

_____
City Attorney

Published:_____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF OAK HARBOR AMENDING CHAPTER 19.44 OF THE OAK HARBOR MUNICIPAL CODE ENTITLED "PARKING" INCORPORATING LOW IMPACT DEVELOPMENT STORMWATER MANAGEMENT PRACTICES IN PARKING FACILITIES.

WHEREAS, the City of Oak Harbor's Comprehensive Plan in Environment Policy 2(h) says "the City should provide incentives to utilize Low Impact Development techniques for new development and redevelopment projects that will further promote resource protection and stewardship. Such incentives may include density credits, street width and/or parking requirement reductions, stormwater fee credits, landscape/park requirement credits, and/or expedited permit review processing. The City should also provide educational materials through pamphlets or web links to the public to educate the public on low impact development and;"

WHEREAS, the City of Oak Harbor finds that Low Impact Development is a non-structural approach for managing stormwater from new and redeveloped sites which has been found by multiple professional and academic studies to have less impact on the environment, especially water quality, than conventional approaches for treating stormwater and;

WHEREAS, the City of Oak Harbor finds that Low Impact Development techniques are, in most cases, cost competitive or less expensive to install than conventional stormwater infrastructure and;

WHEREAS, the City finds that Low Impact Development techniques promote higher property values by using vegetated raingardens, native vegetation areas, and pervious pavements which are considered to be more aesthetically appealing than conventional stormwater techniques and;

WHEREAS, the City of Oak Harbor finds that the Oak Harbor Municipal Code currently does not have standards for incorporating Low Impact Development in site designs, that having such standards will further promote the use of Low Impact Development stormwater treatment techniques, and will help City staff review these projects more efficiently and;

WHEREAS, the City of Oak Harbor conducted seven (7) work sessions on the proposed code updates with the Planning Commission which were open to the public on the following dates: October 27, 2009, November 24, 2009, January 26, 2010, February 23, 2010, March 23, 2010, April 27, 2010, and May 25, 2010 and;

WHEREAS, the City of Oak Harbor conducted a public meeting before the Planning Commission on January 24, 2010 and opened a public hearing on February 22, 2011 which was closed on March 29, 2011, and;

WHEREAS, the Oak Harbor Planning Commission recommended approval of the subject ordinance to the City Council and;

WHEREAS, the City of Oak Harbor issued Notice of Application on February 12, 2011 and Determination of Non-Significance (DNS) on March 11, 2011 for a SEPA Environmental Checklist in accordance with Chapter 43.21 RCW and;

WHEREAS, the City of Oak Harbor provided a 60-day comment period which began on March 17, 2011 and ended on May 17, 2011 to the Washington State Department of Commerce in accordance with Section 36.70A.106 RCW.

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

Section One. Section 19.44.010 of the Oak Harbor Municipal Code last adopted by Section 19 of Ordinance 1555 in 2009 is hereby amended to read as follows:

Chapter 19.44
PARKING
Sections:

19.44.010 **Purpose and intent.**
19.44.020 **General requirements.**
19.44.030 **Bicycle parking.**
19.44.040 **Location.**
19.44.050 **Expansion, enlargement and occupancy.**
19.44.060 **Mixed occupancies.**
19.44.070 **Uses not specified.**
19.44.080 **Joint use.**
19.44.090 **Conditions required for joint use.**
19.44.100 **Minimum parking space standards. ~~Table of minimum standards.~~**
19.44.105 **Maximum parking space standards**[eas1]**.**
19.44.110 **Parking space size and access requirements.**
19.44.120 **Car and van pool parking.**
19.44.130 **Plans.**
19.44.140 **Loading areas.**

19.44.010 Purpose and intent

Provisions of this chapter are of general application to several of the districts described in Chapter 19.20 OHMC, except as noted in the CBD central business district. It is the intent of this chapter to set down provisions for off-street parking and loading areas to prevent congestion in the streets, promote and protect property values and to provide for the health, safety and welfare of the citizenry.

19.44.020 General requirements.

Parking areas, public or private, are permitted as accessory uses, operating in conjunction with permitted uses, unless otherwise permitted by this title. Each off-street parking space shall have a net area of not less than 180 square feet, exclusive of driveways or aisles, and shall be of usable shape and condition. To determine on a gross area basis, 270 square feet shall be allowed per vehicle. If the required parking space for a one-family or

two-family dwelling is not provided in a covered garage, then such space shall be not less than 180 square feet The circulation pattern of all off-street parking areas excepting driveways serving single-family or two-family dwellings shall not have as a part of the pattern any parking or parking maneuvers on a public sidewalk, highway, road, street or alley.

19.44.030 Bicycle parking.

Bicycle racks shall be provided for all nonresidential and multifamily uses. Such racks shall provide space for a minimum of one bicycle for each 10 parking spaces required to a maximum of 10 bicycle spaces.

19.44.040 Location.

Off-street parking facilities shall be located and operated in conjunction with the permitted use as hereinafter specified; where a distance is specified, such distance shall be the walking distance measured from the nearest point of the parking facility to the nearest point of the building that such facility is required to serve:

(1) For one-family and two-family dwellings, on the same lot with the building they are required to serve;

(2) For multiple dwellings, not more than 100 feet;

(3) For hospitals, skilled nursing facilities, assisted living facilities, rooming houses and boarding houses, fraternity and sorority houses, not more than 300 feet;

(4) For uses other than those specified above, not more than 500 feet;

(5) Parking lots for passenger automobiles only shall be allowed when such parking lots are for the purpose of providing the off-street parking required by this title and are located and improved in accordance with this chapter, except that when any such parking lot is to serve a use first permitted in a less restrictive zone than the zone in which the parking lot is to be located, such parking lot may be allowed only by a variance granted by the hearing examiner after a public hearing and the finding that such parking lot will not be unduly detrimental to surrounding properties; provided, that additional landscaping or fencing as directed by the hearing examiner to visually screen parked cars from all residential properties in the vicinity shall be provided as conditions precedent to the granting of such variance; and provided, that at least 40 lineal feet of the boundary of such parking lot adjoins a less restrictive zone or is separated therefrom only by the width of an alley or street. Such parking lots shall not extend beyond said less restrictive zone more than 150 feet into the more restrictive zone in which the parking lot is to be located. No such parking lots shall be allowed for the purpose of serving nonconforming uses.

19.44.050 Expansion, enlargement and occupancy.

All new or substantially altered uses or structures shall be provided with special purpose off-street parking facilities as required by this chapter. No application for a building permit or change of occupancy for a new or substantially altered structure or improvement shall be approved unless there is included with such improvement or use a plot plan showing the required special off-street parking as required in this chapter. Wherever any building is enlarged in height or in ground coverage, off-street parking

shall be provided for said expansion or enlargement in accordance with the requirements of the schedule; provided, however, that no parking space need be provided in the case of enlargement or expansion where the number of parking spaces required for such expansion or enlargement is less than 10 percent of the parking spaces specified in the schedule for the building.

19.44.060 Mixed occupancies.

In the case of mixed uses, the total requirements for the various uses shall be computed separately. Off-street parking facilities for one use shall not be considered as specified for joint use.

19.44.070 Uses not specified.

In the case of uses not specifically mentioned in sections below, the requirements for off-street parking facilities shall be determined by the planning director. Such determination shall be based upon the requirements for the most comparable use listed.

19.44.080 Joint use.

Joint use of parking facilities is encouraged, where appropriate. The[eas2] director, upon application, may authorize the joint use of parking facilities for the following uses or activities under conditions specified:

(1) Up to 50 percent of the parking facilities required by this chapter for primarily nighttime uses such as theaters, bowling alleys, bars, restaurants and related uses may be supplied by certain other types of buildings or uses herein referred to as daytime uses such as banks, offices, retail and personal service shops, clothing, food, furniture, manufacturing or wholesale and related uses;

(2) Up to 50 percent of the parking facilities required by this chapter for primarily daytime uses may be supplied by primarily nighttime uses;

(3) Up to 100 percent of the parking facilities required by this chapter for a church, or for an auditorium incidental to a public or parochial school, may be supplied by the off-street parking facilities provided by uses primarily of a daytime nature.

19.44.090 Conditions required for joint use.

The building or use for which application is being made to utilize the off-street parking facilities provided by another building or use shall be located within 500 feet of such parking facilities in addition to which:

(1) The applicant shall show that there is no substantial conflict in the principal operating hours of the two buildings or uses for which joint use of off-street parking facilities is proposed;

(2) The applicant shall present a properly drawn legal instrument to be recorded with the Island County auditor, executed by the parties concerned for joint use of off-street parking facilities and approved as to form and manner of execution by the city attorney, to the hearing examiner upon application, such instrument to be filed with the building official upon approval of the hearing officer.

19.44.100 Minimum parking space standards~~Table of minimum standards~~[eas3].

Use	Required Parking
Residential, single-family	Two per dwelling
Residential, duplex	Two per dwelling
Residential, multiple	One and one-half per dwelling unit
Three or more bedroom dwelling unit	Two per three or more bedroom dwelling unit. In addition, multifamily projects with eight or more units shall provide one visitor parking space for each eight units.
Banks	One per 400 square feet of gross floor area, plus employee parking
Bowling alleys	Four per alley, plus employee parking
Churches, auditoriums and similar enclosed places of assembly	One per four seats and/or one per 30 square feet of assembly space without fixed seats
Skilled nursing facilities	One per five beds, plus owner and employee parking
College	One space per 200 square feet of class room space
Assisted living facilities	Minimum of 0.8 spaces per unit, with a maximum of one and one-half spaces per unit
Food and beverage places with sales and consumption on premises	One per three seats, plus one space for every two employees on the largest shift
Furniture, appliance, hardware, clothing and shoe stores, personal service stores such as beauty parlors, barbershops and physical fitness centers	One per 600 square feet gross floor area, plus employee parking
Gasoline stations	15 spaces, including pump service area
Hospital	One per two beds, excluding bassinets
Hotels, moter hotels	One per sleeping room, plus owner and employee parking
Libraries and museums	One per 200 square feet gross floor area, plus employee parking
Manufacturing uses, research testing and processing, assembling, all industries	One per each two employees on maximum shift and not less than one per each 800 square feet gross floor area
Mortuaries	One per 100 square feet of gross floor area used for assembly or one per five seats, plus employee parking
Motels	One per unit, plus owner and employee parking
Motor vehicle, machinery, plumbing, heating, ventilating, building supplies stores and services	One per 1,000 square feet floor area, plus employee parking
Offices not providing customer service	One per each employee

Offices of opticians, chiropractors and others licensed by the state of Washington to practice the healing arts	One per 400 square feet of gross floor area, plus employee parking
Offices, business and professional (other than medical and dental) with on-site customer service	One per 400 square feet of gross floor area, plus employee parking
Rooming houses, similar uses	One per dwelling unit
Schools, elementary and junior high	One per each employee and faculty member, plus 15 visitor parking
Schools, high	One per each 10 students, plus one per each employee and faculty member, plus 15 visitor parking
Shopping centers with over 30,000 square feet of gross floor area	Four and one-half spaces per 1,000 square feet gross floor area, but not to exceed five spaces per 1,000 square feet of gross floor area
Stadiums, sport arenas and similar open assemblies	One per four seats and/or one each 30 square feet of assembly space without fixed seats
Theaters	One per four seats, plus employee parking
Warehouses, storage and wholesale businesses	One per each employee, plus two additional spaces
Other retail	One per 300 square feet gross floor area, plus employee parking

19.44.105 Maximum parking space standards[eas4]

Large, impervious parking areas represent inefficient use of land within the City's Urban Growth Area. Impervious parking areas generate stormwater runoff, with negative impacts to water quality and wildlife habitat. The following maximum parking space standards are designed to limit the total impervious area resulting from large, off-street parking lots, helping make land available for other uses, encouraging redevelopment and infill, and reducing negative water quality impacts, while at the same time providing sufficient parking for land uses within Oak Harbor.

(1) These standards shall apply to:

(a) All new development, as well as building remodels, site retrofits, and redevelopment which exceeds sixty (60) percent of the total assessed value for the property and;

(b) Off-street parking lots with fifty (50) or more spaces proposed or required.

(2) The maximum number of parking spaces allowed for each land use listed in section 19.44.100 shall be one hundred twenty-five percent (125%) of the required minimum number of spaces.

(3) Parking spaces in excess of one hundred twenty-five percent (125%) of the minimum specified in 19.44.100 and up to one hundred fifty percent (150%) of the minimum may be approved by the City subject to the following:

(a) Each additional space over one hundred twenty five percent (125%) must have a pervious surface designed to infiltrate stormwater approved by the City Engineer wherever soil conditions make infiltration feasible. The pervious area may be provided at any location within the parking lot, including drive aisles, as long as its size is equivalent to the area of parking stalls exceeding 125%.

(b) Other LID techniques may be proposed in place of the pervious area requirement in subsection (a) above, as approved by the City Engineer and in compliance with the Low Impact Development Technical Guidance Manual for Puget Sound.

(4) Parking variance. A request to provide more than one hundred fifty percent (150%) of the minimum number of required parking spaces listed in 19.44.100 shall meet requirements (a) through (d) below. In no case shall more than two hundred percent (200%) of the required minimum number of parking spaces be approved. Applicants for parking variance shall:

(a) File a parking demand study which demonstrates the projected need for the additional proposed parking spaces above one hundred fifty percent (150%) of the required minimum number of spaces. For the purposes of the parking demand study, "need" shall be defined as 90% occupancy during peak demand hours on more than ten (10) days per year. The Director shall administratively approve parking variance applications meeting the 90% occupancy/more than 10 days per year criteria stated above.

(b) The parking study shall be prepared by a transportation/traffic engineer registered in the state of Washington;

(c) All parking variance requests shall demonstrate compliance with subsection (2) above with regard to pervious surfaces and other LID techniques.

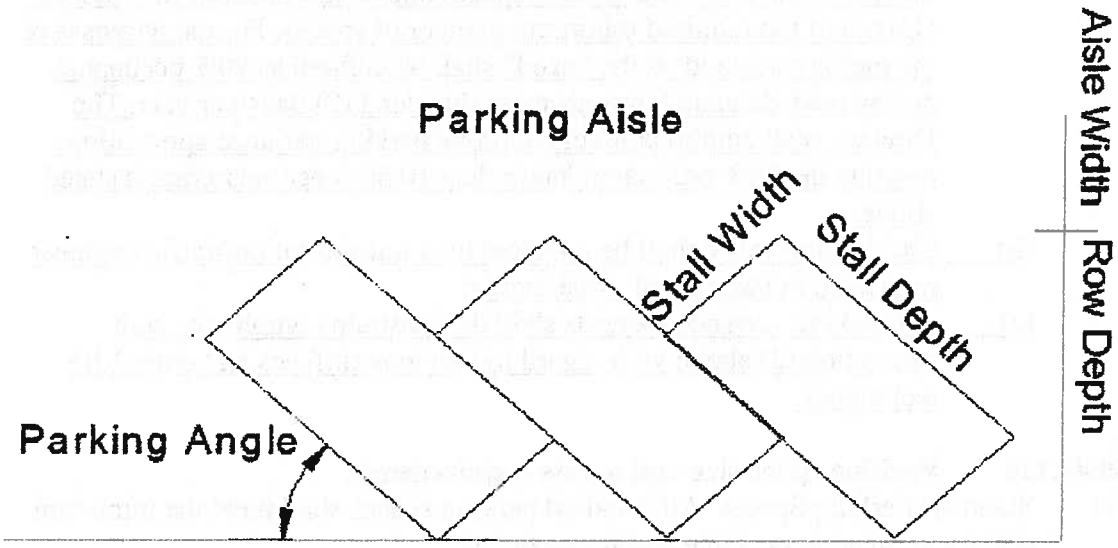
19.44.110 Parking space size and access requirements.

(1) Standard Parking Spaces. All standard parking spaces shall meet the minimum criteria outlined in the table and figure below.

(2) Compact Parking Spaces. Up to 40 percent of required parking spaces may be provided as compact spaces. The aisle widths required for standard spaces shall be applied to compact spaces. Parking space width, parking space depth and row width shall be as shown in the following table. The minimum parking space depth shall be 16 feet and the minimum parking space width shall be eight feet. Compact parking spaces shall be clearly marked by painting the word "compact" on the parking space(s).

Required Parking Dimensions					
Parking Angle	**Stall Width**	**Stall Depth**	**Row Depth**	**Aisle Width (One Way)**	**Aisle Width (Two Way)**
0°	Standard: 9' Compact: 8'	Standard: 23' Compact: 19'	Standard: 9' Compact: 8'	10'	18'
30°	Standard: 9'	Standard: 20'	Standard: 18'	12'	20'

	Compact: 8'	Compact: 16'	Compact: 15'		
40°	Standard 9' Compact: 8'	Standard: 20' Compact: 16'	Standard: 20' Compact: 16'	12'	20'
45°	Standard: 9'	Standard: 20' Compact: 16'	Standard: 21' Compact: 17'	12'	20'
50°	Compact: 8'	Standard: 20' Compact: 16'	Standard: 20' Compact: 16'	15'	20'
60°	Standard: 9' Compact 8'	Standard: 20' Compact: 16'	Standard: 20' Compact: 16'	17'	20'
70°	Standard: 9' Compact: 8'	Standard: 20' Compact: 16'	Standard: 20' Compact: 16'	20'	20'
80°	Standard: 9' Compact: 8'	Standard: 20' Compact: 16'	Standard: 20' Compact: 16'	24'	24'
90°	Standard: 9' Compact: 8'	Standard: 20' Compact: 16'	Standard: 20' Compact: 16'	24'	24'



19.44.120 Car and van pool parking.

Any nonresidential development which shall provide priority spacing for car pools and van pools shall be allowed to reduce the total amount of required parking by 1.15 spaces for each priority car pool and van pool space provided.

19.44.130 Plans.

The plan of the proposed parking area shall be submitted to the ~~city engineer~~ Development Services Department at the time of the application for the building for which the parking area is required. The plan shall clearly indicate the proposed development, including location, size, shape, design, curb cuts, lighting, landscaping, construction details and other features and appurtenances required. The illustrations provided at the end of this chapter shall serve as a guide and illustrate the minimum requirements for parking stall configurations.

A legal description of the property is required and a parking area designated and recorded.

(1) Parking areas shall be designed in conformance with the Oak Harbor design guidelines.

(2) All traffic-control devices such as parking strips designating car stalls, directional arrow or signs, bull rails, curbs, and other developments, shall be installed and maintained as shown on the approved plans. Hard surfaced parking areas shall use paint or similar devices to delineate car stalls and directional arrows. All driveways, off-street parking areas and public off-street parking areas shall be hard surfaced with a minimum of two inches of asphalt concrete. Alternative surfaces, including low impact development practices, may be allowed in compliance with the LID Technical Guidance Manual for Puget Sound (current edition) or as approved by the City Engineer.

(3) Minimum dimensions of off-street parking areas shall be not less than stated in this chapter.

(4) Screen all parking lots from view of adjoining residential district or use through use of sight-obscuring fences, earth berms or landscaped planting strips, to a height of not less than six feet.

(5) At least ~~10~~ 15 percent of every parking lot shall be landscaped. In all cases, landscaping shall be distributed throughout the parking area. LID stormwater management facilities are to be incorporated into the required landscaping as much as possible, unless site or soil conditions make LID stormwater management facilities infeasible. Parking lot landscaping shall conform to 19.46.030(5) with a preference for native species. For computation of required landscape area, allow 30 square feet per parking space. The landscaping shall consist of deciduous or coniferous plant material and may include turf, shrubs and flowers.

(6) Pervious surfacing is encouraged in parking lots, where appropriate for the site and soil conditions, and associated vehicular traffic. A minimum of 30% permeable surfacing in new and remodeled parking lots is encouraged where site and soil conditions make permeable surfacing feasible.

(~~6~~7) Lighting of areas provided for off-street parking shall be so arranged to not constitute a nuisance or hazard to passing traffic and where said lots share a common boundary with any "R" classified property, the illuminating devices shall be so shaded and directed to play their light away from "R" classified property.

(7) Maintenance of all areas provided for off-street parking shall include removal and replacement of dead and dying trees, grass and shrubs, removal of trash and weeds, and repair of traffic control devices, signs, light standards, fences, walls, surfacing material, curbs and railings. Maintenance of LID stormater management facilities shall be completed in accordance with the *LID Technical Guidance Manual for Puget Sound* (current edition), the City's Public Works Maintenance Standards, and an approved operating and maintenance agreement.

19.44.140 Loading areas.

Each off-street loading space shall measure not less than 30 feet by 12 feet and shall have an unobstructed height of 14 feet six inches and shall be made permanently available for

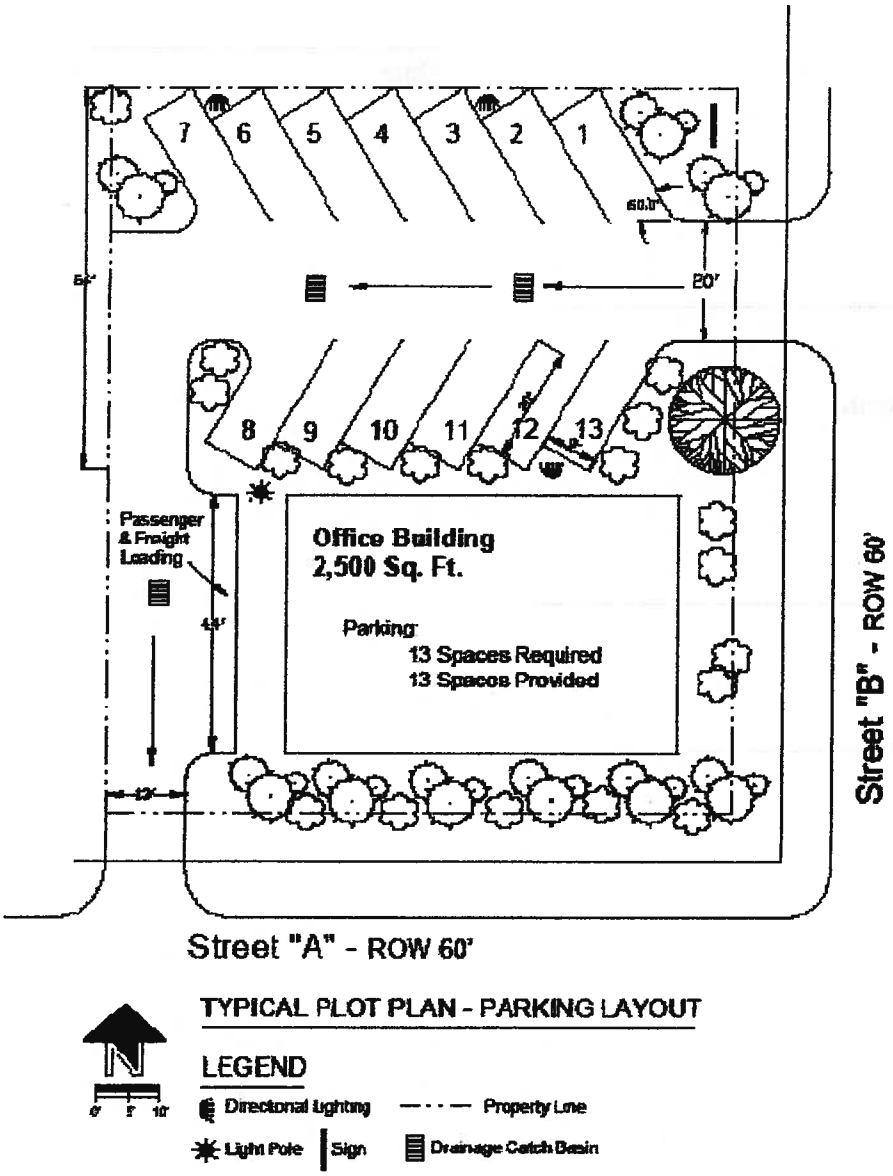
such purposes, and shall be hard surfaced, improved and maintained as required by this chapter. Required loading spaces shall be in conformance with the following table:

Department stores, freight terminals, industrial or manufacturing establishments, retail or wholesale stores or storage warehouses or any similar use which has or intends to have 10,000 square feet or more shall provide truck loading or unloading berths:

Square feet of aggregate gross floor area	Required number of berths
10,000 to 15,999	1
16,000 to 39,999	2
40,000 to 65,000	3
Each additional 16,000	1 additional

Auditoriums, convention or exhibit halls, sports arenas, hotels, office buildings, restaurants or similar uses which have or intend to have an aggregate gross floor area of 40,000 square feet or more shall provide truck loading or unloading berths:

Square feet of aggregate gross floor area	Required number of berths
40,000 to 59,999	1
60,000 to 160,000	2
Each additional 60,000	1 additional



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 (5) days after its publication.

PASSED by the City Council this ___ day of _____ 2011.

CITY OF OAK HARBOR

Approved ( )
Vetoed ( )

_____
Mayor

DRAFT

216

ATTACHMENT 3

_____
Date

ATTEST:

_____
City Clerk

Approved as to Form:

_____
City Attorney

Published:_____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF OAK HARBOR AMENDING CHAPTER 19.46 OF THE OAK HARBOR MUNICIPAL CODE ENTITLED "LANDSCAPING AND SCREENING" PROMOTING LOW IMPACT DEVELOPMENT STORMWATER MANAGEMENT PRACTICES IN LANDSCAPE DESIGNS.

WHEREAS, the City of Oak Harbor's Comprehensive Plan in Environment Policy 2(h) says "the City should provide incentives to utilize Low Impact Development techniques for new development and redevelopment projects that will further promote resource protection and stewardship. Such incentives may include density credits, street width and/or parking requirement reductions, stormwater fee credits, landscape/park requirement credits, and/or expedited permit review processing. The City should also provide educational materials through pamphlets or web links to the public to educate the public on low impact development and;

WHEREAS, the City of Oak Harbor finds that Low Impact Development is a non-structural approach for managing stormwater from new and redeveloped sites which has been found by multiple professional and academic studies to have less impact on the environment, especially water quality, than conventional approaches for treating stormwater and;

WHEREAS, the City of Oak Harbor finds that Low Impact Development techniques are, in most cases, cost competitive or less expensive to install than conventional stormwater infrastructure and;

WHEREAS, the City finds that Low Impact Development techniques promote higher property values by using vegetated raingardens, native vegetation areas, and pervious pavements which are considered to be more aesthetically appealing than conventional stormwater techniques and;

WHEREAS, the City of Oak Harbor finds that the Oak Harbor Municipal Code currently does not have standards for incorporating Low Impact Development in site designs, that having such standards will further promote the use of Low Impact Development stormwater treatment techniques, and will help City staff review these projects more efficiently and;

WHEREAS, the City of Oak Harbor conducted seven (7) work sessions on the proposed code updates with the Planning Commission which were open to the public on the following dates: October 27, 2009, November 24, 2009, January 26, 2010, February 23, 2010, March 23, 2010, April 27, 2010, and May 25, 2010 and;

WHEREAS, the City of Oak Harbor conducted a public meeting before the Planning Commission on January 24, 2010 and opened a public hearing on February 22, 2011 which was closed on March 29, 2011, and;

WHEREAS, the Oak Harbor Planning Commission recommended approval of the subject ordinance to the City Council and;

WHEREAS, the City of Oak Harbor issued Notice of Application on February 12, 2011 and Determination of Non-Significance (DNS) on March 11, 2011 for a SEPA Environmental Checklist in accordance with Chapter 43.21 RCW and;

WHEREAS, the City of Oak Harbor provided a 60-day comment period which began on March 17, 2011 and ended on May 17, 2011 to the Washington State Department of Commerce in accordance with Section 36.70A.106 RCW.

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

Section One. Chapter 19.46 of the Oak Harbor Municipal Code, last amended by Section 20 of Ordinance 1555 in 2009, is hereby amended to read as follows:

Chapter 19.46
LANDSCAPING AND SCREENING

Sections:
19.46.010 Purpose.
19.46.020 Applicability.
19.46.030 ~~General landscape requirements.~~ Requirements for setbacks, perimeters, buffers, fences, screening, and parking lots.
19.46.035 North Whidbey Enterprise Area landscape requirements.
19.46.040 General landscaping standards.
~~19.46.045 Tree Retention~~
19.46.050 Fences and Hedges.
~~19.46.060 Phased projects~~
19.46.070 Conflicts.
19.46.080 Maintenance ~~standards~~ of required landscape areas.
~~19.46.090 Timing of landscape completion~~
19.46.100 Landscape~~ing plans~~ and irrigation plans required.
19.46.110 ~~Administrative relief and alternative compliance~~ Review of landscape plans.
19.46.120 ~~Enforcement of chapter~~Phased projects.
19.46.130 Landscape performance bonding.
19.46.140 Native vegetation standards.
19.46.150 Tree species.
19.46.155 Tree removal outside of native vegetation areas.
19.46.160 Administrative relief and alternative compliance.
19.46.170 Enforcement of chapter.[eas1]

19.46.010 Purpose.

The purpose of this chapter is to provide uniform standards for the development and maintenance of the landscaping of private property and public rights-of-way. The purpose of landscaping is to improve the livability of residential neighborhoods, enhance the customer attraction of commercial areas, increase property values, improve the compatibility of adjacent uses, provide visual separation and physical buffers between

incompatible adjacent land uses, provide visual relief from the expanse of parking lots, screen undesirable views, contribute to the image and appeal of the overall community, and mitigate air and noise pollution.

These requirements are also intended to facilitate Low Impact Development techniques through ~~It is the intent of these requirements to encourage~~ the[eas2] retention of existing vegetation including ~~significant~~ trees to the extent feasible and to require ~~repla~~replanting ~~cement~~ if ~~significant~~ existing trees are removed; to reduce erosion and storm water runoff; to preserve and promote urban wildlife habitats; to enhance the streetscapes along the city's public rights-of-way with an emphasis on trees; to define and separate vehicular and pedestrian traffic areas; to screen the appearance of parking areas from public rights-of-way and adjacent properties; and to make the city a more aesthetically pleasing place to live, shop and work.

19.46.020 Applicability.

The provisions of this chapter shall apply to any of the following:

(1) All new public and private developments, multifamily housing larger than a duplex, and long plats;

(2) Any additions to existing structures that exceed 30 percent of the gross floor area, or are in excess of 1,000 square feet;

(3) Any expansion of a mobile home park in which the number of new mobile home lots exceeds 10 percent of the number of existing mobile home lots;

(4) Provisions required by Chapter 19.48 OHMC;

(5) Situations where this chapter imposes a requirement for buffering or screening between two uses, one of which is existing and the other new. The responsibility for satisfying this requirement rests entirely on the new use;

(6) Single-family dwellings~~,~~ and duplexes~~, and current approved site plans shall be exempt~~;

(7) Any preexisting vehicular surface area which expands in excess of 25 percent shall provide the landscaping required in OHMC 19.46.030. No expenditure made for removing existing asphalt, constructing planting areas, installing irrigation systems, and adding dirt and plant materials which is required in order to comply with these requirements shall be required to exceed four percent of the total assessed real property value of the subject property on which the improvements are being made.

19.46.030 ~~General landscaping requirements.~~ Requirements for setbacks, perimeters, buffers, fences, screening, and parking lots.[eas3]

(1) Required minimum landscape setbacks apply to all zoning districts, except those projects specifically excluded in OHMC 19.46.020.

  (a) Minimum width of landscape setback, as identified with the city's street classification plan:

    (i) Large shopping centers in excess of five acres adjacent to principal arterial streets: 20 feet;

    (ii) Any multifamily and nonresidential use constructed on a designated scenic transportation route: 20 feet;

(iii) All other uses adjacent to a principal arterial: 12 feet;
(iv) Adjacent to a minor arterial or collector arterial: 10 feet;
(v) Adjacent to all other streets: eight feet;
(vi) Where roadway right-of-way expansion is proposed, the setback will begin at the anticipated new edge of the road.

(b) Minimum Number of Trees in Landscaped Setbacks. There shall be four trees for every 100 linear feet of frontage of property adjacent to all street classifications. Guidelines for the specific types and locations of trees and other landscape materials in landscape setbacks are contained within the landscape policy manual.

(c) Design Standards.

(i) Some of the required landscape setback trees may be clustered in the setback. Parking lot screening may be included in the landscape setback width. The required landscaped setback trees may be permitted to be partially or totally located in the adjacent public right-of-way area, if:

(A) All of the required trees cannot be placed in the landscaped setback;
(B) There are no conflicts with utility easements;
(C) In the case of the state highway, the city engineer and State Highway Engineer approve;
(D) It shall be the responsibility of the adjacent property owner to care for landscaped rights-of-way;
(E) Where undeveloped adjacent right-of-way occurs, it shall be landscaped.

The required landscaped setback trees may be located in the adjacent public right-of-way area if these trees cannot be placed in the landscaped setback area due to the existing development of the site. However, such trees are required only to the extent that: (1) the city engineer and State Highway Engineer approve the trees in the case of a state highway; and (2) no conflicts exist within utility easements.

(ii) Opaque walls and fences which obstruct view shall be located outside (building side) of the setback to maintain a landscaped appearance along the street.

(iii) Administrative relief of the requirements of this section may be requested in accordance with OHMC 19.46.~~110~~160.

(2) Required Minimum Landscape Perimeters. Planting areas within side and rear yards that are not occupied by structures shall be as follows:

(a) Minimum Width of Perimeter. Five feet for the length of the property line, unless otherwise specified under screening requirements of this chapter;

(b) Exemptions. Perimeter of industrial site or commercial yard that is not substantially visible from the right-of-way or located where screening is not required, shall be exempt;

(c) Planting Requirements.

(i) A minimum of four trees shall be planted for every 100 linear feet, or fraction thereof, of perimeter planting area;

(ii) Shrubs and ground cover plantings shall be in quantities and spacing that will provide for 80 percent ground coverage within three years;

(iii) When abutting properties with different land use classifications occurs, the screening requirements under OHMC 19.46.030(3) and (4) shall supersede the requirements of this subsection;

(d) Connecting Driveways. When connecting joint driveways, or shared parking lots are provided between sites, the minimum area requirements may be reduced by the area occupied by the driveway that would otherwise be landscaped under the requirements of this subsection.

(3) Required Minimum Landscape Buffers.

(a) Buffers between (1) adjacent nonresidential and residential uses; and (2) adjacent nonresidential uses and single-family residential zones:

(i) Design Standards. The buffer shall be a minimum of 12 feet wide and shall be located on the property line adjacent to any single-family residential community. Said buffer shall generally consist of a mix of predominantly evergreen plantings including trees, shrubs, and ground covers. Evergreen trees shall be a minimum height of four feet at time of planting. Planting shall be chosen and spaced so as to grow together within four years of their planting in a manner that is sufficient to obscure sight through the barrier. The entire planting strip shall be landscaped; however, those plantings used to achieve the sight-obscuring screen shall cover at least six feet of the width of the strip.

(b) Buffers between adjacent multifamily residential and single-family residential zones:

(i) Design Standards. The buffer shall be a minimum of 10 feet wide and shall be located on the property line adjacent to the single-family residential community.

(c) Buffers between nonresidential and residential uses separated by a nonarterial street, public alley or private street:

(i) Design Standards. The buffer shall be a minimum of 12 feet in depth. The minimum number of trees in the buffer shall be two trees for every 20 linear feet of buffer. The trees will consist of a mix of evergreen and deciduous. Depending upon the nonresidential use, evergreens may be increased to help obscure sight between the two uses. An opaque structure with a maximum height of six feet may be optional along the common property line. If a fence is constructed, planting shall still occur as stated above. The buffer may be reduced to 10 feet if an opaque structure is erected.

(d) Buffers between an industrial classified district and a residential classified district:

(i) Design Standards. All sites in an industrial district having a common boundary with a residential district shall be planted and maintained along such common boundary with a view-obscuring

coniferous greenbelt of shrubs, trees and native vegetation not less than six feet in height nor less than 10 feet in width, for screening purposes and controlling access.

(4) Fences and Screening. When applicable, the requirements of this section shall supersede the requirements of other sections of this chapter.

(a) Purpose. The requirements of this subsection are intended to reduce visual impacts and incompatible characteristics of:

(i) Abutting properties with different land use classifications;

(ii) Service areas and facilities, including loading and storage areas;

(iii) Parking areas located in front of buildings;

(iv) Any other use or area as required under this section, or determined to be necessary by the planning director (or designee).

The fence or landscaping screen shall be sight obscuring, obstructing storage areas from view on the sides of the property abutting, adjoining, or facing a residential district. The fence shall be of such material and design as will not detract from adjacent residences and shall be built according to plans submitted by the owner or his/her authorized agent and approved by the planning director (or designee).

(b) Landscaping. Screen planting shall consist of evergreen trees planted a maximum of 15 feet on center, or hedges with dense evergreen foliage, in combination with deciduous trees and hedges for seasonal color and texture. Ground cover shall be planted at a density to form an effective barrier to cover 85 percent of the ground surface within two years.

(i) On a corner lot there may be placed and maintained:

(A) A fence or screen not more than three feet in height; provided, that it is not sight obstructing (50 percent of the area of the fence or screen is open) along a public or private street;

(B) A six-foot-high open wire fence along the property line facing the side street; provided, that it does not come closer to the street right-of-way on the front of the lot than the required building setback;

(C) A four-foot-high solid fence or hedge parallel to the property line facing the side street; provided, it is 10 feet back from the side street; and provided, that it does not come closer to the street on the front of the lot than the rear of the building.

(ii) In commercial zones, no fence or hedge may be placed on the front yard setback except where required to screen the property from the adjacent lot, then the screen shall extend to the street right-of-way.

(c) Minimum Width.

(i) Landscape Screening. If screening is to be achieved through the use of plant materials only, the screening area shall be a minimum of 10 feet in width. If other materials, such as fencing, walls or berms, are used in conjunction with the landscaping, the width may

be reduced, as described in subsections (4)(c)(ii) through (iv) of this section.

(ii) Earth Berm Alternative. If an earth berm is incorporated into the screening plan, medium size shrubs and/or evergreen trees shall be spaced a maximum of four and one-half feet on center and the width of the screening area may be reduced to eight feet.

(iii) Fence Alternative. If a fence option is selected, maximum spacing of medium sized shrubs shall be six feet on center, and the width of the screening area may be reduced to seven feet. The fence shall be constructed of exterior weather- resistant wood, or applicable alternative. One alternative may be a cyclone fence; however, such a fence shall include slats, and if the fence is next to a right-of-way, landscaping shall be planted between the fence and the right-of-way. Plantings must obscure 75 percent of a cyclone fence within four years.

(iv) Wall Alternative. If a wall at least five feet high is to be used for screening, the planting requirements shall be as specified under subsection (1) of this section, and the screening width may be reduced to five feet. Screen walls shall be constructed with masonry, block, rockery or textured concrete, subject to design approval by the planning director.

(d) Uses Requiring Screening. The planning director may require screening to protect adjacent properties from negative impacts of any permitted or conditional use in a zoning district.

Except as otherwise required by the planning director, screening shall be required in the following instances:

(i) Developments located in districts listed on the left side of the chart below shall provide screening when they adjoin districts specified on the right side of the chart.

District to Be Developed	District to Be Screened
Multifamily residential	Single-family residential
Semi-public	All residential
Commercial/business	All residential
Industrial	All residential/commercial

(ii) Churches, community centers, and other similar conditional uses shall provide perimeter screening when adjoining a residential district.

(e) Fence and screen height limits in the various zones are as follows:

Residential Zones:	Front yard	3 feet maximum
	Side yard	6 feet maximum
	Rear yard	6 feet maximum
Commercial Zones:	Front yard	0 feet maximum
	Side yard	6 feet maximum

	Rear yard	6 feet maximum
Industrial Zones:	Front yard	8 feet maximum
	Side yard	8 feet maximum
	Rear yard	8 feet maximum

(5) Minimum Parking Lot Requirements.

(a) Required Trees.

(i) One tree of a type suitable for parking lots shall be provided for every 10 open (not in a garage) vehicular parking spaces in parking lots with 10 or more spaces;

(ii) The tree types and minimum planter sizes shall be consistent with the landscape policy manual. Trees chosen shall be appropriate to a parking lot location;

(iii) The required trees may be clustered but shall be located to divide and break up expanses of paving and long rows of parking spaces and to create a canopy effect in the parking lot. In order to be considered within the parking lot, the trees must be located in planters that are bounded on at least three sides of parking lot paving. This means only trees in landscaped "islands" or "fingers" can count toward the parking lot tree requirement;

(iv) Planters shall be of sufficient size and design to accommodate the growth of the trees and to prevent damage to the trees by vehicles;

(v) The number of species required shall vary according to the overall number of trees required to be planted. The species shall be planted in proportion to the required mix. The species mix shall not apply to areas of vegetation required to be preserved by law nor those located in areas designated as natural. The number of species to be planted are indicated below.

Required # of trees	Maximum # of species
6 – 10	2
11 – 15	3
16 +	4

(b) Required Landscape Area. At least 15 percent of every parking lot shall be landscaped, unless otherwise required by this title. In all cases, with the exception of vehicular display lots, landscaping shall be distributed throughout the parking area. Landscaping located in required setbacks or buffers may not be used to meet this requirement. If LID rain gardens or bioretention facilities are proposed, they are to be incorporated into the required parking lot landscaping unless site and soil conditions make such facilities infeasible. LID stormwater management facilities shall be designed and constructed in accordance with the *Low Impact Development Technical Guidance Manual for Puget Sound* (current edition). The [cas4] landscaping shall consist of deciduous and/or coniferous material and may include turf, shrubs, and flowers.

(c) Required Screening.

(i) Open parking spaces (except those in single-family residential projects in any zone district) shall be screened from the view of adjacent properties and streets to mature minimum height of 30 inches by the use of berms and/or plantings;

(ii) A minimum of two-thirds of the affected street frontage or property boundary, not counting intersecting driveways, must have the required screen;

(iii) The required screening may be a component of the required landscape setback;

(iv) Structures such as decorative walls or fences may be approved through an administrative relief request if the planning director (or other designee) finds that:

(A) The structures avoid a blank and monotonous appearance by such measures as architectural articulation and the planting of vines, shrubs or trees; or

(B) The total use of the berms and/or plantings is not physically feasible; or

(C) The structures attractively complement the use of berms and/or plantings;

(v) The maximum spacing of plants to achieve an acceptable screen and the maximum acceptable grades for screening areas, such as sodded berms and planting beds, shall be consistent with the landscaping policy manual;

(vi) Guidelines for the specific types and location of trees, shrubs and other landscape materials in parking lots are contained within the landscape policy manual as approved by city council or thereafter amended.

(6) In addition to the requirements and standards of this chapter, the landscape guidelines in the design guidelines shall apply. (Ord. 1221 § 1, 2000).

19.46.035 North Whidbey Enterprise Area landscape requirements.

(1) The standards contained in this section apply to the North Whidbey Enterprise Area as identified in Exhibit C of the Urban Growth Area Interlocal Agreement between Island County and the city of Oak Harbor, a copy of which is on file with the city clerk and available for public inspection.

(2) Significant Tree Retention. Significant tree retention in the I, PIP, C-4 and nonresidential development, short subdivision and subdivision in the PRE zones shall meet the following standards:

(a) Applicants should retain 15 percent of the significant trees found on the property except for those trees found in the building footprints, access roads, parking areas and utility line trenches. Applicants should give attention to the following:

(i) Preservation of significant trees along the perimeter of the property; and

(ii) Preservation of significant trees near or adjacent to critical areas; and

(iii) Preservation of significant trees which create a distinctive skyline feature; and

(iv) Preservation of Garry Oak trees; and

(v) Trees that may constitute a safety hazard should be removed; and

(vi) Special attention shall be given to preservation of significant trees on properties identified in the 2001 Oak Harbor Comprehensive Plan, Environmental Element, Woodland Map.

(b) An inventory of significant trees shall be submitted with all applications for subdivision, short subdivision or site plan review.

(3) Landscaping, screening and buffering in the I and PIP zones shall meet the following standards:

(a) Open storage, trash or recycling areas shall be screened by fencing and/or landscaping;

(b) Landscaping including street trees spaced no further than 20 feet on center shall be required in all front yards and the abutting public road; and

(c) Buffers between industrial zones and adjacent residential properties shall be planted along the common boundary. The planting should include coniferous shrubs, trees and native vegetation. Fencing may be incorporated to help ensure an effective visual buffer.

(4) Landscape for I, PIP and C-4 lands abutting Goldie Road and Oak Harbor Road shall meet the following standards:

(a) A 20-foot landscape setback shall be established; and

(b) The area between the property line and drainage swale shall be planted with low profile foliage; and

(c) The landscape area shall be planted with a mixture of native evergreen trees containing a variety of species, colors and textures for a year-round green attractive appearance; and

(d) If the landscape buffer setback does not have existing significant vegetation, the buffer will be planted with native evergreen trees. If deciduous trees are desired they may be planted at a rate of two evergreen to one deciduous tree; and

(e) Maximum spacing of the trees shall be 10 feet on center or equivalent grouping as determined by site and existing conditions; and

(f) Roadway and intersection requirements shall prevail if a conflict arises with the landscape standards listed herein.

19.46.040 General landscaping standards.

(1) Landscape Materials.

(a) Landscape materials shall be defined as evergreen or deciduous trees, shrubs, and ground cover plants, perennial or annual flowers, and lawn. River rock, fountains, ponds, ~~bark,~~ rockeries, ornamental or decorative walkways (provided both sides abut landscaping) may be included, where, in the opinion of the ~~planning~~ director, additional ornamental features may be considered as part of the landscape materials, subject to the administrative relief process.

(b) Suggested tree species ~~plant material~~ suited to the unique soils, geology, and weather patterns of Oak Harbor are contained in ~~the landscape policy manual at the city planning department.~~ 19.46.150 OHMC [eas5].

(c) Planting shall occur based on species tolerance to the environment in which it will be placed.

(d) No artificial lawn or plants will be permitted in landscaped areas.

~~(2) Erosion Control Plan. The city may require temporary erosion and sediment control measures as part of the landscape plan for the development. Erosion or sediment control plan shall be reviewed prior to or in conjunction with a plat or site plan [eas6].~~

(23) Drainage Detention/Retention Ponds. If a proposed detention pond has a slope ratio of 3:1 or greater, where fencing around the pond will be required, a fencing and landscaping plan shall be submitted to the planning department. Submittal of the proposed fencing and landscaping plan shall occur in conjunction with short plat, preliminary plat, or site plan review applications, depending on the project type.

(34) Land Clearing Plan. Clearing of landscaping is required to be in accordance with the provisions of Chapter 19.47 OHMC.

(45) Pollution Control. It shall be the responsibility of the property owner to ensure that storm runoff from landscaped areas does not contain excessive amounts of fertilizer, insecticides, and herbicides that may be harmful to aquatic life, and to take measures to prevent runoff water impacts as required by the Department of Ecology and Wildlife and as specified in the Puget Sound Water Quality Manual. One measure to reduce the use of chemicals is the use of native plants in landscape areas.

(56) Safety Features/Utilities. Installation of landscape materials shall not obstruct access to fire connections, post indicator valves (PIVs) and hydrants, standpipes, sprinkler connections, utility vaults, pedestals, and other public and private utility facilities. ~~Appropriate species of plants for areas affected by overhead utility lines can be found in the plant list.~~ Landscaping shall not obstruct fire apparatus access roads [eas7].

(67) ~~Irrigation and Watering. An underground irrigation system is required which is adequate to provide watering needs for plant materials. Small preexisting sites may receive special consideration through the administrative relief process. Also, administrative relief from the irrigation requirement may be requested for planting areas which contain only drought tolerant vegetation [eas8].~~

(78) Visibility Triangle. Along street frontages, within 30 feet of an alley or unsignalized street intersection, or within 25 feet of a driveway, no shrub shall be higher than 30 inches from street gutter grade and no tree shall have branches or foliage below eight feet above street level.At signalized intersections the conditions of this section shall not be necessary, but it shall be required that only deciduous trees be located at signalized intersections. Under no circumstances shall landscaping interfere with sight distance visibility. In lieu of meeting this standard, visibility triangles shall be provided as per AASHTO standards or in accordance with 11.17.110(5) OHMC.

(89) Where practical, landscaping shall be designed to not block solar gain or solar

access by surrounding properties.

(10) Special Landscaping Districts. The area of the CBD central business district, for the purpose of this chapter, will be considered a special landscaping district. This area is substantially developed on zero setbacks from the right-of-way, making it impractical to meet the full extent of the requirements of this chapter. Businesses located in this district shall meet parking lot landscaping standards as shown in OHMC 19.46.030 (5) and shall participate in a street tree planting program in the street right-of-way adjacent to the parcel frontage.

(11) Xeriscape Process. Xeriscape is a process by which sound horticultural, landscaping, and efficient water-using principles come together. The style of the xeriscapes can be quite variable. Drought resistant landscaping, such as a contemporary design or a Spanish garden, could qualify as xeriscape when constructed to meet the following six principles:

(a) Good Design. Based on careful selection of low-water-use plants or drought tolerant plants;

(b) Soil Improvement. Improvements including the addition of manure, compost, or other organic materials which can be amended into the soil;

(c) Use of Mulch. Beauty bark or other organic substance to ~~beautify the landscape and~~ help maintain moisture in the soil[eas9];

(c~~d~~) Limited Lawn Areas. Minimizing grass areas results in minimal lawn maintenance;

(d~~e~~) Efficient Water Use. Water between 12:00 midnight and 6:00 a.m. to help prevent fungus growth, and lower the evaporation rate of water;

(e~~f~~) Good Maintenance. Maintain the landscape to reflect a weed and trash free environment.

(12) Landscaping for Freestanding Signs. All primary freestanding signs shall include, as part of their design, landscaping about their base to prevent automobiles from hitting the sign supporting structure and to improve the overall appearance of the installation. If the required landscaping is not completed within 60 days after completion of sign installation, the sign is in violation of this chapter.

(13) Groundcover. Groundcover shall be planted and maintained within all required landscaping areas. Groundcover refers to low-growing dense growth of plants, such as pachysandra or crown vetch, planted for ornamental purposes or to prevent soil erosion in areas where turf is difficult to grow, as in deep shade or on a steep slope. Groundcover shall consist of plantings that will achieve complete coverage within two years. Groundcover is not required within the dripline of any shrub or evergreen tree or within a two-foot radius of a deciduous tree trunk.

(14) Undeveloped Areas. Undeveloped areas of a lot which are not required to be landscaped by other requirements of this chapter shall be planted with groundcover. Groundcover may consist of planted or existing vegetation maintained so as not to exceed one foot in height. For the purposes of this section, grass can be considered to be groundcover[eas10].

(15) Bark, Mulch and Gravel. Bark, mulch, gravel or other similar non-vegetative material shall only be used to assist vegetative growth and maintenance within landscaping areas. Non-vegetative material shall not be a substitute for, or interfere with, required vegetative groundcover[eas11].

(16) Tree Topping and Thinning. Topping and thinning of trees shall be allowed as long as it does not negatively effect the health of the tree[eas12].

(18) Calculations/Measurements. All calculations and measurements within this chapter shall be rounded to the nearest whole number with greater than or equal to .50 being rounded up[eas13].

~~19.46.045 Tree Retention[eas14].~~

~~(1) The purpose and intent of this section is to reduce the aesthetic and environmental impacts of site development while promoting reasonable use of land and to implement the city's comprehensive plan by:~~

~~(a) Avoiding the removal of significant trees and stands of trees in order to maintain ecological functions and maintain Oak Harbor's urban environment;~~

~~(b) Providing measures to protect trees from construction impacts and ensure their survival; and~~

~~(c) Providing flexibility in order to retain stands of trees of ecological or aesthetic importance, or to allow for revegetation when trees cannot be retained.~~

~~(2) All development proposals and land clearing applications shall retain at least 15 percent of the significant trees, as defined in Chapter 19.08[eas15].~~

~~(a) Trees shall be retained within stands or clustered. Narrow strips and single unprotected significant trees shall be avoided. Improvements shall be designed to give priority to protection of trees with the following characteristics:~~

~~(i) Healthy significant trees over 50 feet in height;~~

~~(ii) Significant trees that form a continuous canopy or grove of trees;~~

~~(iii) Significant trees on steep slopes or adjacent to existing open space, parkland, wetlands, water courses and conservancy areas; and~~

~~(iv) Significant trees which provide a distinctive feature, such as a skyline, corridors along arterial and collector streets, or provide a land use buffer along the perimeter of the proposed development[eas16].~~

~~(b) All areas where vegetation is retained shall be designated as a native growth protection area, conservation easement, deed restriction or other means of deed conveyance.~~

~~(3) Exceptions.~~

~~(a) The minimum significant tree percentage may be reduced on sites with special circumstances and where revegetation is proposed. Special circumstances include, but are not limited to:~~

~~(i) The retention of significant trees precludes reasonable development of the property.~~

~~(ii) Physical limitations such as existing lot size, soils or topography.~~

~~(iii) Deteriorated health of trees.~~

~~(iv) Potentially hazardous trees.~~

(v) Trees subject to blowdown after construction.

(b) The minimum significant tree percentage may be reduced for preliminary plat applications that demonstrate special circumstances and propose revegetation:

(i) With approval from the planning commission a revegetation plan shall give consideration to revegetation and its proximity to existing vegetation, steep slopes, open space, parkland, wetlands, water courses, conservancy areas, arterial and collector streets, effectiveness as a land use buffer, enhancement of existing stands of native vegetation or other similar conditions.

(ii) The revegetation plan may combine the use of native species and nonnative species,

(iii) The revegetation plan shall provide for a two to one tree replacement ratio.

(iv) Replacement trees shall be a minimum two and one-half inch caliper for deciduous trees or a minimum of six feet in height from existing grade for conifers and comply with the requirements of subsection (5) of this section.

(c) The minimum significant tree percentage may be reduced for short plat, development and land clearing applications that demonstrate special circumstances and propose revegetation:

(i) With approval from the director a revegetation plan shall give consideration to revegetation and its proximity to existing vegetation, steep slopes, open space, parkland, wetlands, water courses, conservancy areas, arterial and collector streets, effectiveness as a land use buffer, enhancement of existing stands of vegetation or other similar conditions.

(ii) The revegetation plan may combine the use of native species and nonnative species.with a preference for the species outlined in 19.46.115 (4).

(iii) The revegetation plan shall provide for a two to one tree replacement ratio.

(iv) Replacement trees shall be a minimum two and one-half inch caliper for deciduous trees or a minimum of six feet in height from existing grade for conifers and comply with the requirement of subsection (5) of this section.

(d) Trees which do not meet the definition of significant trees may be credited towards the minimum significant tree percentage to be retained in order to facilitate the preservation of a greater number of smaller trees if a group of trees and its associated undergrowth provide a distinctive feature, are on a steep slope or adjacent to existing open space, parkland, wetlands, water courses, conservancy areas, arterial and collector streets, effectiveness as a land use buffer, enhancement of existing stands of vegetation or other similar conditions.

(c) A reduction in the replacement ratio required by subsections (3)(b) and (c) of this section may be considered for planting an understory to enhance habitat.

(f) The director may approve the removal of significant trees that have been retained pursuant to this chapter, if it is determined that the tree is diseased, physically deteriorated, potentially hazardous, damaged or subject to windthrow. Significant trees that are removed as approved by the director, and the one-year maintenance period has expired, shall be replaced at a one-to-one ratio. Replacement trees shall be a minimum two and one-half inch caliper for deciduous trees or a minimum of six feet in height from existing grade for conifers[eas17].

(4) Determining the Number of Significant Trees to be Retained.

(a) For plats, short plats and binding site plans, trees that are within a regulated environmentally sensitive area shall be excluded and will not contribute towards the base number of significant trees or the 15 percent retention requirement.

(b) For all other development and clearing applications, trees that are within a regulated environmentally sensitive area, within the building footprint or are within the required landscape area shall be excluded and will not contribute towards the base number of significant trees or the 15 percent retention requirement.

(c) All development proposals and clearing applications shall include a drawing showing the location of all significant trees, trees to be retained, trees to be removed, groves of trees and other natural features on and adjacent to the site.

(i) Parcels larger than five acres may utilize a sampling methodology to identify significant trees. Parcels smaller than five acres shall utilize a survey methodology to identify significant trees.

(5) Revegetation and Survival Standards[eas18].

(a) Sites with documented special circumstances in conformance with subsection (3) of this section shall provide a revegetation plan. The plan shall include:

(i) Written documentation of the special circumstances that make the retention of significant trees impracticable;

(ii) Information required under OHMC 19.46.100;

(iii) The revegetation plan shall replace significant trees that are required to be retained at a two-to-one ratio. Replacement trees shall be a minimum two and one-half inch caliper for deciduous trees or a minimum of six feet in height from existing grade for conifers; and

(iv) Priority shall be given to revegetation and its proximity to existing vegetation, steep slopes, open space, parkland, wetlands, water courses, conservancy areas, arterial and collector streets, effectiveness as a land use buffer, enhancement of existing stands of vegetation or other similar conditions.

~~(b) All trees (replacement trees and retained trees) shall be maintained in a healthy growing condition. All trees found to be diseased, dead or dying within one year of acceptance by the city shall be replaced. Trees planted as part of a revegetation plan shall be replaced at a one to one ratio and retained trees shall be replaced at a two to one ratio.~~

~~(5)~~6) ~~Construction Standards.~~

~~(a) A vegetation protection plan shall be submitted for all vegetation that is to be retained. The vegetation protection plan may be combined with the grading/clearing plan or the temporary erosion control plan.~~

~~(b) Barrier fencing or silt fencing shall be placed around the root zone of all trees and vegetation to be retained. There shall be no construction activity within the fencing.~~

~~(c) Any clearing to be done within the root zone must be approved by the director and utilize hand grubbing and light equipment. No fill will be allowed within the root zone unless approved by the director[eas19].~~

~~(7) Modifications of Standards in Order to Preserve Significant Trees or Stands of Vegetation.~~

~~(a) A variance may be granted to allow intrusion of a building into a setback yard by five feet to preserve significant trees elsewhere on the property.~~

~~(b) Setback averaging may be utilized to preserve significant trees elsewhere on the property. A reduced setback shall be compensated by an increased setback elsewhere[eas20].~~

~~(c) A variance may be granted to allow a 10 percent reduction in parking spaces to preserve significant trees elsewhere on the property.~~

~~(8) Professional Evaluation. In determining tree removal or replacement, the director may require a professional evaluation or tree protection plan by a certified arborist at the applicant's expense, where the director determines that such evaluation is necessary to comply with the standards of this section. The evaluation may include providing a hazardous tree assessment, evaluation of the anticipated effects of a proposed project on the viability of trees on the site, developing a plan for tree protection or replacement and evaluation after construction[eas21].~~

19.46.050 Fences and hedges.

(1) Fences and hedges a maximum of six feet in height may be placed and maintained on the side and rear lot line, and across the front of the property line even with the front of the building on the lot but not closer to the street right-of-way than the required setback. On corner lots the setback shall apply to both streets.

Within the setback area a fence not more than three feet in height may be constructed; provided, that it is not sight-obscuring (50 percent of the area of the fence is open).

Within the setback area a solid hedge may be planted not to exceed a height of more than three feet.

On a corner lot there may be placed and maintained:

(a) A fence or hedge not more than three feet in height; provided, that it is not sight-obstructing (50 percent of the area of the fence or hedge is open);

(b) A six-foot-high open wire fence along the property line facing the side street; provided, that it does not come closer to the street right-of-way on the front of the lot than the required building setback;

(c) A four-foot-high solid fence or hedge parallel to the property line facing the side street; provided, it is 10 feet back from the side street; and provided, that it does not come closer to the street on the front of the lot than the rear of the house.

(2) In commercial zones, no fence or hedge may be placed on the front yard setback except where required to screen the property from the adjacent lot, then the screen shall extend to the street right-of-way.

(3) Fence and hedge limits in the various zones are as follows:

Residential Zones:	Front yard	3 feet maximum
	Side yard	6 feet maximum
	Rear yard	6 feet maximum
Commercial Zones:	Front yard	0 feet maximum
	Side yard	6 feet maximum
	Rear yard	6 feet maximum
Industrial Zones:	Front yard	8 feet maximum
	Side yard	8 feet maximum
	Rear yard	8 feet maximum

~~**19.46.060 Phased projects.**~~

~~Phased projects include but are not limited to shopping centers, large site developments proceeding in phases, applicable subdivisions, cluster developments, and business parks. Before construction permits are issued for the first phase of any phased project, conceptual approval of the landscaping plan for the site as a whole is required. Final approval of the landscaping plan for each phase is required before construction permits are issued for a phase. Installation of landscaping for each phase of development shall be required prior to releasing occupancy permits for that phase. Relief may be available per OHMC 19.46.110.~~

~~Landscaping along a frontage road or perimeter screening may be required to be installed in the first phase. Criteria to be considered in the decision includes but is not limited to the following:~~

~~(1) Timing of phases of a project;~~

~~(2) Proximity to residential areas[eas22].~~

19.46.070 Conflicts.

(1) If the provisions of this chapter conflict with other ordinances or regulations, the more stringent limitation or requirement shall govern or prevail to the extent of the conflict.

(2) In the event that, because of lot configuration, adjacent land uses, or special circumstances, more landscaping is required to meet all requirements of this title, the higher amount of landscaping shall be required.

19.46.080 Maintenance ~~standards~~<u>of required landscape areas</u>.

(1) Maintenance of Cultivated Areas.

(a) General. The owner of land subject to this chapter shall be responsible for the maintenance of said land in good condition so as to present a healthy, neat, and orderly landscape area.

(b) Maintenance of Plants. All landscaping and screening areas shall be maintained in a healthy, growing condition. Broken, dead, or dying trees, shrubs, or other plants shall be replaced. All landscaping and screening shall be kept free of trash and weeds.

(c) Tree Removal. It shall be the responsibility of each private property owner to remove any dead, diseased, or dangerous trees or shrubs, or part thereof, located on private property which overhang or interfere with traffic control devices, public sidewalks, rights-of-way, or property owned by the city. The city shall have the authority to order the removal and possible replacement of any such trees or shrubs.

(d) Pruning.

(i) All pruning should be accomplished according to good horticultural standards. Trees shall be pruned only as necessary to promote healthy growth;

(ii) Unless special approval is provided, trees shall be allowed to attain their normal size and shall not be severely pruned or "hat racked" in order to permanently maintain growth at a reduced height;

(iii) Trees may be periodically pruned or thinned in order to reduce the leaf mass and stimulate further branching.

(e) Mowing. Grass shall be mown as required in order to encourage deep root growth and therefore the preservation of irrigation water.

(f) Edging. All roadways, curbs, and sidewalks shall be edged when necessary in order to prevent encroachment from the adjacent grass areas. Power trimmers shall not be used to trim grasses around trees since they will quickly remove bark causing deterioration and eventual death of the tree.

(g) Watering. All watering of planted areas shall be managed so as to:

(i) Maintain healthy flora;

(ii) Make plant material more drought-tolerant;

(iii) Avoid excessive turf growth;

(iv) Minimize fungus growth;

(v) Stimulate deep root growth;

(vi) Minimize leaching of fertilizers;

(vii) Minimize cold damage.

Watering of plants and trees should always be in sufficient amounts to thoroughly soak the root ball of the plant and the surrounding area, thereby promoting deep root growth and drought tolerance.

Whenever possible, automatic irrigation systems should be installed and operation should occur between the hours of 12:00 midnight and 6:00 a.m. Irrigation during these hours helps to reduce fungus growth and loss of water due to evaporation.

If an irrigation system is installed it shall be regularly maintained to eliminate waste of water due to loss of heads, broken pipes, or misjudged nozzles.

~~(2) Maintenance of Natural Plant Communities.~~

~~(a) General. All areas preserved as natural plant communities shall be annually cleared of nonnative vegetation and lawn grasses, and cleared of all trash and other debris[cas23].~~

~~(b) Required Management Plan. For all areas of preserved plant communities larger than three acres in area, the owner shall submit for the approval of the planning department a narrative management plan indicating the manner in which the owner will preserve the native plant communities. The narrative shall include:~~

~~(i) Whether the existing vegetation is to be preserved in the existing species composition;~~

~~(ii) If applicable, the manner in which the composition of existing plant material is to be preserved;~~

~~(iii) The maintenance schedule for removal of debris and exotic species;~~

~~(iv) Other information the planning department feels necessary to approve a management plan.~~

~~All natural plant communities shall be managed in order to maintain the plant community for the purpose it was preserved.~~

~~When applicable, the planning department shall make periodic inspections of the natural areas to verify the owner's adherence to the approved management plan[cas24].~~

~~19.46.090 Timing of landscaping completion.~~

~~(1) Completion of Landscaping. All landscaping must be completed in accordance with the approved landscape plan before a certificate of occupancy may be issued for any building on the lot. In the event that weather conditions do not allow for the installation of the landscaping, the property owner shall provide the planning director with documented assurance that the landscaping will be completed within six months. The building official may then issue a one six-month temporary certificate of occupancy and permit the owner to complete the landscaping within the six-month period. For the purpose of this subsection, "documented assurance" means:~~

~~(a) A bond or other assurance acceptable to the city equal to 112 percent of the estimated installation costs shall be required. Such deposit shall be accompanied by a letter which shall stipulate completion of all landscape development no later than six months after the issuance of the certificate of occupancy or date of final approval, whichever is later.~~

~~(b) If these conditions are not met, the city may use the deposit to perform the landscape development[cas25].~~

19.46.100 Landscaping and irrigation plans required.

Landscaping and irrigation plans shall be submitted for any landscaping activity required by OHMC 19.46.020[cas26]. The landscaping plan shall be reviewed by the Director. All

landscaping plans shall include information regarding existing vegetation to be preserved onsite and newly proposed plantings.

~~(1) General. Prior to the issuance of any building permit, a landscape plan shall be submitted to, reviewed by, and approved by the Director[eas27].~~

(12) Nature of Required Plans. Landscape plans for lots larger than one and one-half acres in size shall be prepared by and bear the seal of an architect or landscape architect,~~;~~ or other professional with demonstrated qualifications or experience.

(23) Contents of Landscape Plan. The landscape plan shall be drawn to scale with dimensions and distances shown and include the following:

~~(a) Be drawn to scale, including dimensions and distances;~~

~~(b) Delineate the existing and proposed parking spaces, or other vehicular areas, access aisles, driveways, and similar features;~~

~~(c) Show all landscape features including height, quality, type, botanical and common names, place of planting and all areas of vegetation, in context with the location and outline of any existing or proposed and other improvements on the site;~~

~~(d) Gross acreage, area of preservation, number of trees to be planted and/or preserved, other plants to be planted and/or preserved, and square footage of paved areas shall be included in a tabulation that clearly displays this and other relevant information necessary for the planning department to evaluate compliance with the provisions of this chapter;~~

~~(e) Include an irrigation plan, which shows zones, connecting nozzles, distribution valves, irrigation lines, sprinkler heads, timer location, and backflow prevention device, as well as other information integral to the proposed irrigation system.~~

~~An application and inspection fee, in the amount set by the city council from time to time, shall be collected by the building department at time of application for certificate of occupancy. (Ord. 1555 § 20, 2009[eas28]).~~

(a) General information:

(i) Show all property lines and easements for ingress/egress and drainage;

(ii) Show all existing and proposed structures. The square footage and location for each existing and proposed structure shall be identified;

(iii) Show all pedestrian / bike connections and adjacent landscaping areas, storage, garbage, recycling, employee recreation and aboveground stormwater detention and treatment areas;

(iv) Show all paved, impervious surface areas, not including structures. The location of parking, loading and circulation areas and the total paved, impervious surface square footage shall be identified;

(v) Show all proposed and existing outdoor fixtures and equipment such as utility vaults (structures), fire hydrants, light fixtures, fences, retaining walls, ornamental fountains, pools, benches and garbage containers. The size and location of each item above shall be identified;

(b) Information regarding vegetation to be preserved:

(i) Locations of perimeters of individual trees and native vegetation areas to be preserved. The tree protection area for trees to be preserved shall be shown on the plan in accordance with 19.46.140(9).

(ii) Size, species, and health of trees to be preserved.

(iii) General locations of trees proposed for removal.

(iv) Limits of construction on site.

(v) Description of tree protection and tree maintenance measures required for the trees to be preserved.

(vi) Timeline for clearing, grading and installation of tree protection measures.

(vii) If native vegetation retention areas are proposed, the acreage of on-site critical areas, excluding critical area buffers and acreage of on-site public and private roads.

(viii) If native vegetation retention areas are proposed, the calculation of average trees per square foot of protected native vegetation area shall be provided.

(c) Information regarding newly proposed vegetation:

(vi) Location, size, species, spacing and number of trees to be planted.

(vii) Each proposed landscaping area shall have its square footage indicated on the plan.

(viii) Description and detail showing any site preparation, installation, and maintenance measures necessary for the long-term survival and health of the vegetation.

(ix) Timeline for site preparation, installation, and maintenance of vegetation.

(x) Cost estimate for the purchase, installation and three years maintenance.

(3) Irrigation Plan. The landscape plan shall include an irrigation plan. An irrigation plan is required to ensure that the planting will be watered at a sufficient level for plant survival and healthy growth. For projects meeting the one and one-half acre threshold, the irrigation method shall be by a permanent underground system with an automatic controller. An overriding rain sensor switch shall be provided. Also, administrative relief from the irrigation requirement may be requested for planting areas which contain only drought tolerant vegetation[eas29].

(a) The irrigation plan shall show zones, connecting nozzles, distribution valves, irrigation lines, sprinkler heads, timer location, and backflow prevention device, as well as other information integral to the proposed irrigation system.

(b) In lieu of a permanent irrigation system, drought-tolerant plantings may be considered by the City. If drought-tolerant, native species are selected, a watering plan is required for the establishment phase of new plantings. The plan must provide adequate watering of the newly installed trees for a minimum of three years.

~~**19.46.110 Administrative relief and alternative compliance.**~~

~~The standards contained in this chapter are intended to encourage development which is economically viable and environmentally satisfying. The standards are not intended to be arbitrary or to inhibit creative solutions. Projects may justify approval of alternative methods for compliance with the standards. Conditions may arise where normal compliance is impractical or impossible, or where maximum achievement of the city's objectives can only be obtained through alternative compliance.~~

~~(1) Requests for alternative compliance and administrative relief may be accepted for any application to which the requirements of this chapter apply, when one or more of the following conditions exist:~~

~~(a) Topography, soil, vegetation or other site conditions make it impossible or impractical; or improved environmental quality would result from alternative compliance;~~

~~(b) Space limitations, unusually shaped lots, and prevailing practices in the surrounding neighborhood may justify alternative compliance for infill sites, and for improvements and redevelopment in older communities;~~

~~(c) Parking lots with five parking spaces or less may apply for administrative relief in order to reconfigure landscaping to be less than 15 percent of the parking lot. For example, a portion of the requirement can be met by landscaping around the perimeter of the parking lot;~~

~~(d) Change of use of an existing site increases the buffer required more than it is feasible to provide;~~

~~(e) Safety considerations make alternative compliance necessary;~~

~~(f) When an alternative proposal is equal or better than normal compliance in its ability to fulfill all landscaping requirements in this chapter;~~

~~(g) Alternative types of irrigation for preexisting conditions.~~

~~(2) The following may be considered as a remedy in the cases where alternative compliance is proposed:~~

~~(a) Alternative compliance shall be limited to the specific project under consideration and shall not establish precedents for acceptance in other cases;~~

~~(b) Requests for alternative compliance shall be accompanied by sufficient explanation and justification, written and/or graphic, to allow appropriate evaluation and decision;~~

~~(c) A request for alternative compliance shall be submitted to the planning director (or designee) at the time the plan is submitted. In the case of those plans for which no public hearing is required, the decision of the planning director (or designee) will be final, unless the applicant appeals the decision to the planning commission. In the case of those plans for which a planning commission or other public hearing is required:~~

~~(i) The request for alternative compliance shall be submitted no less than 21 calendar days prior to the scheduled date of the hearing;~~

~~(ii) The planning director (or designee) will forward a recommendation to the proper hearing authority a minimum of five working days prior to the hearing;~~

~~(d) The planning director may request modification of proposed standards in the administrative relief proposal[eas30].~~

19.46.110 Review of landscape plans.

(1) Landscape plans shall be submitted and reviewed concurrently with a development or use permit and shall be processed as part of the integrated permit process under 18.20.360 OHMC.

(2) Compliance with the approved landscape plans shall be a condition of approval for all development applications approved pursuant to Titles 19, 20, or 21.

(3) The Director may allow or approve minor modifications to an approved landscape plan during the site development construction process to account for unforeseen site conditions and circumstances. The submittal of an amended landscape plan meeting the requirements of this Chapter may be required[eas31].

~~**19.46.120 Enforcement of chapter.**~~

~~A violation of any of the provisions of this chapter shall be a civil offense and any person failing to comply thereof shall be punished by a fine not to exceed $250.00 or value of materials and labor to bring the property into compliance with this chapter, whichever is greater. It shall be a separate offense for each and every day or portion thereof during which any violation of any part of the provisions of this chapter is committed, continued or permitted[eas32].~~

19.46.120 Phased projects.

Phased projects include but are not limited to shopping centers, large site developments, subdivisions, planned residential developments, and business parks. Before construction permits are issued for the first phase of any phased project, conceptual approval of the landscaping plan for the site as a whole is required. Final approval of the landscaping plan for each phase is required before construction permits are issued for a phase. Installation of landscaping for each phase of development shall be required prior to releasing occupancy permits for that phase. Relief may be available per OHMC 19.46.160.

Landscaping along a frontage road or perimeter screening may be required to be installed in the first phase. Criteria to be considered in the decision includes but is not limited to the following:

(1) Timing of phases of a project;

(2) Proximity to residential areas[eas33].

19.46.130 Landscape performance bonding.

(1) All required landscaping shall be installed prior to a certificate of occupancy being issued.

(2) Deferment. The installation of landscaping may be deferred for up to six months from the date an applicant receives a temporary certificate of occupancy. A performance bond shall be submitted to the city in order to ensure the completion of the landscaping in accordance with the approved plan. It shall be the responsibility of the applicant and the property owner to contact the city upon completion of the landscaping work and request an inspection prior to the City

releasing the bond. Failure to complete all of the required landscaping within six months of the issuance of a certificate of occupancy permit shall constitute a violation and the city shall use the bond to complete the required landscaping.

(3) Maintenance Bond Amount and Type. A three-year maintenance bond shall be required to ensure landscaping completion and a minimum plant survival of eighty percent (80%) at the end of three years. The type of bond shall be approved by the city and must be submitted on forms supplied by the City of Oak Harbor. The approved bond shall be posted with the development services department prior to the issuance of a building permit. The bond amount shall be 150 percent of a landscaping maintenance bid amount submitted and approved by the City. The bid amount must include labor and materials.

(5) Subsections (1), (2), and (3) above shall apply to all landscaping within a development site including street trees required within the public right of way and all landscaping within tracts or lots owned by private entities, such as homeowners' associations[eas34].

19.46.140 Native Vegetation Standards[eas35].

Tree and vegetation retention provides substantial environmental benefits including, but not limited to, erosion prevention, reduction in storm-water runoff, preservation of fish and wildlife habitat, improved water and air quality, energy conservation, reductions in the development impacts on the stormwater drainage system and hydrologic resources, and provides a better transition between adjacent land uses.

(1) Applicability

The native vegetation standards set forth in this section apply to all commercial and residential projects that require one or more of the following approvals: a binding site plan, conditional use permit, manufactured home park development plan, site plan review, planned business park master plan, subdivision, or planned residential development. Short subdivisions are exempt from these requirements.

(2) Definition of Native Vegetation and Allowed Uses.

(a) Definition. Native vegetation includes native, undisturbed areas or rehabilitation of previously disturbed areas. Native vegetation shall consist of plants and trees that are indigenous to the Pacific Northwest. For the purposes of this chapter, native vegetation is defined by a tree density of no less than one tree per 600 square feet plus native understory vegetation.

(b) Allowed Uses. Native vegetation may integrate pervious, passive recreation facilities, stormwater dispersion facilities, and approved surface water restoration projects. Active open space shall not count towards native vegetation requirements. Activities within native vegetation areas shall be limited to passive recreation (e.g. trails), removal of invasive species, amendment of disturbed soils, and planting of native vegetation[eas36].

(3) Native Vegetation Retention and Tree Density Standards.

(a) Minimum Standards. Table 19.46.140-1 provides minimum vegetation retention standards by zone. The native vegetation must be comprised of a

minimum tree density of one tree per 600 square feet plus native understory vegetation.

TABLE 19.46.140-1: Native Vegetation Optional Standards by Zone	
ZONE	Native Vegetation Retention (% of site area)
PRE, R1	15%
R2	10%
R3, R4, OS	10%
RO	10%
C1, C3, C4, C5, CBD	5%
I, PBP, PIP	5%
PF	5%

(b) The minimum native vegetation area may be reduced on sites with special circumstances and where replacement and supplemental plantings are proposed. Special circumstances include, but are not limited to:

(i) The retention of native vegetation to the percentages specified in Table 19.46.140-1 precludes development of the property to the minimum density or intensity specified in Chapter 19.20 OHMC.

(ii) Physical limitations such as existing lot size, soils or topography.

(iii) Land dedicated to public infrastructure serving the property for roads, sewer, water, or storm, or other public facilities use substantially more area than is typical of properties in the zone.

The replacement and supplemental plantings should be located in clusters or contiguous tracts and placed to maximize aesthetic, hydrologic, or habitat function and values.

(4) General Provisions.

Native Vegetation Areas shall meet the following additional standards:

(a) Trees shall be retained in stands or clusters. A professional forester, arborist, or landscape architect shall prepare the landscape plan to ensure that retained vegetation is not susceptible to windthrow. See 19.46.100 for landscape plan requirements.

(b) Native vegetation may be accommodated within perimeter landscaping or other required landscaped areas.

(c) The minimum native vegetation retention may be decreased to five percent (5)for non-residential uses (e.g., churches, schools, etc.) that are permitted outright or conditionally in residential zones.

(d) The calculation of the native vegetation retention area for public school sites shall be based upon the total acreage of the school site minus the areas set aside for playfields in the school site plan; provided that for the purposes of the calculation, such playfield areas shall not exceed 30 percent of the gross site area.

(e) Critical areas and their buffers may be counted towards this standard so long as they contain existing native vegetation (e.g. a steep slope with Douglas fir may be counted while one with Himalayan blackberry may not). Critical areas and their buffers that will be counted towards native vegetation shall not have to comply with the replanting standards within this chapter. Land below an ordinary high water mark shall not be counted towards the required native vegetation.

(f) Any soils disturbed through the site development process that are to be counted toward the native vegetation requirements shall be amended in accordance with the "Guidelines for Implementing Soil Quality and Depth" (BMP T5.13 in DOE *Stormwater Management Manual for Western Washington 2005.*

(5) Selection Standards.

The following selection standards should be used with the applicant's design concept in order to meet the standards outlined in Table 19.46.140-1.

(a) Fifteen percent (15%) of trees on the project site which are 12-inches or greater in diameter and which have a live crown ratio (total tree height in relation to branched portion of the tree) of fifty percent (50%) or more shall be preserved.

(b) Utilize site inventory and analysis techniques to determine which portions of the site are best suited to leave native vegetation. Typically these are the most environmentally sensitive areas such as wetlands, steep slopes, floodplains, critical fish and wildlife habitat areas. In residential developments up to twenty-five percent (25%) of the required native vegetation specified in Table 19.46.140-1 may be incorporated into the individual lot design where covenants or other protection measures are put in place. Where individual lots are utilized, they should be connected either physically or hydrologically to other native vegetation or conservation areas.

(c) Minimize changes to natural topography in an effort to maintain pre-development flow path lengths in natural drainage patterns.

(d) Maintain surface roughness to reduce flow velocities and encourage sheet flow on the lot by preserving native vegetation, forest litter and surface topography.

(6) Flexible standards to allow for native vegetation areas.

(a) Administrative relief under section 19.46.160 OHMC may be granted to allow intrusion of a building into a setback yard by up to five feet to allow for the provision of native vegetation areas elsewhere on the property.

(b) Setback averaging may be utilized to allow for native vegetation areas elsewhere on the property. A reduced setback shall be compensated by increased setback elsewhere.

(c) Administrative relief under section 19.46.160 OHMC may be granted to allow a ten percent (10%) reduction in parking spaces to allow for the provision of native vegetation areas elsewhere on the property.

(7) Replanting Requirements.

(a) If the site or lot has been previously cleared or the proposed native vegetation area does not contain suitable vegetation, then the minimum percentage of native vegetation on the site as required by Table 19.46.140-1 shall be replanted to meet the requirements of subsection (b) below. For the purposes of this section, trees subject to blow down do not constitute suitable vegetation.

(b) New trees that will be planted in native vegetation areas shall meet the revegetation standards in this section and shall be native species. For a list of native species see section 19.46.150 OHMC.

(i) Replacement deciduous and broad-leaf evergreen trees shall have a minimum 2" d.b.h. at planting. Replacement coniferous evergreen trees shall have a minimum height of 6' at planting;

(ii) Reforested areas shall be replanted with a minimum of 25% deciduous species and 25% coniferous species;

(iii) Trees within designated critical areas shall be replanted at a 2:1 ratio.

(8) Permanent Protections[eas37].

A permanent protective mechanism shall be established to ensure that the proposed native vegetation area is preserved and protected in perpetuity. The protective mechanism shall be in a form that is acceptable to the City and filed with the County Auditor's office. Restrictions on the future use of the native vegetation area shall also be recorded on the face of the plat for subdivision applications. A permanent native vegetation area shall be established using one of the following mechanisms.

(a) Placement in a separate non-building tract owned in common by all lots within the subdivision;

(b) Covered by a protective easement or public or private land trust dedication;

(c) Preserved through an appropriate permanent protective mechanism that provides the same level of permanent protection as subsection (1) of this section as determined by the approval authority.

(9) Protection of Native Vegetation Areas During and After Development

(a) All trees and tree stands proposed for retention or to be placed in a native vegetation area shall be protected before and during site development and construction through adherence to the following requirements:

(i) A native vegetation area shall be designed to protect each tree or tree stand during site development and construction. The native vegetation area shall conform to the approved landscape plan.

(ii) Native vegetation areas may vary widely in shape, but must extend a minimum of three feet beyond the existing tree canopy area along the outer edge of the tree stand, unless otherwise approved by the Director.

(iii) Native vegetation areas shall be shown and clearly labeled on all applicable site development, plat, and construction drawings, submitted to the Director.

(iv) No clearing, grading, filling, or other development activities shall occur within the native vegetation area, except where approved in advance by the Director and noted on the Landscape Plan.

(v) No vehicles, construction materials, fuel, or other materials shall be placed in native vegetation area. Movement of any vehicles within the native vegetation area shall be prohibited.

(vi) No nails, rope, cable, signs, or fencing shall be attached to any tree proposed for retention.

(vii) The grade level around the tree may not be lowered within the greater of: (1) the area defined by the drip line of the tree at time of development; or (2) an area around the tree equal to 1 foot in diameter for each 1 inch of tree diameter as measured 1 foot above pre-existing grade at time of development, unless a registered landscape architect, certified arborist or certified nursery professional determines that the long-term health of the tree will not be significantly harmed.

(viii) Trenching and other activities within or adjacent to native vegetation areas that may cut or damage the roots of trees proposed for retention shall be prohibited unless recommended by a professional forester, certified arborist or licensed landscape architect and approved by the City of Oak Harbor.

(ix) The City of Oak Harbor may approve the use of alternate tree protection techniques if the trees will be protected to an equal or greater degree than provided by this section. A description of alternate techniques shall be submitted to and reviewed by the Director along with the site plan, short subdivision, subdivision, planned residential development or other development application[eas38].

(10) Tree Topping.

(a) Topping or pollarding of trees within the native vegetation area is prohibited.

(b) Topping or pollarding may occur when there is an identifiable safety hazard, to remove dead, diseased or unhealthy materials, or to avoid overhead utilities.

(11) Maintenance of Native Vegetation Areas.[eas39]

(a) Removal of trees within native vegetation areas is not allowed, unless the tree is dead or in a state of irreversible decline. In determining tree removal or replacement, the director may require a professional evaluation or tree protection plan by a certified arborist at the applicant's expense, where the director determines that such evaluation is necessary to comply with the standards of this section. The evaluation may include providing a hazardous tree assessment, evaluation of the anticipated effects of a proposed project on the viability of trees on the site, developing a plan for tree protection or replacement and evaluation after construction. Trees that become diseased, severely damaged, or which die shall be replaced. Replacement trees shall be a minimum two-inch caliper for deciduous

trees and broadleaf evergreen or a minimum of six feet in height from existing grade for conifers.

(b) Minor trimming of trees within native vegetation areas is permitted as long as trimming activities do not negatively affect the long-term health and survivability of the tree. Trimming of select branches is allowed for safety reasons, e.g. cracked branches which may fall and become a hazard.

(c) General. All native vegetation areas shall be annually cleared of nonnative vegetation and lawn grasses, and cleared of all trash and other debris.

(d) Developer responsibility for maintenance of trees, including removal or replacement of diseased, dead, or dying trees, shall be as follows:

(i) Within residential subdivisions the developer shall be responsible for maintaining trees on individual lots until such time as the individual lots are sold at which point the individual lot owner shall assume responsibility. Developer responsibility for maintaining trees within common tracts shall remain in effect until such time as the common tract is transferred to the control of a homeowner's association or, where no homeowner's association exists, until such time as all individual lots within the subdivision are sold, at which point the individual lot owners shall assume responsibility.

(ii) Within all other developments, developer responsibility for maintaining trees shall remain in effect until such time as the property sale occurs. Upon the property sale, the new owner shall assume the responsibility for maintenance.

(iii) Compliance with the landscape plan shall be a condition of approval and shall be identified on the face of the binding site plan, conditional use permit, manufactured home park development plan, site plan review, planned business park master plan, subdivision, or planned residential development.

(e) Failure to maintain trees as required in this section shall constitute a violation of this Chapter and any associated land use or subdivision approvals.

19.46.150 Tree species [eas401].

The following table provides information on selected species of native and non-native trees suitable for replanting. All species listed are suited to the climate conditions found in the Pacific Northwest. The list is for guidance only and is not intended to be all-inclusive. Other tree species may be utilized where appropriate when recommended by a professional forester, certified arborist, licensed landscape architect, or as approved by the Director. Species availability and quantity may be limited in some cases. It is best to coordinate in advance with nurseries specializing in native plants. For bioretention areas, a complete list of appropriate plants can be found in Appendix 3 of the *LID Technical Guidance Manual for Puget Sound* (2005).

Characteristics and Use of Select Tree Species				
Species Scientific Name	Native Tree?	Canopy Size Category	Street Tree?	Characteristics
Grand fir *Abies grandis*	Yes	Large	No	Coniferous tree achieving heights of up to 150 feet. Tolerant of a variety of soil conditions, similar needs as Douglas fir.
Vine maple *Acer circinatum*	Yes	Small	No	Deciduous tree typically reaching heights of 5-35 feet. Tree-like in open sun, crooked sprawling and vine-like in shade. Good fall color. Tolerant of a wide variety of soil conditions. Prefers moist soils, but can tolerate drier conditions once established.
Big leaf maple *Acer macrophyllum*	Yes	Large	No	Deciduous tree. Form varies widely based upon competition and soil conditions. Typically 20 to 30 feet high when grow in open conditions but can reach heights of 80 feet or more in the forest. Good fall color. Tolerant of a wide variety of soil conditions. Similar environmental needs as Douglas fir.
Red Alder, Oregon Alder, Western Alder *Alnus rubra*	Yes	Medium	No	Deciduous tree to 50 feet. Best in restoration settings. Mature trees can be very attractive, especially in naturalized settings. Beautiful, mottled grey bark.
Serviceberry *Amelanchier alnifolia*	Yes	Small	No	Deciduous tree seldom larger than 20 feet in height. Tolerant of a wide variety of soil conditions. Fruit very valuable to wildlife.
Madrone *Arbutus menziessii*	Yes	Medium	No	Attractive tree, but very difficult to establish. Expect high losses. Review plant establishment notes at www.soundnativeplants.com before considering. Do not provide supplemental water once established.

Characteristics and Use of Select Tree Species				
Species Scientific Name	Native Tree?	Canopy Size Category	Street Tree?	Characteristics
Weeping nootka cypress *Chamaecyparis nootkatensis 'Pendula'*	Yes		No	Narrow (5'), pyramidal evergreen conifer. Main trunk grows straight up with branchlets that weep straight down from drooping branches.
Hybrid Western dogwood 'Eddie's White Wonder' *Cornus nutallii x florida*	Yes	Small	Yes	Hybrid of Cornus florida and the native western dogwood species. More successful than the native species for transplanting. Deciduous tree up to 30 feet in height. Prefers well-drained sites and partial shade. Could work well as a supplemental planting under a canopy of larger trees.
Black hawthorn *Crataegus douglasii*	Yes	Small	No	Deciduous tree up to 30 feet in height. Scarlet fruit. Prefers highly fertile soil and grows best in moist, open areas.
Oregon Ash *Fraxinus latifolia*	Yes	Medium	No	Deciduous tree up to 80 feet in height. Prefers moist or wet sites with rich soils. Works well for streamside and wetland plantings. Best in natural or restoration plantings and generally not appropriate for ornamental landscaping applications.
Mountain Ash	Yes	?	?	Deciduous perennial tree. Light gray, smooth bark. Flowers in May or June after leaves are full grown.
Incense cedar *Libocedrus decurrens*	No	Large	Yes	Coniferous tree achieving height of 150 feet. Drought and wind resistant. Slow growth. Native to California, Nevada, Oregon.
Sitka spruce *Picea sitchensis*	Yes	Large	No	Coniferous tree achieving 80-160 feet. Best in moist areas.
Shore pine *Pinus contorta*	Yes	Medium	No	Coniferous tree to 35 feet tall. Can be trained if a more manicured look is desired.
Western white pine *Pinus monticola*	Yes	Medium	No	Coniferous tree to 60 feet tall.

Characteristics and Use of Select Tree Species				
Species Scientific Name	Native Tree?	Canopy Size Category	Street Tree?	Characteristics
Black cottonwood *Populus balsamifera* spp. *trichocarpa*	Yes	Large	No	Heavy-limbed deciduous tree, brittle wood. Best in moist, native plantings where space is plentiful
Choke Cherry *Prunus virginiana*	No	Medium	No	Needs well drained soil. Usually upright branching with an oval crown. Fragrant white flowers.
Douglas fir *Pseudotsuga menziesii*	Yes	Large	No	Fast growing, long lived coniferous tree growing to height of 150 feet or more. Prefers drier sites, but tolerates a wide variety of soil conditions.
Western crabapple *Pyrus (Malus) fusca*	Yes	Small	No	Best in native or restoration plantings and generally not appropriate for ornamental landscape use.
Cascara *Rhamnus purshiana*	Yes	Medium	No	Deciduous tree that produces black berries.
Western red cedar *Thuja plicata*	Yes	Large	No	Coniferous tree growing to height of 150 feet or more. Best under moist, shaded conditions, but tolerates a wide variety of soil conditions once established.
Western hemlock *Tsuga heterophylla*	Yes	Large	No	Fairly fast grower, Picturesque and also makes a good background, screen, or hedge.
Japanese Maple *Acer Palmatum*	No	Small	Yes	Common deciduous landscape tree. Slow growing; typically grow to no larger than 20 feet in height. Well suited for small lot use. Popular varieties 'Atropurpureum' and 'Bloodgood.'
Norway Maple (varieties) *Acer platanoides*	No.	Large	Yes	Common deciduous landscape tree. Typically achieves heights of 50 to 60 feet. Care must be taken near sidewalks and drives as roots can become a problem.

Characteristics and Use of Select Tree Species				
Species Scientific Name	Native Tree?	Canopy Size Category	Street Tree?	Characteristics
Red Maple *Acer rubrum*	No	Small	Yes	Common deciduous landscape tree. Varieties 'Armstrong' and 'Red Sunset' are recommended for street tree use. Fast growing, typically to 40 feet with brilliant fall color. May be appropriate in a native setting.
Whitebarked Himalayan birch Betula utilis var. jacquemontii	No	Medium	No	Prefers rich, moist, well drained soil. Narrow tree with oval crown. Brilliant white bark. Yellow fall color.
Incense cedar *Calocedrus decurrens*	No	Large	No	Coniferous tree achieving height of 150 feet. Drought and wind resistant. Slow growth. Native to California, Nevada, Oregon. Appropriate for native restoration areas.
European hornbeam *Carpinus betulus*	No	Medium	Yes	Deciduous tree growing to 40 feet. Variety 'Fastigiata' recommended for street tree use.
Eastern redbud *Cercis canadensis*	No	Medium	Yes	Tolerates any soil but wet. Short trunk with spreading branches. Flowers appear before leaves. Heart-shaped leaves emerge reddish and turn dark green. Yellow fall color.
Katsura Tree *Cercidiphyllum japonicum*	No	Medium	Yes	Deciduous tree, slow growing to 40 feet. Good fall color. Well suited for small lot use.
Washington hawthorn *Crataegus phaenopyrum*	No	Small	Yes	Small deciduous tree, typically no larger than 25 feet. Well suited for small lot use with good fall color.
White Ash (varieties) *Fraxinus americana*	No	Medium	Yes	Prefers deep, moist, well drained soil. Green leaflets turn to purple shades. Fall color may include yellow, orange, red, and dark purple.
Green ash *Fraxinus amreicana*	No	Medium	Yes	Fast growing deciduous tree with height of 40 feet. For street tree use, seedless varieties such as 'Marshall' are preferred.

Characteristics and Use of Select Tree Species				
Species Scientific Name	Native Tree?	Canopy Size Category	Street Tree?	Characteristics
Honey locust *Gleditsia triacanthos*	No	Medium	Yes	Fast growing deciduous tree with height of 40 feet. Varieties 'Shademaster', 'Skyline', and 'Moraine' are preferred varieties.
American sweet gum *Liquidambar styraciflua*	No.	Medium	Yes	Common landscape tree very tolerant of urban conditions. Achieves heights of 60 feet with good fall color. Not good in windy settings- the branches are brittle and break easily.
Tulip tree *Liriodendron tulipifera*	No	Large	No	Large deciduous tree achieving height of up to 60 feet. Very tolerant of urban conditions.
Crabapple *Malus sp.*	No	Medium	Yes	Large deciduous tree achieving height of up to 60 feet. Very tolerant of urban conditions.
Dawn redwood *Metasequoia glyptostroboides*	No	Large	No	A deciduous conifer. Fast growing. Bright green fern-like needles. Fall color ranges from bronze to apricot.
Sourwood *Oxydendron arboreum*	No	Medium	Yes	Medium deciduous tree with good fall color. Achieves height of 18 feet.
Yoshino flowering cherry	No	Medium	Yes	Medium sized deciduous tree achieving height of 40 feet. Fast growing.
Flowering callery pear *Pyrus calleryana*	No	Medium	Yes	Widely used in commercial landscaping. Deciduous tree 25 to 40 feet. Well suited to urban conditions. Varieties for street tree use include 'Aristocrat', 'Bradford', 'Capital', 'Chanticlear', 'Redspire' and 'Whitehouse'.
Pin Oak *Quercus palustris*	No	Large	No	Deciduous tree achieving heights of 50 to 80 feet. Better suited to park or large lot use due to size.
Scarlet oak *Quercus coccinea*	No	Large	No	Oval to round canopy shape with high, open branching pattern. Bright green leaves turn scarlet in fall. Deep roots allow for lawn or perennial plant growth beneath canopy.

Characteristics and Use of Select Tree Species				
Species Scientific Name	Native Tree?	Canopy Size Category	Street Tree?	Characteristics
English oak *Quercus robur*	No	Large	No	Prefers well drained sites. Open form. Deep green leaves with yellow-brown fall color. Needs ample space.
Giant Sequoia *Sequoiadendron*	No	Large	No	A good choice in a landscape with adequate space.
Japanese snowbell	No	Medium	Yes	Needs well drained soil and ample water. Medium green foliage with yellow fall color. Blooms in June with fragrant white bell-shaped flowers.
Little Leaf Linden *Tilia cordata*	No	Small	Yes	Small deciduous tree reaching height of 30 feet. Tolerant of urban conditions.
Sawleaf zelkova *Zelkova serrata*	No	Large	No	Water well initiallyto establish deep roots. Once established, very drought and wind tolerant. Fall foliage varies from yellow to dark red. Smooth gray bark.
Notes: Canopy size catetories: (a) Large - mature canopy area>1,250 square feet (b) Medium – mature canopy area 450 to 1,250 square feet (c) Small – mature canopy area 450 square feet or less				

19.46.155. Tree removal outside of native vegetation areas.

The director may approve the removal of trees that are not part of a native vegetation area that were required to be retained as part of a previous plan approval, if it is determined that the tree is diseased, physically deteriorated, potentially hazardous, damaged or subject to wind throw. Trees that are removed as approved by the director shall be replaced at a one to one ratio. Replacement trees shall be a minimum two and one-half-inch caliper for deciduous trees or a minimum of six feet in height from existing grade for conifers.

19.46.160 Administrative relief and alternative compliance[eas41].

The standards contained in this chapter are intended to encourage development which is economically viable and environmentally satisfying. The standards are not intended to be arbitrary or to inhibit creative solutions. Projects may justify approval of alternative methods for compliance with the standards. Conditions may arise where normal compliance is impractical or impossible, or where maximum achievement of the community's objectives can only be obtained through alternative compliance.

(1) Requests for alternative compliance and administrative relief may be accepted for any application to which the requirements of this chapter apply, when one or more of the following conditions exist:

(a) Topography, soil, vegetation or other site conditions make it impossible or impractical; or improved environmental quality would result from alternative compliance;

(b) Space limitations, unusually shaped lots, and prevailing practices in the surrounding neighborhood may justify alternative compliance for infill sites, and for improvements and redevelopment in older communities;

(c) Parking lots with five parking spaces or less may apply for administrative relief in order to reconfigure landscaping to be less than 15 percent of the parking lot. For example, a portion of the requirement can be met by landscaping around the perimeter of the parking lot;

(d) Change of use of an existing site increases the buffer required more than it is feasible to provide;

(e) Safety considerations make alternative compliance necessary;

(f) When an alternative proposal is equal or better than normal compliance in its ability to fulfill all landscaping requirements in this chapter;

(g) Alternative types of irrigation for preexisting conditions.

Alternative compliance shall be limited to the specific project under consideration and shall not establish precedents for acceptance in other cases.

(2) Submittal requirements.

(b) Requests for alternative compliance shall be accompanied by sufficient explanation and justification, written and/or graphic, to allow appropriate evaluation and decision;

(c) A request for alternative compliance shall be submitted to the planning director (or designee) at the time the landscape plan is submitted. In the case of those plans for which no public hearing is required, the decision of the planning director (or designee) will be final, unless the applicant appeals the decision to the hearing examiner.

(d) The planning director may request modification of proposed standards in the administrative relief proposal. (Ord. 1221 § 1, 2000).

19.46.170 Enforcement of chapter.

A violation of any of the provisions of this chapter shall be a civil offense and any person failing to comply thereof shall be punished by a fine not to exceed $250.00 or value of materials and labor to bring the property into compliance with this chapter, whichever is greater. It shall be a separate offense for each and every day or portion thereof during which any violation of any part of the provisions of this chapter is committed, continued or permitted. (Ord. 1221 § 1, 2000[eas421]).

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 (5) days after its publication.

PASSED by the City Council this ___ day of _____ 2011.

CITY OF OAK HARBOR

Approved ( )
Vetoed ( )

_____
Mayor

_____
Date

ATTEST:

_____
City Clerk

Approved as to Form:

_____
City Attorney

Published:_____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF OAK HARBOR AMENDING CHAPTER 19.47 OF THE OAK HARBOR MUNICIPAL CODE ENTITLED "LAND CLEARING" PROMOTING LOW IMPACT DEVELOPMENT CLEARING AND GRADING PRACTICES.

WHEREAS, the City of Oak Harbor's Comprehensive Plan in Environment Policy 2(h) says "the City should provide incentives to utilize Low Impact Development techniques for new development and redevelopment projects that will further promote resource protection and stewardship. Such incentives may include density credits, street width and/or parking requirement reductions, stormwater fee credits, landscape/park requirement credits, and/or expedited permit review processing. The City should also provide educational materials through pamphlets or web links to the public to educate the public on low impact development and;

WHEREAS, the City of Oak Harbor finds that Low Impact Development is a non-structural approach for managing stormwater from new and redeveloped sites which has been found by multiple professional and academic studies to have less impact on the environment, especially water quality, than conventional approaches for treating stormwater and;

WHEREAS, the City of Oak Harbor finds that Low Impact Development techniques are, in most cases, cost competitive or less expensive to install than conventional stormwater infrastructure and;

WHEREAS, the City finds that Low Impact Development techniques promote higher property values by using vegetated raingardens, native vegetation areas, and pervious pavements which are considered to be more aesthetically appealing than conventional stormwater techniques and;

WHEREAS, the City of Oak Harbor finds that the Oak Harbor Municipal Code currently does not have standards for incorporating Low Impact Development in site designs, that having such standards will further promote the use of Low Impact Development stormwater treatment techniques, and will help City staff review these projects more efficiently and;

WHEREAS, the City of Oak Harbor conducted seven (7) work sessions on the proposed code updates with the Planning Commission which were open to the public on the following dates: October 27, 2009, November 24, 2009, January 26, 2010, February 23, 2010, March 23, 2010, April 27, 2010, and May 25, 2010 and;

WHEREAS, the City of Oak Harbor conducted a public meeting before the Planning Commission on January 24, 2010 and opened a public hearing on February 22, 2011 which was closed on March 29, 2011, and;

WHEREAS, the Oak Harbor Planning Commission recommended approval of the subject ordinance to the City Council and;

WHEREAS, the City of Oak Harbor issued Notice of Application on February 12, 2011 and Determination of Non-Significance (DNS) on March 11, 2011 for a SEPA Environmental Checklist in accordance with Chapter 43.21 RCW and;

WHEREAS, the City of Oak Harbor provided a 60-day comment period which began on March 17, 2011 and ended on May 17, 2011 to the Washington State Department of Commerce in accordance with Section 36.70A.106 RCW.

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

Section One. Chapter 19.47 of the Oak Harbor Municipal Code, last amended by Section 21 of Ordinance 1555 in 2009, is hereby amended to read as follows:

Chapter 19.47
LAND CLEARING

Sections:

19.47.010 Purpose.
19.47.020 Applicability.
19.47.025 Definitions
19.47.030 Permits.
19.47.040 Exemptions.
19.47.050 Application for land clearing permit.
19.47.060 Minor clearing permit.
19.47.065 Performance standards.
19.47.070 Performance bond or cash guarantee.
19.47.080 Appeals.
19.47.090 Civil/criminal enforcement.
19.47.100 Injunctive enforcement.
19.47.110 Severability.
19.47.120 Permit fees.
19.47.130 Compliance with state law[eas1].

19.47.010 Purpose.

These regulations are adopted for the following purposes. ~~The city staff shall consider such purposes as criteria or standards of the issuance of land clearing permits under OHMC 19.47.050[eas2].~~

(1) To promote the public health, safety and general welfare of the citizens of Oak Harbor;

(2) To preserve and enhance the city's physical and aesthetic character by preventing indiscriminate removal or destruction of trees and ground cover on undeveloped and partially developed property;

(3) To promote land development practices that result in a minimal disturbance to the city's vegetation and soils;

(4) To minimize surface water and ground water runoff and diversion and to prevent

erosion and reduce the risk of slides;

(5) To minimize the need for additional storm drainage facilities~~;~~ and to promote Low Impact Development grading and clearing techniques[eas3].

(6) To acknowledge that trees and ground cover reduce air pollution by producing pure oxygen from carbon dioxide;

(7) To promote building and site planning practices that are consistent with the city's natural topographic and vegetation features while at the same time recognizing that certain factors such as condition (e.g., disease, danger of falling, etc.), proximity to existing and proposed structures and improvements, interference with utility services, protection of scenic views, and the realization of a reasonable enjoyment of property may require removal of certain trees and ground cover;

(8) To ensure prompt development, restoration and replanting and effective erosion control of property after land clearing through the use of phased development, performance bonds, and other reasonable controls;

(9) To reduce siltation and water pollution;

(10) To implement the goals and objectives of the Washington State Environmental Policy Act;

(11) To maintain the rural character of the city~~;~~

(12) To protect and enhance critical lands and their buffers;

(13) To implement the following environmental element policies as stated in the comprehensive plan:

(a) Policy 1.c: Protect the public and public resources and facilities from injury, loss of life, property damage or financial loss due to flooding, erosion, landslides, soil subsidence and slope failure;

(b) Policy 6.c: Require planting or retention of trees and shrubs with new development and substantial development projects;

(c) Policy 6.g: The city shall require developers to submit and receive city approval of erosion control and limit-of-clearing plans, as applicable, prior to release of forest practices permits and land clearing;

(d) Policy 6.h: Consider adopting a land clearing and grading ordinance to prevent indiscriminate removal or destruction of trees and ground cover on undeveloped and partially developed property;

(14) ~~Not to prevent~~To allow the reasonable development of land in the city of Oak Harbor[eas4].

19.47.020 Applicability.

This chapter applies to all properties within the city with exceptions as listed ~~shown~~ in OHMC 19.47.040. This chapter does not apply to oak trees, which are regulated under Chapter 20.16 OHMC.

19.47.025 Definitions

(1) "Caliper" shall mean the diameter of any tree trunk as measured at a height of four feet above the ground on the upslope side of the tree.

(2) "Creek" shall mean those areas where surface waters flow sufficiently to produce a defined channel or bed. A defined channel or bed is indicated by hydraulically

sorted sediments or the removal of vegetative litter or loosely rooted vegetation by the action of moving water. The channel or bed need not contain water year around. This definition is not meant to include storm water runoff devices or other entirely artificial watercourses unless they are used to store and/or convey pass-through stream flows naturally occurring prior to construction.

(3) "Clearing" shall mean the act of cutting and/or removing vegetation. This definition shall include grubbing vegetation.

(4) "Clearing and Grading Permit" shall mean the written approval of the city of Oak Harbor to proceed with the act of clearing property within the city limits of Oak Harbor. The Clearing and Grading Permit includes the associated approved plans and any conditions of approval as well as the permit form itself.

(5) "Critical Area" shall mean any area designated as a critical area pursuant to RCW 36.70A.170 and Chapter 20.02 OHMC.

(6) "Development" shall mean any activity that requires federal, state, or local approval for the use or modification of land or its resource. These activities include, but are not limited to, subdivision and short subdivisions; binding site plans; planned residential developments; variances; shoreline substantial development; clearing activity; excavation; embankment; fill and grade work; converting fallow land or undeveloped land to agricultural purposes; activity conditionally allowed; building or construction; ~~revocable encroachment permits;~~ and septic approval.

(8) "Dry Season" shall mean the months of May through September.

(9) "Ecology" shall mean Washington State Department of Ecology.

(10) "Erosion" shall mean the wearing away of the land surface by running water, wind, ice, or other geological agents, including such processes as gravitational creep. Also, the detachment and movement of soil or rock fragments by water, wind, ice, or gravity. The following terms are used to describe different types of water erosion:

(11) Geological erosion – The normal or natural erosion caused by geological processes acting over long geologic periods and resulting in the wearing away of mountains, building up of floodplains, coastal plains, etc. Synonymous with natural erosion.

(12) Natural erosion – Wearing away of the earth's surface by water, ice, or other natural agents under natural environmental conditions of climate, vegetation, etc., undisturbed by humans. Synonymous with geological erosion.

(13) "Excavation" shall mean the removal of material such as earth, sand, gravel, rock, or asphalt from a parcel, tract, or lot of land.

(14) "Fill" shall mean earth, sand, gravel, rock, asphalt, or other solid material used to increase the ground surface elevation or to replace excavated material.

(15) "Geotechnical Engineer" shall mean a professional engineer currently registered in the state of Washington, qualified by reason of experience and education in the practice of geotechnical engineering, and designated by the owner as the geotechnical engineer of record for the project.

(16) "Grading" shall mean the movement of earth material through mechanical or other means to create the finished surface and contour of a project site.

(17) "Grubbing" shall mean the act of removing vegetation by the roots.

(18) "Ground cover" shall mean a dense covering of small plants such as salal, ivy, ferns, mosses, grasses, or other types of vegetation which normally cover the ground.

(19) "Land Disturbance Activity" shall mean any activity that results in movement of earth, or a change in the existing soil cover and/or the existing soil topography. Land disturbing activities include, but are not limited to, clearing, grading, filling, and excavation.

(20) "Low Impact Development (LID)" shall mean a stormwater management strategy that emphasizes conservation and use of existing natural site features integrated with distributed, small-scale stormwater controls to more closely mimic natural hydrologic patterns in residential, commercial, and industrial settings.

(21) "Partially developed lot" shall mean a lot or parcel of land upon which a structure (refer to 19.08.875 OHMC for the definition of a structure) is located and which is of sufficient area so as to be capable of accommodating additional development pursuant to the Oak Harbor zoning code; or which may be subdivided in accordance with the city of Oak Harbor subdivision chapter.

(22) "Permit" shall mean, unless otherwise noted, the Clearing and Grading Permit; see Clearing and Grading Permit.

(23) "Removal" shall mean the actual destruction or causing the effective destruction through damaging, poisoning or other direct or indirect actions resulting in the death of a tree or ground cover.

(24) "Runoff" shall mean water from rain, melted snow, or irrigation that flows over the land surface.

(25) "Sedimentation" shall mean the process of gravity-induced settling and deposition of fragmented rock, soil, or organic particles displaced, transported, and deposited by erosive water-based processes.

(26) "Wet Season" shall mean the period of the year between October 1 and April 30.

19.47.030 Permits.

No person, corporation, or other legal entity shall engage in or cause land clearing in the city without having obtained a land clearing permit or minor clearing permit. Obtaining a land clearing permit or minor clearing permit does not exempt any person from obtaining a grading permit, when required.

19.47.040 Exemptions.

The following shall be exempt from the provisions of this chapter:

(1) The installation and maintenance of fire hydrants, surface electrical transformer boxes, water meters, water and sewer mains, pumping stations, pedestrian or bicycle ~~paths~~ connections[eas5], and street improvements by the city or its contractors;

(2) Removal of trees and ground cover in emergency situations involving immediate danger to life or property or substantial fire hazards;

(3) Removal of dead or diseased ground cover or trees. If there is a question as to whether ground cover or trees are diseased, an arborist~~forester~~[eas6] or city staff shall inspect the site and determine whether the plant needs to be removed;

(4) Removal of trees or ground cover on partially developed lots, for purposes of

general property and utility maintenance, landscaping or gardening; provided, that this exemption shall not apply to any land clearing which includes the use of a bulldozer or similar mechanical equipment and shall not be construed to eliminate the requirement of permits for land clearing for the purpose of developing the property with substantial permanent improvements such as roads, driveways, utilities, or buildings;

(5) Developed[eas7] single-family residential lots;

(6) Individual undeveloped single-family residential lots where a building permit has been issued.

19.47.050 Application for land clearing permit.

(1) An application for a land clearing permit shall be submitted by the owner or authorized agent on a form provided by the city and shall be accompanied by such of the following documents and information as are determined to be necessary by the city staff as indicated on the application form.

(2) Applications shall be submitted with the preliminary plat application, where applicable.

(3) ~~The c~~City staff shall complete its review and make its decision within 20 working days from the date a complete land clearing application is submitted, if such application is submitted as a stand-alone application. However, if the application is submitted with a preliminary plat, binding site plan, site plan review, planned residential development or other development application, the review shall be completed within the prescribed timelines of Chapter 18.20 OHMC, unless an extension is authorized by the Director ~~planning director~~[eas8].

(4) Any permit granted hereunder shall expire six months from the date of issuance. Approved plans shall not be amended without authorization of the city staff. The permit may be suspended or revoked by the city staff because of incorrect information supplied, not following the approved plan or any violation of the provisions of this chapter. A one-time six-month extension may be approved by the Director ~~planning director~~ upon submission of a letter from the applicant stating the reason for delay and approximate time clearing will be completed.

(5) The city shall be advised by the property owner or authorized agent the day prior to beginning any land clearing operations.

(6) Land clearing involving the use of heavy equipment shall be limited to those hours indicated in OHMC 6.56.030(1)(h).

(7) The applicant shall be responsible for posting the property as per Chapter 18.21 OHMC.

(8) In the case that multiple owners own a share in a property, a homeowners' association or other similar maintenance association shall be responsible for continued maintenance of the land and remaining vegetation, subsequent to land clearing.

(9) An erosion and sediment control plan shall be approved prior to issuance of a land clearing permit, or as a condition of approval of a land clearing permit.

19.47.060 Minor clearing permit.

In the case that a property owner wishes to remove five percent or less of the total trees

and ground cover on a site, the owner may apply for a minor clearing permit.

(1) To apply for a permit, the owner must submit a letter requesting approval to remove the trees and/or ground cover. Such letter shall provide the following information:

(a) The percentage of total ground cover and trees which will be removed, as compared to the existing amount of trees and ground cover on the lot;

(b) Location of the trees and/or ground cover proposed for removal;

(c) If applicable, the approximate date the last minor clearing permit was approved by the city;

(d) Date that trees and/or ground cover are to be removed.

(2) At no time shall the city approve, either by individual permit or by multiple permits, the removal of more than five percent of ground cover and trees on a lot per year through the minor clearing permit. Any proposed tree or ground cover removal above the annual maximum of five percent is subject to the land clearing permit process.

(3) The minor clearing permits may not be used for requesting the removal of trees within a required buffer on arterial streets per OHMC 21.60.180.~~.~~

19.47.065 Performance standards[eas9].

~~All of the performance standards in this section are required unless an exemption from a particular standard is clearly justified in the narrative of the construction SWPPP.~~

Compliance with the following performance standards is required prior to the approval of a land clearing permit in 19.47.050 OHMC, unless an exemption is clearly justified in the SWPPP.

(1) Minimize Potential Impacts

All grading and clearing activities shall be conducted so as to minimize potential adverse effects of these activities on forested lands, surface water quality and quantity, groundwater recharge, fish and wildlife habitat, adjacent properties, and downstream drainage channels. in accordance with the performance standards in this section.

(2) Stormwater Consistency of Standards

All standards under this code will be consistent with the latest version of the *Stormwater Management Manual for Western Washington*, pursuant to Title 12 OHMC.

(3) Natural Features and Vegetation Retention

Projects shall be phased to the maximum degree practical and shall take into account seasonal work limitations, to decrease exposed soils and minimize adverse impacts to natural features and vegetation resulting from land disturbance activities. The Director shall have the authority to require a phased land clearing plan[eas10].

(4) Dust Suppression

Dust from clearing, grading, and other construction activities shall be minimized at all times. Impervious surfaces on or near the construction area shall be swept, vacuumed, or otherwise maintained to suppress dust entrainment. Any dust suppressants used shall be approved by the Director ~~planning division manager~~ or designee. Petrochemical dust suppressants are prohibited. Watering the site to suppress dust is also prohibited unless it can be done in a way that keeps sediment out of the drainage system[eas11].

(5) Erosion and Sedimentation Control[eas12]

Erosion and sedimentation control BMPs shall be designed and implemented appropriate to the scale of the project and necessary to prevent sediment from leaving the project site,

including but not limited to, the standards and requirements described in this chapter, and in the latest edition of the *Department of Ecology Stormwater Management Manual for Western Washington.*

(a) In addition to the measures in this and other codes and ordinances, the planning division manager or designee may impose the following erosion control measures, or other additional measures, as appropriate for the project:

(ii) Funding additional city inspection time, up to a full-time inspector.

(iii) Stopping work if necessary to control erosion and sedimentation.

(6) Native Soil Protection and Amendment

(a) The duff layer and native topsoil should be retained in an undisturbed state to the maximum extent practicable. In areas requiring grading, remove and stockpile the duff layer and topsoil on site in a designated, controlled area, not adjacent to public resources and critical areas, to be reapplied to other portions of the site where feasible[eas13].

(7) Protection of Critical Areas

The function and values of all critical areas, including all stream types, geologically unstable areas, critical aquifer recharge areas, frequently flooded areas, wetlands, and fish and wildlife conservation areas or habitats, and their critical areas buffers located on or adjacent to the site shall be protected from clearing and grading activities that result in sedimentation, erosion, and degradation. Such impacts shall be avoided by appropriate use of setbacks, erosion, and sediment control measures, construction barriers, and other appropriate best development and management practices.[eas14].

(8) Avoidance of Hazards

Land disturbance activities shall not result in off-site physical damage, nor pose a danger or hazard to life or property.

(9) Cut and Fill Slopes

Cut and fill slopes shall be designed and constructed in a manner that will minimize erosion. In addition, slopes shall be stabilized in accordance with the requirements of this section. The applicant shall:

(a) Submit a geotechnical report, prepared by a geotechnical engineer, when required pursuant to Title 20 OHMC including Critical Area Ordinance provisions for qualified professional reports.

(b) Minimize clearing and grading on slopes fifteen (15) percent or greater and meet any geologically sensitive areas performance standards set forth in Chapter 20.28 OHMC.

(c) Comply with the Geologically Sensitive Areas ~~Land Use Code~~ restrictions (OHMC 20.28) applicable to slopes forty (40) percent or greater and to areas of colluvial or landslide deposit on slopes of fifteen (15) percent or greater.

(d) Limit the maximum gradient of artificial slopes to no steeper than 2:1 [two (2) feet of horizontal run to one (1) foot of vertical fall] unless a geotechnical engineering report and slope stability analysis is provided and shows that a factor of safety of at least 1.5 for static loads and 1.1 for pseudostatic loads can be met.

(e) Do no clearing, excavation, stockpiling, or filling on the potential slide block of an unstable or potentially unstable slope unless it is demonstrated to the City Engineer's satisfaction that the activity would not increase the load, drainage, or erosion on the slope.

(f) Do no clearing, excavation, stockpiling, or filling on any unstable or potentially unstable areas (such as landslide deposits) unless it is demonstrated to the City Engineers that the activity would not increase the risk of damage to adjacent property or natural resources or injury to persons.

(g) Intercept any ground water, subsurface water, or surface water drainage encountered on a cut slope and discharge it at a location approved by the city of Oak Harbor ~~D~~development ~~S~~services ~~D~~department. Off-site stormwater (run-on) or groundwater shall be diverted away from slopes and undisturbed areas with interceptor dikes, pipes and/or swales. Off-site stormwater should be managed separately from stormwater generated on the site.

(h) Design and protect cut and fill slopes to minimize erosion.

(i) Excavated material shall be placed on the uphill side of trenches, consistent with safety and space considerations.

(j) Check dams shall be placed at regular intervals within constructed channels that are cut down a slope.

(10) Slash Removal

Slash from clearing should preferably be chipped and used in native vegetation areas on the site within one (1) year of project completion.

(11) Seasonality – Temporary Restrictions

Seasonality refers to the wet season (defined as the period from October 1 through April. Clearing, grading, and other land disturbing activities may be approved by the Development Services Director~~planning division manager~~ or designee for proposals that have minimal disturbance of soils and are on sites with predominant soils that have low runoff potential, and are not hydraulically connected to sediment/erosion-sensitive features. The following criteria also apply:

(a) Wet season clearing, grading, and other land disturbing activities may be approved provided an erosion and sediment control plan is prepared by a professional engineer that specifically identifies methods of erosion control for wet weather conditions to control erosion/sedimentation, surface water run off, and safeguard slope stability. In a situation where erosion or sediment is not contained on site, construction activity shall cease immediately and notification of the Development Services Director~~planning division manager~~ shall be made within twenty-four (24) hours.

(b) When approval is issued in the dry season (defined as the months of May through September), and work is allowed to continue in the wet season, the city of Oak Harbor may require additional measures to limit erosion and/sedimentation. ~~for slope stability.~~ The Director ~~planning division manager~~ or designee may prohibit land-disturbing activities during certain

days of the wet season. Determinations shall be made on a site-specific basis and evaluation of the following:

(i) Average existing slope on the site.

(ii) Quantity of proposed cut and/or fill.

(iii) Classification of the predominant soils and their erosion and runoff potential.

(iv) Hydraulic connection of the site to features that are sensitive to erosion impacts.

(v) Storm events and periods of heavy precipitation[eas15].

(c) If a clearing and grading approval is issued for work during the wet season and the Director~~planning division manager~~ subsequently issues a "Stop Work" order or correction notice for insufficient erosion and sedimentation control, the approval will be suspended until the dry season, or until the Director ~~planning division manager~~ determines that weather conditions are favorable and effective erosion and sedimentation control is in place.

(d) Certain activities are exempted from seasonal restrictions (For a list of exemptions, see Stormwater Management Manual for Western Washington, Construction SWPPP, Vol. 2[eas16]).

(12) Site-Specific Requirements

Additional, site-specific requirements may be established after a site visit by the city. These requirements shall be based on specific site conditions and are limited to additional temporary erosion and sedimentation control and the mitigation of hazardous or potentially hazardous conditions that pose a threat off site or habitat preservation[eas17].

(13) Tree Retention

Clearing plans shall show tree retention areas and native vegetation retention areas and shall conform to all the requirements of 19.46 for protection during construction and development.

(14) Protection of Trees During Construction

Protection of trees during construction and development shall conform to the requirements of 19.46.140.

19.47.070 Performance bond or cash guarantee.

The city staff may require, as a condition to the granting of a permit, that the applicant furnish a performance bond or cash guarantee to the city to secure the applicant's obligation, after the approved land clearing has been accomplished, to complete the restoration and replanting of the property in accordance with the terms of the permit and within the term thereof. The bond shall be in an amount equal to the estimated cost of such restoration and replanting, plus an additional 10 percent and with surety and conditions satisfactory to the city staff.

19.47.080 Appeals.

Any person or persons aggrieved by any action of the city staff may within 15 days of such action file a written notice of appeal in accordance with Chapter 1.24 OHMC.

19.47.090 Civil/criminal enforcement.

A violation of any of the provisions of this chapter shall be a misdemeanor and any person found guilty thereof shall be punished by a fine not to exceed $500.00 or replacement value, whichever is greater. It shall be a separate offense for each and every day or portion thereof during which any violation of any part of the provisions of this chapter is committed, continued or permitted.

19.47.100 Injunctive enforcement.
Any violation of the provisions of this chapter is hereby declared to be a public nuisance and may be abated through proceedings for injunctive or similar relief in superior court or other court of competent jurisdiction.

19.47.110 Severability.
If any section, paragraph, subsection, clause or phrase of this chapter is for any reason held to be unconstitutional or invalid by action of law, such decision shall not affect the validity of the remaining portions of this chapter.

19.47.120 Permit fees.
After review and approval of the application a land clearing permit and minor clearing permit will be issued at a cost ~~determined from time to time by the city council.~~ in accordance with the "City of Oak Harbor Comprehensive Permit and Fee List[eas18]."

19.47.130 Compliance with state law.
All clearing shall be done in accordance with applicable state laws.

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 (5) days after its publication.

PASSED by the City Council this ___ day of _____ 2011.

CITY OF OAK HARBOR

Approved ( )
Vetoed ( )

_____
Mayor

_____
Date

ATTEST:

_____

City Clerk

Approved as to Form:

_____

City Attorney

Published:_____

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF OAK HARBOR AMENDING TITLE 21 OF THE OAK HARBOR MUNICIPAL CODE ENTITLED "SUBDIVISIONS" FOR THE PURPOSES OF PROMOTING LOW IMPACT DEVELOPMENT STORMWATER MANAGEMENT PRACTICES IN SUBDIVISIONS, SHORT SUBDIVISIONS, AND BINDING SITE PLANS.

WHEREAS, the City of Oak Harbor's Comprehensive Plan in Environment Policy 2(h) says "the City should provide incentives to utilize Low Impact Development techniques for new development and redevelopment projects that will further promote resource protection and stewardship. Such incentives may include density credits, street width and/or parking requirement reductions, stormwater fee credits, landscape/park requirement credits, and/or expedited permit review processing. The City should also provide educational materials through pamphlets or web links to the public to educate the public on low impact development and;

WHEREAS, the City of Oak Harbor finds that Low Impact Development is a non-structural approach for managing stormwater from new and redeveloped sites which has been found by multiple professional and academic studies to have less impact on the environment, especially water quality, than conventional approaches for treating stormwater and;

WHEREAS, the City of Oak Harbor finds that Low Impact Development techniques are, in most cases, cost competitive or less expensive to install than conventional stormwater infrastructure and;

WHEREAS, the City finds that Low Impact Development techniques promote higher property values by using vegetated raingardens, native vegetation areas, and pervious pavements which are considered to be more aesthetically appealing than conventional stormwater techniques and;

WHEREAS, the City of Oak Harbor finds that the Oak Harbor Municipal Code currently does not have standards for incorporating Low Impact Development in site designs, that having such standards will further promote the use of Low Impact Development stormwater treatment techniques, and will help City staff review these projects more efficiently and;

WHEREAS, the City of Oak Harbor conducted seven (7) work sessions on the proposed code updates with the Planning Commission which were open to the public on the following dates: October 27, 2009, November 24, 2009, January 26, 2010, February 23, 2010, March 23, 2010, April 27, 2010, and May 25, 2010 and;

WHEREAS, the City of Oak Harbor conducted a public meeting before the Planning Commission on January 24, 2010 and opened a public hearing on February 22, 2011 which was closed on March 29, 2011, and;

WHEREAS, the Oak Harbor Planning Commission recommended approval of the subject ordinance to the City Council and;

WHEREAS, the City of Oak Harbor issued Notice of Application on February 12, 2011 and Determination of Non-Significance (DNS) on March 11, 2011 for a SEPA Environmental Checklist in accordance with Chapter 43.21 RCW and;

WHEREAS, the City of Oak Harbor provided a 60-day comment period which began on March 17, 2011 and ended on May 17, 2011 to the Washington State Department of Commerce in accordance with Section 36.70A.106 RCW.

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

Section One. Chapter 21.10 of the Oak Harbor Municipal Code, last amended by Ordinance 1568, section four in 2010, is hereby amended to read as follows:

Chapter 21.10
GENERAL PROVISIONS

Sections:

21.10.010 Purpose.
21.10.020 Applicability.
21.10.030 Administration.
21.10.040 City standards.
21.10.050 Consent to access.
21.10.060 Monuments.
21.10.070 Definitions.

21.10.010 Purpose.

This title shall be known as the "Subdivision Ordinance of the City of Oak Harbor, Washington." The purpose of this title is to regulate the subdivision of land and to promote the public health, safety and general welfare in accordance with the standards established by the state in Chapter 58.17 RCW as now or hereafter amended and the city and to:

(1) Provide for the expeditious review and approval of proposed land divisions which comply with this title, the Oak Harbor zoning ordinance, other city plans, policies and land use controls, and Chapter 58.17 RCW;
(2) Promote safe and convenient traffic circulation;
(3) Facilitate adequate provision for water, sewerage, drainage, parks and recreational areas, sites for schools and school grounds, and other public requirements;
(4) Provide for proper ingress and egress;
(5) Adequately provide for the housing and commercial needs of the citizens of the state and city;
(6) Require uniform monumenting of land divisions and conveyance by accurate legal description;
(7) Provide for convenient and safe pedestrian and bicycle movement;
(8) Promote the integration of new residential neighborhoods with developed areas of

the community;

(9) Encourage environmentally sound Low Impact Development techniques to manage stormwater;

(10) Facilitate development that is aesthetically appealing and appropriate for the community; and

(11) Implement the goals, objectives and policies of the Oak Harbor Comprehensive Plan.

21.10.020 Applicability.

(1) The provisions of this title shall apply to all division of land within the corporate limits of the City of Oak Harbor except as expressly stated in this title.

(2) Division of land into nine (9) or less lots shall be in compliance with the regulations and standards governing "short subdivision" set out in Chapter 21.70 of this title unless the binding site plan procedures of Chapter 21.80 are being followed. Division of land into ten (10) or more lots shall comply with regulations and standards pertaining to "Subdivisions" contained herein and must follow the preliminary and final procedures hereafter set forth or, if applicable, binding site plan processes.

(3) Sale of land is prohibited unless it is a duly platted parcel of land or lot or is a tract of record prior to September 16, 1980, or is a parcel of land approved under the short subdivision provisions.

(4) The provisions of the subdivision ordinance shall not apply to:

(a) Cemeteries and other burial plats while used for that purpose;

(b) Divisions of land into lots or tracts each of which is one hundred twenty-eighth ($1/128^{th}$) of a section of land or larger, or five (5) acres or larger if the land is not capable of description as a fraction of a section of land;

(c) Divisions made by testamentary provisions, or the laws of descent;

(d) Divisions of land into lots or tracts classified for industrial or commercial use when the city council has approved a binding site plan for the use of the land in accordance with Chapter 21.80 of this title;

(e) A division for the purpose of lease when no residential structure other than mobile homes or travel trailers are permitted to be placed upon the land when the city council has approved a binding site plan for the use of the land in accordance with Chapter 21.80 of this title;

(f) A division made for the purpose of alteration by adjusting boundary lines between platted or unplatted lots or both, which does not create any additional lot, tract, parcel, site, or division nor create any lot, tract, parcel, site, or division which contains insufficient area and dimension to meet minimum lot size requirements for width and area as specified in the underlying zoning;

(g) Divisions of land into lots or tracts if:

(i) Such division is the result of subjecting a portion of a parcel or tract of land to either Chapters 64.32 or 64.34 RCW subsequent to the recording of a binding site plan for all such land;

(ii) The improvements constructed or to be constructed thereon are required by the provisions of the binding site plan to be included in one (1) or more condominiums or owned by an association or other

legal entity in which the owners of units therein or their owners' associations have a membership or other legal or beneficial interest;

(iii) The city council has approved the binding site plan for all such land;

(iv) Such approved binding site plan is recorded in Island County;

(h) A division for the purpose of leasing land for facilities providing personal wireless services, as defined in Chapter 58.17.040 RCW, while used for that purpose.

(i) A division of land into lots or tracts of less than three (3) acres that is recorded in accordance with Chapter 58.09 RCW and is used or to be used for the purpose of establishing a site for construction and operation of consumer-owned or investor-owned electric utility facilities as defined in Chapter 58.17 RCW. This subsection does not exempt a division of land from the zoning and permitting laws and regulations of the Oak Harbor Municipal Code. Furthermore, this subsection only applies to electric utility facilities that will be placed into service to meet the electrical needs of a utility's existing and new customers.

(5) Land which the city council may find to be unsuitable or inappropriate for subdivision due to flooding, inadequate drainage, excessive slope, rock formations, high ground water, or other features likely to be harmful to the safety and general health and welfare of the future residents shall not be subdivided unless adequate corrective methods are provided and approved by city council.

21.10.030 Administration.

The director of development services, referred to in this title as "director" is delegated and assigned the administrative and coordinating responsibilities contained in this title pursuant to Chapter 58.17 RCW. All applications for land division approval under this title shall be submitted to the development services department. In cases where an environmental impact statement is required under the provisions of the State Environmental Policy Act (SEPA – Chapter 43.21C RCW), the department shall not be considered to be in receipt of an application, for the purpose of complying with time limitations established by this title, until the date of issuance of a final environmental impact statement.

21.10.040 City standards.

In addition to compliance with this title, all subdivisions shall adhere to all applicable adopted City standards and regulations including, but not limited to, the Comprehensive Plan, the Sewer Comprehensive Plan, the Water System Plan, and the Comprehensive Stormwater Drainage Plan, and the street and utility standards of the city which are on file with the city clerk.

21.10.050 Consent to access.

Persons applying for land division or lot line adjustment approval under this title shall permit free access to the land subject to the application to all agencies considering the

proposal for the period of time extending from the time of application to the time of final action.

21.10.060 Monuments.

~~Concrete~~ Brass monuments in cases shall be set at controlling corners of the subdivision, at all points where the street lines intersect the exterior boundaries of the subdivision, at controlling corners and points of curvature in each street, and at all street intersections. All surveys shall be of third order accuracy. The use of state plane coordinates is required.

All other lot corners shall be marked with a permanent suitable metal marker not less than three-eighths inch (3/8th) in diameter and eighteen inches (18") long and driven flush with the finished grade.

21.10.070 Definitions.

Words used in the present tense shall include the future tense; the future tense shall include the present tense. The singular shall include the plural; the plural shall include the singular. The words "may" and "should" are permissive; "shall" is mandatory.

(1) "Alley" means a public or private right-of-way, a minimum of twenty (20) feet in width, which affords a secondary access to abutting property.

(2) "Block" means a group of lots, tracts, or parcels surrounded by public rights-of-way or easements for pedestrian/bike travel.

(3) "Block length" means the perimeter distance around a block, divided by two (2).

(4) "Binding site plan" means a drawing to a scale specified by Chapter 21.80 OHMC which:

- (a) Identifies and shows the areas and locations of all streets, roads, improvements, utilities, open spaces, and any other matters specified by local regulations;
- (b) Contains inscriptions or attachments setting forth such appropriate limitations and conditions for the use of the land as are established by the city; and
- (c) Contains provisions requiring development to be in conformity with the site plan.

(5) "Building" means any structure used or intended for supporting or sheltering a continuous use.

(6) "Building setback line" means a line parallel to the front property line in front of which no structure shall be erected. The location of such line shall be determined from the regulations of the zoning ordinance of the city.

(7) "City" means the city of Oak Harbor.

(8) "City engineer" means the duly appointed engineer for the city.

(9) "City finance director" means the duly appointed treasurer and finance director for the city.

(10) "Comprehensive plan" means the coordinated land use policy statement of the City adopted pursuant to 36.70A.030(4) RCW.

(11) "Controlling corner" means all angle points of the perimeter of a subdivision or separate divisions of a subdivision.

(12) "Council" means the city council of the city.

(13) "County assessor" means the duly elected county assessor for the county.
(14) "County auditor" means the duly elected county auditor for the county.
(15) "County engineer" means the duly appointed county engineer for the county.
(16) "County treasurer" means the duly elected county treasurer for the county.
(17) "Dedication" means the deliberate appropriation of land by an owner for any general and public use, reserving to him/her no other rights than such as are compatible with the full exercise and enjoyment of the public uses to which the property has been devoted. The intention to dedicate shall be evidenced by the owner by the presentment for filing of a final or short plat showing the dedication thereon and the acceptance by the public shall be evidenced by the approval of such plat for filing by the City.
(18) "Director" means the duly appointed director of development services for the city.
(19) "Engineer" means a registered professional engineer licensed to practice engineering in the State of Washington.
(20) "Grid street pattern" means a street layout characterized by rectangular blocks and four-way intersections with streets meeting at right angles. This street pattern is also characterized by no or very few dead-ends.
(21) "Modified grid street pattern" means a street layout characterized by rectangular blocks. This street pattern is distinguished from a grid street pattern by a mix of three-way and four-way intersections with streets meeting at right angles.
(22) "Health department" means the county department of health.
(23) "Low impact development" or "LID" means a stormwater management strategy that emphasizes conservation and use of existing natural site features integrated with distributed, small-scale stormwater controls to more closely mimic natural hydrologic patterns in residential, commercial, and industrial settings.
(24) "Lot" means a fractional part of subdivided land having fixed boundaries being of sufficient area and dimension to meet minimum zoning requirements for width and area. The term shall include "plots" and "parcels."
  (a) "Corner lot" means a lot which abuts on two (2) or more intersecting streets;
  (b) "Interior lot" means a lot which has frontage on one (1) street only;
  (c) "Through lot" means a lot other than a corner lot abutting more than one (1) street.
(25) "Metes and bounds" means a description of real property which starts at a known point of beginning and describes the bearings and distances of the lines forming the boundaries of the property, and is completed when the description returns to the point of beginning.
(26) "Mid-block connection" is a thoroughfare connecting two (2) sides of a residential block, usually located near the middle of said block and intended for pedestrian and bicycle use.
(27) "Monument" means an object used to permanently mark a surveyed location. The size, shape and design of the monument is to be in accordance with standards specified by the city engineer.
(28) "Open space" means a portion of land excluding building sites and parking areas which is designated and maintained as an area for leisure, recreation and other activities normally carried on outdoors. Open space may include greenbelt and

recreational areas.

(29) "Pavement width" means the actual paved surface measured from edge to edge of streets or alley road surface.

(30) "Pipe stem lots," also called a "panhandle" lot, is defined as a parcel of land which resembles a rectangle with a lot taken out of a corner or corners leaving the remainder with considerably less width on the front lot line than the width at the rear of the parcel.

(31) "Planning commission," also referred to as "the commission," means the appointed planning commission of the city.

(32) "Plat" means a map or representation of a subdivision, showing thereon the division of a tract or parcel of land into lots, blocks, streets and alleys or other divisions and dedications.

(a) "Preliminary plat" means a neat and accurately scaled drawing of a proposed subdivision showing the general layout of streets and alleys, lots, blocks, and other elements , which shall furnish a basis for the approval or disapproval of the subdivision.

(b) "Final plat" means the final drawing of the subdivision and dedication prepared for recording with the county auditor and containing all elements and requirements in Chapter 58.17 RCW and the Oak Harbor Municipal Code.

(c) "Redivision" means a map or representation of a subdivision showing thereon the division of a tract or parcel of platted land into two (2) or more lots, blocks, streets, and alleys or other divisions and dedications.

(d) "Short plat" means the map or representation of a short subdivision.

(33) "Plat certificate" means a title report by a title insurance company certifying the ownership, deed restrictions, covenants, etc., of the land being subdivided.

(34) "Right-of-way" or "R/W" means a strip of land deeded or dedicated to the city for street, utility and/or drainage purposes.

(35) "Short Subdivision" means the division or redivision of land into nine (9) or less lots, tracts, parcels, or divisions for the purpose of sale or lease.

(36) "Street" means a dedicated and accepted public right-of-way for vehicular traffic. The word "street" includes the words "road, drive, boulevard or way."

(a) "Arterial street" means an existing or proposed roadway designated as a "Principal" or "Minor" arterial within the Transportation Element of the Comprehensive Plan.

(b) "Collector street" means an existing or proposed roadway designated as a "Collector" or "Collector, Industrial" in the Transportation Element of the Comprehensive Plan.

(c) "Cul-de-sac" means a turnaround at the termination of a dead-end street designed in such a manner as to provide for the safe and convenient reversal of traffic movement.

(d) "Dead-end street" means a local street whose continuation is not required by the city for access to adjoining properties. For the purposes of this title, "eyebrow" or "crescent" turn-arounds are not considered to be dead-ends.

(e) "Local or minor access street" means a street providing vehicular access to abutting properties.

(f) "Private street" means a privately owned right-of-way which provides access for up to nine (9) residential units and meets the requirements of this title.

(g) "Shared drive" means a privately owned right-of-way for vehicular access for a maximum of four (4) residential units and meets the requirements of this title.

(37) "Street and utility standards of the city" shall consist of the requirements contained in the standard drawings and documents as specified by the city engineer which are on file with the city clerk.

(38) "Subdivider" means any person, firm or corporation who subdivides or develops any land deemed to be a subdivision.

(39) "Subdivision" means the division or redivision of land into ten (10) or more lots, tracts, parcels, sites or divisions for the purpose of sale or lease and includes all resubdivision of land.

(40) "Surveyor" means a registered professional land surveyor licensed to practice surveying in the State of Washington.

(41) "Tract" is a non-buildable unit of land created by a subdivision, short subdivision, deed, or other instrument recorded with the appropriate county recorder. Tracts are usually held in common by the owners of an organization, such as a home owner's association, for common benefit and are not required to meet minimum lot size and dimensional requirements of the applicable zone.

Section Two. Chapter 21.20 of the Oak Harbor Municipal Code, last amended by Ordinance 1568, section four in 2010, is hereby amended to read as follows:

Chapter 21.20
PRELIMINARY PLATS

Sections:

21.20.010 Purpose and Applicability.
21.20.020 Process for preliminary plat.
21.20.030 Application and submission requirements.
21.20.040 Prints, application and fee submittal.
21.20.050 Review procedures.
21.20.060 Dedications.
21.20.070 Planning commission public hearing.
21.20.080 City council decision.
21.20.090 Effect of approval.

21.20.010 Purpose and Applicability.

The purposes of a preliminary plat (preliminary subdivision) application is to:

(1) Accept public comment on the proposed plat application in accordance with the public participation goals and policies of the comprehensive plan and;

(2) Review the proposed division of land for conformance with the comprehensive plan, zoning standards contained in Title 19 OHMC and design standards of this title including, but not limited to, lot size, setbacks and density prior to submittal of detailed construction plans and drawings under the provisions of Chapter 21.30

ATTACHMENT 6

OHMC.

A preliminary plat shall be required when division of land into ten (10) or more lots, tracts, or parcels is proposed for which a binding site plan process is not being followed.

21.20.020 Application and submission requirements.

(1) The preliminary plat shall be prepared, stamped and signed by a licensed land surveyor.

(2) The preparer shall, by placing his or her signature and seal upon the face of the plat, certify that all information is portrayed accurately and that the proposed subdivision complies with the standards and requirements of this title, the Oak Harbor zoning ordinance, and any other applicable land use and development controls.

(3) The preliminary plat must be prepared in accordance with the following minimum requirements:
   (a) The preliminary plat shall be reproducible;
   (b) All geographic information portrayed by the preliminary plat shall be accurate, legible, and drawn to an engineering (decimal) scale;
   (c) The horizontal scale of a preliminary plat shall be one hundred (100) feet or fewer to the inch, except that the vicinity sketch and typical street cross sections may be drawn to any other appropriate scale; and
   (d) A preliminary plat shall be twenty-four (24) inches by thirty-six (36) inches in size, and if more than one (1) sheet is needed, each sheet shall be numbered consecutively and an index sheet showing the entire property and orienting the other sheets, at any appropriate scale, shall be provided.

(4) The preliminary plat must include the following information:
   (a) Name of proposed plat;
   (b) Name, address and phone number of the subdivider (owner) and the name, address and phone number and seal of the surveyor preparing the plat;
   (c) An accurate and complete legal description of the area being platted;
   (d) All parcels of land intended to be dedicated or temporarily reserved for public use and the conditions attached thereto shall be accurately indicated;
   (e) The lines and names of all streets and other public ways, pedestrian/bike connections, parks, playgrounds and easements intended to be dedicated for public use and/or common areas granted for use of inhabitants of the subdivision;
   (f) There shall be a vicinity sketch at a scale of not more than eight hundred (800) feet to the inch showing the proposed plat in relation to surrounding land. All platted or public rights-of-way for a distance of at least a quarter mile shall be shown, and additional area shall be illustrated, if necessary, to show connecting streets or arterials;
   (g) Monuments found and established during the preliminary survey;
   (h) Names and addresses of all land owners contiguous to the proposed plat;
   (i) Present zoning classification on and adjacent to the proposed plat;
   (j) Date, scale, north arrow and lot lines; and
   (k) All mapped information shall be prepared in a neat and legible manner.

(5) On a separate sheet of paper from the preliminary plat map, a site plan showing the following:
  (a) Name of plat;
  (b) Topography of the area with a maximum five-foot (5') contour intervals;
  (c) City datum shall be used;
  (d) Location of all utilities and sizing of existing and proposed public utilities, including but not limited to fire hydrants, water, sewer, storm drains, electricity, gas, telephone and cablevision lines, mail boxes; and
  (e) Existing structures and natural features and all proposed and existing improvements within and adjoining the proposed subdivision as required by the design standards contained in Chapters 21.50 and 21.60 OHMC.

(6) A landscape plan showing all of the following:
  (a) All buffers, screening, native vegetation and/or tree retention areas, fences and hedges required by Chapter 19.46 OHMC[easl];
  (b) Landscaping around stormwater ponds as required by this title;
  (c) Any landscaping required in the public right-of-way or pedestrian/bicycle connections, including location, type and spacing of street trees; and
  (d) Locations of light fixtures in pedestrian/bike connections and along all streets;

(7) An environmental checklist and review fee shall be required in accordance with city ordinance upon the submittal of a preliminary plat;

(8) A copy of any deed restrictions or protective covenants existing or proposed; and

(9) Any additional materials, supporting documentation, and fees necessary to fulfill the requirements of other applicable municipal standards defined in the Oak Harbor Municipal Code.

21.20.030 Prints, application and fee submittal.

The preliminary plat application number of prints and applicable fees shall be as set forth on forms provided by the development services department.

21.20.040 Review procedures.

(1) Preliminary subdivision approval shall be a Type IV review process as outlined in OHMC Chapter 18.20.

(2) Upon receipt of the proposed preliminary plat application and determination of "fully completed" status, the director shall distribute it to each of the following for their review and comments as applicable:
  (a) City administrator or such other person as designated by the mayor;
  (b) City engineer;
  (c) Fire chief;
  (d) Police chief;
  (e) Public works superintendent;
  (f) City park board;
  (g) Island County planning department;
  (h) Oak Harbor school district;
  (i) Post office;

(j) Public and private utilities (such as power and natural gas), telephone, cable TV, telecommunications providers holding franchises in Oak Harbor; and

(k) Other agencies designated by the mayor.

(3) For purposes of this section, the term "fully completed," as used in RCW 58.17.033, is the same as Technically Complete" as defined and referenced in OHMC 18.20.350.

(4) The director shall prepare and give notice of the time, location and purpose of the hearing to the following agencies, if applicable:

(a) Department of Transportation if the preliminary plat is adjacent to the right-of-way of a state highway or within two (2) miles of the boundary of a state or municipal airport; and

(b) The county if the preliminary plat abuts the city limits.

21.20.050 Dedications.

(1) Dedication of land to any public body, provision of public improvements to serve the subdivision, and/or impact fees imposed in conformity with RCW 82.02.050 through 82.02.090 may be required as a condition of subdivision approval. Dedications shall be clearly shown on the final plat. No dedication, provision of public improvements, or impact fees imposed under RCW 82.02.050 through 82.02.090 shall be allowed that constitutes an unconstitutional taking of private property. The city shall not, as a condition to the approval of any subdivision, require a release from damages to be procured from other property owners.

(2) If the preliminary plat includes a dedication of a public park with an area of less than two (2) acres and the donor has designated that the park be named in honor of a deceased individual of good character, the city shall adopt the designated name.

21.20.060 Planning commission public hearing.

(1) Notice shall be provided of a public hearing before the planning commission.

(a) The director shall set a public hearing before the planning commission on the preliminary plat application.

(b) The director shall publish notice of the hearing not less than fifteen (15) days prior to the hearing date in a newspaper of general circulation in the area where the real property which is proposed to be subdivided is located.

(c) The director shall also give special notice of the hearing to landowners of adjacent real property located within three hundred (300) feet of any portion of the boundary of the proposed subdivision. If the owner of the real property which is proposed to be subdivided owns another parcel or parcels of real property which lie adjacent to the real property proposed to be subdivided, special notice shall also be given to landowners of real property any portion of the boundaries of which are adjacent to real property owned by the owner of the real property proposed to be subdivided.

(d) All hearing notices shall include a description of the location of the proposed subdivision. The description may be in the form of either a

vicinity location sketch or a written description other than a legal description.

(2) The planning commission shall consider the preliminary plat application and make a recommendation to the city council whether to approve or disapprove the proposed subdivision.

(a) The public hearing shall be an open record hearing where testimony and evidence shall be taken subject to the rules of procedure of the planning commission.

(b) The applicant shall be given an opportunity to testify and produce evidence in support of the preliminary plat application.

(c) Members of the public shall also be allowed to testify and to produce evidence.

(d) The planning commission shall review the application to determine whether the proposed subdivision conforms to the city's comprehensive plan, zoning code, and other planning documents adopted by the city council.

(e) The planning commission shall enter written finding of fact and conclusions concerning the proposed subdivision and include them in the recommendations to the city council.

(f) The recommendations of the planning commission shall be transmitted to the city council within fourteen (14) days of action by the planning commission.

21.20.070 City council decision.

(1) The preliminary plat application shall be placed on the agenda for the next regular city council meeting not less than one (1) week after the city council's receipt of the planning commission recommendations.

(2) Consideration of the application by the city council shall be a closed record proceeding. The city council shall make its determination whether to approve or disapprove the application based on the record created before the planning commission and the planning commission's recommendations.

(3) The city council shall inquire into the public use and interest proposed to be served by the establishment of the subdivision and dedication(s). It shall make written findings:

(a) Whether appropriate provisions have been made for, but not limited to, the public health, safety and general welfare, for open spaces, drainage ways, streets or roads, alleys, other public ways, transit stops, potable water supplies, sanitary wastes, parks and recreation, playgrounds, schools and schoolgrounds, and all other relevant facts, including sidewalks and other planning features that assure safe walking conditions for students who walk to and from school.

(b) Whether the public use and interest will be served by the platting of the subdivision and dedication(s).

(c) The city council may approve or disapprove the application by resolution, which shall include the written findings required in paragraph (3) of this section. The city council may condition approval of the preliminary plat

upon actions to meet the requirements of paragraph (3) of this section. The city council may not require a release from damages to be procured from other property owners as a condition of preliminary plat approval.

(d) The city council decision shall be made within ninety (90) days of the date of the director's determination that the application is fully completed, excluding those excepted time periods specified in RCW 58.17.140, unless the applicant consents in writing to an extension of the time period for decision.

21.20.080 Effect of approval.

(1) Approval of the preliminary plat by the city council shall constitute approval for the applicant to develop construction plans and specifications for facilities and improvements, as required, in strict conformance with the approved preliminary plat, street and utility standards adopted by the city, and any special conditions required by the council.

(2) Permission shall not be granted for installation of required improvements until all construction plans and specifications have been approved in writing by the city engineer.

(3) Time for performance. Except as provided for in 21.40.020, construction shall be completed within five (5) years of the date of the city council resolution approving the preliminary plat or the preliminary plat approval shall terminate and all permits and approvals issued pursuant to such authorization shall expire and be null and void. If construction has been commenced but the work has been abandoned for a period of one (1) year or more, and if no extension of time has been granted as provided in 21.40.020 OHMC, the authorization granted for the preliminary plat shall terminate and all permits and approvals issued pursuant to such authorization shall expire and be null and void.

Section Three. Chapter 21.50 of the Oak Harbor Municipal Code last amended by Ordinance 1568, section seven in 2010, is hereby amended to read as follows.

Chapter 21.50
GENERAL DESIGN STANDARDS

Sections:

21.50.010 Purpose.
21.50.020 Applicability.
21.50.030 Relationship to other plans required by this title.
21.50.040 Waiver of requirements – Procedure.
21.50.050 General improvement standards.
21.50.060 Streets – Access requirements.
21.50.070 Streets – Required improvements.
21.50.080 Streets – Relationship to adjoining development.
21.50.090 Alleys.
21.50.100 Lot Dimensions.

21.50.010. Purpose.

The design standards in this chapter implement the goals and policies of the Oak Harbor Comprehensive Plan for the division of land within city boundaries into lots, tracts, and parcels, as well as set requirements for the design and provision of public infrastructure needed to serve land divisions.

21.50.020. Applicability.

The general design standards in this chapter apply to all divisions of land within the City of Oak Harbor, including binding site plans, short subdivisions, and subdivisions.

21.50.030 Relationship to other plans required by this title.

All improvements required by this chapter for land divisions must be shown on the preliminary plat site plan, short subdivision map, or the binding site plan map, as applicable.

21.50.040 Waiver of requirements - Procedure.

(1) Any subdivider can make application for a waiver from one (1) or more of the design standards contained in this chapter provided the request is received concurrently with the proposed subdivision, short subdivision, binding site plan or dedication. In addition, the waiver process described in this section may be used to vary from the residential design standards in Chapter 21.60. A waiver shall be granted only upon a finding that strict compliance with the provisions for subdivision, short subdivision, binding site plan or dedication would cause unusual and unnecessary hardship on the subdivider due to the following:
   (a) Because of the size of the tract to be subdivided; or,
   (b) Its topography; or,
   (c) The condition or nature of adjoining areas; or,
   (d) The existence of unusual physical conditions.

(2) No waiver shall be granted which allows a subdivision, short subdivision or binding site plan, which is not in the public interest as identified in RCW

58.17.010 et seq.

(3) Subdivision waivers are a Type IV review process, as described in Chapter 18.20 of the OHMC and shall accompany and be processed with the preliminary plat, short subdivision, binding site plan or boundary line adjustment application.

(4) Such conditions may be required which may achieve, insofar as practicable, the objectives of the requirements for which a waiver is authorized.

(5) Application for an Adjustment or Waiver from the Local Residential Street designs contained in Table 21.50 -1 shall be processed in accordance with the provisions of section 21.60.070 and 21.60.080 OHMC, not the provisions of this section.

21.50.050 General improvement standards.

The standards of this section shall apply generally throughout the city of Oak Harbor.

(1) A water distribution system, including fire hydrants, shall provide domestic water service and fire protection to each lot. Said system shall conform to the city's comprehensive water plan, established policy and state requirements. Fire hydrant type and location shall be subject to the review and approval of the fire chief or his designee. Water mains and distribution systems shall be installed as shown on construction plans approved by the city engineer pursuant to Chapter 21.30 OHMC

(2) Sewer mains shall be installed as shown on drawings approved by the city engineer and shall conform to the city's comprehensive sewer plan. When required, sewer mains, manholes, lift stations and force mains shall be installed in all subdivisions prior to any water service being connected to any improvements. Service connections shall be provided to each lot.

(3) Drainage:

(a) All drainage in and through the subdivision shall be the responsibility of the subdivider.

(b) The subdivider may divert or enclose the natural drainage in his subdivision after providing a drainage system approved by the city engineer. The subdivider shall bear all costs associated with diverting or enclosing natural drainage and such alterations shall comply with Title 20 OHMC.

(c) All drainage within street rights-of-way must be contained in underground pipes and culverts except where permitted in gutters, or where Low Impact Development ("LID") stormwater management facilities are approved by the city;

(d) Where required, the subdivider shall design and install storm drain detention or infiltration systems.

(e) Alternate drainage structures, facilities and conveyances, such as LID techniques, may be acceptable where soil conditions permit, subject to approval by the city engineer.

(f) For maintenance purposes, all storm water detention or treatment facilities shall be placed in a tract, unless located within a public right-of-way.

(4) Streets:

(a) Paved streets, sidewalks, landscape strips and concrete curbs and gutters shall be required on all dedicated street rights-of-way in all subdivisions, unless an alternative design has been approved in accordance with section 21.60.070 and 21.60.080. LID alternatives such as permeable surfacing and on-site stormwater management facilities are encouraged where site and soil conditions make these feasible alternatives. All improvements shall be constructed in conformance with city street and utility standards and, when applicable, the "LID Technical Manual for Puget Sound" (Puget Sound Action Team, January, 2005 edition).

(b) The improvements shall be made from intersection to intersection, intersection to subdivision boundary, or from subdivision boundary to subdivision boundary.

(c) All streets, roads and alleys shall be graded to their full width so that pavement and sidewalks can be constructed on the same plane. Before grading is started, the entire right-of-way area shall be cleared of all stumps, roots, brush and other objectionable materials, and all trees not intended for preservation.

(d) On streets where a proposed subdivision adjoins an existing subdivision or existing street dedication and the existing subdivision or existing street dedication does not meet city standards, the subdivider shall, as a minimum, be responsible for installing paved streets, sidewalks, curbs, gutters, landscape strips, street trees, monuments, sanitary and storm sewers, street lights, water mains, and street name signs on both sides of all streets within the subdivision and on one (1) side on streets around the perimeter of the proposed subdivision. Any partial street improvements required on the perimeter of a subdivision shall be designed to allow for two-way vehicular traffic where reasonably necessary as a direct result of the creation of the subdivision.

(5) Alleys shall be constructed to the standards indicated in Table 21.50 – 1.

(6) Sidewalks:

(a) Sidewalks shall be installed on both sides of all streets, along dead-end streets and around cul-de-sacs. No physical obstructions such as poles, fire hydrants, utility boxes, utility vaults, or mailboxes shall be constructed in the sidewalk or overhang the sidewalk from zero to eight (8) feet above grade. Sidewalks shall be a minimum of five (5) feet wide and four (4) inches thick. Where rolled curb has been approved by the city engineer, all sidewalks adjacent will be a minimum thickness of six (6) inches.

(b) All sidewalks shall be completed prior to an occupancy permit being granted for any new building.

(7) Other Utilities:

(a) Street light standards and fixtures shall be provided to supply adequate lighting for the safety and convenience of the public.

(b) Franchise utilities shall be installed to provide electricity, natural gas, telephone, television/internet cable, and other services to the platted area. Said utilities shall be restricted to underground installation.

(c) All utilities (water, sewer, and electrical, and if available, gas, TV cable, and internet cable) shall be installed to the property line prior to acceptance of the public improvements.

(8) The subdivider shall install street name signs and traffic control signs and/or improvements and devices other than traffic signals to the satisfaction of the city engineer. The city may install such signs and devices at the expense of the subdivider.

(9) All utilities except water, sewer and storm sewer will be installed behind the sidewalk.

21.50.060 Streets - Access requirements.

(1) Each lot in a subdivision or short subdivision must have access to a public street or road. This requirement does not apply to lots created through a binding site plan. Alternatively, access may be by private access easement within a residential short subdivision in accordance with the requirements of sections 21.60.120 – through 21.60.140 of this title. In the case of lots intended for use by single-family residences, no more than one (1) driveway access is permitted for each lot, except as authorized by the city engineer.

(2) Whenever a proposed lot created through land divisions abuts two (2) or more streets of a different functional classification, access to the lot must be from the street with the lowest functional classification. Provided, that access may be from the street with the highest functional classification if it is determined by the city engineer that access from the street with the lower functional classification is impractical or impossible due to:

(a) Existing site conditions;

(b) Existing structures; and/or

(c) Topography or critical areas constraints of the site.

21.50.070 Streets - Required Improvements.

(1) Table 21.50 – 1 gives the minimum required dimensional standards for each functional street type listed in the Transportation Element of the Oak Harbor Comprehensive Plan. All public rights-of-way proposed within subdivisions, short subdivisions or binding site plans must conform to the requirements in Table 21.50 – 1, unless an alternative Local Residential Street design has been approved in accordance with section 21.60.070 or 21.60.080.

Table 21.50 – 1. Required Street Improvements

Street Type	Right-of-way width *	Face of curb to-face of curb width	Sidewalk width each side	Landscape strip width each side	Bike lane width each side
Principal Arterial, 4-lane	97 - 105 feet	52 feet without bike lanes, 60 feet with bike lanes. Landscaped median is 12	8 feet	12 feet	4 feet.

		feet.			
Minor Arterial, 2-lane	80 feet	47 feet, with 11 foot center turn-lane	5 feet	10.5 feet	5 feet
Minor Arterial, Industrial	60 feet	38 feet	none	6 feet (bioswale)	4 feet
Collector w/ bike lanes	66 feet	48 feet	5 feet	3 feet	5 feet
Collector, Industrial	50 feet	26 feet	none	6 feet (bioswale)	4 feet, one side
Local, Residential - Narrow	50 ft	28 feet with one parking lane. Or 28 feet including two 4-foot bike lanes and no parking	5 feet	5 feet	4 feet, optional
Local Residential, Wide	60 feet	36 feet parking on both sides. Or 36 feet with parking on one side and 4-foot bike lanes on both sides.	5 feet	5 feet	4 feet, optional.
Local LID Street #1	50 feet	20 feet (two 10-foot travel lanes).	5 feet	8-foot planter strip on elevated side. 10-foot utility corridor on basin side. Bioretention outside of right-of-way	none
Local LID Street #2	60 feet	28.5 feet, with one, 8.5-foot parking parking lane on basin side of street.	5 feet	9.5 foot planter strip on elevated side. 10-foot utility strip on basin	none

				side.Bioretention outside of right-of-way.	
Alley	20	19 feet.±**	none		none

* All street types include a 6-inch strip at the outside edge of the physical improvements, but within the right-of-way, with the exception of the "Minor Arterial, Industrial" which has a 1-foot strip on the outside edge of right-of-way, ~~and~~ the "Collector, Industrial" which has a 4 foot strip on the outside edge of right-of-way, and the Local LID Street #2 which has a 1-foot strip on the outside edge of right-of-[way[eas2].

~~** All streets include 6-inch curbs not shown in the dimensions above, with the exception of alleys which do not have curbs.~~

±**16-foot width pavement sections may be used as approved on alleys ~~with permission from~~ by the city engineer.

Note: All streets include 6-inch curbs not shown in the dimensions above, with exception of alleys which do not have curbs.

(2) Where landscape strips are required on Local Residential streets within the public right-of-way, they are to be maintained by the property owner whose property is adjacent to the landscape strip. Such landscape strips shall contain one hundred percent (100%) groundcover in the form of drought-tolerant grass or turf.

(3) Intersection spacing of less than one hundred twenty five feet (125') is not allowed.

(4) For land division of commercial or industrial property, dead-end streets may be permitted where the proposed dead-end street will not adversely affect the traffic flow and circulation within the area. Dead-end streets shall terminate in a turnaround approved by the city engineer. The maximum allowable length is for dead-end streets is four hundred feet (400'), measured from the center of intersection to the dead-end terminus. Requirements for dead-end streets in residential subdivisions or short subdivisions are contained in OHMC section 21.60.110.

(5) All public roads shall also meet the requirements Title 11 OHMC.

21.50.080 Streets - Relationship to adjoining development.

The standards in this section address pedestrian, vehicular and bicycle traffic flow on a site as it relates to surrounding sites. These provisions create continuous, multimodal connections across properties and developments of different ownership. In so doing, these standards facilitate the efficient and safe movement of pedestrians, bicycles and vehicles, giving each mode multiple route choices from origins to destinations.

(1) Streets, sidewalks, pedestrian or bike paths, shall be linked within and between neighborhoods to create a continuous and interconnected network of roads and pathways;

(2) Local Streets, Arterials and Collectors shall be extended to the boundary of the development, unless an exceptional circumstance of topography, critical areas or existing development prohibits the extension. Provided, that if an adjacent property has a reasonable likelihood of redeveloping in the future, the director may require a street stub. Streets that end within a subdivision which will be extended in the future must be designed at least 200 feet beyond the limits of the subdivision and shall be shown on the preliminary plat document.

(3) The location of all Principal Arterials, Minor Arterials, and Collectors must conform to the Transportation Element of the Oak Harbor Comprehensive Plan;

(4) All streets dedicated shall be full-width except along the boundary lines of the plat. Half-width streets may be permitted along the boundaries of a development

upon approval of a final plat and in compliance with 21.50.050(4) OHMC where reasonably necessary as a direct result of the creation of the subdivision.

(5) The number of intersecting streets with Principal or Minor arterials shall be held to a minimum.

(6) Increased right-of-way requirements: the city engineer may require that street widths be increased from the minimum width in Table 21.50 - 1 to provide for traffic movement, to reduce or eliminate traffic congestion and for safety reasons.

21.50.090 Alleys.

Alleys provide secondary access to an abutting property. Alleys may be considered as a design solution to provide vehicular or service access to residential, commercial and industrial properties according to the following provisions:

(1) When alleys are proposed, they may be publicly dedicated and maintained or privately owned and maintained. All alleys which are dead-ends and do not provide a through connection to the other side of the block shall be privately owned and maintained.

(2) The dimensions of alleys must conform to Table 21.50 – 1.

(3) Alleys may be required by the city engineer as a design solution to serve residential properties which front on Arterials and Collectors and to minimize the number of driveway accesses on these streets. Alleys may also be required by the city engineer in commercial and industrial areas.

(4) Where private alleys are proposed, access and utility easements for residential areas may be permitted in lieu of public dedication. All utility easements shall contain access provisions for purpose of public utility maintenance.

21.50.100 Lot Dimensions.

The following requirements address the size and shape of lots created as part of subdivisions or short subdivisions and are intended to create a well-ordered and efficient arrangement of lots.

(1) Every lot shall have a minimum width of sixty feet (60') at the building line. All lots which do not have a width of sixty feet (60') at the setback line as referenced under the applicable zoning ordinance shall indicate on the face of the final plat the location of said building line.

(2) The size, shape, and orientation of lots shall meet the minimum area and width requirements of the applicable zoning classification and shall be appropriate for the type of development and use contemplated.

(4) Generally, the depth of the lot should not be more than three (3) times the width of the lot.

(5) All lots shall have a minimum frontage of thirty feet (30') on a public street unless access from a shared drive or private street has been approved in accordance with the requirements of 21.60.120 through 21.60.140.

(6) Insofar as practical, side lot lines shall be at right angles to street lines or radial to curved street lines, and no more than twenty (20) degrees from perpendicular to the front property line with which it intersects.

(7) Side and rear lot lines shall be straight, or composed of straight line elements.

(8) All lot corners in subdivisions and short subdivisions at intersections of dedicated public rights-of-way shall have a minimum radius of fifteen feet (15').

Section Four. Chapter 21.60 of the Oak Harbor Municipal Code last amended by section eight of Ordinance 1568 is hereby amended to read as follows:

Chapter 21.60
RESIDENTIAL DESIGN STANDARDS

Sections:

21.60.010 Purpose.
21.60.020 Applicability.
21.60.030 Relationship to other plans required by this title.
21.60.040 Blocks – Configuration.
21.60.050 Blocks – Size.
21.60.060 Local residential streets - Alternative designs.
21.60.070 Local residential streets – Adjustment application for alternative designs.
21.60.080 Local residential streets – Waiver application for alternative designs.
21.60.090 Local residential streets - Submittal requirements for alternative street designs.
21.60.100 Local residential streets – Layout.
21.60.110 Local residential streets - Limitations on dead-ends.
21.60.120 Access easements – When allowed.
21.60.130 Access easements – Design.
21.60.140 Access easements - Utility services.
21.60.150 Street trees – Requirement.
21.60.160 Street trees – Species.
21.60.170 Street trees – Maintenance and protection.
21.60.180 Landscape buffer – Requirement.
21.60.190 Landscape buffer – Design.
21.60.200 Landscape buffer – Maintenance and protection.
21.60.210 Pedestrian/bike connections – When required.
21.60.220 Pedestrian/bike connections – Design.
21.60.230 Pedestrian/bike connections – Safety.
21.60.240 Pedestrian/bike connections – Maintenance and Protection.
21.60.250 Stormwater ponds –Location and design.
21.60.260 Stormwater ponds – Required landscaping.

21.60.010 Purpose.

The following design criteria address the street, block and lot layout, landscaping and aesthetic design of residential subdivisions and short subdivisions and are intended to create attractive and safe neighborhoods and networks for pedestrians, bikes and vehicular travel within Oak Harbor. The criteria promote "walkable" neighborhoods which contribute to the efficient and comfortable movement of pedestrians, within Oak Harbor, and a reduction in the growth of vehicle trips, in accordance with the comprehensive plan policies.

21.60.020 Applicability.

The design standards contained in this chapter shall apply to all residential subdivisions or short subdivisions of land within the City of Oak Harbor, unless stated otherwise and are in addition to the general design standards of OHMC Chapter 21.50. These standards

do not apply to the division of land for commercial or industrial use.

21.60.030 Relationship to other plans required by this title.
All improvements required by this chapter for land divisions must be shown on the preliminary plat site plan, or short subdivision map, as applicable.

21.60.040 Blocks – Configuration.
(1) Blocks shall be deep enough to allow two (2) tiers of lots, except where:
  (a) There is an abutting Principal or Minor Arterial defined in the Transportation Element of the Comprehensive Plan;
  (b) The location and extent of environmental constraints prevents a two-tiered lot arrangement;
  (c) Unusual shape or small size of the lot prevents a two-tiered lot arrangement;
  (d) A single-tiered lot arrangement may be permitted on the boundary of a residential subdivision or short subdivision bordering existing non-residential development.
  (e) Prior to approval of a single-tier lot configuration based on exceptions (a), (b) or (c), the proponent has demonstrated to the city that a different layout or provision of an alley system is not feasible.

21.60.050 Blocks – Size.
(1) Blocks shall be a maximum of eight hundred (800) feet in length, as defined in 21.10,
(2) Blocks may be up to a maximum of one thousand feet (1,000') in length provided:
  (a) The applicant has demonstrated, through written materials, drawings, and illustrations, submitted as part of the plat application, that an exceptional circumstance exists. Exceptional circumstances are steep topography (exceeding 10%), a critical area designated in the comprehensive plan or delineated in a critical areas report; and
  (b) An alternative block pattern is proposed which achieves the purpose of this chapter; and,
  (c) A mid-block pedestrian/bike connection conforming to the design standards of this chapter are provided for all blocks over eight hundred feet (800') in length.

21.60.060 Local residential streets - Alternative designs.
(1) The following process for reviewing alternative street designs applies to Local Residential streets only. The City has a two-tiered process for reviewing alternative Local Residential street designs which do not meet the requirements in Table 21.50 - 1:
  (a) In the first tier, applicants for residential subdivisions may request to vary from the standard designs in Table 21.50-1 for Local Residential streets. Such requests must continue to provide all of the essential elements listed in 21.60.070. These types of alterations are reviewed administratively through an "Adjustment" application under a Review Process II.

(b) In the second tier, applicants may propose unique Local Residential street designs which eliminate one (1) or more of the essential elements found in 21.60.070 under a Review Process IV which shall be reviewed by planning commission at the time the preliminary plat is reviewed.

21.60.070 Local residential streets - Adjustment application for alternative designs.

(1) The director may at the request of an applicant, allow adjustments under a Type II Review process to the Local Residential Street sections specified in Table 21.50 - 1 "Required Street Improvement Standards" in residential subdivisions. If an adjustment is requested, it must meet both provisions (a) and (b) below.

(a) All of the "essential elements" continue to be provided in the street design. Essential elements are:

(i) Pedestrian facilities must be provided on both sides of the street. Pedestrian facilities must be a minimum of five (5) feet in width, but need to be either concrete (pervious or impervious) or hard-packed gravel. However, hard-packed gravel surfaces may only be provided adjacent to critical areas, and shall not be provided adjacent to residential lots.

(ii) Adequate public parking is provided. In place of on-street parallel parking lanes, applicants for residential subdivisions may provide public parking in the form of head-in parking, diagonal parking, parking courts, or parking in side alleys. A minimum of one (1) public parking space per two (2) residential units in the subdivision must be provided, whether or not parking is provided in on-street parallel spots, or an alternative design (parking courts, parking alleys, etc.) or a combination. Public parking spaces must meet the parking space size and access requirements specified in 19.44.110 OHMC, with the exception of on-street parallel spaces which shall be eight feet (8') in width by twenty feet (20') in length. The public parking spaces must be interspersed throughout the subdivision or short subdivision and within convenient walking distance to all units.

(iii) A landscaping element which has a total dimension of ten (10) feet in width. The landscape element may be one (1) or more landscape strips located within the street section. No single landscape strip may be less than three (3) feet in width. Low Impact Development (LID) bio-retention and stormwater treatment facilities qualify as landscaping elements as long as they are located within the public right-of-way.

(iv) Two (2), minimum ten (10) foot wide travel lanes.

(b) A narrative is provided which describes how the proposed design will meet all of the following:

(i) How the proposed street section will provide an equal or better street design for vehicles and pedestrians.

(ii) The proposed design will not compromise vehicle or pedestrian safety,

(iii) Public utilities, such as storm, sewer and water can continue to be provided, as necessary to serve the development.

(iv) All comprehensive plan designated vehicular and pedestrian connections will continue to be provided.

21.60.080 Local residential streets – Waiver application for alternative designs.

(1) Applicants for residential subdivisions or short subdivisions may also propose alternative Local Residential Street designs which do not contain all of the essential elements listed in section 21.60.070 above. The waiver will be reviewed by the planning commission under a Type IV review as specified in OHMC 18.20.260 and must be reviewed concurrently with the preliminary plat application.

(2) If an applicant is proposing to eliminate one (1) or more essential elements listed in 21.60.070 through the waiver process, all of the criteria for Adjustment contained 21.60.070(1)(b) must be met. In addition, applicants must meet criteria (a), (b), and (c) below and also meet either criteria (d) or criteria (e).

(a) There are unique site conditions (topography, critical areas or size and / or shape of the site) not common to other residential sites, which necessitate street designs that do not have all of the essential elements listed in 21.60.070(1)(a),

(b) Essential elements which have been eliminated from the street design are unnecessary either from a functional (pedestrian or automobile movement) or safety standpoint,

(c) Essential elements are not being eliminated solely for applicant convenience and,

(d) The applicant proposes to offset the loss of the essential element by replacing it with another element (i.e. bike lanes in place of landscaping) within the street section or

(e) The unique site conditions limit the applicant's ability to provide either the essential elements listed in 21.60.070 OHMC or any replacement elements referenced in (d) above.

21.60.090 Local residential streets – Submittal requirements for alternative street designs.

(1) Requests for alternative Local Residential Street designs, either under the Adjustment or Waiver processes must be received from the applicant at the time of preliminary plat submittal and must contain the following:

(a) Section drawings prepared by an engineer certified in the State of Washington that clearly illustrates the proposed street improvements.

(b) Written rationale for requesting to vary from the Local Residential Street improvements which meets all of the criteria in 21.60.070(1)(b) (if Adjustment or Waiver is pursued) and the criteria in 21.60.080(2) (if Waiver is pursued).

21.60.100 Local residential streets – Layout.

(1) The street pattern utilized for short subdivisions and subdivisions shall be a grid or modified grid, with four or three-way intersections designed at right angles. Blocks shall be rectilinear. The grid or modified grid street pattern may be adjusted to a curvilinear street pattern where the following factors are present on site:

(a) Infeasible due to steep topography (exceeding 10 percent) or presence of critical areas designated in the comprehensive plan; or delineated in a critical areas report in accordance with the requirements of Title 20 OHMC of this code, and/or

(b) Substantial improvements exist on adjacent properties which inhibit a grid or modified grid pattern and/or

(c) In lieu of the requirement for a grid or modified grid street pattern, alley access is an acceptable street pattern, in accordance with the requirements of 21.50.090.

21.60.110 Local residential streets – Limitations on dead-ends.

Dead-end streets may only be permitted in residential subdivisions or short subdivisions by the city engineer where, due to demonstrable physical constraints, no future connection to a larger street pattern is physically possible.

(1) Dead-end streets shall only be allowed where:

(a) There exists an exceptional circumstance of steep topography (exceeding 10 percent), a critical area identified in the Comprehensive Plan or delineated in a critical areas report, or existing development which prohibits a stub street or connection to the adjacent property;

(b) The street length for the dead-end as measured from the intersection to the terminus is no longer than 400 feet;

(c) The design of the dead-end turn-around has been approved by the city engineer and the Fire Department. Oak Harbor encourages alternative dead-end designs which reduce stormwater impacts and use less space. Dead-end designs shall meet minimum turning radius requirements for appropriate design vehicles.

(d) A pedestrian/bike connection has been provided for connectivity or future connectivity at the terminus of the dead-end constructed to the standards in 21.60.210 through 21.60.240; or

(e) A temporary turn-around may be approved when connections to adjacent properties cannot be extended at the time of development, but will be provided in the future and such temporary turn-around is required for emergency vehicles.

21.60.120 Access Easements – When allowed.

(1) The City may, at the request of the applicant and as permitted by the Oak Harbor zoning code, allow access to residential lots created through a short subdivision by alternative means in the form of shared drives and private streets. The purpose of the provisions in sections 21.60.120 through 21.60.140 is to optimize the opportunity for efficient and compatible use of land and infrastructure within city

limits and where full public street improvements are not needed to serve the development. Alternative access may be provided when the applicant demonstrates that all of the following criteria have been met as part of the short subdivision application:

(a) Public utilities can be accommodated in the access easement or other easements on the site;

(b) The access easement will not compromise, pedestrian, bicyclist, or vehicular safety and will provide for efficient traffic movement within the short subdivision and connecting to the surrounding circulation system;

(c) A public street is not necessary to provide access to a future developable area.

(d) A site contains steep topography (exceeding 10 percent) or a critical area(s), and the use of an access easement would reduce impacts to those areas. If a site contains steep topography or critical areas, criteria (a) through (c) must continue to be met; and

(e) The access easement must conform to the requirements of the Transportation Element of the Comprehensive Plan, OHMC section 21.60.130, and all other relevant street and utility standards as adopted by the city which are on file with the city clerk.

21.60.130 Access Easements – Design.

(1) Shared drives and private streets shall, at a minimum, be constructed to the following standards:

Table 21.60 – 1 Access Easement Dimensions

Feature	Shared Drives	Private Streets
Pavement width	Minimum 16 feet for up to 2 units, or 20 feet for 3 or more units.	Minimum 20 feet
Sidewalk	N/A	5 feet, one side only
On- street parking	N/A	Optional. If provided, parallel parking must be 8 feet wide. The public parking requirements from OHMC 21.60.070 must be met.
Maximum length	150 feet	400 feet
Turnaround required?	N/A	Yes, if more than 150 feet in length, or as required by the city engineer.

(2) Shared drives may be created which access a total of four (4) residential units in any combination of single-family detached units and / or duplex units.

(a) Shared drives may be connected to private streets as long as the total number of units served by the private street does not exceed nine (9).

(3) Private streets may be created which access a total of nine (9) residential units in any combination of single-family detached units and / or duplex units.

(a) Where a private street intersects a public street, signage shall be placed at the entrance to the private street indicating that the street is private and is not maintained by the City of Oak Harbor.

(4) All land divisions with more than nine (9) residential units accessing the same street must provide public streets that meet the configurations described in Table 21.50 – 1.

21.60.140 Access Easements – Utility services.

A maximum of two (2) lots can be served by private utility side services within an easement, unless the city engineer determines that a public utility main is necessary for adequate area service. Three (3) or more lots served within an easement will require public utilities.

21.60.150 Street Trees – Requirement.

Street trees shall be required along both sides of Local Residential Streets. The purpose of street trees is to improve the visual quality of streets, improve the pedestrian environment, and provide the environmental benefits of improved air quality, reduced stormwater impacts, and reduced heat-island effects associated with large paved areas.

21.60.160 Street Trees – Species

The following standards shall apply to the installation of street trees on any Local Residential Street containing landscape strips within a subdivision or short subdivision

(1) Street trees of a species specified in 21.60 - 2, shall be planted in the designated landscape strip within the public right-of-way, with a maximum spacing of thirty feet (30') along frontage for all divisions of land and on both sides of any public street. Landscape strip minimum dimensions are contained in Table 21.60 – 2;

(2) At the time of planting, all street trees shall be a species listed in Table 21.60 - 2 "Street Tree Species" or as otherwise approved by the director.

(3) The following table identifies tree species acceptable to the City of Oak Harbor.

Table 21.60 – 2. Street Tree Species

Species	Characteristics
Armstrong Maple	Common deciduous landscape tree. Fast growing, typically 40 feet with brilliant fall color. May be appropriate in a native setting.
Red Sunset Maple	Common deciduous landscape tree. Fast growing, typically to 40 feet with brilliant fall color. May be appropriate in a native setting.
Paper Bark Maple *Acer Griseum*	Small, compact tree appropriate as a street tree.
Japanese Hornbeam *Carpinus Japonica*	Deciduous tree, mid-size, compact tree recommended for street tree use.
Lavelle Hawthorne *Crataegus Lavelle*	Appropriate for street tree use.
Little Leaf Linden *Tilia Cordata*	Small deciduous tree reaching height of 30 feet. Tolerant of urban conditions.
Autumn Brilliance Serviceberry *Amelanchier Arborea*	Slow growing, small compact tree.

21.60.170 Street Trees – Maintenance and protection.

To protect their function, define management responsibilities, and protect the health of the street trees, the following language shall be placed on face of the plat:

> Street trees planted in the designated landscape strip along the frontage of all lots, in accordance with the approved landscape plan associated with the residential plat of _____, shall be maintained by the property owners of lots directly adjacent to the location of the street trees. The replacement of street trees for those that have died is the responsibility of the adjacent property owners. The location and tree species for replacement street trees must be in conformance with the approved landscape plan for the plat or as approved by the director and shall not obstruct the travel lane or parking stalls at full maturity. If property owners do not maintain street trees, the City of Oak Harbor may choose to maintain these trees and invoice the adjacent property owner for the cost of the work.

21.60.180 Landscape buffer – Requirement.

A landscaped buffer shall be required along all Minor Arterial roads for a width of at least twenty-five feet (25') abutting all standard residential subdivisions. The purpose of the landscape buffer is to minimize the impact of the roads on adjacent residential uses, encourage tree preservation and planting, and to create visually attractive corridors along these roadways. The landscape buffer shall be established as a separate tract on the face of the plat. The provisions in this section and 21.60.190 and 21.60.200 OHMC do not apply to short subdivisions.

21.60.190 Landscape buffer - Design.

The landscape buffer may incorporate either natural vegetation, applicant proposed vegetation or a combination of both. The purpose of the following requirements is to provide a "complete" buffer which contains overstory, understory and groundcover vegetation.

(1) The Landscape Buffer shall include the following landscaping:

- (a) Trees planted thirty feet (30') on center along the entire length of the edge closest to the arterial road, and no closer than ten feet (10') from this edge of the buffer to avoid conflicts with the required utility easement.
- (b) Shrubs and bushes to provide ninety percent (90%) cover of the buffer area within two (2) years; drought-tolerant, low-maintenance varieties are required.
- (c) Sufficient shrubs and bushes to provide a continuous four-foot (4') high visual screen of the arterial road from within the land division. The plantings must not restrict site distance at intersections.
- (d) In addition to the street trees identified in (a), throughout the entire buffer area a mix of deciduous and coniferous trees, of a species determined suitable by the City of Oak Harbor, shall be provided at a planting density of at least one (1) tree for every four hundred (400) square feet of the buffer area.
- (e) All required plantings in the buffer shall avoid conflicts with public utilities and the species shall be selected to avoid root damage to sidewalks, streets and curbing.

(f) The dual use of landscaped buffers as LID stormwater management facilities is encouraged, provided that the purpose and character of the landscaping is not compromised[eas3].

(2) Those areas of the landscape buffer where suitable natural vegetation of understory and ground cover and healthy stands of trees not prone to wind throw or blow down after adjacent areas have been cleared, may be retained as substitute for the required landscaping in (1) provided:
- (a) Trees are planted as in accordance with (1)(a);
- (b) Evergreen ground cover is present in accordance with (1)(b);
- (c) Screening is present in accordance with (1)(c); and,
- (d) The minimum number of trees are present in accordance with (1)(d).
- (e) Trees which pose a safety hazard from wind-throw, as determined by an arborist, must be removed.

21.60.200 Landscape buffer – Maintenance and protection.

To protect their function, define management responsibilities, and protect the health of the landscape buffers, the following language shall be placed on face of the plat:

(1) Tract(s) _____, are set aside as landscape buffers. No vehicular access to the adjacent roadway is permitted through the tract(s) to protect vegetation and planting areas for their environmental and aesthetic value to the community; and

(2) Maintenance of Tract(s) _____ shall be the responsibility of the home owners association and not the City of Oak Harbor. If the association disbands, maintenance responsibility for Tract(s) defaults to the individual lot owners within the boundaries of the originally approved residential subdivision. If the landscape buffer is not maintained, the City of Oak Harbor may choose to impose a fee structure or invoice the property owners within the boundaries of the originally approved residential plat to maintain landscape buffers.

(3) All vegetation shall be maintained to preserve the health of the buffer plantings and to maintain the landscaping in a manner that conforms to the original landscape and maintenance plans associated with the residential plat approval, including replacement of dead or diseased plantings.

(4) Trees deemed to be a hazard by a professional arborist certified in the State of Washington may be removed, subject to approval by the City of Oak Harbor. Removed trees must be replaced. The city reserves the right to exempt the requirement for an Arborist's assessment if the tree is obviously a hazard, diseased, or dead.

(5) No dumping of vegetation or debris is allowed in buffer tract(s).

(6) No structures are allowed in buffer tract(s).

21.60.210 Pedestrian/bike connections – When required.

Pedestrian/bike connections shall be integrated into the design of subdivisions to enhance the connectivity throughout the plat. They should generally be placed in locations shown in the Comprehensive Plan. The applicant shall install pedestrian/bike connections in subdivisions and short subdivisions in any of the following circumstances:

(1) Sidewalks shall be provided along both sides of public streets in accordance with Table 21.50 - 1, unless an adjustment or waiver is requested in accordance with

code section 21.60.070 or 21.60.080 OHMC.

(2) If the pedestrian/bike connection is necessary to provide non-circuitous pedestrian and/or bike access to a park, open space, or activity center within or adjacent to the subdivision;

(3) Mid-block pedestrian/bike connections for blocks that are over eight hundred feet (800') long;

(4) Pedestrian/bike connections shall be provided to all adjacent uses at no greater than eight hundred-foot (800') intervals. The location of these connections must be coordinated between property owners. Specific connections to adjacent uses may be waived if:

(a) The applicant has exhibited through written materials, drawings, and illustrations, submitted as part of the plat application, that this is impractical or unsafe due to:

(i) Existence of an exceptional circumstance. Exceptional circumstances are steep topography (exceeding 10 percent), critical areas designated in the comprehensive plan or delineated in a critical areas report or existing development.

(ii) The land use characteristics of the adjacent use or potential use as determined by the Comprehensive Plan Land Use Designation; or

(b) An alternative connection to a bordering street can provide a non-circuitous route to the adjacent use; and

(c) An easement or dedication for future connection is provided to properties which have a reasonable likelihood of redeveloping as determined by the director.

21.60.220 Pedestrian/bike connections – Design.

This section provides the minimum design requirements for pedestrian/bike connections which are required by section 21.60.210. Sidewalks do not need to meet the standards specified in this section. Pedestrian/bike connections which meet the design standards in this section and the safety standards in 21.60.230 may be counted as active open space in planned residential developments.

(1) Pedestrian/bike connections shall be built to the following standards:

(a) Be constructed within an easement twenty feet (20') wide,

(b) The pedestrian/bike connection itself shall be either concrete or asphalt (pervious or impervious) and be a minimum of ten feet (10') wide;

(c) Hard-packed gravel may be used for walkway surface in areas adjacent to critical areas designated in the comprehensive plan or delineated through a critical areas report;

(d) A landscape strip of five (5) feet shall be provided on either side with one hundred percent (100%) ground cover and deciduous trees planted at a maximum thirty-foot (30') interval with no less than two (2) trees on each side of the pedestrian bike connection. Ground cover shall be low-maintenance, drought tolerant varieties. Bark mulch and wood chips are not allowed in landscaped areas adjacent to the pedestrian/bike connection;

(2) Fencing along pedestrian connections shall comply with Chapter 19.46 OHMC

and shall not be constructed of chain link, plastic, or vinyl strips.

(3) Lots should front on the pedestrian/bike connection, where possible, to provide visual access and safety of these facilities. The sides of lots may be located along pedestrian/bike connections, however, this is a less preferable option, since fencing is required to separate the pedestrian/bike connection from areas on private lots such as side and rear yards. If lots front on pedestrian/bike connections, secondary access to these lots may be provided from an alley.

(4) All pedestrian/bike connections required by this code must be publicly accessible either by way of easement or through public dedication:

(a) The city may choose not to accept dedication of pedestrian/bike connections at its discretion; and

(b) All pedestrian/bike connections must be designed to city standards contained in sections 21.60.220 and 21.60.230.

(5) Continuous pedestrian/bike connections shall be provided by aligning with street ends, other pedestrian/bike facilities, and connecting destinations or trails.

(6) All trails proposed as part of subdivisions or short subdivisions shall be designed in accordance with the Parks, Recreation and Open Space Plan.

21.60.230 Pedestrian/bike connections - Safety.

The following safety requirements apply to all pedestrian/bike connections in subdivisions and short subdivisions with the exception of sidewalks:

(1) Visibility.

(a) Users shall have clear vision from one (1) end to of the connection to the other;

(b) Plantings shall provide clear visibility from the ground up to thirty inches (30") above grade;

(c) In natural or critical areas with existing vegetation, sight lines for pedestrian and bike safety may vary if:

(i) The protection required of the critical area by other OHMC or other applicable regulations prohibits the pedestrian/bike connection design from meeting this requirement

(3) The entire length of the pedestrian/bike connection must be well lit. Bollard lighting must be used with number of lights and spacing of light fixtures shown on the preliminary plat landscape plan.

(4) Bollard lighting is required at pedestrian/bike connection entrances;

(5) Signage directing users to the pedestrian/bike connection and appropriate use is required at all entrances;

(6) The intersections of pedestrian/bike connections with arterial streets shall provide a ten foot by ten foot (10' x 10') visibility triangle to promote clear vision into the pedestrian/bike connection.

(7) Mid-block connections which cross more than one (1) residential block and intersect streets, must meet the following safety requirements:

(a) Adequate site distance for vehicles to see pedestrians and bikes and come to a complete stop;

(b) Signage from both directions, warning motorists of the pedestrian/bike crossing;

(c) At a minimum, painted striping must be provided to delineate the crosswalk. Applicants are encouraged to use crossing designs which include different materials, such as pavers or pavement patterns, or rumble strips to warn motorists of the crossing. Raised crosswalks may also be provided.

(d) Staggered bollards at all intersections of mid-block crossings and the public right-of-way must be provided. If safety measures cannot be provided to ensure adequate pedestrian/bike safety, the mid-block crossing may be required at a different location or the city engineer may require additional design features to ensure safety of the facility.

21.60.240 Pedestrian/bike connections – Maintenance and protection.

(1) Pedestrian/bike connections and trails shall be maintained by an association of home owners. If the pedestrian/bike connection is part of the city-wide trail system, the city will maintain the connection.

(2) Language detailing the purpose, maintenance responsibilities of the home owners' association, and design standards for these facilities must be placed on the face of the plat.

(3) If these facilities are not adequately maintained to allow safe pedestrian and bicycle passage and/or landscaping is overgrown or in a state of decline, the City may choose to maintain the facility and bill the homeowner's association for the cost.

21.60.250 Stormwater ponds - Location and design.

Stormwater ponds shall be located and designed with consideration to aesthetics and to incorporate the facility as an amenity to the subdivision or short subdivision with features such as landscaping and natural building materials. The provisions in this section apply to all subdivisions and short subdivisions proposed within Oak Harbor. The following design requirements shall apply to the location and design of stormwater ponds.

(1) To create the visual effect of larger open space areas, stormwater facilities shall be located near open spaces, unless site conditions or topography do not allow.

(2) Structural materials utilized within stormwater pond design must have regard for natural aesthetic principles defined as follows:

(a) All structural elements of ponds shall utilize stone or other natural material that have decorative finishes. Acceptable pond materials are brick, natural stone, gabions and architectural blocks. Concrete is an acceptable material, subject to the standards of (b) below.

(b) Use of concrete in stormwater ponds shall be limited to the following finish types:

(i) Relief or architectural detail
(ii) Fractured finish
(iii) Exposed aggregate
(iv) Cast in patterns or textures

In addition, when concrete is used as a pond material, it shall be screened by planting to reduce the visual impact of these facilities.

(c) The use of Ecology block and synthetic stone veneers in pond construction is prohibited.

(d) All masonry in contact with pond water must be designed to withstand spalling. Pourous pond materials shall be placed above the wet zone.

(3) To limit the need for safety fencing resulting from steep slopes, stormwater facilities shall be designed with shallow internal slopes (recommend 3:1 or flatter), whenever feasible. If safety fencing is required it must:

(a) Be decorative or ornamental in nature. Gray, galvanized, chain-link fencing, chain-link fencing with slats or wood-plank fencing is not permitted. Vinyl clad chain-link fencing of green, brown or black color is acceptable if screened by plantings;

(b) For safety reasons, fencing must not completely limit visibility to the pond; and

(c) Ponds shall be designed such that safety fencing is not required on more than two (2) sides of the pond or fifty percent (50%) of the circumference, whichever is less.

21.60.260 Stormwater pond - Landscaping.

Landscaping shall be required for all stormwater ponds within subdivisions and short plats. The purpose of the landscaping is to improve visual quality. The following standards shall apply to the landscaping for stormwater ponds:

(1) A landscape plan that meets the standards of this section and the DOE (Department of Ecology) Stormwater Manual shall be designed by a Landscape Architect certified in the State of Washington and submitted as part of the preliminary plat or the preliminary application.

(2) A perimeter landscape area, a minimum ten (10) feet wide, is required adjacent to all stormwater ponds and shall be placed in a tract owned and maintained by an association of homeowners. This area shall be delineated on the face of the plat and associated landscape plan. The perimeter landscape area shall include:

(a) Evergreen ground cover, shrubs and bushes, to provide one hundred percent (100%) cover of the perimeter area within two (2) years. Native species and low-maintenance varieties are preferred;

(b) A mix of evergreen and deciduous trees to provide visual interest with a planting density of at least one (1) tree for every two hundred-fifty (250) square feet of landscape perimeter.

(c) Existing vegetation may be used to fulfill the landscaping requirements. However, all trees which pose a safety hazard and are subject to wind-throw must be removed.

(d) Trails or pedestrian paths are allowed near the pond, provided that the side slopes of the pond are 3:1 or flatter or safety fencing is provided around the pond. If a trail or pedestrian path is included around the stormwater facility, the area outside the trail or pedestrian path, but within the 10-foot landscape area must have one hundred percent groundcover within two (2) years.

(3) All landscaping for stormwater ponds shall be placed in a tract and maintained according to industry standards by a homeowner's association. If stormwater ponds are not maintained by the homeowner's association to provide for the necessary minimum treatment/detention functions and the pond tract, including

landscaping, is not being maintained, the City may choose to perform necessary maintenance of the facility and bill the homeowner's association for the cost.

(4) Any landscaping provided shall be above the freeboard water level.

Section Five. Severability and Savings Clause

(1) 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.

(2) Deletion or amendment of provisions from the Oak Harbor Municipal Code shall not terminate any obligation to the City already vested or incurred thereunder.

Section Six. Effective Date. This Ordinance shall be in full force and effect (5) five days after its publication as required by law.

PASSED by the City Council this ___ day of _____ 2011.

CITY OF OAK HARBOR

Approved ( )
Vetoed ( )

_____
Jim Slowik, Mayor

_____
Date

ATTEST:

_____
City Clerk

Approved as to Form:

_____
City Attorney

Published:_____

PRELIMINARY DOCKET FOR THE 2011 COMPREHENSIVE PLAN AMENDMENTS – Public Hearing

Mr. Powers reported the City followed advertising procedures to inform the informing the public of the amendment cycle and called for applications. The City received no request for privately sponsored land use map amendments. Therefore, the docket has two items; the annual Capital Improvements Plan update and staff will continue to work on the UGA capacity analysis. In 2011, City staff will work with the County on furthering the analysis. It is not anticipated that there will be any actual Comprehensive Plan amendments coming out of the continuation of the UGA capacity analysis. Mr. Powers summarized the staff report which details the criteria for considering items for the docket and a draft City Council resolution for the proposed docket. Mr. Powers concluded by recommending that the Planning Commission conduct the public hearing and recommend that the City Council approve the proposed docket for the 2011 Comprehensive Plan amendments.

The public hearing was opened. No comments came forth and the public hearing was closed.

ACTION: MR. OLIVER MOVED, MS. JENSEN SECONDED, MOTION CARRIED TO FORWARD A RECOMMENDATION THAT THE CITY COUNCIL APPROVE THE PROPOSED DOCKET FOR THE 2011 COMPREHENSIVE PLAN AMENDMENTS.

LOW IMPACT DEVELOPMENT (LID) CODE UPDATE PROJECT – No Action Required

Mr. Spoo reviewed the concept of Low Impact Development and the project background. Mr. Spoo explained that LID is stormwater practices which mimic natural hydrologic cycle through the use of rain gardens, pervious pavement, native vegetation (Infiltration). Traditional stormwater management uses ponds and pipes (conveyance).

Mr. Spoo said that the reason for LID is the Puget Sound cleanup efforts by the State. There are also advantages to property owners and the community. By moving away from traditional stormwater practices to LID it reduces the amount of public stormwater infrastructure that the community has to maintain and in certain cases, the use of LID instead of a stormwater pond could open up more of the site to development.

Mr. Spoo summarized the project background as follows:

- Project start – late 2007 with grant award
- 2008 – Consultant drafted code
- 2009 – Staff reviewed code
- Early 2010 – Work with Planning Commission
- Late 2010 – Staff drafts code

Mr. Spoo summarized the proposed code changes as follows:

Title 11 "Streets"

- Changes to match subdivision code
- Provisions for LID in streets, sidewalks, driveways. Two new LID street sections

Title 19 "Zoning"

- Chapter 19.44 "Parking"
  - ✓ Maximum parking standard – 150% minimum
  - ✓ Variance required for more than 150% of minimum
  - ✓ Pervious surface for 125% or more
- Chapter 19.46 "Landscaping and Screening"
  - ✓ Tree retention is rolled into native vegetation areas

- ✓ Advantages over tree retention concept:
  - Cross over with critical areas and landscape areas
  - Focus on area instead of number
- Chapter 19.47 "Clearing and Grading"
  - ✓ Performance standards – the how and when of grading.
    - Phased grading – where possible
    - Dust suppression
    - Preserve duff layer
    - Approval required for wet season grading
- Title 21 – "Subdivisions"
  - ✓ New street sections consistent with Title 11
  - ✓ Corridor buffers as LID facilities

Mr. Spoo reported that future scheduling could be as follows:

- February – Revisions by staff, pending PC comments.
- February – Open public hearing. Possible recommendation to Council?
- March – present to council, Council hearing.
- April – adoption by Council

Commission Discussion
Commissioners asked the following questions:

Why is the entire development cleared when some of the lots are not built on for a long time? Mr. Spoo said that it is cheaper to have the grading equipment on site one time rather than bringing the equipment back. In some cases, developers specify a phasing plan and there may be a few years between phases. In that case, it may be more appropriate to have phased grading.

Does the City offer any incentives to encourage phased grading? Mr. Spoo said that there were none at this point. Mr. Powers said it was an interesting idea that the City could consider. Mr. Powers also explained that the mass grading that occurs relates to the installation of the utilities as well. Depending upon how the subdivision is being served by utilities and where those utility lines may be; there is a need to grade more than what you might see in the first phase of building. But that doesn't mean there can't be some ways that we might see to limit that grading through this kind of ordinance.

Forty years ago developers saved trees and built around the trees. What has changed that makes it necessary to clear the entire site? Mr. Powers said that two things have changed; lot size and home size. Over the years we have seen lot sizes get smaller and home sizes get larger. When there was a smaller home on a larger lot it was possible and made good sense to grade just the area that for the home.

Where does the oil and sludge from the run-off go? Mr. Spoo said that it goes into the rain garden or the bioretention area. The oil settles into the soil and there are microbes that break down the hydrocarbon naturally into something that is not harmful to the environment.

Is this something the County is adopting as well? Mr. Spoo said that the County received the same grant and they are just now starting to look at LID.

BEING NO FURTHER BUSINESS BEFORE THE PLANNING COMMISSION, THE MEETING WAS ADJOURNED AT 9:08 P.M.

the application but that link goes back to how we define alteration. The answer to the question may be to take both of those together and staff will have a clear direction as to what we should be looking at when we determine what the appropriate signatures are.

MOTION: MR. FAKKEMA MOVED, MR. WASINGER SECONDED, A MOTION TO RECOMMEND APPROVAL TO CITY COUNCIL OF THE AMENDMENTS TO CHAPTER 21.80 OHMC ("BINDING SITE PLANS") AS DRAFTED.

Mr. Fakkema asked staff to let the City Council know that the Planning Commission struggled with the amendments. Mr. Powers said the minutes from each of the Planning Commission's meetings on the subject would be provided to the Council.

VOTE: MOTION CARRIED BY A VOTE OF 3 IN FAVOR AND 1 OPPOSED.

Mr. Powers noted that the next steps will be a brief to the Governmental Services Standing Committee. Then the item will be placed on the City Council's pending agenda and scheduled for the City Council's public hearing. Both meetings are opened to the public.

LOW IMPACT DEVELOPMENT (LID) CODE UPDATE PROJECT – Public Hearing
Due to the late hour the Planning Commission opted to hear the staff presentation at the March 22, 2011 Planning Commission meeting and to open the public hearing at this time.

Mr. Neil opened the public hearing.

Bill Massey (41 NE Midway Blvd.) said that he was generally in support of the proposed changes. He asked staff to take a closer look at 19.44.105 (2) (a). Mr. Massey shared his company's experience with parking areas using pervious pavement. He found that over a period of time the pavers didn't work because of the combination of oil and siltation. Mr. Massey said that if the surfaces were not maintained absolutely perfectly they plugged up and there was standing water. Mr. Massey recommended that staff look at other options rather than requiring one approach. He suggested allowing landscape areas, where soil conditions make infiltration feasible, to substitute for 20% landscaping requirement. Mr. Massey noted that there was a proliferation of stormwater retention ponds that are not always maintained and working. He said that the City can't police them as well as they should and it takes a lot of money to police them. In that case he recommended a regional approach to stormwater retention and collection. He thought that the pervious surface he described earlier would add to the problem.

ACTION: MR. WALLIN MOVED, MR. OLIVER SECONDED, MOTION CARRIED TO CONTINUE THE LOW IMPACT DEVELOPMENT (LID) CODE UPDATE PUBLIC HEARING TO MARCH 22, 2011.

ADJOURN: 8:55 p.m.

PLANNING COMMISSION
REGULAR MEETING
CITY HALL – COUNCIL CHAMBERS
March 29, 2011

ROLL CALL: **Present:** Bruce Neil, Keith Fakkema, Jeff Wallin and Jill Johnson. **Absent:** Kristi Jensen, Gerry Oliver and Greg Wasinger. **Staff Present:** Development Services Director, Steve Powers; Senior Planner Ethan Spoo; and Associate Planner Melissa Sartorius

Chairman Neil called the meeting to order at 7:30 p.m.

MINUTES: **MR. FAKKEMA MOVED, MR. WALLIN SECONDED, MOTION CARRIED TO APPROVE THE FEBRUARY 22, 2011 MINUTES AS PRESENTED.**

PUBLIC COMMENT: No comments.

LOW IMPACT DEVELOPMENT (LID) CODE UPDATE PROJECT - Public Hearing (continued)

Mr. Spoo reported that the public hearing was opened in March and the last staff presentation on LID was in January. Mr. Spoo reviewed what was covered in January and presented the changes to the code that were proposed following the January presentation and the February public hearing.

Mr. Spoo noted that the changes to the code affect three different titles: Titles 11, 19, and 21. There are many proposed changes to Title 11 which is the City's street code so that Title 11 is consistent with Title 21. Title 21 is the City's subdivision code and changes to the title were approved last year.

Changes to Title 19 affect three different chapters. Chapter 19.44, 19.46, and 19.47. Chapter 19.44 "Parking" will apply a parking maximum to all parking areas with 50 or more spaces. Chapter 19.46 "Landscaping" will require native vegetation areas with new development. Native vegetation area is an undisturbed native vegetation area which helps filter stormwater. Chapter 19.47 "Clearing and Grading" proposes a variety of clearing and grading best practices to help limit erosion and siltation of surface water bodies. There's two substantive changes to Title 21 relate directly to LID is the creation of two new local residential street sections from which applicants for subdivision can choose. The second is language which allows LID facilities to be placed in streets, driveways, parking areas, and patios.

Mr. Spoo reported that in January, staff has worked with the Engineering department modify the street sections. There are still two LID street sections which applicants can choose from and both of them have a bio-retention area outside of right-of-way. Previously one of the street sections had pervious pavement in right-of-way and the other had a bioretention area in the right-of-way. Now, neither of them use pervious pavement and both of them move the bioretention area outside of right-of-way. Mr. Spoo displayed the two street sections and explained that the 50-foot section has two 10-foot travel lanes, a 10-foot utility corridor, which could be planted. It also has 5-foot sidewalks and an 8-foot planter. Outside of right-of-way, behind the sidewalk, is the bioretention area which individual property owners are more likely to maintain.

The 60-foot section is very similar, but this section adds an 8.5-foot parking lane. Everything else is essentially the same. There are 10-foot travel lanes, planter strip, sidewalks, and utility corridor.

Mr. Spoo discussed Title 19.44 "Parking" in more detail. The proposed language puts in place a maximum number of parking spaces which is 150% of the minimum number. But, instead of applying this to every use, this only applies to uses which have 50 or more parking spaces. The variance process would apply if the applicant wants to go above 150% of the minimum number of parking spaces. The variance process allows an applicant to go up to 200%. The second change to the parking chapter is in the use of pervious surfaces. In January the proposed code required that all spaces over 125% of the minimum number of spaces were required to be pervious surface. Staff received a citizen comment from a construction contractor which requested that we allow other LID techniques to be used in place of the pervious surface. So, instead of using pervious surfaces, in a parking lot with more than 125% of the minimum number of spaces, an applicant might be able to propose raingardens to treat that additional area.

Mr. Spoo reminded the Commission that a native vegetation area is a portion of the site which is preserved as native vegetation for the purposes of limiting stormwater runoff. The changes that have happened to Chapter 19.46 "Landscaping" since January, is that if no suitable vegetation exists, the applicants are allowed to clear and replant.

Mr. Spoo concluded his presentation by recommending that the Planning Commission accept public comments, close the hearing which was opened in February and recommend approval of the proposed amendments to Titles 11, 19, and 21 as drafted.

Discussion
Commissioners asked the following questions.

How would the new LID parking options have affected the Wal-Mart type parking areas? Mr. Spoo said that under the new code sites like the Home Depot parking lot would have been subject to a maximum. Home Depot has 200% of the code required minimum and the new code would scale that back. Mr. Powers added that K-Mart/Saar's parking would have seen a reduction of the total number of spaces at that facility and noted that the spaces which are on the back side of the K-Mart/Saar's building along Oak Harbor Road are hardly ever utilized.

Do the maximum parking spaces in the new code conflict with the box-store's maximum requirement? Mr. Powers said that was true and what we see is that our current code has a minimum standard and often businesses wish to provide more than the minimum requirement and that is not inherently wrong or bad, if, however the one of the overall community goals is to reduce the amount of stormwater that we have to deal with, providing the large areas of paved parking perhaps for only a certain number of days a year may not be the best idea in terms of meeting that community goal. The 200% was seen in other codes during staff's research but there is not necessarily any magic in that number either. Mr. Spoo explained that parking maximums are relatively new in the planning world. Over the last decade jurisdictions are starting to adopt maximums.

Do parking maximums apply to parking garages? Mr. Spoo said that structured parking is not addressed because it isn't commonly seen in Oak Harbor. So it only applies to surface parking lots that have a minimum of 50 spaces. Mr. Powers added that staff would look at the parking

as to whether it is a stormwater generating surface. A parking garage under a building would not create any additional stormwater.

Chapter 11.17 eliminated 11.17.090 variance language, is that because it was moved to another chapter? Mr. Spoo said that the variance section was deleted from that location and moved to the end of Chapter 11.17.120.

In Chapter 11.17 responsibility for the public right-of-way is moved from the public to the homeowners, what happens if a developer goes bankrupt and the property goes back to the bank, who is going to maintain the public section? Mr. Spoo said that when a final plat is created a homeowners association (HOA) is also created; so as the lots sell off some combination of the developer and the property owners that are there are responsible for the maintenance. As the developer sells lots then his share of the homeowners association decreases. Mr. Powers added that at some point the responsibility switches from the developer to the HOA. The present language on the face of the final plat assigns the maintenance responsibility to the HOA and the language goes on to say that if the HOA disbands for some reason then the individual property owners become responsible for that maintenance. If the bank becomes responsible the bank is responsible for the maintenance.

Mr. Powers added that not all neighborhoods would have LID techniques and that this is a voluntary street section and there is somewhat of an equity issue to say that all of the stormdrain rate payers should fund that maintenance of those few subdivisions that might choose to utilizes the LID techniques so we were a little worried about that and what the actual rate issue would be. The flip side is the challenges of having the maintenance responsibility fall to a private entity or onto the individual lot owner. Staff has concluded that this is an option that the developer can choose; it is not something that the staff is proposing to be city-wide as the mandatory section, so much like a PRD that has its own private parks or private open space there is a certain level of expectation that comes with buying into that piece of property.

Does the code apply to all new construction or can existing properties that wish to remodel use this code. Mr. Spoo said that the answer lies earlier in the parking code where it talks about when parking standards are applied generally. Section 19.44.050 talks about when the parking code is applied. It says, "All new or substantially altered uses or structures shall be provided with special purpose parking facilities as required by this chapter". This is where the parking maximum requirements are applied. Mr. Powers added that it could be argued that that standard should be applied going forward and that retrofitting of existing parking lots to meet that standard would be more challenging than starting from scratch. If the Planning Commission wishes to explore that, staff can do that.

There was discussion about whether the maximum parking standard should apply to only new construction or whether to define what "substantially altered uses or structures" are. Mr. Powers noted that the Design Guidelines use 60% threshold which might be the appropriate threshold to make clear how staff will handle existing properties. That would also screen out those that are just trying to make use of an existing building.

There was some confusion as to whether LID was voluntary. Mr. Spoo clarified that LID is voluntary but that the parking maximum is mandatory for all parking lots with 50 spaces or more.

Mr. Spoo said that staff can draft language that says the parking maximums only applies to new development or sets a threshold as to when the parking maximums kick in.

Mr. Neil opened the public hearing for additional public comment. Hearing none, Mr. Neil closed the public hearing.

ACTION: **MR. FAKKEMA MOVED, MR. WALLIN SECONDED, MOTION CARRIED TO RECOMMEND THAT THE CITY COUNCIL APPROVE AMENDMENTS TO TITLE 11 "STREETS" AS DRAFTED.**

ACTION: **MR. WALLIN MOVED, MR. FAKKEMA SECONDED, MOTION CARRIED TO RECOMMEND THAT THE CITY COUNCIL APPROVE AMENDMENTS TO TITLE 19 "ZONING" AS DRAFTED SUBJECT TO INCORPORATION OF A 60% THRESHOLD TO APPLY TO PARKING.**

ACTION: **MR. FAKKEMA MOVED, MR. WALLIN SECONDED, MOTION CARRIED TO RECOMMEND THAT THE CITY COUNCIL APPROVE AMENDMENTS TO TITLE 21 "SUBDIVISIONS" AS DRAFTED.**

ADJOURN: 8:17p.m.

City of Oak Harbor
City Council Agenda Bill

Bill No. 8
Date: July 12, 2011
Subject: Multimodal Facility Project – Shoreline Substantial Development Permit

FROM: Steve Powers RSP
Development Services Director

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 the application for a Shoreline Substantial Development Permit (SSDP) by the City of Oak Harbor to construct uplands improvements associated with the Multimodal Facility Project in Flintstone Park. This is a quasi-judicial matter.

AUTHORITY

RCW Chapter 90.58 provides the authority to local governments for the planning and administration of a shoreline regulatory program consistent with the Shoreline Management Act. The City's adopted Shoreline Master Program (SMP) requires that the Planning Commission conduct a public hearing and forward a recommendation to the City Council who shall conduct their own hearing before making a decision.

BACKGROUND

Proposed project

The City of Oak Harbor proposes to construct a new 2,325 square foot multipurpose building with meeting room and restroom facilities. An additional 525 square foot picnic shelter, plaza, trail improvements, paved parking and circular drive are also planned. The existing picnic shelter and restrooms will be demolished. The project is Phase 1 of the overall Multimodal Facility Project. Phase 1 consists of the uplands improvements to Flintstone Park. The City of Oak Harbor has applied for a SSDP to construct the aforementioned improvements.

The proposed project is located across the street from the Island Transit station, and adjacent to condominiums to the west of the site. The main access to the site is from east or west on SE Bayshore Drive. There is also a connecting street, SE Dock Street, from Pioneer Way. Pioneer Way connects to State Route 20 about one half mile to the west. Users are able to access Flintstone Park from numerous public access points, reducing the

demand on any one site to provide large amounts of parking. There are parking spaces along Bayshore Drive and in the Central Business District (CBD) within a short walking distance of the proposed site. Twelve parking spaces are proposed on site, one of which is ADA compliant. More than half of the parking spaces are parallel to the circular drive to allow for efficient drop off and pickup.

Approximately 11,300 square feet of additional impervious cover is proposed in the upland part of the project, primarily in a new paved path, the multipurpose building, and the adjacent plaza. The building provides approximately 1,500 square feet of gathering or meeting space. From a building code perspective, the room capacity is approximately 92 people. It is anticipated that the space will be used in a manner consistent with other gathering places in City parks.

The site plan for the project was recently revised from that included in the Staff Report to Planning Commission (Attachment A) and has been attached for your reference as Attachment E. Changes to the site plan are minor but include adding a parking space bringing the total number of parking spaces from 11 to 12, reducing the number of ADA parking spaces to one as is required by code, and removal of a driveway ramp from the Waterfront Trail to Bayshore Drive.

The proposed location is within the shoreline environment of Oak Harbor and approval of this project is therefore subject to review under the provisions of the City of Oak Harbor SMP. Specifically, the proposal as designed must meet the requirements for issuance of shoreline substantial development permit (for all activity related to the proposal).

Project Summary

Project Name:	Multimodal Facility Project
Applicant:	City of Oak Harbor Joe Stowell, Project Engineer
Location:	1370 SE Dock Street
Property Owner:	City of Oak Harbor
Zoning:	PF - Public Facilities
Land Use Designation:	Public Facilities
Shoreline Environment:	Urban
Acreage:	Uplands – 1.51 acres

Public Notice
A Notice of Application (NOA) for the proposed project was posted on the property and published in the newspaper, as per the requirement of the SMP for two consecutive weeks, on May 14, 2011 and May 21, 2011. The notice provided a comment period of 30 days with a deadline of June 20, 2011. Property owners within 300 feet of the project were also notified my mail. One public comment in the form of an email with an attachment was received by Mr. Gray Giordan during the comment period (see Attachment B)

The Public Hearing for the Planning Commission was advertised in the newspaper on June 4, 2011. The hearing notice was also posted on the property and mailed to property owners within 300 feet. A notice for the City Council public hearing on this agenda item was published in the Whidbey News Times on June 25, 2011. Property owners within 300-feet were noticed by mail. Signage was posted on the site in two locations indicating the time, place, and subject of the public hearing.

SEPA
The original environmental assessment and determination made in 2003 still applies to this project in accordance with the checklist requirements of the State Environmental Policy Act of 1971; no adoption or changes are needed per WAC 197-11-600(4)(a). This proposal has been determined to not have a significant impact upon the environment. An Environmental Impact Statement is not required under RCW 43.21C.031. A Mitigated Determination of Non Significance was issued for the project on October 13, 2003. A copy of the Determination is been included in the staff report to Planning Commission (Attachment A).

The mitigation measures included in the determination and checklist that address the uplands improvements to the site include erosion control, minimizing light and glare impacts by using downward directing lighting fixtures, temporary silt fences, transportation concurrency and archaeological response.

Cultural Resources Review
In light of the discovery of Native American remains within the boundaries of the Pioneer Way project, a summary of the cultural resources review this project has undergone is appropriate.

Federal funding has been, or will be, used for design, permitting and construction activities associated with the Multimodal Facility Project. The use of Federal funding requires the City to undergo a Section 106 (cultural resources and historic properties) review. The City commissioned an archaeological assessment in February 2007 intended to meet the permit requirements. The conclusion of that study stated:

> "Archaeological survey and examinations of subsurface sediments in the project area did not result in the identification of archaeological resources.

> Archaeological survey and testing was conducted throughout locations of proposed ground disturbance. At present there are no indications of archaeological resources within the specified project boundary…Additional archaeological evaluations of the project area does not appear to be necessary prior to construction."

In issuing its permit for the project on June 27, 2005, the US Army Corps of Engineers noted that historic properties occur in the vicinity of the proposed project; however, they do not occur in the permit area. They also noted that "little likelihood exists for the proposed project to impinge upon an undisturbed historic property." The Corps determined that the proposed project is in compliance with Section 106 of the National Historic Preservation Act.

The City's SEPA checklist (dated September 2, 2003) included the following proposed mitigation in the Historic and Cultural Preservation section: "If any evidence of traditional cultural properties is uncovered during excavation, the City will notify the Washington Office of Archaeology and Historic Preservation and affected tribal groups." It is recommended that this SEPA mitigation measure be included as part of the Shoreline Permit decision. An additional condition of approval is recommended that requires consultation with affected tribes prior to construction and that an archaeologist be on-site during any ground disturbing activities.

PROJECT BACKGROUND (excerpt from 2003 Shoreline Permit)

The location proposed for the new Oak Harbor Municipal Pier is about 250 feet east of the site where the historic Maylor Dock once stood. Built in the 1890s, when the City's only link to the mainland was by water, the Maylor Dock was for the decades that followed synonymous with the necessary exchange of goods that provided livelihoods and provisions for an island community. The dock also served an important social function in bringing visitors and mail to early Oak Harbor. With the completion of Deception Pass Bridge in 1935, the importance of the Maylor Dock waned, although it remained in constant use until 1966 when fire destroyed the structure.

Organizational work to explore building a new pier started in earnest in January 1998 with the appointment of a Citizen's Planning Advisory Committee for the Reconstruction of the Maylor Pier. The subsequent report to the City Council in May of that year concluded that support was high for redeveloping a pier facility, one that had potential to serve the dual purpose of a highly desirable local landmark and attraction and a regional transportation hub that might attract a passenger ferry service to Oak Harbor. The Advisory Committee also recommended that the next step should be to contract for a professional feasibility study to study and refine the approach.

The City hired a consultant team in October 1998 to look at the potential demand for use of the pier as a transportation facility, to evaluate alternatives and select a preferred pier location and configuration, to estimate costs for construction and to outline

implementation strategies. Three alternatives were explored in terms of function and operation; constructability, relative environmental impacts and costs. Following public review, the consultants, in combination with the renamed Oak Harbor Municipal Dock Committee, presented in September 1999 the final *Oak Harbor Municipal Pier Feasibility Analysis* with a preferred alternative.

Since that date, the City has contracted for several technical studies and for a biological evaluation and mitigation plan. These include the *Oak Harbor Municipal Pier Dredge Material Characterization Report* (June 2001), the *Oak Harbor Municipal Pier Eelgrass/Macro Algae Habitat Surveys* (December 2002), the *Mitigation Plan of the Oak Harbor Municipal Pier Project* (May 2003) and the *Oak Harbor Municipal Pier Project Biological Evaluation* (July 2003). Collectively, these documents provide a foundation for the project description, Shoreline Master Program analysis and proposed conditions described in detail in the sections that follow.

On August 28, 2003, the City submitted the attached Joint Aquatic Resources Permit Application (JARPA) in support of its request for a shoreline substantial development permit, shoreline conditional use permit and shoreline variance. This same application had been submitted previously to the Washington Department of Fish and Wildlife, the Washington Department of Ecology, the Army Corps of Engineers and the National Marine Fisheries Service. Each of these agencies has permit authority over some aspect of the municipal pier project. The Planning Commission is responsible for reviewing the local permits only.

The City's Environmental Official issued a final Mitigated Determination of Nonsignificance on October 13, 2003 (see attached). In making this determination, it was concluded that all of the anticipated environmental impacts from the Oak Harbor Municipal Pier Project can be mitigated to a level of nonsignificance and that an environmental impact statement is not required.

In December of 2003, the Planning Commission recommended approval of the Shoreline Substantial Development Permit and City Council then approved it. Subsequent to City Council approval, city staff pursued a variety of funding sources for the project from state and federal levels between 2003 and 2009. In 2009, a federal transportation grant was secured for the project and the funds were obligated later that year allowing final design to proceed.

SHORELINE MASTER PROGRAM REVIEW

The Shoreline Management Act was adopted by the State in 1971 to protect the State's fragile shorelines and its natural resources from development pressures. The goals of the Shoreline Management Act give preference to uses in the following order of preference which:

(1) Recognize and protect the statewide interest over local interest;

(2) Preserve the natural character of the shoreline;

(3) Result in long term over short term benefit;

(4) Protect the resources and ecology of the shoreline;

(5) Increase public access to publicly owned areas of the shorelines;

(6) Increase recreational opportunities for the public in the shoreline;

The Shoreline Management Act establishes nine elements to be incorporated into every Master Program (RCW 90.58.100). These are shoreline use, economic development, public access, circulation, recreation, conservation, historic and cultural preservation, flood prevention and any other element necessary to effectuate the policy of RCW 90.58. These elements are addressed in goal and policy statements in Section Three of the City's SMP. Within the regulated shoreline environment, proposed projects are reviewed for consistency with the applicable goals, policies and regulations. The Multimodal Facility Project is an improvement to an existing park on previously improved land within the regulated Shoreline. The improvements will stay entirely within the existing limits of the park. For this reason, no impacts to the shoreline environment are anticipated.

There are four designated shoreline environments in Oak Harbor: urban, urban residential, natural and aquatic. The Multimodal Facility Project is located within the "urban" shoreline environment – an area of intensive and diverse land use(s). Recreation facilities are permitted uses in this environment so long as they meet the policies and regulations of the SMP.

REVIEW CRITERIA

The SSDP for the street improvements is subject to relevant criteria within the City's adopted SMP. Relevant sections of the SMP for this project include: (1) Section 4.02 "Urban Environment," (2) Section 5.02 "General Regulations," (3) Section 5.17 "Recreation," and (4) Section 5.20 "Utilities." These criteria are reviewed in the Staff Report, Attachment A.

STAFF REVIEW

Staff reviewed the project against the applicable SMP policies and regulations and recommended approval to the Planning Commission in the staff report, which is Attachment A to this agenda bill. The staff report contains a detailed discussion of compliance with the relevant SMP criteria. In general, staff found the project to be consistent with the City's adopted SMP because it will not impact the shoreline environment.

PLANNING COMMISSION REVIEW

Planning Commission reviewed the permit, conducted a public hearing, and recommended approval with conditions to City Council on June 21, 2011. Public comment received at the hearing discussed concerns regarding the operational use of the proposed building, project funding and maintenance of city parks, the amount of impervious surface proposed and location of the proposed picnic shelter. In addition, the Commission discussed the project's consistency with recreation regulation 5.17 of the SMP which seeks to protect the rights and property of residents from adverse impacts due to recreational shoreline use. After hearing the public testimony, the Planning Commission moved to approve the permit but added a condition to the Findings of Fact. This condition recommends City Council approval of the Shoreline Substantial Development Permit for the project so long as the facility is used for purposes currently in line with the City's Parks and Recreation policies. The Planning Commission's draft minutes from the June 21, 2011 hearing are Attachment B to this agenda bill. The Planning Commission's Findings of Fact are Attachment C.

CITY COUNCIL REVIEW

According to the Shoreline Master Program, City Council's duties include the following:

(1) "Consider through public hearings or other means, all pertinent data, testimony, correspondence and recommendations related to any application for a Shoreline Management Substantial Development Permit"[1] and;

(2) "Make findings and thereupon take action to grant or deny applications for permits in full compliance with the City of Oak Harbor's Shoreline Master Program, the Shoreline Management Act, and regulations and requirements adopted pursuant thereto.

[1] Please note this is a closed record hearing. A closed record hearing is one that is based upon the record that was established in the open record hearing (in this case, the one held by the Planning Commission). No or very limited evidence may be submitted at a closed record hearing.

RECOMMENDED ACTION

1. Conduct a public hearing to review the Planning Commission's recommendation.
2. Consider approval of the Shoreline Substantial Development Permit.
3. If the permit is approved, adopt the "Findings of Fact" (Attachment D).

ATTACHMENTS

Attachment A	Staff report to Planning Commission dated June 21, 2011.
Attachment B	Planning Commission minutes dated June 21, 2011.
Attachment C	Planning Commission Findings of Fact
Attachment D	City Council Findings of Fact
Attachment E	Site Plan dated June 17, 2011

MAYOR'S COMMENTS

City of Oak Harbor
Report to the Planning Commission

Date: June 21, 2011
Subject: Shoreline Substantial Development Permit for the Multimodal Facility Project

FROM: Melissa Sartorius
Associate Planner

PURPOSE

This report presents the application (Attachment 1) for a Shoreline Substantial Development Permit by the City of Oak Harbor to construct uplands improvements associated with the Multimodal Facility Project in Flintstone Park. The report highlights the goals and policies that are relevant to the review of the application. The Findings of Facts on the project are also included with the report. The Shoreline Master Program requires the Planning Commission to hold a public hearing, adopt findings and make a recommendation to the City Council.

AUTHORITY

RCW 98.58.050 provides the authority and the responsibility to local governments for the planning and administering the shoreline regulatory program consistent with the Shoreline Management Act.

BACKGROUND

Proposed project

The City of Oak Harbor proposes to construct a new 2,325 square foot multipurpose building with meeting room and restroom facilities. An additional 525 square foot picnic shelter, plaza, trail improvements, paved parking and circular drive are also planned. The existing picnic shelter and restrooms will be demolished. The project is Phase 1 of the overall Multimodal Facility Project. Phase 1 consists of the uplands improvements to Flintstone Park. The City of Oak Harbor has applied for a Shoreline Substantial Development Permit to construct the aforementioned improvements.

The proposed project is located across the street from the Island Transit station, and adjacent to condominiums to the west of the site. The main access to the site is from east or west on SE Bayshore Drive. There is also a connecting street, SE Dock Street, from Pioneer Way. Pioneer Way connects to State Route 20 about one half mile to the west. Users are able to access Flintstone Park from numerous public access points, reducing the demand on any one site to provide large amounts of parking. There are parking spaces along Bayshore Drive and in the Central Business District (CBD) within a short walking distance of the proposed site. Eleven parking spaces are proposed on site, one of which is ADA compliant. More than half of the parking spaces are parallel to the circular drive to allow for efficient drop off and pickup.

Approximately 11,300 square feet of additional impervious cover is proposed in the upland part of the project, primarily in a new paved path, the multipurpose building, and the adjacent plaza. The building provides about 1,500 square feet of space for formal and informal activities, including dining, small meetings, celebrations and ceremonies. Capacity would be approximately 92 people.

The proposed location is within the shoreline environment of Oak Harbor and approval of this project is therefore subject to review under the provisions of the City of Oak Harbor Shoreline Master Program. Specifically, the proposal as designed must meet the requirements for issuance of shoreline substantial development permit (for all activity related to the proposal).

Project Summary

Project Name:	Multimodal Facility Project
Applicant:	City of Oak Harbor Joe Stowell, Project Engineer
Location:	1370 SE Dock Street
Property Owner:	City of Oak Harbor
Zoning:	PF - Public Facilities
Land Use Designation:	Public Facilities
Shoreline Environment:	Urban
Acreage:	Uplands – 1.51 acres

Public Notice

A Notice of Application (NOA) for the proposed project was posted on the property and published in the newspaper, as per the requirement of the Shoreline Master Program for two consecutive weeks, on May 14, 2011 and May 21, 2011. The notice provided a comment period of 30 days with a deadline of June 20, 2011. Property owners within 300 feet of the project were also notified my mail. No comments have been received as of the date of this report.

The Public Hearing for the Planning Commission was advertised in the newspaper on June 4, 2011. The hearing notice was also mailed to property owners within 300 feet. No comments have been received as of the date of this report.

SEPA
The original environmental assessment and determination made in 2003 still applies to this project in accordance with the checklist requirements of the State Environmental Policy Act of 1971; no adoption or changes are needed per WAC 197-11-600(4)(a). This proposal has been determined to not have a significant impact upon the environment. An Environmental Impact Statement is not required under RCW 43.21C.030(2)C. A Mitigated Determination of Non Significance was issued for the project on October 13, 2003. A copy of the Determination has been included (Attachment 3) for your reference.

The mitigation measures included in the determination and checklist that address the uplands improvements to the site include erosion control, minimizing light and glare impacts by using downward directing lighting fixtures, temporary silt fences, transportation concurrency and archaeological response.

For more details on the mitigation measures, please refer to the MDNS in Attachment 3.

PROJECT BACKGROUND (excerpt from 2003 Shoreline Permit)
The location proposed for the new Oak Harbor Municipal Pier is about 250 feet east of the site where the historic Maylor Dock once stood. Built in the 1890s, when the City's only link to the mainland was by water, the Maylor Dock was for the decades that followed synonymous with the necessary exchange of goods that provided livelihoods and provisions for an island community. The dock also served an important social function in bringing visitors and mail to early Oak Harbor. With the completion of Deception Pass Bridge in 1935, the importance of the Maylor Dock waned, although it remained in constant use until 1966 when fire destroyed the structure.

Organizational work to explore building a new pier started in earnest in January 1998 with the appointment of a Citizen's Planning Advisory Committee for the Reconstruction of the Maylor Pier. The subsequent report to the City Council in May of that year concluded that support was high for redeveloping a pier facility, one that had potential to serve the dual purpose of a highly desirable local landmark and attraction and a regional transportation hub that might attract a passenger ferry service to Oak Harbor. The Advisory Committee also recommended that the next step should be to contract for a professional feasibility study to study and refine the approach.

The City hired a consultant team in October 1998 to look at the potential demand for use of the pier as a transportation facility, to evaluate alternatives and select a preferred pier location and configuration, to estimate costs for construction and to outline implementation strategies. Three alternatives were explored in terms of function and operation, constructability, relative environmental impacts and costs. Following public review, the consultants, in combination with the renamed Oak Harbor Municipal Dock Committee, presented in September 1999 the final *Oak Harbor Municipal Pier Feasibility Analysis* with a preferred alternative.

Since that date, the City has contracted for several technical studies and for a biological evaluation and mitigation plan. These include the *Oak Harbor Municipal Pier Dredge Material Characterization Report* (June 2001), the *Oak Harbor Municipal Pier Eelgrass/Macro Algae Habitat Surveys* (December 2002), the *Mitigation Plan of the Oak Harbor Municipal Pier Project* (May 2003) and the *Oak Harbor Municipal Pier Project Biological Evaluation* (July 2003). Collectively, these documents provide a foundation for the project description, Shoreline Master Program analysis and proposed conditions described in detail in the sections that follow.

On August 28, 2003, the City submitted the attached Joint Aquatic Resources Permit Application (JARPA) in support of its request for a shoreline substantial development permit, shoreline conditional use permit and shoreline variance. This same application had been submitted previously to the Washington Department of Fish and Wildlife, the Washington Department of Ecology, the Army Corps of Engineers and the National Marine Fisheries Service. Each of these agencies has permit authority over some aspect of the municipal pier project. The Planning Commission is responsible for reviewing the local permits only.

Finally, the City's Environmental Official issued a final Mitigated Determination of Nonsignificance on October 13, 2003 (see attached). In making this determination, it was concluded that all of the anticipated environmental impacts from the Oak Harbor Municipal Pier Project can be mitigated to a level of nonsignificance and that an environmental impact statement is not required.

CONSISTENCY WITH SHORELINE MASTER PROGRAM

The primary responsibility of the Planning Commission with respect to this proposal is to ensure that it is consistent with the Oak Harbor Shoreline Master Program (SMP). The SMP establishes permitted and conditional uses by shoreline environment and performance measures for those uses that are considered appropriate for a given location. It also establishes criteria and grounds for considering conditional uses and variances. The following analysis addresses the shoreline substantial development permit.

DISCUSSION

Flintstone Park is located within the area designated as an Urban Environment in the Shoreline Master Program. The proposed project is a permitted use within this designation. The project falls primarily under Section 5.17, Recreation, of the Shoreline Master Program. However, the project impacts the waterfront trail and the existing parking lot. Their redevelopment is supported by policies and regulations in other sections of the program.

Uplands Improvements

The improvements to the uplands, including construction of the new multipurpose building, are the primary scope of this phase of the project. Therefore the project is

primarily reviewed under the policies and regulations of the following section of the Shoreline Master Program:

5.17 Recreation

Policies

1. Preference should be given to developments which provide for recreational activities and improvements facilitating public access to the shoreline. *This is a community project that provides public access to the shoreline by way of improved trail connections and an overlook. The redevelopment allows for an increased public use of the site by creating the meeting room and improvements to the parking lot. In the interim (until permanent pier construction) the uplands project may lead to increased usage of the existing municipal dock adjacent to the site.*

2. A variety of water oriented recreational activities should be encouraged to locate on shorelines to satisfy diverse needs and interests of residents and visitors. *The redevelopment of the site will increase the types of activities available to residents and visitors from current conditions. The addition of a meeting room, an outdoor plaza with tables, and widening of the Waterfront Trail all help increase the amount of amenities available in Flintstone Park and in general the greater Oak Harbor Parks and Recreation System.*

3. Linkage such as walkways, walking and/or bicycle paths between shoreline recreational and public access areas should be provided. *The Waterfront Trail currently exists along the southern boundary of the park next to the shoreline. The proposal includes widening of this trail from 6 feet to 12 feet along the Flintstone Park portion. Improvements to this portion of the trail are part of the larger Waterfront Trail system in which the multimodal facility is centrally located. Additionally, the overlook will be improved with a paved path that connects the Waterfront Trail to the new parking area. The overlook path will contain new benches, bollards, and trash receptacles.*

4. Recreational developments should be located, designed and operated to be compatible with adjacent uses and to minimize adverse affects on ecological and aesthetic qualities of the shoreline and the water. *Parks are commonly considered compatible with residential areas as they generally have less noise and operational impacts than commercial districts. Residents can use and enjoy the amenities of a nearby community or neighborhood park. Flintstone Park serves as an important niche by providing public shoreline access to downtown Oak Harbor and to the nearby Island Transit station. All of the proposed work is upland of the ordinary high water mark and distinct clearing limits and silt fencing are*

shown on the civil plans in order to protect ecological and aesthetic qualities of the shoreline.

5. Recreational developments should be designed to preserve or create open space and public use of the water and the shorelines. *The proposal preserves open space within the city and improves public access to the shoreline.*

Regulations

1. The City may adjust or require changes to project dimensions, use intensity, parking provisions or landscaping in approving recreational developments to ensure that scenic views and ecological qualities of the site are protected. *As this is a city project the design process took into account and was sensitive to the items addressed by this regulation.*

2. Protect the rights and property of residents from adverse impacts due to recreational shoreline uses. *The only adjacent residential uses are condominiums along the western property line. As the proposed use is similar to the existing use, impacts (if any) are largely known, therefore mitigation of potential impacts are focused on construction of the project. In order to avoid adverse impacts from construction of the park on the residents, the following measures will be employed: limiting construction to those hours stipulated in the Oak Harbor Municipal Code, use downward directing or shielded light fixtures, and install landscaping along the western property line as a buffer from the park use while retaining scenic views from the condos by reducing the height of the landscaping.*

3. Safe pedestrian walkways shall be provided between parking areas and recreational facilities they serve. *Within the site, the Waterfront Trail serves as a safe pedestrian sidewalk between the recreational shoreline and the parking area of the site. The parking area includes delivery and drop-off locations along a circular drive which is buffered by the trail. The separation of pedestrians and vehicles will be an improvement from the existing situation.*

4. Recreational facilities which normally require the use of large quantities of chemical fertilizers and herbicides such as playing fields shall not be located over water or in shoreline areas, unless adequate provisions can be made for protection of water areas from drainage and surface runoff. *This regulation does not directly apply to this proposal there are no large areas of grass similar to playing fields that are treated in Flintstone Park. The park is treated with a minor amount of fertilizer and herbicides once annually and best management practices are utilized by trained city staff.*

5. Shoreline permit applications for recreational development shall include a parking and landscaping plan. *The application contains a parking plan and landscape plan as part of the site plan package. See Attachment 2 for more detail.*

The project is also reviewed against any regulation specific to a particular shoreline environment. In this case, there following regulation is specific to recreation in the urban environment:

> Regulations by Environment - Urban, Urban Residential
> Recreational development shall be permitted in the urban or urban residential environment subject to the policies and regulations of this Master Program and the Oak Harbor Critical Areas Ordinance. However, RV Parks (public) are prohibited in the urban residential designation.

Other Shoreline Use Policies
As the project entails modifications to the trail and parking areas, staff reviewed the project against the following sections of the SMP:

Waterfront Trail
The existing waterfront trail is impacted by the project construction. The project scope includes widening this portion of the waterfront trail and improving the overlook area as shown in Attachment 2. The trail will be approximately 12 feet wide. Listed below are supporting policies within the Shoreline Master Program for improving the trail.

3.04 Public Access
Policies
1. Provide, protect and enhance a public access system that is both physical and visual, utilizing both private and public lands. The Oak Harbor Bay Trail, as described by the City of Oak Harbor Comprehensive Park and Recreation Plan, provides a spine route for accessing Oak Harbor's shoreline.

4.02 Urban Environment
Policies
3. Provide public access to the shoreline. New and expanded development should be designed to include physical or visual access.
4. Link public access points by pedestrian routes where practical.

5.19 Transportation Facilities

Policies

5. Trails and bicycle routes along shorelines should be provided in conformance with the Oak Harbor Comprehensive Parks and Recreation Plan.

Parking

The project includes redeveloping the existing parking lot. The Shoreline Master Program includes some general guidelines for parking. The policies are listed below. The guidelines are primarily targeted toward parking associated with a development (building or use). The parking lot redesign must meet the requirements of OHMC 19.44.

5.02 General Regulations

4. Parking

In addition to parking requirements imposed by other City ordinances the following regulations shall also apply:

a. Parking areas serving shoreline and over water uses shall be located off the street and landward of uses served unless incorporated into authorized structures, park landscapes or shoreline viewing areas accessible to the public.

b. Whenever adequate on site parking cannot be provided and upland parking site shall be required. Upland parking sites may serve individual uses or be managed for joint-use.

c. Where there is no land area available on the landward side of developments or on adjacent uplands, parking areas shall be located no closer than 25 feet from the OHWM and shall be entirely screened from view from the water by plantings or a solid fence of a design consistent with other applicable ordinances. In no case shall a fence or other screen block views of the water from public roads or areas.

d. Where public access is included as a part of a development proposal, additional parking spaces to serve the general public may be required.

In summary, projects that encourage public access and respect the natural environment tend to be supported by the SMP policies. Further, the multimodal facility will enhance public access and shoreline enjoyment by residents and visitors alike. Public amenities will be relatively modest, but the ability to use the multi-purpose building for meetings and events will be an improvement to the community. In its location, planning,

construction and future use, the pier project is conclusively consistent with our Shoreline Master Program.

OAK HARBOR COMPREHENSIVE PLAN AND OTHER PLANS

In addition to consistency with the Shoreline Master Program, it is good planning practice and a requirement of the SMP to assess whether or not the proposed municipal pier improvements helps to further the community vision as expressed in adopted plans and policies. Clearly, building a new downtown pier to replace the Maylor Dock has been part of Oak Harbor's municipal vocabulary for a number of years, and is firmly established as a desirable outcome in our Comprehensive Plan. The following policies and statements offer strong support for the current proposal.

From the *Oak Harbor Comprehensive Plan*:

Urban Design Element Policy 5.d: "Developments along Oak Harbor's waterfront should enhance the area's natural and physical aesthetics."

Parks, Recreation, and Open Space Element Policy Parks g: "Provide upland facilities at Flintstone Park that will support the Municipal Pier Project."

Parks, Recreation, and Open Space Element Recommendation: "Enhance the trail connection between Flintstone Park and the Marina as a multiuse trail and extend the trail from the Marina to Maylor Point."

Transportation Policy 3.e: "The City should explore planning, financing and designing a municipal pier in the downtown area, within close proximity to the Island Transit transfer station."

Transportation Policy 3.f: "The City should explore developing a municipal pier for passenger ferry service, float plane service and recreational day moorage. Marine education, fishing, emergency services and related entrepreneurial functions shall be included as ancillary uses."

Transportation Policy 3.g: "The City should explore all potential funding sources to finance the construction and operation of a downtown municipal pier."

Transportation Policy 3.h: "The City should explore opportunities for leases, franchises or use agreements for pier docking requirements of passenger ferry service providers with transportation linkages to Everett, Seattle, Langley, Camano Island, Coupeville and Mukilteo. Other linkages may be identified through citizen involvement. The City should explore opportunities for leases, franchises or use agreements for pier docking requirements of float plane transportation."

From *Harbor Watch: A Redevelopment Plan for Oak Harbor's Downtown and Waterfront* (1990): "Construct a water transportation pier extending south from the 50th Street [now Dock Street] axis. Light so that it becomes a 'twilight promenade' as well as offering a welcome mat for boaters and a dock for air and water transportation."

"Attract more active uses to Flintstone Park. Regrade a portion to provide a windbreak that can be used for picknicking or informal performances."

From *Harbor Pride: A Blueprint for Change* (2000): "The Oak Harbor Municipal Pier is an important downtown anchor that will promote public education and enjoyment of the natural harbor. The two legged pier design with multiple functions of commuter ferry and seaplane moorage will provide easy walking access into Old Town for arriving pedestrians."

From *Oak Harbor Parks, Recreation, and Open Space Plan (2009):*

"Upland improvements at the Flintstone Park will continue to move the Municipal Pier project ahead by preparing the park for the eventual construction of the pier.

This project will provide for the design and construction of the upland improvements associated with the Municipal Pier project. The improvements will include restrooms, a waiting area and other upgrades to the park.

Improvements Needed:

- Surfaces could use an asphalt overlay
- Shelter (donated by Lions in 80s) needs to be replaced
- Rails on approach dock needs to be galvanized
- Shoreline is unstable and needs repair and reinforcement
- Light should be added along the trail

Other Improvements:

- Dock needs to be upgraded

In summary, the proposal is consistent with adopted plans and policies. Because the proposed improvements will occur within the existing area of improvements, staff does not expect negative impacts from the project on the shoreline ecology or environment.

SUMMARY

With the list of conditions that were identified in the SEPA MDNS and the standard conditions related to subsequent review and permit restrictions, the staff believe that this proposal meets all adopted standards for the shoreline substantial development permit. These conditions are contained in the attached "Findings of Fact, Conclusions of Law and

Entry of Order." Adopting this document will forward a recommendation of conditional approval to the City Council, with appropriate findings.

Recommendations

1. Conduct the public hearing.
2. Recommend that the City Council approve the Shoreline Substantial Development Permit
3. Adopt the "Findings of Fact" (Attachment 4)

Attachments:

Attachment 1- Shoreline Substantial Development Permit (JARPA Application)
Attachment 2- Site Plan
Attachment 3- Mitigated Determination of Nonsignificance (MDNS)
Attachment 4- Findings of Fact

ATTACHMENT A

2010
WASHINGTON STATE
Joint Aquatic Resources Permit Application (JARPA) Form[1]

USE BLACK OR BLUE INK TO ENTER ANSWERS IN WHITE SPACES BELOW.

US Army Corps of Engineers • Seattle District

AGENCY USE ONLY

Date received:

Agency reference #: _____

Tax Parcel #(s): _____

_____

_____

Part 1–Project Identification

1. Project Name (A name for your project that you create. Examples: Smith's Dock or Seabrook Lane Development) [help][2]
Oak Harbor Multimodal Facility

Part 2–Applicant

RECEIVED
MAY 10 2011
CITY OF OAK HARBOR
Development Services Department

The person or organization responsible for the project. [help]

2a. Name (Last, First, Middle) and Organization (if applicable)			
City of Oak Harbor			
2b. Mailing Address (Street or PO Box)			
865 SE Barrington Drive			
2c. City, State, Zip			
Oak Harbor, WA 98277			
2d. Phone (1)	**2e.** Phone (2)	**2f.** Fax	**2g.** E-mail
(360)279-4510	( )	( )	

Part 3–Authorized Agent or Contact

Person authorized to represent the applicant about the project. (Note: Authorized agent(s) must sign 11b. of this application.) [help]

3a. Name (Last, First, Middle) and Organization (if applicable)
Ellison, Bruce - Arai Jackson Ellison Murakami LLP
3b. Mailing Address (Street or PO Box)
2300 7th Avenue

[1] Additional forms may be required for the following permits:
- If your project may qualify for Department of the Army authorization through a Regional General Permit (RGP), contact the U.S. Army Corps of Engineers for application information (206) 764-3495.
- If your project might affect species listed under the Endangered Species Act, you will need to fill out a Specific Project Information Form (SPIF) or prepare a Biological Evaluation. Forms can be found at http://www.nws.usace.army.mil/PublicMenu/Menu.cfm?sitename=REG&pagename=mainpage_ESA
- If you are applying for an Aquatic Resources Use Authorization you will need to fill out and submit an Application for Authorization to Use State-Owned Aquatic Lands form to DNR, which can be found at http://www.dnr.wa.gov/Publications/aqr_use_auth_app.doc
- Not all cities and counties accept the JARPA for their local Shoreline permits. If you think you will need a Shoreline permit, contact the appropriate city or county government to make sure they will accept the JARPA.

[2] To access an online JARPA form with [help] screens, go to http://www.epermitting.wa.gov/site/alias__resourcecenter/jarpa_jarpa_form/9984/jarpa_form.aspx . For other help, contact the Governor's Office of Regulatory Assistance at 1-800-917-0043 or help@ora.wa.gov.

3c. City, State, Zip			
Seattle, WA 98121			
3d. Phone (1)	**3e.** Phone (2)	**3f.** Fax	**3g.** E-mail
(206) 323-8800	( )	( )	bellison@araijackson.com

Part 4–Property Owner(s)

Contact information for people or organizations owning the property(ies) where the project will occur. [help]

☑ *Same as applicant. (Skip to Part 5.)*

☐ Repair or maintenance activities on existing rights-of-way or easements. (Skip to Part 5.)

☐ There are multiple property owners. Complete the section below and fill out JARPA Attachment A for each additional property owner.

4a. Name (Last, First, Middle) and Organization (if applicable)			
Joseph A. Stowell – City of Oak Harbor			
4b. Mailing Address (Street or PO Box)			
865 NE Barrington Drive			
4c. City, State, Zip			
Oak Harbor, WA 98277			
4d. Phone (1)	**4e.** Phone (2)	**4f.** Fax	**4g.** E-mail
(360) 279-4520	(360) 720-8796	(360) 279-3902	jstowell@oakharbor.org

Part 5–Project Location(s)

Identifying information about the property or properties where the project will occur. [help]

☐ There are multiple project locations (e.g., linear projects). Complete the section below and use JARPA Attachment B for each additional project location.

5a. Indicate the type of ownership of the property. (Check all that apply.) [help]
☐ State Owned Aquatic Land (If yes or maybe, contact the Department of Natural Resources (DNR) at (360) 902-1100) ☐ Federal ☑ Other publicly owned (state, county, city, special districts like schools, ports, etc.) ☐ Tribal ☐ Private
5b. Street Address (Cannot be a PO Box. If there is no address, provide other location information in 5p.) [help]
1370 SE Bayshore Drive
5c. City, State, Zip (If the project is not in a city or town, provide the name of the nearest city or town.) [help]
Oak Harbor, WA 98277
5d. County [help]
Island County

5e. Provide the section, township, and range for the project location. [help]

¼ Section	Section	Township	Range
	2	T32N	R1E

5f. Provide the latitude and longitude of the project location. [help]

- Example: 47.03922 N lat. / -122.89142 W long. (NAD 83)

48° 17' 14.36" N / 122° 38' 51.12" W

5g. List the tax parcel number(s) for the project location. [help]

- The local county assessor's office can provide this information.

S6565-00-00C09-9

5h. Contact information for all adjoining property owners. (If you need more space, use JARPA Attachment C.) [help]

Name	Mailing Address	Tax Parcel # (if known)
(See attached list)		

5i. List all wetlands on or adjacent to the project location. [help]

None

5j. List all waterbodies (other than wetlands) on or adjacent to the project location. [help]

Puget Sound is located approximately 22 feet to the south and east.

5k. Is any part of the project area within a 100-year flood plain? [help]

☑ Yes ☐ No ☐ Don't know

5l. Briefly describe the vegetation and habitat conditions on the property. [help]

The property is currently city park with grass vegetation and some trees. Improvements such as asphalt pathways, a small parking lot, restrooms and a picnic shelter also exist. Any habitat would be for song birds in the trees.

5m. Describe how the property is currently used. [help]

The property is currently used as a city park. It provides recreational opportunities for the community. The property is also adjacent to an existing dock and timber float for day recreational moorage use.

5n. Describe how the adjacent properties are currently used. [help]

Adjacent properties consist of residential condos and offices to the west, a public transit system station to the northwest, offices and commercial businesses to the north, and marine shoreline to the east and south.

5o. Describe the structures (above and below ground) on the property, including their purpose(s). [help]

Currently there are public restrooms, a picnic shelter, paved parking spaces and circular drive, and asphalt trails above ground on the property. Underground structures include water, sewer, gas and electrical.

5p. Provide driving directions from the closest highway to the project location, and attach a map. [help]

From State Route 20, go east onto SE Pioneer Way. Turn right onto SE City Beach Street then left onto SE Bayshore Drive. The property is located approximately 0.64 miles from the SR 20 and Pioneer Way intersection. See attached map.

Part 6–Project Description

6a. Summarize the overall project. You can provide more detail in 6d. [help]

The project is Phase 1 of the overall Oak Harbor Pier Project. Phase 1 consists of the uplands improvements to Flintstone Park. The work consists of demolition of the existing restroom facility, asphalt driveway and trails and construction of a new 2,325 square foot restroom and community center building, a 525 square foot picnic shelter, and related utilities and site improvements.

6b. Indicate the project category. (Check all that apply) [help]

☐ Commercial ☐ Residential ☐ Institutional ☐ Transportation ☑ Recreational
☐ Maintenance ☐ Environmental Enhancement

6c. Indicate the major elements of your project. (Check all that apply) [help]

☐ Aquaculture	☐ Culvert	☐ Float	☐ Road
☐ Bank Stabilization	☐ Dam / Weir	☐ Geotechnical Survey	☐ Scientific Measurement Device
☐ Boat House	☐ Dike / Levee / Jetty	☐ Land Clearing	☐ Stairs
☐ Boat Launch	☐ Ditch	☐ Marina / Moorage	☐ Stormwater facility
☐ Boat Lift	☐ Dock / Pier	☐ Mining	☐ Swimming Pool
☐ Bridge	☐ Dredging	☐ Outfall Structure	☐ Utility Line
☐ Bulkhead	☐ Fence	☐ Piling	
☐ Buoy	☐ Ferry Terminal	☐ Retaining Wall (upland)	
☐ Channel Modification	☐ Fishway		

☑ Other: Community center, restrooms, picnic shelter, plaza, parking, trail improvements.

6d. Describe how you plan to construct each project element checked in 6c. Include specific construction methods and equipment to be used. [help]

- Identify where each element will occur in relation to the nearest waterbody.
- Indicate which activities are within the 100-year flood plain.

The project elements listed above are located adjacent to Oak Harbor Bay however the limits of the project are located approximately 22 feet (at its nearest) away from the edge of a concrete and boulder seawall which slopes down to the water. The trail improvements will be located entirely within the 100-year floodplain. Portions of the other project elements including roughly half of the community center and half of the circular drive and parking will be located within the 100-year floodplain.

The existing restroom facility and picnic shelter will be demolished and the asphalt trail and paved areas are expected to be removed in their entirety. A new community center with restrooms and an associated plaza are will be constructed. A new picnic shelter, concrete trail, paved parking area and circular drive will be installed. Undergrounding placement of overhead utilities is included.

Removal of the existing sanitary system and paved areas and installation of the utilities and new concrete surfaces represent the extent of excavation necessary to complete the project. Any other cut and fill activities within the project area are expected to produce negligible quantities of fill material. Excavation will be completed using standard construction and will take place within approximately 6 feet of Puget Sound, at the south end of the overlook peninsula.

Standard construction equipment will be used to construct the project. Examples of equipment to be used include backhoes, compactors, concrete trucks, dozers, concrete saw, dump trucks, excavator, generators, graders, pneumatic tools, and similar equipment. No blasting or pile driving will be required.

6e. What are the start and end dates for project construction? *(month/year)* [help]

- If the project will be constructed in phases or stages, use JARPA Attachment D to list the start and end dates of each phase or stage.

Start date: _September 2011___ End date: __June 2012_____ ☐ See JARPA Attachment D

6f. Describe the purpose of the project and why you want or need to perform it. [help]

The project will create the uplands improvements associated with the larger municipal pier project on Oak Harbor's central waterfront designed to serve as a multi-modal transportation hub. The uplands improvements comprise the first phase of the overall pier project. The pier project is recognized by the community as a key element to the revitalization of downtown Oak Harbor making it easier for a greater number of citizens to access the waterfront and downtown. This phase of the project will provide the circular drive for drop off and pickup, public restrooms, a community center and plaza, improvements to the waterfront trail system, and enhanced city park features.

6g. Fair market value of the project, including materials, labor, machine rentals, etc. [help]

$ 1,040,411

6h. Will any portion of the project receive federal funding? [help]

- If yes, list each agency providing funds.

☑ Yes ☐ No ☐ Don't know

United States Department of Transportation - Federal Transportation Administration

Part 7–Wetlands: Impacts and Mitigation

☐ Check here if there are wetlands or wetland buffers on or adjacent to the project area. (If there are none, skip to Part 8.) [help]

7a. Describe how the project has been designed to avoid and minimize adverse impacts to wetlands. [help]

☑ Not applicable

7b. Will the project impact wetlands? [help]

☐ Yes ☑ No ☐ Don't know

7c. Will the project impact wetland buffers? [help]

☐ Yes ☑ No ☐ Don't know

7d. Has a wetland delineation report been prepared? [help]

- **If yes**, submit the report, including data sheets, with the JARPA package.

☐ Yes ☑ No

7e. Have the wetlands been rated using the Western Washington or Eastern Washington Wetland Rating System? [help]

- **If yes**, submit the wetland rating forms and figures with the JARPA package.

☐ Yes ☑ No ☐ Don't know

7f. Have you prepared a mitigation plan to compensate for any adverse impacts to wetlands? [help]

- **If yes**, submit the plan with the JARPA package and answer 7g.
- **If No, or Not applicable**, explain below why a mitigation plan should not be required.

☐ Yes ☐ No ☑ Not applicable

7g. Summarize what the mitigation plan is meant to accomplish, and describe how a watershed approach was used to design the plan. [help]

Does not apply.

7h. Use the table below to list the type and rating of each wetland impacted; the extent and duration of the impact; and the type and amount of mitigation proposed. Or if you are submitting a mitigation plan with a similar table, you can state (below) where we can find this information in the plan. [help]

Activity (fill, drain, excavate, flood, etc.)	Wetland Name[1]	Wetland type and rating category[2]	Impact area (sq. ft. or Acres)	Duration of impact[3]	Proposed mitigation type[4]	Wetland mitigation area (sq. ft. or acres)

[1] If no official name for the wetland exists, create a unique name (such as "Wetland 1"). The name should be consistent with other project documents, such as a wetland delineation report.
[2] Ecology wetland category based on current Western Washington or Eastern Washington Wetland Rating System. Provide the wetland rating forms with the JARPA package.
[3] Indicate the days, months or years the wetland will be measurably impacted by the activity. Enter "permanent" if applicable.
[4] Creation (C), Re-establishment/Rehabilitation (R), Enhancement (E), Preservation (P), Mitigation Bank/In-lieu fee (B)

Page number(s) for similar information in the mitigation plan, if available: _____

7i. For all filling activities identified in 7h., describe the source and nature of the fill material, the amount in cubic yards that will be used, and how and where it will be placed into the wetland. [help]

Does not apply.

7j. For all excavating activities identified in 7h., describe the excavation method, type and amount of material in cubic yards you will remove, and where the material will be disposed. [help]

Does not apply.

Part 8–Waterbodies (other than wetlands): Impacts and Mitigation

In Part 8, "waterbodies" refers to non-wetland waterbodies. (See Part 7 for information related to wetlands.) [help]

☑ Check here if there are waterbodies on or adjacent to the project area. (If there are none, skip to Part 9.)

8a. Describe how the project is designed to avoid and minimize adverse impacts to the aquatic environment. [help]

☑ Not applicable

The entire project will be constructed within the existing city park only, which is located a minimum of 6 feet away from the Puget Sound. A temporary silt fence will be installed along the clearing limits for the project which are generally 20 feet away from the seawall with the exception of the peninsula area near the condos where it will be approximately 6 feet away from the seawall. A Temporary Erosion and Sediment Control (TESC) and Spill Prevention plan will be prepared for the project, which will include, at a minimum, catch- basin protection and filter-fabric fencing. Storm and erosion control best management practices (BMPs) will be used during construction.

A portion of stormwater from the site will be treated by a rain garden and bioretention cells. The remainder will sheet flow across concrete paths into lawn and be treated and infiltrated by the grass.

8b. Will your project impact a waterbody or the area around a waterbody? [help]

☐ Yes ☑ No

8c. Have you prepared a mitigation plan to compensate for the project's adverse impacts to non-wetland waterbodies? [help]

- **If yes**, submit the plan with the JARPA package and answer 8d.
- **If No, or Not applicable**, explain below why a mitigation plan should not be required.

☐ Yes ☐ No ☑ Not applicable

This phase of the project will have no effects on non-wetland waterbodies.

8d. Summarize what the mitigation plan is meant to accomplish. Describe how a watershed approach was used to design the plan.

- If you already completed 7g., you do not need to restate your answer here. [help]

Does not apply.

8e. Summarize impact(s) to each waterbody in the table below. [help]

Activity (clear, dredge, fill, pile drive, etc.)	Waterbody name[1]	Impact location[2]	Duration of impact[3]	Amount of material to be placed in or removed from waterbody	Area (sq. ft. or linear ft.) of waterbody directly affected

[1] If no official name for the waterbody exists, create a unique name (such as "Stream 1") The name should be consistent with other documents provided.
[2] Indicate whether the impact will occur in or adjacent to the waterbody. If adjacent, provide the distance between the impact and the waterbody and indicate whether the impact will occur within the 100-year flood plain.
[3] Indicate the days, months or years the waterbody will be measurably impacted by the work. Enter "permanent" if applicable.

8f. For all activities identified in 8e., describe the source and nature of the fill material, amount (in cubic yards) you will use, and how and where it will be placed into the waterbody. [help]

Does not apply.

8g. For all excavating or dredging activities identified in 8e., describe the method for excavating or dredging, type and amount of material you will remove, and where the material will be disposed. [help]

Does not apply.

Part 9–Additional Information

Any additional information you can provide helps the reviewer(s) understand your project. Complete as much of this section as you can. It is ok if you cannot answer a question.

9a. If you have already worked with any government agencies on this project, list them below. [help]

Agency Name	Contact Name	Phone	Most Recent Date of Contact
		( )	
		( )	
		( )	

9b. Are any of the wetlands or waterbodies identified in Part 7 or Part 8 on the Washington Department of Ecology's 303(d) List? [help]

- **If yes,** list the parameter(s) below.
- If you don't know, use Washington Department of Ecology's Water Quality Assessment tools at: http://www.ecy.wa.gov/programs/wq/303d/.

☐ Yes ☑ No

9c. What U.S. Geological Survey Hydrological Unit Code (HUC) is the project in? [help]

- Go to http://cfpub.epa.gov/surf/locate/index.cfm to help identify the HUC.

Puget Sound Watershed - 17110019

9d. What Water Resource Inventory Area Number (WRIA #) is the project in? [help]

- Go to http://www.ecy.wa.gov/services/gis/maps/wria/wria.htm to find the WRIA #.

WRIA 6

9e. Will the in-water construction work comply with the State of Washington water quality standards for turbidity? [help]

- Go to http://www.ecy.wa.gov/programs/wq/swqs/criteria.html for the standards.

☐ Yes ☐ No ☑ Not applicable

9f. If the project is within the jurisdiction of the Shoreline Management Act, what is the local shoreline environment designation? [help]

- If you don't know, contact the local planning department.
- For more information, go to: http://www.ecy.wa.gov/programs/sea/sma/laws_rules/173-26/211_designations.html.

☐ Rural ☑ Urban ☐ Natural ☐ Aquatic ☐ Conservancy ☐ Other _____

9g. What is the Washington Department of Natural Resources Water Type? [help]

- Go to http://www.dnr.wa.gov/BusinessPermits/Topics/ForestPracticesApplications/Pages/fp_watertyping.aspx for the Forest Practices Water Typing System.

☑ Shoreline ☐ Fish ☐ Non-Fish Perennial ☐ Non-Fish Seasonal

9h. Will this project be designed to meet the Washington Department of Ecology's most current stormwater manual? [help]

- If no, provide the name of the manual your project is designed to meet.

☑ Yes ☐ No

Name of manual: 2005 DOE Stormwater Management Manual for Western Washington (SMMWW)

9i. If you know what the property was used for in the past, describe below. [help]

The site has been a city park for a number of years. Historically, Maylor Pier was located immediately to the west of the existing boat basin, and was used for shipping and industrial uses from approximately the 1920's and remained in operation until 1966 when it was destroyed in a fire. Flintstone Park and other areas along the shoreline east of the park were created by fill in roughly the 1960's. Up to that time, the bay was where the park and Bayshore Drive exist today.

9j. Has a cultural resource (archaeological) survey been performed on the project area? [help]

- If yes, attach it to your JARPA package.

☐ Yes ☑ No

9k. Name each species listed under the federal Endangered Species Act that occurs in the vicinity of the project area or might be affected by the proposed work. [help]

Some listed species known to be present within Puget Sound, including the following threatened and endangered species:

- Chinook Salmon (threatened)
- Coho Salmon (species of concern)
- Steelhead (threatened)
- Southern Resident Killer Whale (endangered)
- Humpback Whale (endangered)
- Steller Sea Lion (threatened)

Impacts to ESA-listed species are not expected.

9l. Name each species or habitat on the Washington Department of Fish and Wildlife's Priority Habitats and Species List that might be affected by the proposed work. [help]

Per the Washington Department of Fish and Wildlife, the Puget Sound shoreline to the south of the project area is an estuary zone, which provides habitat for many shoreline species. There are also wetlands and oak stands within .75 miles of the project area that are considered priority habitat or species. There are no known eagle's nests or heron rookeries within the immediate project area, though there are noted nests located to the southeast and southwest of the project area, approximately one mile away in each direction. Impacts to priority species or habitat are not expected.

Part 10–SEPA Compliance and Permits

Use the resources and checklist below to identify the permits you are applying for.

- Online Project Questionnaire at http://apps.ecy.wa.gov/opas/.
- Governor's Office of Regulatory Assistance at (800) 917-0043 or help@ora.wa.gov.
- For a list of agency addresses to send your application, click on the "where to send your completed JARPA" at http://www.epermitting.wa.gov.

10a. Compliance with the State Environmental Policy Act (SEPA). (Check all that apply.) [help]

- For more information about SEPA, go to www.ecy.wa.gov/programs/sea/sepa/e-review.html.

☑ A copy of the SEPA determination or letter of exemption is included with this application.

☐ A SEPA determination is pending with _____ (lead agency). The expected decision date is _____.

☐ I am applying for a Fish Habitat Enhancement Exemption. (Check the box below in 10b.) [help]

☐ This project is exempt (choose type of exemption below).

☐ Categorical Exemption. Under what section of the SEPA administrative code (WAC) is it exempt? _____

☐ Other: _____

☐ SEPA is pre-empted by federal law.

10b. Indicate the permits you are applying for. (Check all that apply.) [help]

LOCAL GOVERNMENT

Local Government Shoreline permits:

☑ Substantial Development ☐ Conditional Use ☐ Variance

☐ Shoreline Exemption Type (explain): _____

Other city/county permits:

☑ Floodplain Development Permit ☐ Critical Areas Ordinance

STATE GOVERNMENT

Washington Department of Fish and Wildlife:

☐ Hydraulic Project Approval (HPA) ☐ Fish Habitat Enhancement Exemption

Washington Department of Ecology:

☐ Section 401 Water Quality Certification

Washington Department of Natural Resources:

☐ Aquatic Resources Use Authorization

FEDERAL GOVERNMENT

United States Department of the Army permits (U.S. Army Corps of Engineers):

☐ Section 404 (discharges into waters of the U.S.) ☐ Section 10 (work in navigable waters)

United States Coast Guard permits:

☐ General Bridge Act Permit ☐ Private Aids to Navigation (for non-bridge projects)

Part 11–Authorizing Signatures

Signatures are required before submitting the JARPA package. The JARPA package includes the JARPA form, project plans, photos, etc. [help]

11a. Applicant Signature (required) [help]

I certify that to the best of my knowledge and belief, the information provided in this application is true, complete, and accurate. I also certify that I have the authority to carry out the proposed activities, and I agree to start work only after I have received all necessary permits.

I hereby authorize the agent named in Part 3 of this application to act on my behalf in matters related to this application. JAS (initial)

By initialing here, I state that I have the authority to grant access to the property. I also give my consent to the permitting agencies entering the property where the project is located to inspect the project site or any work related to the project. JAS (initial)

JOSEPH A. STOWELL — Applicant Printed Name

Applicant Signature

5/10/11 — Date

11b. Authorized Agent Signature [help]

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I certify that to the best of my knowledge and belief, the information provided in this application is true, complete, and accurate. I also certify that I have the authority to carry out the proposed activities and I agree to start work only after all necessary permits have been issued.

Authorized Agent Printed Name	Authorized Agent Signature	Date

11c. Property Owner Signature (if not applicant). [help]
Not required if project is on existing rights-of-way or easements.

I consent to the permitting agencies entering the property where the project is located to inspect the project site or any work. These inspections shall occur at reasonable times and, if practical, with prior notice to the landowner.

Property Owner Printed Name	Property Owner Signature	Date

18 U.S.C §1001 provides that: Whoever, in any manner within the jurisdiction of any department or agency of the United States knowingly falsifies, conceals, or covers up by any trick, scheme, or device a material fact or makes any false, fictitious, or fraudulent statements or representations or makes or uses any false writing or document knowing same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years or both.

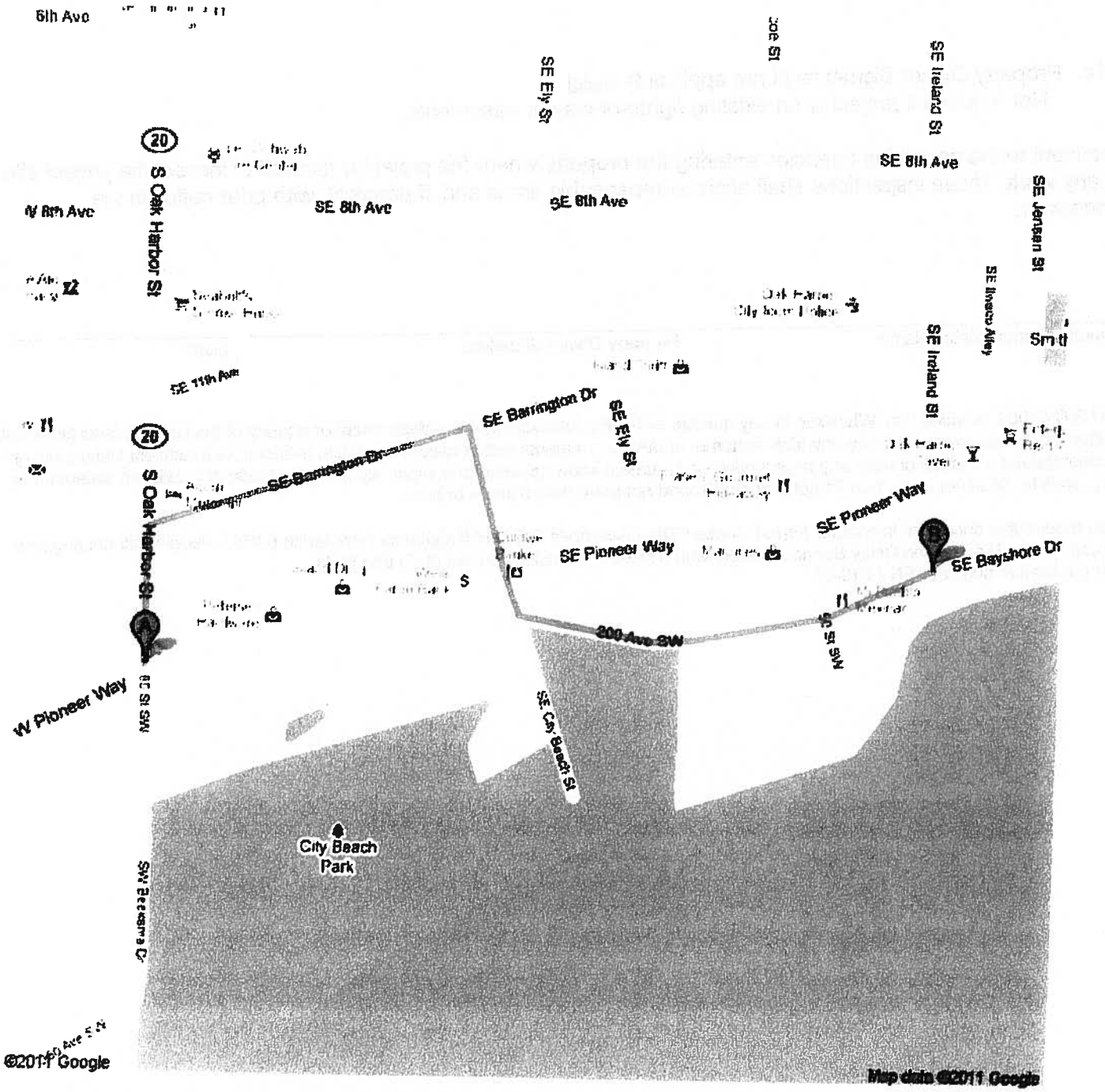
If you require this document in another format, contact The Governor's Office of Regulatory Assistance (ORA). People with hearing loss can call 711 for Washington Relay Service. People with a speech disability can call (877) 833-6341.
ORA publication number: ENV-019-09

ATTACHMENT A

Google maps

Directions to 1370 SE Bayshore Dr, Oak Harbor, WA 98277
0.7 mi – about **2 mins**

Save trees. Go green!
Download Google Maps on your phone at **google.com/gmm**



MARCELLE ARONSON
17900 23RD LANE NE APT E304
SHORELINE, WA 98155

MICHAEL THELEN
BARBARA THELEN
1401 SE DOCK ST APT 101
OAK HARBOR, WA 98277

SHIRLEY SANDERS
1401 SE DOCK ST APT 102
OAK HARBOR, WA 98277

JAMES HADDON
316 SE PIONEER WAY #132
OAK HARBOR, WA 98277

DONALD/DONNA GRATE
TRUSTEES
1401 SE DOCK ST APT 202
OAK HARBOR, WA 98277

TIMOTHY BRAY
PO BOX 1799
OAK HARBOR, WA 98277

FREDDA PFAU
1401 SE DOCK ST APT 302
OAK HARBOR, WA 98277

TULL ET AL, LLP
C/O PATRICIA COHICK
1365 CHATHAM LANE
OAK HARBOR, WA 98277

ESTHER KNEALE, TRUSTEE
CHARLES KNEALE, "B"
TRUSTEE
747 SE BAYSHORE DR APT 102
OAK HARBOR, WA 98277

PERRY MCKEE TRUSTEE
NOLA MCKEE CO TRUSTEES
747 SE BAYSHORE DR APT 202
OAK HARBOR, WA 98277

LOUISE NIELSEN
307 155TH ST SW
LYNNWOOD, WA 98087-6609

LESLIE RIENTJES
MARY ANN RIENTJES
543 SW WATERLOO AVE
OAK HARBOR, WA 98277

HJW PROPERTIES LLC
PO BOX 80769
PORTLAND, WA 97280-1769

GSS INC
424 COVINGTON PLACE
GOLETA, CA 93117-1519

CHANA SRITONG
NATCHANOK SRITONG
17070 KOKANEE CT
MOUNT VERNON, WA 98274

TERRY SMITH
PO BOX 86
FREELAND, WA 98249

CITY OF OAK HARBOR
865 SE BARRINGTON DRVIE
OAK HARBOR, WA 98277

TIMBER ISLAND INC
PO BOX 42
OAK HARBOR, WA 98277

FIR GROVE PARTNERSHIP
41 NE MIDWAY BLVD STE 101
OAK HARBOR, WA 98277

MAKER'S MARK LLC
740 SE PIONEER WAY
OAK HARBOR, WA 98277

GARY FORNER
HENRY FORNER
11576 SW SHEFFIELD CIR
TIGARD, OR 97223

FRED WALRATH
711 SE BAYSHORE DR
OAK HARBOR, WA 98277

WL MASSEY
41 NE MIDWAY BLVD STE 101
OAK HARBOR, WA 98277

N.U.B. LLC
3078 NE GOLDIE RD STE C
OAK HARBOR, WA 98277

KRISTI JENSEN
380 SE 8TH AVE
OAK HARBOR, WA 98277

ISLAND TRANSIT
ATTN: ROY DANIEL
PO BOX 1735
COUPEVILLE, WA 98239

JOHN DUNNING
CHARLENE DUNNING
PO BOX 488
FRIDAY HARBOR, WA 98250

JILLIAN DAWN KEITH-
MADEIROS
PO BOX 1706
OAK HARBOR, WA 98277

CARLA DOZIER
DOUGLAS MILLER
830 SE BAYSHORE DR STE 201
OAK HARBOR, WA 98277

CHARLES WILKINS
PO BOX 535
OAK HARBOR, WA 98277

CHRISTOPHER SAXMAN
OAK HARBOR PROPERTIES INC
PO BOX 87
HANOVER, NEW MEXICO 88041

RYAN / KARA NOWICKI
CAPTURED MOMENTS
PHOTOGRAPHY
954 PEACOCK LANE
OAK HARBOR, WA 98277

PAUL NEWMAN
ROSE NEWMAN
886 SE BAYSHORE DR APT 202
OAK HARBOR, WA 98277

Mr. Dave Matulich
Municipal Liaison Manager
Puget Sound Engery
PO Box 97034 BOT-01G
Bellevue, WA 98009-9734

WHIDBEY HOLDINGS LLC
740 SE PIONEER WAY
OAK HARBOR, WA 98277

CATHERINE HENDERSON
886 SE BAYSHORE DR APT 302
OAK HARBOR, WA 98277

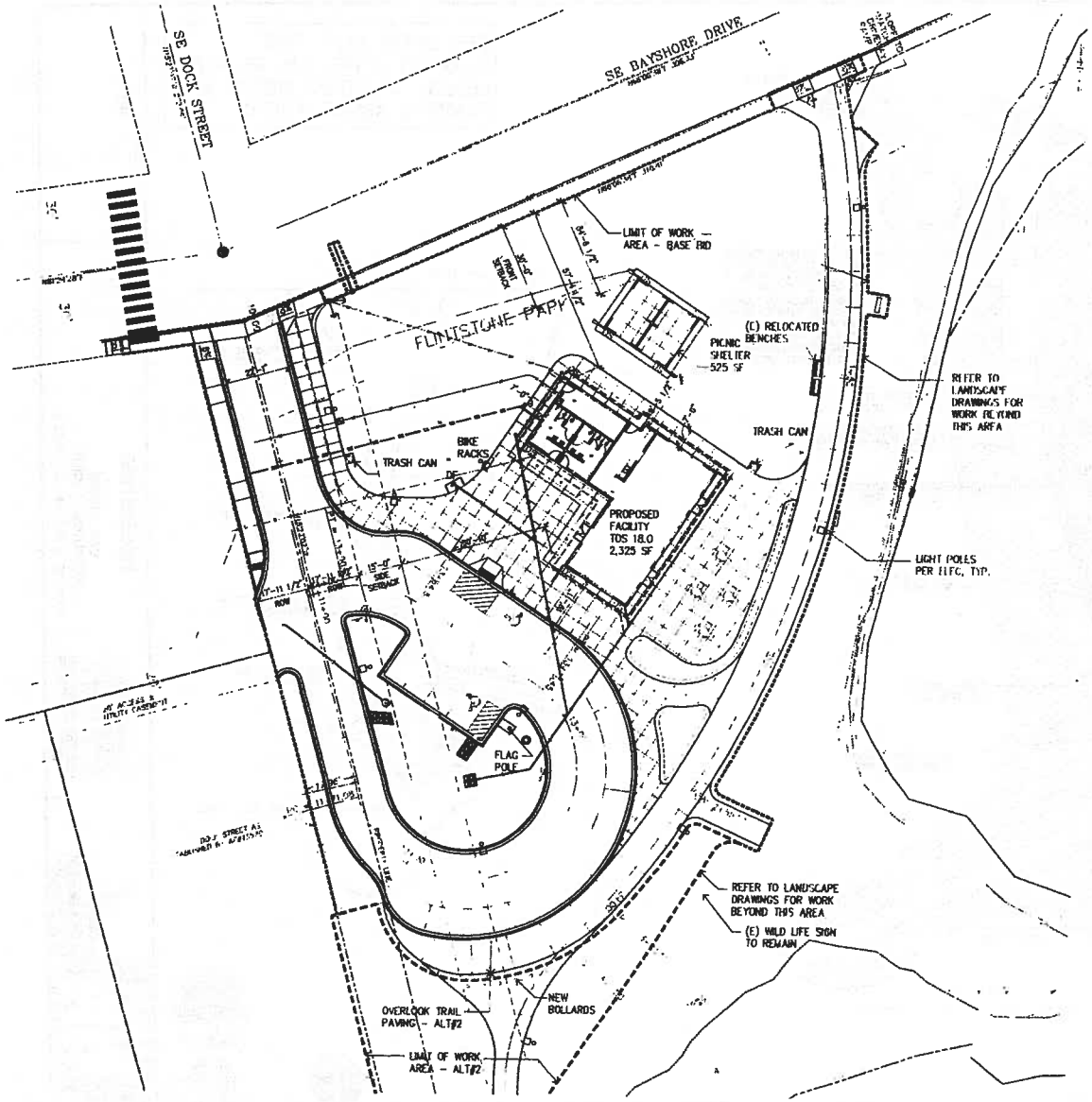
JOHN FINE
FRANK ANTHONY SANCHEZ
886 SE BAYSHORE DR APT A201
OAK HARBOR, WA 98277

LISA MARSHALL / MARILEE HIRST
PACIFIC HEALTHCARE
MANAGEMENT SERVICES
PO BOX 400
OAK HARBOR, WA 98277

ELEANOR HANKINS
886 SE BAYSHORE DR APT 7
OAK HARBOR, WA 98277

DAVID WALKER
PO BOX 897
OAK HARBOR, WA 98277

ATTACHMENT A



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PARKING PROVIDED:
(9) STALLS: (4) COMPACT – 9'-0" X 16'-0"
(5) STANDARD – 9'-0" X 26'-5"
(2) ACCESSIBLE STALLS: (1) 9'-0" X 25'-0" (1) 9'-0" X 16'-0"

SITE PLAN
BASE BID
SCALE: 1" = 20' (1)

PROJECT NORTH

PROJECT SITE ADDRESS:
SOUTH EAST BAYSHORE DRIVE
OAK HARBOR, WA 98277

PARCEL ID # S6565-00-00009-0

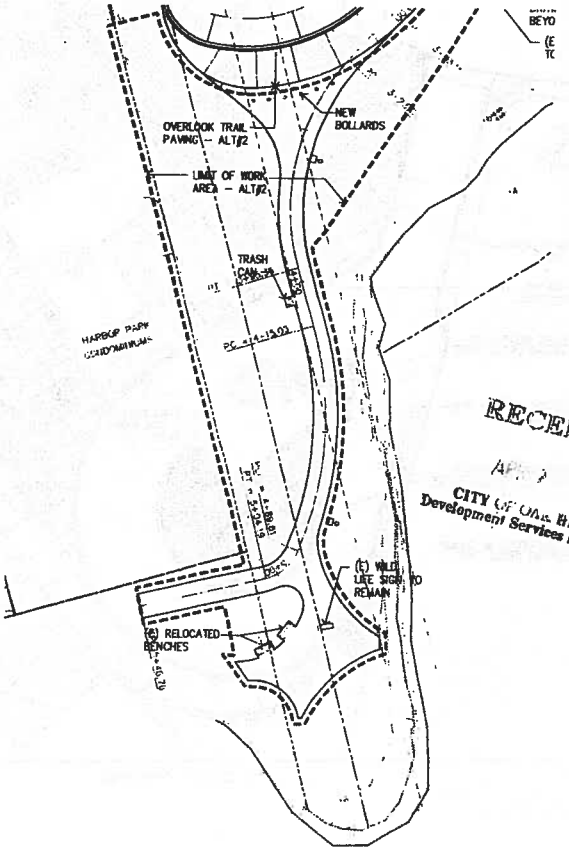
BUILDING USE: MEETING AND RESTROOM WITH PICNIC SHELTER FACILITY

PROPOSED WORK: CONSTRUCTION OF A NEW MEETING ROOM, PUBLIC RESTROOM FACILITY AND PICNIC SHELTER INCLUDING RELATED PARKING AREA AND PAVED TRAILS/WALKWAYS

LAND USE INFORMATION

SEPA	REQUIRED
LAND USE ZONE	(PF) PUBLIC FACILITY
SEISMIC ZONE	3
HEIGHT RESTRICTION	35 FT
YARD SETBACK REQUIREMENTS	
A. FRONT	30'
B. SIDE	15'
C. REAR	15'

SITE AREA:	65,776 SF (1.51 ACRE)
BUILDING AREA:	2,325 SF
PICNIC SHELTER AREA:	525 SF
LOT COVERAGE:	4.3%



OVERLOOK PAVING PLAN
ALTERNATE # 2 (2)
SCALE: 1" = 20'

PROJECT NORTH

RECEIVED
APR 28 2011
CITY OF OAK HARBOR
Development Services Department

NO.	DATE	REVISIONS DESCRIPTION

SITE PLAN
OAK HARBOR
MULTIMODAL FACILITY
PROJECT # ENG-08-44-PHASE I

10 | 2nd johnson o'brien associates llp
ARCHITECTURE | URBAN DESIGN | INTERIORS
2200 second avenue
seattle, washington 98121
phone 206.441.9080
fax 206.441.9085
internet www.sojobrien.com

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

PROJECT NO.	2009180
DESIGNED BY	BJP
DRAWN BY	BJP
CHECKED BY	JHC
APPROVED BY	JHC
DATE PLOTTED	4-18-2011
SCALE	1"=20'

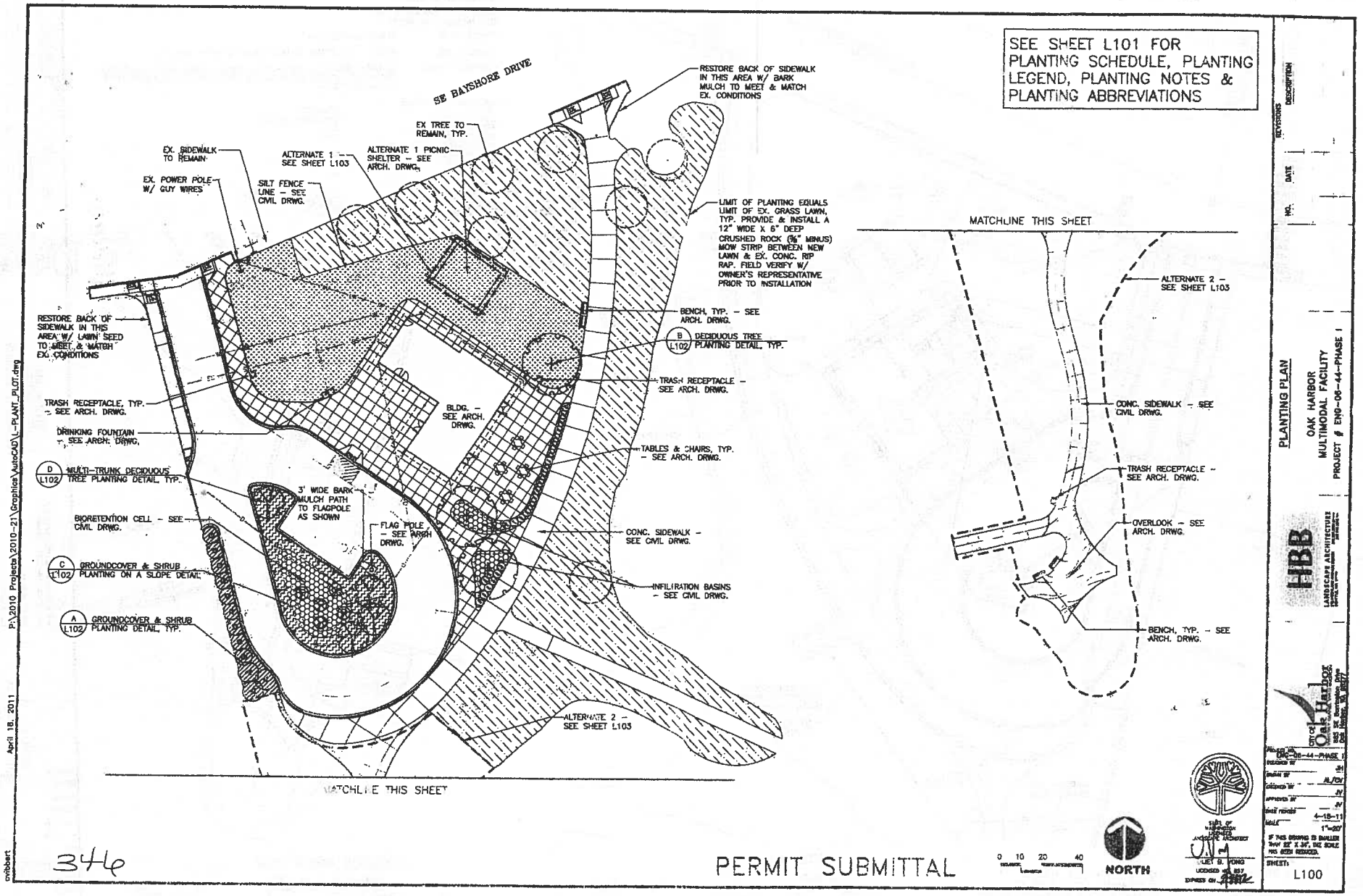
IF THIS DRAWING IS SMALLER THAN 22" X 34", THE SCALE HAS BEEN REDUCED.

SHEET:

1 SET

PC ATTACHMENT 2

April 20, 2011 - 2:09:30pm 2009180_Oak Harbor Multimodal.08 Drawings\Sheets\PERMIT SET 04-18-2011\ORM-SITE PLAN.dwg


SE BAYSHORE DRIVE
EX. SIDEWALK TO REMAIN
EX. POWER POLE W/ GUY WIRES
ALTERNATE 1 – SEE SHEET L103
SILT FENCE LINE – SEE CIVIL DRWG.
ALTERNATE 1 PICNIC SHELTER – SEE ARCH. DRWG.
EX TREE TO REMAIN, TYP.
RESTORE BACK OF SIDEWALK IN THIS AREA W/ BARK MULCH TO MEET & MATCH EX. CONDITIONS
LIMIT OF PLANTING EQUALS LIMIT OF EX. GRASS LAWN, TYP. PROVIDE & INSTALL A 12" WIDE X 6" DEEP CRUSHED ROCK (¾" MINUS) MOW STRIP BETWEEN NEW LAWN & EX. CONC. RIP RAP. FIELD VERIFY W/ OWNER'S REPRESENTATIVE PRIOR TO INSTALLATION
BENCH, TYP. – SEE ARCH. DRWG.
B L102 DECIDUOUS TREE PLANTING DETAIL, TYP.
TRASH RECEPTACLE – SEE ARCH. DRWG.
RESTORE BACK OF SIDEWALK IN THIS AREA W/ LAWN SEED TO MEET & MATCH EX. CONDITIONS
TRASH RECEPTACLE, TYP. – SEE ARCH. DRWG.
DRINKING FOUNTAIN – SEE ARCH. DRWG.
BLDG. – SEE ARCH. DRWG.
TABLES & CHAIRS, TYP. – SEE ARCH. DRWG.
D L102 MULTI-TRUNK DECIDUOUS TREE PLANTING DETAIL, TYP.
3' WIDE BARK MULCH PATH TO FLAGPOLE AS SHOWN
BIORETENTION CELL – SEE CIVIL DRWG.
FLAG POLE – SEE ARCH DRWG.
CONC. SIDEWALK – SEE CIVIL DRWG.
C L102 GROUNDCOVER & SHRUB PLANTING ON A SLOPE DETAIL
INFILTRATION BASINS – SEE CIVIL DRWG.
A L102 GROUNDCOVER & SHRUB PLANTING DETAIL, TYP.
ALTERNATE 2 – SEE SHEET L103
MATCHLINE THIS SHEET
SEE SHEET L101 FOR PLANTING SCHEDULE, PLANTING LEGEND, PLANTING NOTES & PLANTING ABBREVIATIONS
MATCHLINE THIS SHEET
ALTERNATE 2 – SEE SHEET L103
CONC. SIDEWALK – SEE CIVIL DRWG.
TRASH RECEPTACLE – SEE ARCH. DRWG.
OVERLOOK – SEE ARCH. DRWG.
BENCH, TYP. – SEE ARCH. DRWG.
NORTH
0 10 20 40
PERMIT SUBMITTAL
PLANTING PLAN
OAK HARBOR MULTIMODAL FACILITY
PROJECT # ENG-06-44-PHASE I
L100
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April 18, 2011
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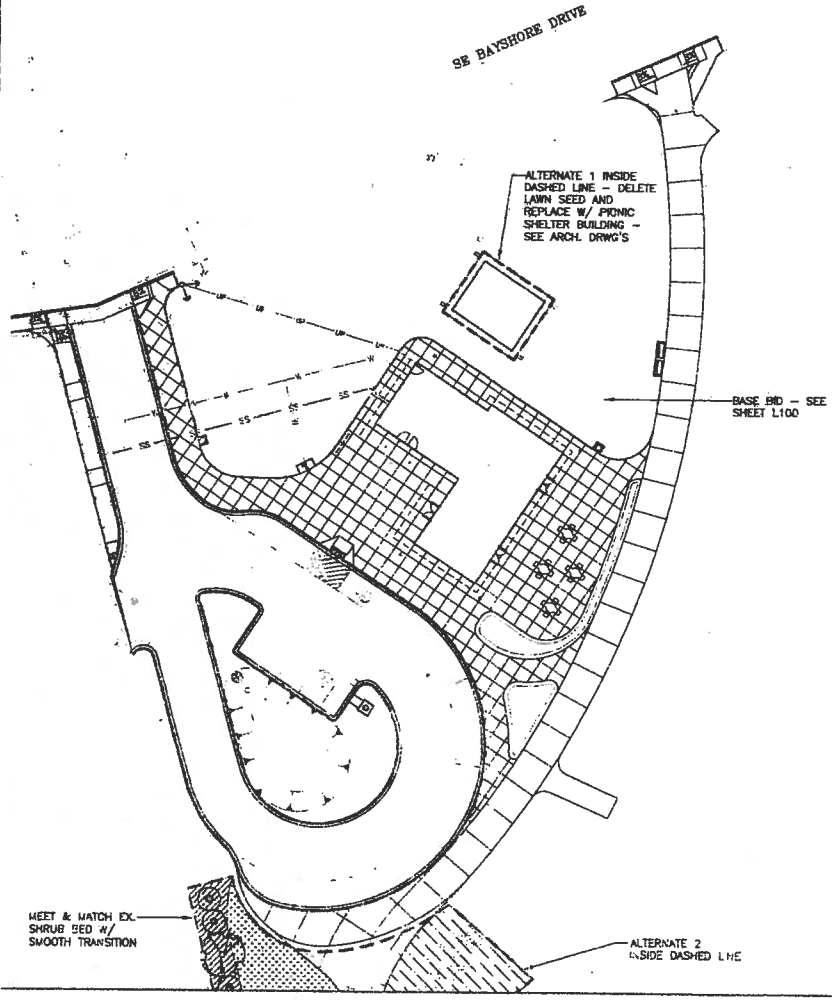
SEE SHEET L101 FOR PLANTING LEGEND, PLANTING NOTES & PLANTING ABBREVIATIONS



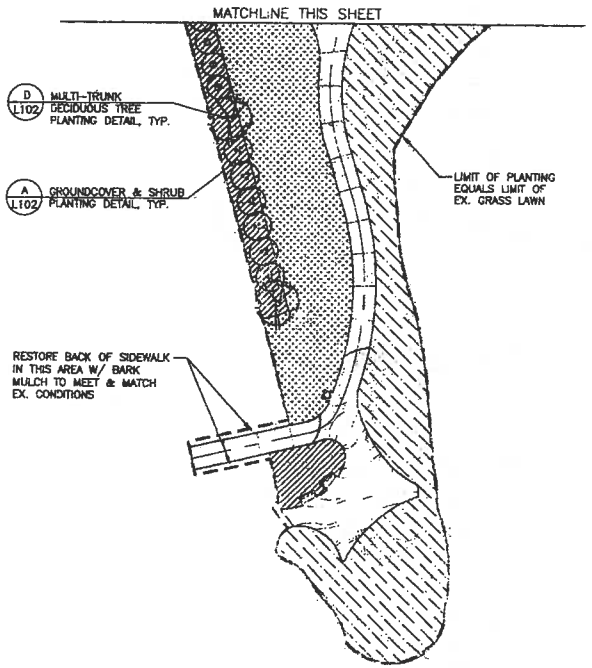
ALTERNATE 2 PLANTING SCHEDULE

SYM.	QTY.	SCIENTIFIC/COMMON NAME	SIZE/REMARKS
		TREES	
	3	Acer circinatum / VINE MAPLE	6' 6' HT. B&B, FULL, WELL BRANCHED, MULTI-TRUNKED W/ 5 MAIN TRUNKS. SPECIMEN QUALITY
		GROUNDCOVERS	
	*	Gaultheria shallon/ SALAL	1 GAL. CONT. FULL, WELL BRANCHED & WELL ROOTED. TRIANGULAR SPACING @ 18" O.C. W/ 12" OFFSET FROM ADJACENT CURB OR PAVING
	*	LAWN SEED	SEE SPEC'S
	*	RESTORATION LAWN SEED	

SYM.	QTY.	SCIENTIFIC/COMMON NAME	SIZE/REMARKS
		SHRUBS	
	6	Myrica californica/ PACIFIC WAX MYRTLE	2 GAL. CONT. FULL, WELL BRANCHED & WELL ROOTED
	8	Ribes sanguineum 'King Edward VII'/ KING EDWARD VII RED FLOWERING CURRANT	2 GAL. CONT. FULL, WELL BRANCHED & WELL ROOTED

* WHERE QUANTITIES ARE NOT SHOWN IN THE PLANT SCHEDULE, IT IS THE CONTRACTOR'S RESPONSIBILITY TO DETERMINE THE QUANTITIES REQUIRED TO MEET THE SPECIFIED PLANT SPACING.

1. CLEAR & GRUB EX. GRASS LAWN TO ONE (1) INCH DEPTH WITH SOD CUTTER MACHINE.
2. ROTOTILL EX. SOIL TO A SIX (6) INCH DEPTH.
3. RAKE, ROLL FOR FIRMNESS, DRAG TO EVEN GRADE, REMOVE & DISPOSE ALL ROCKS AND DEBRIS GREATER THAN ONE (1) INCH DIA.
4. INSTALL TWO (2) INCH DEPTH COMPACTED PLANTING SOIL TO ESTABLISH FINISH GRADE.
5. INSTALL LAWN SEED, SEE SPECS.



PERMIT SUBMITTAL

0 10 20 40

NORTH

REVISIONS: NO. | DESCRIPTION | DATE

PLANTING PLAN & SCHEDULE
ALTERNATE 1 & 2
OAK HARBOR
MULTIMODAL FACILITY
PROJECT # ENG-06-44-PHASE 1

HBB
LANDSCAPE ARCHITECTURE

City of Oak Harbor

ENG-06-44-PHASE 1
DESIGNED BY: JM
DRAWN BY: AL/CH
CHECKED BY: JM
APPROVED BY: JM
DATE PLOTTED: 4-18-11
SCALE: 1"=20'
IF THIS DRAWING IS SMALLER THAN 22" X 34", THE SCALE HAS BEEN REDUCED.
SHEET: L103

JULIET B. VONG
LICENSED LANDSCAPE ARCHITECT
EXPIRES ON: 2-2013

April 18, 2011
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CITY OF OAK HARBOR
MITIGATED DETERMINATION OF NONSIGNIFICANCE

Description of proposal: The City of Oak Harbor proposes to expand the municipal pier along the City's waterfront and to dredge and expand the existing boat basin and entrance channel located offshore. The pier facility consists of a main pier, wave barrier and floating pier about 300 feet in length, a secondary floating pier and seaplane moorage about180 feet in length and associated upland improvements (passenger waiting building, multipurpose building, other ancillary improvements).

Proponent: City of Oak Harbor

Location of proposal: The proposed project area is located at 1370 SE Dock Street in Oak Harbor, Island County, Washington (SE Quarter, Section 2, T32N, R1E, WM). A large portion of the project is located seaward of the Ordinary High Water Mark, although a number of changes are proposed for the upland areas in Flintstone Park at the foot of SE Dock Street.

Lead Agency: City of Oak Harbor

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment and that an environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c), so long as certain mitigating conditions are applied to this action. These conditions are described below. This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public on request.

☐ There is no comment period for this mitigated DNS.

☒ This mitigated DNS is issued after using the optional DNS process in WAC 197-11-355. There is no further comment period on the mitigated DNS.

☐ This mitigated DNS is issued under WAC 197-11-340)2); the lead agency will not act on this proposal for 14 days from the date below.

FINDINGS OF FACT:

1. The City of Oak Harbor has applied for a Shoreline Substantial Development Permit to construct a new municipal pier along the City's waterfront and to dredge and expand the existing boat basin and entrance channel located offshore. The pier facility consists of a main pier, wave barrier and floating pier about 300 feet in length, a secondary floating pier and seaplane moorage about180 feet in length and associated upland improvements (passenger waiting building, multipurpose building, other ancillary improvements).

2. The new municipal pier will replace an existing floating dock with a larger facility that is able to accommodate passenger-only ferries, seaplanes and day use moorage. The major pier components are as follows: an approximately 176-foot by 20-foot fixed approach pier; an approximately 310-foot by 20-foot fixed pier (main pier) with a partially penetrating vertical wave barrier, approximately 270-foot by 12-foot concrete float, observation shelter, and 120-foot and 80-foot gangways; a 180-foot by 12-foot concrete

float, aligned approximately east-west for day-use moorage, with an 80-foot gangway and a 30-foot by 50-foot float on the east end for seaplane access; and a connecting float between the bases of the two floats.

3. Approximately 108 galvanized steel pipe piles (12 to 16 inches in diameter) will be driven to support the approach pier, fixed pier and floating docks. The wave barrier will require about 75 additional galvanized steel pipe piles with interlocking steel sheet piles. The pipe piles will be driven into the mud and solid sheet piles will remain a minimum of 2 feet above the mudline to allow water circulation under the breakwater. A vibratory hammer will initially be used to set all piles. For the load-bearing piles for the approach and fixed piers, an impact hammer will be used. It may also be necessary to drive some wave barrier piles with an impact hammer.

4. **The decks of the approach and fixed piers will be constructed using pre-cast, pre-stressed concrete deck panels with grouted shear keys. Approximately 5% of the fixed pier surface will consist of contained concrete closure pours. Floating docks will be constructed of pre-engineered concrete pontoons filled with encapsulated foam. The pre-case units will be floated into place and connected on-site.**

5. **Dredging activities associated with this proposal will occur over a footprint of 8.33 acres. The design dredge depth is minus 12 feet MLLW plus 1-foot overdredge allowance. Sideslopes will be shaped to a 4:1 slope ratio. The total estimated quantity of material to be dredged is 139,000 cubic yards, which includes the sideslopes. Analysis of the dredge material indicates that it meets the suitability criteria for open-water disposal.**

6. Two small peninsulas jut into the harbor on the western portion of the project area, one at the base of the proposed pier site and one just to the west. These peninsulas will be cut back substantially and the shoreline graded to create new upper intertidal zone habitat. Fill activities will create a new, more natural beach profile by the placement of fill at depths of 3.5 to 4 feet thick in places. The top 0.5 feet of fill material (approximately 3,700 cy) will consist of "habitat mix," a composition of coarse sands and small gravels that range from 0.4 mm to 38.1 mm in diameter. As a result of this change, the upper intertidal zone habitat will increase from 1.27 to 1.59 acres, or 0.32 acre.

7. Approximately 4,000 square feet of additional impervious cover is proposed in the upland part of the project, primarily in a new paved path and the multipurpose building at the foot of the pier. With these improvements, the percentage of impervious area above ordinary high water will be approximately 20%.

8. Some upland grass vegetation will be removed as part of the beach creation and enhancement within the upper intertidal zone. In addition, an estimated 125 eelgrass shoots, with shoot densities ranging from one to eight shoots per patch, will likely be lost during dredging. According to Norris et al. (2002), the eelgrass observed in the project area is either a relic population or one that is sustained by propagules brought to the area by tidal currents.

9. Although no studies have been conducted on the river or rivers of origin of juvenile salmonids in Oak Harbor, it is expected that salmonid use of the harbor by fish originating from the Skagit River is significant. Oak Harbor is approximately 11 miles

west of the Skagit estuary. Salmonids from other rivers systems (e.g., Snohomish River, Stillaguamish River) may also utilize the bay. For the purpose of this environmental assessment, the Skagit River system is considered to be a representative source of chinook salmon, coho salmon and bull trout that occur in this locality. Bald eagle and marbled murrelet may also occur in the project vicinity.

10. During construction, nearly 200 new steel piles will be driven using a barge-mounted vibratory pile driver and impact hammer. Ambient noise levels will likely increase during pile-driving activities. Measurements taken elsewhere would indicate that driving piles results in a decibel reading of from 105 to 115 dB 50 feet from the source. Noise levels are highest when a pile was first driven, and decrease near completion because of a reduction of exposed surface area and increased stiffness.

11. **Pier lighting will consist of low-voltage, railing mounted pedestrian lights directed toward the pier surface and away from the water. There will be only a negligible light spillover onto the water surface. The observation shelter at the end of the pier will be internally lit with a ceiling-mounted down-light at or near the crown of the roof. This light will be controlled to minimize spillover onto the water surface. Light levels on the interior of the building will likely range from 1 to 3 footcandles (fc) and approximately 0.5 fc on the pier deck around the structure.**

12. **The Feasibility Analysis concluded that initial passenger ferry ridership from the proposed pier to Everett or Mukilteo might be on the order of 400 to 425 passengers per day. This projected ridership would likely be spread throughout the day, with expected peaking during the morning and late afternoon commute times. With a coordinated ridership program with Island Transit (encompassing vanpools and buses using the adjacent transfer station), this level of ridership would generate about 200 additional vehicle traffic trips per day. Increases due to enhanced seaplane use and day moorage is expected to be negligible.**

13. As a new public facility, it would be expected that the pier would cause an increased need for both public works services, in maintaining the facility, and police services, in policing the facility. Preliminary cost estimates to operate and maintain the municipal pier start in Year 1 at $30,000 annually and rise through inflation to nearly $60,000 in twenty years. In addition, re-dredging would occur on a ten year cycle, with the first effort in Year 10 expected to cost about $225,000. The City would also have to commit to establishing a capital replacement fund to ensure that monies are available for major repairs and replacement when pier components reach the end of their useful life.

SEPA MITIGATION MEASURES:

1. Bid specifications will include a requirement that appropriate best management practices (BMPs) be used to control erosion during construction. Efforts to control erosion from the intertidal expansion area will be developed in conjunction with State agencies.

2. Pier construction will utilize steel pilings instead of treated wood pilings to prevent the introduction of any chemical contaminants that might leach from the treated wood. Similarly, to minimize leaching of chemicals into the water column, the individual sections for the concrete floats will be prefabricated off-site and moved into position for

final assembly. [See Final Mitigation Plan for the Oak Harbor Municipal Pier Project, May 5, 2003]

3. Best management practices (BMPs) will be employed during dredging activities to minimize turbidity from dredging operations. BMPs to reduce resuspension of sediment during mechanical dredging could include the following: a. bucket deployment and retrieval could be slowed; b. the bucket descent would be stopped at the designated depth of digging penetration; c. "sweeping" the bottom to smooth contours could be disallowed; d. stockpiling of material on the bottom would not be permitted (each time the bucket is closed, it will be brought to the surface); e. the bucket could be paused for several seconds at the water surface during retrieval to release excess water within the bucket; f. free water draining from the barges could be filtered through hay bales or geotextile fabric before it is returned to the harbor. [See Final Mitigation Plan for the Oak Harbor Municipal Pier Project, May 5, 2003]

4. Native riparian vegetation (trees and shrubs) will be planted over a minimum of 0.4 acres of area adjacent to project shorelines. Species to be planted may include black cottonwood, willow, madrona, shore pine and Douglas fir. Planting densities will be appropriate for the species. Survival criterion will be 80% at the end of 5 years and additional plantings will me made if necessary to achieve that goal. [See Final Mitigation Plan for the Oak Harbor Municipal Pier Project, May 5, 2003]

5. Norris et al. (2002) identified existing eelgrass beds within 2,000 meters of the project area with estimated densities of 100 shoots per square meter. Eelgrass will be planted on the edge of these beds in three 3.5 x 3.5 meter plots, each with 64 PUs. Together, these eelgrass transplants will contain approximately 40% more individual eelgrass shoots (192 total) than were identified in the project area. Based on recent data, expansion and spreading of PUs have increased overall shoot density 100 times over the initial planting density within two years. This level of transplant performance will more than offset the loss of the sparse eelgrass in the project area. In addition, the City will conduct an experimental planting of at least 126 eelgrass shoots along the southeastern shore of the dredged canal. [See Final Mitigation Plan for the Oak Harbor Municipal Pier Project, May 5, 2003]

6. No dredging will occur above +2 feet MLLW in the current location. All dredging and construction activities will also be conducted during prescribed work windows to avoid periods when high abundances of juvenile Chinook salmon and bull trout are in the area. More specific mitigation measures for replacing habitat lost due to unavoidable impacts of dredging and pier constructions are as follows: [See Final Mitigation Plan for the Oak Harbor Municipal Pier Project, May 5, 2003]

a. The enhancement of the upper intertidal zone by about 0.32 acres, along 400 lineal meters, will provide potential spawning habitat for Pacific sand lance and surf smelt. Currently, the upper intertidal areas are dominated by large rocks, cobble and sand, with very little of the small gravel and sand necessary for spawning.

b. Regrading the two peninsulas on the western portion of the project site will reconnect the beach with existing spawning habitats immediately west of the project area.

c. The sparse eelgrass occurrences within the project area will be transplanted and enhanced at a ratio of 1.5:1, creating additional habitat adjacent to larger and denser concentrations of eelgrass.

d. A monitoring program will be put into action with measurable thresholds for success.

7. Hours of pile driving will be limited to normal work hours during the mandatory work windows. No significant effect or take on juvenile salmonids because the proposed work would occur outside of the months when significant numbers are present. Studies of pile driving activities on bald eagles indicate little or no impact on favored nesting or perching sites, although foraging behavior may be temporarily disrupted. As a result, no other measures to control noise impacts are proposed or necessary. [See Final Mitigation Plan for the Oak Harbor Municipal Pier Project, May 5, 2003]

8. If any evidence of traditional cultural properties is uncovered during excavation, the City will notify the Washington State Office of Archaeology and Historic Preservation and affected tribal groups.

9. Before undertaking this project, the City will formulate a strategy for how the carrying costs associated with the municipal pier will be funded without unduly affecting other public services.

CONCLUSION OF LAW:

With the mitigation measures described above and contained in the *Mitigation Plan for the Oak Harbor Municipal Pier Project, May 5, 2003,* adopted by this reference into this document, all of the anticipated environmental impacts from the proposed Oak Harbor Municipal Pier Project can be mitigated to a level of nonsignificance. Additional mitigation measures may be imposed by applicable state, federal and local agencies and regulations.

Responsible Official: Steve Powers

Position/Title: Director of Development Services Phone: (360) 679-5551

Address: 865 SE Barrington Drive, Oak Harbor, Washington 98277

Date: 10/13/03 Signature:

This mitigated determination of nonsignificance shall be considered final unless subsequently modified by a major amendment to the proposed project. You may appeal this determination to the City Council at Oak Harbor City Hall, 865 SE Barrington Drive, Oak Harbor, WA, 98277 within fifteen days of the date set out above, or no later than close of business on November 3, 2003.

BEFORE THE CITY OF OAK HARBOR PLANNING COMMISSION
STATE OF WASHINGTON

In Re Application #PLN 11-02	)	FINDINGS OF FACT
	)	CONCLUSIONS OF LAW
	)	AND RECOMMENDATION
	)	OF PLANNING COMMISSION

City of Oak Harbor Multimodal Facility Uplands Improvements Project Shoreline Substantial Development Permit.

THIS MATTER came before the Planning Commission upon the application of the City of Oak Harbor for a Shoreline Substantial Development Permit. Having considered the evidence in the record, heard the arguments of the parties and any public comment, and being fully advised in the premises, the Planning Commission hereby enters the following findings of fact, conclusions of law, and recommendation:

Findings of Fact

1. An application for a Shoreline Substantial Development Permit was filed with the Department of Development Services and deemed complete by the Director on May 10, 2011.
2. The permit sought by the applicant is to construct uplands improvements associated with the Multimodal Facility Project to Flintstone Park within the City's regulated shoreline area which is located within 200 feet of the ordinary high water mark of the waters of Oak Harbor Bay.
3. A Notice of Application was published in the Whidbey News Times, the newspaper of local circulation on May 14 and May 21, 2011.
4. The Public Hearing for the Planning Commission was advertised in the newspaper on June 4, 2011.
5. The original environmental assessment and determination made in 2003 still applies to this project in accordance with the checklist requirements of the State Environmental Policy Act of 1971; no adoption or changes are needed per WAC 197-11-600(4)(a).
6. A Mitigated Determination of Non Significance was issued for the project on October 13, 2003.

Conclusions of Law

A. The Planning Commission has jurisdiction to make a recommendation on this project permit pursuant to the City's Shoreline Master Program.
B. Proper notice of all hearings, comment periods and appeal periods was given.
C. A single open record hearing on the permit application was held before the Planning Commission.
D. The Planning Commission recommendation regarding the permit application was reached

after a single open record public hearing.
E. The permit application meets the goals, policies, and regulations of the City's Shoreline Master Program.

Recommendation

Based upon the foregoing findings of fact and conclusions of law, the Planning Commission hereby recommends approval of the Shoreline Substantial Development Conditional Use Permit based upon the following conditions:

1. The following mitigation measures from the Mitigated Determination of Nonsignificance issued on October 13, 2003 apply:
    a. Bid specifications will include a requirement that appropriate best management practices (BMPs) will be used to control erosion during construction.
    b. If any evidence of traditional cultural properties is uncovered during excavation, the City will notify the Washington State Office of Archaeology and Historic Preservation and affected tribal groups.
2. Temporary public access shall be provided and remain open from Bayshore Drive to the existing municipal dock.
3. The Waterfront Trail beginning at Waterside Condos and ending at the northeastern corner of Flintstone Park shall be closed to public access during construction. Temporary access will be by way of Bayshore Drive for trail users. Temporary access provisions such as signage and fencing shall be erected at both ends of the Waterfront Trail to inform trail users.
4. Construction pursuant to the shoreline substantial development permit shall not begin and is not authorized until 30 days from the date of filing with the Department of Ecology or until review proceedings initiated within 30 days from the date of such filing have been terminated.

This order is advisory to the City Council and may be accepted by the City Council, remanded to the Planning Commission for reconsideration, or rejected by the City Council after public hearing.

RECOMMENDED TO THE CITY COUNCIL THE 21st DAY OF JUNE 2011.

PLANNING COMMISSION
CITY OF OAK HARBOR, WASHINGTON

_____
Chair

Attest:

_____
Kathy Gifford
Clerk to the Planning Commission

PLANNING COMMISSION
REGULAR MEETING
CITY HALL – COUNCIL CHAMBERS
June 21, 2011

ROLL CALL: **Present:** Keith Fakkema, Gerry Oliver, Kristi Jensen, Jeff Wallin, Greg Wasinger and Jill Johnson. **Absent:** Bruce Neil. **Staff Present:** Development Services Director, Steve Powers; Associate Planner, Melissa Sartorius; City Engineer, Eric Johnston and Project Engineer, Joe Stowell.

Vice Chairman Fakkema called the meeting to order at 7:30 p.m.

MINUTES: **MS. JENSEN MOVED, MR. WASINGER SECONDED, MOTION CARRIED TO APPROVE THE April 26, 2011 MINUTES AS PRESENTED.**

PUBLIC COMMENT: No comments.

SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT – CITY OF OAK HARBOR MULTIMODAL FACILITY PROJECT– Public Hearing

Ms. Sartorius reported that State law (RCW 90.58) gives local government authority to administer the Shoreline Master Program (SMP) and the SMP gives Planning Commission the authority to make a recommendation on substantial development permits to City Council.

Ms. Sartorius presented background associated with the project, the purpose of the SMP and what it means. Ms. Sartorius noted that public notice was done in accordance with City Code. A Mitigated Determination of Nonsignificance (MDNS) was issued October 13, 2003. The SEPA decision covered the entire project and the original checklist and MDNS from 2003 applies; no adoption or changes are needed per WAC 197-11-600(4)(a). All applicable mitigation measures in checklist and MDNS apply and the applicable mitigation measures are listed at the back of the staff report as conditions. Ms. Sartorius noted that one public comment was received and provided it to the Commissioners (attached to these minutes as PC Attachment 1).

Ms. Sartorius displayed the site plan showing details of what the proposal includes: a new multipurpose building including restrooms, a picnic shelter, plaza area, parking including loading/drop-off area, widened trail and then paved overlook. The existing restrooms and picnic shelter will be demolished. Simulations were displayed of what the exterior of the building will look like at different angles as well as the interior which will have capacity for 90 people. Ms. Sartorius noted that the applicant has submitted an updated site plan that changed the number of parking spaces from eleven to twelve parking spaces.

Ms. Sartorius stated that the Shoreline Management Act (SMA) and the SMP are intended to preserve the shoreline environment/respect property rights and preserve or enhance public access to the shoreline and pointed out that the improvements are to an existing facility and a long established park. The improvements will not encroach further into the shoreline area and no impacts to the shoreline environment are anticipated.

Ms. Sartorius detailed compliance with applicable sections of the SMP, recreation policy and regulations and concluded that the project consists of improvements landward of the ordinary high water mark but still within the shoreline area regulated by the SMP. SEPA review was conducted and it was determined that the original environmental assessment and determination made in 2003 still applies. The proposal is consistent with the SMP by meeting all adopted

standards for a recreation use within the shoreline and meeting all other applicable shoreline use policies. Ms. Sartorius recommended approval of the Shoreline Substantial Development Permit with conditions in the Findings of Fact.

Discussion

Mr. Oliver asked what would happen to the Fred Flintstone car and where the capital funds would come from for repairs and replacement. Mr. Stowell indicated that the car would remain as is. Mr. Powers noted that the section Mr. Oliver was referring to with regard to the capital funds for repairs and replacement is referring to the capital replacement program for the in-water portion of the project. For the park structure, the capital replacement program is to some degree already embodied in the Parks budget albeit very small and perhaps sometimes not sufficient to cover all our facilities but there is already some thought as to how to budget for routine maintenance of the facility. Mr. Powers also noted that the Council is charged with making the budgetary decisions and the Planning Commission's role this evening is to determine whether the project is consistent with the Shoreline Master Program requirements.

Ms. Johnson commented that one of the review criteria mentioned is how the project would impact neighbors and that the use is consistent with its current use. Ms. Johnston pointed out that the facility was called a meeting space which is a different use than there is in that location now and she asked if there were limited uses or hours of operation. Mr. Powers stated that at this stage the building has the potential to have events or activities but there has been no policy established by the City Council for how that space will used yet. How the space will be used will be a different conversation that the City Council and the community will be involved in sometime in the future.

Ms. Johnson felt that saying that there would be no impact on the neighbors without knowing what the building will be used for is a leap of faith based on information that the Planning Commission doesn't have.

Mr. Powers indicated that it is within the Planning Commissions purview to add a condition of approval if the Planning Commission feels there is an issue related to making a recommendation as to whether or not the project is consistent with the goals of the Shoreline Master Program. As far as a change in activity, in staff's view point, we are talking about restroom facility and picnic facilities. Yes there is an interior space, keeping in mind that the interior space was originally designed to be the waiting area for the pier which was part of the multimodal program. How that space may be utilized in the interim remains to be seen.

There was additional discussion about the original intent of the multimodal program and additional questions about the cost and where the funds come from. Mr. Stowell said that the engineer's estimate for construction is $1,040,000. Mr. Johnston explained that the funds for come from the Federal Government through the Federal Transportation Administration (FTA) grant and the General Fund.

Mr. Fakkema opened the public hearing at 7:58 p.m.

Gray Giordan (651 SE Bayshore Drive) asked the following questions:

1. What is the amount of the grant?
2. What is the proposed rental fee?
3. Why does the ticket building or meeting building enjoy a better view placement than the picnic structure?
4. How much natural surface currently exists and how much after the proposed changes?

5. Have the engineer's estimated costs for City projects ever run over the estimated budget?

Mr. Giordan also thanked Ms. Johnson for her question about unintended consequences. Mr. Giordan believed that there would be unintended consequences. He was a little disturbed to find out that the building is really for the pier and the ferry. He felt that it would be a long time before the pier would be built and that current park users won't see any benefit. Mr. Giordan referred to his e-mail documenting repair and maintenance issues in Windjammer Park and pointed out that the Parks Department does a great job but there are a lot of buildings. Mr. Giordan felt that the proposed building would be better positioned in Windjammer Park where there are two roads with access. Mr. Giordan wanted to defend Flintstone Park as a relatively unimproved space.

Billy Cook (651 SE Bayshore Drive) commented that she uses the park and she also agreed with Ms. Johnson about the unknown and there is much more serious study that must be done. Now the park is a quiet, peaceful little park. Ms. Cook didn't think there was enough room for a seaplane, ferry and a pier. Ms. Cook spoke of unintended consequence from actions taken by the City that have affected her condominiums just down the street.

Steve Bonner (651 SE Bayshore Drive) pointed out that the capacity of the building is for 90 people but there are only 12 parking spaces.

Seeing no further public comment Mr. Fakkema closed the public hearing at 8:07 p.m.

Mr. Fakkema asked if staff would respond to the questions asked during the public comment period.

Mr. Powers referenced past events to give those present context about previous efforts in bringing the multimodal facility about. Mr. Powers spoke about the tremendous amount of public discussions and actions by the City Council that played into the design. Mr. Powers noted that if the City were in financial position to build the project what would have already happened based upon the approvals from 2003. There would have been the construction of a pier, the construction of the building to serve the users of the park and the transit facility. Use by the transit facility is part of the reason the City received the funding for the uplands portion of the project from the FTA. Those funds cannot be used at another location as was suggested. The funds are transportation dollars to be used on Phase I of the multimodal facility.

The site plan design decisions were previously made in 2000 and once authorization was given by City Council to go forward with building plan design staff worked very hard not to go backward in time and re-examine those design decisions that were previously made because it wasn't a wise use of public funds to go back and reinvent the design. The positioning of the structures on the park was hammered out a number of years ago through a public process.

The project as proposed would benefit the users of Flintstone Park and not just the eventual users of the City's municipal pier. Staff believes that the members of the community will benefit from more modern bathroom facilities, better parking and a better separation between the waterfront trail from the existing asphalt parking area and a better section of trail through the area.

With respect of budget and public works projects, for some time our engineers have been very conservative in their estimates and the actual costs of the projects have been considerably

below the estimate. This is not to say that sometimes things don't change. Mr. Powers didn't believe that there was any reason to believe that this would change for this project.

Mr. Stowell spoke to the question about change in natural surface versus impervious surface. There will be an additional 11,300 square feet of impervious cover due mostly to the pathway parking area and around the building itself.

Mr. Powers spoke to the question about the number of parking spaces. The facility is located in the downtown and there is a substantial amount of on-street parking within the Bayshore area and the City's park-and-ride lot is available on Dock Street and the facility is adjacent to the transit station. One of the things that was of paramount importance to the Pier Committee when they were originally working on the design was that they didn't want it to be a large parking lot which was going to serve only those users of the pier, they wanted to hold onto the park space recognizing that people in the community use the park.

Discussion

Mr. Wasinger thought that the picnic tables should be in a more prime location and asked if the positioning could be changed. Mr. Powers said that Planning Commission could recommend changes to the site plan but to be specific so that the intent and meaning is well understood by the Council. Mr. Powers noted that this is a complete permit package and staff is working towards spending the Federal dollars that were obligated some time ago and there is full engineering and full site plan and building plans but until there is a Shoreline Substantial Development Permit there is no project.

Ms. Jensen asked how much the grant was. Mr. Powers said that the grant was slightly over one million dollars but the actual funding that we receive is just above $800,000. $200,000 is the City's responsibility to match the grant.

Ms. Johnson asked staff to explain the process of how the City got to the point where there is a project ready to go but there are members of the Planning Commission that still have questions about elements of the project. Mr. Powers said that our Code allows for the City to make a concurrent submittal for a site plan, civil plan and building plans and process them through the review process. In this case the City is both the applicant and the reviewing agency. Secondly, we were basing our work on the previously approved shoreline development permit from 2003 and this design is very consistent with that permit approval. Mr. Johnston also noted that the project has been vetted through the Parks Board on more than one occasion and the process and development of the plans and specifications has also been presented to the Public Works Standing Committee. Mr. Johnston pointed out the Helen Chatfield-Weeks is the Chair of the Parks Board and was also significantly involved with the development of the pier project and has been engaged with the project for a very long time.

Ms. Johnson asked if there were any questions from the Planning Commission that were unfamiliar questions that were vetted in the Parks Board or that were asked at Public Works. Mr. Johnston said no, but the question about the use of the facility is hard to answer because we don't know. It still has to go through the Parks Board and the City Council as to how the building will be used. Staff believes that the use will be similar to the other buildings at Windjammer Park such as church, family, or community events. Mr. Johnston also pointed out the need for maintenance on the current building and that the original restrooms were built in the 1980's and there have been significant security concerns with the restroom facility, so the facility was designed with that in mind, to help control the security concerns. The orientation of

the structure was to make it more visible from the street to avoid those illicit activities that can occur in parks.

Mr. Wasinger asked if the restrooms would be accessible from the inside of the building as well as the outside. Mr. Johnston said that they are only accessible from the outside.

Ms. Jensen indicated that she was having a hard time moving the permit forward without knowing how building was going to be used. Mr. Powers reminded the Commissioners that they are being asked to make a decision as to whether the project is consistent with the Shoreline Master Program. The project is a recreation improvement in an existing recreational facility. The question about how a facility may be used is an excellent question and it is one that the City Council will also be engaged in but the activities are not dissimilar to the activities to the space that we have in our other major waterfront park known as Windjammer Park.

There was continued discussion by the Commission about uneasiness regarding the possible uses of the new building facility and the possible adverse impacts on neighboring property owners. Mr. Powers noted that the facility is defined as a restroom facility, picnic facility, a meeting space and a public viewing space and those are the four main activities that would occur on the site and those are consistent with the recreational goals and policies within the Shoreline Master Program and they are consistent with other uses we have within the shoreline environment. A separate issue is how that interior space may eventually be utilized if it is utilized in a fashion different than our existing spaces are used today. Planning Commission would have to find that the meeting space is not consistent with the regulation and would have to further find that that means that the project isn't consistent will all of the recreational goals and policies.

Ms. Johnston asked if what staff is saying is that the use of that facility is governed by regulations within the Parks Department. Mr. Powers said yes, absent any change in those regulations by the City Council which would be part of another public process. Mr. Powers suggested that the Planning Commission could add or modify the draft Findings of Fact to specifically address their concern about the building's use.

The location of the picnic area was discussed further. Mr. Wasinger said that he understood why the picnic area was located closer to the street for policing and to prevent illicit activities in the picnic area.

Mr. Wallin asked when the grant expires. Mr. Johnston indicated that there is some time before the grant expires but that the FTA has the expectation that the facility will be under construction later this year.

Mr. Fakkema asked if the permits are looked at by any higher authority than the City. Mr. Powers explained that the permits get circulated for comment to the State Department of Ecology and they have the opportunity to comment on mitigation measures that the City imposes on itself. As a general rule the City is harder on itself just to be sure that we don't have any conflicts of interest. Mr. Powers commented that it is typical for cities to undertake public works projects and that puts the city in the role of permit applicant and reviewing agency. There is also a 30 day appeal period that allows for individuals to appeal Councils decision to Ecology.

There was discussion about whether the Parks Department could afford to maintain the facility. Mr. Johnston pointed out the questions as to whether the Parks Department could afford to maintain the facility in its current state or whether they can afford to maintain improvements in

Windjammer Park or Fort Nugent Park etc., is a difficult problem and oftentimes a struggle for people to understand how we can build new facilities and not maintain or replace other facilities within the City. When new improvements go in maintenance cost go down over a period of time and as improvements age the maintenance costs go up. It is a fair assessment that there are significant maintenance needs in the Parks Department. There are dollars that are specifically set aside for capital improvements that cannot be used for maintenance or could not be used until the Legislature changed the law this year.

Mr. Wasinger asked how long the construction project would take. Mr. Johnston said it would take about four months.

ACTION: **MS. JOHNSON MOVED, MR. OLIVER SECONDED, MOTION CARRIED BY A VOTE OF 4 IN FAVOR AND 1 OPPOSED TO RECOMMEND THAT THE CITY COUNCIL APPROVE THE SHORELINE SUBSTANTIAL DEVELOPMET PERMIT FOR THE CITY OF OAK HARBOR MULTIMODAL FACILITY PROJECT SO LONG AS THE FACILITY IS USED FOR PURPOSES CURRENTLY IN LINE WITH THE CITY'S PARKS AND RECREATION POLICIES.**

ACTION: **MS. JOHNSON MOVED, MR. OLIVER SECONDED, MOTION CARRIED BY A VOTE OF 4 IN FAVOR AND 1 OPPOSED TO ADOPT THE FINDINGS OF FACT, CONCLUSIONS OF LAW AND RECOMMENDATION OF PLANNING COMMISSION WITH THE FOLLOWING REVISIONS:**

ADD TO THE LAST SENTENCE IN SECTION E UNDER CONCLUSIONS OF LAW, "SO LONG AS THERE IS LANGUAGE LIMITING THE USE OF THE FACILITY TO USES AND PURPOSES CURRENTLY IN LINE WITH THE CITY'S PARKS AND RECREATION POLICIES" AND ADD ADDITIONAL RECOMMENDATION NUMBER 5 TO STATE, "THE FACILITY SHOULD BE USED FOR PURPOSES CURRENTLY IN LINE WITH THE CITY'S PARKS AND RECREATION POLICIES".

ADJOURN: 8:50 p.m.

Melissa Sartorius

From: Dee and Gray Giordan [giordan@comcast.net]
Sent: Monday, June 20, 2011 12:11 AM
To: Melissa Sartorius
Subject: Comments regarding the Flintstone Park proposal
Attachments: 2011 park proposal.pdf

Dear Melissa Sartorius,
Please accept this email and slide presentation as my comments regarding the proposed changes at Flintstone Park. I may call to verify receipt and proper operation of the presentation.
Sincerely,
Gray Giordan
http://giordan.dotphoto.com

RECEIVED
JUN 20 2011
CITY OF OAK HARBOR
Development Services Department

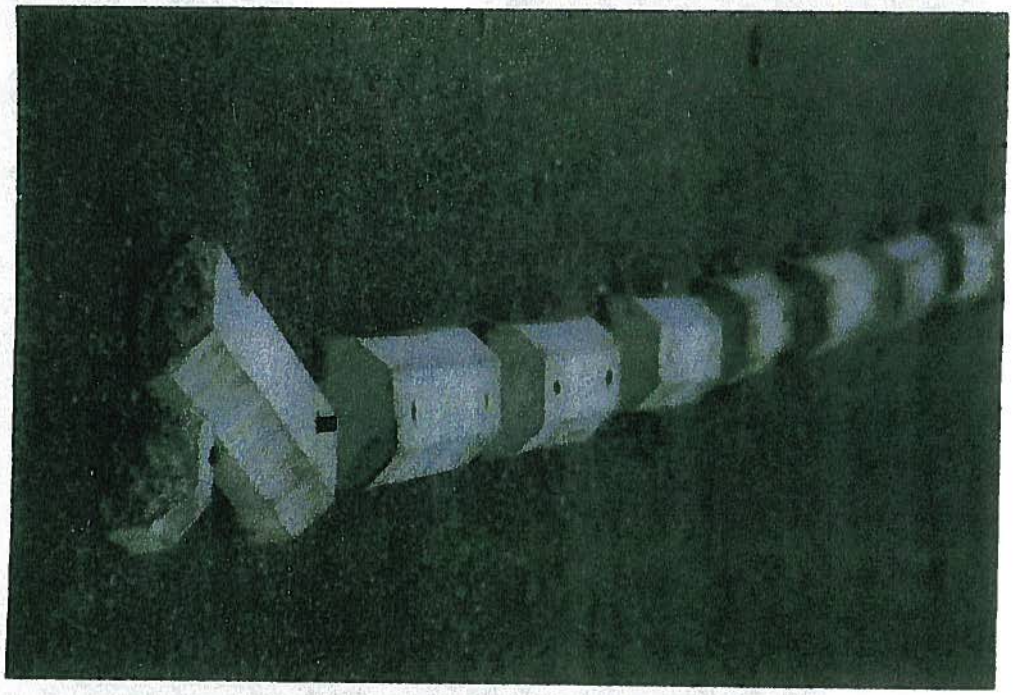
Windjammer Park Facilities

362

Windjammer Park picnic tables

- Damaged Siding

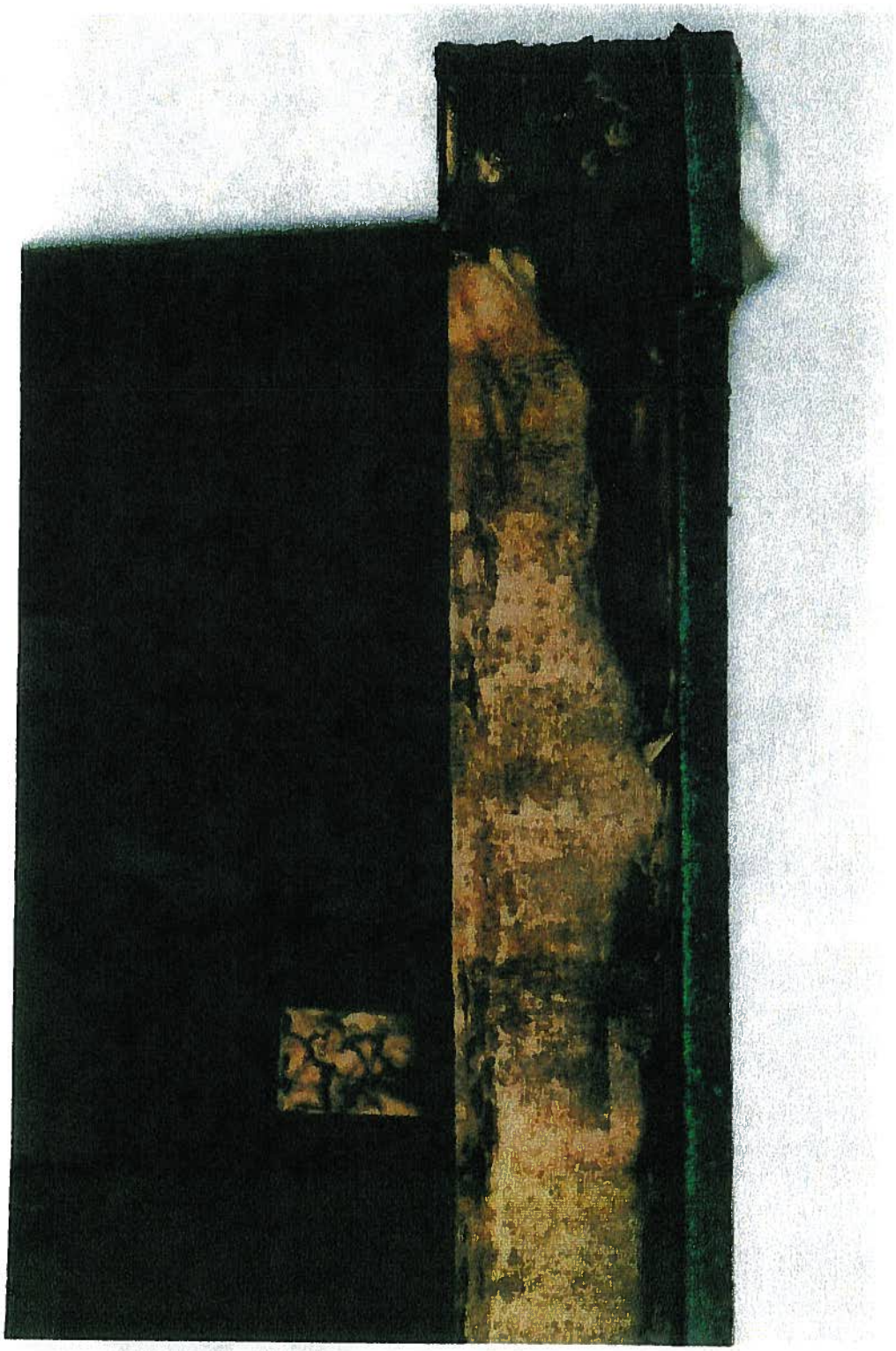
Frayed flags



Less than 2 years old

Broken Chimney

Flashing failure and rot aren't pretty



Flashing and roof failure

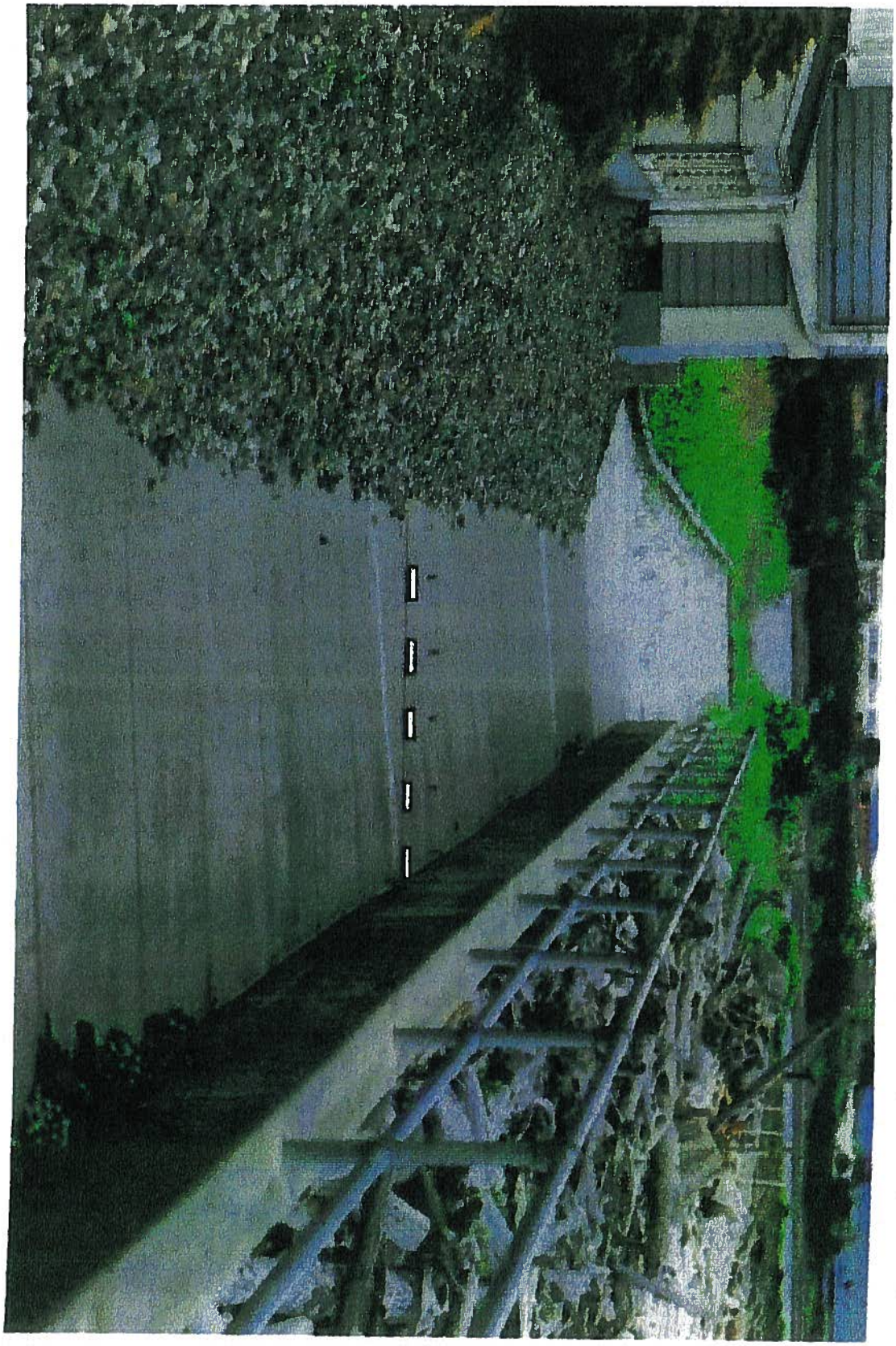
ATTACHMENT B

Bandaid has failed. How long will rest of the roof last?

PC ATTACHMENT 1

369

Windjammer Park item 11



Dangerous tilted walkway

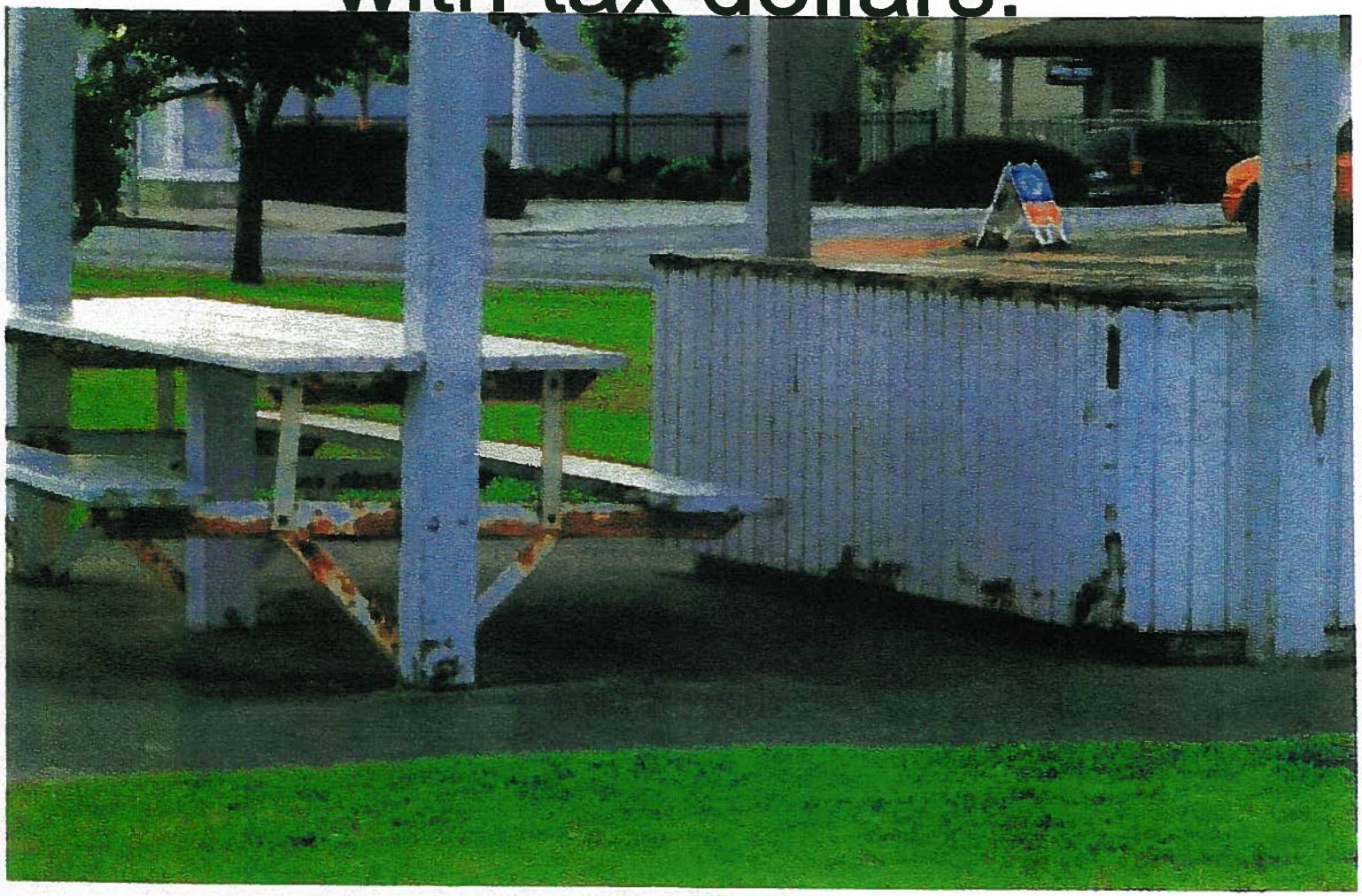
Tension spring will fail under load

Unexpected maintenance

Regular maintenance

How many are there?

Built with tax dollars, not maintained using tax dollars then demolished with tax dollars.



PC ATTACHMENT 1

ATTACHMENT B

Yes you can see thru that support post.

Do these work?

BEFORE THE CITY OF OAK HARBOR PLANNING COMMISSION
STATE OF WASHINGTON

In Re Application #PLN 11-02	)	FINDINGS OF FACT
	)	CONCLUSIONS OF LAW
	)	AND RECOMMENDATION
	)	OF PLANNING COMMISSION

City of Oak Harbor Multimodal Facility Uplands Improvements Project Shoreline Substantial Development Permit.

THIS MATTER came before the Planning Commission upon the application of the City of Oak Harbor for a Shoreline Substantial Development Permit. Having considered the evidence in the record, heard the arguments of the parties and any public comment, and being fully advised in the premises, the Planning Commission hereby enters the following findings of fact, conclusions of law, and recommendation:

Findings of Fact

1. An application for a Shoreline Substantial Development Permit was filed with the Department of Development Services and deemed complete by the Director on May 10, 2011.
2. The permit sought by the applicant is to construct uplands improvements associated with the Multimodal Facility Project to Flintstone Park within the City's regulated shoreline area which is located within 200 feet of the ordinary high water mark of the waters of Oak Harbor Bay.
3. A Notice of Application was published in the Whidbey News Times, the newspaper of local circulation on May 14 and May 21, 2011.
4. The Public Hearing for the Planning Commission was advertised in the newspaper on June 4, 2011.
5. The original environmental assessment and determination made in 2003 still applies to this project in accordance with the checklist requirements of the State Environmental Policy Act of 1971; no adoption or changes are needed per WAC 197-11-600(4)(a).
6. A Mitigated Determination of Non Significance was issued for the project on October 13, 2003.

Conclusions of Law

A. The Planning Commission has jurisdiction to make a recommendation on this project permit pursuant to the City's Shoreline Master Program.
B. Proper notice of all hearings, comment periods and appeal periods was given.
C. A single open record hearing on the permit application was held before the Planning Commission.

D. The Planning Commission recommendation regarding the permit application was reached after a single open record public hearing.
E. The permit application meets the goals, policies, and regulations of the City's Shoreline Master Program, so long as the use of the facility is limited to uses currently in line with the City's Parks and Recreation Regulations.

Recommendation

Based upon the foregoing findings of fact and conclusions of law, the Planning Commission hereby recommends approval of the Shoreline Substantial Development Conditional Use Permit based upon the following conditions:

1. The following mitigation measures from the Mitigated Determination of Nonsignificance issued on October 13, 2003 apply:
    a. Bid specifications will include a requirement that appropriate best management practices (BMPs) will be used to control erosion during construction.
    b. If any evidence of traditional cultural properties is uncovered during excavation, the City will notify the Washington State Office of Archaeology and Historic Preservation and affected tribal groups.
2. Temporary public access shall be provided and remain open from Bayshore Drive to the existing municipal dock.
3. The Waterfront Trail beginning at Waterside Condos and ending at the northeastern corner of Flintstone Park shall be closed to public access during construction. Temporary access will be by way of Bayshore Drive for trail users. Temporary access provisions such as signage and fencing shall be erected at both ends of the Waterfront Trail to inform trail users.
4. Construction pursuant to the shoreline substantial development permit shall not begin and is not authorized until 30 days from the date of filing with the Department of Ecology or until review proceedings initiated within 30 days from the date of such filing have been terminated.
5. Use of the facility should be limited to purposes currently in line with the City's Parks and Recreation Regulations.

This order is advisory to the City Council and may be accepted by the City Council, remanded to the Planning Commission for reconsideration, or rejected by the City Council after public hearing.

RECOMMENDED TO THE CITY COUNCIL THE 21st DAY OF JUNE 2011.

PLANNING COMMISSION
CITY OF OAK HARBOR, WASHINGTON

Vice Chair

Attest:

Kathy Gifford
Clerk to the Planning Commission

ATTACHMENT D

BEFORE THE CITY OF OAK HARBOR CITY COUNCIL
STATE OF WASHINGTON

In Re Application No. PLN 11-02	)	FINDINGS OF FACT
	)	CONCLUSIONS OF LAW
	)	AND DECISION OF
	)	CITY COUNCIL

City of Oak Harbor Multimodal Facility Uplands Improvements Project Shoreline Substantial Development Permit.

THIS MATTER came before the City Council upon the application of the City of Oak Harbor for a Shoreline Substantial Development Permit. Having considered the evidence in the record, heard the arguments of the parties and any public comment, and being fully advised in the premises, the City Council hereby enters the following findings of fact, conclusions of law, and decision:

Findings of Fact

1. An application for a Shoreline Substantial Development Permit was filed with the Department of Development Services and deemed complete by the Director on May 10, 2011.
2. The permit sought by the applicant is to construct uplands improvements associated with the Multimodal Facility Project to Flintstone Park within the City's regulated shoreline area which is located within 200 feet of the ordinary high water mark of the waters of Oak Harbor Bay.
3. A Notice of Application was published in the Whidbey News Times, the newspaper of local circulation on May 14 and May 21, 2011.
4. The Public Hearing for the Planning Commission was advertised in the newspaper on June 4, 2011.
5. The original environmental assessment and determination made in 2003 still applies to this project in accordance with the checklist requirements of the State Environmental Policy Act of 1971.
6. A Mitigated Determination of Non Significance was issued for the project on October 13, 2003.
7. Notice of the hearing before the Planning Commission was advertised in the Whidbey News Times on June 4, 2011. Posting of the project site for the public hearing occurred on June 1, 2011. Property owners within 300 feet of the project were notified by mail on June 1, 2011.
8. The Planning Commission conducted a public hearing on June 21, 2011. Public testimony was received in an open record public hearing and Planning Commission recommended approval with conditions to the City Council.
9. Notice of the hearing before the City Council was published in the Whidbey News Times on June 25, 2011. Posting of the project site for the City Council public hearing occurred on June 24, 2010. Property owners within 300 feet of the project were notified by mail on June 24, 2011.
10. The City Council decision regarding the permit application was reached after a single closed record review of the Planning Commission recommendation. Said review was conducted in a public hearing held by the City Council on July 12, 2011

ATTACHMENT D

Conclusions of Law

1. The City Council has jurisdiction to determine whether to issue this permit pursuant to RCW 98.58.050, to OHMC 19.56 and to the City's Shoreline Master Program.

2. Proper notice of all hearings, comment periods and appeal periods was given.

3. No adoption of, or changes to, the original environmental assessment and determination made in 2003 are needed per WAC 197-11-600(4)(a).

4. The permit application meets the goals, policies and regulations of the City's Shoreline Master Program, so long as the use of the facility is limited to uses currently in line with the City's Parks and Recreation Regulations.

Decision

Based upon the foregoing findings of fact and conclusions of law, the City Council hereby grants approval of the Shoreline Substantial Development Conditional Use Permit based upon the following conditions:

1. The following mitigation measures from the Mitigated Determination of Nonsignificance issued on October 13, 2003 apply:
    a. Bid specifications will include a requirement that appropriate best management practices (BMPs) will be used to control erosion during construction.
    b. If any evidence of traditional cultural properties is uncovered during excavation, the City will notify the Washington State Office of Archaeology and Historic Preservation and affected tribal groups.
2. Prior to the start of construction, the City of Oak Harbor shall initiate a consultation with the affected tribal groups for the purposes of further determining the likelihood of any cultural resources being located within the boundaries of the project site. The City of Oak Harbor shall have an archaeologist on site to monitor work during any ground disturbance activities.
3. Temporary public access shall be provided and remain open from Bayshore Drive to the existing municipal dock.
4. The Waterfront Trail beginning at Waterside Condos and ending at the northeastern corner of Flintstone Park shall be closed to public access during construction. Temporary access will be by way of Bayshore Drive for trail users. Temporary access provisions such as signage and fencing shall be erected at both ends of the Waterfront Trail to inform trail users.
5. Construction pursuant to the shoreline substantial development permit shall not begin and is not authorized until 30 days from the date of filing with the Department of Ecology or until review proceedings initiated within 30 days from the date of such filing have been terminated.
6. Use of the facility should be limited to purposes currently in line with the City's Parks and Recreation Regulations.

ATTACHMENT D

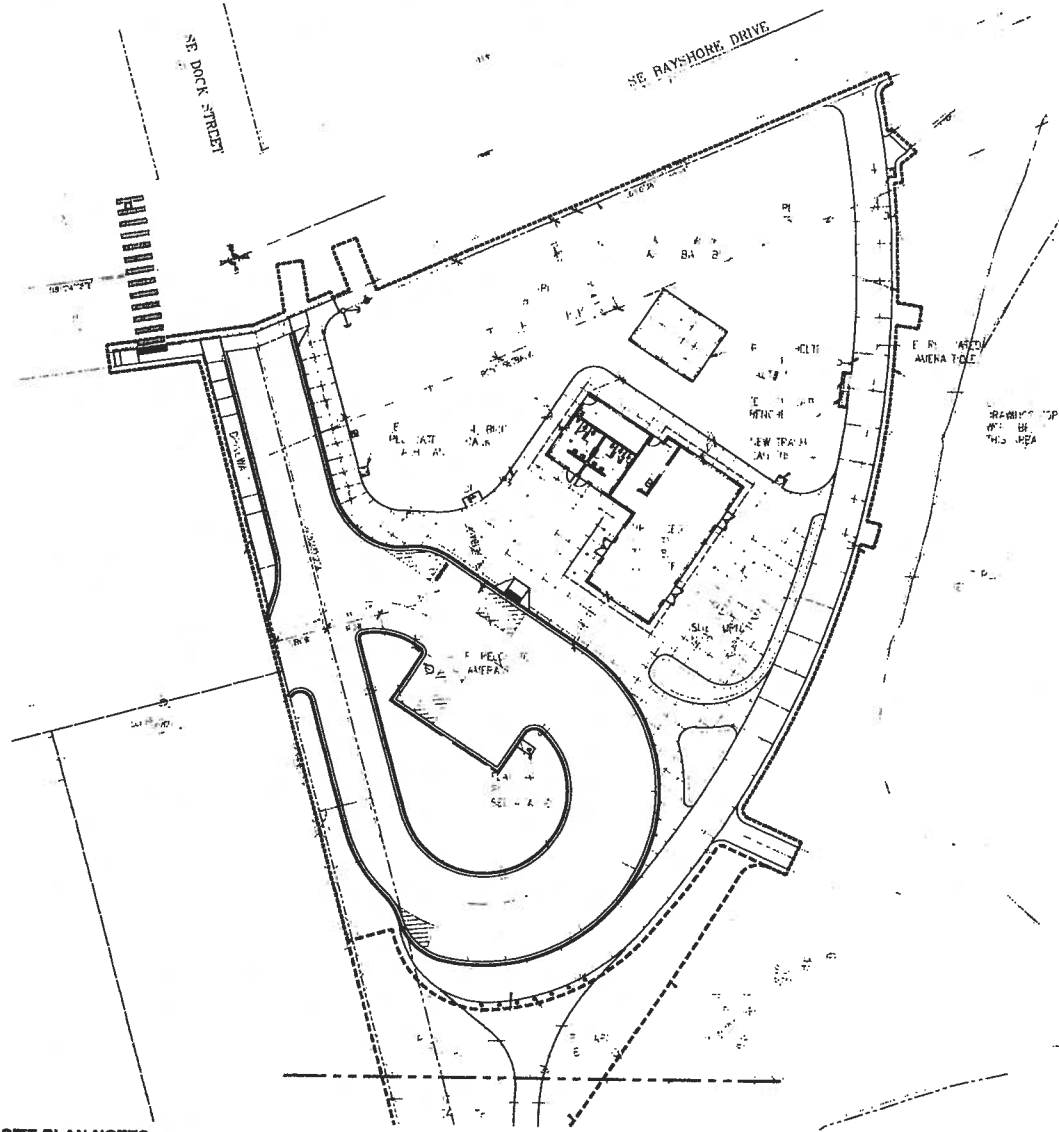
APPROVED ON THE 12TH DAY OF JULY, 2011

CITY COUNCIL
CITY OF OAK HARBOR, WASHINGTON

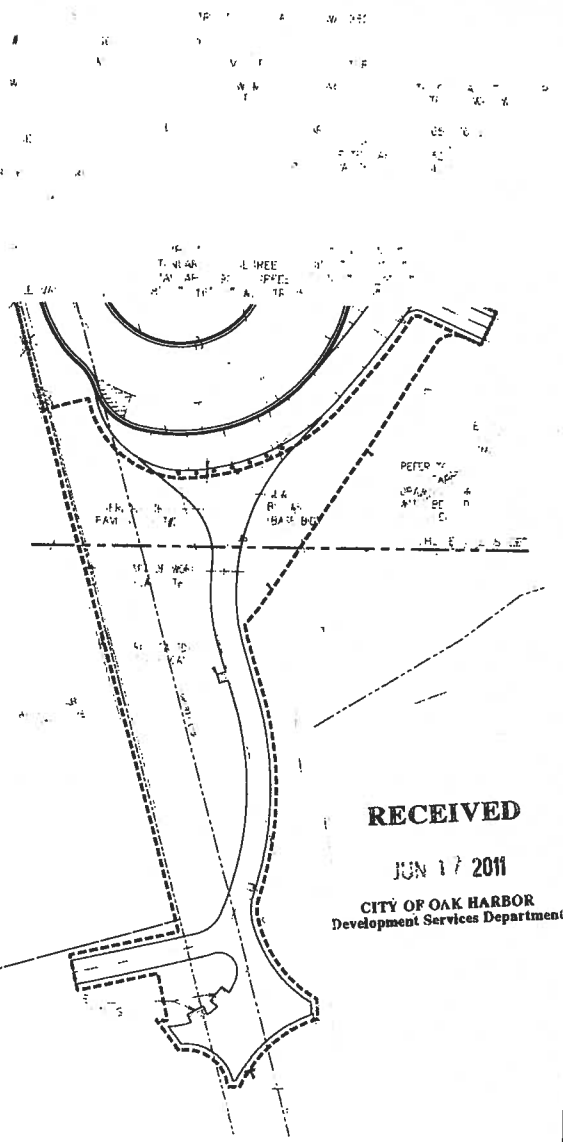
_____
Mayor

Attest:

_____
Connie Wheeler
City Clerk



SITE PLAN
BASE BID 1
SCALE: 1" 20'



OVERLOOK PAVING PLAN
ALTERNATE # 2 2
SCALE: 1" 20'

SITE PLAN NOTES

385

RECEIVED
JUN 17 2011
CITY OF OAK HARBOR
Development Services Department

REVISIONS
NO. | DATE | DESCRIPTION

SITE PLAN
OAK HARBOR MULTIMODAL FACILITY
1370 SE DOCK STREET
PROJECT # ENG-06-44-PHASE I

SHEET: A100

City of Oak Harbor
City Council Agenda Bill

Agenda Bill No. 9
Date: July 12, 2011
Subject: Ordinance Amending OHMC re: Temporary Political Signs (Interim)

PSP

FROM: Steve Powers, Development Services Director

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: The purpose of this agenda item is to bring forward an ordinance amending OHMC 19.36.080(8), the portion of the City's sign code dealing with temporary political signs. Legal review raises concerns about the enforceability of the provision limiting the placement of campaign signs to the 60 day period immediately preceding an election. The recommendation is to eliminate the language limiting the campaign sign period to 60-days pre-election but not to modify the other existing provisions. This ordinance is proposed as an interim ordinance while undergoing Planning Commission and Department of Commerce review.

Authority: The authority to regulate signs within the city limits is part of the city council's police powers. RCW 35A.11.020.

Policy Considerations. Because the election season is upon us, it is important for the City Council to determine what rules will apply to all candidates so that everyone is treated equally under city ordinance. This ordinance has been published for a public hearing and may therefore be adopted at the July 12th council meeting, if the council so chooses.

Budget Considerations. There are no budgetary concerns raised by this agenda bill.

STANDING COMMITTEE REVIEW: This matter was prompted by a citizen complaint, requesting enforcement of the City's temporary political signs ordinance. Development Services requested legal review and will bring this item to the attention of the Government Services standing committee at its next available meeting date, which is July 12.

RECOMMENDED ACTION:
1. Hold a public hearing.

2. Adopt the ordinance amending Section 19.36.080 of the Oak Harbor Municipal Code pertaining to temporary political signs as an interim ordinance pending Planning Commission and Department of Commerce review.

ATTACHMENTS:
Proposed ordinance (interim)

MAYOR'S COMMENTS:

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF OAK HARBOR AMENDING SECTION 19.36.080(8) OF THE OAK HARBOR MUNICIPAL CODE RELATING TO TEMPORARY POLITICAL SIGNS (INTERIM)

WHEREAS, the Oak Harbor Municipal Code presently restricts the time period in which temporary political signs may be displayed pre-election to a 60-day time period; and

WHEREAS, the City Council determines that such a time restriction may infringe upon rights to free expression of political views protected by the First Amendment to the United States Constitution and Article 1, Section 5 of the Washington State Constitution; and

WHEREAS, there is a need for immediate action on this code provision because of the election season and to ensure all candidates have ample opportunity to display their pre-election political message; and

WHEREAS, the Oak Harbor Planning Commission and the State Department of Commerce have not yet had the opportunity to provide comments and recommendations on the change to OHMC 19.36.080(8); and

WHEREAS, a public hearing was held prior to the adoption of the ordinance;

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF OAK HARBOR do ordain as follows:

Section One. Oak Harbor Municipal Code Sections 19.36.060 through 19.36.100 last amended by Section 5 of Ordinance No. 1553 in 2009 is hereby amended to read as follows:

19.36.060 Multifamily residential district and public facilities district signs – Zones R-2, R-3, R-4 and PF.

Requirements for signs in multifamily residential districts and public facilities districts shall be identical to those for the R-O residential office district and the C-1 neighborhood commercial district zones as set forth in OHMC 19.36.040.

(1) Exceptions. In the public facilities zoning district, a single freestanding or building-mounted changing general electronic reader board is allowed with the following restrictions:

(a) Freestanding signs are limited to 35 square feet in sign area, no more than 15 feet in height and must be set back five feet from the property line;

(b) Wall-mounted signs are limited to 35 square feet in sign area and no more than 20 feet in height;

(c) Lettering shall not be more than 12 inches in height;

(d) The electronic message shall be limited to those allowed on noncommercial signs as defined in OHMC 19.36.020(25) and shall not change more frequently than every four seconds;

(e) The sign's lights shall be limited to a warm-toned, off-white color or other similar color as approved by the development services director;

(f) An electronic reader board counts as one of the allowed primary signs; and

(g) For locations adjacent to a residential use or district, electronic displays shall be turned off between the hours of 10:00 p.m. and 6:00 a.m.

19.36.070 Single-family residential signs – R-1 zones.

(1) General. Two categories of sign uses are covered by this section:

(a) Existing, Legal Nonconforming Commercial Uses. The provisions herein for signs for commercial uses apply only to legal nonconforming uses which have been approved under applicable zoning ordinances prior to the enactment of this code.

(b) Noncommercial uses such as schools, churches, fire stations and house number identification.

(2) Signs for Existing Legal Nonconforming Uses. No more than one primary sign is permitted for each use in this category so long as the building remains legally nonconforming under the provisions of this title as follows:

(a) Such sign may be either freestanding or building-mounted.

(b) If freestanding, the sign shall conform to the requirements of OHMC 19.36.030(5)(a) in regard to placement and OHMC 19.36.040(2)(a) in regard to size and height.

(c) A building-mounted sign shall conform to the requirements of OHMC 19.36.030(5)(b); provided, however, that no sign shall exceed 20 square feet in surface area.

(3) Signs for Noncommercial Uses.

(a) On-premises signs for churches, schools, golf courses, fire stations, police stations, noncommercial use or public service, or other similar noncommercial uses:

(i) Signs shall be unobtrusive, in keeping with the character of the neighborhood and constructed of quality materials, as approved in advance by the administrator of this code. No building-mounted signs shall exceed 20 feet in height and 50 square feet in surface area and no freestanding sign located between the building line and the property line shall exceed five feet in height and 25 square feet in surface area. A freestanding sign located at the building line or behind it shall not exceed 15 feet in height or 35 square feet in area. No more than one freestanding sign and one building-mounted sign is permitted from the above uses per street frontage.

(ii) Off-premises signs for nonconforming uses may be approved by the site plan review committee subject to the following conditions:

(A) The sign is to identify current events or activities;

(B) The sign or message is for a temporary period of time sufficient to inform the public of the event or activity with a maximum of two weeks;

(C) The sign shall not be located on street right-of-way except when a part of a permanent subdivision or neighborhood designation sign (see subsection (3)(d) of this section);

(D) The sign shall not exceed 15 square feet in area nor five feet in height;

(E) Not more than two such signs shall be permitted.

(b) Illumination. Illumination from or upon any signs in single-family residential districts shall be shaded, shielded, directed or reduced so that the light intensity or brightness does not affect the enjoyment of residential property in the vicinity in any substantial way.

(c) House Numbers. All houses in the single-family residential district shall display house numbers visible from the street and letters or numbers shall be a minimum of five inches in height.

(d) Permanent Subdivision or Neighborhood Designation Signs. Signs shall be unobtrusive, in keeping with the character of the neighborhood, and constructed of quality materials, as approved in advance by the administrator of this code. Signs shall not exceed five feet in height and 25 square feet in surface area, and shall be located between the building line and property line unless a location of excess city right-of-way is approved by the superintendent of public works. Responsibility for the future maintenance or removal of these signs must be determined prior to their construction.

19.36.080 Temporary and special signs.

Temporary and special signs or displays are nonpermanent in nature and are intended for use only for a short period of time. The category includes any banner, pennant or advertising display constructed of canvas, fabric, wood, plastic or other semi-durable material, with or without frame. Permissible signs, with applicable limitations, are as follows:

(1) Construction Signs.

(a) These signs identify the architects, engineers, contractors or other individuals or firms involved with the construction of a building and announce the character of the building, or the purpose for which the building is intended. Such signs may be displayed only after a building permit is obtained and during the period of construction on the construction site. Only one such sign (which may be double-faced) is permitted per construction project for each public street upon which the project fronts.

(b) In all zones other than single-family residential zones, no construction sign shall exceed 32 square feet in surface area or 10 feet in height, nor be located closer than 10 feet from the property line or closer than 30 feet from the property line of the abutting owner. Further, such signs must be removed by the date of first occupancy of the premises, or one year after placement of the sign, whichever first occurs.

(c) In single-family residential zones, no construction sign shall exceed eight square feet in surface area, or be located closer than 10 feet from the property line of the abutting owner. Such signs shall be removed by the date of first occupancy of the premises or six months after first placement of the sign, whichever first occurs.

(2) General Promotions.

(a) General promotions are those events which occur on a regular basis in retail businesses for the purpose of boosting sales, attracting new business, selling of certain items (i.e., year-end, etc.), seasonal sales and the like.

(b) Allowed temporary signage for these types of events consists of posters in windows, posters under motor vehicle hoods, glass painting, small balloons of less than 12 inches in diameter and a maximum of one banner per street frontage placed on the exterior of the building on the space that the particular business occupies. The size of the banners will be limited to a maximum of four feet in height and a maximum length of either 50 percent of the length of the side of the building on which the banner is located or 30 feet. Businesses with a facade of less than 24 feet in length may have banners of up to 12 feet in length. Each separate business is permitted to have one banner on the building.

(c) No clusters of flags or pennants, ribbons, streamers, shimmering discs, spinners, twirlers, or propellers, strings of lights, moving, flashing, rotating or blinking lights, chasing or scintillating lights, flares, or large balloons, bubble machines and similar devices of a carnival nature, or containing elements creating sound or smell may be used for these types of promotions with the exception of Christmas, when flashing Christmas-type lights will be allowed.

(d) The duration of these promotions will be 30 days maximum (except banners) and no permit will be required. Banners have no time restrictions but shall be placed solely on the building for which the banner is advertising. In the event that the banner becomes dilapidated or otherwise ruined it must be removed or replaced. Such promotions are permitted only in districts where the enterprise so advertised is allowed under district zoning regulations. Banners shall be allowed in addition to primary signage and shall not be used as primary signs. When no primary sign is installed the duration of a banner shall be no more than 30 days.

(3) Light Pole Banners.

(a) Businesses may have light pole banners on 100 percent of the total number of poles located in privately owned parking lots.

(b) Size of banners shall be limited to three feet by seven feet free flying or two feet by six feet when attached by brackets.

(c) There shall be at least eight feet of clearance between the bottom of the banner and the ground. No banner shall extend over a public sidewalk or street.

(d) There is no time limit for light pole banners. However, when the banners become dilapidated or otherwise ruined, they must be removed or replaced.

(e) No other signage of any type shall be permitted on light poles where light pole banners are displayed.

(4) Grand Openings and Anniversaries.

(a) Businesses may have one grand opening or anniversary promotion per year. One additional such promotion may be held if the business changes ownership or management, should this occur less than one year after a particular grand opening or anniversary promotion.

(b) In addition to those items allowed in general promotions (above) the business may also use flags, pennants, ribbons, streamers, various types of balloons (including large "hot air" types), and strings of lights.

(c) These promotions will be no more than 30 days in length.

(5) Grandfathered Commercial Promotions Signage. No existing temporary or special signage will be grandfathered. Businesses will have 60 days from the date of enactment of the ordinance codified in this chapter in which to comply.

(6) Real Estate Signs. All exterior real estate signs must be of wood or plastic or other durable material. The permitted signs, with applicable limits, are as follows:

(a) Residential "For Sale" or "For Rent" Signs. Signs advertising residential property for sale or for rent shall be limited to one single- or double-faced sign per street frontage. Sign to be installed 30 days prior to becoming available or during a vacancy only. The sign may not exceed four square feet in surface area, and must be placed wholly on the property for sale or rent. The "For Sale" or "For Rent" sign may remain up until the property is sold or rented.

(b) Residential Directions "Open House" Signs. Signs advertising an open house and the directions to a residence for sale shall be limited to one single- or double-faced on-premises for sale and three single- or double-faced off-premises signs. However, if a realtor has more than one house open for inspection in a single development or subdivision, off-premises signs are limited to four for the entire development or subdivision. Such signs are permitted only during daylight hours and when the realtor or seller or an agent is in attendance at the property for sale. No such sign shall exceed four square feet in surface area. The sign may be placed along the periphery of a public right-of-way.

(c) Residential Condominiums, Condominium Conversions, Apartments, Mobile Home Parks and New Subdivisions.

(i) Temporary Real Estate Signs. Temporary signs, posters and banners may be used for the grand opening and ongoing promotion of new residential projects having five or more units. These signs and banners may be used in a particular project for a period not exceeding one year after the date of issuance of the final occupancy permit for that project or at such time as the project is 90 percent occupied, whichever occurs first, or in the case of subdivision and mobile home parks, one year after final plat approval. In the event that the project consists of more than one phase, as in a "phased" condominium project, the signs and banners promoting one phase must be removed prior to installing the signs and banners for the next phase. A time extension may be granted for up to one year in length by the building official where 90 percent occupancy has not been obtained. Justification for the extension includes:

(A) Certification of vacant units; and

(B) Statement of reason for lack of occupancy.

(ii) Allowable Number and Sizes of Signs.

(A) One banner of not more than 30 feet in length and four feet in height advertising the project for sale or rent;

(B) Banners or signs of not more than 18 square feet each on each model unit with a maximum of three of these types allowed per project or phase;

(C) "A-frame" and other signs used internally within the project as needed for the purpose of directing traffic to model units or open house functions;

(D) One sign per road frontage of not more than 32 square feet per side advertising the project for rent or sale. These signs may be installed only after the construction sign has been removed.

(d) Undeveloped Commercial or Industrial Property "For Sale or Rent" Signs. Signs advertising undeveloped commercial or industrial property for sale or rent shall be limited to one single- or double-faced sign per street frontage. Signs may be displayed while the property is actually for sale or rent. The sign may not exceed 16 square feet in surface area. If freestanding, the sign may not exceed five feet in height, and shall be located more than 15 feet from any abutting interior property line and wholly on the property for sale or rent.

(e) Developed Commercial or Industrial Property "For Sale or Rent" Signs. Signs advertising developed commercial or industrial property for sale or rent shall be limited to one single- or double-faced sign per street frontage. Signs may be displayed while the building is actually for rent or sale. The sign may not exceed 16 feet in surface area. If freestanding, the sign may not exceed five feet in height and shall be located more than 15 feet from any abutting side or rear property line, and wholly on the property for sale or rent.

(f) Residential Land Subdivision Signs. Signs advertising residential subdivisions shall be limited to one single- or double-faced sign not exceeding a total of 32 square feet in surface area placed at a right angle to the street, or two signs not exceeding a total of 32 square feet in surface area facing the street, which shall be at least 200 feet apart. No sign shall project beyond the building line. Such signs must be placed more than 30 feet from the abutting owner's property line and may not exceed a height of 12 feet. Such signs shall be removed by the end of one year or when 75 percent of the houses in the subdivision are sold or occupied, whichever first occurs. Permanent subdivision or neighborhood designation signs shall be approved by the administrator of this code as set forth in OHMC 19.36.070.

(g) Subdivision Directional Signs Designating New Development. Signs advertising the direction to a subdivision shall be furnished and placed only by the developer

or residents of the subdivision, but at locations designated by the city. Signs shall be of the dimensions 12 inches by 36 inches, shall bear only the name of the subdivision and a directional arrow (no name of realtor permitted), and be limited in number to four. The city will designate placement of the signs at street intersections a maximum of one mile from the nearest subdivision entrance. The signs shall be maintained by the developer and removed at the end of one year or when 75 percent of the subdivision is occupied, whichever first occurs, unless a variance is granted by the hearing examiner.

(h) Undeveloped Multifamily Property "For Sale" Signs. Permissible signs and their limitations for undeveloped multifamily zoned property shall be identical to those for undeveloped commercial and industrial property "For Sale" signs as set forth in subsection (6)(d) of this section.

(i) Undeveloped Single-Family Acreage "For Sale" Signs. Permissible signs and their limitations for undeveloped, unsubdivided single-family property which may be legally divided into four or more single lots shall be identical to those for undeveloped commercial and industrial property "For Sale" signs as set forth in subsection (6)(d) of this section.

(7) Political Headquarters Signs.

(a) Party Headquarters. On-premises political signs are permitted on the premises of political headquarters located in the business districts (OHMC 19.36.030), on office buildings in the residential/office and neighborhood commercial districts (OHMC 19.36.040), and in the industrial district (OHMC 19.36.050), so long as the signs meet the requirements of those districts.

(b) Headquarters for Candidate or Ballot Issue. On-premises political signs are permitted on the premises of the headquarters of a candidate for public elective office (whether partisan or nonpartisan) or on the headquarters of persons supporting or opposing a public issue decided by ballot, when such headquarters are located in the commercial districts (OHMC 19.36.030), on office buildings in the residential/office and neighborhood commercial districts (OHMC 19.36.040), and in the industrial district (OHMC 19.36.050), so long as the signs meet the requirements of those districts and so long as the signs remain for a period no longer than six months. Such signs shall be removed within seven days after the general election.

(8) Political Signs on Private Property Not a Headquarters.

(a) Signs, posters or bills promoting or publicizing candidates for public office or issues that are to be voted upon in a general or special election may be displayed on private property. Such signs, posters or bills shall be permitted ~~only for a period of 60 days preceding the election and for~~ through a period of seven days following such election; provided, that signs, posters or bills promoting successful

candidates in a primary election may remain displayed on private property until seven days following the immediately subsequent general election.

(b) Sign Dimension and Location. Political signs shall not exceed 32 square feet in surface area per side or 10 feet in height, or be located closer than five feet from the property line or closer than 15 feet from the property line of an abutting owner. Signs must be located so as not to restrict sight distances on approaches to intersections. A-frame type political signs are not permitted. Political signs located along SR-20 within the city limits of Oak Harbor must be located on private property. Signs installed within the SR-20 right-of-way will be removed by the city or State Highway Department personnel.

(c) Removal of Signs Following Election. Any such sign, poster or bill shall be removed within seven days following an election. It shall be the responsibility of the above campaign officer or responsible official to have the signs, posters or bills removed.

(d) Political Signs Not Allowed on Public Property. It is unlawful for any person to paste, paint, affix or fasten on any utility pole or on the sidewalk, roadway, or on any public building or structure any such sign, poster, bill or other advertising device when such facilities are located on public property or within public easements.

(e) Public Notices Unaffected. Nothing in this section shall be construed to prohibit the placement of public notices required by law.

(f) The display of any political sign in violation of this section, or any portion thereof, shall be presumed to have been done at the direction and request of the campaign officer or responsible official.

(g) No permit is required for placement of political signs.

(9) Community Events and Fundraisers. Celebrations such as Holland Happening, the Fourth of July, and similar events scheduled for the benefit of the general community may install temporary directional signing, provided such signs are removed within two days following the event.

(10) Civic Organizations. Civic organizations shall be allowed to have two A-frame signs per event or sale. This sign is in addition to directional signs that may be necessary. The sign shall be no larger than the allowed maximum for a business and subject to all requirements of A-frames for businesses. The sign shall be placed solely on the property for which the activity will be conducted and written permission must be obtained from the property owner or their designee. A civic organization sign shall be in addition to any other A-frame signs existing on site at time of application.

(11) Portable A-Frame Signs.

(a) Portable A-frame signs, for the purpose of this code, also include sandwich board signs.

(b) Portable A-frame signs are allowed in all districts throughout the city except the CBD.

(c) Each business is permitted to have one portable A-frame sign no larger than 36 inches by 48 inches. The portable A-frame sign shall be included in the total allowable signage for said business.

(d) The portable A-frame sign shall be placed solely on the property of the business for which the sign advertises during normal business hours and removed at the close of business, and located no further than four feet from the building line. No two portable A-frames shall be closer than 20 feet from one another. No direct or indirect lighting of any kind shall be permitted.

(e) A-frame signs shall be constructed to be sturdy and withstand all types of weather conditions. No more than two-thirds of the total A-frame sign area may be reader board or changeable copy. All artistic embellishments and lettering shall have the appearance of professionalism.

(12) No temporary vehicular-mounted sign shall be placed in such a manner as to subvert the intentions of this chapter.

19.36.090 Street right-of-way signs.

(1) General. Signs for the purpose of identification only, which contain no advertising, may be located upon the street right-of-way only where view-obstructing acoustical protective devices such as acoustical walls, berms or solid fences have been legally installed with city approval at property line thereby making building-mounted or conforming freestanding signs ineffective. Such signing may not exceed the maximum square footage for signs permitted in the applicable district.

(2) Design and Materials. Street right-of-way signs shall be in keeping with the character of the zoning district in which they are located and shall be constructed of quality materials. The proposed design and materials to be utilized in the construction of any such sign shall be approved in advance of the issuance of any sign permit by the administrator of this code.

(3) Types of Signs Permitted. Only signs identifying the use being maintained or operated upon the immediately abutting property and incidental signs indicating the appropriate entrance to and exit therefrom are permitted upon the public right-of-way under this

section; provided, that vacancy signs no larger than three square feet in surface area may be installed as an addition to the identification sign.

(4) Sign Location. Signs permitted upon the street right-of-way shall not be installed or placed on the top of acoustical protective devices, nor shall such signs be installed upon or attached to acoustical protective devices constructed by the city.

(5) Sign Dimensions. Street right-of-way signs shall have a maximum height of five feet measured from the street grade only, a maximum surface area of 15 square feet.

(6) Sign Illumination. Street right-of-way sign illumination shall be from a source other than the sign itself.

(7) Permit Requirements. Street right-of-way signs are subject to all general requirements of this code; provided, that no such sign may be erected without a permit regardless of the size of the sign; and provided further, that any application for a street right-of-way sign permit is subject to the approval of the superintendent of public works.

19.36.100 Exempt signs or displays.

The following signs or displays are exempted from coverage under this code:

(1) Traffic or pedestrian control signs or signals, or signs indicating scenic or historic points of interest, which are erected by or on the order of a public officer in the performance of his public duty;

(2) Regulatory, informational, identification or directional signs installed by or at the direction of a government entity;

(3) Signs required by law;

(4) Official public notices, official court notices or official sheriff's notices;

(5) The flag of a government or noncommercial institution such as schools;

(6) Exterior signs or displays not visible from streets or ways open to the public;

(7) Signs in the interior of a building more than three feet from the closest window or not facing a window;

(8) Plaques, tablets or inscriptions indicating the name of a building, its date of erection, or other commemorative information, which are an integral part of the building structure or are attached flat to the face of the building, which are nonilluminated, and which do not exceed three square feet in surface area;

(9) "No Trespassing," "No Dumping," "No Parking," "Private," and other informational warning signs, which shall not exceed three square feet in surface area;

(10) Reasonable seasonal decorations within the appropriate public holiday season. However, such displays shall be removed promptly at the end of the public holiday season;

(11) Sculptures, fountains, mosaics and design features which do not incorporate advertising or identification;

(12) Existing theater marquees (freestanding and/or building-mounted);

(13) Nonflashing, low-lumen building outline and window accent lighting may be installed by businesses in the CBD, CBD-1, CBD-2, C-3, C-4 and C-5 business and commercial districts. Permit and plan review is required.

Section Two. Interim Ordinance. The City Council adopts this ordinance as an interim ordinance, after public hearing, based on the following findings of fact:

(1) The current time restriction on posting political signs pre-election requires immediate modification due to the on-going election season;

(2) Delaying adoption of this ordinance to obtain Oak Harbor Planning Commission review and State Department of Commerce comments on this change to an "official control" would impair the ability of political candidates to display their signs for the up-coming municipal election;

(3) This ordinance shall be an interim ordinance and shall expire six months from the date of publication unless earlier adopted as a permanent ordinance by action of the City Council.

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

PASSED by the City Council this _____ day of _____, 2011.

THE CITY OF OAK HARBOR

Veto ( )
Approve ( )

_____
Mayor

_____
Date

Attest:

_____

City Clerk

Approved as to Form:

_____

City Attorney

Published: _____

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City of Oak Harbor
City Council Agenda Bill

Bill No. 10

Date: July 12, 2011

Subject: Referral of Change in the Use of Lodging Taxes to Lodging Tax Advisory Committee.

FROM: Doug Merriman, Finance Director

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

Jim Slowik, Mayor
Paul Schmidt, City Administrator
Margery Hite, City Attorney, as to form

PURPOSE

This agenda bill refers to the Lodging Tax Advisory Committee potential changes in the use Lodging Taxes (2% Funds) that may be under consideration by the City.

AUTHORITY

Under RCW 67.28.1817, any municipality that proposes imposition of a 2% lodging tax, an increase in the rate of an existing lodging tax, repeal of an exemption from a lodging tax, or a change in the use of lodging tax revenue received under shall submit the proposal to the lodging tax advisory committee for review and comment. The submission shall occur at least forty-five days before final action on or passage of the proposal by the municipality. The Advisory Committee may deliver its comments prior to the 45 day time period. The Advisory Committee shall submit comments on the proposal through generally applicable public comment procedures.

BACKGROUND INFORMATON

Based on this requirement, an action is required to refer to the committee a request to consider topics regarding 2% that include but are not limited to the following subjects:

1) To discuss possible changes in funding options, currently designated through a multi-agency interlocal agreement, for the City's participation in the island wide marketing promotion program.

2) To review policy considerations and the funding options for marketing of businesses within the city limits.

3) To discuss and review application procedures for 2% grant requests.

City of Oak Harbor
City Council Agenda Bill

STANDING COMMITTEE REVIEW:

The Finance Standing Committee has not discussed this item.

RECOMMENDED ACTION

1) A motion to refer potential changes in the use of 2% funds to the Lodging Tax Advisory Committee for review and comment.

ATTACHMENTS:

RCW 67.28.1817

MAYOR'S COMMENTS

City of Oak Harbor
City Council Agenda Bill

RCW 67.28.1817
Lodging tax advisory committee in large municipalities--Submission of proposal for imposition of or change in tax or use--Comments.

(1) Before proposing imposition of a new tax under this chapter, an increase in the rate of a tax imposed under this chapter, repeal of an exemption from a tax imposed under this chapter, or a change in the use of revenue received under this chapter, a municipality with a population of five thousand or more shall establish a lodging tax advisory committee under this section. A lodging tax advisory committee shall consist of at least five members, appointed by the legislative body of the municipality, unless the municipality has a charter providing for a different appointment authority. The committee membership shall include: (a) At least two members who are representatives of businesses required to collect tax under this chapter; and (b) at least two members who are persons involved in activities authorized to be funded by revenue received under this chapter. Persons who are eligible for appointment under (a) of this subsection are not eligible for appointment under (b) of this subsection. Persons who are eligible for appointment under (b) of this subsection are not eligible for appointment under (a) of this subsection. Organizations representing businesses required to collect tax under this chapter, organizations involved in activities authorized to be funded by revenue received under this chapter, and local agencies involved in tourism promotion may submit recommendations for membership on the committee. The number of members who are representatives of businesses required to collect tax under this chapter shall equal the number of members who are involved in activities authorized to be funded by revenue received under this chapter. One member shall be an elected official of the municipality who shall serve as chair of the committee. An advisory committee for a county may include one nonvoting member who is an elected official of a city or town in the county. An advisory committee for a city or town may include one nonvoting member who is an elected official of the county in which the city or town is located. The appointing authority shall review the membership of the advisory committee annually and make changes as appropriate.

(2) Any municipality that proposes imposition of a tax under this chapter, an increase in the rate of a tax imposed under this chapter, repeal of an exemption from a tax imposed under this chapter, or a change in the use of revenue received under this chapter shall submit the proposal to the lodging tax advisory committee for review and comment. The submission shall occur at least forty-five days before final action on or passage of the proposal by the municipality. The advisory committee shall submit comments on the proposal in a timely manner through generally applicable public comment procedures. The comments shall include an analysis of the extent to which the proposal will accommodate activities for tourists or increase tourism, and the extent to which the proposal will affect the long-term stability of the fund created under RCW 67.28.1815. Failure of the advisory committee to submit comments before final action on or passage of the proposal shall not prevent the municipality from acting on the proposal. A municipality is not required to submit an amended proposal to an advisory committee under this section.

City of Oak Harbor
City Council Agenda Bill

Bill No. 11

Date: July 12, 2011

Subject: Outreach Funding Discussion

FROM: Doug Merriman, Finance Director

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

Jim Slowik, Mayor
Paul Schmidt, City Administrator
Margery Hite, City Attorney, as to form

PURPOSE

To receive a report from the Finance Director on the July 1, 2011 meeting with representatives of the Downtown Merchants Association, city staff, members of City Council, and a representative of the State Auditors Office. The purpose of the meeting was to discussion the legal parameters of funding marketing activities along the section of Pioneer Way impacted by the Pioneer Way Improvement Project.

AUTHORITY

RCW 35A.11.020 – Powers vested in legislative bodies of non-charter and charter code cities. *The legislative body of each code city shall have power to organize and regulate its internal affairs within the provisions of this title and its charter, if any; and to define the functions, powers, and duties of its officers and employees; within the limitations imposed by vested rights, to fix the compensation and working conditions of such officers and employees and establish and maintain civil service, or merit systems, retirement and pension systems not in conflict with the provisions of this title.....*

BACKGROUND INFORMATON

The Finance Department initiated and moderated a meeting of stakeholders involved in the outreach effort for the Pioneer Way Improvement project. The purpose of the meeting was to receive input from all parties regarding potential marketing and outreach ideas to assist in minimizing the impact of the current construction project. Jan Jutte, Director of Legal Affairs for the State Auditors Office attended to provide guidance and insight into the legal parameters of the public funding of private entities, and to suggest allowable funding strategies for advertising and other outreach activities.

At the June 28, 2011 City Council meeting, Council approved freezing further advertising activities until a report is received from the Finance Director on the July 1, 2011 meeting. Based on the input received from the stakeholders at the July 1 meeting, a motion is requested to remove the freeze from further advertising activities.

A finalized copy of the minutes of the July 1 meeting will be provided.

STANDING COMMITTEE REVIEW:

The Finance Standing Committee has not discussed this item.

City of Oak Harbor
City Council Agenda Bill

RECOMMENDED ACTION

1) Receive the report from the Finance Director as directed on June 28, 2011.
2) A motion to reinstate advertising and other outreach activities for the Pioneer Way Improvement project.

MAYOR'S COMMENTS

Rules regarding Cities and the gifting of public funds:

1) Prohibition Against Gifts/Lending of Credit

Article 8, section 7 of the state constitution has been the direct basis of several lawsuits against local governmental entities. That provision is as follows:

No county, city, town or other municipal corporation shall hereafter give any money, or property, or loan its money, or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and infirm, or become directly or indirectly the owner of any stock in or bonds of any association, company or corporation.

2) Subsidizing or Assisting Private Individuals or Organizations

A city or county is often asked to use its funds, property, or borrowing power (credit) to subsidize or assist endeavors by individuals or private organizations, such as the construction or operation of recreational facilities, economic development, or tourist promotion, and other civic or charitable works. However, the Washington State Supreme Court has long held *that no matter how public the purpose may be*, it may not be accomplished by public gifts or loans to private persons or organizations (except certain aid to the poor or infirm). [Although the language in the constitution reads "poor *and* infirm" (emphasis added), the courts have held that this should be interpreted in the disjunctive ("poor *or* infirm"). *Health Care Facilities v. Ray*, 93 Wn.2d 108, 115-16, 605 P.2d 1260 (1980)] *Johns v. Wadsworth*, 80 Wash. 352, 354-55, 141 Pac. 892 (1914) (the legislature may not authorize the use of public funds to aid a private fair);

3) Economic Development

The supreme court also has found certain economic development to be a public purpose. *See Anderson v. O'Brien*, 84 Wn.2d 64, 70, 524 P.2d 379 (1974). Accordingly, our state legislature has declared certain economic development programs to be a "public purpose." *See* ch. 43.160 RCW. However, as the cited cases indicate, the characterization of a program as a "public purpose" may not justify a gift or loan of credit to a private entity for that purpose, except in aid of the poor or infirm.

Limitations on economic development

Due to strict constitutional limitations, cities and counties in Washington State have very few avenues open for direct participation in private economic development projects. There are potential legal issues regarding the loaning or gifting of public funds. Under article 8, section 7 of the Washington State Constitution, a city or county may not directly give or loan money to private businesses for economic development. The State of Washington is one of the more restrictive in the nation in regard to how public funds may be utilized to attract private investment. Specifically, Article 8, section 7 of the state constitution provides:

No county, city, town or other municipal corporation shall hereafter give any money, property, or loan its money, or credit to or in aid of any individual, association, company or corporation, except for the necessary support of the poor and infirm.

This constitutional provision has been interpreted in numerous cases in this state and generally has been interpreted very narrowly in regard to allowable uses of public funds to aid private businesses or corporations. A city or county does not have direct authority to construct and operate industrial and commercial facilities, or to pay city funds out for the purpose of attracting private industrial development, neither does the city have indirect authority to pay an industrial development council (not a municipal corporation) for performing those functions [*Morgan Jacobson & James Pharris, MRSC Information Bulletin No. 432 (1985)].* In addition, a city's general funds cannot be expended for "industrial development projects." See *Hogue v. Port of Seattle*, 55 Wn.2d 153 (1959); art. XXXII, § 1, Washington State Constitution.

Mr. Merriman noted that we have looked at everything regarding a funding source under existing laws; what discretionary leeway can be used and still remain in compliance with the State Auditor. The full page advertisements are the City's first attempt to connect the project to the funding source. Mr. Merriman is now communicating directly with the State Auditor's Office and a representative from the Auditor's Office will be here Friday, June 30, 2011, to talk with Mr. Merriman. Mr. Merriman noted that this is completely up to the State Auditor.

MOTION: Councilmember Dudley moved to cease the mitigation spending and looks forward to hearing back from the Finance Director. Councilmember Almberg seconded the motion.

Councilmember Dudley talked about hearing back from Mr. Merriman, talking with the merchants, and finally, a return to City Council. Mr. Dudley felt the City is not promoting the businesses and the print advertising (advertorials) and commercials only promote the project and should stop. Mayor Slowik noted the limited number of City Council meetings in July and August which could delay a return to Council. Council discussion continued with concern about total elimination of advertising, what plan the merchants will have, the "boots on the ground" outreach which is being done by Rhonda Severns and Larry Cort (Mr. Merriman clarified that funding for their activity has been incorporated into other budgets), the effect on wayfinding signage and reader boards, where the line should be drawn, and the end result. City Administrator Schmidt talked about the intent of the original mitigation proposal.

AMENDMENT TO THE
MOTION: Councilmember Dudley moved to amend the original motion to stop the print advertisements, commercials, radio advertisements, and T.V. advertisements which are promoting the project. The amendment to the motion was seconded by Councilmember Almberg.

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

VOTE ON THE ORIGINAL MOTION AS
AMENDED: Councilmembers Almberg, Campbell, Dudley, Paggao, and Severns voted in favor of the original motion as amended. Councilmembers Munns and Palmer opposed. The original motion, as amended, carried.

City of Oak Harbor
City Council Agenda Bill

Bill No. 12
Date: July 12, 2011
Subject: WAIF Contract

FROM: **Paul Schmidt**
City Administrator

INITIALED AS APPROVED FOR SUBMITTAL TO THE COUNCIL BY:

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

PURPOSE

This agenda bill is requested by City Council by a motion and second from the June 28, 2011, regularly scheduled City Council meeting.

AUTHORITY

OHMC 1.04.020(3)
Public Notice for full council agenda – Introduction of action.

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

(a) Matters declared an emergency;

(b) Directions to staff to prepare documents or reports or both for consideration; or

(c) Scheduling of meetings. (Ord. 1578 § 4, 2010; Ord. 1115 § 1, 1997; Ord. 1031 § 1, 1996; Ord. 817 § 1, 1988).

FUNDING

Budget Amount: $ N/A

Funds Required: $ N/A

Appropriation Requested: $ N/A

Appropriation Source: $ N/A

City of Oak Harbor
City Council Agenda Bill

SUMMARY STATEMENT

From the June 28, 2011 City Council meeting, Councilmember Dudley made a motion to have the WAIF (Whidbey Animal Improvement Foundation) come back to City Council on the July 12, 2011 agenda. The motion was seconded by Councilmember Campbell.

For information purposes, the December 7, 2010 agenda bill titled 2011 Animal Services Contract – Whidbey Animal Improvement Foundation (WAIF) and subsequent contract have been attached.

STANDING COMMITTEE REPORT

N/A

RECOMMENDED ACTION

N/A

ATTACHMENTS

Exhibit A – December 7, 2010 agenda bill titled 2011 Animal Services Contract – Whidbey Animal Improvement Foundation (WAIF)

Exhibit B – 2011 WAIF contract.

Exhibit A

City of Oak Harbor
City Council Agenda Bill

Bill No. _____
Date: December 7, 2010
Subject: 2011 Animal Services Contract – Whidbey Animal Improvement Foundation (WAIF)

FROM: **Rick Wallace**
Chief of Police

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 is a proposed contract between the City of Oak Harbor and the Whidbey Animal Improvement Foundation (WAIF) for the purpose of providing animal shelter services for the City of Oak Harbor.

AUTHORITY

The City has authority to provide animal control services as part of its police powers to protect public health, safety and welfare. RCW 35A.11.020

Unless otherwise authorized or directed by law, ordinance or council resolution (for example, responding to an emergency), all contracts over $30,000 require council approval. OHMC 2.390.010

SUMMARY STATEMENT

The City of Oak Harbor and the WAIF Executive Director, on behalf of the WAIF Board of Directors, tentatively agreed to use the terms and conditions of the existing 2010 agreement for 2011, with several changes. Those changes reflect the animal control holding facility duties that WAIF will undertake to take custody of animals brought to the Navy Base facility by authorized animal control officers. City ordinance specifies the holding time periods. Thereafter, unclaimed animals will be transferred to WAIF ownership for adoption, foster care, shelter care, or other appropriate disposition. The current agreement expires December 31, 2010. This proposed contract would expire December 31, 2011.

The City shall pay to the Contractor monthly payments of Seven Thousand and Eighty Three Dollars, and Thirty Three Cents ($7,083.33) for services under the contract after the month for which the services are rendered.

Additionally, the City shall pay $30.00 per call-out for after hours (before 8:00 a.m. and after 5:00 p.m. or on holidays) for service requests deemed necessary by the Oak Harbor Police Department, upon proper billing by Contractor within thirty (30) days of service. The City shall verify that the Contractor has provided the services required under this agreement in a form acceptable to the City.

The City of Oak Harbor and Whidbey Animal Improvement Foundation (WAIF) originally came to the terms of this agreement in 2005 following a request for proposal and contract bidding process. The agreement has continued in one year increments since then.

STANDING COMMITTEE REPORT

The Public Safety Standing Committee reviewed this agenda item on November 18, 2010.

RECOMMENDED ACTION

Approve and authorize the Mayor to sign this contract on behalf of the City of Oak Harbor.

ATTACHMENTS

Proposed 2011 WAIF Contract

MAYOR'S COMMENTS

ANIMAL SHELTER SERVICES CONTRACT
WHIDBEY ANIMALS' IMPROVEMENT FOUNDATION
AND CITY OF OAK HARBOR

THIS CONTRACT is between the CITY OF OAK HARBOR, a Washington State Municipal Corporation, hereinafter referred to as "City" and Whidbey Animals' Improvement Foundation (WAIF), hereinafter referred to as "Contractor," jointly referred to as the "Parties."

WHEREAS, the City is authorized by law to assert control of animals within the City limits under its police powers; and

WHEREAS, the City animal control authority is exercised by the Oak Harbor Police Department; and

WHEREAS, the City regulations for control of animals within the city limits are set out in Title 7 of the Oak Harbor Municipal Code; and

WHEREAS, the City requires an animal control holding facility for cats and dogs impounded pursuant to Ch. 7.20 OHMC; confined pursuant to veterinary quarantine; and for cats and dogs abandoned pursuant to Ch. 7.04 OHMC; and

WHEREAS, cats and dogs unclaimed at the expiration of the periods for impoundment, veterinary quarantine and abandonment under City ordinances require appropriate management of their disposition for adoption, foster care, shelter or euthanasia so that they do not return to the city without appropriate ownership and care; and

WHEREAS, Contractor has a program which it exercises in its discretion to appropriately manage the disposition of unclaimed cats and dogs to meet the City's objectives in controlling animals within its city limits; and

WHEREAS, the City has selected the Contractor based upon Contractor's experience, expertise and qualifications to humanely and appropriately dispose of unclaimed cats and dogs at the expiration of the holding periods set forth in City ordinance; and

WHEREAS, the Contractor has agreed to manage the disposition of unclaimed cats and dogs surrendered to the Contractor by the City at the expiration of the holding periods established by City ordinances in return for a flat annual fee; and

WHEREAS, the City's ownership and supervision of the unclaimed dogs and cats shall cease upon surrender to the Contractor except for those animal control functions applicable under City code.

NOW, THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. PURPOSE: The City and the Contractor enter into this Contract for the Contractor to provide holding facility services to the animal control authorities of the City of Oak Harbor and to take custody and control of such dogs and cats as are unclaimed after the expiration of applicable holding periods under city ordinances.

2. SERVICES:

A. Contractor Holding Facility Services: The Contractor shall provide animal control holding facility services for all dogs and cats subject to the City's jurisdiction that are impounded, abandoned or quarantined in accordance with city ordinances or state law. For the purpose of this Contract, "dogs" and "cats" are defined as domestic cats, domestic cat hybrids, domestic dogs and domestic dog hybrids only.

For purposes of this Contract, "animal control authority of the City" shall mean City law enforcement officers, including the City's appointed animal control officer (ACO). The services provided in this Section are material to the City and failure to perform shall constitute a material default. Such services shall include the following:

(1) Quarantine animals, in accordance with municipal ordinances and state law.

(2) Have available the services of a local veterinarian for emergency medical attention for any injured, sick, or diseased dogs and cats placed at the holding facility by City law enforcement officers, animal control officers or authorized NAS Whidbey personnel.

(3) Provide proper food, water, housing and humane care for all animals under its control at the animal control holding facility.

(4) Maintain sanitation and cleaning protocols to minimize disease transmission.

(5) Provide basic medical care, including vaccinations, de-worming and flea treatment, if needed, to dogs and cats introduced into the animal control holding facility.

(6) Provide exercise for dogs and cats kept at the holding facility.

(7) Provide sufficient, competent and trained staff to assume the responsibilities of this Contract.

(8) Provide monthly reports to the Chief of Police regarding holding facility activities including number of incoming dogs and cats and the authorized agency utilizing the holding facility for that dog or cat.

(9) Make space and access available for after-hours drop offs of animals as defined herein by animal control authorities of the City and designated NAS Whidbey personnel.

(10) Provide the name and address of every owner claiming an animal to the City.

(11) Contractor, along with designated employees and volunteers, shall undergo a criminal background check prior to beginning work at the facility, if required by the Navy regulations for admission onto the Naval Base facility.

B. Contractor Unclaimed Animal Services: Contractor shall also provide animal disposition services for unclaimed animals at the end of the applicable holding period under City ordinance. The City has reviewed the Contractor's qualifications with respect to animal placement and has chosen Contractor to provide animal disposition services based upon those qualifications. Contractor shall place the animal for adoption, foster care or shelter, or euthanize the animal as the Contractor in its sole discretion shall deem appropriate. Contractor shall provide the City with a monthly report of the status of all unclaimed animals released to the Contractor pursuant to this Contract, including the date and nature of disposition.

C. Contractor Use of the Animal Control Holding Facility: The City has been granted authority to operate an animal control holding facility on NASWI-SPB, subject to regulation, control and ownership by the United States. Contractor agrees to operate and maintain the holding facility in a neat, clean and sanitary condition, and in compliance with all applicable governmental laws, rules and regulations. Contractor will not permit any condition to exist which might constitute a nuisance. The City and the Navy, through its authorized agents and representatives, shall have the right to enter upon and inspect the facility during regular business hours, without prior notice, for the purpose of inspecting the shelter facility for compliance with this Contract. The Contractor shall obtain City approval from the Chief of Police or his designee before making improvements to the Navy-owned facility. Contractor accepts property "as is." All City-approved improvements must comply with the bidding and public works laws applicable to the City.

No tenancy in favor of Contractor in the premises is created by this Contract. The City and Navy allow use of the animal holding facility by the Contractor solely for the purpose of its obligations to operate a holding facility pursuant to this Contract. Contractor may not use the facility upon termination of this Contract. Upon termination of this Contract, Contractor will remove all animals Contractor has accepted into the holding facility and remove all of its property. The City may dispose of any animal or Contractor's property left behind upon termination, as the City deems appropriate. Expenses which the City incurs for such disposition are chargeable to Contractor, and the City may deduct such funds from any payment due the Contractor.

Any improvement to the premises and fixtures left behind by Contractor becomes the property of the City without extra payment by the City. Contractor shall provide janitorial service to the holding facility. Contractor shall be responsible for any damage to the premises Contractor causes, normal wear and tear excepted. Contractor may not use the premises for any purpose except the holding facility authorized by this Contract.

D. Costs: Contractor shall be responsible for all costs of providing services to dogs and cats brought to the holding facility pursuant to this Contract. Such costs shall include all costs of care of such animals, including, but not limited to, food, cleaning supplies, veterinary care and grooming. City will pay the utility bills for heat, electricity, water and sewer provided to the holding facility. Contractor will pay for telephone service. Contractor shall maintain the grounds at the holding facility in a clean and neat appearance. Due to the access difficulties with garbage service, the Contractor will ensure that solid waste is packaged in a manner that will allow for timely disposal by the Animal Control Officer (ACO).

E. Medical Costs for Sick/Injured Animals Picked Up By Animal Control: Contractor shall be responsible for providing veterinary care to any and all dogs or cats impounded or quarantined by City or Navy personnel authorized to utilize the animal control holding facility under this Contract. In the event that such authorized personnel assume custody of a dog or cat in need of immediate veterinary attention, the personnel will first attempt to contact the Shelter Manager before obtaining veterinary treatment if possible. If unable to contact the Shelter Manager, the authorized personnel will next attempt to make contact with the Lead Animal Care Technician. If unable to contact either party, the authorized personnel may obtain emergency treatment to relieve the immediate pain/suffering of the animal at a cost of no more than Two Hundred Dollars ($200.00), and will notify Contractor of action taken.

F. Holding Facility Procedures:

(1) Licensed Stray Animals: If the dog or cat placed in the holding facility is licensed by the City of Oak Harbor, the Contractor shall use owner information from the City or other sources to attempt to give notice to the owner by way of personal contact, telephone or mail that the animal is being held at the shelter. If the owner is notified via telephone, this notice, including the time and name of the person contacted shall be noted in records kept by Contractor and provided to the City monthly. The animal shall be held for a minimum period as outlined by City ordinance unless written instructions to the contrary are provided by the animal control authority requesting Contractor to hold the animal pending legal action. If not claimed during the applicable holding period, an animal shall be subject to disposition pursuant to Contractor's program for placing and/or disposing of unclaimed dogs and cats.

(2) Unlicensed Stray Animals: If the dog or cat placed in the holding facility is not licensed by the City of Oak Harbor, the animal shall be held for the period of time applicable under City ordinance. If not claimed during the applicable holding period, an animal immediately becomes the property of Contractor. Disposition of the animal is then at Contractor's sole discretion.

(3) Severely Injured or Diseased Animals: Severely injured or diseased animals placed at the holding facility shall be subject to veterinary examination. In the event that a state-licensed veterinarian determines that the injured or diseased animal will require veterinary services in excess of Five Hundred Dollars ($500.00) in value, the Contractor may follow the recommendations of the veterinarian for euthanasia of the animal. Contractor shall provide a copy of the veterinarian's written recommendation(s) to the City as part of its monthly report.

(4) Reclaimed Animals: Impounded animals will be released to owners or custodians upon proof of ownership, and payment of applicable fees and fines established pursuant to Title 7 of the Oak Harbor Municipal Code. Any individual representing him or herself as custodian of the impounded animal should provide written authorization for release from the owner or other sufficient evidence of authority to assume control of the animal on behalf of the owner.

(5) Dangerous Animals: Animals that have bitten people, or are suspected of having bitten people, shall be kept a minimum of ten (10) days from date of bite, for observation. The holding facility will house such animals in the absence of other available alternatives such as owner's home or a veterinary board facility. The animal's owner, if known, shall be responsible for payment of the applicable fees and costs.

(6) Waiver of Fees: The Contractor agrees to release any animal without payment of impound fees and other charges, when ordered in writing by the Chief of Police.

(7) Citizen Complaints: All citizen complaints regarding animals shall be referred to the Oak Harbor ACO upon receipt.

3. CITY RETAINED AUTHORITY:

A. Licensing: All licensing fees shall be established by the City.

B. Animal Control: The City retains authority to enforce animal control laws and regulations.

C. Independent Fees: The City retains authority to establish impound fees for animals impounded pursuant to City ordinances. The Contractor may recommend changes in City fees.

4. HOURS OF OPERATION: The Contractor shall submit to the City, as Attachment A to this Contract, a schedule of its operating hours which shall include:

A. Days and hours when the office and holding facility are open to the public (a minimum of three (3) hours per day Monday through Friday for reclaiming of animals as required by the Memorandum of Understanding between the Navy and the City of Oak Harbor).

B. A location where animals can be delivered by ACO, NAS personnel and Oak Harbor Police Department personnel 24-hours per day.

C. Days the office and holding facility will be closed for City observed holidays.

All changes to the schedule must receive approval of the Chief of Police or his designee prior to becoming effective.

5. TREATMENT OF PUBLIC: Contractor shall treat the public fairly and courteously in carrying out services required under this Contract.

6. NAVY MOU: The City currently has an agreement with the Navy, authorizing use of their facility on the Seaplane Base located in Oak Harbor. In exchange, the Contractor is responsible for hours of operation as stated in the MOU. A copy of the current Memorandum of Understanding with the U.S. Navy is attached to this document as Attachment B. Should those facilities become unavailable, either party to this Contract may terminate this Contract within thirty (30) days after they become unavailable. The Navy may restrict access to the base and/or this facility as it deems appropriate and the Contractor's use of the facility is subject to such restriction. Restrictions may include, but are not limited to, delay and access requirement of security clearance for employee. The City is not responsible for damages or costs incurred by reason of Navy actions.

7. COMPENSATION:

A. The City shall pay to Contractor monthly payments of Seven Thousand and Eighty Three Dollars, and Thirty-three Cents ($7,083.33) for services under the Contract after the month for which the services are rendered.

B. Additionally, City shall pay Thirty Dollars ($30.00) per call-out for after hours (before 8 a.m. and after 5 p.m. or on Holidays) for service requests deemed necessary by Oak Harbor Police Department, upon proper billing by Contractor within thirty (30) days of service. City shall verify that the Contractor has provided the services required under this Contract in a form acceptable to the City.

C. City shall pay utility costs for the holding facility, as long as the Contractor is not in default of this Contract.

D. City shall be responsible for replacement of equipment purchased by the City due to normal wear and tear. Contractor will be responsible for notifying the City of replacement needs of City equipment in a timely manner to allow for inclusion in the annual City budget.

E. The City shall retain all fines or penalties arising out of the issuance of citations for violation of the City's animal control ordinance, as now enacted or hereafter adopted.

8. CONTRACT TERM: This Contract shall begin on January 1, 2011 and end on December 31, 2011. Either party may terminate this Contract earlier by sixty (60) days written notice, with or without cause. The City reserves the right to immediately terminate this Contract without hearing or notice in the event of material default by the Contractor.

9. HOLD HARMLESS/INDEMNIFICATION:

A. Contractor shall defend, indemnify and hold harmless the City, its officers, officials, employees and volunteers from any and all claims, injuries, damages, losses or suits including attorney fees, arising out of or resulting from the acts, errors or omissions of the Contractor in performance of this Contract, except for injuries and damages caused by the sole negligence of the City. No liability shall attach to the City by reason of entering into this Contract except as expressly provided herein.

B. An animal shall become the responsibility of Contractor at the point that the animal is placed or released into the holding facility. Contractor shall hold the City harmless under the terms of this section for all claims arising out of the detention and custody of the animal. Accordingly, Contractor shall be held harmless by the City under the terms of this Contract for claims arising out of the detention of the animal or arising out of any situation occurring prior to the time that Contractor assumes ownership for the animal(s).

10. THE PARTIES REPRESENTATIVES AND NOTICES: The Chief of Police shall be responsible for administration of this Contract. All reports, recommendations, and other correspondence will be directed to the Chief. The Contractor's Executive Director shall act as the Contractor's liaison with the City.

All notices to the City shall be mailed or personally delivered to the City of Oak Harbor Police Chief at his/her address:

860 SE Barrington Drive
Oak Harbor, WA 98277

All notices to the Contractor shall be mailed or personally delivered to its Executive Director at:

PO Box 1108
Coupeville, WA 98239

Either party may change its address by providing written notice by certified mail, return receipt requested.

11. TAXES: Contractor will be responsible for payment of taxes applicable to its operations, including, but not limited to, business and occupation tax, sales tax, excise tax, income tax, employer's social security tax, employer's industrial insurance premium, employer's unemployment compensation premium. Contractor will be solely responsible to collect and transmit to the correct government office any employee taxes, assessments, or contributions which an employer is required to collect from employees and transmit including, but not limited to, social security and income tax withholding.

12. INSURANCE: The Contractor shall provide insurance against claims for injuries to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, its agents, representatives, or employees.

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

a. Automobile Liability insurance covering all owned, non-owned, hired and leased vehicles. Coverage shall be written on Insurance Services Office (ISO) form CA 00 01 or a substitute form providing equivalent liability coverage. If necessary, the policy shall be endorsed to provide contractual liability coverage.

b. Commercial General Liability insurance shall be written on ISO occurrence form CG 00 01 and shall cover liability arising from premises, operations, independent contractors, volunteers and personal injury and advertising injury. The City shall be named as an insured under the Contractor's Commercial General Liability insurance policy with respect to the work performed for the City.

c. Workers' Compensation coverage as required by the Industrial Insurance laws of the State of Washington.

d. Professional Liability Insurance appropriate to the Contractor's profession.

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

a. Automobile Liability insurance with a minimum combined single limit for bodily injury and property damage of One Million Dollars ($1,000,000) per accident.

b. Commercial General Liability insurance shall be written with limits no less than One Million Dollars ($1,000,000) each occurrence, Two Million Dollars ($2,000,000) general aggregate.

c. Professional Liability insurance shall be written with limits no less than One Million Dollars ($1,000,000) per claim and One Million Dollars ($1,000,000) policy aggregate limit.

Other Insurance Provisions. The insurance policies are to contain, or be endorsed to contain, the following provisions for Automobile Liability, Professional Liability and Commercial General Liability insurance:

a. The Contractor's insurance coverage shall be primary insurance with respect to the City. Any insurance, self-insurance, or insurance pool coverage maintained by the City shall be excess of the Contractor's insurance and shall not contribute with it.

b. The Contractor's insurance shall be endorsed to state that coverage shall not be cancelled by either party, except after thirty (30) days prior written notice by certified mail, return receipt requested, has been given to the CITY.

Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of not less than A:VII.

Verification of Coverage. Contractor 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 Contractor before commencement of the work.

13. RECORDS: Along with records specified in Section 2.B., the Contractor shall maintain accurate and complete records of all animals brought to the shelter in the performance of this Contract. The records shall contain the following information:

A. Description of the animal, including its breed, color, size, sex, disposition, where and how the animal was obtained and the animal's owner, if known.

B. Record of any citizen complaints regarding animals which have been referred to the ACO.

C. All dangerous or potentially dangerous animals received by Contractor.

D. Date, time, location, reason and manner in which the animal was obtained.

E. Length of time the animal was placed in the animal shelter facility.

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

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

15. NONDISCRIMINATION:

A. The City is an equal opportunity employer.

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

C. Nondiscrimination in Services. The Contractor will not discriminate against any recipient of any services or benefits provided for in this Contract on the grounds of race, creed, color, national origin, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental or physical disability or the use of a trained guide dog or service animal by a person with a disability.

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

16. AMENDMENTS: This Contract may be amended at any time by mutual written agreement between the parties.

17. OAK HARBOR MUNICIPAL CODE CHANGES: The City Council reserves the right to amend, add or delete Title 7 of the Oak Harbor Municipal Code or other provisions of the Oak Harbor Municipal Code concerning animal control or care of animals at any time on its motion. The City Council also reserves the right to pass such general rules and regulations as it may deem necessary for the operation of the shelter and/or disposal area; provided, further, that changes in rules, regulations, ordinances and Title 7 which result in additional work or change indirectly compensation, do not have to be undertaken by the Contractor unless mutually agreed to. It is further provided that changes in ordinances of the City or Title 7 of the Oak Harbor Municipal Code which cause additional work or change directly or indirectly compensation levels for the Contractor, that these occurrences shall be the basis for the re-evaluation of compensation levels under this Contract. Such changes shall be to reasonably compensate the Contractor and must be consistent with the principles and levels of compensation set out in this Contract.

18. INDEPENDENT CONTRACTOR: All activities performed by the Contractor, employees, volunteers or representatives are, for all purposes under this Contract performed as an independent contractor and shall not be deemed to be an employee or agent or representative of the City, and none of them shall be entitled to any benefits to which City employees are entitled including, but not limited to, overtime, retirement benefits, unemployment insurance, worker's compensation benefits, injury leave or other leave benefits. Contractor will pay all taxes as are connected with this operation including, but not limited to, employee taxes (such as industrial insurance and FICA) and federal, state and local taxes (such as income, excise and sales taxes). Contractor shall file a federal tax return showing expenses and any profits of the enterprise and shall maintain an account with the Washington State Department of Labor and Industries.

Contractor acknowledges that it is an independent contractor and that it is not a City of Oak Harbor agency or the agent of a City of Oak Harbor officer and agrees not to represent itself as such. All volunteers and any paid staff are volunteers and staff of Contractor and not of

the City of Oak Harbor. Any uniforms or insignia used by Contractor shall not use the words "Oak Harbor."

19. ASSIGNABILITY: The Contractor will use its best efforts, skill and independent judgment in providing high quality shelter service for the City. Contractor may not assign this Contract or any part of it to any other person or firm. The Contractor may hire employees; provided, the Contractor recognizes that it's right to use employees of its choice is necessarily limited by the Navy's needs and authority to control access to NASWI-SPB. The Contractor is responsible for supervision of any employees or volunteers.

20. THIRD PARTY BENEFICIARIES: This Contract is for the purpose of providing animal shelter services for the City of Oak Harbor and is for the general benefit of Oak Harbor and should not be construed as creating a right or benefit for any particular person or class of persons not a party to this Contract.

21. NO WAIVER: Any failure or delay by City or Contractor in strictly enforcing the terms of this Contract shall not operate to waive or be deemed a waiver of the rights of the City or Contractor to require compliance that is full and to the letter of the Contract, or to thereafter require performance by City or Contractor in strict accordance with the terms of this Contract.

EXECUTED, this 8th day of December, 2010 for the WHIDBEY ANIMALS' IMPROVEMENT FOUNDATION.

Kathryn Marit
President of the Whidbey Animals' Improvement Foundation

Executive Director of the Whidbey Animals' Improvement Foundation

EXECUTED, this the 10th day of December, 2010 for the CITY OF OAK HARBOR.

Jim Slowik, Mayor

ATTEST:

Connie Wheeler, City Clerk

APPROVED AS TO FORM:

Margery Hite, City Attorney

DEPARTMENTAL APPROVAL:

Richard W. Wallace, Chief of Police

ATTACHMENT "A"

ANIMAL SHELTER SERVICES CONTRACT
WHIDBEY ANIMALS' IMPROVEMENT FOUNDATION AND CITY OF OAK HARBOR

Whidbey Animals' Improvement Foundation Operating Schedule

Open to Public for Viewing and Adoption
Wednesday through Sunday – 12 to 4 p.m.

Open for Redemption and Surrender of Animals
Monday through Sunday – 9am to 4pm

Animals being delivered to City can be left in the outside kennel which can be seen to the left of building when facing front of facility.

Holiday Closures
Shelter will be closed on the following holidays:

New Year's Eve
New Year's Day
Easter
Memorial Day
Fourth of July
Labor Day
Thanksgiving Day
Christmas Eve
Christmas Day

All changes to the schedule must receive approval of the Chief of Police or his designee prior to becoming effective.

ATTACHMENT "B"

ANIMAL SHELTER SERVICES CONTRACT
WHIDBEY ANIMAL IMPROVEMENT FOUNDATION AND CITY OF OAK HARBOR

The following is the text of the Navy MOU:

U.S. NAVY LICENSE FOR NONFEDERAL USE OF REAL PROPERTY
LICENSE NUMBER N4425596RP00T31 (series)
WITH THE CITY OF OAK HARBOR, WASHINGTON

OPERATING MEMORANDUM OF UNDERSTANDING FOR THE
USE OF NAVY FACILITIES FOR AN ANIMAL SHELTER

1. The City of Oak Harbor ("City") use of Navy facilities for an animal shelter, pursuant to License Number N4425596RP00T31, shall be subject to the following conditions:

   a. Routine inspection of the premises by authorized naval personnel shall be performed on a not-to-interfere basis.

   b. The building and surrounding area shall be maintained in a clean and orderly manner at all times.

   c. City animal control shall be limited to the following areas of Naval Air Station (NAS), Whidbey Island:

      (1) All areas of the NAS Whidbey Island Seaplane Base;

      (2) Mayor Point Housing;

      (3) Victory Housing

      (4) Saratoga Heights Housing;

      (5) Rockhill Terrace Housing;

      (6) Crescent Harbor Housing; and

      (7) Whidbey Apartments

      All other areas on the naval reservation will be controlled by NAS Whidbey Island Security.

   d. Animals taken by NAS Whidbey Island Security will be turned over to the City attendant, who will keep them for 5 days prior to disposal. Return of animals so taken will not include the impound fee, but all other fees are applicable.

e. The animal shelter facility shall be open for recovery of pets during the hours of 1:00 p.m. to 3:00 p.m., Monday through Friday.

f. City residents will be allowed entry to the Seaplane Base to recover pets.

g. The City animal shelter attendant shall double-bag all dead animals, and shall transport said animals to the transfer station on board the NAS Whidbey Island Ault Field Base for disposal. The City will assure compliance with applicable sanitary requirements.

2. The Navy will provide necessary utility services and will bill the City for these services on the basis of engineering estimates. Reimbursement by the City shall be due upon receipt of bills.

3. The terms of this Memorandum of Understanding may be modified by mutual agreement.

4. This Memorandum of Understanding shall remain in effect throughout the existence of License Number N4425596RP00T31 and any successor licenses for the use of Building 297 on board NAS Whidbey Island.

5. This Memorandum of Understanding supersedes all previously executed memoranda of understanding concerning the City's use of Navy facilities for an animal shelter.

For Naval Air Station, Whidbey Island	For the City of Oak Harbor
/s/	/s/
Name Gerral David, Captain, U.S. Navy	Name: Jim Slowik
Title: Commanding Officer	Title: Mayor
Date: _____	Date: _____

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