

Gig Harbor City Council Meeting

**March 09, 2009
6:00 p.m.**



**AGENDA FOR
GIG HARBOR CITY COUNCIL MEETING
March 9, 2009 – 6:00 p.m.**

CALL TO ORDER:

PLEDGE OF ALLEGIANCE:

CONSENT AGENDA:

1. Approval of the Minutes of City Council Meeting of Feb.23, 2009.
2. Receive and File: a) Boards / Commission Candidate Review Feb. 23, 2009; b) Gig Harbor North Traffic Operations Committee Feb. 25, 2009; c) Operations Committee Minutes Feb. 19, 2009; d) Prudential Spirit of Community Letter.
3. Liquor License Actions: a) Change of Corporate Officers – Moctezumas; b) Added Privilege – Harbor Kitchen; c) Special Occasion – Prison Pet Partnership; d) Application – Sip at the Wine Bar & Restaurant.
4. Appointment to the Parks Commission.
5. Appointment to the Arts Commission.
6. WWTP Ph. 1 Improvement Project – Escrow Agreement for Retainage.
7. Sewer Outfall Extension – DNR Easement.
8. Eddon Boat – Oversight Remedial Action Grant Agreement.
9. Approval of Payment of Bills for March 9, 2009: Checks #60366 through #60504 in the amount of \$855,506.06.
10. Approval of Payroll for the month of February: Checks #5372 through #5393 and direct deposits in the amount of \$334,255.75.

OLD BUSINESS:

1. Second Reading of Ordinance – Truck Weight Limits on Pioneer Way.

NEW BUSINESS:

1. First and Final Reading of Ordinance – Burnham Sehmel Annexation.
2. Public Hearing and First Reading of Ordinance – Height Restriction Area.
3. Pioneer Way Brick Planter – Construction Contract and Materials Testing Contract Award.

STAFF REPORT:

1. Greater Peninsula Partnership.
2. Frontage Road Issue.

PUBLIC COMMENT:

MAYOR'S REPORT / COUNCIL COMMENTS:

ANNOUNCEMENT OF OTHER MEETINGS:

1. St. Anthony's Opening Celebration – Fri. March 13th 6:00 p.m.
2. Operations and Public Projects Committee – Thu. Mar. 19th at 3:00 p.m.
3. Finance Safety Committee – *Moved from Mar. 16th to Apr. 20th.*
4. Joint City Council / Planning Commission Worksession: Mon. March 16th at 5:15 p.m.
5. Planning & Building Committee – Monday, Apr. 6th at 5:15 p.m.

EXECUTIVE SESSION: To discuss pending litigation per RCW 42.30.110(1)(i).

ADJOURN:

GIG HARBOR CITY COUNCIL MEETING OF FEBRUARY 23, 2009

PRESENT: Councilmembers Ekberg, Young, Franich, Conan, Malich, Payne, Kadzik and Mayor Hunter.

CALL TO ORDER: 6:01 p.m.

PLEDGE OF ALLEGIANCE:

CONSENT AGENDA:

1. Approval of the Minutes of City Council Meeting of Feb. 9, 2009.
2. Receive and File: a) Joint City Council / Lodging Tax Advisory Board Minutes Feb. 2, 2009 b) GHPD Monthly Report;
3. Animal Control Services – Kitsap County Humane Society.
Special Services Agreement – Pierce County Sheriff's Department.
4. Special Occasion Liquor License – Kiwanis.
5. City Prosecuting Attorney Contract.
6. Resolution – Authorizing Interlocal Agreement with Pierce County Amending Countywide Planning Policies.
7. 2008 Solid Waste Management Plan Supplement.
8. Harbor History Museum – Amendment to Purchase and Sale Agreement.
9. Resolution – Acceptance of the Public Works Trust Fund Loan (PWTF) Pre Construction Loan Project for the Wastewater Treatment Plant.
10. Wastewater Treatment Plant Phase 1 Improvement Project – WA State Centennial Clean Water Program Grant Agreement.
11. Wastewater Treatment Plant Phase I Project – Storage Tank Agreement.
12. Approval of Payment of Bills for Feb. 23, 2009: Checks #60267 through #60365 in the amount of \$747,868.08.

Councilmember Franich asked that item seven be removed for further discussion.

MOTION: Move to approve the Consent Agenda without item number seven.
Kadzik / Malich – unanimously approved.

OLD BUSINESS:

1. Second Reading of Ordinance – Joint Use Parking in Mixed Use Developments.
Jennifer Kester presented a brief report on this proposed text amendment to revise how parking is calculated in Mixed Use Developments approved under one site plan application. This proposal would apply to all zones that allow both day and night uses. She addressed questions on the administrative interpretation process.

Councilmember Franich voiced concern that this only exchanges what would have been a parking lot for a building which eliminates open space.

MOTION: Move to approve Ordinance No. 1154.
Young / Kadzik –

AMENDMENT: Move to remove the RB-1 Zone from this Ordinance.
Ekberg / Malich –

Councilmember Ekberg explained that the RB-1 Zone does not have the issue of night-time / day-time use, and churches will be considered as a conditional use. It is primarily an office transitional zone and night-time use should not be encouraged.

Ms. Kester addressed questions about the process for a conditional use permit in context of shared parking. She said that the ordinance states that houses of religious worship is considered a night-time use.

Councilmembers discussed how churches have evolved into more than just evening or weekend uses. Ms. Kester explained that parking calculations for churches is based upon the specific size of the main seating area and any parking credit would be based on this and other mixed uses on the site.

Councilmember Malich asked if this ordinance would affect building size. Ms. Kester responded that the parking requirements are in response to a particular building size and not the other way around. She explained that during site plan review, the building use is required to determine if it meets land use requirements.

Ms. Kester was asked to cite the list of uses in the RB-1 zone.

AMENDMENT: Move to remove the RB-1 Zone from this Ordinance.
Ekberg / Malich – a roll call vote was taken:

Ekberg - yes; Young – no; Franich – yes; Conan – no; Malich – yes; Payne – no; Kadzik – Yes.
The motion to amend the ordinance carried four to three.

MOTION: Move to postpone this until the next Council meeting.
Malich / Ekberg –

Councilmember Malich recommended that this be studied further because it affects future shopping centers, citing the lack of parking in Tacoma and Seattle. He expressed a hope that this could be postponed until a parking study could be done on March 30th.

Councilmember Young explained that the parking study on March 30th is for the downtown area which already has the capability for shared parking. He then said that the community has spoken about not having large “seas” of asphalt and so to encourage more parking seems counter-productive. He stressed that property owners are going to ensure ample parking to guarantee they have tenants.

Councilmember Franich responded that he isn't willing to take that risk. He said that this will encourage under-developed shopping centers to take advantage leading to more buildings. He stressed that a parking lot is open space.

Councilmember Malich said he would like to see some of the asphalt returned to nature as a compromise to reducing the parking requirement that doesn't add more structures.

Councilmember Young responded by saying that the concept of the Growth Management Act is to preserve open space by condensing development; fewer buildings on a site will just expand the commercial area outward. He said that the Planning Commission did a great job of studying this issue and their recommendation is more conservative than other jurisdictions. He agreed that it makes sense to look at the waterfront and RB-1 zones separately.

Councilmember Kadzik agreed, adding that this may result in more buildings on a site but with better utilization.

MOTION: Move to postpone this until the next Council meeting.
Malich / Ekberg – six voted no. Councilmember Malich voted yes.

MAIN MOTION: Move to approve Ordinance No. 1154 as amended.
Young / Kadzik – five voted in favor. Councilmembers Franich and Malich voted no.

2. Second Reading of Ordinance – Harbor Hill Water Tank & Mainline Extension Latecomers Agreement. Rob Karlinsey explained that staff would like to bring this back at the next meeting to verify the fire flow on several parcels before adoption of the ordinance.

NEW BUSINESS:

1. First Reading of Ordinance – Truck Weight Limit on Pioneer Way. David Stubchaer presented the background for this ordinance to limit truck on this steep street. He said an amendment to the exemptions section has been suggested by the Operations Committee that will be reflected in the second reading.

Councilmember Payne reminded staff to contact the Department of Transportation regarding signage for the alternate truck route.

2. Council Initiated Comprehensive Plan Amendment – 3700 Grandview Street Comprehensive Land Use Map Amendment. Mayor Hunter explained that item was on the agenda not as a public hearing, but to allow City Council to discuss whether to move forward with this amendment.

Tom Dolan, Planning Director, presented the history of this comprehensive plan amendment beginning in 2007. He said that the applicants have indicated a desire for

City Council to sponsor the amendment for 2009 and have held two meetings with the public. Mr. Dolan explained that there is no limit to the number of times a comprehensive plan amendment can be submitted nor is there a waiting period. He said that it is his understanding that the applicant would not submit their own application if Council chooses not to sponsor the amendment.

Mr. Dolan responded to Mayor Hunter's request for the approximate cost and staff hours to process this application. There is an application fee, a SEPA fee, a vehicle trip review fee and a development agreement fee all adding up to approximately \$6000. Based upon the number of hours spent on this same request he guessed two to three hundred hours of staff time would be involved. He said the only difference in the process for a Council sponsored amendment is payment of the fees; the amendment would still go through the Planning Commission and back to Council. He then responded that the city has a number of Comp Plan Amendments they sponsor each year which go through the same process, but no fees are charged.

Mayor Hunter commented about the cost to the citizens. Councilmember Franich added that city-sponsored amendments don't benefit individual property owners.

Councilmember Payne explained that he proposed this Council-initiated Comp Plan Amendment after the applicant showed movement towards a more acceptable proposal than what was denied by the Planning Commission, and also to encourage the applicant to continue communication with the citizens.

Tom Dolan was asked his opinion on support of the amendment by those who attended the two public meetings. He responded that on whole the property owners at the first meeting were generally in favor of the proposal. At the second meeting, the comments were more negative.

Councilmember Young pointed out that there were comments that this amendment should be sent back to the Planning Commission but the deadline for the comp plan process required a decision. He asked what the additional costs would be if this amendment were treated as if it had not ended.

Angela Belbeck, City Attorney, responded that the only way to get this back in front of the Planning Commission is with a new application. The process was formally concluded in December with the denial. To the extent that any reports that may have been produced during the earlier review could be updated, there could be some cost savings.

Councilmember Franich asked about the possibility of an agreement for the applicant to pay the costs if the amendment is approved. The response from the City Attorney was it either had to be submitted by the applicant or sponsored by Council.

Mayor Hunter said that the property owner also has a text amendment in the process that could alter the height of these buildings. He added that the current plan is nothing

like what the Planning Commission reviewed. Councilmember Payne responded that this is the point and why it should go back.

Councilmember Young stressed that design modifications should be done at the Planning Commission level rather than with Council debate. He said he felt like Council gave up on the changing application.

Councilmember Ekberg said that a plan was submitted and that the Planning Commission denied that plan. Then the applicant began adjusting it, which is fine, but there is a level at which the citizens should expect the process to conclude. If the developer wants to start over again with a lesser plan, then it goes through the process again. To have it continue on and on wears down the citizens.

Carl Halsan – PO Box 1447, Gig Harbor. Mr. Halsan referred to the two community meetings explaining he was only able to attend the first. He said that he sent the invitations starting with the abutting property owners and then added others who had signed up as interested parties. He handed out a summary sheet and two colored renderings of the current proposed project, then gave an overview of the information regarding tree preservation, buffering, setback and below-grade parking. Mr. Halsan said that they would resubmit the development agreement if this goes forward, and the term of the agreement can be as short or long as Council desires. He said that their intention is to move as quickly as possible but they are willing to insert a reverting clause to ensure the terms are met or the agreement expires. Mr. Halsan continued to explain that on the Stinson Building, they put a “not-to-exceed” limit of 11,500 feet on the first floor and 7,500 feet on the second floor. The height limit for the Pioneer Building will be left as proposed: “not-to-exceed” 30 feet if the property is removed from the height restriction area. If it remains in the restrictive area, it will be built to code. The second floor of residences will be “stepped-back” on all facades to belie the look of bulk and density.

Mr. Dolan responded to a question saying that he understands that this plan has been revised to include a 30 foot buffer off Grandview as opposed to the previously proposed 20 foot buffer.

Councilmember Young said that it is up to the Planning Commission to determine these issues. Councilmember Ekberg responded that the issue is whether Council wants the citizens to pay for this or the developer. He disagreed that the plan has to be hashed out with the Planning Commission.

Bill Fogerty – 3614 Butler Street. Mr. Fogerty, adjacent property owner, said he had a couple of questions and wanted to reinforce why he thinks it has to go back to the Planning Commission. Mr. Fogerty said that the original document dated February 26, 2008 shows Mrs. Ancich’s lot as zoned R-1 which does not reflect the developer’s claim that the RB-1 zone stretches all the way across. The next document dated August 14, 2008 shows the property as RB-1. He said he doesn’t remember a zoning change. Mr.

Fogerty read points from the resolution Council adopted based upon the Planning Commission's recommendations:

- The proposed scale of the two mixed-use commercial buildings, 2-1/2 stories would be substantially larger than surrounding structures.
- The proposed mixed-use development on the southerly half of the site is inconsistent with the goals, policies and objectives of the Comprehensive Plan.
- A change in the land-use map that led to the site being rezoned to RB-2 could adversely affect the neighborhood scale, which mostly consists of single-story and 1-1/2 story commercial buildings.
- The Planning Commission concluded that the future large multiple story buildings would not be compatible with the surrounding land uses.

Mr. Fogerty continued to say that this has been denied and so it goes back to the Planning Commission to start over. He questioned the developer's right to develop five, 5000 square foot commercial buildings if part of the parcel was never zoned RB-1. He mentioned a study performed by TRANSPRO on June 11, 2008 stating that a transportation impact fee should approximate \$84,000 and the project would generate 272 trips per day. He then said he doesn't buy that you won't be able to see a 30' high building at the top of the basin and people from East Gig Harbor agree. He again said lets go back to the Planning Commission with this.

Councilmember Payne asked Mr. Dolan for clarification on whether this is a rare, split-zones within the same property; RB-1 on the corner and R-1 on the lower half. Mr. Dolan said yes, and it isn't quite two acres.

John McMillan – 9816 Jacobsen Lane. Mr. McMillan reiterated his comments to Council in his e-mail regarding the use of trees as coverage on the north side of the project. He asked why they are covering a project. Is it because it is distasteful, too large or too bulky? He said that using trees to cover up buildings is not a good idea because trees can come and go. He said rezoning is not warranted here and sets a bad precedent for future projects in the view basin.

Marty Paul – 3312 Rosedale Street. Mr. Paul said that over the past 6-9 months he had the opportunity to listen to public support and opposition which is important to understand both sides. He said that as investors, they have shown a willingness to adapt their project to its highest and best use and which is palatable and applicable to both. He voiced surprise at the number of economic specialists and development expertise before mentioning his Grandfather's grocery store built in 1940's; one of the largest at that time. His competitor, Keith Uddenberg went on to build a 70,000 shopping center in the heart of downtown Gig Harbor. He said that a lot of regulations in place now were established up to 20-30-40 years ago, and the reason they land-banked this property is to try to influence a mixed-use so that it's not restricted to commercial only, and so residents could live where businesses operate and enhance what was built on top of this hill 20-30-40 years ago. If they go forward with a commercial-only project regardless of the size of the buildings, the top of Gig Harbor will look more like it does today; commercial only. He said they have shrunk the buildings in order to maximize underground parking to allow for the most trees to enhance the residential experience,

and they plan for a residential project between the commercial and current residents. Mr. Paul talked about walking up Pioneer saying he couldn't even see the 16 foot homes on Butler because of the elevation. From Shyleen Street you can't even see the Uddenberg Buildings which are 25-27 feet tall. He said he didn't know what imagery or trickery was used to show big buildings planted down the hill and he didn't know what people are afraid of...but said he is afraid of affecting balance. He stressed that you need to incorporate better vision for the future and economic stability. Mr. Paul said Mayor Hunter made a point of saying we can't afford this because of the predominant amount of our revenues are dependent upon retail sales tax. He then said that a tenant whose headquarters are in Chicago and doesn't want to be on the highway came to him today looking for 5,000 to 7,000 square feet of office space. Mr. Paul asked him to come to the meeting tonight to help fight for the ability to bring white-collar, environmental engineering firms to this community. He continued to say the property taxes from this project alone will generate over \$200,000 a year not counting the 60-80 employees that will be there. Mr. Paul said that before you turn down big buildings consider the adjacent buildings adjacent which average less than 1500 square foot and house tanning salons, massage therapist, and beauty supply shops. He said we need a broader base of economic stability; and that's what this project does.

Guy Hoppen – 8402 Goodman Drive. Mr. Hoppen said he is opposed to Council passing this Comprehensive Plan Amendment as it allows for two massive, out of scale buildings in the Gig Harbor View Basin. Many here tonight believe that the balance and scale that it so important to the historic character of the view basin will be compromised by the proposal and everything regarding the proposal presented so far has reinforced this opinion. The proposed buildings are too huge and nothing can alter that fact; not buffers, not tree retention or building use. He said that it's also disappointing and confusing that the community has to continue to weigh in on the agenda item that has appeared at least three to four times.

Mark Hoppen – 8133 Shirley Avenue. Mr. Hoppen said he went to the meeting and was impressed by the fact that the developer was open and shared information. He said that the audience was largely not in support of the project. He then pointed out that the architect said that every so often zones just have to be changed because people just don't really know what they're doing when they establish zones. This made him think of two people present at the meeting, Kae Paterson and John English who were on the Planning Commission when he served on City Council and the RB-1 zone was approved. He explained that the reason for the approval of the RB-1 zone is because it is transitional from residential to the commercial triangle to the south. He stressed that if it is time to change the nature of the uses and geometric considerations and the Comprehensive Plan has to be changed in order to do that, it should be bundled with the same respect that the city paid it when they established the RB-1 zone in the first place; it should be treated as an area-wide rezone.

Councilmember Young said he had a discussion with Tom Dolan about having staff take another look at this to make sure it is being done correctly. One of the reasons for the development agreement is the leap from RB-1 to RB-2 resulting in some fear. He said it

is too large for a site-specific rezone and so if this goes forward, he would like the Planning Commission to take a look at: a) whether or not there should be an area-wide rezone legislative action; and b) whether or not there should be an additional RB zone. He further explained that the reason he voted to deny the application was because we hadn't gone through the process correctly and there was interest in doing something different. He said he is in favor of an opportunity for something more sensible on this site and a process in which people can be better heard. He agreed that people are getting worn down. He agreed that it's not the best thing for the city to initiate the application, but because it has taken so many years he wanted to buy more time. He said if additional things are required such as a traffic study then the previous applicant should pay for it, but he is unsure how to go about that.

Councilmember Franich said that Council has done a good job of trying to maintain the character and scale of Gig Harbor up to this point, and in his opinion, things have been getting out of hand; this project for example. He said he hears talk about being progressive but a line should be drawn at the view basin. There are plenty of other places to have new urbanization ideas; the downtown view-basin is not the place. He said he is disappointed that this is moving forward adding that the worst thing is the city is paying for it. Mayor Hunter agreed.

Councilmember Young stressed for the record that if this is directed back to the Planning Commission it's not any way instruction to pass it or an indication of support; the project has to be considered on its own merits.

Councilmember Ekberg commented that this would be clear if the proponent was allowed to apply for the amendment. Councilmember Malich and Franich agreed. Councilmember Malich said it doesn't make sense for Council to have to send it back to the Planning Commission.

Councilmember Conan explained that he voted for the denial because it was the end of the year and we had to stop the process; he sees this as a continuation of the same. He said that he understands the citizen's frustration for this coming back, but there were several that recognized the progress made and wanted the conversation to continue. That is why he thinks Council should be moving this forward because it was the city's process that stopped it from continuing. If it had been legally possible to move it forward, it would have; that is why he favors the Council-initiated Comprehensive Plan Amendment with no expectation of approval.

Mayor Hunter said this project is a bad fit for the gateway to Gig Harbor. He cited the multiple changes required: a comp plan amendment, removal from the height restriction area, a height text amendment, a design review approval for zone transitions, and hearing examiner approval. He said no pictures have been shown from the perspective down the hill because of the big, high face. The trees they show in front of the project will block visibility for the tenants. Mayor Hunter said that he thinks the city will be pushed to allow more clearing so the people living in the second-floor condos can see the water. He stressed that this is the wrong project for that location.

Councilmember Conan responded that the removal from the height restriction area is a separate issue and will be voted on separately. Councilmember Franich voiced concern that precedent was set with the exemption of the historical society property and if the same standards are used, this project will also be removed.

Councilmember Conan continued by saying he is sure the proponent of this project will be happy to figure out a way to make sure the identified trees will stay; it's up to the Planning Commission to come up with a guarantee.

Councilmember Payne overviewed how this comp plan amendment was encouraged to proceed until it ended in December. He applauded the effort that has gone into this, noting that the project was changing for the positive. He said as a resident of the area who has walked the property many times, he thinks this is a stately entrance to the harbor and however possible, he wants to make sure it is preserved. When he thinks of the alternative allowed by the RB-1 zoning designation, he agrees that we may need to look at an area-wide reconsideration. RB-1 would allow four, 5,000 square foot buildings spread over the face of Grandview that would look similar to the Uddenberg Development across the street. He said he would prefer a project with residential on top. He also said that he is impressed with the underground parking to remove asphalt and to preserve trees and the proposed setbacks. He stressed that he is not suggesting that the Planning Commission should assume anything about whether or not Council would approve this project; it has to be judged on its merits. He thinks there are citizens and residents who like the project and think that it could potentially benefit this residential community. He called office space without residential a "dead zone" that attract nuisance in the evening that will spread. He said he believes the applicant has done a great deal in order to move forward and he is in favor of moving it forward to the Planning Commission.

MOTION: Move for Council to initiate a Comprehensive Plan Amendment for 3700 Grandview Street through the 2009 process.
Payne / Conan –

AMENDMENT: Move to add clear language that this in no way is a Council recommendation and this Comprehensive Plan Amendment be treated and processed in the exact same manner as all other amendments this year with no special consideration.
Franich / Payne –

Councilmember Young asked for clarification on input to determine whether this needed to be considered as an area-wide basis. Tom Dolan responded that it would be helpful for Council to give the Planning Commission direction, adding that an area-wide rezone process would be problematic to get done this year.

Mayor Hunter voiced concern that there is a fair and transparent process in place with a timeline. What this says is that if you don't get approval within that timeframe, the

process doesn't count and you'll get more time. Councilmember Payne disagreed that this is the intention; the intent is for the process to start over. Mayor Hunter then said it's damaging for a property owner surrounded by residences to have big building come in adjacent to them.

Councilmember Malich asked if the motion was for the city to fund this. Councilmember Payne responded that no, it's just to sponsor it. He asked if there is an ability to break out fees for such things as a traffic study. Ms. Belbeck said the city could ask for the property owner to contribute, but in terms of a vehicle to require that fee, no...it's on the city's dime if they initiate the process.

AMENDMENT: Move to add clear language that this in no way is a Council recommendation and this Comprehensive Plan Amendment be treated and processed in the exact same manner as all other amendments this year with no special consideration.

Franich / Payne – unanimously approved.

Councilmember Kadzik said he respects the opinions of those who have spoken. He said that he agrees with Councilmember Conan; he looks at this as a continuation of what would have occurred if there had been an opportunity to remand this project back to the Planning Commission. He said it deserves another review.

Councilmember Malich asked if there is money in the budget for this. Rob Karlinsey responded that staff time is already budgeted; this is more of an opportunity cost. Tom Dolan said that a traffic consultant will have to run the model and so there will be a cost associated with that.

MOTION: Move for Council to initiate a Comprehensive Plan Amendment for 3700 Grandview Street through the 2009 process, this in no way is a Council recommendation, and this Comprehensive Plan Amendment will be treated and processed in the exact same manner as all other amendments of this year with no special consideration.

Payne / Conan – a roll call vote was taken:

Ekberg - no; Young – yes; Franich – no; Conan – yes; Malich – no; Payne – yes; Kadzik – yes. The motion to initiate a Comp Plan Amendment carried four to three.

Councilmember Ekberg left the meeting at 7:32 p.m.

3. Resolution – Authorizing Interlocal Agreement with Pierce County Amending Countywide Planning Policies.

Councilmember Franich said he understands that in our UGA affected by this, but personally he feels that the city should get out from the Puget Sound Regional Council's control over implementation of programs and policies that they want to impose on the region. He said he wanted it on the record that he voted against this. Control over land

use policies should not come down from Puget Sound Regional Council, but should be controlled by the local jurisdiction. Every time we get on board it gives them more weight to throw around and to control people.

Councilmember Young clarified that this is the Countywide Planning Policies for Pierce County; Puget Sound Regional Counsel has nothing to do with this. What this does is amends the policy at the request of cities that want to designate “centers” of concentrated employment and housing so they know where to build transit centers and allow for transportation funding.

MOTION: Move to adopt Resolution No. 784 authorizing Interlocal Agreement with Pierce County Amending Countywide Planning Policies.
Payne / Conan – five voted in favor. Councilmember Franich voted no.

STAFF REPORT:

Pierce County Public Benefit Rating System. Lita Dawn Stanton, Special Projects, presented the background for this request by the cities of Lakewood, Puyallup, Tacoma and the Town of Steilacoom to amend the point system so that historic properties can qualify for this program. She said that because very few properties in Gig Harbor would qualify for the register, but those who are willing to commit to conserve their property should be rewarded. She requested that the City of Gig Harbor join other CLGs in requesting that this item be placed on the County Council agenda for public input. If adopted by the county it will still be up to Council to adopt the PBRs locally.

Councilmember Young asked for further clarification on whether this is reducing the tax or the overall valuation of the property; a much broader issue. After discussion, Ms. Stanton offered to come back with more information at a later meeting. She asked if Gig Harbor could join with the other cities in support of bringing it up as an agenda discussion.

Councilmember Franich said he thinks it’s a great idea and the first step in major tax reform, because taxes are totally out of control.

Rob Karlinsey said staff would clarify the calculation at the next council meeting, explaining that this is a countywide policy being established and whether it’s implemented in the City of Gig Harbor is a separate step. He asked whether Gig Harbor can be one of the cities listed in support. Councilmember Young suggested coming back with the clarification and if it isn’t reducing property valuation, he would be in support.

Councilmember Payne asked about timing, and Mr. Karlinsey responded that it isn’t a rush. Councilmember Kadzik agreed to wait for the additional information, adding that he is in support of this as he has never agreed with the county’s policy of “highest and best use” especially on the waterfront.

PUBLIC COMMENT:

Mike Siegel. Mr. Siegel said he works with Northwest Conservancy Group and Gig Harbor Home sites as a member and principal. He thanked Council for approving the 96th Street Annexation, of which they were a part. He explained that through a 1958 Deed the State of Washington is required to build a frontage road from Rosedale to the Schick Business Park. He said that in a meeting with the Department of Transportation on September 13, 2007, DOT agreed that they have the obligation to build that road. Now that the property is within the city, it would be beneficial to the city as well as the property owners to have the road built by the state. Mr. Siegel said he is meeting with Troy Cowen and John Wynans from the Dept. of Transportation March 3rd in an on-going effort and they have met with Senator Kilmer who supports the effort. Everyone up to the Assistant Attorney General in charge of DOT agrees that they have the obligation under the deed. According to the January 25th memo, upon completion of the project the 2800 foot long frontage road would be relinquished to Pierce County; because of the annexation that would now be to the City of Gig Harbor. He said their goal is for Council to authorize the city's lobbyist in Olympia to work with them to get the state to build the road.

Councilmember Franich said the frontage road was identified during the Narrows Bridge / Highway 16 Improvement project as a long-term goal. He agreed that there is a horrible, dangerous situation at the Connie Schick property and until that frontage road is constructed, there should be no further development in that stretch. He then said the city shouldn't be promoting this on it's their dime.

Councilmember Payne said the decision should be made whether it's in the city's best interest to allow the lobbyist to spend time on this. Councilmember Young said he would like a better assessment of the likelihood of this going through before that decision is made due to the state's current financial situation.

Councilmember Kadzik recommended that the city attorney take a look at it and come back with information.

Mr. Siegel mentioned a long list of officials that attended his meeting which illustrates that the state takes this very seriously. He said another meeting is scheduled for March 3rd to allow Mr. Cowan and Mr. Wynans, both people in authority, to attend. Mr. Siegel stressed that the Senior Assistant Attorney General acknowledged as the attorney for Department of Transportation that the road needs to be built. When they discussed the lack of a date certain for completion, he said that any court will use the reasonable time standard and 51 years at this point is beyond a reasonable time. He said that he thinks it's solid that the state has the obligation and are willing to talk about this project which would be a great benefit to the city.

Councilmembers recommended that the city attorney review the deed and then have the city's lobbyist consult with them and come back with a recommendation.

Councilmember Young pointed out that the cut-off is tomorrow for the fiscal impact session but it doesn't mean we can't lay the groundwork for the future.

Councilmember Malich agreed that a frontage road would be a benefit to the city and the citizens and so we should look at it from that standpoint.

Rob Karlinsey said this road is identified in the Comprehensive Plan, adding that the city attorney and lobbyist will review the information and will report back at the next meeting.

MAYOR'S REPORT / COUNCIL COMMENTS:

Councilmember Young asked that the Floor Area Ratio be brought back on the Planning Commission work plan agenda. Councilmember Franich said this needs to be discussed at the Planning/Building Committee level because the Planning Commission's work plan schedule is so full.

Councilmember Payne reported that the federal appropriation to assist with day lighting Donkey Creek is likely to be approved in the next week.

Councilmember Franich said that the Comp Plan Amendment that was just put through is going to have very big effects. He talked about the election promises to keep the character and scale of Gig Harbor, and pointed out that after people are elected some forget all the sentiment expressed during the election season. He said he thinks it's important that Councilmen, Mayor and Staff keep that in the back of their minds and try and remember back to what people say they want.

Mayor Hunter said that is true; people want the size, scale and character maintained and we're going in the opposite direction. We will have to see what happens.

ANNOUNCEMENT OF OTHER MEETINGS:

1. GH North Traffic Options Committee – Wednesday, Feb. 25th, at 9:00 a.m.
2. Planning & Building Committee – Monday, Mar. 2nd at 5:15 p.m.
3. Canterwood Boulevard Ribbon Cutting Ceremony – Mon. Mar. 9th at 4:30 p.m.
4. Intergovernmental Affairs Committee – Mon., Mar. 9th CANCELLED.
5. St. Anthony's Ribbon Cutting Ceremony – Fri. Mar. 13th
6. Operations and Public Projects Committee – Thursday, Mar. 19th at 3:00 p.m.
7. Boards and Commission Candidate Review – Mon. Mar. 23rd at 4:30 p.m.

ADJOURN:

MOTION: Move to adjourn at 8:09 p.m.
Franich / Conan – unanimously approved.

CD recorder utilized:
Tracks 1001 – 1037

Charles L. Hunter, Mayor

Molly Towslee, City Clerk

OUTLINE MINUTES

Boards and Commissions Candidate Review Committee

Date: February 23, 2009 Time: 4:30 p.m. Location: Executive Conference Room Scribe: Molly Towslee, City Clerk

Members Present: Councilmembers Kadzik and Malich

Others Present: Bob Sullivan, Chair, GH Arts Commission

Topic	Recommendation/Action	Follow-up (if needed)
Review Candidate Applications for Arts Commission Vacancy.	<p>The city received three applications for the vacant position: Carol Fischer Valstyn, Lane Landry and Arvid Anderson.</p> <p>The committee held a brief interview with Lane Landry. The other applicants could not come.</p> <p>After the interview, the group discussed all three applicants' background and experience.</p>	Forward a recommendation to the Mayor and City Council to approve the appointment of Lane Landry to the vacant position on the Gig Harbor Arts Commission.
Review Candidate Application for two openings on the Parks Commission	The city received two applications for the openings. Nick Tarabochia submitted a letter asking to re re-appointed to his position. Jim Borgen was the second applicant.	

Topic	Recommendation/Action	Follow-up <i>(if needed)</i>
	<p>The applicants were not asked to come in to interview because only two applications were received.</p>	<p>Forward a recommendation to the Mayor and City Council to approve the re-appointment of Nick Tarabochia and the appointment of Jim Borgen to the two open positions on the Gig Harbor Parks Commission.</p> <p>Both recommendations will be in the March 9th Consent Agenda.</p>



City of Gig Harbor
Gig Harbor North Traffic Options Committee

Summary Minutes

Wednesday, February 25, 2009 - 9:00 a.m.

Gig Harbor Civic Center – Community Rooms A & B

Committee members in attendance: Mayor Hunter; Councilmember Ekberg; Rob Karlinsey, City Administrator; David Stubchaer, Public Works Director; Stephen Misiurak, City Engineer; Tom Dolan, Planning Director; Paul Rice, Asst. Building & Fire Safety Director; Marcos McGraw, City Project Engineer; Budd Wagner, FHS Vice President Marketing and Communications; Troy Cowan, WSDOT; Warren Zimmerman, Executive Director Chamber of Commerce; Julie Tappero, VP Chamber of Commerce Economic Dev. Board; Terry Lee, Pierce County Council; Doug Dickinson for Lynne Griffith, Pierce Transit; John Chadwell, Olympic Property Group; Walt Smith; WS LLC.

Others present: Dave Morris, Keller Williams; Darrell Anton, Petco; Mike Baum, Key Peninsula Commission; Hillary Bridge, Colliers International.

Mayor Hunter opened the meeting and expressed with exuberance his appreciation to all of the team who partnered together to make this very important project a reality. He thanked WSDOT, County Councilmember Terry Lee, the state, city staff, FHS, Active Construction, and all who worked on this project.

1. Update of Hospital Progress – Budd Wagner, Franciscan Health System

- ∂ Mr. Wagner reported that the hospital will be officially open for patient care on March 17.
- ∂ Dept. of Health will be onsite the week of March 9th and come back again on the opening day.
- ∂ 420 staff have been hired; 65% are new non Franciscan employees.
- ∂ Mr. Wagner passed out St. Anthony campus map brochure.
- ∂ All rooms are private with rooming facilities.
- ∂ Phased opening: 48 beds to start and more beds available in the next few months. A Certificate of Need will be required to open the 5th Floor.
- ∂ 144th/54th Intersection: As a mitigation requirement from Pierce County, FHS will be working with the City to identify optimum timing.
- ∂ Mr. Wagner thanked City staff for their great help.

2. Gig Harbor North Project Updates – Paul Rice, Asst. Building Official & Fire Marshal

- ∂ Mr. Rice reported that all was going well regarding issuing the Hospital's Certificate of Occupancy for March 6th.
- ∂ St. Anthony's Emergency Plan and evacuation drills were conducted this week and went very well.
- ∂ The Shops at Harbor Hill: Walgreen's should be opening in June/July.
- ∂ Harborstone Credit underway.
- ∂ Buildings E & F in front of Costco are pouring foundations.
- ∂ Little Boat homes behind Target have renewed 30 building permits.
- ∂ Medical Office Building: Two offices are open. Lots of tenant improvements going in. In the next month or two it will be two-thirds full.

Gig Harbor North Project Updates – Tom Dolan, Planning Director

- ∂ Hospital C.O.: Minor landscaping issues need to be resolved.
- ∂ OPG 800 unit plat filed for north and south sides of Borgen Blvd.
- ∂ OPG 6 office buildings planned between YMCA and Costco which will provide 130,000 – 140,000 sq. ft. of office space.

3. Burnham Interchange

A. Interim Improvements – David Stubchaer, Public Works Director

- ∂ Mr. Stubchaer thanked Steve Misiurak and Marcos McGraw for their efforts.
- ∂ Description of the Hospital Mitigation Interim Improvements Phase 2 includes widening off ramps and adding slip lanes. Construction will begin in July.
- ∂ Public Outreach: Effective outreach? Troy Cowan/WSDOT appreciated receiving weekly updates and shared them with WSDOT staff that have been working on the project. Mr. Stubchaer asked if there was anyone in the audience that wanted to be added to the email list. If so, send email to whitakerm@cityofgigharbor.net.

1. Canterwood Boulevard – Marcos McGraw, City Project Manager

- ∂ All physical work was completed on Feb. 24th.
- ∂ Provided an overview of all work that was completed.
- ∂ Bike lanes have been striped but not yet marked until Ph. 2 is completed.

2. Hospital Mitigation – Phase 2

- ∂ Design plans for the second phase of the interchange improvements are 60% complete. Construction is scheduled to begin in July, 2009. Phase 2 will be constructed in approximately four stages (see attached design concept) to minimize traffic disruptions. The fact that a portion of the work is required to be completed in the "fish window" is a major factor that is driving the schedule. This phase of the project is going to cause disruptions to traffic using the interchange simply due to the nature and location of the required improvements, but the City is focusing on achieving the best construction sequencing possible for this work to minimize the impacts. The construction schedule is being developed.
- ∂ It was recommended that GH North landlords should notify their current and future tenants of construction.

4. Long-term Solution – Rob Karlinsey, City Administrator

- ∂ The City has been working on the long-term solution for two years. The level 3 screening selected the single-point urban interchange (SPUI) as the preferred

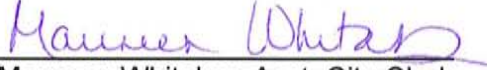
- alternative. The next step is to work with the state to receive their approval on the Interchange Justification Report (IJR), and then the NEPA process will begin.
- ∂ Mr. Karlinsey passed out the flyer that was sent to Congress for funding from the Federal Surface Reauthorization Account. City is applying for \$10M over five years for the design piece. He asked for a letter of support to be sent to Congressman Dicks. Julie Tappero and Budd Wagner acknowledged that they would provide a letter.
 - ∂ Next meeting there will be better information on the construction phasing/sequencing and the status of the IJR/WSDOT.

5. Canterwood Blvd. Construction Project Update – Stephen Misiurak, City Engineer

- ∂ Mr. Misiurak thanked WSDOT for their construction management, ACI who was a great contractor on the project, FHS for their support, and everyone involved in the project.
- ∂ The project had major constraints; was completed on time and under budget.
- ∂ Ribbon Cutting Ceremony on March 9th at 4:30 p.m. The location will be on the sidewalk near St. Anthony's main entrance. The road will remain fully open during this event. Parking is available in the Medical Office Building lot (farthest from the building). Thank you FHS!

6. Setting Next Meeting Date: May 20th at 9:00 a.m.

Respectively submitted by,


Maureen Whitaker, Asst. City Clerk

**CITY OF GIG HARBOR
COMMITTEE OUTLINE MINUTES**

City of Gig Harbor Operations & Public Projects
(Council Committee Ekberg, Franich, and Payne)

Date: Thursday, February 19, 2009 Time: 3:00 p.m. Location: Public Works Conf Rm Scribe: Maureen Whitaker

Commission Members and Staff Present: Councilmember Tim Payne and Jim Franich; David Stubchaer; Steve Misiurak; and Maureen Whitaker.

Others Present: John Chadwell, OPG

Excused: Councilmember Steve Ekberg

Topic / Agenda Item	Main Points Discussed	Recommendation/Action Follow-up (if needed)
<p>1. Truck Weight Limit on Pioneer Way Ordinance— David Stubchaer</p>	<p>Public Works Director Stubchaer presented the revised ordinance that was changed based on input from the last Operations Committee meeting and direction from Mayor Hunter. He stated that the ordinance was much more straightforward.</p> <p>Alternate Routes were discussed. Councilmember Payne suggested changing section 10.16.030 Exceptions to have Nos. 5 and 6 include the same language as No. 3: "if alternate routes do not exist." This will prevent delivery trucks from using Pioneer that can access their delivery addresses using Soundview and Burnham/Borgen. Mr. Stubchaer and Councilmember Franich thought this change was a good idea.</p> <p>Enforcement and signage were discussed. Mr. Stubchaer said that his staff is working with WSDOT to put additional signage on SR16.</p> <p>It was also suggested to have some police presence for</p>	<p>For the second reading: Mr. Stubchaer to revise section 10.16.030 Exceptions to Nos. 5 and 6 to include the same language as No. 3: "if alternate routes do not exist."</p> <p>Councilmember Payne suggested that when this ordinance is passed that Public Works send notices to the businesses in this area.</p>

Topic / Agenda Item	Main Points Discussed	Recommendation/Action Follow-up (if needed)
<p>2. Update to 2009 Comprehensive Plan Process for Utility Elements – David Stubchaer</p>	<p>the first month or so.</p> <p>Mr. Stubchaer explained that in order for the Public Works to update its Comp Plan elements, it has been confirmed by the City Attorney that these text amendments must go through the Comp Plan Process which are due on Feb. 27th and cannot be adopted separately.</p> <p>There was a discussion about what is a “functional plan.” Mr. Stubchaer and Mr. Misiurak explained that a functional plan is a public works plan, e.g. Transportation Element of the Comprehensive Plan.</p>	
<p>3. 2009 Pavement Rehab List – David Stubchaer</p>	<p>Mr. Stubchaer presented a systematic approach to organizing the annual pavement rehabilitation process. He suggested a planned maintenance program that divides the city into 4-5 zones. Only one zone per year would be addressed on a rotating schedule with the exception of roads needing pothole repairs, water/sewer breaks, etc. It was discussed that this organized system, aka as asset management, would help the city move away from reactive maintenance to proactive maintenance, which is more cost effective.</p> <p>Councilmember Payne liked the systematic approach because he believed it was a better way to quantify needs at budget time and Council could take this information and allocate funds accordingly. He also expressed that currently he didn’t think that there was a system in place whereby all roadways are systematically reviewed and inspected.</p> <p>Councilmember Franich did not see the benefit and preferred to go with the rehab list that was already in</p>	

Next Meeting: Thursday, March 19, 2009.

Topic / Agenda Item	Main Points Discussed	Recommendation/Action Follow-up (if needed)
	<p>place. He stated that implementing a new program would be expensive and take up a great deal of staff time.</p> <p>The patch on Harborview was discussed.</p> <p>Councilmember Franich expressed his dissatisfaction with the finished product and asked for an explanation.</p> <p>Mr. Stubchaer explained that there were two main factors that affected the final outcome: a soft subgrade and no clear grade to measure to on the curb side because the curb and gutter were lower. He also noted that this was an interim repair and would be eventually ripped out when the approved plat of Harbor Highlands constructs their frontage improvements.</p>	<p>Councilmember Franich stated if the city is going to do these kinds of patches throughout the city in the future, next time present the Council with the option of how much it costs to do a quick repair or a correct repair that is more expensive and let Council make the decision.</p>
Meeting adjourned at 4:20 p.m.	<p>Respectfully submitted: <u>Maureen Whitaker</u> Maureen Whitaker</p>	



February 23, 2009

Alexa Brenner
818 – 24th Avenue NW
Gig Harbor WA 98335

Dear Ms. Brenner:

I just learned that you were named one of the top two youth volunteers in Washington State for 2009, in the 14th annual Prudential Spirit of Community Awards. Congratulations! Your commitment to increasing public awareness about juvenile diabetes, and the creation of "Alexa's Athletes" to support diabetes research is commendable. I'm sure you have provided a spark of hope to other children and their families as they begin their journey with diabetes.

Thank you for setting such a wonderful example of giving. You are a worthy role model and I hope your May trip to Washington D. C. will be most memorable.

I give you my best wishes for your future endeavors.

Sincerely,



Chuck Hunter
Mayor

CH:lb



THE PRUDENTIAL SPIRIT OF COMMUNITY AWARDS

HONORING OUTSTANDING COMMUNITY SERVICE BY YOUNG AMERICANS

February 10, 2009

The Honorable Chuck Hunter
3510 Grandview Street
Gig Harbor, WA 98335

Dear Mayor Hunter:

We thought you'd like to know that Alexa Brenner of Gig Harbor is today being named one of the top two youth volunteers in Washington for 2009, in the 14th annual Prudential Spirit of Community Awards. This is an extraordinary honor; nearly 20,000 young people across the country were considered for state-level recognition in this year's program.

As a State Honoree, Alexa will receive a \$1,000 award, an engraved silver medallion, and a trip to Washington, D.C., May 2-5 for a series of national recognition events. A copy of the news release announcing this prestigious honor is enclosed.

The Prudential Spirit of Community Awards, created in 1995 by Prudential Financial in partnership with the National Association of Secondary School Principals (NASSP), are designed to emphasize the importance our nation places on service to others, and to encourage all young Americans to contribute to their communities.

Students like Alexa represent the best of America's youth, and are role models to their peers and their communities. We hope you will take advantage of this opportunity to extend your congratulations and encouragement. You can contact Alexa at 818 24th Avenue NW, Gig Harbor, WA, 98335, (253) 858-9050.

You also may want to consider inviting your honoree to talk about volunteering and the importance of community service at an upcoming city council meeting, proclaiming a special day of recognition, or issuing an official statement of commendation (suggested language is included).

During the May events in Washington, a distinguished National Selection Committee will name ten National Honorees who will receive additional \$5,000 awards, gold medallions, crystal trophies, and \$5,000 grants from The Prudential Foundation for charitable organizations of their choice. Your State Honoree is among those being considered for these national awards. If you would like additional information, please call (973) 802-4568, write to us at spirit@prudential.com, or visit spirit.prudential.com.

Congratulations for having such an outstanding young person in your city.

Sincerely,

John R. Strangfeld
Chairman and CEO
Prudential Financial

Gerald N. Tirozzi
Executive Director
NASSP



THE PRUDENTIAL SPIRIT OF COMMUNITY AWARDS

HONORING OUTSTANDING COMMUNITY SERVICE BY YOUNG AMERICANS

February 10, 2009

Contact: Harold Banks, Prudential Financial (973) 802-8974

FOR IMMEDIATE RELEASE

**WASHINGTON STATE'S TOP TWO YOUTH VOLUNTEERS
SELECTED IN 14th ANNUAL NATIONAL AWARDS PROGRAM**

**Snohomish and Gig Harbor students earn \$1,000 awards,
engraved medallions and trip to nation's capital**

**Honors also bestowed on youth volunteers from
Ellensburg, Lake Stevens, Mukilteo, Newcastle, Port Angeles and Seattle**

OLYMPIA, Wash. – Rachel Bervell, 16, of Snohomish and Alexa Brenner, 12, of Gig Harbor today were named Washington state's top two youth volunteers for 2009 by The Prudential Spirit of Community Awards, a nationwide program honoring young people for outstanding acts of volunteerism. The awards program, now in its 14th year, is conducted by Prudential Financial in partnership with the National Association of Secondary School Principals (NASSP).

Rachel was nominated by Kamiak High School in Mukilteo, and Alexa was nominated by Annie Wright School in Tacoma. As State Honorees, each will receive \$1,000, an engraved silver medallion, and an all-expense-paid trip in early May to Washington, D.C., where they will join the top two honorees – one middle level and one high school youth – from each of the other states and the District of Columbia for several days of national recognition events. Ten of them will be named America's top youth volunteers for 2009 at that time.

- more -

Rachel, a senior at Kamiak High School, conducted a teddy-bear collection drive at her school that provided more than 1,000 stuffed animals for her to distribute to children in hospitals and orphanages in Ghana. Several years earlier, Rachel's grandmother traveled to Ghana and took with her some of Rachel's old teddy bears to give to children in the villages she visited. Rachel was struck by this gesture of compassion, and recalled how, as a summer volunteer at a local hospital, she had seen how much a mere doll or stuffed animal could comfort a frightened child. So, when her parents told her they were planning a family trip to Ghana, Rachel knew what she wanted to do: "I wanted to encourage children in Ghanaian hospitals and orphanages," she said. "I wanted to put a smile on each child's face."

With help from five friends, Rachel planned a campaign to collect about 100 teddy bears at her school. They hung posters on the walls, sent fliers to teachers, spoke to classes, and set up "Teddy Bears for Ghana" collection bins. Several school clubs and classes rallied to Rachel's cause, and when the two-and-a-half-week drive was over, Rachel had more than 1,000 stuffed animals for her trip. Her parents agreed to pay for shipping, and when she arrived in the capital city of Accra, Rachel was greeted by government officials and the news media. Over the next six weeks, she distributed her donated bears to children in hospitals and orphanages. "I vividly remember the expressions of the children I met," said Rachel. "Some faces beamed while others smiled shyly, but all of them hugged their gifts." Since returning, Rachel has been speaking to groups about the children of Ghana, and has formed an organization that is collecting funds and school supplies for an elementary school there.

✓ **Alexa**, a seventh-grader at Annie Wright School, has been dedicating much of her life over the past six years to increasing public awareness about juvenile diabetes and raising money to find a cure. Alexa, who was diagnosed with the disease when she was a baby, told her parents when she was in first grade that she wanted to form a team to walk in the Juvenile Diabetes Research Foundation annual "Walk for a Cure." "I wanted to let people know what living with diabetes means and why money is so important to finding a cure," she said. She recruited walkers to join "Alexa's Athletes," wrote letters soliciting donations, spoke to school and community groups, and sold pins and bracelets.

Over the years, Alexa's fund-raising team has grown from 15 to more than 50 members, and has raised more than \$50,000 for diabetes research. In addition, Alexa visits newly diagnosed children and their families at a local children's hospital. "I want the kids to see through me that

diabetes won't stand in the way of a normal life," she explained. Alexa also has traveled to Washington, D.C., to urge her congressional representatives to continue research funding. "As much as I hate this disease, I try to be optimistic that research will find a cure in my lifetime," she said. "We have had so much progress, and we cannot afford to stop now."

In addition, the program judges recognized six other Washington students as Distinguished Finalists for their impressive community service activities. Each will receive an engraved bronze medallion:

Whitley Barnes, 18, of Port Angeles, a senior at Crescent High School in Joyce, helped start a youth suicide prevention program at her school in 2004, shortly after her best friend killed himself in front of her. The program's members have visited more than 20 schools to teach teens what to do if a friend expresses suicidal thoughts. They also are trained to provide direct support to individuals as peer counselors.

Cheryl Delostrinos, 18, of Seattle, a senior at Garfield High School, helped lead a group of students that repaired and refurbished 125 used computers and then travelled to the Philippines to install them in four rural high schools. Cheryl and other students in a school technology group collected donations of used computers, printers, and monitors from local businesses; held bake sales and raffles to purchase additional parts and cables; and conducted software and Internet training sessions for Philippine students after installing the equipment in their schools.

Derek Hahn, 18, of Lake Stevens, a senior at Lake Stevens High School, helped teach 4,000 middle school students and their parents about Internet safety in a two-day course he created. Derek, who was a victim of online identity theft, teaches kids about the dangers of online predators, pornography, child abduction, and identify theft. He also produced an educational CD for parents.

Kohta Hansen, 10, of Mukilteo, a fifth-grader at Serene Lake Elementary School in Edmonds, has volunteered to serve breakfast and lunch in the school cafeteria since he was in the first grade. He also helps prepare food for special school events and cleans up afterwards, and volunteers to work with pre-school children.

Maddison Small, 17, of Newcastle, a junior at Newport High School in Bellevue, has helped build 50 homes for impoverished people in Mexico through an organization called "Club Baja." Maddison, who began making these trips when she was only 6 years old, serves as a translator while helping to paint, install drywall, hammer nails, and build roofs.

Morgan Uceny, 16, of Ellensburg, a junior at Kittitas Secondary School in Kittitas, developed a community campaign to educate girls about the health dangers of sexually transmitted diseases, and the importance of getting vaccinated to prevent cervical cancer. Morgan created informational posters and brochures, promoted vaccinations through the news media, and hosted a community presentation at her school that was followed by free vaccinations.

“The recipients of these awards vividly demonstrate that young people across America are making remarkable contributions to the health and vitality of their communities,” said John R. Strangfeld, chairman and CEO of Prudential Financial. “They truly deserve all of the praise and encouragement we can give them.”

“Congratulations to this year’s state winners in the Prudential Spirit of Community Awards,” stated Gerald N. Tirozzi, executive director of the National Association of Secondary School Principals. “The hard work and determination that these students have exhibited in trying to make a difference in the lives of others is remarkable.”

All public and private middle level and high schools in the country, as well as all Girl Scout councils, county 4-H organizations, American Red Cross chapters, YMCAs and affiliates of HandsOn Network, were eligible to select a student or member for a local Prudential Spirit of Community Award this past November. More than 5,000 Local Honorees were then reviewed by an independent judging panel, which selected State Honorees and Distinguished Finalists based on criteria such as personal initiative, creativity, effort, impact and personal growth.

While in Washington, D.C., the 102 State Honorees will tour the capital’s landmarks, attend a gala awards ceremony at the Smithsonian’s National Museum of Natural History, and visit their congressional representatives on Capitol Hill. In addition, 10 of them – five middle level and five high school students – will be named National Honorees on May 4 by a prestigious national selection committee. These honorees will receive additional \$5,000 awards, gold medallions, crystal trophies, and \$5,000 grants from The Prudential Foundation for nonprofit, charitable organizations of their choice.

Serving on the national selection committee will be John Strangfeld of Prudential; Larry Bradley, president of NASSP; Michelle Nunn, president and CEO of the Points of Light & Hands On Network; Marguerite Kondracke, president and CEO of the America’s Promise Alliance; Kathy Cloninger, CEO of Girl Scouts of the USA; Donald T. Floyd Jr., president and CEO of National 4-H

Council; Pam Farr, the American Red Cross' national chair of volunteers; Elson Nash, associate director for project management at the Corporation for National and Community Service; Michael Cohen, president and CEO of Achieve, Inc.; and two 2008 Prudential Spirit of Community National Honorees: Kristen Allcorn of Sedalia, Mo., and Shanna Decker of Plainview, Minn.

In addition to granting its own awards, The Prudential Spirit of Community Awards program will be distributing President's Volunteer Service Awards to nearly 3,100 of its Local Honorees this year on behalf of the President's Council on Service and Civic Participation. The President's Volunteer Service Award recognizes Americans of all ages who have volunteered significant amounts of their time to serve their communities and their country.

The Prudential Spirit of Community Awards represent the United States' largest youth recognition program based solely on volunteer service. The program is part of a broad youth-service initiative by Prudential that includes a youth leadership training program administered by the Points of Light Institute; a free booklet of volunteer ideas for young people offered through the Federal Citizen Information Center; and a website featuring profiles of outstanding youth volunteers, volunteer tips and project ideas for students, an electronic newspaper on youth volunteerism, and more (spirit.prudential.com). The Spirit of Community Awards program also is conducted by Prudential subsidiaries in Japan, South Korea, Taiwan and Ireland.

For information on all of this year's Prudential Spirit of Community State Honorees and Distinguished Finalists, visit spirit.prudential.com or www.principals.org/prudential.

In existence since 1916, the National Association of Secondary School Principals (NASSP) is the preeminent organization of and national voice for middle level and high school principals, assistant principals, and aspiring school leaders from across the United States and more than 45 countries around the world. NASSP's mission is to promote excellence in school leadership. The National Honor Society®, National Junior Honor Society®, National Elementary Honor Society™, and National Association of Student Councils® are all NASSP programs. For more information about NASSP, located in Reston, Va., visit www.principals.org or call 703-860-0200.

Prudential Financial, Inc. (NYSE: PRU), a financial services leader, has operations in the United States, Asia, Europe, and Latin America. Leveraging its heritage of life insurance and asset management expertise, Prudential is focused on helping approximately 50 million individual and institutional customers grow and protect their wealth. The company's well-known Rock symbol is an icon of strength, stability, expertise and innovation that has stood the test of time. Prudential's businesses offer a variety of products and services, including life insurance, annuities, retirement-related services, mutual funds, investment management, and real estate services. For more information, please visit <http://www.news.prudential.com/>.

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Editors: Graphics depicting the award program's logo and medallions may be downloaded from spirit.prudential.com.

Handwritten initials



NOTICE OF LIQUOR LICENSE APPLICATION

Consent Agenda - 3a

WASHINGTON STATE LIQUOR CONTROL BOARD
License Division - 3000 Pacific, P.O. Box 43075
Olympia, WA 98504-3075
Customer Service: (360) 664-1600
Fax: (360) 753-2710
Website: www.liq.wa.gov

TO: MOLLY TOWSLEE, CITY CLERK
RE: CHANGE OF CORPORATE OFFICERS/STOCKHOLDERS APPLICATION

DATE: 2/24/09

CORRECTED

UBI: 601-426-874-001-0001

License: 077699 - 1U County: 27
Tradename: MOCTEZUMAS - GIG HARBOR
Loc Addr: POINT FOSDICK SQ SHOPPING CTR
4803 POINT FOSDICK DR NW
GIG HARBOR WA 98332
Mail Addr: 4803 POINT FOSDICK DR NW
GIG HARBOR WA 98332
Phone No: 253-677-9286 ARTURO GARCIA

APPLICANTS:
MOCTEZUMAS GIG HARBOR, INC.
GARCIA, ARTURO ARECO
1953-10-09
GARCIA, BERNARDO
1983-02-01
GARCIA, MARIA MAGDALENA
1955-04-05
GARCIA, MARIBEL
1981-08-28

Privileges Applied For:
SPIRITS/BR/WN REST LOUNGE +

As required by RCW 66.24.010(8), the Liquor Control Board is notifying you that the above has applied for a liquor license. You have 20 days from the date of this notice to give your input on this application. If we do not receive this notice back within 20 days, we will assume you have no objection to the issuance of the license. If you need additional time to respond, you must submit a written request for an extension of up to 20 days, with the reason(s) you need more time. If you need information on SSN, contact our CHRI Desk at (360) 664-1724.

- 1. Do you approve of applicant ?
2. Do you approve of location ?
3. If you disapprove and the Board contemplates issuing a license, do you wish to request an adjudicative hearing before final action is taken?
4. If you disapprove, per RCW 66.24.010(8) you MUST attach a letter to the Board detailing the reason(s) for the objection and a statement of all facts on which your objection(s) are based.

DATE

SIGNATURE OF MAYOR,CITY MANAGER,COUNTY COMMISSIONERS OR DESIGNEE

NOTICE OF LIQUOR LICENSE APPLICATION



Consent Agenda - 3b

RETURN TO:

WASHINGTON STATE LIQUOR CONTROL BOARD
License Division - 3000 Pacific, P.O. Box 43075
Olympia, WA 98504-3075
Customer Service: (360) 664-1600
Fax: (360) 753-2710
Website: www.liq.wa.gov

DATE: 2/26/09

TO: MOLLY TOWSLEE, CITY CLERK

RE: APPLICATION FOR ADDED PRIVILEGE

UBI: 602-082-132-001-0002
License: 083974 - 1U County: 27
Tradename: THE HARBOR KITCHEN
Loc Addr: 8809 N HARBORVIEW DR
GIG HARBOR WA 98332-2168
Mail Addr: PO BOX 1815
GIG HARBOR WA 98332-3815
Phone No.: 253-853-6040

APPLICANTS:

DREYLING, CHERRI LYNN
DREYLING, CHERRI LYNN
1961-03-11

Privileges Upon Approval:

BEER/WINE REST - BEER/WINE
OFF PREMISES

As required by RCW 66.24.010(8), the Liquor Control Board is notifying you that the above has applied for a liquor license. You have 20 days from the date of this notice to give your input on this application. If we do not receive this notice back within 20 days, we will assume you have no objection to the issuance of the license. If you need additional time to respond, you must submit a written request for an extension of up to 20 days, with the reason(s) you need more time. If you need information on SSN, contact our CHRI Desk at (360) 664-1724.

- 1. Do you approve of applicant ?
2. Do you approve of location ?
3. If you disapprove and the Board contemplates issuing a license, do you wish to request an adjudicative hearing before final action is taken?
4. If you disapprove, per RCW 66.24.010(8) you MUST attach a letter to the Board detailing the reason(s) for the objection and a statement of all facts on which your objection(s) are based.

DATE

SIGNATURE OF MAYOR, CITY MANAGER, COUNTY COMMISSIONERS OR DESIGNEE

WASHINGTON STATE LIQUOR CONTROL BOARD-License Services
 3000 Pacific Ave SE - P O Box 43075
 Olympia WA 98504-3075

TO: MAYOR OF GIG HARBOR

February 26, 2009

SPECIAL OCCASION # 092801

PRISON PET PARTNERSHIP PROGRAM
 9601 BUJAUCH RD
 NWGIG HARBOR, WA 98335

DATE: MAY 30, 2009

TIME: 4 PM TO 7 PM

PLACE: BEST WESTERN WESLEY INN, 6575 KIMBALL DR, GIG HARBOR

CONTACT: GERRY SCHLEHAFFER

206-227-1954

SPECIAL OCCASION LICENSES

- * License to sell beer on a specified date for consumption at specific place.
- * License to sell wine on a specific date for consumption at a specific place.
- * Beer/Wine in unopened bottle or package in limited quantity for **off** premises consumption.
- * Spirituous liquor by the individual glass for consumption at a specific place.

If return of this notice is not received in this office within 20 days from the above date, we will assume you have no objection to the issuance of the license. If additional time is required please advise.

1. Do you approve of applicant? YES__ NO__
2. Do you approve of location? YES__ NO__
3. If you disapprove and the Board contemplates issuing a license, do you want a hearing before final action is taken? YES__ NO__

OPTIONAL CHECK LIST

EXPLANATION

LAW ENFORCEMENT	_____	YES__ NO__
HEALTH & SANITATION	_____	YES__ NO__
FIRE, BUILDING, ZONING	_____	YES__ NO__
OTHER:	_____	YES__ NO__

If you have indicated disapproval of the applicant, location or both, please submit a statement of all facts upon which such objections are based.



NOTICE OF LIQUOR LICENSE APPLICATION

Consent Agenda - 3d

RETURN TO: WASHINGTON STATE LIQUOR CONTROL BOARD
License Division - 3000 Pacific, P.O. Box 43075
Olympia, WA 98504-3075
Customer Service: (360) 664-1600
Fax: (360) 753-2710
Website: www.liq.wa.gov

TO: MOLLY TOWSLEE, CITY CLERK
RE: NEW APPLICATION

DATE: 3/04/09

UBI: 602-829-976-001-0001

License: 403430 - 1U County: 27
Tradename: SIP AT THE WINE BAR & RESTAURANT
Loc Addr: 4793 POINT FOSDICK DR NE #300
GIG HARBOR WA 98335-2315
Mail Addr: PO BOX 1150
NE HIGH ST STE 102
ISSAQUAH WA 98027-0043
Phone No.: 425-391-6612

APPLICANTS:
GIG HARBOR WINE CELLAR'S, LLC
SCELZI, LANE HOOVER
1965-01-02

Privileges Applied For:
BEER/WINE REST - BEER/WINE

As required by RCW 66.24.010(8), the Liquor Control Board is notifying you that the above has applied for a liquor license. You have 20 days from the date of this notice to give your input on this application. If we do not receive this notice back within 20 days, we will assume you have no objection to the issuance of the license. If you need additional time to respond, you must submit a written request for an extension of up to 20 days, with the reason(s) you need more time. If you need information on SSN, contact our CHRI Desk at (360) 664-1724.

- 1. Do you approve of applicant? YES NO
2. Do you approve of location? YES NO
3. If you disapprove and the Board contemplates issuing a license, do you wish to request an adjudicative hearing before final action is taken? YES NO
4. If you disapprove, per RCW 66.24.010(8) you MUST attach a letter to the Board detailing the reason(s) for the objection and a statement of all facts on which your objection(s) are based.

DATE

SIGNATURE OF MAYOR, CITY MANAGER, COUNTY COMMISSIONERS OR DESIGNEE



Subject: APPOINTMENT TO PARKS COMMISSION

Proposed Council Action:

A motion for the re-appointment of Nick Tarabochia and appointment of Jim Borgen to serve three-year terms on the Parks Commission.

Dept. Origin: Administration

Prepared by: Boards/Commission Review Committee

For Agenda of: March 9, 2008

Exhibits: Application Package

Initial & Date

Concurred by Mayor: CLH 3/3/09

Approved by City Administrator: RJK

Approved as to form by City Atty: N/A

Approved by Finance Director: N/A

Approved by Department Head: N/A

Expenditure Required	\$0	Amount Budgeted	\$0	Appropriation Required	\$0
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INFORMATION / BACKGROUND

We received a letter from Nick Tarabochia asking to be re-appointed for another three-year term on the Parks Commission and one other letter of interest for the other vacant position from Jim Borgen.

FISCAL CONSIDERATION

N/A

BOARD OR COMMITTEE RECOMMENDATION

The following recommendation came from the review process.

RECOMMENDATION / MOTION

Move to: A motion for the re-appointment of Nick Tarabochia and appointment of Jim Borgen to serve three-year terms on the Parks Commission.



**Subject: APPOINTMENT TO GIG HARBOR
ARTS COMMISSION**

Proposed Council Action:

A motion to appoint Summer Lane Landry to serve the remainder of a three-year term on the Gig Harbor Arts Commission.

Dept. Origin: Administration

Prepared by: Boards/Commission
Review Committee

For Agenda of: March 9, 2008

Exhibits: Application Package

Initial & Date

Concurred by Mayor:

CLH 3/3/09

Approved by City Administrator:

ROK 3/3/09

Approved as to form by City Atty:

Approved by Finance Director:

N/A

Approved by Department Head:

N/A

Expenditure	Amount	Appropriation	
Required \$0	Budgeted \$0	Required	\$0

INFORMATION / BACKGROUND

We received three letters of interest to serve on the Arts Commission from Carol Fisher Valstyn, Summer Lane Landry and Arvid Anderson.

Summer Lane Landry was able to attend a brief interview. The committee reviewed all three candidates' qualifications.

FISCAL CONSIDERATION

N/A

BOARD OR COMMITTEE RECOMMENDATION

The following recommendation came from the review process.

RECOMMENDATION / MOTION

Move to: A motion to appoint Summer Lane Landry to serve the remainder of a three-year term on the Gig Harbor Arts Commission.



Subject: Wastewater Treatment Plant Phase 1 Improvement Project (CSSP-0904)
--Escrow Agreement for Retainage

Proposed Council Action: Authorize the Mayor to execute the Escrow Agreement with Prospect Construction, Inc. and Valley Bank

Dept. Origin: Engineering Division

Prepared by: Stephen Misiurak, P.E.
City Engineer

For Agenda of: March 9, 2009

Exhibits: Escrow Agreement

Initial & Date

Concurred by Mayor:

CLH 3/24/09

Approved by City Administrator:

RJK 3/23/09

Approved as to form by City Atty:

approved AB 3/17/09

Approved by Finance Director:

DR 3/2/09

Approved by Department Head:

DR 2/19/09

Expenditure Required	0	Amount Budgeted	0	Appropriation Required	0
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INFORMATION / BACKGROUND

Prospect Construction, Inc. was awarded the construction contract in the amount of \$10,883,949.00 for the Wastewater Treatment Plant Project at the January 26, 2009 council meeting. Prospect has requested that their retainage be placed in an escrow account with Valley Bank. Valley Bank is certified as a public depository by the Washington Public Deposit Protection Commission. Exhibit A of the agreement limits investments to those allowed by the State of Washington and the City's investment policy.

FISCAL CONSIDERATION

The retained percentage is 5% of each progress payment.

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION / MOTION

Move to: Authorize the Mayor to execute the Escrow Agreement with Prospect Construction, Inc. and Valley Bank.

Project No.: CSSP-0702
Project Name: Gig Harbor WWTP
Escrow No.: 342

ESCROW AGREEMENT

TO: Bank Name: Valley Bank
Branch: Main Branch
Address: PO Box 578
City, State Zip: Puyallup, WA 98371
Phone: 253-848-2316

The undersigned, Prospect Construction, Inc., hereinafter referred to as Contractor, has directed the City of Gig Harbor, hereinafter referred to as Agency, to deliver to you its warrants or checks which shall be payable to you and the Contractor jointly. Such warrants or checks are to be held and disposed of by you in accordance with the following instructions and upon the terms and conditions hereinafter set forth.

INSTRUCTIONS

1. The Agency shall deliver to you from time to time checks or warrants payable jointly to you and the Contractor. You are hereby authorized by the Contractor to endorse in the Contractor's name any such check or warrant so that you may receive the proceeds thereof and invest the same. The power of endorsement hereby granted to you by the Contractor shall be deemed a power coupled with an interest and shall be irrevocable during the term of this escrow. Although you may be a payee named in such warrants or checks as shall be delivered to you, your duties and responsibilities with respect to the same shall be only those duties and responsibilities which a depository bank would have pursuant to Article 4 of the Uniform Commercial Code of the State of Washington for an item deposited with it for collection as of the date such check or warrant shall be delivered to you. The proceeds from collection shall be used by you to purchase, as directed by the Contractor, bonds or other securities chosen by the Contractor and approved by you, and the Agency. For the purpose of each such purchase, you may follow the last written direction received by you from the Contractor, provided such direction otherwise conforms with the restrictions on investments recited herein. Attached (Exhibit A) is a list of such bonds, or other securities approved by the Agency. No further approval is necessary if any of these bonds or securities are selected by the Contractor. Other bonds or securities, except stocks, may be selected by the Contractor, subject to express written approval of you and the Agency. Purchase of such bonds or other securities shall be in a form which shall allow you alone to reconvert such bonds or other securities into money if you are required to do so by the Agency as provided in Paragraph 4 of this Escrow Agreement.

The investments selected by the Contractor, approved by the Agency and purchased by you must mature on or prior to the date set for the completion of the contract, including extensions thereof or thirty days following the final acceptance of said improvement or work.

2. When and as interest on the securities held by you pursuant to this Agreement accrues and is paid, you shall collect such interest and forward it to the Contractor at its address designated below unless with your written consent you are otherwise directed in writing by the Contractor.

3. You are not authorized to deliver to the Contractor all or any part of the securities held by you pursuant to the Agreement (or any moneys derived from the sale of such securities, or the negotiation of the Agency's warrants or checks) except in accordance with written instructions from the Agency. The Agency shall inform you and keep you informed in writing of the name of the person or persons with authority to give you such written instructions. Compliance with such instructions shall relieve you of any further liability related thereto. Upon request by you, the Agency shall advise you in writing of any change in the estimated completion date. If the estimated completion date is changed, you are authorized to reinvest the moneys held hereunder in accordance with the new estimated completion date.

4. In the event the Agency orders you to do so in writing, and notwithstanding any other provisions of this Agreement, you shall, within thirty-five (35) days of receipt of such order, reconvert into money the securities held by you pursuant to this Agreement and return such money together with any other moneys, including accrued interest on such securities, held by you hereunder, to the Agency.

5. Payment of all fees shall be the sole responsibility of the Contractor and shall not be deducted from any property placed with you pursuant to this Agreement until and unless the Agency directs the release to the Contractor of the securities and moneys held hereunder whereupon you shall be granted a first lien upon such property released and shall be entitled to reimburse yourself from such property for the entire amount of your fees and any unanticipated amounts which might be owing as provided for herein.

In the event that you are made a party to any litigation with respect to the property held by you hereunder, or in the event that the conditions of this escrow are not promptly fulfilled or that you are required to render any services not provided for in these instruction, or that there is any assignment of the interests of this escrow or any modification hereof, you shall be entitled to reasonable compensation for such extraordinary services from the Contractor and reimbursement from the Contractor for all costs and expenses, including attorney fees occasioned by such default, delay, controversy or litigation.

6. Should you at any time and for any reason desire to be relieved of your obligations as escrow holder hereunder, you shall give written notice to the Agency and Contractor. The Agency and Contractor shall, within twenty (20) days of the receipt of such notice, jointly appoint a successor escrow holder and instruct you to deliver all securities and funds held hereunder to said successor. If you are not notified of the appointment of the successor escrow holder within twenty (20) days, you shall return the subject matter hereof to the Agency and upon so doing, it absolves you from all further charges and obligations in connection with this escrow.

7. This Agreement shall not be binding until executed by the Contractor and the Agency and accepted by you.

8. This instrument contains the entire agreement between you, the Contractor and the Agency, with respect to this escrow and you are not a party to nor bound by any instrument or agreement other than this; you shall not be required to take notice of any default or any other matter, not be bound by nor required to give notice or demand, not required to take any action whatever except as herein expressly provided; you shall not be liable for any loss or damage that is caused by your failure to perform as required under this instrument, and any loss or damage caused by your own negligence or willful misconduct.

9. The foregoing provisions shall be binding upon the assigns, successors, personal representatives and heirs of the parties hereto.

10. This Escrow Agreement may only be amended or modified upon the written consent of each party's duly authorized representative.

The undersigned have read and hereby approve the instructions as give above governing the administration of this escrow and do hereby execute this Agreement on this _____ day of _____, 200__.

BANK: Valley Bank
Branch: Main Branch
Address: PO Box 578
City, State Zip: Puyallup, WA 98371
Phone: 253-848-2316

Contractor: Prospect Construction, Inc
Address: 116 23rd St. SE
City, State Zip: Puyallup, WA 98372
Phone: 253-446-1600

Authorized Signature

By: _____
Authorized Signature

Title: Senior Vice President

Title: President

342
Escrow Account No.

The above escrow instructions received and accepted this _____ day of _____, 200__.

CITY OF GIG HARBOR

Title: Mayor

Exhibit "A"

List of Type of Bonds or Securities that are Approved
by the City of Gig Harbor

1. Bills, certificates, notes or bonds of the United States.
2. Other obligations of the United States or its agencies.
3. Obligations of any corporation wholly-owned by the government of the United States.
4. Indebtedness of the Federal National Mortgage Association.
5. Time deposits in Commercial Banks, Mutual Savings Banks or Savings and Loan Associations.

In no event shall the City of Gig Harbor approve investments in stock of any company, association or corporation. In all cases, the investments selected must mature on or prior to the date set for completion of the contract, including extensions thereof.

**Please indicate which type of Bonds or Securities that have
been selected by circling the appropriate number above.**



Subject: Sewer Outfall Extension (CSSP-0023)
– Washington State Department of Natural Resources (DNR) Easement for the Off-Shore Sewer Outfall Pipeline.

Proposed Council Actions:

Approve the DNR Easement for Sewage Outfall Pipeline located on State owned aquatic lands as presented and authorize the Mayor to execute the Easement.

Dept. Origin: Public Works

Prepared by: Stephen Misiurak, PE
City Engineer *[Signature]*

For Agenda of: March 9, 2009

Exhibits:

- A. Aerial photo of project alignment
- B. Plan of Operations and Maintenance
- C. Letter from Dept of Natural Resources
- D. Aquatic Outfall Easement Agreement No. 51-074604

	Initial & Date
Concurred by Mayor:	<i>CLH 3/3</i>
Approved by City Administrator:	<i>RJK 3/3</i>
Approved as to form by City Atty:	<i>✓ by email</i>
Approved by Finance Director:	<i>DF 3/3/09</i>
Approved by Department Head:	<i>DF 3/3/09</i>

Expenditure Required	\$18,905.75	Amount Budgeted	\$15,000,000	Appropriation Required	\$0
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INFORMATION / BACKGROUND

A new wastewater treatment plant effluent pipe (sewage outfall pipeline) which empties into Colvos passage is a requirement of the Washington Department of Ecology in order to increase the permitted discharge of the Gig Harbor Wastewater Treatment Plant beyond its current limit of 1.2 million gallons per day average annual flow.

The City plans to construct improvements requiring entry to a portion of State owned aquatic lands. The new sewer outfall pipe will occupy a small portion of the harbor area when it enters the northwest shore of the harbor, and then be placed in the bedlands for the remaining length.

Approval of the attached DNR Easement (Exhibit D) is required in order to construct the outfall pipe. The construction of the outfall pipe is currently planned for 2010. This is the last of required easements for this project.

Carol Morris previously reviewed this agreement and approved it as to form. Approval of this easement follows three years of active efforts towards this end.

FISCAL CONSIDERATION

The costs for procuring this easement amount to \$18,905.75 and are broken down as follows:

State DNR Administration Fee:	\$2,900.00
Geoduck Construction Damage:	\$15,505.75
Financial Performance Fee:	\$500.00
Total:	\$18,905.75

The geoduck damage fee is the amount the DNR is assessing under Section 5.5 of the lease to compensate for shellfish damage resulting from construction.

Since the Outfall Extension is a water quality improvement project and is being driven by the Wastewater Treatment Plant operating permit, funding for this easement will be from the Wastewater Treatment Plant Improvement Project.

Should the City be successful in obtaining additional funding in the form of low interest loans and/or grants for this project, these fees would be eligible for reimbursement.

BOARD OR COMMITTEE RECOMMENDATION

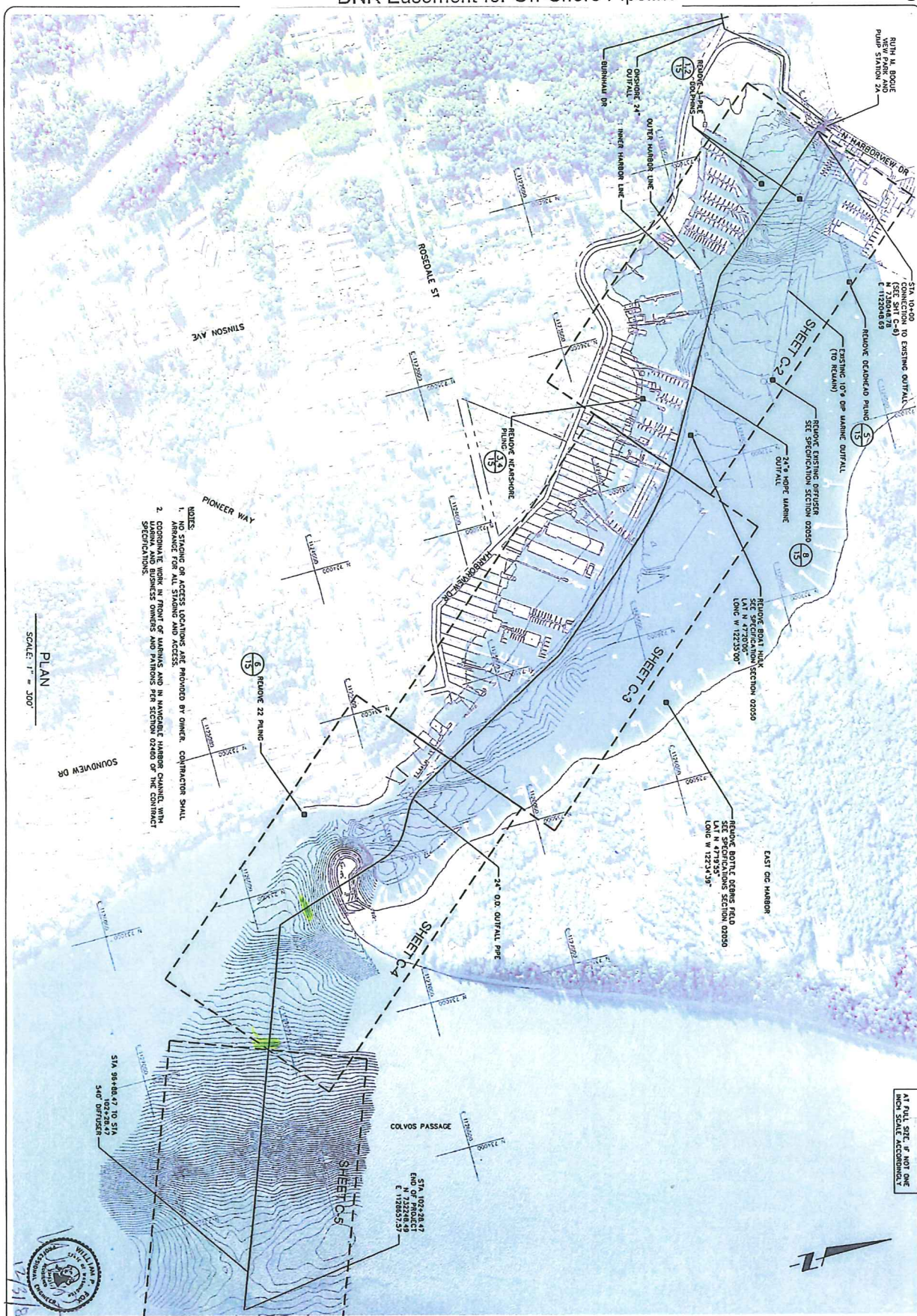
N/A

RECOMMENDATION / MOTION

Approval of the Washington State Department of Natural Resources Aquatic Outfall Easement No. 51-074604 for Sewage Outfall Pipeline to be located in State owned aquatic lands as presented.

Exhibit A
Aerial Photo of Project Alignment
Sewer Outfall Extension CSSP-0023
DNR Easement for Off-Shore Pipeline

* yellow highlighted marks show -18 + -70 ft. contours, which are extent of commercial grade bed # 10450.



PLAN
 SCALE: 1" = 300'

- NOTES:**
1. NO STAKING OF ACCESS LOCATIONS ARE PROVIDED BY OWNER. CONTRACTOR SHALL MAINTAIN ALL ACCESS AND EGRESS.
 2. COORDINATE WITH IN FRONT OF LARSEN AND IN MARSHALL HARBOR CHANNEL WITH LARSEN AND BUSINESS OWNERS AND PATRONS PER SECTION 0240 OF THE CONTRACT SPECIFICATIONS.



3 16	SHEET NO C-1
	DATE DEC 2008

DESIGNED BAM/JDF
CHECKED BAM/JDF
SCALE AS NOTED
DATE DEC 2008

CITY OF GIG HARBOR
WWTP OUTFALL EXTENSION
PROJECT OVERVIEW

APPLICANT:
 CITY OF GIG HARBOR
 3510 GRANDVIEW STREET
 GIG HARBOR, VA 98335
 (252) 651-6145

NO.	REVISIONS	DATE	BY

JOB NO. GIG005 DRAWING NO. GIG00502



ONE INCH
 AT FULL SIZE, IF NOT ONE
 INCH SCALE ACCORDINGLY

PLAN OF OPERATIONS AND MAINTENANCE

City of Gig Harbor

Outfall Easement No. 51-074604

1. Site Description and Present Use. The City of Gig Harbor is replacing its current sewer outfall pipe, which discharges in the middle of the harbor, and constructing a new sewer outfall system which will be piped through the harbor and will discharge into Colvos Passage. Once the new outfall pipe is functioning, the unburied portions of the existing outfall pipe, authorized under aquatic lands Lease No. 20-010230, will be removed from State owned aquatic lands as required by said lease.

The new sewer outfall pipe will occupy a small portion of the harbor area when it enters the northwest shore of the harbor, and then be placed on the bedlands for the remaining length. There are no existing leases or other encumbrances in the harbor area where the new outfall pipe enters the harbor. Because the remainder of the pipe will be placed immediately waterward of the outer harbor line, and will follow the entire length of the outer harbor line towards the mouth of the harbor, there will be no interference with existing leases whose improvements do not cross the outer harbor line. The only exception being Lease No. 22-002782, Gig Harbor Marina Inc., who has a small portion of their improvements built outside of the outer harbor line. In this case the outfall pipe has been designed to meander around the marina's existing improvements to avoid interference now or in the future. The City of Gig Harbor is aware that, in Colvos Passage, the new outfall pipe will cross the existing right-of-way Easement No. 51-072401 issued to AT&T for a communications line.

2. Future Use and Conditions. Per temporary Exhibit A, the outfall pipe will enter the harbor on the northwest shore via public right-of-way on the uplands and City owned tideland parcel no. 0221064043 where it will be buried using the trench method for approximately 1000 feet. The pipe will then be anchored on the bedlands as it follows the length of the outer harbor line towards the mouth of the harbor. At the end of the harbor area the pipe will again be buried using the trench method for approximately 500 feet, then directionally drilled under the Coast Guard owned sand spit parcel no. 0221081036. In Colvos Passage the remainder of the pipe will be anchored on the bedlands to the end of the outfall diffuser.

3. Property Description for Construction Purposes. The City plans to construct improvements requiring entry to a larger portion of State owned aquatic lands only for construction purposes. The "construction easement" terminates as soon as the City concludes that construction is complete so the easement then only includes the property described in Exhibit A. The construction easement width shall not exceed 100 feet.

4. Reduction of Discharge on State-Owned Aquatic Lands. The City of Gig Harbor's municipal wastewater treatment plant is a category of discharger for which technology-based effluent limits have been promulgated by federal and state regulations. These effluent limitations are given in the Code of Federal Regulations (CFR) 40 CFR Part 133 (federal) and in Chapter 173-221 WAC (state). These regulations are performance standards that constitute all known available and reasonable methods of prevention, control, and treatment for municipal waste water, also known as AKART. The City of Gig Harbor complies with these regulations as required by their NPDES permit issued by the Washington Department of Ecology in order to minimize the impact of the discharge into State waters.

The city of Gig Harbor has adopted the *Gig Harbor Sewer Comprehensive Plan* in 2001 and the *Wastewater Treatment Plant Improvements Engineering Report* in 2003. These reports were approved by Ecology in October 2003. The Comprehensive Plan evaluated:

- sewer service needs,
- treatment options, and
- wastewater discharge options, including
 - wastewater reclamation and
 - upland discharge.

The approved Comp Plan evaluated total wastewater reclamation and upland discharge and determined that not to be feasible. The adopted and approved plans have established the following requirements:

- The treatment plant would be upgraded to provide nitrogen reduction tertiary treatment using biological nutrient removal
- The outfall would be extended outside the mouth of Gig Harbor to a new outfall in Colvos Passage at the north end of the Tacoma Narrows

As required by Department of Ecology, each periodic Comprehensive Plan update re-evaluates the feasibility of wastewater reclamation and upland disposal. Therefore, the City will be continuing evaluations of non-discharge options to Puget Sound throughout the term of the easement.

5. Fees.

a) Easement Fee:

Per Engrossed Substitute House Bill 1623 "Aquatic Lands- Easement Fees", effective June 12, 2008, government owned public utilities pay administrative fees only. The current rate which applies to this easement is \$2,900.00.

b) Geoduck Construction Damages:

Planning for this easement has been ongoing since 2001. At the time the geoduck damages were discussed and negotiated, DNR only charged geoduck construction damages for geoduck in commercial beds lying between the -18 foot and -70 foot corridor. Because of the policy at the time geoduck surveys and show factor plots were only completed for that area only. For this easement only DNR will only charge construction damages for the commercial beds lying between the -18 and -70 foot corridor. All future easements will comply with current DNR policy regarding geoduck damages.

6. Construction Schedule, Maintenance and Mitigation.

a) Construction schedule:

Advertise for bids	Oct 2009
Open bids	Dec 2009
Award construction contract	Jan 2010
Begin pipe fabrication (upland site)	Apr 2010
Begin in-water construction	Jul 16, 2010
Boring beneath sand spit	Sep 2010
Construction complete, project startup	Feb 2011

The City of Gig Harbor shall supply DNR with an updated construction schedule when the contract is awarded.

b) Inspection Schedule:

Video inspections will be conducted during construction and in years 1, 2, 3, and 5, then at least every 5 years following. Inspections are submitted to the Washington State Department of Ecology.

All intertidal work will occur between July 16 and September 30, and all other in-water work between July 16 and February 14. In-water work within Colvos Passage is expected to occur between September and January.

The Washington State Department of Fish and Wildlife (WDFW) has imposed the following in-water work restrictions in the HPA permit:

- Work below the ordinary high water line shall not occur from March 15 through June 14 of any year.
- Any work associated with directional drilling in the area of the sand spit at the mouth of Gig Harbor, below the ordinary high water line, from September 1 through December 31 and January 1 through March 31 of any year, may be acceptable if a biologist, certified by WDFW, confirms a lack of spawn (surf smelt) during a site inspection. Work shall commence within 48 hours of site inspection and of notification by WDFW and shall be completed within 7 days of project commencement.

c) Construction Plan/Profile/Methods/Sequence:

The new outfall will connect at Ruth M. Bogue View Park on the northwest shore of Gig Harbor. Construction will proceed from shore through the harbor, following the outer harbor line, cross under the sand spit, and terminate in Colvos Passage at a depth of approximately 196 feet. The outfall will be constructed of 24-inch diameter high-density polyethylene (HDPE) pipe. The overall length of the outfall pipe is approximately 8,750-feet in length including a 540-foot diffuser with ten ports spaced 60-inches apart.

The majority of the construction staging will be conducted off site, including preparation and assembly of the HDPE outfall pipe, including that to be laid in Colvos Passage, as well as precast anchors, and directional drilling equipment.

Trenching: In the intertidal areas that cannot be reached from the uplands, all excavation, pipe installation, and placement of backfill materials will be conducted by clamshell dredge from barge-mounted cranes. Trenching, backfill, and pipeline installation in the sub tidal will be staged from floating barges.

Anchoring: The portions of the outfall pipe in the harbor that are not buried will be weighted and protected with precast concrete anchors. Commercial divers will connect the underwater joints and direct the placement of materials and anchors.

Three types of anchors will be used for the portions of the outfall pipe that will be laid on the bedlands.

- Type A: precast concrete anchors that lay over the pipe onto the bedlands (10-feet long by 41-1/2 inches wide) will be placed every 20-feet inside Gig Harbor from station 53+00 to station 69+00 and in Colvos Passage from station 75+50 to station 85+00.
- Type B: two piece precast concrete anchors which bolt together around the pipe and require the bottom portion of the anchor to be vibrated or jetted into the substrate (9-inches long, by 36-inches wide and 36-inches in height) will be used every 30-feet* inside Gig Harbor from station 53+00 to station 69+00 and in Colvos Passage from station 75+50 to station 85+00, and every 10-feet in Colvos Passage from station 85+00 to station 102+60 (end of pipe) where substrate is uneven and requires anchor to be partially buried to maintain a straight pipe.
- Type C: two piece precast concrete anchors which bolt together around the pipe and lay on the bedlands (9-inches long by 6-feet, 6-inches wide) will be used every 30-feet* inside Gig Harbor from station 53+00 to station 69+00 and in Colvos Passage from station 75+50 to station 85+00, and every 10-feet in Colvos Passage from station 85+00 to station 102+60 (end of pipe) where substrate is even.

*Note that type B and C anchors are used interchangeably depending on levelness of substrate.

The entire length of the diffuser will be held in place by being partially buried with crushed gravel.

Directional Drilling: The portion of the outfall pipe that runs under the sand spit will be directionally drilled, daylighting at approximately -20 feet MLLW on both sides. Silt curtains will be used to contain turbidity. Bentonite-based drilling fluid will be used and contained at the entrance and exit with chambers placed on the bedlands and monitored by divers. Once the pipe has been installed through the drill site it will be joined by divers to the anchored pipe laying on the bedlands.

d) Construction Mitigation Methods per Regulatory Requirements

WDFW has agreed to an extensive list of mitigation provisions; these projects are detailed in pages 4-6 the HPA permit issued by WDFW on March 13, 2008.

7. **Sediment Sampling.** Sediment sampling shall be conducted as required by the Washington Department of Ecology.

8. **Grantee's Procedures for Inspection, Routine Maintenance, and Emergencies.**

Inspection: The City will conduct visual (ROV or diver) inspection of the outfall at least in years 1, 2, 3 and 5, then at least once every five years thereafter.

Routine maintenance: The only routine maintenance will be on the air relief valves at the shoreline before the outfall enters the harbor. Other maintenance will be dependent on the inspections.

Monitoring: The city will monitor the head loss in the outfall to determine if there is any loss in hydraulic capacity, potentially indicating a debris blockage or collapse in some part of the pipe. This will be done by monitoring pump operations.

Emergencies: The city police, fire and public works departments have on call numbers in addition to the 911 system for emergencies. 911, police or fire departments are generally the first ones notified; if they identify the incident as utility related, the public works on call person is brought in.

Contact person:
Stephen Misiurak, P.E.
City Engineer
City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335
253-851-8145



WASHINGTON STATE DEPARTMENT OF
Natural Resources

Exhibit C
Letter from Dept of Natural Resources
Sewer Outfall Extension CSSP-0023
DNR Easement for Off-Shore Pipeline

Consent Agenda - 7

PETER GOLDMARK
Washington State Commissioner of Public Lands

February 18, 2009

Mr. William Fox, Engineer
Cosmopolitan Engineering Group
711 Pacific Avenue
Tacoma, WA 98401

SUBJECT: Aquatic Outfall Easement No. 51-074604

Dear Mr. Fox:

Enclosed are two (2) identical originals of Outfall Easement No. 51-074604. You have agreed to hand deliver these documents to the City of Gig Harbor for the Mayor's signature. Please have both copies of the document signed and dated and return them within thirty (30) days from the date of this letter to:

Department of Natural Resources
Aquatics Shoreline District
950 Farman Avenue North
Enumclaw, WA 98022-9282

Please note that the signature must be notarized. Each document contains a certificate of acknowledgement for this purpose.

Before the department can finalize the City's aquatic lands Outfall Easement, within thirty (30) days we must also receive:

1. Fees:
 - a. Administrative fee, per Engrossed Substitute House Bill 1623 "Aquatic Lands Easement Fees", effective June 12, 2008, in the amount of \$2,900.00.
 - b. Geoduck construction damage one-time fee in the amount of \$15,505.75.
2. Financial security to ensure full performance of Outfall Easement terms in the amount of \$500.00, pursuant to 10.4 of the Outfall Easement.
3. Evidence of insurance coverage in accordance with Subsection 10.2 through 10.3 of the Outfall Easement.

RECEIVED

FEB 19 2009

COSMOPOLITAN ENGINEERING GROUP

RECEIVED

FEB 23 2009

CITY OF GIG HARBOR
ENGINEERING

Mr. William Fox, Engineer
Cosmopolitan Engineering Group
February 18, 2009
Page 2 of 2

Upon receiving the items listed above and completion of our final evaluation, we will submit them to DNR management for their review and final execution. Please call me at 206-909-1304, if you have any questions.

Sincerely,



Wynnae Wright, Natural Resource Specialist
Aquatics Shoreline District

Enclosures

c: Region File
 Aquatic Resources file

db/51074604TransmitOutfallEasement

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES
PETER GOLDMARK, Commissioner of Public Lands

AQUATIC LANDS OUTFALL EASEMENT

TABLE OF CONTENTS

	PAGE
1. GRANT OF EASEMENT	1
1.1 Easement Defined	1
1.2 Survey and Easement Property Descriptions.....	2
1.3 Condition of Easement Property.....	2
2. USE	2
2.1 Permitted Use	2
2.2 Restrictions on Use.....	2
2.3 Conformance with Laws.....	3
2.4 Liens and Encumbrances	3
2.5 Interference with Other Uses.....	4
2.6 Amendment Upon Change of Permit Status.....	4
3. TERM	4
3.1 Term Defined.....	4
3.2 Renewal of the Easement	4
3.3 End of Term.....	5
4. FEES	6
4.1 Fee	6
4.2 Payment Place.....	6
5. OTHER EXPENSES	6
5.1 Utilities	6
5.2 Taxes and Assessments	6
5.3 Failure to Pay.....	6
5.4 Environmental Damages.....	6
5.5 Shellfish Damages Resulting From Construction	6

6. LATE PAYMENTS AND OTHER CHARGES7

6.1 Late Charge..... 7

6.2 Interest Penalty for Past Due Fees and Other Sums Owed..... 7

6.3 Referral to Collection Agency and Collection Agency Fees..... 7

6.4 No Accord and Satisfaction..... 7

7. IMPROVEMENTS7

7.1 Improvements Defined 7

7.2 Existing Improvements..... 8

7.3 Construction, Alteration, Replacement, and Modification..... 8

7.4 Grantee-Owned Improvements at End of Easement 9

7.5 Disposition of Unauthorized Improvements..... 10

7.6 Disposition of Personal Property 10

8. ENVIRONMENTAL LIABILITY/RISK ALLOCATION11

8.1 Definitions 11

8.2 General Conditions 11

8.3 Current Conditions and Duty to Investigate 11

8.4 Use of Hazardous Substances 12

8.5 Management of Contamination 12

8.6 Notification and Reporting 12

8.7 Indemnification..... 13

8.8 Reservation of Rights 14

8.9 Cleanup..... 14

8.10 Sampling by State, Reimbursement, and Split Samples..... 15

9. ASSIGNMENT15

10. INDEMNITY, FINANCIAL SECURITY, INSURANCE.....16

10.1 Indemnity..... 16

10.2 Insurance Terms 16

10.3 Insurance Types and Limits..... 18

10.4 Financial Security 21

11. ROUTINE MAINTENANCE AND REPAIR.....21

11.1 State's Repairs..... 21

11.2 Grantee's Repairs and, Maintenance..... 21

12. DAMAGE OR DESTRUCTION.....22

12.1 Notice and Repair 22

12.2 State’s Waiver of Claim 22

12.3 Insurance Proceeds 22

13. CONDEMNATION.....22

14. TERMINATION.....23

14.1 Termination by Breach 23

14.2 Termination by Nonuse 23

14.3 Termination by Grantee..... 23

15. NOTICEAND SUBMITTALS23

15.1 Notice..... 23

15.2 Contact Persons 24

16. MISCELLANEOUS24
16.1 Authority 24
16.2 Successors and Assigns 24
16.3 Headings 24
16.4 Entire Agreement..... 24
16.5 Waiver 24
16.6 Cumulative Remedies..... 25
16.7 Time is of the Essence 25
16.8 Language 25
16.9 Invalidity..... 25
16.10 Applicable Law and Venue 25
16.11 Recordation..... 25
16.12 Modification 25
16.13 Survival..... 25
16.14 Exhibits..... 25

EXHIBIT A LEGAL DESCRIPTION AND SURVEY
EXHIBIT B PLAN OF OPERATIONS AND MAINTENANCE

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES
PETER GOLDMARK, Commissioner of Public Lands

AQUATIC LANDS OUTFALL EASEMENT

AQUATIC LANDS EASEMENT NO. 51-074604

THIS AGREEMENT is made by and between the STATE OF WASHINGTON, acting through the Department of Natural Resources ("State"), and the CITY OF GIG HARBOR, a Government Agency/Entity, ("Grantee").

BACKGROUND

Grantee desires to use state-owned aquatic lands located in Pierce County, Washington for the purpose of discharging effluent from an outfall pipeline. Grantee has obtained regulatory authorizations for this purpose including, but not limited to, a National Pollutant Discharge Elimination System ("NPDES") Permit.

State is willing to grant an easement for a term to Grantee in reliance upon Grantee's promises to operate the outfall in compliance with all laws and permits and in the manner as described in all regulatory authorizations.

Nonetheless, State's goals are to promote water re-use and reduce reliance on in-water disposal of waste effluent, storm water and other discharges that affect the use and environmental conditions of state-owned aquatic lands and associated biological communities. Therefore, future grants of easement rights will depend on Grantee's satisfactory progress toward implementation of reasonably practical disposal alternatives.

THEREFORE, the Parties agree as follows:

SECTION 1 GRANT OF EASEMENT

1.1 Easement Defined.

- (a) State grants and conveys to Grantee a nonexclusive easement, subject to the terms and conditions of this agreement, over, upon, and under the real property described in Exhibit A. In this agreement, the term "Easement" means this agreement and the rights granted; the term "Easement Property" means the real property subject to the easement.
- (b) This Easement is subject to all valid interests of third parties noted in the records of Pierce County, or on file in the office of the Commissioner of Public Lands, Olympia, Washington; rights of the public under the Public Trust Doctrine or federal navigation servitude; and treaty rights of Indian Tribes.

- (c) This Easement does not include any right to harvest, collect or damage any natural resource, including aquatic life or living plants, any water rights, or any mineral rights, including any right to excavate or withdraw sand, gravel, or other valuable materials, except to the extent expressly permitted in Exhibit B.
- (d) State grants to Grantee a nonexclusive easement for construction purposes only over the property described in Exhibit B.

1.2 Survey and Easement Property Descriptions.

- (a) Grantee prepared Exhibit A, which describes the Easement Property. Grantee warrants that Exhibit A is a true and accurate description of the Easement boundaries and the improvements to be constructed or already existing in the Easement area.
- (b) Grantee shall not rely on any written legal descriptions, surveys, plats, or diagrams (“property description”) provided by State. Grantee shall not rely on State’s approval or acceptance of Exhibit A or any other Grantee-provided property description as affirmation or agreement that Exhibit A or other property description is true and accurate. Grantee’s obligation to provide a true and accurate description of the Easement Property boundaries is a material term of this Easement.
- (c) State accepts a preliminary Exhibit A upon the Commencement Date of this Easement. Grantee shall submit a final Exhibit A for State’s approval within ninety (90) days of the Commencement Date. Upon State’s written approval, the final Exhibit A supersedes the preliminary Exhibit A. Until superseded, the preliminary Exhibit A has full legal effect.

1.3 Condition of Easement Property. State makes no representation regarding the condition of the Easement Property, improvements located on the Easement Property, the suitability of the Easement Property for Grantee’s Permitted Use, compliance with governmental laws and regulations, availability of utility rights, access to the Easement Property, or the existence of hazardous substances on the Easement Property.

SECTION 2 USE

2.1 Permitted Use. Grantee shall use the Easement Property for a public sewer outfall (the “Permitted Use”), and for no other purpose. The Permitted Use is described or shown in detail in Exhibit B.

2.2 Restrictions on Use.

- (a) Grantee shall not cause or permit any damage to natural resources on the Easement Property or adjacent state-owned aquatic lands, except to the extent expressly permitted in Exhibit B, regardless of whether the damages are a direct or indirect result of the Permitted Use.
- (b) Unless approved by State in writing, Grantee shall not cause or permit any filling activity to occur on the Easement Property or adjacent state-owned aquatic land. This prohibition includes any deposit of rock, earth, ballast, wood waste, refuse,

- garbage, waste matter (including chemical, biological, or toxic wastes), hydrocarbons, any other pollutants, or other matter. Outfall discharges in full compliance with a valid NPDES Permit are not subject to this prohibition.
- (c) Grantee shall neither commit nor allow waste to be committed to or on the Easement Property or adjacent state-owned aquatic land.
 - (d) Failure to Comply with Restrictions on Use.
 - (1) Grantee's failure to comply with the restrictions on use under this Subsection 2.2 is a breach subject to Subsection 14.1. Grantee shall cure the breach by taking all steps necessary to remedy the failure and restore the Easement Property and adjacent state-owned aquatic lands to the condition before the failure occurred within the time for cure provided in Subsection 14.1. Additionally, Grantee shall mitigate environmental damages in accordance with Paragraph 2.2(d)(3).
 - (2) If Grantee fails to cure the default in the manner described in this Paragraph 2.2(d), State may terminate in accordance with Subsection 14.1. In addition, the State may (1) restore the Easement Property and adjacent state-owned aquatic lands and charge Grantee remedial costs and/or (2) charge Grantee environmental damages. Upon demand by State, Grantee shall pay all remedial costs and environmental damages.
 - (3) Mitigation of Environmental Damages
 - (i) Grantee shall prepare a written plan, subject to State's approval, incorporating measures to (1) eliminate or minimize future impacts to natural resources, (2) replace unavoidable lost or damaged natural resource values, and (3) monitor and report on plan implementation. Grantee shall implement the plan upon State's approval.
 - (ii) Grantee shall compensate State in accordance with Subsection 5.4 for lost or damaged resource values that are not replaceable.
 - (iii) If a regulatory authority requires Grantee to provide mitigation on state-owned aquatic lands, Grantee shall coordinate the proposed mitigation activities with state and obtain an appropriate use authorization prior to commencement of activities.
 - (e) State's failure to notify Grantee of Grantee's failure to comply with all or any of the restrictions set out in this Subsection 2.2 does not constitute a waiver of any remedies available to State.
 - (f) This Section 2.2 does not limit Grantee's liability under Section 8, below.

2.3 Conformance with Laws. Grantee shall keep current and comply with all conditions and terms of any permits, licenses, certificates, regulations, ordinances, statutes, and other government rules and regulations regarding its use of the Easement Property.

2.4 Liens and Encumbrances. Grantee shall keep the Easement Property free and clear of any liens and encumbrances arising out of or relating to its use of the Easement Property, unless expressly authorized by State in writing.

2.5 Interference with Other Uses.

- (a) Grantee shall exercise Grantee's rights under this Easement in a manner that minimizes or avoids interference with the rights of State, the public or others with valid right to use or occupy the Easement Property or surrounding lands and water.
- (b) To the fullest extent reasonably possible, Grantee shall place and construct Improvements in a manner that allows unobstructed movement in and on the waters above and around the Easement Property.
- (c) Except in an emergency, Grantee shall provide State with written notice of construction or other significant activity on Easement Property at least thirty (30) days in advance. "Significant Activity" means any activity that may affect use or enjoyment by the State, public, or others with valid rights to use or occupy the Easement Property or surrounding lands and water.
- (d) Grantee shall mark the location and limits of the Improvements. The signs and notices shall identify the type of installation (e.g., an outfall pipe) and identify Grantee as the entity responsible for the Permitted Use and its maintenance. As required by applicable regulation, Grantee shall facilitate amendment of official navigational charts to indicate existence and location of submerged improvements.

2.6 Amendment Upon Change of Permit Status. State reserves the right to amend the terms and conditions of this Easement whenever any regulatory authority (1) modifies a permit in a manner affecting the provisions of this Easement or (2) allows for a change in the manner of outfall operation including, but not limited to, a change in the type, quality, or quantity of discharge.

SECTION 3 TERM

3.1 Term Defined. The term of this Easement is thirty (30) years (the "Term"), beginning on the 1st day of January, 2009 (the "Commencement Date"), and ending on the 31st day of December, 2038 (the "Termination Date"), unless terminated sooner under the terms of this Easement.

3.2 Renewal of the Easement.

- (a) This Easement does not provide a right of renewal. Grantee may apply for a new Easement, which State has discretion to grant subject to requirements in Paragraph 3.2(b) Grantee must apply for a new Easement at least one (1) year prior to Termination Date and State will respond with denial or consent within ninety (90) days.
- (b) Reduction of Discharge on State-Owned Aquatic Lands
 - (1) Grantee warrants that Grantee considered alternatives to minimize impact of discharge as summarized in Exhibit B.
 - (2) At the time of application to renew the NPDES Permit, or every five (5) years, whichever is first, Grantee shall submit to State a report addressing

- progress to reduce discharges on state-owned aquatic land and associated biological communities. "Progress" means Grantee is analyzing or developing alternative disposal methods including, but not limited to, (1) reduction of inflow and infiltration; (2) groundwater recharge; (3) stream augmentation, industrial process supply, and/or agricultural application; (4) water conservation programs; (5) other water re-use projects.
- (3) State will consider reports submitted under Subparagraph 3.2(b)(1) in evaluation of Grantee's application to enter into a new Easement. If reports demonstrate insufficient progress toward disposal alternatives that abate impacts to state-owned aquatic land and associated biological communities, State may either:
 - (i) Require Grantee to undertake investigation and analysis of reasonably practical disposal alternatives to the Permitted Use, or
 - (ii) Rely on State's alternatives analysis developed in accordance with WAC 332-30-122(2)(d) and other regulations.
 - (4) Grantee's failure to anticipate and conduct disposal alternatives investigation and analysis may delay or prevent issuance of a new Easement.
 - (5) State is under no obligation to issue a new Easement if Grantee fails to comply with this Paragraph 3.2(b).

3.3 End of Term.

- (a) Upon the expiration or termination of this Easement, Grantee shall remove Improvements in accordance with Section 7, Improvements, and surrender the Easement Property to State restored to a condition substantially like its natural state before construction and operation of the outfall.
- (b) If Easement Property does not meet the condition described in Paragraph 3.3(a), the following provisions apply.
 - (1) State shall provide Grantee a reasonable time to take all steps necessary to remedy the condition of the Easement Property. State may require Grantee to enter into a right-of-entry or other use authorization prior to the Grantee entering the Easement Property to remedy any breach of this Subsection 3.3.
 - (2) If Grantee fails to remedy the condition of the Easement Property in a timely manner, State may take any steps reasonably necessary to remedy Grantee's failure. Upon demand by State, Grantee shall pay all costs of such remedial action, including but not limited to the costs of removing and disposing of any material deposited improperly on the Easement Property, lost revenue resulting from the condition of the Easement Property prior to and during remedial action, and any administrative costs associated with the remedial action.

SECTION 4 FEES

4.1 Fee. For the Term, Grantee shall pay to State an administrative fee calculated in accordance with RCW 79.110.230(1). State shall bill Grantee for the administrative fee, which Grantee shall pay within thirty (30) days of billing. Any payment not paid by State's close of business on the date due is past due.

4.2 Payment Place. Grantee shall make payment to Financial Management Division, 1111 Washington St SE, PO Box 47041, Olympia, WA 98504-7041.

SECTION 5 OTHER EXPENSES

5.1 Utilities. Grantee shall pay all fees charged for utilities in connection with the use of the Easement Property.

5.2 Taxes and Assessments. Grantee shall pay all taxes, assessments, and other governmental charges, of any kind whatsoever, applicable or attributable to the Easement and the Permitted Use.

5.3 Failure to Pay. If Grantee fails to pay any of the amounts due under this Easement, State may pay the amount due, and recover its cost in accordance with Section 6.

5.4 Environmental Damages.

- (a) If required to mitigate for environmental damage under Paragraph 2.2(d)(3)(ii), Grantee shall compensate State for lost or damaged resource values upon State's demand. The value of damages shall be determined in accordance with Paragraph 5.4(b), except that shellfish damages shall be calculated in accordance with Paragraph 5.5.
- (b) Unless the Parties otherwise agree on the value, a three-member panel of appraisers will determine the measure of lost or damaged resource values. The appraisers shall be qualified to assess economic value of natural resources. State and Grantee each shall appoint and compensate one member of the panel. By consensus, the two appointed members shall select the third member, who will be compensated by State and Grantee equally. The panel shall base the calculation of damages on generally accepted valuation principles. The written decision of the majority of the panel shall bind the Parties.

5.5 Shellfish Damages Resulting From Construction. Grantee shall compensate the State for the loss of public resources caused by construction of the Permitted Use in the amount of Fifteen Thousand Five Hundred Five Dollars and Seventy Five Cents (\$15,505.75), due and payable within thirty (30) days after the Commencement Date.

SECTION 6 LATE PAYMENTS AND OTHER CHARGES

6.1 Late Charge. If State does not receive any payment within ten (10) days of the date due, Grantee shall pay to State a late charge equal to four percent (4%) of the amount of the payment or Fifty Dollars (\$50), whichever is greater, to defray the overhead expenses of State incident to the delay.

6.2 Interest Penalty for Past Due Fees and Other Sums Owed.

- (a) Grantee shall pay interest on the past due fees at the rate of one percent (1%) per month until paid, in addition to paying the late charges determined under Subsection 6.1, above.
- (b) If State pays or advances any amounts for or on behalf of Grantee, Grantee shall reimburse State for the amount paid or advanced and shall pay interest on that amount at the rate of one percent (1%) per month from the date State notifies Grantee of the payment or advance. This includes, but is not limited to taxes, assessments, insurance premiums, costs of removal and disposal of unauthorized materials pursuant to Subsection 2.2 above, costs of removal and disposal of improvements pursuant to Section 7 below, or other amounts not paid when due.

6.3 Referral to Collection Agency and Collection Agency Fees. If State does not receive payment within thirty (30) days of the due date, State may refer the unpaid amount to a collection agency as provided by RCW 19.16.500 or other applicable law. Upon referral, Grantee shall pay collection agency fees in addition to the unpaid amount.

6.4 No Accord and Satisfaction. If Grantee pays, or State otherwise receives, an amount less than the full amount then due, State may apply such payment as it elects. No endorsement or statement on any check, any payment, or any letter accompanying any check or payment constitutes accord and satisfaction.

SECTION 7 IMPROVEMENTS

7.1 Improvements Defined.

- (a) "Improvements," consistent with RCW 79.105 through 79.145, are additions within, upon, or attached to the land. This includes, but is not limited to, structures and fixtures.
- (b) "Personal Property" means items that can be removed from the Easement Property without (1) injury to the Easement Property, adjacent state-owned lands or Improvements or (2) diminishing the value or utility of the Easement Property, adjacent state-owned lands or Improvements.
- (c) "State-Owned Improvements" are Improvements made or owned by State. State-Owned Improvements includes any construction, alteration, or addition to State-Owned Improvements made by Grantee.
- (d) "Grantee-Owned Improvements" are Improvements made by Grantee with State's consent.

- (e) "Unauthorized Improvements" are Improvements made on the Easement Property without State's prior consent or Improvements made by Grantee that do not conform with plans submitted to and approved by the State.
- (f) "Improvements Owned by Others" are Improvements made by Others with a right to occupy or use the Easement Property or adjacent state-owned lands.

7.2 Existing Improvements. On the Commencement Date, the following Improvements are located on the Easement Property: None.

7.3 Construction, Major Repair, Modification, and Demolition.

- (a) This Subsection 7.3 governs construction, alteration, replacement, major repair, modification alteration, demolition and deconstruction of Improvements ("Work"). Section 11 governs routine maintenance and minor repair of Improvements and Easement Property.
- (b) Except in an emergency, Grantee shall not conduct any Work, except as described in Exhibit B, without State's prior written consent, as follows:
 - (1) State may deny consent if State determines that denial is in the best interests of the State. State may impose additional conditions reasonably intended to protect and preserve the Easement Property. If Work is for removal of Improvements at End of Term, State may waive removal of any or all Improvements.
 - (2) Except in an emergency, Grantee shall submit to State plans and specifications describing the proposed Work at least sixty (60) days before submitting permit applications to regulatory authorities unless Grantee and State otherwise agree to coordinate permit applications. At a minimum or if no permits are necessary, Grantee shall submit plans and specifications at least ninety (90) days before commencement of Work. This submittal requirement does not apply to activity described in Exhibit B.
 - (3) State waives the requirement for consent if State does not notify Grantee of its grant or denial of consent within sixty (60) days of submittal.
- (c) Grantee shall notify State of emergency Work within five (5) business days of the start of such Work. Upon State's request, Grantee shall provide State with plans and specifications or as-builts of emergency Work.
- (d) Grantee shall not commence or authorize Work until Grantee has:
 - (1) Obtained a performance and payment bond in an amount equal to one hundred twenty-five percent (125%) of the estimated cost of construction. Grantee shall maintain the performance and payment bond until Grantee pays in full the costs of the Work, including all laborers and material persons.
 - (2) Obtained all required permits.
 - (3) Provided notice of Significant Activity in accordance with Paragraph 2.5(c).
- (e) Grantee shall preserve and protect Improvements Owned by Others, if any.

- (f) Grantee shall preserve all legal land subdivision survey markers and witness objects ("Markers.") If disturbance of a Marker will be a necessary consequence of Grantee's construction, Grantee shall reference and/or replace the Marker in accordance with all applicable laws and regulations current at the time, including, but not limited to Chapter 58.24 RCW. At Grantee's expense, Grantee shall retain a registered professional engineer or licensed land surveyor to reestablish destroyed or disturbed Markers in accordance with U.S. General Land Office standards.
- (g) Before completing Work, Grantee shall remove all debris and restore the Easement Property, as nearly as possible, to its natural condition before the Work began. If Work is intended for removal of Improvements at End of Term, Grantee shall restore the Easement Property in accordance with Subsection 3.3, End of Term.
- (h) Upon completing work, Grantee shall promptly provide State with as-built plans and specifications.
- (i) State shall not charge rent for authorized Improvements installed by Grantee during this Term of this Easement, but State may charge rent for such Improvements when and if the Grantee or successor obtains a subsequent use authorization for the Easement Property and State has waived the requirement for Improvements to be removed as provided in Subsection 7.4.

7.4 Grantee-Owned Improvements at End of Easement.

- (a) Disposition
 - (1) Grantee shall remove Grantee-Owned Improvements in accordance with Subsection 7.3 upon the expiration, termination, or cancellation of the Easement unless State waives the requirement for removal or State determines that abandonment of Improvements is in the best interests of State.
 - (2) Grantee-Owned Improvements remaining on the Easement Property on the expiration, termination or cancellation date become State-Owned Improvements without payment by State, unless State elects otherwise. State may refuse or waive ownership.
 - (3) If Grantee-Owned Improvements remain on the Easement Property after the expiration, termination, or cancellation date without State's consent, State may remove all Improvements and Grantee shall pay the costs of removal and disposal.
- (b) Determination of Removal or Abandonment.
 - (1) State may waive removal of any or all Grantee-Owned Improvements whenever State determines that it is in the best interests of the State. State will consider it in the best interests of the State to waive removal where abandonment is less detrimental than removal to the long term use and management of state-owned lands and resources.
 - (2) If Grantee renews the Easement or enters into a new Easement, State may waive requirement to remove Grantee-Owned Improvements. State also may consent to Grantee's continued ownership of Grantee-Owned Improvements.

- (3) If Grantee does not renew the Easement or enter into a new Easement, State and Grantee shall coordinate removal or abandonment as follows:
 - (i) Grantee must notify State at least one (1) year before the Termination Date of its proposal to either leave or remove Grantee-Owned Improvements.
 - (ii) State, within ninety (90) days, will notify Grantee whether State (1) does not waive removal or (2) consents to abandonment.
- (c) Grantee's Obligations if State Consents to Abandonment.
 - (1) Grantee shall conduct Work necessary for abandonment in accordance with Subsection 7.3.
 - (2) The submittal of plans and specifications shall identify means for plugging pipelines and notifying public of abandoned Improvements.
- (d) Grantee's Obligations if State Waives Removal.
 - (1) Grantee shall not remove Improvements if State waives the requirement for removal of any or all Grantee-Owned Improvements.
 - (2) Grantee shall maintain such Improvements in accordance with this Easement until the expiration, termination, or cancellation date. Grantee is liable to State for cost of repair if Grantee causes or allows damage to Improvements State has designated to remain.

7.5 Disposition of Unauthorized Improvements.

- (a) Unauthorized Improvements belong to State, unless State elects otherwise.
- (b) State may either:
 - (1) Consent to Grantee ownership of the Improvements, or
 - (2) Charge use and occupancy fee in accordance with RCW 79.105.200 of the Improvements from the time of installation or construction and
 - (i) Require Grantee to remove the Improvements in accordance with Subsection 7.3, in which case Grantee shall pay use and occupancy fee for the Improvements until removal,
 - (ii) Consent to Improvements remaining and Grantee shall pay use and occupancy fee for the use of the Improvements, or
 - (iii) Remove Improvements and Grantee shall pay for the cost of removal and disposal, in which case Grantee shall pay use and occupancy fee for use of the Improvements until removal and disposal.

7.6 Disposition of Personal Property.

- (a) Grantee retains ownership of Personal Property unless Grantee and State agree otherwise in writing.
- (b) Grantee shall remove Personal Property from the Easement Property by the Termination Date. Grantee is liable for any damage to the Easement Property and to any Improvements that may result from removal of Personal Property.
- (c) State may sell or dispose of all Personal Property left on the Easement Property after the Termination Date.

- (1) If State conducts a sale of Personal Property, State shall apply proceeds first to the State's administrative costs in conducting the sale, second to payment of amount that then may be due from the Grantee to the State, and State shall pay the remainder, if any, to the Grantee.
- (2) If State disposes of Personal Property, Grantee shall pay for the cost of removal and disposal.

SECTION 8 ENVIRONMENTAL LIABILITY/RISK ALLOCATION

8.1 Definitions.

- (a) "Hazardous Substance" means any substance that now or in the future becomes regulated or defined under any federal, state, or local statute, ordinance, rule, regulation, or other law relating to human health, environmental protection, contamination, pollution, or cleanup, including, but not limited to, the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6901 *et seq.*, as amended; Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), 42 U.S.C. 9601 *et seq.*, as amended; Washington's Model Toxics Control Act ("MTCA"), Chapter 70.105 RCW, as amended; and Washington's Sediment Management Standards, WAC Chapter 173-204.
- (b) "Release or threatened release of Hazardous Substance" means a release or threatened release as defined under any law described in Paragraph 8.1(a) or any similar event defined under any such law.
- (c) "Utmost care" means such a degree of care as would be exercised by a very careful, prudent, and competent person under the same or similar circumstances; the standard of care established under MTCA, RCW 70.105D.040.

8.2 General Conditions.

- (a) Grantee's obligations under this Section 8 extend to the area in, on, under, or above:
 - (1) The Easement Property and
 - (2) Adjacent state-owned aquatic lands where a release or the presence of Hazardous Substances may arise from Grantee's use of the Easement Property.
- (b) Standard of Care.
 - (1) Grantee shall exercise the utmost care with respect to Hazardous Substances.
 - (2) In relation to the Permitted Use, Grantee shall exercise utmost care for the foreseeable acts or omissions of third parties with respect to Hazardous Substances, and the foreseeable consequences of those acts or omissions, to the extent required to establish a viable, third-party defense under the law, including – but not limited to – RCW 70.105D.040.

8.3 Current Conditions and Duty to Investigate.

- (a) State makes no representation about the condition of the Easement Property. Hazardous Substances may exist in, on, under, or above the Easement Property or adjacent state-owned lands.

- (b) This Easement does not impose a duty on State to conduct investigations or supply information to Grantee about Hazardous Substances.
- (c) Grantee is responsible for conducting all appropriate inquiry and gathering sufficient information concerning the Easement Property and the existence, scope, and location of any Hazardous Substances on the Easement Property or on adjacent lands that allows Grantee to meet Grantee's obligations under this Easement.

8.4 Use of Hazardous Substances.

- (a) Grantee, its, contractors, agents, employees, guests, invitees, or affiliates shall not use, store, generate, process, transport, handle, release, or dispose of Hazardous Substances, except in accordance with all applicable laws.
- (b) Grantee shall not undertake, or allow others to undertake by Grantee's permission, acquiescence, or failure to act, activities that:
 - (1) Result in a release or threatened release of Hazardous Substances, or
 - (2) Cause, contribute to, or exacerbate any contamination exceeding regulatory cleanup standards whether the regulatory authority requires cleanup before, during, or after Grantee's use of the Easement Property.
- (c) If use of Hazardous Substance related to the Permitted Use results in a violation of an applicable law:
 - (1) Grantee shall submit to State any plans for remedying the violation, and
 - (2) State may require remedial measures in addition to remedial measures required by regulatory authorities.

8.5 Management of Contamination.

- (a) Grantee shall not undertake activities that:
 - (1) Damage or interfere with the operation of remedial or restoration activities;
 - (2) Result in human or environmental exposure to contaminated sediments;
 - (3) Result in the mechanical or chemical disturbance of on-site habitat mitigation.
- (b) Grantee shall not interfere with access by:
 - (1) Employees and authorized agents of the Environmental Protection Agency, the Washington State Department of Ecology, health department, or other similar environmental agencies; and
 - (2) Potentially liable or responsible parties who are the subject of an order or consent decree that requires access to the Easement Property. Grantee may negotiate an access agreement with such parties, but Grantee may not unreasonably withhold such agreement.

8.6 Notification and Reporting.

- (a) Grantee shall immediately notify State if Grantee becomes aware of any of the following:
 - (1) A release or threatened release of Hazardous Substances;
 - (2) Any new discovery of or new information about a problem or liability related to, or derived from, the presence of any Hazardous Substance;

- (3) Any lien or action arising from the foregoing;
 - (4) Any actual or alleged violation of any federal, state, or local statute, ordinance, rule, regulation, or other law pertaining to Hazardous Substances;
 - (5) Any notification from the US Environmental Protection Agency (EPA) or the Washington State Department of Ecology (DOE) that remediation or removal of Hazardous Substances is or may be required at the Easement Property.
- (b) Grantee's duty to report under Paragraph 8.6(a) extends to the Easement Property, adjacent state-owned aquatic lands where a release or the presence of Hazardous Substances could arise from the Grantee's use of the Easement Property, and any other property used by Grantee in conjunction with Grantee's use of the Easement Property where a release or the presence of Hazardous Substances on the other property would affect the Easement Property.
- (c) Grantee shall provide State with copies of all documents concerning environmental issues associated with the Easement Property, and submitted by Grantee to any federal, state or local authorities. Documents subject to this requirement include, but are not limited to, applications, reports, studies, or audits for National Pollution Discharge and Elimination System Permits (NPDES); Army Corps of Engineers permits; State Hydraulic Project Approvals (HPA); State Water Quality certification; Substantial Development permit; and any reporting necessary for the existence, location, and storage of Hazardous Substances on the Easement Property.

8.7 Indemnification.

- (a) "Liabilities" as used in this Subsection 8.7 means any claims, demands, proceedings, lawsuits, damages, costs, expenses, fees (including attorneys' fees and disbursements), penalties, or judgments.
- (b) Grantee shall fully indemnify, defend, and hold State harmless from and against any Liabilities that arise out of, or relate to:
- (1) The use, storage, generation, processing, transportation, handling, or disposal of any Hazardous Substance by Grantee, its contractors, agents, invitees, guests, employees, affiliates, licensees, or permittees occurring anytime Grantee uses or has used the Easement Property;
 - (2) The release or threatened release of any Hazardous Substance, or the exacerbation of any Hazardous Substance contamination resulting from any act or omission of Grantee, its contractors, agents, employees, guests, invitees, or affiliates regardless of whether the release, threatened release, or exacerbation occurring anytime Grantee uses or has used the Easement Property.
- (c) Grantee shall fully indemnify, defend, and hold State harmless for any Liabilities that arise out of or relate to Grantee's breach of obligations under Subsection 8.5.
- (d) Third Parties.

- (1) Grantee has no duty to indemnify State for acts or omissions of third parties unless Grantee fails to exercise the standard of care required by Paragraph 8.2(b)(2). Grantee's third-party indemnification duty arises under the conditions described in Subparagraph 8.7(d)(2).
- (2) If an administrative or legal proceeding arising from a release or threatened release of Hazardous Substances finds or holds that Grantee failed to exercise care as described in Subparagraph 8.7(d)(1), Grantee shall fully indemnify, defend, and hold State harmless from and against any liabilities arising from the acts or omissions of third parties in relation to the release or threatened release of Hazardous Substances. This includes any liabilities arising before the finding or holding in the proceeding.
- (e) Grantee is obligated to indemnify under the Subsection 8.7 regardless of whether a NPDES or other permit or license authorizes the discharge or release of Hazardous Substances.

8.8 Reservation of Rights.

- (a) For any environmental liabilities not covered by the indemnification provisions of Subsection 8.7, the Parties expressly reserve and do not waive or relinquish any rights, claims, immunities, causes of action, or defenses relating to the presence, release, or threatened release of Hazardous Substances that either Party may have against the other under law.
- (b) This Easement affects no right, claim, immunity, or defense either Party may have against third parties, and the Parties expressly reserve all such rights, claims, immunities, and defenses.
- (c) The provisions under this Section 8 do not benefit, or create rights for, third parties.
- (d) The allocations of risks, liabilities, and responsibilities set forth above do not release either Party from, or affect the liability of either Party for, claims or actions by federal, state, or local regulatory agencies concerning Hazardous Substances.

8.9 Cleanup.

- (a) If Grantee's act, omission, or breach of obligation under Subsection 8.4 results in a release of Hazardous Substances, Grantee shall, at Grantee's sole expense, promptly take all actions necessary or advisable to clean up the Hazardous Substances in accordance with applicable law. Cleanup actions include, without limitation, removal, containment, and remedial actions.
- (b) Grantee's obligation to undertake a cleanup under Section 8 is limited to those instances where the Hazardous Substances exist in amounts that exceed the threshold limits of any applicable regulatory cleanup standards.
- (c) At the State's discretion, Grantee may undertake a cleanup of the Easement Property pursuant to the Washington State Department of Ecology's Voluntary Cleanup Program, provided that Grantee cooperates with the Department of

Natural Resources in development of cleanup plans. Grantee shall not proceed with Voluntary Cleanup without Department of Natural Resources approval of final plans. Nothing in the operation of this provision is an agreement by Department of Natural Resources that the Voluntary Cleanup complies with any laws or with the provisions of this Easement. Grantee's completion of a Voluntary Cleanup is not a release from or waiver of any obligation for Hazardous Substances under this Easement.

8.10 Sampling by State, Reimbursement, and Split Samples.

- (a) Grantee shall conduct sediment sampling, if required, in accordance with Exhibit B.
- (b) State may conduct sampling, tests, audits, surveys, or investigations ("Tests") of the Easement Property at any time to determine the existence, scope, or effects of Hazardous Substances.
- (c) If such Tests, along with any other information, demonstrate the existence, release, or threatened release of Hazardous Substances arising out of any action, inaction, or event described or referred to in Subsection 8.4, above, Grantee shall promptly reimburse State for all costs associated with such Tests.
- (d) State shall not seek reimbursement for any Tests under this Subsection 8.10 unless State provides Grantee written notice of its intent to conduct any Tests at least thirty (30) calendar days prior to undertaking such Tests, except when such Tests are in response to an emergency. Grantee shall reimburse State for Tests performed in response to an emergency if State has provided such notice as is reasonably practical.
- (e) Grantee is entitled to obtain split samples of any Test samples obtained by State, but only if Grantee provides State with written notice requesting such samples within twenty (20) calendar days of the date of Grantee's receipt of notice of State's intent to conduct any non-emergency Tests. Grantee solely shall bear the additional cost, if any, of split samples. Grantee shall reimburse State for any additional costs caused by split sampling within thirty (30) calendar days after State sends Grantee a bill with documentation for such costs.
- (f) Within sixty (60) calendar days of a written request (unless otherwise required pursuant to Paragraph 8.6(c), above), either Party to this Easement shall provide the other Party with validated final data, quality assurance/quality control information, and chain of custody information, associated with any Tests of the Easement Property performed by or on behalf of State or Grantee. There is no obligation to provide any analytical summaries or the work product of experts.

SECTION 9 ASSIGNMENT

Grantee shall not assign any part of Grantee's interest in this Easement or the Easement Property or grant any rights or franchises to third parties without State's prior written consent, which State shall not unreasonably condition or withhold. State reserves the right to reasonably change the terms and conditions of this Easement upon State's consent to assignment.

SECTION 10 INDEMNITY, FINANCIAL SECURITY, INSURANCE

10.1 Indemnity.

- (a) Grantee shall indemnify, defend, and hold State, its employees, officers, and agents harmless from any Claims arising out of the Permitted Use or activities related to the Permitted Use by Grantee, its contractors, agents, invitees, guests, employees, affiliates, licensees, or permittees.
- (b) "Claim" as used in this Subsection 10.1 means any financial loss, claim, suit, action, damages, expenses, fees (including attorneys' fees), penalties, or judgments attributable to bodily injury; sickness; disease; death; damages to tangible property, including, but not limited to, land, aquatic life, and other natural resources; and loss of natural resource values. "Damages to tangible property" includes, but is not limited to, physical injury to the Easement Property and damages resulting from loss of use of the Easement Property.
- (c) Grantee is obligated to indemnify under this Subsection 10.1 regardless of whether any other provision of this Agreement or NPDES or other permit or license authorizes the discharge or release of a deleterious substance resulting in a claim.
- (d) No damages or fees paid by Grantee to State under other provisions of this Easement are a setoff against Grantee's obligation to indemnify under this Subsection 10.1
- (e) State shall not require Grantee to indemnify, defend, and hold State harmless for claims that arise solely out of the willful or negligent act of State or State's elected officials, employees, or agents.
- (f) Grantee waives its immunity under Title 51 RCW to the extent it is required to indemnify, defend, and hold State and its agencies, officials, agents, or employees harmless.
- (g) Section 8, Environmental Liability/Risk Allocation, exclusively governs Grantee's liability to State for Hazardous Substances and its obligation to indemnify, defend, and hold State harmless for Hazardous Substances.

10.2 Insurance Terms.

- (a) Insurance Required.
 - (1) Alternative for Self-Insured. Grantee certifies that it is self-insured for all the liability exposures, its self-insurance plan satisfies all State requirements, and its self-insurance plan provides coverage equal to that required in this Subsection 10.2 and by Subsection 10.3, Insurance Types and Limits. Grantee shall provide to State evidence of its status as a self-insured entity. Upon request by State, Grantee shall provide a written description of its financial condition and/or the self-insured funding mechanism. Grantee shall provide State with at least thirty (30) days' written notice prior to any material changes to Grantee's self-insured funding mechanism.
 - (2) Unless State agrees to an exception, Grantee shall provide insurance issued by an insurance company or companies admitted to do business in

the State of Washington and have a rating of A- or better by the most recently published edition of Best's Reports. Grantee may submit a request to the risk manager for the Department of Natural Resources for an exception to this requirement. If an insurer is not admitted, the insurance policies and procedures for issuing the insurance policies must comply with Chapter 48.15 RCW and 284-15 WAC.

- (3) The State of Washington, the Department of Natural Resources, its elected and appointed officials, agents, and employees must be named as an additional insured on all general liability, excess, umbrella, property, builder's risk, and pollution legal liability insurance policies.
 - (4) All insurance provided in compliance with this Easement must be primary as to any other insurance or self-insurance programs afforded to or maintained by State.
- (b) Waiver.
- (1) Grantee waives all rights against State for recovery of damages to the extent insurance maintained pursuant to this Easement covers these damages.
 - (2) Except as prohibited by law, Grantee waives all rights of subrogation against State for recovery of damages to the extent that they are covered by insurance maintained pursuant to this Easement.
- (c) Proof of Insurance.
- (1) Grantee shall provide State with a certificate(s) of insurance executed by a duly authorized representative of each insurer, showing compliance with insurance requirements specified in this Easement and, if requested, copies of policies to State.
 - (2) The certificate(s) of insurance must reference additional insureds and the Easement number.
 - (3) Receipt of such certificates or policies by State does not constitute approval by State of the terms of such policies.
- (d) State must receive written notice before cancellation or non-renewal of any insurance required by this Easement, in accordance with the following:
- (1) Insurers subject to RCW 48.18 (admitted and regulated by the Insurance Commissioner): If cancellation is due to non-payment of premium, provide State ten (10) days' advance notice of cancellation; otherwise, provide State forty-five (45) days' advance notice of cancellation or non-renewal.
 - (2) Insurers subject to RCW 48.15 (surplus lines): If cancellation is due to non-payment of premium, provide State ten (10) days' advance notice of cancellation; otherwise, provide State thirty (30) days' advance notice of cancellation or non-renewal.
- (e) Adjustments in Insurance Coverage.
- (1) State may impose changes in the limits of liability for all types of insurance as State deems necessary.
 - (2) Grantee shall secure new or modified insurance coverage within thirty (30) days after State requires changes in the limits of liability.

- (f) If Grantee fails to procure and maintain the insurance described above within fifteen (15) days after Grantee receives a notice to comply from State, State may either:
 - (1) Deem the failure an Event of Default under Section 14, or
 - (2) Procure and maintain comparable substitute insurance and pay the premiums. Upon demand, Grantee shall pay to State the full amount paid by State, together with interest at the rate provided in Subsection 6.2 from the date of State's notice of the expenditure until Grantee's repayment.
- (g) General Terms.
 - (1) State does not represent that coverage and limits required under this Easement will be adequate to protect Grantee.
 - (2) Coverage and limits do not limit Grantee's liability for indemnification and reimbursements granted to State under this Easement.
 - (3) The Parties shall use any insurance proceeds payable by reason of damage or destruction to Easement Property first to restore the Easement Property, then to pay the cost of the reconstruction, then to pay the State any sums in arrears, and then to Grantee.

10.3 Insurance Types and Limits.

- (a) General Liability Insurance.
 - (1) Grantee shall maintain commercial general liability insurance (CGL) or marine general liability (MGL) covering claims for bodily injury, personal injury, or property damage arising on the Easement Property and/or arising out of the Permitted Use and, if necessary, commercial umbrella insurance with a limit of not less than One Million Dollars (\$1,000,000) per each occurrence. If such CGL or MGL insurance contains aggregate limits, the general aggregate limit must be at least twice the "each occurrence" limit. CGL or MGL insurance must have products-completed operations aggregate limit of at least two times the "each occurrence" limit.
 - (2) CGL insurance must be written on Insurance Services Office (ISO) Occurrence Form CG 00 01 (or a substitute form providing equivalent coverage). All insurance must cover liability arising out of premises, operations, independent contractors, products completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another party assumed in a business contract) and contain separation of insured (cross-liability) condition.
 - (3) MGL insurance must have no exclusions for non-owned watercraft.
- (b) Workers' Compensation.
 - (1) State of Washington Workers' Compensation.
 - (i) Grantee shall comply with all State of Washington workers' compensation statutes and regulations. Grantee shall provide workers' compensation coverage for all employees of Grantee. Coverage must include bodily injury (including death) by accident

- or disease, which arises out of or in connection with the Permitted Use or related activities.
- (ii) If Grantee fails to comply with all State of Washington workers' compensation statutes and regulations and State incurs fines or is required by law to provide benefits to or obtain coverage for such employees, Grantee shall indemnify State. Indemnity includes all fines; payment of benefits to Grantee, employees, or their heirs or legal representatives; and the cost of effecting coverage on behalf of such employees.
- (2) Longshore and Harbor Worker's Act. The Longshore and Harbor Worker's Compensation Act (33 U.S.C. Section 901 *et. seq.*) may require Grantee to provide insurance coverage for longshore and harbor workers other than seaman. Failure to obtain coverage in the amount required by law may result in civil and criminal liabilities. Grantee is fully responsible for ascertaining if such insurance is required and shall maintain insurance in compliance with this Act. Grantee is responsible for all civil and criminal liability arising from failure to maintain such coverage.
 - (3) Jones Act. The Jones Act (46 U.S.C. Section 688) may require may require Grantee to provide insurance coverage for seamen injured during employment resulting from negligence of the owner, master, or fellow crew members. Failure to obtain coverage in the amount required by law may result in civil and criminal liabilities. Grantee is fully responsible for ascertaining if such insurance is required and shall maintain insurance in compliance with this Act. Grantee is responsible for all civil and criminal liability arising from failure to maintain such coverage.
- (c) Employer's Liability Insurance. Grantee shall procure employer's liability insurance, and, if necessary, commercial umbrella liability insurance with limits not less than One Million Dollars (\$1,000,000) each accident for bodily injury by accident or One Million Dollars (\$1,000,000) each employee for bodily injury by disease.
 - (d) Pollution Legal Liability Insurance.
 - (1) Grantee shall procure and maintain for the duration of this Easement pollution legal liability insurance, including investigation and defense costs, for bodily injury and property damage, including loss of use of damaged property or of property that has been physically damaged or destroyed. Such coverage must provide for both on-site and off-site cleanup costs and cover gradual and sudden pollution, and include in its scope of coverage natural resource damage claims. Grantee shall maintain coverage in an amount of at least:
 - (i) One Million Dollars (\$1,000,000) each occurrence for Tenant's operations at the site(s) identified above, and
 - (ii) Five Million Dollars (\$5,000,000) general aggregate or policy limit, if any.
 - (2) Such insurance may be provided on an occurrence or claims-made basis. If such coverage is obtained as an endorsement to the CGL and is

provided on a claims-made basis, the following additional conditions must be met:

- (i) The Insurance Certificate must state that the insurer is covering Hazardous Substance removal.
- (ii) The policy must contain no retroactive date, or the retroactive date must precede abatement services.
- (iii) Coverage must be continuously maintained with the same insurance carrier through the official completion of any work on the Easement Property.
- (iv) The extended reporting period (tail) must be purchased to cover a minimum of thirty-six (36) months beyond completion of work.

(e) Builder's Risk Insurance.

- (1) Grantee shall procure and maintain in force, or require its contractor(s) to procure and maintain in force, builder's risk insurance on the entire work during the period construction is in progress and until completion of the project. Such insurance must be written on a completed form and in an amount equal to the value of the completed Improvements, subject to subsequent modifications to the sum. The insurance must be written on a replacement cost basis. The insurance must name Grantee, all contractors, and subcontractors in the work as insured. State must be named additional insured as required by Subparagraph 10.2(a)(3)).
- (2) Insurance described above must cover or include the following:
 - (i) All risks of physical loss except those specifically excluded in the policy, including loss or damage caused by collapse;
 - (ii) The entire work on the Easement Property, including reasonable compensation for architect's services and expenses made necessary by an insured loss;
 - (iii) Portions of the work located away from the Easement Property but intended for use at the Easement Property, and portions of the work in transit;
 - (iv) Scaffolding, falsework, and temporary buildings located on the Easement Property; and
 - (v) The cost of removing debris, including all demolition as made legally necessary by the operation of any law, ordinance, or regulation.
- (3) Grantee or Grantee'(s) contractor(s) is responsible for paying any part of any loss not covered because of application of a deductible contained in the policy described above.
- (4) Grantee or Grantee'(s) contractor shall buy and maintain boiler and machinery insurance required by contract documents or by law, covering insured objects during installation and until final acceptance by permitting authority. If testing is performed, such insurance must cover such operations. The insurance must name Grantee, all contractors, and subcontractors in the work as insured. State must be named additional insured as required by Subparagraph 10.2(a)(3).

10.4 Financial Security.

- (a) At its own expense, Grantee shall procure and maintain during the Term of this Easement a corporate security bond or provide other financial security that State may approve (“Security”). Grantee shall provide Security in an amount equal to Five Hundred Dollars (\$500), which is consistent with RCW 79.105.330, and secures Grantee’s performance of its obligations under this Easement, with the exception of the obligations under Section 8, Environmental Liability/Risk Allocation. Grantee’s failure to maintain the Security in the required amount during the Term constitutes a breach of this Easement.
- (b) All Security must be in a form acceptable to the State.
 - (1) Bonds must be issued by companies admitted to do business within the State of Washington and have a rating of A-, Class VII or better, in the most recently published edition of Best’s Reports, unless State approves an exception.. Grantee may submit a request to risk manager for the Department of Natural Resources for an exception to this requirement.
 - (2) Letters of credit, if approved by State, must be irrevocable, allow State to draw funds at will, provide for automatic renewal, and comply with RCW 62A.5-101, *et. seq.*
 - (3) Savings account assignments, if approved by State, must allow State to draw funds at will.
- (c) Adjustment in Amount of Security.
 - (1) State may require an adjustment in the Security amount:
 - (i) At the same time as revaluation, if any,
 - (ii) As a condition of approval of assignment of this Easement,
 - (iii) Upon a material change in the condition or disposition of any Improvements, or
 - (iv) Upon a change in the Permitted Use.
 - (2) Grantee shall deliver a new or modified form of Security to State within thirty (30) days after State has required adjustment of the amount of the Security.
- (d) Upon any default by Grantee in its obligations under this Easement, State may collect on the Security to offset the liability of Grantee to State. Collection on the Security does not (1) relieve Grantee of liability, (2) limit any of State’s other remedies, (3) reinstate or cure the default or (4) prevent termination of the Easement because of the default.

SECTION 11 ROUTINE MAINTENANCE AND REPAIR

11.1 State’s Repairs. This Easement does not obligate State to make any alterations, maintenance, replacements, or repairs in, on, or about the Easement Property, during the Term.

11.2 Grantee’s Repairs and Maintenance.

- (a) Routine maintenance and repair are acts intended to prevent a decline, lapse or, cessation of the Permitted Use and associated Improvements. Routine maintenance or repair is the type of work that does not require regulatory permits.

- (b) At Grantee's sole expense, Grantee shall keep and maintain all Grantee-Owned Improvements and the Easement Property as it relates to the Permitted Use in good order and repair and in a safe condition. State's consent is not required for routine maintenance or repair.
- (c) At Grantee's own expense, Grantee shall make any additions, repairs, alterations, maintenance, replacements, or changes to the Easement Property or to any Improvements on the Easement Property that any public authority requires because of the Permitted Use.
- (d) Grantee shall follow procedures for the inspection, routine maintenance, and emergency plans in Exhibit B. Upon State's request, Grantee shall provide State with a copy of complete Operation and Maintenance Manual and/or Facilities Plan.
- (e) Upon completion of maintenance activities, Grantee shall remove all debris and restore the Easement Property, as nearly as possible, to the condition prior to the commencement of work.

SECTION 12 DAMAGE OR DESTRUCTION

12.1 Notice and Repair.

- (a) In the event of any known damage to or destruction of the Easement Property or any Improvements, Grantee shall promptly give written notice to State. State does not have actual knowledge of the damage or destruction of the Easement Property or any Improvements without Grantee's written notice.
- (b) Unless otherwise agreed in writing, Grantee shall promptly reconstruct, repair, or replace any Improvements in accordance with Subsection 7.3, Construction, Major Repair, Modification, and Demolition, as nearly as possible to its condition immediately prior to the damage or destruction. Where damage to state-owned aquatic land or natural resources is attributable to the Permitted Use or related activities, Grantee shall promptly restore the lands or resources to the condition preceding the damage in accordance with Subsection 7.3 unless otherwise agreed in writing.

12.2 State's Waiver of Claim. State does not waive any claims for damage or destruction of the Easement Property unless State provides written notice to Grantee of each specific claim waived.

12.3 Insurance Proceeds. Grantee's duty to reconstruct, repair, or replace any damage or destruction of the Easement Property or any Improvements on the Easement Property is not conditioned upon the availability of any insurance proceeds to Grantee from which the cost of repairs may be paid. The Parties shall use insurance proceeds in accordance with Subparagraph 10.2(g)(3).

SECTION 13 CONDEMNATION

In the event of condemnation, the Parties shall allocate the award between State and Grantee based upon the ratio of the fair market value of (1) Grantee's rights in the Easement Property and

Grantee-Owned Improvements and (2) State's interest in the Easement Property; the reversionary interest in Grantee-Owned Improvements, if any; and State-Owned Improvements. In the event of a partial taking, the Parties shall compute the ratio based on the portion of Easement Property or Improvements taken. If Grantee and State are unable to agree on the allocation, the Parties shall submit the dispute to binding arbitration in accordance with the rules of the American Arbitration Association.

SECTION 14 TERMINATION

14.1 Termination by Breach. State may terminate this Easement upon Grantee's failure to cure a breach of the terms and conditions of this Easement. State shall provide Grantee written notice of breach. Grantee shall have sixty (60) days after receiving notice to cure. State may extend the cure period if breach is not reasonably capable of cure within sixty (60) days.

14.2 Termination by Nonuse. If Grantee does not use the Easement Property for a period of three (3) successive years, this Easement terminates without further action by State. Grantee's rights revert to State upon Termination by Nonuse.

14.3 Termination by Grantee. Grantee may terminate this Easement upon providing State with sixty (60) days written notice of intent to terminate.

SECTION 15 NOTICE AND SUBMITTALS

15.1 Notice. Following are the locations for delivery of notice and submittals required or permitted under this Easement. Any Party may change the place of delivery upon ten (10) days written notice to the other.

State: DEPARTMENT OF NATURAL RESOURCES
Shoreline District Aquatics Region
950 Farman Ave N
Enumclaw, WA 98022-9282

Grantee: CITY OF GIG HARBOR
Attn: City Engineer
3510 Grandview Dr
Gig Harbor, WA 98335

The Parties may deliver any notice in person, by facsimile machine, or by certified mail. Depending on the method of delivery, notice is effective upon personal delivery, upon receipt of a confirmation report if delivered by facsimile machine, or three (3) days after mailing. All notices must identify the Easement number. On notices transmitted by facsimile machine, the Parties shall state the number of pages contained in the notice, including the transmittal page, if any.

15.2 Contact Persons. On the Commencement Date, the following persons are designated day-to-day contact persons. Any Party may change the Contact Person upon reasonable notice to the other.

State: Wynnae Wright (or current Pierce County Natural Resource Specialist)
Phone: 360-825-1631
Fax: 360-825-1672
wynnae.wright@drn.wa.gov

Grantee: Steve Misiurak, City Engineer
Phone: 253-853-7626
Fax: 253-853-7597
misiuraks@cityofgigharbor.net

SECTION 16 MISCELLANEOUS

16.1 Authority. Grantee and the person or persons executing this Easement on behalf of Grantee represent that Grantee is qualified to do business in the State of Washington, that Grantee has full right and authority to enter into this Easement, and that each and every person signing on behalf of Grantee is authorized to do so. Upon State's request, Grantee shall provide evidence satisfactory to State confirming these representations. This Easement is entered into by State pursuant to the authority granted it in Chapter 43.12 RCW, Chapter 43.30 RCW, and Title 79 RCW and the Constitution of the State of Washington.

16.2 Successors and Assigns. This Easement binds and inures to the benefit of the Parties, their successors, and assigns.

16.3 Headings. The headings used in this Easement are for convenience only and in no way define, limit, or extend the scope of this Easement or the intent of any provision.

16.4 Entire Agreement. This Easement, including the exhibits and addenda, if any, contains the entire agreement of the Parties. This Easement merges all prior and contemporaneous agreements, promises, representations, and statements relating to this transaction or to the Easement Property.

16.5 Waiver.

- (a) The waiver of any breach or default of any term, covenant, or condition of this Easement is not a waiver of such term, covenant, or condition; of any subsequent breach or default of the same; or of any other term, covenant, or condition of this Easement. State's acceptance of payment is not a waiver of any preceding or existing breach other than the failure to pay the particular payment that was accepted.
- (b) The renewal of the Easement, extension of the Easement, or the issuance of a new Easement to Grantee, does not waive State's ability to pursue any rights or remedies under the Easement.

16.6 Cumulative Remedies. The rights and remedies under this Easement are cumulative and in addition to all other rights and remedies afforded by law or equity or otherwise.

16.7 Time is of the Essence. TIME IS OF THE ESSENCE as to each and every provision of this Easement.

16.8 Language. The word "Grantee" as used in this Easement applies to one or more persons, as the case may be. The singular includes the plural, and the neuter includes the masculine and feminine. If there is more than one Grantee, their obligations are joint and several. The word "persons," whenever used, includes individuals, firms, associations, and corporations. The word "Parties" means State and Grantee in the collective. The word "Party" means either or both State and Grantee, depending on context.

16.9 Invalidity. The invalidity, voidness, or illegality of any provision of this Easement does not affect, impair, or invalidate any other provision of this Easement.

16.10 Applicable Law and Venue. This Easement is to be interpreted and construed in accordance with the laws of the State of Washington. Any reference to a statute means that statute as presently enacted or hereafter amended or superseded. Venue for any action arising out of or in connection with this Easement is in the Superior Court for Thurston County, Washington.

16.11 Recordation. Grantee shall record this Easement or a memorandum documenting the existence of this Easement in the county in which the Easement Property is located, at Grantee's sole expense. If used, the memorandum must contain the Easement Property description, the names of the Parties to the Easement, the State's Easement number, and the duration of the Easement. Grantee shall provide State with recording information, including the date of recordation and file number. Grantee has thirty (30) days from the date of delivery of the final executed agreement to comply with the requirements of this Subsection 16.11. If Grantee fails to record this Easement, State may record it and Grantee shall pay the costs of recording upon State's demand.

16.12 Modification. No modification of this Easement is effective unless in writing and signed by the Parties. Oral representations or statements do not bind either Party.

16.13 Survival. Any obligations of Grantee not fully performed upon termination of this Easement do not cease, but continue as obligations of the Grantee until fully performed.

16.14 Exhibits. All referenced exhibits are incorporated in this Easement unless expressly identified as unincorporated.

THIS AGREEMENT requires the signature of all Parties and is effective on the date of the last signature below.

CITY OF GIG HARBOR

Dated: _____, 20__

CHUCK HUNTER

Title: Mayor

Address: 3510 Grandview Dr
Gig Harbor, WA 98335

STATE OF WASHINGTON
DEPARTMENT OF NATURAL RESOURCES

Dated: _____, 20__

PETER GOLDMARK

Title: Commissioner of Public Lands

Address: Shoreline District Aquatics Region
950 Farman Ave N
Enumclaw, WA 98022-9282

Standard Aquatic Lands Outfall Easement
Approved as to Form on April 28, 2008

PROOFED

AC

By: Janis Snoey
Assistant Attorney General
State of Washington

REPRESENTATIVE ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss
COUNTY OF)

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

Dated: _____

(Seal or stamp)

(Signature)

(Print Name)

Notary Public in and for the State of
Washington, residing at

My appointment expires _____

STATE ACKNOWLEDGMENT

STATE OF WASHINGTON)
) ss
COUNTY OF)

I certify that I know or have satisfactory evidence that PETER GOLDMARK is the person who appeared before me, and said person acknowledged that he signed this instrument, on oath stated that he was authorized to execute the instrument and acknowledged it as the COMMISSIONER OF PUBLIC LANDS, and ex officio administrator of the DEPARTMENT OF NATURAL RESOURCES OF THE STATE OF WASHINGTON to be the free and voluntary act of such party for the uses and purposes mentioned in the instrument.

Dated: _____

(Signature)

(Print Name)

Notary Public in and for the State of Washington,
residing at _____

My appointment expires _____



Subject: DOE Remedial Action Grant Agreement - Eddon Boat

Proposed Council Action: Authorize the Mayor on behalf of Council to authorize the Agreement with DOE to receive \$230,902 for site remediation activities at Eddon Boat.

Dept. Origin: Administration
Prepared by: Lita Dawn Stanton
Special Projects
For Agenda of: March 9, 2009
Exhibits: Bid Documents

Initial & Date

Concurred by Mayor: CLH 3/5/09
Approved by City Administrator: RJK
Approved as to form by City Atty: PENDING BILL LYCO
Approved by Finance Director: OP 3/5/09
Approved by Department Head: _____

Expenditure	Amount	Appropriation
Required \$ -0-	Budgeted \$-0-	Required \$ -0-

INFORMATION / BACKGROUND

Eddon Boat Park was acquired through the 2005 Voted General Obligation (UTGO) Bond. As part of the acquisition, the tideland area and uplands required the excavation of contaminated soil and capping of marine sediments. That work was completed in Dec, 2008. A Department of Ecology Remedial Action Grant was applied for and approved. The attached Agreement is for \$230,902 in matching funds from DOE.

FISCAL CONSIDERATION

This is a reimbursement grant that is already matched.

BOARD OR COMMITTEE RECOMMENDATION

n/a

RECOMMENDATION / MOTION

Move to: Authorize the Mayor on behalf of Council to sign the Agreement (DOE - Oversight Remedial Action Grant Agreement No. G0900181 authorizing \$230,902 from the Local Toxics Control Account).



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47600 • Olympia, WA 98504-7600 • 360-407-6000
711 for Washington Relay Service • Persons with a speech disability can call 877-833-6341

Consent Agenda - 8
RECEIVED
MAR - 2 2009
CITY OF GIG HARBOR

February 26, 2009

Charles L. Hunter, Mayor
City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335

RE: Oversight Remedial Action Grant Agreement No.G0900181
Eddon Boat Yard Site

Dear Mr. Hunter:

The enclosed grant agreement will provide up to \$230,902 in matching grant funds to the City of Gig Harbor for site remediation activities at the Eddon Boat Yard. If you find the grant agreement satisfactory, please have it signed by the appropriate authorized official and return it to this office as soon as possible. The grant agreement becomes effective upon signature by Laurie G. Davies, Department of Ecology's Program Manager for the Solid Waste and Financial Assistance Program.

The Department of Ecology reserves the right to withdraw the grant offer if the agreement is not returned within 45 days.

Please contact me at (360) 407-6062, if you have any questions.

Sincerely,

Diane R. Singer
Grant/Loan Manager, Remedial Action Grants/Loans
Solid Waste and Financial Assistance Program

Enclosures

cc: Joyce Mercuri, Toxics Cleanup Program, SWRO, WDOE



Grant No. G0900181
Oversight Remedial Action Grant Agreement with
The City of Gig Harbor

REMEDIAL ACTION GRANT AGREEMENT
BETWEEN THE
STATE OF WASHINGTON DEPARTMENT OF ECOLOGY
AND THE
CITY OF GIG HARBOR

This is a binding agreement entered into by and between the state of Washington Department of Ecology, hereinafter referred to as the DEPARTMENT, and the City of Gig Harbor, hereinafter referred to as the RECIPIENT, to carry out the activities described herein.

RECIPIENT ADDRESS	3510 Grandview Street Gig Harbor, WA 98335
RECIPIENT REPRESENTATIVE	Charles L. Hunter, Mayor
RECIPIENT TELEPHONE NUMBER FAX	(253) 851-6170 (253) 853-7597
RECIPIENT PROJECT MANAGER	Stephen T. Misiurak, City Engineer
DEPARTMENT GRANT MANAGER FAX	Diane R. Singer, (360) 407-6062 (360) 407-6102
DEPARTMENT TECHNICAL STAFF	Joyce Mercuri, (306) 407-6260
FUNDING SOURCE	Local Toxics Control Account
MAXIMUM ELIGIBLE COST	\$461,804
STATE GRANT SHARE	\$230,902
LOCAL SHARE	\$230,902
STATE MAXIMUM GRANT PERCENT	50%
FEDERAL TAX IDENTIFICATION NO.	91-6001435

Grant No. G0900181
Oversight Remedial Action Grant Agreement with
The City of Gig Harbor

The effective date of this grant agreement is June 1, 2005. Any work performed prior to the effective date of this agreement without prior written authorization and specified in the Scope of Work will be at the sole expense and risk of the RECIPIENT.

This agreement shall expire no later than June 30, 2009.

SITE HISTORY/BACKGROUND

The Eddon Boathouse properties consist of two distinct parcels and associated tidelands. The upland properties front to the south side of Gig Harbor including the Tidelands, adjacent to and abutting the upland property beginning at an intersection with Burnham-Hunt County Road, North 1 degrees 13 minutes East, Section 5 and 6, Township 21 North, Range 2 East of the W.M., in Pierce County, Washington.

Boats have been built on the property (historically used as a boathouse) since the 1920s. Under recent private ownership of Harbor Cove Group, the property's new owners propose using these sites for housing development. The RECIPIENT acquired the properties for park purposes and public shoreline access by a voter-approved Land Acquisition and Development General Obligation Bond of \$3.5 million. The RECIPIENT completed purchase of the property in March 2005 for \$3.75 million.

The future vision for the Eddon Boat Park is the preserve the historic waterfront and boat building history, and to provide public water access and education opportunities in downtown Gig Harbor. Department of Natural Resources promoted and funded the removal of creosote-treated wood that was located at the Eddon Boatyard. The U.S. Environmental Protection Agency provided technical support in addition to the two related grants received.

Consent Decree or Settlement Agreement

The RECIPIENT and the DEPARTMENT have an Agreed Order DE-5597 dated 08-08-08.

Current Site Status

The current status is open space with historic buildings.

Grant No. G0900181
Oversight Remedial Action Grant Agreement with
The City of Gig Harbor

Overview/Summary of Remedial Activities to Be Performed

The RECIPIENT's remedial plan includes excavation of contaminated soil and removal or isolation capping of marine sediments. The cleanup includes demolition of the existing creosote-treated bulkhead, pier and marine rails, removal of gangway and floating dock, and cleanup of sediments that exceed Model Toxics Control Act Standards by a combination of dredging, backfilling, and capping. The bulkhead is 1,600 square-feet long and includes 26 creosote-treated pilings. 87 pilings will be removed from the pier and marine rails. The shoreline habitat will be enhanced including the creation of a pocket estuary. The project includes all the resources for completing related design work, contract management and oversight, permitting, bidding of the construction, and contracting the work to remove, transport, and dispose of the structures described in the agreement with the Department of Natural Resources. The RECIPIENT has secured all the necessary permits and project reviews including archaeological and historical review.

Settlements with Potentially Liable Persons and Insurance Companies

If the RECIPIENT successfully pursues a future private right of action against a potentially liable person, the local government shall reimburse the DEPARTMENT for a proportionate share of the money received. Furthermore, if the RECIPIENT receives future proceeds from an insurance claim, and the amount is greater than the difference between the total remedial action costs and the DEPARTMENT's grant, then the RECIPIENT must reimburse the DEPARTMENT for any project expenditures funded by the grant.

SCOPE OF WORK

This grant will cover the costs associated with the remedial activities that meet the eligibility requirements of the Remedial Action Grant Program Guidelines (Ecology Publication #07-07-032 October 2007) and the Administrative Requirements for Ecology Grants and Loans (Ecology Publication #91-18 Revised September 2005).

Indirect costs are limited to 25 percent of the salaries and benefits applied directly to the project (see Additional Budget Conditions). Legal fees associated with this project are not grant eligible.

Grant No. G0900181
 Oversight Remedial Action Grant Agreement with
 The City of Gig Harbor

The task(s) set forth below summarize the RECIPIENT's activities, budget(s), and schedule(s).

1. PROJECT TASK: SITE REMEDIATION

Project Description:

This task provides funding for the RECIPIENT for completing the following tasks:

- Site characterization
- Excavation of contaminated soil
- Removal or isolation capping of marine sediments
- Demolition of structures to provide access for removal of contaminated soils and sediment, including pier, gangway, floating dock, and marine rails
- Completion of design and specifications
- Obtaining necessary permits
- Contract management and construction/cleanup oversight
- One year of operation and maintenance costs for monitoring

All sampling data shall be submitted to the Department of Ecology in both printed and electronic formats in accordance with WAC 173-340-840(5) and Department of Ecology's Toxics Cleanup Program Policy 840: Data Submittal Requirements. Failure to properly submit sampling data will result in the withholding of grant funding.

FUND SOURCE

Costs are approved consistent with the most recent budget plan. To change how funds are spent, the RECIPIENT must request in writing to revise the budget plan, and the DEPARTMENT must approve this request in writing and approve the revised budget plan by date and signature. Revised budget plans the DEPARTMENT approves are incorporated into this agreement by reference.

Total Eligible Project Cost		\$461,804
Fund	Fund Share (%)	Maximum Fund Amount
Local Toxics Control Account	50%	\$230,902
Match Requirement	Match Share (%)	Match Amount
Cash Match	50%	\$230,902

Grant No. G0900181
 Oversight Remedial Action Grant Agreement with
 The City of Gig Harbor

BUDGET PLAN

<u>Project Tasks</u>	<u>Estimated Eligible Cost</u>	<u>Estimated Maximum Fund Amount</u>
1. Site Remediation	\$461,804	\$230,902
TOTAL:	\$461,804	\$230,902

ADDITIONAL BUDGET CONDITIONS

1. Overhead is eligible; the RECIPIENT may charge 25 percent of the RECIPIENT salaries and benefits applied directly to the project as overhead.
2. The fiscal office will monitor expenditures at the task level. A letter amendment is required to redistribute costs among tasks. A formal amendment is required to increase state funding.
3. The maximum allowable amount from the Local Toxics Control Account is \$230,902.
4. Match requirements will be funded by cash, two EPA Brownfield Grants totaling \$400,000, a grant from Department of Natural Resources Creosote Removal Program for \$182,000, and a grant from Department of Natural Resources Habitat Restoration for \$36,000.
5. The RECIPIENT must submit supporting documentation for all costs incurred organized by project task.
6. The RECIPIENT contact and telephone number for billing/invoice questions is David Rodenbach, Finance Director, (253) 851-8136.
7. Payment to the RECIPIENT from the DEPARTMENT shall be made payable to the City of Gig Harbor, 3510 Grandview Street, Gig Harbor, WA 98335.

Grant No. G0900181
 Oversight Remedial Action Grant Agreement with
 The City of Gig Harbor

BUDGET PLAN

<u>Project Tasks</u>	<u>Estimated Eligible Cost</u>	<u>Estimated Maximum Fund Amount</u>
1. Site Remediation	\$461,804	\$230,902
TOTAL:	\$461,804	\$230,902

ADDITIONAL BUDGET CONDITIONS

1. Overhead is eligible; the RECIPIENT may charge 25 percent of the RECIPIENT salaries and benefits applied directly to the project as overhead.
2. The fiscal office will monitor expenditures at the task level. A letter amendment is required to redistribute costs among tasks. A formal amendment is required to increase state funding.
3. The maximum allowable amount from the Local Toxics Control Account is \$230,902.
4. Match requirements will be funded by cash, two EPA Brownfield Grants totaling \$400,000, a grant from Department of Natural Resources Creosote Removal Program for \$182,000, and a grant from Department of Natural Resources Habitat Restoration for \$36,000.
5. The RECIPIENT must submit supporting documentation for all costs incurred organized by project task.
6. The RECIPIENT contact and telephone number for billing/invoice questions is David Rodenbach, Finance Director, (253) 851-8136.
7. Payment to the RECIPIENT from the DEPARTMENT shall be made payable to the City of Gig Harbor, 3510 Grandview Street, Gig Harbor, WA 98335.

Grant No. G0900181
Oversight Remedial Action Grant Agreement with
The City of Gig Harbor

SPECIAL TERMS AND CONDITIONS

A. MINORITY AND WOMEN'S BUSINESS PARTICIPATION

The RECIPIENT agrees to solicit and recruit, to the maximum extent possible, certified minority-owned (MBE) and women-owned (WBE) businesses in purchases and contracts initiated after the effective date of this agreement.

In the absence of more stringent goals established by the RECIPIENT'S jurisdiction, the RECIPIENT agrees to use the DEPARTMENT'S goals for MBE and WBE participation in all bid packages, request for proposals, and purchase orders. These goals are expressed as a percentage of the total dollars available for the purchase or contract and are as follows:

Construction/Public Works	10% MBE	6%WBE
Architecture/Engineering	10% MBE	6%WBE
Purchased Goods	8% MBE	4%WBE
Purchased Services	10% MBE	4%WBE
Professional Services	10% MBE	4%WBE

Meeting these goals is voluntary and the DEPARTMENT shall not base any contract award or rejection on whether the RECIPIENT achieves the goals. The DEPARTMENT encourages achievement of the goals, however, and the RECIPIENT and ALL prospective bidders or persons submitting qualifications shall take the following affirmative steps in any procurement initiated after the effective date of this agreement:

1. Include qualified MBEs and WBEs on solicitation lists.
2. Make sure to solicit qualified MBEs and WBEs whenever they are potential sources of services or supplies.
3. Divide the total requirements, when economically feasible, into smaller tasks or quantities, to permit qualified MBEs and WBEs to take part as much as possible.
4. Establish delivery schedules, where work requirements permit, which will encourage qualified MBEs and WBEs to take part.
5. Use the services and assistance of the State Office of Minority and Women's Business Enterprises (OMWBE) and the Office of Minority Business Enterprises of the U.S. Department of Commerce, as appropriate.

Grant No. G0900181
Oversight Remedial Action Grant Agreement with
The City of Gig Harbor

By signing this agreement, the RECIPIENT certifies that the above steps were, or will be followed. Any contractor engaged by the RECIPIENT under this agreement shall be required to follow the above five affirmative steps in the award of any subcontract(s).

The RECIPIENT shall report to the DEPARTMENT at the time of submitting each invoice, on a form provided by the DEPARTMENT, payments made to qualified firms. The FORM D report includes:

1. Name and business identifier of any OMWBE-qualified firm receiving funds under the voucher, including any sub-and/or sub-subcontractors.
2. The total dollar amount paid to qualified firms under this invoice.

B. PROCUREMENT AND CONTRACTS

1. The RECIPIENT shall provide written certification that it will follow its standard procurement procedures and/or applicable state law in awarding contracts; RECIPIENTS with no formal procurement procedures must certify that they have complied with the "Standards for Competitive Solicitation," found in the Administrative Requirements for Ecology Grants and Loans, Ecology Publication #91-18 (Revised September 2005).
2. Upon issuance, the RECIPIENT shall submit a copy of all requests for qualifications (RFQs), requests for proposals (RFPs), and bid documents relating to this grant agreement to the DEPARTMENT.
3. Prior to contract execution, the RECIPIENT shall submit all draft documents and a copy of the draft proposed contract to the DEPARTMENT for review and approval. Following the contract execution, the RECIPIENT shall submit a copy of the final contract to the DEPARTMENT.

C. USE OF EXISTING CONTRACTS

The RECIPIENT may use existing contracts that conform to adopted procurement procedures and applicable state laws. The RECIPIENT shall notify the DEPARTMENT if it used contracts entered into prior to the execution of the grant agreement for performance of grant-funded activities.

D. SEPA COMPLIANCE

To ensure that the state and local government officials consider environmental values when making decisions, the RECIPIENT shall comply with the provisions of the State Environmental Policy Act (SEPA), Chapter 41.23C RCW, and the SEPA Rules, Chapter 197-11 WAC. The RECIPIENT shall send copies of the SEPA documents to the DEPARTMENT'S Environmental Review Section, appropriate regional office, and Solid Waste and Financial Assistance Program – Headquarters Section.

Grant No. G0900181
Oversight Remedial Action Grant Agreement with
The City of Gig Harbor

E. FAILURE TO COMMENCE WORK

In the event the RECIPIENT fails to commence work on the project funded herein within six (6) months after the effective date of this grant, the DEPARTMENT reserves the right to terminate this grant.

F. GRANT PROJECT REPORTING

Progress Reports: The RECIPIENT shall submit progress reports to the DEPARTMENT with each payment request. These reports shall be in accordance with the DEPARTMENT-approved reporting format as indicated in the Remedial Action Grant Guidelines, Publication #07-07-032 (Revised 2007), Appendix 3. The DEPARTMENT shall not approve payments without the required progress reports.

The RECIPIENT shall complete and submit to the DEPARTMENT a spending plan projecting monthly expenditures for the time period of June 1, 2005 to June 30, 2009. The spending plan will be updated and submitted quarterly and reported with the progress report should there be any changes. The RECIPIENT shall also submit a 10 year budget forecast to the DEPARTMENT and provide updates as appropriate or requested by the DEPARTMENT.

Progress reports and spending plan forms can be found on the DEPARTMENT'S website at <http://www.ecy.wa.gov/programs/swfa/grants/rag.html>, and in the Remedial Action Grant Guidelines, Ecology Publication #07-07-032 (Revised 2007).

G. COMPENSATION

The DEPARTMENT shall reimburse the RECIPIENT for eligible costs at least quarterly and no more than once a month. The RECIPIENT shall submit each request for payment on state voucher request forms the DEPARTMENT provides; the RECIPIENT shall include documentation of the expenses.

The payment request form and supporting documents must itemize all allowable costs by major elements as described in the Scope of Work and approved budget plan. Instructions for submitting the payment requests are found in "Administrative Requirements for Ecology Grants and Loans," published by the DEPARTMENT.

All costs submitted must have supporting documents.

H. GOVERNING LAW

The laws of the state of Washington shall govern this agreement.

Grant No. G0900181
Oversight Remedial Action Grant Agreement with
The City of Gig Harbor

I. INDEMNIFICATION

1. The DEPARTMENT shall in no way be held responsible for direct payment of salaries, consultant's fees, or any other costs related to the project described herein.
2. To the extent that the Constitution and laws of the state of Washington permit, each party shall indemnify and hold the other harmless from and against any liability for any or all injuries to persons or property, arising from the negligent act or omissions of the party or that party's agents or employees, while performing under this agreement.

J. ARCHEOLOGICAL AND CULTURAL RESOURCES

The RECIPIENT shall take reasonable action to avoid, minimize, or mitigate adverse effects to the archeological or cultural resources. RECIPIENT shall immediately cease work and notify the DEPARTMENT if any archeological or cultural resources are found while conducting work under this agreement. In the event that historical or cultural artifacts are discovered at the project site, the RECIPIENT must also notify the state historic preservation officer at the Department of Archaeology and Historic Preservation at (360) 586-3065. Applicability of the National Historic Preservation Act (NHPA) may require the RECIPIENT to obtain a permit pursuant to Chapter 27.53 RCW prior to conducting on-site activity with the potential to impact historic properties (such as invasive sampling, dredging, or cleanup actions).

K. PRECEDENCE

In the event of inconsistency in this agreement, the inconsistency shall be resolved by giving precedence in the following order: (a) applicable federal and state statutes and regulations; (b) Scope of Work and approved budget plan; (c) Special Terms and Conditions; (d) Remedial Action Grant Program Guidelines (e) any terms incorporated herein by reference including the Administrative Requirements for Ecology Grants and Loans, Ecology Publication #91-18 (Revised September 2005); and (f) the General Terms and Conditions (SS-010 Rev. 05/02).

L. ALL WRITINGS CONTAINED HEREIN

This agreement, including the appended "General Terms and Conditions," the latest approved budget plan, and the DEPARTMENT'S Administrative

Grant No. G0900181
Oversight Remedial Action Grant Agreement with
The City of Gig Harbor

Requirements for Ecology Grants and Loans, Ecology Publication #91-18 (Revised September 2005), contain the entire understanding between the parties, and there are no other understandings or representations except as those set forth or incorporated by reference herein. No subsequent modification(s) or amendment(s) of this grant agreement shall be of any force or effect unless in writing, signed by authorized representatives of the RECIPIENT and DEPARTMENT and made part of this agreement; **EXCEPT** a letter of amendment will suffice to change the DEPARTMENT'S grant manager or the RECIPIENT'S project coordinator or to extend the period of performance as set forth in the grant agreement and the DEPARTMENT'S grant manager may approve, by date stamp and signature, a revised project budget plan.

GENERAL TERMS AND CONDITIONS
Pertaining to Grant and Loan Agreements of
the Department of Ecology

A. RECIPIENT PERFORMANCE

All activities for which grant/loan funds are to be used shall be accomplished by the RECIPIENT and RECIPIENT'S employees. The RECIPIENT shall not assign or subcontract performance to others unless specifically authorized in writing by the DEPARTMENT.

B. SUBGRANTEE/CONTRACTOR COMPLIANCE

The RECIPIENT must ensure that all subgrantees and contractors comply with the terms and conditions of this agreement.

C. THIRD PARTY BENEFICIARY

The RECIPIENT shall ensure that in all subcontracts entered into by the RECIPIENT pursuant to this agreement, the state of Washington is named as an express third-party beneficiary of such subcontracts with full rights as such.

D. CONTRACTING FOR SERVICES (BIDDING)

Contracts for construction, purchase of equipment and professional architectural and engineering services shall be awarded through a competitive process, if required by State law. RECIPIENT shall retain copies of all bids received and contracts awarded, for inspection and use by the DEPARTMENT.

E. ASSIGNMENTS

No right or claim of the RECIPIENT arising under this agreement shall be transferred or assigned by the RECIPIENT.

Grant No. G0900181
Oversight Remedial Action Grant Agreement with
The City of Gig Harbor

F. COMPLIANCE WITH ALL LAWS

1. The RECIPIENT shall comply fully with all applicable Federal, State and local laws, orders, regulations and permits.

Prior to commencement of any construction, the RECIPIENT shall secure the necessary approvals and permits required by authorities having jurisdiction over the project, provide assurance to the DEPARTMENT that all approvals and permits have been secured, and make copies available to the DEPARTMENT upon request.

2. Discrimination. The DEPARTMENT and the RECIPIENT agree to be bound by all Federal and State laws, regulations, and policies against discrimination. The RECIPIENT further agrees to affirmatively support the program of the Office of Minority and Women's Business Enterprises to the maximum extent possible. The RECIPIENT shall report to the DEPARTMENT the percent of grant/loan funds available to women or minority owned businesses.

3. Wages And Job Safety. The RECIPIENT agrees to comply with all applicable laws, regulations, and policies of the United States and the State of Washington which affect wages and job safety.

4. Industrial Insurance. The RECIPIENT certifies full compliance with all applicable state industrial insurance requirements. If the RECIPIENT fails to comply with such laws, the DEPARTMENT shall have the right to immediately terminate this agreement for cause as provided in Section K.1, herein.

G. KICKBACKS

The RECIPIENT is prohibited from inducing by any means any person employed or otherwise involved in this project to give up any part of the compensation to which he/she is otherwise entitled or, receive any fee, commission or gift in return for award of a subcontract hereunder.

H. AUDITS AND INSPECTIONS

1. The RECIPIENT shall maintain complete program and financial records relating to this agreement. Such records shall clearly indicate total receipts and expenditures by fund source and task or object.

All grant/loan records shall be kept in a manner which provides an audit trail for all expenditures. All records shall be kept in a common file to facilitate audits and inspections.

Engineering documentation and field inspection reports of all construction work accomplished under this agreement shall be maintained by the RECIPIENT.

Grant No. G0900181
Oversight Remedial Action Grant Agreement with
The City of Gig Harbor

2. All grant/loan records shall be open for audit or inspection by the DEPARTMENT or by any duly authorized audit representative of the State of Washington for a period of at least three years after the final grant payment/loan repayment or any dispute resolution hereunder. If any such audits identify discrepancies in the financial records, the RECIPIENT shall provide clarification and/or make adjustments accordingly.

3. All work performed under this agreement and any equipment purchased, shall be made available to the DEPARTMENT and to any authorized state, federal or local representative for inspection at any time during the course of this agreement and for at least three years following grant/loan termination or dispute resolution hereunder.

4. RECIPIENT shall meet the provisions in OMB Circular A-133 (Audits of States, Local Governments & Non Profit Organizations), including the compliance Supplement to OMB Circular A-133, if the RECIPIENT expends \$300,000 or more in a year in Federal funds. The \$300,000 threshold for each year is a cumulative total of all federal funding from all sources. The RECIPIENT must forward a copy of the audit along with the RECIPIENT'S response and the final corrective action plan to the DEPARTMENT within ninety (90) days of the date of the audit report.

I. PERFORMANCE REPORTING

The RECIPIENT shall submit progress reports to the DEPARTMENT with each payment request or such other schedule as set forth in the Special Conditions. The RECIPIENT shall also report in writing to the DEPARTMENT any problems, delays or adverse conditions which will materially affect their ability to meet project objectives or time schedules. This disclosure shall be accompanied by a statement of the action taken or proposed and any assistance needed from the DEPARTMENT to resolve the situation. Payments may be withheld if required progress reports are not submitted.

Quarterly reports shall cover the periods January 1 through March 31, April 1 through June 30, July 1 through September 30, and October 1 through December 31. Reports shall be due within twenty (20) days following the end of the quarter being reported.

J. COMPENSATION

1. Method of compensation. Payment shall normally be made on a reimbursable basis as specified in the grant agreement and no more often than once per month. Each request for payment will be submitted by the RECIPIENT on State voucher request forms provided by the DEPARTMENT along with documentation of the expenses. Payments shall be made for each task/phase of the project, or portion thereof, as set out in the Scope of Work when completed by the RECIPIENT and certified as satisfactory by the Grant Manager.

Grant No. G0900181
Oversight Remedial Action Grant Agreement with
The City of Gig Harbor

The payment request form and supportive documents must itemize all allowable costs by major elements as described in the Scope of Work. Instructions for submitting the payment requests are found in "Administrative Requirements for Ecology Grants and Loans", part IV, published by the DEPARTMENT. A copy of this document shall be furnished to the RECIPIENT. When payment requests are approved by the DEPARTMENT, payments will be made to the mutually agreed upon designee.

Payment requests shall be submitted to the DEPARTMENT and directed to the Grant Manager assigned to administer this agreement.

2. Budget Deviation. Deviations in budget amounts are not allowed without written amendment(s) to this agreement. Payment requests will be disallowed when the RECIPIENT'S request for reimbursement exceeds the State maximum share amount for that element, as described in the Scope of Work.

3. Period of Compensation. Payments shall only be made for action of the RECIPIENT pursuant to the grant/loan agreement and performed after the effective date and prior to the expiration date of this agreement, unless those dates are specifically modified in writing as provided herein.

4. Final Request(s) for Payment. The RECIPIENT must submit final requests for compensation within forty-five (45) days after the expiration date of this agreement and within fifteen (15) days after the end of a fiscal biennium. Failure to comply may result in delayed reimbursement.

5. Performance Guarantee. The DEPARTMENT may withhold an amount not to exceed ten percent (10%) of each reimbursement payment as security for the RECIPIENT'S performance and a financial bond. Monies withheld by the DEPARTMENT may be paid to the RECIPIENT when the project(s) described herein, or a portion thereof, have been completed if, in the DEPARTMENT'S sole discretion, such payment is reasonable and approved according to this agreement and, as appropriate, upon completion of an audit as specified under section J.6. herein.

6. Unauthorized Expenditures. All payments to the RECIPIENT shall be subject to final audit by the DEPARTMENT and any unauthorized expenditure(s) charged to this grant/loan shall be refunded to the DEPARTMENT by the RECIPIENT.

7. Mileage and Per Diem. If mileage and per diem are paid to the employees of the RECIPIENT or other public entities, it shall not exceed the amount allowed under state law for state employees.

8. Overhead Costs. No reimbursement for overhead costs shall be allowed unless provided for in the Scope of Work hereunder.

Grant No. G0900181
Oversight Remedial Action Grant Agreement with
The City of Gig Harbor

K. TERMINATION

1. For Cause. The obligation of the DEPARTMENT to the RECIPIENT is contingent upon satisfactory performance by the RECIPIENT of all of its obligations under this agreement. In the event the RECIPIENT unjustifiably fails, in the opinion of the DEPARTMENT, to perform any obligation required of it by this agreement, the DEPARTMENT may refuse to pay any further funds there under and/or terminate this agreement by giving written notice of termination.

A written notice of termination shall be given at least five working days prior to the effective date of termination. In that event, all finished or unfinished documents, data studies, surveys, drawings, maps, models, photographs, and reports or other materials prepared by the RECIPIENT under this agreement, at the option of the DEPARTMENT, shall become Department property and the RECIPIENT shall be entitled to receive just and equitable compensation for any satisfactory work completed on such documents and other materials.

Despite the above, the RECIPIENT shall not be relieved of any liability to the DEPARTMENT for damages sustained by the DEPARTMENT and/or the State of Washington because of any breach of agreement by the RECIPIENT. The DEPARTMENT may withhold payments for the purpose of setoff until such time as the exact amount of damages due the DEPARTMENT from the RECIPIENT is determined.

2. Insufficient Funds. The obligation of the DEPARTMENT to make payments is contingent on the availability of state and federal funds through legislative appropriation and state allotment. When this agreement crosses over state fiscal years the obligation of the DEPARTMENT is contingent upon the appropriation of funds during the next fiscal year. The failure to appropriate or allot such funds shall be good cause to terminate this agreement as provided in paragraph K.1 above.

When this agreement crosses the RECIPIENT'S fiscal year, the obligation of the RECIPIENT to continue or complete the project described herein shall be contingent upon appropriation of funds by the RECIPIENT'S governing body; provided, however, that nothing contained herein shall preclude the DEPARTMENT from demanding repayment of ALL funds paid to the RECIPIENT in accordance with Section O herein.

4. Failure to Commence Work. In the event the RECIPIENT fails to commence work on the project funded herein within four months after the effective date of this agreement, or by any date mutually agreed upon in writing for commencement of work, the DEPARTMENT reserves the right to terminate this agreement.

Grant No. G0900181
Oversight Remedial Action Grant Agreement with
The City of Gig Harbor

L. WAIVER

Waiver of any RECIPIENT default is not a waiver of any subsequent default. Waiver of a breach of any provision of this agreement is not a waiver of any subsequent breach and will not be construed as a modification of the terms of this agreement unless stated as such in writing by the authorized representative of the DEPARTMENT.

M. PROPERTY RIGHTS

1. Copyrights and Patents. When the RECIPIENT creates any copyrightable materials or invents any patentable property, the RECIPIENT may copyright or patent the same but the DEPARTMENT retains a royalty-free, nonexclusive and irrevocable license to reproduce, publish, recover or otherwise use the material(s) or property and to authorize others to use the same for federal, state or local government purposes.

Where federal funding is involved, the federal government may have a proprietary interest in patent rights to any inventions that are developed by the RECIPIENT as provided in 35 U.S.C. 200-212.

2. Publications. When the RECIPIENT or persons employed by the RECIPIENT use or publish information of the DEPARTMENT; present papers, lectures, or seminars involving information supplied by the DEPARTMENT; use logos, reports, maps or other data, in printed reports, signs, brochures, pamphlets, etc., appropriate credit shall be given to the DEPARTMENT.

3. Tangible Property Rights. The DEPARTMENT'S current edition of "Administrative Requirements for Ecology Grants and Loans", Part V, shall control the use and disposition of all real and personal property purchased wholly or in part with funds furnished by the DEPARTMENT in the absence of state, federal statute(s), regulation(s), or policy(s) to the contrary or upon specific instructions with respect thereto in the Scope of Work.

4. Personal Property Furnished by the DEPARTMENT. When the DEPARTMENT provides personal property directly to the RECIPIENT for use in performance of the project, it shall be returned to the DEPARTMENT prior to final payment by the DEPARTMENT. If said property is lost, stolen or damaged while in the RECIPIENT'S possession, the DEPARTMENT shall be reimbursed in cash or by setoff by the RECIPIENT for the fair market value of such property.

Grant No. G0900181
Oversight Remedial Action Grant Agreement with
The City of Gig Harbor

5. Acquisition Projects. The following provisions shall apply if the project covered by this agreement includes funds for the acquisition of land or facilities:

- a. Prior to disbursement of funds provided for in this agreement, the RECIPIENT shall establish that the cost of land/or facilities is fair and reasonable.
- b. The RECIPIENT shall provide satisfactory evidence of title or ability to acquire title for each parcel prior to disbursement of funds provided by this agreement. Such evidence may include title insurance policies, Torrens certificates, or abstracts, and attorney's opinions establishing that the land is free from any impediment, lien, or claim which would impair the uses contemplated by this agreement.

6. Conversions. Regardless of the contract termination date shown on the cover sheet, the RECIPIENT shall not at any time convert any equipment, property or facility acquired or developed pursuant to this agreement to uses other than those for which assistance was originally approved without prior written approval of the DEPARTMENT. Such approval may be conditioned upon payment to the DEPARTMENT of that portion of the proceeds of the sale, lease or other conversion or encumbrance which monies granted pursuant to this agreement bear to the total acquisition, purchase or construction costs of such property.

N. RECYCLED/RECYCLABLE PAPER

All documents and materials published under this agreement shall be produced on recycled paper containing the highest level of post consumer and recycled content that is available. At a minimum, paper with 10 percent post consumer content and 50 percent recycled content shall be used. Whenever possible, all materials shall be published on paper that is unbleached or has not been treated with chlorine gas and/or hypochlorite.

As appropriate, all materials shall be published on both sides of the paper and shall minimize the use of glossy or colored paper and other items which reduce the recyclability of the document.

O. RECOVERY OF PAYMENTS TO RECIPIENT

The right of the RECIPIENT to retain monies paid to it as reimbursement payments is contingent upon satisfactory performance of this agreement including the satisfactory completion of the project described in the Scope of Work. In the event the RECIPIENT fails, for any reason, to perform obligations required of it by this agreement, the RECIPIENT may, at the DEPARTMENT'S sole discretion, be required to repay to the DEPARTMENT all grant/loan funds disbursed to the RECIPIENT for those parts of the project that are rendered worthless in the opinion of the DEPARTMENT by such failure to perform.

Interest shall accrue at the rate of twelve percent (12%) per annum from the time the DEPARTMENT demands repayment of funds. If payments have been discontinued by the DEPARTMENT due to insufficient funds as in Section K.2 above, the RECIPIENT shall not be obligated to repay monies which had been paid to the RECIPIENT prior to such termination. Any property acquired under this agreement, at the option of the DEPARTMENT, may become the DEPARTMENT'S property and the RECIPIENT'S liability to repay monies shall be reduced by an amount reflecting the fair value of such property.

P. PROJECT APPROVAL

The extent and character of all work and services to be performed under this agreement by the RECIPIENT shall be subject to the review and approval of the DEPARTMENT through the Grant Manager or other designated official to whom the RECIPIENT shall report and be responsible. In the event there is a dispute with regard to the extent and character of the work to be done, the determination of the Grant Manager or other designated official as to the extent and character of the work to be done shall govern. The RECIPIENT shall have the right to appeal decisions as provided for below.

Q. DISPUTES

Except as otherwise provided in this agreement, any dispute concerning a question of fact arising under this agreement which is not disposed of in writing shall be decided by the Grant Manager or other designated official who shall provide a written statement of decision to the RECIPIENT. The decision of the Grant Manager or other designated official shall be final and conclusive unless, within thirty days from the date of receipt of such statement, the RECIPIENT mails or otherwise furnishes to the Director of the DEPARTMENT a written appeal.

In connection with appeal of any proceeding under this clause, the RECIPIENT shall have the opportunity to be heard and to offer evidence in support of this appeal. The decision of the Director or duly authorized representative for the determination of such appeals shall be final and conclusive. Appeals from the Director's determination shall be brought in the Superior Court of Thurston County. Review of the decision of the Director will not be sought before either the Pollution Control Hearings Board or the Shoreline Hearings Board. Pending final decision of dispute hereunder, the RECIPIENT shall proceed diligently with the performance of this agreement and in accordance with the decision rendered.

Grant No. G0900181
Oversight Remedial Action Grant Agreement with
The City of Gig Harbor

R. CONFLICT OF INTEREST

No officer, member, agent, or employee of either party to this agreement who exercises any function or responsibility in the review, approval, or carrying out of this agreement, shall participate in any decision which affects his/her personal interest or the interest of any corporation, partnership or association in which he/she is, directly or indirectly interested; nor shall he/she have any personal or pecuniary interest, direct or indirect, in this agreement or the proceeds thereof.

S. INDEMNIFICATION

1. The DEPARTMENT shall in no way be held responsible for payment of salaries, consultant's fees, and other costs related to the project described herein, except as provided in the Scope of Work.

2. To the extent that the Constitution and laws of the State of Washington permit, each party shall indemnify and hold the other harmless from and against any liability for any or all injuries to persons or property arising from the negligent act or omission of that party or that party's agents or employees arising out of this agreement.

T. GOVERNING LAW

This agreement shall be governed by the laws of the State of Washington.

U. SEVERABILITY

If any provision of this agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this agreement which can be given effect without the invalid provision, and to this end the provisions of this agreement are declared to be severable.

Grant No. G0900181
Oversight Remedial Action Grant Agreement with
The City of Gig Harbor

V. PRECEDENCE

In the event of inconsistency in this agreement, 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) Scope of Work; (c) Special Terms and Conditions; (d) Any terms incorporated herein by reference including the "Administrative Requirements for Ecology Grants and Loans"; and (e) the General Terms and Conditions. SS-010 Rev. 05/02

IN WITNESS WHEREOF, the parties hereby execute this Grant Agreement:

STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

CITY OF GIG HARBOR

Laurie G. Davies Date
Program Manager
Solid Waste and Financial Assistance

Authorized Official Date

Approved as to form only
Assistant Attorney General

Printed Name and Title



Subject: Second Reading of Ordinance –
Truck Weight Limits on Pioneer Way.

Proposed Council Actions:

Approve ordinance adding Chapter 10.16 Truck Weight Limits on Pioneer Way to the Gig Harbor Municipal Code.

Dept. Origin: Public Works

Prepared by: David Stubchaer, P.E.
Public Works Director

For Agenda of: March 9, 2009

Exhibits: Proposed ordinance

	Initial & Date
Concurred by Mayor:	<u>CLH 3/2/09</u>
Approved by City Administrator:	<u>PK 3/2/09</u>
Approved as to form by City Atty:	<u>approved via email</u>
Approved by Finance Director:	<u>N/A</u>
Approved by Department Head:	<u>DS 3/2/09</u>

Expenditure	Amount	Appropriation
Required \$0	Budgeted \$0	Required \$0

INFORMATION / BACKGROUND

The proposed ordinance was presented to Council on February 23, 2009 for a first reading. The Council is being asked to approve the ordinance at the second reading at its March 9, 2009 Council meeting.

Pioneer Way in the City of Gig Harbor is a steep street ending in a tee intersection at its lower end and its safety can be adversely affected by rain, snow or other climactic conditions. Safer alternatives to Pioneer Way exist for trucks to accommodate the transportation needs of the vicinity of Pioneer Way. The proposed ordinance addresses these issues by adding a new chapter to the City of Gig Harbor Municipal Code. The intent of the new Chapter 10.16, entitled Truck Weight Limits on Pioneer Way, is to limit the use of Pioneer Way by heavy trucks. The use of Pioneer Way by trucks with 3 axles or more would be limited to only those trucks that do not exceed 6,000 pounds unladen weight. The restriction would effectively eliminate all 18-wheeler trucks and most other 3 or more axle trucks except as discussed below.

Certain exemptions would be allowed as required under RCW 46.44.080 that requires the City to authorize by general rule or special permit the operation thereon by school buses, emergency vehicles and motor trucks transporting perishable commodities or commodities necessary for the health and welfare of local residents. Therefore, important and necessary activities such as access by emergency vehicles, or deliveries to businesses along Pioneer

Way would still be able to occur. Exemptions are discussed in §10.16.030 of the proposed new chapter.

The new chapter also directs the Public Works Director to post signs that would let motorists know of the restrictions on Pioneer Way. Staff will also work with the Washington Department of Transportation in an effort to put appropriate signage on or before the SR16 off ramps to Pioneer Way.

FISCAL CONSIDERATION

None with this action.

BOARD OR COMMITTEE RECOMMENDATION

This proposed ordinance was presented to the Operations & Public Projects Committee on February 19, 2009. The committee had minor edits which have been incorporated into the proposed ordinance.

RECOMMENDATION / MOTION

Approve ordinance adding Chapter 10.16 Truck Weight Limits on Pioneer Way to the Gig Harbor Municipal Code.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO STREETS; PROHIBITING THE USE OF PIONEER WAY BY TRUCKS EXCEEDING A CERTAIN WEIGHT; ADOPTING A NEW CHAPTER 10.16 ENTITLED "TRUCK WEIGHT LIMITS ON PIONEER WAY" TO THE GIG HARBOR MUNICIPAL CODE; DIRECTING THE PUBLIC WORKS DIRECTOR TO POST SIGNS DESIGNATING THE PROVISIONS OF THIS ORDINANCE; PROVIDING FOR SEVERABILITY AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, RCW 46.44.080 authorizes the City to restrict the weight or prohibit the operation of motor trucks and other vehicles on City streets whenever the City streets, by reason of rain, snow, climatic or other conditions, will be seriously damaged or destroyed unless such operation is prohibited or restricted; and

WHEREAS, if the City chooses to restrict the weight or prohibit the operation of motor trucks or other vehicles on City streets, RCW 46.44.080 requires the City to authorize by general rule or special permit the operation thereon by school buses, emergency vehicles and motor trucks transporting perishable commodities or commodities necessary for the health and welfare of local residents, under such weight and speed restrictions that the City deems necessary to protect the street from undue damage; and

WHEREAS, Pioneer Way is a steep street ending in a tee intersection at its lower end and its safety can be adversely affected by rain, snow or other climactic conditions; and

WHEREAS, safer alternatives to Pioneer Way exist for trucks exceeding a certain weight to accommodate the transportation needs of the vicinity of Pioneer Way; and

WHEREAS, the City Council finds that trucks exceeding a certain weight and oversized vehicles traveling along Pioneer Way can cause structural damage to the street section and/or destruction of other elements relating to the safe operations of street such as curbs, roadway signs and street lighting; and

WHEREAS, the City Council wishes to extend the usable life of Pioneer Way by limiting unnecessary damage or destruction of City property and provide for the safe operations of Pioneer Way within the City; and

WHEREAS, the City Council believes that the establishment of a truck weight limit on Pioneer Way will increase the usable life of City streets by limiting unnecessary damage and will contribute to increased public safety on City streets; and

WHEREAS, the City SEPA Responsible Official has determined that this Ordinance is exempt; and

WHEREAS, the City Council considered this Ordinance during its regular City Council meetings of February 23, 2009 and March 9, 2009; Now, Therefore,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, ORDAINS AS FOLLOWS:

Section 1. A new chapter 10.16 is hereby added to the Gig Harbor Municipal Code, entitled "Truck Weight Limits on Pioneer Way," which shall read as follows:

CHAPTER 10.16

TRUCK WEIGHT LIMITS ON PIONEER WAY

SECTIONS:

- 10.16.010** Definitions.
- 10.16.020** Truck Weight limits on Pioneer Way.
- 10.16.030** Exemptions.
- 10.16.040** Penalty.

10.16.010. Definitions. As used in this Chapter, the following terms shall have the following meanings:

A. "Motor Truck" means any motor vehicle designated or used for the transportation of commodities, merchandise, produce, freight or animals; except that pickup trucks, campers, motor homes, recreational vehicles and vehicles licensed for twelve thousand pounds gross, or less, shall not be considered motor trucks for the purposes of this chapter.

B. "Oversized vehicle" means any motor vehicle exceeding the outside width limit set forth in RCW 46.44.010.

10.16.020. Truck Weight limits on Pioneer Way.

No person shall operate a motor truck or oversized vehicle of three or more axles which is more than six thousand pounds unladen weight on Pioneer Way, unless exempt under Section 10.16.030.

10.16.030. Exemptions.

The following vehicles shall be exempt from the prohibition in Section 10.16.020:

1. Emergency vehicles.
2. School buses.
3. Motor trucks and oversized vehicles may be operated on Pioneer Way when transporting perishable commodities if alternate routes do not exist.
4. Motor trucks and oversized vehicles may be operated on Pioneer Way when installing, repairing or maintaining a public utility that is accessed from Pioneer Way.
5. Motor trucks and oversized vehicles may be operated on Pioneer Way when making pickups or deliveries to businesses or residences that are accessed from Pioneer Way if alternate routes do not exist.
6. Motor trucks and oversized vehicles may be operated on Pioneer Way when servicing construction sites accessed from Pioneer Way if alternate routes do not exist.
7. Garbage and recycling collection motor trucks may be operated on Pioneer Way when providing services to premises accessed from Pioneer Way.

Motor trucks and oversized vehicles covered by this exemption shall limit their use of Pioneer Way only to use which is reasonably necessary to accomplish the function that allows them to be exempt.

10.16.030. Penalties.

Any person 18 years of age or over who violates GHMC Section 10.16.020 shall be subject to issuance of a civil infraction in accordance with GHMC Section 1.16.010.D.

Section 2. Signage. The Public Works Director is hereby authorized and directed to cause appropriate signs to be posted informing the public of the weight limits on Pioneer Way specified in this ordinance.

Section 3. Severability. If any section, sentence, clause or phrase of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or

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constitutionality of any other section, clause or phrase of this Ordinance.

Section 4. Effective Date. This Ordinance shall take effect and be in full force when both of the following conditions have been met:

1. It is five (5) days or more after passage and publication of an approved summary consisting of the title; and,
2. Signs designating the provisions of this ordinance are erected on the appropriate City streets.

PASSED by the City Council and approved by the Mayor of the City of Gig Harbor this _____ day of _____, 2009.

CITY OF GIG HARBOR

CHARLES L. HUNTER, MAYOR

ATTEST/AUTHENTICATED:

By: _____
MOLLY TOWSLEE, City Clerk

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY

By: _____
ANGELA S. BELBECK

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO:



Subject: "Burnham/Sehmel Annexation"
(ANX 05-1151)

Proposed Council Action:

First and final reading of an ordinance approving the Burnham/Sehmel Annexation.

Dept. Origin: Planning Department

Prepared by: Tom Dolan *TD*
Planning Director

For Agenda of: **March 9, 2009**

Exhibits: Draft Ordinance

Initial & Date

Concurred by Mayor:	<u>CLH 3/3/09</u>
Approved by City Administrator:	<u>PK 3/2/09</u>
Approved as to form by City Atty:	<u>Approved by e-mail</u>
Approved by Finance Director:	<u>N/A</u>
Approved by Department Head:	<u>TD 3/2/09</u>

Expenditure	Amount	Appropriation
Required \$0	Budgeted \$0	Required \$0

INFORMATION / BACKGROUND

On August 11, 2008 the City Council approved a resolution declaring its intent to approve the Burnham/Sehmel Annexation. Subsequent to the Council's action, Staff prepared a Notice of Intention which was transmitted to the Pierce County Boundary Review Board. The Chief Clerk of the Boundary Review Board determined that the Notice of Intention was complete on January 12, 2009. The 45 day appeal period for the Notice of Intention expired on February 26, 2009 and the Boundary Review Board issued a decision approving the annexation. State law provides that after the Boundary Review Board approves an annexation, the City must finalize the annexation by adopting an ordinance that formally accepts the annexed area into the City.

STAFF ANALYSIS

Staff recommends adoption of the ordinance.

BOARD OR COMMITTEE RECOMMENDATION

None

RECOMMENDATION / MOTION

Move to: Adopt Ordinance _____ formally approving the Burnham/Sehmel Annexation.

EXHIBITS – Draft Ordinance

**CITY OF GIG HARBOR
ORDINANCE NO. _____**

AN ORDINANCE OF THE CITY OF GIG HARBOR, RELATING TO ANNEXATION AND ZONING, ANNEXING APPROXIMATELY 377 ACRES OF PROPERTY LOCATED TO THE WEST OF THE BURNHAM/BORGEN STATE ROUTE 16 INTERSECTION, BOUNDED BY SEHMEL DRIVE ON THE SOUTH AND THE PURDY DRIVE ONRAMP TO HIGHWAY 16 ON THE NORTH, (ANX 05-1151), ADOPTING SINGLE-FAMILY RESIDENTIAL (R-1) ZONING, (ED) EMPLOYMENT DISTRICT ZONING, (RB-1) RESIDENTIAL AND BUSINESS DISTRICT ZONING, (RB-2) RESIDENTIAL AND BUSINESS DISTRICT ZONING (B-2) GENERAL BUSINESS ZONING, AND REQUIRING THE PROPERTY OWNERS TO ASSUME THEIR PROPORTIONATE SHARE OF INDEBTEDNESS.

WHEREAS, the City of Gig Harbor received a Notice of Intent to Annex approximately 377 acres of property located in the vicinity of Sehmel Drive NW and Burnham Drive NW, west of the existing City Limits, within the City's Urban Growth Area (UGA), located in Pierce County; and

WHEREAS, the Notice of Intent was signed by the owners of not less than ten percent (10%) of the acreage of the property; and

WHEREAS, on May 14, 2007, the City Council met with the initiators of the petition and voted (Young/Ekberg, 7-0-0) to authorize circulation of the annexation petition subject to certain conditions including adoption of pre-annexation zoning (R-1, ED, RB-1, RB-2 and B-2) as depicted on the Official Zoning Map of the City and requiring that the property owners assume all of the existing indebtedness of the area being annexed; and

WHEREAS, on June 10, 2008, the petition for annexation of the property described in Exhibit A and graphically depicted on Exhibit B was received by the City; and

WHEREAS, on June 11, 2008, the Pierce County office of the Assessor-Treasurer certified the signatures on the petition for annexation of the property described in Exhibit A and graphically depicted on Exhibit B; and

WHEREAS, the property described in Exhibit A and graphically depicted on Exhibit B proposed to be annexed is within the Urban Growth Area as established by Pierce County and included in the Comprehensive Plans of both the County and the City of Gig Harbor; and

WHEREAS, the City of Gig Harbor Comprehensive Plan, adopted in December, 2004, established the land use map designation for this area as Residential Low, Residential Medium, Employment Center and Commercial Business along with pertinent goals and objectives, to guide the development of the annexation area over the next twenty years; and

WHEREAS, the proposed pre-annexation zoning (R-1, ED, RB-1, RB-2 and B-2) being applied to the property described in Exhibit A and graphically depicted on Exhibit B is consistent with the City of Gig Harbor Comprehensive Land Use Plan designations; and

WHEREAS, on August 11, 2008, the City Council, following a public hearing on the annexation petition, voted (Young/Conan, 6-0-0) to declare its intent to authorize and approve the annexation for the area described in

Exhibit A and graphically depicted on Exhibit B, subject to Boundary Review Board approval (Resolution No. 766); and

WHEREAS, on December 29, 2008, the Notice of Intention, together with supporting documentation, was submitted to the Chief Clerk of the Pierce County Boundary Review Board; and

WHEREAS, on February 2, 2009, the Chief Clerk of the Pierce County Boundary Review Board deemed the annexation proposal as complete, set the official filing date as January 12, 2009, initiated the forty-five (45) day review period, and noted that the period during which jurisdiction could be invoked would expire on February 26, 2009; and

WHEREAS, on February 27, 2009, the Pierce County Boundary Review Board issued a written decision approving the annexation of the property as described in Exhibit A and graphically depicted in Exhibit B; and

WHEREAS, the City Council considered this Ordinance during its regular City Council meeting of March 9, 2009; Now, Therefore,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR,
WASHINGTON, ORDAINS AS FOLLOWS:

Section 1. The Gig Harbor City Council hereby approves the annexation of approximately 377 acres of property located in the vicinity of Sehmel Drive NW and Burnham Drive NW, west of the existing City Limits, located in Pierce County, as described in Exhibit A and graphically depicted on Exhibit B, attached hereto, as part of the City of Gig Harbor, contingent upon compliance with the following conditions:

- A. Pursuant to the terms of the annexation petition, the approximately 377 acres of property located in the vicinity of Sehmel Drive NW and Burnham Drive NW, west of the existing City Limits located in Pierce County, as described in Exhibit A and graphically depicted on Exhibit B, shall be assessed and taxed at the same rate and on the same basis as property within the City, including assessments for taxes and payment of any bonds issued or debts contracted prior to or existing as of the date of annexation;
- B. All property within the area described in Exhibit A and graphically depicted on Exhibit B shall be zoned R-1, ED, RB-1, RB-2 and B-2 as depicted on the Official Zoning Map of the City in accordance with the Gig Harbor Municipal Code, Title 17; and

Section 2. The Planning Director is hereby instructed to effectuate the necessary changes to the Official Zoning Map of the City in accordance with the zoning established in Section 1.

Section 3. The Gig Harbor City Clerk hereby declares the property described in Exhibit A and graphically depicted in Exhibit B to be contiguous with the boundaries of the City of Gig Harbor.

Section 4. The City Clerk is hereby directed to record a certified copy of this ordinance with the Office of the Pierce County Auditor.

Section 5. This ordinance shall take effect five days after passage and publication as required by law.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor this 9th day of March, 2009.

APPROVED:

MAYOR, CHARLES L. HUNTER

ATTEST/AUTHENTICATED:

CITY CLERK, MOLLY M. TOWSLEE

APPROVED AS TO FORM;
OFFICE OF THE CITY ATTORNEY:

BY: _____
ANGELA BELBECK

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO.

Exhibit A
BURNHAM/SEHMEL ANNEXATION (ANX 05-1151)
LEGAL DESCRIPTION

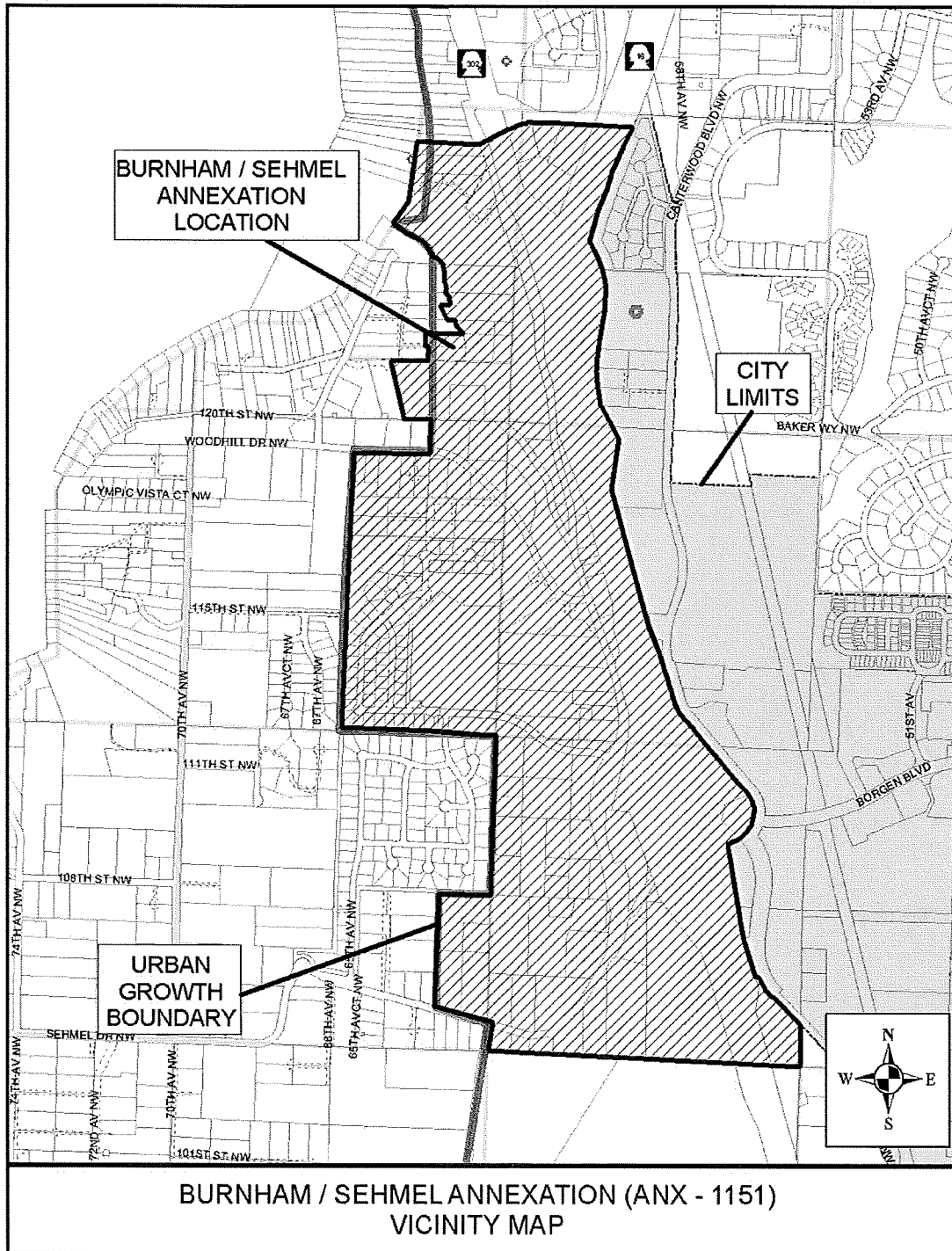
**PIERCE COUNTY BOUNDARY REVIEW BOARD PAGE 15 NOTICE OF
INTENTION EXHIBIT**

I.4

LEGAL DESCRIPTION OF PERIMETER BOUNDARIES

Those portions of Sections 25 and 36, Township 22 North, Range 1 East of the Willamette Meridian, in Pierce County, Washington, described as follows:
Beginning at the Southeast Corner of the Northeast Quarter of Section 36, Township 22 North, Range 1 East of the Willamette Meridian, in Pierce County, Washington; thence North along the East Line of said Northeast Quarter to the Southwesterly Margin of Burnham Drive NW; thence Northwesterly along said southwesterly margin to the Easterly Margin of State Highway 16; thence Northwesterly along said easterly margin to the easterly prolongation of the southerly margin of Goodnough Drive NW in the Northwest Quarter of the Northeast Quarter of Section 25, Township 22 North, Range 1 East; thence West along said southerly margin to the easterly margin of State Route 302 (Purdy Drive NW); thence Southwesterly to the southeast corner of Lot 2, Pierce County Short Plat No. 8103020195; thence West along the south line of said Lot 2 to the shoreline; thence Southwesterly along the shoreline to McCormick Creek; thence Southeasterly along McCormick Creek to the south line of Lot 2, Pierce County Short Plat No. 8501250117; thence S 89°37'18" W along said south line, 94.32 feet; thence S 21°31'44" E, 134.41 feet to the south line of Lot 3 of said short plat; thence S 87°54'57" E along said south line to McCormick Creek; thence southeasterly along McCormick Creek to the north line of Lot 2, Pierce County Short Plat No. 77-696; thence N 87°54'58" W along said north line, 328 feet, more or less, to the northeast corner of Lot 4 of said short plat; thence S 2°05'02" W along the east line of said Lot 4 to the north line of the south half of Lot 2 of said short plat; thence S 87°53'45" E along said north line, 26.20 feet; thence S 5°06'14" W to the north line of Lot 4, Pierce County Short Plat No. 8902060256; thence N 87°54'58" W along said north line to the northwest corner of said Lot 4; thence S 8°51'58" E along the west line of said lot, 518.19 feet to the south line of the Northwest Quarter of said Section 25; thence East along said south line to the northwest corner of the Northeast Quarter of the Northeast Quarter of the Southwest Quarter of said Section 25; thence South along the West Line of said Northeast Quarter of the Northeast Quarter of the Southwest Quarter of said Section 25 to the South Margin of Wood Hill Drive NW; thence West along said south margin to the West Line of the Northeast Quarter of the Southwest Quarter of said Section 25; thence South along said west line to the South Line of said Section 25; thence East along said south line to the South Quarter-corner of said Section 25; thence South along the East Line of the Northeast Quarter of the Northwest Quarter of said Section 36 to the Southeast Corner of said northeast quarter; thence West along the South Line of said northeast quarter to the West Line of the East 440 feet of the Southeast Quarter of the Northwest Quarter of said Section 36; thence South along said west line to the Southerly Margin of Sehmel Drive NW; thence Easterly along said southerly margin to the Westerly Margin of Bujacich Road NW; thence Southerly along said westerly margin to the South Line of said northwest quarter; thence East along said south line and the South Line of the Northeast Quarter of said Section 36 to the Point of Beginning.

Exhibit B
BURNHAM/SEHMEL ANNEXATION (ANX 05-1151)
ANNEXATION AREA MAP





Subject: Public Hearing and First Reading of Ordinance - Height Restriction Area Criteria Amendment (ZONE 07-0012).

Proposed Council Action: Review ordinance and approve or deny the text amendment request at second reading.

Dept. Origin: Planning

Prepared by: Jennifer Kester
Senior Planner

For Agenda of: March 9, 2009

Exhibits: Draft Ordinance; Planning Commission Minutes; Text Amendment Application

Initial & Date

Concurred by Mayor:

CLH 3/3/09

Approved by City Administrator:

RJK

Approved as to form by City Atty:

approved by

e-mail 2/27/09

Approved by Finance Director:

N/A

Approved by Department Head:

ID 3/2/09

Expenditure		Amount		Appropriation	
Required	0	Budgeted	0	Required	0

INFORMATION / BACKGROUND

Attached for the Council's consideration is a draft ordinance that would amend the criteria for removal from height restriction area in order to meet the intent of the height restriction area (HRA). The initial application was submitted on September 12, 2005 by Carl Halsan of Halsan Frey LLC.

On May 27, 2008, the Council held a public hearing and first reading of the draft ordinance as recommended by the Planning Commission. It was determined at this meeting that additional changes to the amendment were necessary to clarify the intent of the chapter and remove ambiguities in the proposed criteria. Staff has worked with the applicant and the attached draft ordinance includes those modifications. I have also attached a sheet showing the originally proposed language and the clarified language.

If the City Council desires a process to remove properties from the height restriction area, the staff believes the proposed changes to the criteria for approval are appropriate and meet the intent of the chapter. If the Council does not want to provide a process for removal from the height restriction area, the Council should deny this amendment and repeal the current criteria (GHMC 17.62.040).

It should be noted that the decisionmaker for an application for removal from the height restriction area is the Hearing Examiner. The Council has no input on the actual applications; the Council may only appeal the Examiner's decision as a party of record.

History of ordinance prior to current Council meeting:

The applicant's original submittal was a request to amend the criteria for removal from height restriction area. Prior to reaching the Planning Commission, the applicant amended his request to ask for a new height restriction area special exception process.

The Planning Commission held a work study session on the proposed exception process on April 3, 2008. During that same work study session, the Planning Commission reviewed an alternative amendment proposed by planning staff that would amend the criteria for removal from height restriction area in order to meet the intent of the height restriction area. The Planning Commission was not in favor of the proposed exception process and preferred the criteria amendment.

At the April 17, 2008 hearing on both amendments, Carl Halsan felt the amendments to the criteria proposed by the Planning Commission would meet the same goals as his exception amendment. Therefore, he withdrew his exception criteria language in favor of the proposed criteria amendment. Only Mr. Halsan testified at the public hearing. The Planning Commission voted unanimously to recommend approval of the application to amend the criteria for removal from height restriction area. Copies of the minutes for the Planning Commission meetings which these amendments were discussed are attached.

POLICY CONSIDERATIONS

Zoning text amendments are addressed in Chapter 17.100 of the Gig Harbor Municipal Code. There are no criteria for approval of a zoning text amendment, but the Council should generally consider whether the proposed amendment furthers the public health, safety and welfare, and whether the proposed amendment is consistent with the Gig Harbor Municipal Code, the Comprehensive Plan and the Growth Management Act (chapter 36.70A RCW). Zoning text amendments are considered a Type V legislative action (GHMC 19.01.003).

Gig Harbor Comprehensive Plan:

While the comprehensive plan does not specifically address height restrictions or view protection, the most recent revisions to the comprehensive plan adopted in 2007 designate the "View Basin" and "Soundview" as two of the City's neighborhood design areas. Both neighborhoods include properties with views to the Gig Harbor Bay, Mt. Rainier and Colvos Passage. The neighborhood design area policies seek to maintain the design characteristics of these neighborhoods to preserve their character. The height restriction area encompasses many of the properties within these neighborhoods. Generally heights are limited within these neighborhoods so as not to restrict views from adjacent properties.

GHMC 17.62 Height Restriction Area

The purpose of this height restriction area is to establish standards for those properties located inside the Gig Harbor view basin where decreased building height shall be required. This is intended to be a limitation on height so as not to restrict views from adjacent properties.
(GHMC 17.62.010)

Design Manual:

GHMC 17.99.370(D) states that:

"Allowable building height may be measured from any point within defined buildable areas; provided, that the point of measurement is within 50 feet of the building footprint, as follows:

1. In the height restriction area, each lot is allowed a building height of up to 16 feet; provided, that no portion of the structure exceeds 27 feet above natural and finished grade. ...”

Those properties within the historic district (which is within the HRA) are allowed up to 18 feet in height but have additional restrictions on roof pitch and downhill height.

Planning Commission Analysis:

The following is a synopsis of the issues discussed and reviewed by the Planning Commission:

The Planning Commission felt it was important to pay particular attention to the intent of the height restriction area to ensure that any new exception process or change to the criteria for removal from the HRA meets that intent.

The Planning Commission was concerned that the special exception proposed by Carl Halsan did not meet the intent of the height restriction area. The height restriction area is “intended to be a limitation on height so as not to restrict views from adjacent properties.” The proposed special exception would account for impairment of views from only those properties within the height restriction areas, not “adjacent properties” as intended by the Chapter. The Planning Commission felt that views from all properties should be considered in determining if a project should be exempt from the height limitations of the HRA, not just properties within the HRA. It was clear from looking at the existing height restriction area that not all properties with views have been included in the height restriction area. In addition, those property owners with views, but not in the height restriction area, may have an expectation, due to the HRA map, that the properties in the height restriction area will have limited height to preserve their view across those properties.

Furthermore, the Planning Commission felt that an exception process was not an appropriate process for increasing height in the height restriction area. The Planning Commission felt that any developer of property that wanted to be exempt from the height restrictions of the HRA should request an amendment to the HRA map and meet the criteria contained in the Chapter. With an exception process the public would not easily know which properties are exempt from height limitations and which properties need to meet the limitations as the map remains the same.

At the April 3, 2008 work-study session, staff expressed their concern that the current criteria for removal from the height restriction area do not meet the intent of the chapter. A recent decision by the hearing examiner approving the removal of a property from the HRA indicated that the intent of the chapter and the criteria were not consistent. Staff proposed to the Planning Commission an amendment to the criteria to provide necessary internal consistency. The current criteria focus on views from the subject property, not views across the subject property. The chapter is clearly intended to preserve views across properties.

The Planning Commission considered a few items when developing their proposal for changes to the Height Restriction Area intent and criteria for removal from the Area.

- Adjacent property. The current intent statement indicates that views from adjacent properties should be protected. The Planning Commission suggested the use of “other

properties” rather than “adjacent properties” as properties across the street and within the line-of-sight may have views a proposed project could block. The use of “adjacent properties” is too limiting.

- Potential Development. The Planning Commission felt it was important for an applicant requesting removal of a property from the HRA to analyze the potential views gained by redevelopment of surrounding properties. A vacant property may not currently have a view, but once a new office building is placed on a site, a view from the second story may be obtained. That property has the potential for a view which should not be impacted by an exemption from height limitations of the downhill property.

Furthermore the Planning Commission is recommending changes to the intent of the height restriction area chapter to implement the Neighborhood Design Policies of the Comprehensive Plan.

ENVIRONMENTAL ANALYSIS

The City’s SEPA Responsible Official issued a threshold Determination of Nonsignificance (DNS) for this Ordinance on January 4, 2006.

FISCAL CONSIDERATION

None

BOARD OR COMMITTEE RECOMMENDATION

The Planning Commission recommended approval of the text amendment reviewed at the May 27, 2008 council meeting.

RECOMMENDATION / MOTION

Move to: Staff recommends the Council review the ordinance and approve or deny the text amendment request at second reading.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO LAND USE AND ZONING, AMENDING THE CRITERIA FOR REMOVAL OF INDIVIDUAL PROPERTIES FROM THE HEIGHT RESTRICTION AREA MAP TO MEET THE INTENT OF THE HEIGHT RESTRICTION AREA CHAPTER TO LIMIT STRUCTURE HEIGHT AS TO NOT BLOCK VIEWS OF GIG HARBOR BAY, MT. RAINIER OR THE PUGET SOUND; AND AMENDING THE INTENT OF THE HEIGHT RESTRICTION AREA TO IMPLEMENT THE COMPREHENSIVE PLAN ESTABLISHED NEIGHBORHOODS WHICH HAVE VIEWS OF GIG HARBOR BAY, MT. RAINIER AND THE PUGET SOUND; AMENDING SECTIONS 17.62.010 AND 17.62.040 OF THE GIG HARBOR MUNICIPAL CODE.

WHEREAS, a recent decision by the City's hearing examiner approving the removal of a property from the height restriction area illustrates that the intent of the height restriction area chapter (17.62 of the GHMC) and the criteria for removal from the height restriction area are not consistent; and

WHEREAS, the intent of the height restriction area chapter is to establish standards for those properties located inside the Gig Harbor view basin where decreased building height shall be required so as not to block views of Mount Rainier, Gig Harbor Bay and the Puget Sound; and

WHEREAS, the current code criteria for removal from the height restriction area focuses on the views from the property requesting removal and not the views across the subject property from other properties; and

WHEREAS, the current code criteria for removal of individual properties from the height restriction area do not meet the intent of the chapter to limit structure height as to not block views from other properties of Mount Rainier, Gig Harbor Bay and the Puget Sound; and

WHEREAS, the City desires to amend the criteria for removal from the height restriction area to meet the intent of the chapter to limit structure height to not block views; and

WHEREAS, the City desires to amend the intent of the height restriction area chapter to state those neighborhoods which have views of Gig Harbor Bay, Mount Rainier and the Puget Sound thereby implementing the Neighborhood Design Policies of the Comprehensive Plan; and

WHEREAS, on December 13, 2005, a copy of this Ordinance was sent to the Washington Department of Community, Trade and Economic Development, pursuant to RCW 36.70A.106; and

WHEREAS, the City's SEPA Responsible Official issued a threshold Determination of Nonsignificance (DNS) for this Ordinance on January 4, 2006; and

WHEREAS, the City Planning Commission held a public hearing on this Ordinance on April 17, 2008 and made a recommendation of approval to the City Council; and

WHEREAS, the Gig Harbor City Council considered the Ordinance at first reading and public hearing on May 27, 2008; and

WHEREAS, after the May 27, 2008 hearing, the applicant of the text amendment asked that the second reading be postponed until staff and the applicant could work together to develop revisions to address concerns voiced at the public hearing; and

WHEREAS, the Gig Harbor City Council considered the revised Ordinance at a second first reading and public hearing on _____, 2009; and

WHEREAS, on _____, 2009, the City Council adopted this Ordinance at second reading during a regular City Council meeting; Now, therefore;

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, ORDAINS AS FOLLOWS:

Section 1. Section 17.62.010 of the Gig Harbor Municipal Code is hereby amended, to read as follows:

17.62.010 Intent

The purpose of this height restriction area is to establish standards for those properties located inside the Gig Harbor ~~v~~View ~~b~~Basin and Soundview neighborhoods where decreased building height shall be required. This is intended to be a limitation on height of structures so as not to ~~restrict block views from adjacent properties of Gig Harbor Bay, Mt. Rainier or the Puget Sound.~~

Section 2. Section 17.62.040 of the Gig Harbor Municipal Code is hereby amended, to read as follows:

17.62.040 Amendment to height restriction area map.

A. Amendments to the height restriction area map are a Type ~~IV~~ III permit procedure. The procedures established under Chapter 17.10

GHMC and GHMC Title 19 for the consideration of amendments to the zoning district map shall be followed for amendments to the height restriction area map. ~~The criteria for approval shall be as follows:~~

B. Every applicant for the removal of property from the height restriction area shall demonstrate that all of the following criteria have been met:

A. 1. That the request to amend the height restriction area map furthers the goals, policies and objectives of the Land Use, Community Design, Economic Development and Shoreline Management elements of the comprehensive plan;

B. 2. The property ~~or~~ area proposed for exclusion from the height restriction area map, if developed to its fullest height and extent allowed by the underlying zoning district, would not substantially block views from any property, if such property does not currently possess or could potentially possess a any view of Gig Harbor Bay, Mt. Rainier or the Puget Sound Narrows if such property were to be developed to its fullest height and extent allowed by the underlying zoning district;

C. 3. The gradient of the land within 100 feet of the property or area does not have a slope of five percent or greater toward Gig Harbor Bay, Mt. Rainier or the Puget Sound Narrows, excluding the subject property and properties between the subject property and the view of the Gig Harbor Bay, Mt. Rainier and/or Puget Sound;

~~D. That views from adjacent properties will not be adversely affected.~~

Section 3. Severability. If any section, sentence, clause or phrase of this Ordinance should be held to be unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this Ordinance.

Section 4. Effective Date. This Ordinance shall take effect and be in full force five (5) days after passage and publication of an approved summary consisting of the title.

PASSED by the Council and approved by the Mayor of the City of Gig Harbor, this ___ day of ____, 2009.

CITY OF GIG HARBOR

Mayor Charles L. Hunter

ATTEST/AUTHENTICATED:

Molly Towslee, City Clerk

APPROVED AS TO FORM:
Office of the City Attorney

Angela S. Belbeck, City Attorney

FILED WITH THE CITY CLERK:
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:
ORDINANCE NO:

Changes to the proposed amendment since May 27, 2008

Intent Statement proposed on 5/27/08

17.62.010 Intent

The purpose of this height restriction area is to establish standards for those properties located inside the Gig Harbor ~~View Basin and Soundview~~ neighborhoods where decreased building height shall be required. This is intended to be a limitation on height ~~so as not to restrict current or potential views from adjacent other properties.~~

Intent Statement proposed on 3/9/09

17.62.010 Intent

The purpose of this height restriction area is to establish standards for those properties located inside the Gig Harbor ~~View Basin and Soundview~~ neighborhoods where decreased building height shall be required. This is intended to be a limitation on height ~~of structures so as not to restrict block views from adjacent properties of Gig Harbor Bay, Mt. Rainier or the Puget Sound.~~

Criteria language proposed on 5/27/08

17.62.040 Amendment to height restriction area map.

~~A. Amendments to the height restriction area map are a Type IV III permit procedure. The procedures established under Chapter 17.10 GHMC and GHMC Title 19 for the consideration of amendments to the zoning district map shall be followed for amendments to the height restriction area map. The criteria for approval shall be as follows:~~

~~B. Every applicant for the removal of property from the height restriction area shall demonstrate that all of the following criteria have been met:~~

~~A. 1. That the request to amend the height restriction area map furthers the goals, policies and objectives of the Land Use, Community Design, Economic Development and Shoreline Management elements of the comprehensive plan;~~

~~B. 2. The property or area proposed for exclusion from the height restriction area map, if developed to its fullest height and extent allowed by the underlying zoning district, would not block, impair or adversely affect views from any property within the line-of-sight of the subject property, if such property does not currently possess or could potentially possess a any view of Gig Harbor Bay, Mt. Rainier or the Puget Sound Narrows;~~

~~C. 3. The gradient of the land within 100 feet of the property or area does not have a slope of five percent or greater toward Gig Harbor Bay, Mt. Rainier or the Puget Sound Narrows, excluding the subject property and properties between the subject property and the view of the Gig Harbor Bay, Mt. Rainier and/or Puget Sound;~~

~~D. That views from adjacent properties will not be adversely affected.~~

Criteria language proposed on 3/9/09

17.62.040 Amendment to height restriction area map.

A. Amendments to the height restriction area map are a Type ~~IV~~ III permit procedure. The procedures established under Chapter 17.10 GHMC and GHMC Title 19 for the consideration of amendments to the zoning district map shall be followed for amendments to the height restriction area map. ~~The criteria for approval shall be as follows:~~

B. Every applicant for the removal of property from the height restriction area shall demonstrate that all of the following criteria have been met:

A. 1. That the request to amend the height restriction area map furthers the goals, policies and objectives of the Land Use, Community Design, Economic Development and Shoreline Management elements of the comprehensive plan;

B. 2. The property ~~or area~~ proposed for exclusion from the height restriction area map, if developed to its fullest height and extent allowed by the underlying zoning district, would not substantially block views from any property, if such property does not currently possess or could potentially possess a any view of Gig Harbor Bay, Mt. Rainier or the Puget Sound Narrows if such property were to be developed to its fullest height and extent allowed by the underlying zoning district;

C. 3. The gradient of the land within 100 feet of the property or area ~~does not have a slope of five percent or greater toward Gig Harbor Bay, Mt. Rainier or the Puget Sound Narrows,~~ excluding the subject property and properties between the subject property and the view of the Gig Harbor Bay, Mt. Rainier and/or Puget Sound;

~~D. That views from adjacent properties will not be adversely affected.~~

HALSAN FREY, L.L.C.
REAL ESTATE AND CONSULTING SERVICES

New Business - 2

May 25, 2007

Ms. Jennifer Kester, Senior Planner
Planning and Building, Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335

RECEIVED
CITY OF GIG HARBOR

MAY 25 2007

COMMUNITY
DEVELOPMENT

**RE: ZONING CODE TEXT AMENDMENT
HEIGHT RESTRICTION AREA**

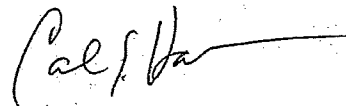
Dear Ms. Kester:

As you requested, I have provided the proposed new language and revised answers to the questionnaire. This amendment was submitted on September 12, 2005, but I do not know the reference number the City uses. The SEPA checklist doesn't need to be changed so I did not provide a new one.

As we've discussed, this new language keeps the property in the Height Restriction Area, but it adds an exception section to the code allowing for full underlying zone height if certain criteria are met. This will achieve our purpose and prevent the "creep" down the hill you were concerned with. If you need anything else, please call me directly at 307-1922.

We hope this gets moving along to the Planning Commission very soon.

Sincerely,



Carl E. Halsan
Member

c: Mike and Marty Paul

PO BOX 1447 * GIG HARBOR, WA * 98335
OFFICE: (253) 858-8820 FAX: (253) 858-9816
EMAIL: carl@halsanfrey.com

(New Section to be added)

17.62.050 Special Exception

If a property is located within the Height Restriction Area, but is situated such that development of the property to the fullest height allowed by the underlying zoning district would not restrict views from adjacent property, then the height limitations of the Height Restriction Area shall not apply, subject to the following criteria:

A. The property or area, if developed to the fullest height allowed by the underlying zoning district, would not block, hinder or impair views from other property within the height restriction area, if such other property currently possesses, or could potentially possess a view of Gig Harbor Bay, Mt. Rainer or the Puget Sound Narrows;

B. The views of Gig Harbor Bay, Mt. Rainer or the Puget Sound Narrows from adjacent properties within the height restriction area will not be adversely affected.

1. **Detailed description and explanation of amendment.**

We are requesting that a new section be added to the Height Restriction Area provisions of the code (17.62.050 GHMC) so that some uniquely situated property would not be limited in height, but would stay in the Height Restriction Area. A portion of the property I am particularly interested in should have never been included, but it was probably easiest to use streets and parcel lines as boundaries, even though a street or parcel line might not be the best dividing line. Unfortunately, the current amendment criteria leave little room for altering the Map, even in obvious situations. After discussions with staff, it was determined that it would be better for such situated property to stay in the Height Restriction Area, but allow it to be developed to the underlying zoning height limit. This provided relief where necessary, but prevents a "creep-down-the-hill" one parcel at a time.

We are working with a large and prominent property in the City that is under-utilized relative to its current zoning and comprehensive plan designation. The property consists of five parcels totaling 4.27 acres that is developed with three, forty-year old single family homes. The property is split-zoned; about half is zoned RB-1 and other half is zoned R-1. If the property were completely devoted to residential uses, 17 homes could be built. If it were developed with a mixture of single family and office uses, it could yield several office buildings and up to 10 single family home sites. The property is under-utilized.

Our plans are to develop the entire site with a first class mixed use project that combines office and residential uses, perhaps even within the same building, in order to create a synergistic project that would serve as an example for others to follow. Ideally, we would develop a single, multi-level structure where office and some limited retail uses would use the ground floor, office uses would be located on the second floor and residential uses would be on the top floor. The balance of the site would be developed with smaller, attached single-family homes.

The property in question is located on the north side of Grandview Street, between Pioneer Way and Stinson Avenue. This area of town contains one of the most prominent points of entry into the downtown area, and is currently developed with a mixture of retail, residential and offices uses of mixed vintage. The most important current use is our Civic Center. Several of the properties are in the process of being redeveloped, and the site we are working with will be an important piece of this puzzle. We believe that our plans for the property, if implemented, will serve as another catalyst for other property owners to redevelop their property. The Civic Center was the beginning, the bank remodel is underway, and the new office building complex at the northeast corner of Pioneer and Grandview is coming soon. The other underutilized property in the area should begin to follow. The low-slung strip centers in the area are in the most need of updating. We want to be part of

this redevelopment process and help set the tone through implementation of our plans.

2. **Change in circumstances pertaining to the Zoning Code text or public policy.**

When the current zoning code text was written for the Height Restriction Area (1996), the stated purpose was to establish standards for those properties located inside the Gig Harbor view basin where decreased building height would limit structure height so as not to restrict views from adjacent properties. This section of the Code also contains amendment language so that properties could be removed from the overlay, if all the stated criteria are met.

Unfortunately, the amendment criteria are written such that certain property can't be removed from the overlay, even if it makes sense to anyone who considers it. For instance, Criterion "B" prevents a property from being removed if it possesses a view, even though the stated intent of the overlay district is to protect views from adjacent property. The proposed new exception language would alleviate this problem by considering view from adjacent property as the primary criteria for limiting height. Criterion "C" prevents a property from being removed if the gradient of the land within 100 feet of the property slopes at five percent or more. The proposed new exception language would alleviate this problem as well. The obvious point being that the height of a structure behind or away from someone else's view has no impact on their view.

We do not want to circumvent the zoning limitation on height where such limitations are necessary for achieving the stated purpose. We only want the property that should logically not be height-limited to be fully developed while the stated purpose of the overlay district is not violated. The zoning text should be amended to accommodate such situations.

3. **Impacts caused by the change, including the geographic area affected and the issues presented.**

There will be no adverse or negative impacts from the changes. We have worked very hard to ensure that the language we've proposed will only allow appropriate properties to have taller structures. If any other language changes are needed to ensure no adverse impacts, we would be in full support of such additional changes. Once again, we have proposed language changes that only allow certain property to build taller structures, and only if it can be shown that no other views will be negatively affected. This is our goal and is the stated goal of the zoning code.

4. **How the amendment complies with the community vision statements, goals, objectives and policies of the Comprehensive Plan.**

The Comprehensive Plan contains no goals, objectives or policies that specifically require view protection. Despite this lack of policy direction, it is obvious that this is an important element of the City vision. Nothing about the proposed language changes can be construed as being inconsistent with the adopted Comprehensive Plan. There is a goal (#1 on page 21) that instructs the City to identify significant views, but there aren't any goals telling us what to do with the areas after they are identified. Goal #2 on page 21 does tell us to preserve corner lots so that more stately buildings can be developed that play such a crucial role in establishing an identity for the city. This is exactly what we have in mind for the property we are working with. We intend on developing a signature type building at the corner that will help make a statement of arrival as one leaves the SR-16 corridor area and begins the descent into the downtown core.

5. **Is there public support for the proposed amendment?**

Based on our canvassing of the community, there will be support. The property in question is at the top of the hill, with no other property behind it having a view of the Bay, the Sound or the Mountain. It is a property that should be developed with a stately structure that can not only define a sense of place in and of itself, but that will assist in the overall redevelopment of the general area. There are several properties in this mixed use node that will be redeveloped over the years, and the subject property can help set the tone and style for the area. This new tone should not be one of more low-slung one story buildings that lack style or grace when the opportunity exists for such a dynamic mixed use node to take hold in the area. We would like to play an important role in this renaissance, but cannot do so with the property being limited by the height restriction area limitations.

**City of Gig Harbor Zoning Code
Text Amendment Application**

The use of this application is appropriate when a change in the specific text in the adopted City of Gig Harbor Zoning Code is desired.

Owner/ Applicant: WWR Properties, Inc.
 Attn: James H. White
 3803 Bridgeport Way West
 University Place, Washington 98466
 (253) 565-8661 (Phone)
 (253) 564-1078 (Fax)

RECEIVED
CITY OF GIG HARBOR
JAN 25 2007
COMMUNITY
DEVELOPMENT

Agent/Contact: Mr. Randy Boss
 Post Office Box 237
 Gig Harbor, Washington 98335
 (253) 858-5100 (Phone)
 (253) 858-5103 (Fax)
 (253) 279-8877 (Cell)

If applicable, name of general area/location/site which would be affected by this proposed change in text.

The proposed text amendment would change the allowed height of structures within the C-1 zoning classification from the current 35 feet to a maximum of 45 feet. This text amendment would only apply to those properties north of Dairy Queen between Point Fosdick and 32nd Street continuing north of 56th Street to include the Inn at Gig Harbor which is currently a non-conforming use now as it does exceed current 35 foot height limitation. The only other affected C-1 zoned property within the City Limits of Gig Harbor would be the Stroh's/Rental Mart property on the corner of Kimball Drive and Hunt Street.

The applicant agrees to pay a minimum application fee of \$275.00, in accordance with the approved fee schedule on file with the City of Gig Harbor Department of Planning and Building Services. If the application is approved for further consideration by the City Council, the applicant may be required to submit a State Environmental Policy Act (SEPA) checklist and an additional fee of \$150.00. Acceptance of this application and/or payment of fees does not guarantee final approval.

Owner/Applicant Signature: Randy Boss Date: 1-25-07

**QUESTIONNAIRE
FOR TEXT AMENDMENT APPLICATION**

Please provide a detailed description and explanation of the proposed text amendment.

Gig Harbor Municipal Code Chapter 17.40 COMMERCIAL DISTRICT (C-1)

17.40.100 Maximum height of structures.

In a C-1 District, all building and structures shall not exceed a height of ~~35 feet~~ **45 feet**, except as provided for under Chapter 17.62 GHMC, Height Restriction Area, and as provided under GHMC 17.99.390 (A) 3 and 17.99.510(A)(2) and (B).

This proposed text amendment would allow buildings and structures in the C-1 zoning areas to be no more than 45 feet high except for that C-1 zoned area that is within the view basin and/or the historic district which are further restricted by GHMC 17.99.510(B) and GHMC 17.62.010 and 17.62.030.

Has there been a change in circumstances pertaining to the Zoning Code text or public policy?

C-1 is the most commercially intensive use category within the City of Gig Harbor allowing for such outright permitted business uses as gas stations, car washes, taverns, adult entertainment venues and industrial uses. The scarcity of this C-1 zoned land has made it some of the most expensive and valuable land within the City limits of Gig Harbor with one recent sale recorded at almost \$24.00 per square foot. The 35 foot height limitation has become a considerable burden on the ability of land owners to create economically viable projects reducing the tax revenue that can be generated for the City.

What do you anticipate will be the impacts caused by the change in text, including the geographic area affected by the issues presented?

“Mixed Use” is a newly emerging construction format that lends itself to greater density achieved by merging commercial, primarily retail shops, on the ground floor (the commercial element of the mixed use) with residential units above. This “Mixed Use” concept complies with the mandates of the Growth Management Act as well as the Gig Harbor Comprehensive Plan and creates, in larger projects, a “lifestyle” center that is almost self contained.

Allowing the requested additional height within the C-1 zones areas would permit one additional upper floor dramatically reducing the per square foot cost of the project and allowing for the creation of more affordable retail lease rates (greater economic development) and lower rental/sale prices for the residential units above.

How would the proposed text amendment comply with the community vision statements, goals, objectives, and policies of the Comprehensive Plan?

This text amendment would comply with the Vision Statement of the City by:

- Providing greater planning options
- Creating a more identifiable and defined commercial business district
- Creating additional municipal amenities
- Vertically consolidate commercial shopping with other destinations
- Creating an additional economic base within the City
- Emphasize additional business opportunities within the City

This text amendment would also serve to further the goals, objectives and policies of the Gig Harbor Comprehensive Plan by:

- Helping to create more affordable residential units
- Creating increased economic development opportunities
- By building “up” instead of “out” this text amendment would help to preserve critical open space
- Allocate urban uses into suitable land within the City
- Promote community diversity and increase housing opportunities
- Provide land use development flexibility
- Creates an active interface between the private and the public realms

Is there public support for this proposed text amendment (i.e. have you conducted community meetings, etc.)? Note: All applications will be subject to full public participation, notice, and environmental review.

There have been no advance public meeting regarding this proposed text amendment but the applicant understands, and will fully comply with, all public meeting requirements conducted by the City under Chapter 42.30 RCW.

**City of Gig Harbor Planning Commission
Minutes of Work-Study Session
April 3, 2008
Gig Harbor Civic Center**

PRESENT: Commissioners Jim Pasin, Harris Atkins, Jeane Derebey and Joyce Ninen. Commissioners Theresa Malich, Jill Guernsey and Dick Allen were absent. Staff present: Jennifer Kester, and Stephanie Pawlawski.

CALL TO ORDER: 6:00 p.m.

APPROVAL OF MINUTES

In the minutes from March 6th, 2008 Planning Commissioner Joyce Ninen noted one typo on the last page, at the top second paragraph 5th line, says "is doesn't". It was also pointed out that on the previous page it should be Ms. Malich rather than "she".

MOTION: Move to approve minutes of March 6th, 2008 with the changes. Ninen/Derebey – Motion carried.

It was noted that the Commissioners present had been corrected in the minutes for March 20th, 2008. Ms. Derebey noted that on the 4th page 2nd paragraph the sentence beginning Mr. Dolan said, didn't make sense. It was decided to add the word areas. It was also noted on that on line 5 of the same page it should read original retail rather than retails. In the paragraph above number three where it says Mr. Atkins felt that there should be some mechanism for dealing with neighborhood transition issues it was decided to delete the phrase "when there is a problem".

MOTION: Move to approve the minutes of March 20th, 2008 with the changes mentioned. Pasin/Derebey – motion carried

1. Overview of text amendment to be reviewed during the second quarter of 2008.

Senior Planner Jennifer Kester passed out the new information for this quarter for the Planning Commission binders. She pointed out what was being reviewed and the staff reports for each. She went over each of the amendments and the elements of each.

Mr. Pasin asked if the vegetation amendment would receive some input from the Mayor since that was something that was important to him and asked how they were going to get some input from the DRB. Ms. Kester noted that she had asked the DRB for volunteers and there were some members that were interested and are aware of the schedule and that the meetings will begin in May. She also stated that the Mayor has given some input to staff and she could provide that to the Planning Commission.

Ms. Kester stated that the Quadrant development will be an example of our current standards for everyone to compare. She did note; however, that ordinarily there would need to be trees on the frontage of Borgen but they had found laminated root rot in the trees so they had to be removed and planted with another species. Discussion followed on the Harbor Crossing plat and it's greenbelt with Canterwood. Ms. Kester explained that Canterwood had cleared their own buffer and that is why it appears that there is no buffer. Ms. Derebey noted that there is a huge problem with beetles destroying trees.

Ms. Kester went on to say that new for this quarter is the height restriction area criteria amendment, which we will be having a work session on tonight. She noted that they will also be holding a public hearing on the gross floor area changes on April 17th. Ms. Derebey had a question about the RB-1 changes and if they could be split into two work study session. Ms. Kester agreed that it wasn't ready for a hearing but they could plan for an upcoming work study session. She also stated that they will be discussing the area wide rezone from MUD to the Mixed Use zone. Discussion continued on the process for the RB-1 amendments and that some of them may need comprehensive plan amendments as well.

Ms. Kester went on to say that the Planning Commission will have one more meeting before their joint meeting with the City Council on the 21st and that the Design Review Board will have a joint meeting with the City Council on another night. Mr. Pasin noted that the Design Review Board would like to discuss the issue of utilizing the hearing examiner for certain projects. Mr. Atkins stated that he would like to know how the new review process is working. Ms. Ninen asked about the update of the Shoreline Master Program. Ms. Kester said that we are about to begin interviewing consultants and when the consultant is selected they will provide a public participation plan. Ms. Kester explained the process and that the Planning Commission will be making a recommendation to the City Council regarding the Shoreline Master Program. The development of the plan will probably take around a year and a half.

**2. Carl Halsan, Halsan Frey LLC, P.O. Box 1447, Gig Harbor WA 98335 –
ZONE 07-0012 – Height Restriction Area Special Exception**

Ms. Kester stated that this was a private developer proposal to create a new section which would provide a special exception process where someone could apply to be exempt from the provisions of the height restriction area if their development would not affect another properties view. Staff is recommending an alternative amendment to the criteria for removal. She noted that staff has felt that perhaps the criteria is not meeting the chapter but have not had that tested by the Hearing Examiner. Ms. Kester stated that recently the owners of the property where the Shenandoah is stored have asked for a rezone back to R-1 and to be removed from the height restriction area because of the topography. She went on to say that it had gone to hearing and in the criteria it talks about views from the property not views across the property. It was approved by the Hearing Examiner because it met the intent of the chapter.

Ms. Ninen pointed out that the code states that the property itself should have a view rather than dealing with surrounding properties. Ms. Kester said that the applicant had acknowledged that the staff suggestion would work. Mr. Atkins asked why if it is a Type IV application, it went to the Hearing Examiner. Ms. Kester pointed out where it refers you to a Type III application and the table identifies it as a Type III. Planning staff made an interpretation and presented that to the Hearing Examiner. Mr. Atkins expressed that sometimes Hearing Examiners don't really deal well with issues that are subjective, so sometimes these height restriction and view issues are better decided by the City Council.

Ms Kester then went through what the applicant was proposing which was a new exception to the height restriction area. She stated that staff had a concern with just limiting it to properties within the height restriction area as there are properties that have views that are not within the height restriction area. She felt that if they wanted to adopt a special exception it should deal with adjacent properties being impacted rather than just those within the height restriction areas. Mr. Pasin said that if you use a term like adjacent, what happens if you are two lots away. Ms. Kester said we would have to write a definition of what adjacent is. Mr. Pasin asked why we would we want to provide exceptions to the height restriction area and Ms. Derebey agreed. Ms. Ninen said well perhaps that is why staff was suggesting that it be a change to the criteria rather than an exception so that if you are not impacting anyone else's views than perhaps you should be removed. Mr. Atkins agreed. Ms. Kester pointed out which properties were being considered for development that had begun this amendment. Mr. Pasin said that he felt that both properties were examples where they don't necessarily have a view because of the trees and when the trees come down other properties could potentially have a view. Ms. Kester said that whatever criteria we write it will be the burden of the applicant to show that it will not impact other properties views. Mr. Atkins asked what constitutes a view, is it a tiny sliver? Ms. Ninen asked about a possible legal definition of a view and Ms. Kester said she would look into it.

Ms. Kester said that the code does say it has to be a view of Gig Harbor Bay, Puget Sound or the Narrows. Discussion continued on that it should be any amount of a view. Mr. Pasin asked if a view of Gig Harbor Bay mean you need to actually see the body of water and expressed concern with messing with the height restriction area as it has worked pretty well. Ms. Kester stated that she anticipated other people exploring being removed from the height restriction area map since the decision on the Shenandoah property. Mr. Atkins asked for further clarification on the decision. Ms. Kester explained that it didn't restrict views from adjacent properties and met the intent of the comprehensive plan. She talked about the gradient of the land and Mr. Atkins asked why are we worried about the gradient and Ms. Kester said that she and Associate Planner Kristin Moerler had tried to figure it out and she believed it was because of the view potential on sloped land. Mr. Atkins said that he felt that if you say something has potential for a view then perhaps that is enough whether they have a slope or not. She stated that staff felt that Item D was perhaps not really necessary and that Item C was just extra protection. Mr. Atkins said that he felt that the Hearing Examiner was looking for black and white and didn't want to deal with subjectivity. Ms Derebey talked about

what is adjacent properties and what did that mean and suggested that perhaps it should say properties within the line of sight of the subject property. Ms. Kester asked how far the line of sight can go and how would a property owner figure that out. Mr. Atkins said that this particular area defines a right and we are talking about creating a privilege for someone and it is their burden to show that they deserve the privilege. Ms. Kester brought up the issue of what is "potentially possess" a view. What if the current development is one story but if they redevelop and make it two stories, potentially they could have a view. Mr. Pasin brought up the issue of views within the proposed development and possible loss of those views as well. He pointed out that the height restriction area just says that you have to stay within a certain height it doesn't say that you can't block someone's view. Mr. Pasin asked why we would want to let people get out of it. Ms. Ninen said that we are trying to make the criteria be in line with the intent and what Ms. Kester has written really strengthens the criteria. Ms. Ninen asked how the city would handle notifying the property owners within the line of sight. Ms. Kester said that was a good point because we would have to figure out how we could map that. Ms. Ninen said that line of sight was a good concept but would be difficult to manage. Ms. Kester said that this was something to think about since a number would just be arbitrary.

Mr. Pasin asked why we use the word area in Item B and Ms. Kester said that could be changed to say property. Ms. Kester then asked what the right gradient of slope was for Item C. Mr. Pasin said that he thought that it should remain at 5% and Mr. Atkins agreed. Mr. Atkins then brought up the exclusions and Ms. Kester explained through an illustration. He then asked if the phrase subject site should be changed to property requesting to be removed from height restriction area. Ms. Derebey agreed that subject site could be confusing. Ms. Kester agreed to check on that. Ms. Derebey asked why can't we say 5% or greater in a downhill slope? Mr. Pasin gave an example of a piece of property at the bottom of Soundview that if you were over by the Harbor Inn looking uphill you would be able to see Mt. Rainier across that piece of property at the bottom of Soundview. Ms. Kester said that in that case there is a grade change of at least 5%. Mr. Pasin said that he was still concerned with views within a parcel that is removed from the height restriction area. Ms. Kester said that she did see one loop hole within the language is that if there was an entire group of homeowners like Spinnaker Ridge and they all applied for every single one of their properties to be removed you get a large chunk of area removed from the height restriction area that might affect other properties and that might be where Item C would come into play. Ms. Kester verified that they don't really like the idea of an exception but rather to amend the map. Ms. Kester verified that with these changes they would be ready to go to hearing on this proposal. Mr. Atkins asked if they wanted to change the intent statement. Ms. Ninen asked if the height restriction area was going to be looked at during the view basin segment of the neighborhood design areas. Ms. Kester said that it may result in changes to the map. Ms. Kester also noted that there are no criteria for what to do to be included in the height restriction area. Ms. Derebey asked if it should say that the intent is not to restrict views or potential views. Ms. Ninen stated that she thought that it was a good place to put that statement. Discussion followed on some of the areas pending annexation that may need to be included in the height restriction area. Ms.

Kester said that she was not sure that it was necessary to say potential views. Ms. Derebey said that there are areas that are not in the view basin that may have a view.

Ms. Kester said that she would contact the applicant to see if he was willing to hold a hearing on the staff proposal rather than on both proposals. Ms. Kester said the next meeting will be a public hearing on this item.

3. Identification of any key areas of change to the land use map the Planning Commission wants to work on in this year's cycle.

Ms. Kester stated that the 3rd quarter is for the comprehensive plan amendments and explained the process. She noted that the council will be deciding which of the proposed comp plan amendments are worthy of taking forward. Mr. Atkins said that he had found three areas that he identified as needing change. Ms. Kester said that if they want to put something forward for change she needs to know which areas. Mr. Atkins said that the three areas he had were the Soundview area where it's residential medium and there is a lot of single family residential zoning, and further down Soundview there is an area that is residential low and the zoning is R-2. Ms. Kester stated that there are a couple of things to remember is that all land use map changes have to go through concurrency review and we have no sewer and some areas have traffic issues and she is not sure how it will work when we are doing an up designation in one area and down designating in another area. Mr. Atkins stated that he was worried about how this would affect buildable lands and Ms. Kester said the changes to a lower designation wouldn't necessarily affect buildable lands. In the area where we would be up designating it would create more housing capacity through buildable lands, what may be a concern of the council would be that if it's residential medium someone may want to rezone to RB-2. Ms. Kester explained how concurrency works in relation to zoning. Mr. Atkins asked isn't concurrency based on zoning rather than land use and Ms. Kester that yes, but in the case of up designating it may allow a more intense zone and the council is trying to pay more attention to land use designations to assure that the city has the infrastructure to handle the land use designation. Mr. Pasin asked about the mixed use area that they had discussed and would there need to be a change to the land use map and Ms. Kester did not believe that there would need to be a change to the land use map in order to implement the new MX zone. Mr. Pasin asked about a particular area within the Mixed Use Overlay and Ms. Kester displayed the map and clarified where the land use designations are located.

Ms. Derebey thought they should recommend to the council that they discuss the three areas along Soundview. Everyone agreed and Ms. Kester clarified that they wanted to recommend discussion but not necessarily action at this time.

**4. City of Gig Harbor, 3510 Grandview Street, Gig Harbor WA 98335 –
ZONE 08-0003 – Appropriateness of RB-1 zoning district locations and
allowed uses in the RB-1 zone.**

Mr. Atkins asked that everyone submit their thoughts on the RB-1 issue. Ms. Kester said that at the next meeting there will be three public hearings and hopefully at the end of the hearing we could get a recommendation to the City Council. She noted that the hearing starts at 7:00 and asked did they want to have another item during the work study session at 6:00. They agreed that they would discuss the upcoming meeting with the City Council and the RB-1 issue during the 6:00 work study session.

Ms. Ninen shared information she learned from an on-line class she took on the role of a Planning Commissioner. Ms. Kester stated that the city does have a budget for some of these classes if anyone else is interested. She distributed information on an upcoming Short Course on Planning being offered by Bonney Lake. Ms. Derebey asked about a possible lecture on Buildable Lands and Ms. Kester said she had spoken with Dan Cardwell from Pierce County and he had agreed that he could come talk to the Commission. Discussion continued on buildable lands and how they are calculated.

ADJOURNMENT

MOTION: Move to adjourn at 8:45 p.m. Derebey/Atkins – motion carried.

**City of Gig Harbor Planning Commission
Minutes of Work-Study Session
April 17th
Gig Harbor Civic Center**

Present: Commissioners Jim Pasin, Harris Atkins, Jeane Derebey, Dick Allen, Theresa Malich, Jill Guernsey Joyce Ninen and Jeane Derebey.

Staff Present: Tom Dolan, Jennifer Kester and Cindy Andrews

CALL TO ORDER: – 6:05 pm

APPROVAL OF MINUTES:

MOTION: Move to table the minutes from April 3rd, 2008 until the next meeting.
Atkins / Ninen – Motion passed unanimously

NEW BUSINESS:

1. **Discussion of the agenda for the Planning Commission's meeting with the City Council on April 21st, 2008 –**

Senior Planner Jennifer Kester summarized the upcoming April 21st meeting with City Council discussing the new re-appointment policy and the Vision and Charter work program. Ms. Derebey asked if council had seen everything that the board had completed. Ms. Kester replied no, Mr. Dolan added that council had approved the work program. Board members discussed the reappointment policy, the new DRB process, annexations and the Shoreline Master Plan Update. Mr. Dolan encouraged board members to bring their comments to the April 21st meeting.

2. **City of Gig Harbor, 3510 Grandview Street, Gig Harbor, WA 98335 -**
ZONE 08-0003 – Appropriateness of RB-1 zoning district locations and allowed uses in the RB-1 zone.

Ms. Kester asked board members if they would like to discuss item #2 tonight noting that the last time the item had been discussed had been on March 20th. Board members agreed to postpone the item.

MOTION: Move to postpone until the next meeting Zone 08-0003. Derebey / Ninen – Motion passed unanimously.

Recess at 6:45

7:00 – PUBLIC HEARING

1. **City of Gig Harbor, 3510 Grandview St, Gig Harbor, WA 98335 –**
Zone 07-0006- Mixed Use District Overlay (MUD) Amendments and Area-Wide Rezone.

Ms. Kester discussed the proposal to remove the mixed use district overlay and add the new MX Zone explaining the intent to harmonize the R-1 and the RB-2 zones.

Ms. Kester continued to explain the changes pointing out that property owners would not see a reduction in the zoning of their property however they would see a change in the density in the RB2- zone, also no requirements for parcel size developments and buffer requirements would be carried over.

Chair Theresa Malich opened the hearing up for public comments.

Mark Shoenes– 2002 Sullivan Dr, Gig Harbor, WA 98335. Mr. Shoenes asked for the reason in the reduction of the density in the RB-2 zone. Ms. Kester explained by removing the process for allowing the density to expand to 12 units per acre in the new MX zone_it would harmonize the R-1 and RB-2 zones, noting that the MX zone would still allow density of 8 units per acre

Tom Metzdorf -15604 Sunny Cove Dr, Olalla, WA. Mr. Metzdorf currently owns property along Burnham Dr. asked to confirm that the property would remain commercial for development purposes. Ms. Kester replied yes however light industrial would require a Conditional Use Permit.

Ms. Malich closed the public hearing on Item #1 at 7:15 pm

2. Carl Halsan, Halsan Frey LLC, P.O. Box 1447, Gig Harbor, WA 98335 – Zone 07 -0012 Height Restriction Area Special Exception

Ms. Kester introduced applicant Carl Halsan.

Mr. Halsan summarized his proposed text amendment explaining the intent to make the process clearer for properties owners that would like to remove their property from the Height Restriction Area explaining the difficulties imposed by the current criteria.

Ms. Kester explained the concern of the Planning Commissions members for protecting views of property that would not be in the Height Restriction Area. Ms. Kester explained the Planning Commission's proposed changes to the intent statement and the criteria for removal from the Height Restriction area. Board members further discussed their proposed changes to the criteria specifically the reference to the Gig Harbor view basin and the Soundview neighborhoods, the removal of the term adjacent and other properties as well as stating that current and potential views should refer to all properties. Mr. Halsan agreed to the changes. Ms. Kester explained the proposed change to the permit type_to a type III permit to insure that property owners would be notified and a public hearing would be held.

Ms. Malich closed the public hearing at 7:28.

3. City of Gig Harbor, 3510 Grandview Street, Gig Harbor, WA 98335 – Zone 07-0008 – Gross Floor Area Definition Amendment.

Ms. Kester summarized Zone 07-0008 pointing out the most notable change would be the removal of the underground floor area as part of the calculation of the gross floor area. Ms. Kester also discussed additional changes to the amendment including defining attic space and removing garage space as part of the calculation for off street parking. Ms Kester further explained why the Planning Commission is not proposing the change to the gross floor area definition apply to the waterfront zones given the higher utilization of the land for waterfront properties.

Ms. Malich closed the public hearing at 7:34 pm.

MOTION: Move that the Planning Commission recommend adoption of the amendments to the gross floor area, underground floor area and attic area covered in the staff report dated April 17th, 2008 also including a reference to the language contained in the January 17th, memo from the Planning Commission Chair to City Council and that the second version of the definitions for underground floor area be used. Also that the motion be based on the discussion contained in the January 17th memo to city council which includes more language on shoreline master program update. Atkins / Derebey – motion passed as amended –
Mr. Pasin abstained.

Mr. Dolan discussed the reasons that the upland areas would be treated differently than the shoreline areas. Ms. Kester asked if it would be alright if she added additional language referencing the SMP update. Ms. Malich agreed. Ms. Kester suggested using the memo signed by Ms. Malich to clarify the reason why waterfront zones were not included in the gross floor area definition change.

Height Restriction Comments: Item 2

Board members discussed the definition of views, views of Gig Harbor Bay, of the Narrows, across the bay, the inner harbor and territorial views. Ms. Kester discussed what views would be considered the most important. Ms. Malich pointed out that most homeowners would have a territorial view. Mr. Atkins asked if there would be a way to define their view. Ms. Kester suggested it could be mapped to include water, mountain, ridge line, and view over water and territorial. Ms. Ninen noted that homeowners have a financial impact associated with their view and that they should have some protection. Mr. Pasin pointed out the importance in the description of views.

MOTION: To adopt the staff's recommendation for height restriction area criteria as presented with the change to page 5 reference to the Narrows be changed to refer to Puget Sound.
Ninen / Derebey – Motion passed unanimously

Mixed Use Overlay Comments: Item #1

Ms. Kester discussed the proposed MX zone explaining that there would be no requirement to develop as a mixed use. Commission members discussed development options, uses, density, incentives and projects currently vested. The Commission members reviewed the letter provided by Courtney Kaylor of McCollough Hill PS expressing concerns with the reduction of density for the property she represents, the RV Resort. The Commission directed staff to prepare an Option C, which would rezone only those portions of the mixed use overlay north of the Northharbor Business Campus to the new MX zone and would remove the overlay from those south of the same point. Furthermore, the Commission requested staff develop incentive-based performance standards for the MX zone for Option C which would require a percentage of mixed use development on any given site. Board members agreed to continue the discussion at a later date. Ms. Kester agreed.

Mr. Dolan discussed staff schedules the possible cancelation of the May 1st meeting and potential addition of a special meeting in July.

MOTION: Move to adjourn. Atkins / Ninen



Subject: Pioneer Way Planter Box Project – Construction Contract and Materials Testing Contract Award

Proposed Council Action:

A. Authorize the award and execution of a public works contract to RW Scott Construction in the amount of \$124,912.00 and authorize the Public Works Director to approve additional expenditures up to \$12,491 to cover any cost increases that may result from contract change orders.

B. Authorize the award and execution of a consultant services contract to GeoResources, LLC, for materials testing services in an amount not to exceed \$3,773.00 and approve additional expenditures up to \$377.00 to cover any cost increases that may result from necessary changes in the scope of work.

Dept. Origin: Public Works/Engineering

Prepared by: Jeff Langhelm
Senior Engineer 

For Agenda of: March 9, 2009

Exhibits: Public Works Contract and Materials Testing Scope, Fee, and Contract

	Initial & Date
Concurred by Mayor:	<u>CLH</u> 3/4/09
Approved by City Administrator:	<u>RSK</u>
Approved as to form by City Atty:	approved via email
Approved by Finance Director:	<u>DR</u> 3/4/09
Approved by Department Head:	<u>DR</u> 3/4/09

Expenditure Required	\$141,553	Amount Budgeted	\$400,000	Appropriation Required	\$0
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INFORMATION / BACKGROUND

In September 2007 a vehicle drove through a brick planter box located at the intersection of Pioneer Way and Harborview Drive. The proposed Pioneer Way Planter Box Project replaces the brick planter box with a new planter box while including many aspects at this location from the conceptual Harborview/Judson Street Improvement Projects. The Harborview/Judson Street Improvement Projects are identified in the Capital Facilities Element of the City of Gig Harbor Comprehensive Plan and has been presented to the City Council and the general public through numerous public meetings and work sessions.

Additionally, the City requested a scope and fee from GeoResources, LLC, for materials testing services for this project.

BID RESULTS

The Pioneer Way Planter Box Project was bid using the City's Small Works Roster Process (Resolution No. 750). A total of nine contractors provided bid proposals. The three lowest bid results are provided below:

No.	Bidder	Bid Amount
1	RW Scott Construction	\$124,912.00
2	RV Associates	\$126,417.00
3	Merlino Brothers	\$139,059.60

FISCAL CONSIDERATION

The 2009 City of Gig Harbor Budget includes funding for this work in the Street Division Capital budget, Item No. 2, "Harborview/Pioneer Intersection and Uddenburg Lane". The budget summary for this item is provided in the table below:

2009 Budget for Street Division Capital, Item No. 2 (102-018-595-30-63-10)	\$ 400,000
Anticipated 2009 Expenses:	
Pioneer Way Planter Box Project	\$141,553
Additional Project Objectives	\$ * TBD
Remaining 2009 Budget =	\$ * TBD

*The additional project objectives will be designed and bid after the award of this contract and therefore the cost for these additional project objectives are to be determined at a later date. The costs of the additional project objectives will not exceed the remaining 2009 budget unless otherwise approved by council.

BOARD OR COMMITTEE RECOMMENDATION

The Pioneer Way Planter Box Project was presented to the Operations and Public Project Committee at their January 2009 meeting. Committee Member concerns were addressed with revisions in the design.

RECOMMENDATION / MOTION

Move to: Staff recommends approval of proposed council action A and B.

**CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
GeoResources, LLC**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (the "City"), and GeoResources LLC, a corporation organized under the laws of the State of Washington (the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in the Pioneer Way Planter Box Project (CSP-0902) and desires that the Consultant perform services necessary to provide the following consultation services; and

WHEREAS, the Consultant agrees to perform the services more specifically described in the Scope of Work including any addenda thereto as of the effective date of this Agreement, all of which are attached hereto as **Exhibit A – Scope of Work and Schedule of Rates**, and are incorporated by this reference as if fully set forth herein;

NOW, THEREFORE, in consideration of the mutual promises set forth herein, it is agreed by and between the parties as follows:

TERMS

1. Retention of Consultant - Scope of Work. The City hereby retains the Consultant to provide professional services as defined in this Agreement and as necessary to accomplish the scope of work attached hereto as **Exhibit A** and incorporated herein by this reference as if set forth in full. The Consultant shall furnish all services, labor and related equipment necessary to conduct and complete the work, except as specifically noted otherwise in this Agreement.

2. Payment.

A. The City shall pay the Consultant an amount based on time and materials, not to exceed Three thousand, seven hundred seventy-three dollars and zero cents. (\$3,773.00) for the services described in Section 1 herein. This is the maximum amount to be paid under this Agreement for the work described in **Exhibit A**, and shall not be exceeded without the prior written authorization of the City in the form of a negotiated and executed supplemental agreement. The Consultant's staff and billing rates shall be as described in **Exhibit A – Scope of Work and Schedule of Rates**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit A** or bill at rates in excess of the hourly rates shown in **Exhibit A**, unless the parties agree to a modification of this Contract, pursuant to Section 18 herein.

B. The Consultant shall submit monthly invoices to the City after such services have been performed, and a final bill upon completion of all the services described in this Agreement. The City shall pay the full amount of an invoice within forty-five (45) days of

receipt. If the City objects to all or any portion of any invoice, it shall so notify the Consultant of the same within fifteen (15) days from the date of receipt and shall pay that portion of the invoice not in dispute, and the parties shall immediately make every effort to settle the disputed portion.

3. Relationship of Parties. The parties intend that an independent contractor-client relationship will be created by this Agreement. As the Consultant is customarily engaged in an independently established trade which encompasses the specific service provided to the City hereunder, no agent, employee, representative or subconsultant of the Consultant shall be or shall be deemed to be the employee, agent, representative or subconsultant of the City. In the performance of the work, the Consultant is an independent contractor with the ability to control and direct the performance and details of the work, the City being interested only in the results obtained under this Agreement. None of the benefits provided by the City to its employees, including, but not limited to, compensation, insurance, and unemployment insurance are available from the City to the employees, agents, representatives, or subconsultants of the Consultant. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and subconsultants during the performance of this Agreement. The City may, during the term of this Agreement, engage other independent contractors to perform the same or similar work that the Consultant performs hereunder.

4. Duration of Work. The City and the Consultant agree that work will begin on the tasks described in **Exhibit A** immediately upon execution of this Agreement. The parties agree that the work described in **Exhibit A** shall be completed by June 30, 2009; provided however, that additional time shall be granted by the City for excusable days or extra work.

5. Termination. The City reserves the right to terminate this Agreement at any time upon ten (10) days written notice to the Consultant. Any such notice shall be given to the address specified above. In the event that this Agreement is terminated by the City other than for fault on the part of the Consultant, a final payment shall be made to the Consultant for all services performed. No payment shall be made for any work completed after ten (10) days following receipt by the Consultant of the notice to terminate. In the event that services of the Consultant are terminated by the City for fault on part of the Consultant, the amount to be paid shall be determined by the City with consideration given to the actual cost incurred by the Consultant in performing the work to the date of termination, the amount of work originally required which would satisfactorily complete it to date of termination, whether that work is in a form or type which is usable to the City at the time of termination, the cost of the City of employing another firm to complete the work required, and the time which may be required to do so.

6. Non-Discrimination. The Consultant agrees not to discriminate against any customer, employee or applicant for employment, subcontractor, supplier or materialman, because of race, color, creed, religion, national origin, marital status, sex, sexual orientation, age or handicap, except for a bona fide occupational qualification. The Consultant understands that if it violates this provision, this Agreement may be terminated by the City and that the Consultant may be barred from performing any services for the City now or in the future.

7. Indemnification.

A. The Consultant agrees to hold harmless, indemnify and defend the City, its officers, agents, and employees, from and against any and all claims, losses, or liability, for injuries, sickness or death of persons, including employees of the Consultant, or damage to property, arising out of any willful misconduct or negligent act, error, or omission of the Consultant, its officers, agents, subconsultants or employees, in connection with the services required by this Agreement; provided, however, that:

1. The Consultant's obligations to indemnify, defend and hold harmless shall not extend to injuries, sickness, death or damage caused by or resulting from the sole willful misconduct or sole negligence of the City, its officers, agents or employees; and

2. The Consultant's obligations to indemnify, defend and hold harmless for injuries, sickness, death or damage caused by or resulting from the concurrent negligence or willful misconduct of the Consultant and the City, or of the Consultant and a third party other than an officer, agent, subconsultant or employee of the Consultant, shall apply only to the extent of the negligence or willful misconduct of the Consultant.

B. It is further specifically and expressly understood that the indemnification provided herein constitutes the consultant's waiver of immunity under industrial insurance, title 51 RCW, solely for the purposes of this indemnification. The parties further acknowledge that they have mutually negotiated this waiver. The consultant's waiver of immunity under the provisions of this section does not include, or extend to, any claims by the consultant's employees directly against the consultant.

C. The provisions of this section shall survive the expiration or termination of this Agreement.

8. Insurance.

A. The Consultant shall procure and maintain for the duration of the Agreement, insurance against claims for injuries to persons or damage to property which may arise from or in connection with the Consultant's own work including the work of the Consultant's agents, representatives, employees, subconsultants or subcontractors.

B. Before beginning work on the project described in this Agreement, the Consultant shall provide evidence, in the form of a Certificate of Insurance, of the following insurance coverage and limits (at a minimum):

1. Business auto coverage for any auto no less than a \$1,000,000 each accident limit, and
2. Commercial General Liability insurance no less than \$1,000,000 per occurrence with a \$2,000,000 aggregate. Coverage shall include, but is not limited to, contractual liability, products and completed operations, property damage, and employers liability, and
3. Professional Liability insurance with no less than \$1,000,000. All policies and coverages shall be on a claims made basis.

C. The Consultant is responsible for the payment of any deductible or self-insured retention that is required by any of the Consultant's insurance. If the City is required to contribute to the deductible under any of the Consultant's insurance policies, the Contractor shall reimburse the City the full amount of the deductible within 10 working days of the City's deductible payment.

D. The City of Gig Harbor shall be named as an additional insured on the Consultant's commercial general liability policy. This additional insured endorsement shall be included with evidence of insurance in the form of a Certificate of Insurance for coverage necessary in Section B. The City reserves the right to receive a certified and complete copy of all of the Consultant's insurance policies upon request.

E. Under this Agreement, the Consultant's insurance shall be considered primary in the event of a loss, damage or suit. The City's own comprehensive general liability policy will be considered excess coverage with respect to defense and indemnity of the City only and no other party. Additionally, the Consultant's commercial general liability policy must provide cross-liability coverage as could be achieved under a standard ISO separation of insured's clause.

F. The Consultant shall request from his insurer a modification of the ACORD certificate to include language that prior written notification will be given to the City of Gig Harbor at least 30 days in advance of any cancellation, suspension or material change in the Consultant's coverage.

9. Exchange of Information. The City warrants the accuracy of any information supplied by it to the Consultant for the purpose of completion of the work under this Agreement. The parties agree that the Consultant will notify the City of any inaccuracies in the information provided by the City as may be discovered in the process of performing the work, and that the City is entitled to rely upon any information supplied by the Consultant which results as a product of this Agreement.

10. Ownership and Use of Work Product. Any and all documents, drawings, reports, and other work product produced by the Consultant under this Agreement shall become the property of the City upon payment of the Consultant's fees and charges therefore. The City shall have the complete right to use and re-use such work product in any manner deemed appropriate by the City, provided, that use on any project other than that for which the work product is prepared shall be at the City's risk unless such use is agreed to by the Consultant.

11. City's Right of Inspection. Even though the Consultant is an independent contractor with the authority to control and direct the performance and details of the work authorized under this Agreement, the work must meet the approval of the City and shall be subject to the City's general right of inspection to secure the satisfactory completion thereof. The Consultant agrees to comply with all federal, state, and municipal laws, rules, and regulations that are now effective or become applicable within the terms of this Agreement to the Consultant's business, equipment, and personnel engaged in operations covered by this Agreement or accruing out of the performance of such operations.

12. Records. The Consultant shall keep all records related to this Agreement for a period of three years following completion of the work for which the Consultant is retained. The Consultant shall permit any authorized representative of the City, and any person authorized by the City for audit purposes, to inspect such records at all reasonable times during regular business hours of the Consultant. Upon request, the Consultant will provide the City with reproducible copies of any such records. The copies will be provided without cost if required to substantiate any billing of the Consultant, but the Consultant may charge the City for copies requested for any other purpose.

13. Work Performed at the Consultant's Risk. The Consultant shall take all precautions necessary and shall be responsible for the safety of its employees, agents, and subconsultants in the performance of the work hereunder and shall utilize all protection necessary for that purpose. All work shall be done at the Consultant's own risk, and the Consultant shall be responsible for any loss of or damage to materials, tools, or other articles used or held by the Consultant for use in connection with the work.

14. Non-Waiver of Breach. The failure of the City to insist upon strict performance of any of the covenants and agreements contained herein, or to exercise any option herein conferred in one or more instances shall not be construed to be a waiver or relinquishment of said covenants, agreements, or options, and the same shall be and remain in full force and effect.

15. Resolution of Disputes and Governing Law.

A. Should any dispute, misunderstanding, or conflict arise as to the terms and conditions contained in this Agreement, the matter shall first be referred to the City Engineer or Director of Operations and the City shall determine the term or provision's true intent or meaning. The City Engineer or Director of Operations shall also decide all questions which may arise between the parties relative to the actual services provided or to the sufficiency of the performance hereunder.

B. If any dispute arises between the City and the Consultant under any of the provisions of this Agreement which cannot be resolved by the City Engineer or Public Works Director determination in a reasonable time, or if the Consultant does not agree with the City's decision on the disputed matter, jurisdiction of any resulting litigation shall be filed in Pierce County Superior Court, Pierce County, Washington. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. The prevailing party in any such litigation shall be entitled to recover its costs, including reasonable attorney's fees, in addition to any other award.

16. **Written Notice.** All notices required to be given by either party to the other under this Agreement shall be in writing and shall be given in person or by mail to the addresses set forth below. Notice by mail shall be deemed given as of the date the same is deposited in the United States mail, postage prepaid, addressed as provided in this paragraph.

CONSULTANT:

Geo Resources, LLC
ATTN: Keith Schembs, Principal
5007 Pacific Hwy E, Ste 20
Fife, WA 98424
(253) 896-1011

City of Gig Harbor

ATTN: Stephen Misiurak, P.E.
City Engineer
3510 Grandview Street
Gig Harbor, WA 98335
(253) 851-6170

17. **Subcontracting or Assignment.** The Consultant may not assign or subcontract any portion of the services to be provided under this Agreement without the express written consent of the City. Any subconsultants approved by the City at the outset of this Agreement are named in **Exhibit A** attached hereto and incorporated herein by this reference as if set forth in full.

18. **Entire Agreement.** This Agreement represents the entire integrated agreement between the City and the Consultant, superseding all prior negotiations, representations or agreements, written or oral. This Agreement may be modified, amended, or added to, only by written instrument properly signed by both parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement this _____ day of _____, 2009.

CONSULTANT

CITY OF GIG HARBOR

By: _____
(print name) _____
Its: _____

By: _____
Mayor Charles L. Hunter

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

Exhibit A
Scope of Work and Schedule of Rates

New Business - 3

Ph. 253-896-1011
Fx. 253-896-2633

GeoResources, LLC
5007 Pacific Hwy. E., Ste. 20
Fife, Washington 98424-2649

March 4, 2009

City of Gig Harbor
Department of Public Works
3510 Grandview Street
Gig Harbor, Washington 98335
(253) 853-7695

Attention: Mr. George Flannigan

Proposal for Construction
Monitoring Services
Pioneer Way Planter Box Project (CSP-0902)
Gig Harbor, Washington
ProNo: CityofGigHarbor.PioneerWay.P

As requested, we are pleased to submit this proposal for geotechnical construction monitoring and inspections services for earthwork activities associated with the Pioneer Way Planter Box Project CSP-0902. According to the plans and specifications provided by the City in their February 27, 2009 transmittal, the project includes the reconstruction of the planter box at the corner of Pioneer Way and Harborview Drive. In addition to the new planter box, the project will include new concrete sidewalks, curbs, gutters; relocation of a nearby utility; backfill; a large new asphalt patch, and other work.

We have reviewed the plans but have not been provided with a contractor schedule at this time. According to our discussions with the City of Gig Harbor, we understand our involvement will be related to testing the compaction of the trench backfill, subgrade verification for the sidewalk area and under the asphalt layer, concrete testing, and laboratory testing of the backfill material. Based on our experience on similar projects and a review of the plans we anticipate that the required testing will occur on a part time basis lasting over a period of several weeks. Our construction monitoring and testing would consist of on-call site visits requested by the City and/or the contractor.

Our services will be provided in accordance with the terms presented in our Schedule of Charges and General Conditions, a copy of which is attached at the end of this proposal.

Unit	Unit Price
Principal	\$125/hr
Engineer	\$85/hr
Technician	\$65/hr
Mileage	\$.585
Proctor (ASTM D:1557)	\$150/test
Sieve (ASTM D-6913-04)	\$85/test

GeoResources does not perform concrete sampling and testing, but has obtained a price from Mayes Testing, which is a WABO certified special inspection firm. We have attached their standard price sheet.

Our total fee for the services provided will be determined on a time-and-expense basis (hourly plus expenses) in accordance with the attached Schedule of Charges. We anticipate that the specific day and time of our site visits will be based on requests from the City or the

Exhibit A
Scope of Work and Schedule of Rates

New Business - 3

CityofGigHarbor.PioneerWay.P
March 4, 2009
Page 2

Contractor, and that the duration of each visit will be determined according to the specific inspection or testing requested.

For budgeting, we anticipate up to four site visits for utility trench backfill and subgrade verification, up to four site visits associated with concrete placement, and one visit for asphalt paving. We anticipate each site visit will be less than 4 hours.

GeoResources' field technician rate for construction monitoring service is \$65/hour. In addition to the labor time, we also charge mileage to and from the site. We estimate that the site is 18 miles from our office. As such, a daily rate for our inspector would be \$280. We have also budgeted 2 hours per of principal (project manager time) to review field reports and answer questions by the contractor. We do not have minimum charges, nor do we charge a rental rate for the Nuclear Densometer or other equipment.

In addition to the hourly time on site and project manager review time, we expect that there may be some additional costs related to laboratory testing using the rates outlined above. For a project of this size and scope we anticipate 2 proctors and 2 sieves will be adequate to characterize the trench backfill material. The Rice value for compaction should be provided by the batch plant producing the asphalt. At the estimated quantities this will add \$470 to the overall cost.

Assuming the above numbers and duration of each site visit, we anticipate the total cost will should not exceed following breakdown:

<u>Geotechnical Inspection</u>	<u>Item</u>
Utilities and subgrade inspections (4 site visits)	\$1,120
Asphalt testing (1 site visit).....	\$280
Laboratory testing	\$150
Project Management.....	<u>\$250</u>
Subtotal	<u>\$1,770</u>
<u>Concrete Inspection</u>	<u>Item</u>
Inspections (4 pours, laboratory testing, PM)	\$2,003
Subtotal	<u>\$2,003</u>
Total	<u>\$3,773</u>

We anticipate that this proposal will be include as Exhibit A on a City of Gig Harbor Consultant Services Contract.

Our field personnel are instructed to leave copies of the daily field reports on site on a daily basis. Our project manager will review the reports weekly or biweekly, depending on the frequency of inspections and if deficiencies are noted. The reviewed and signed field reports will then transmitted electronically to the City and the contractor. At the end of the project, GeoResources will prepare a final letter and will attach a complete set of the field reports, as well as provide an electronic copy. The estimated projected cost does not include attending project meetings. Any meeting or additional service will be billed on a time and materials basis using the rates shown on the attached Schedule of Charges.

Exhibit A
Scope of Work and Schedule of Rates

New Business - 3

CityofGigHarbor.PioneerWay.P
March 4, 2009
Page 3

We appreciate the opportunity to submit this proposal and look forward to working with you on this project. If you have any questions regarding the scope of work or budget of this proposal, please contact our office.

Yours very truly,
GeoResources, LLC



Keith S. Schembs, LEG
Principal

W. Glen Coad, PE
Principal

KSS:WGC:kss
Doc ID: CityofGigHarbor.PioneerWay.P

**PIONEER WAY PLANTER BOX PROJECT
CSP-0902**

PUBLIC WORKS CONTRACT

THIS AGREEMENT, made and entered into, this ____ day of _____, 2009, by and between the City of Gig Harbor, a Non-Charter Code city in the State of Washington, hereinafter called the "City", and R.W. Scott Construction Company organized under the laws of the State of Washington, located and doing business at, 405 West Valley Highway, Suite A, Auburn, WA 98001 hereinafter called the "Contractor."

WITNESSETH:

That in consideration of the terms and conditions contained herein and attached and made a part of this Contract, the parties hereto covenant and agree as follows:

The Contractor will provide for the construction of landscaping and pedestrian improvements at the intersection of Pioneer Way and Harborview Drive and shall include removal and replacement of asphalt concrete pavement, removal and replacement of cement concrete sidewalk, curb, and gutter, placement of a cast-in-place concrete planter box with irrigation, placement of electrical components including street lights, placement of pavement markings, and other work, all in accordance with the attached Contract Plans, these Special Provisions, and the Standard Specifications, and shall perform any changes in the work, all in full compliance with the contract documents entitled "Pioneer Way Planter Box Project (CSP-0902)," which are by this reference incorporated herein and made a part hereof; and agrees to accept payment for the same in accordance with the said contract documents, including the schedule of prices in the "Proposal," the sum of One hundred twenty-four thousand, nine hundred twelve dollars and zero cents (\$124,912.00), subject to the provisions of the Contract Documents, the Special Provisions, and the Standard Specifications.

1. The Notice to Proceed will be given within 21 days after the contract has been executed BY BOTH PARTIES. The Contractor shall commence construction activities on the project site within ten working days of the Notice to Proceed date, unless otherwise DIRECTED BY THE OWNER in writing. Contract time shall begin on the first working day following the Notice to Proceed Date. Work shall be substantially completed within 12 working days and shall be physically completed within 15 working days.
2. The Contractor agrees to pay the City the sum of \$1249.12 per day for each and every day all work remains uncompleted after expiration of the specified time, as liquidated damages.
3. The Contractor shall provide for and bear the expense of all labor, materials, tools and equipment of any sort whatsoever that may be required for the full performance of the work provided for in this Contract upon the part of the Contractor.
4. The term "Contract Documents" shall mean and refer to the following: "Invitation to Bidders," "Quotation Proposal," "Addenda" if any, "Specifications," "Plans," "Contract," "Performance Bond," "Maintenance Bond," "Payment Bond," "Special Provisions," "Notice to Proceed," "Change Orders" if any, and any documents referenced or incorporated into the Contract Documents, including, but not limited to the Washington State Department of Transportation's "2008 Standard Specifications for Road, Bridge, and Municipal

Construction,” including the American Public Works Association (APWA) General Special Provisions.

- 5. The City agrees to pay the Contractor for materials furnished and work performed in the manner and at such times as set forth in the Contract Documents.
- 6. The Contractor for himself/herself, and for his/her heirs, executors, administrators, successors, assigns, agents, subcontractors, and employees, does hereby agree to the full performance of all of the covenants herein contained upon the part of the Contractor.
- 7. It is further provided that no liability shall attach to the City by reason of entering into this Contract, except as expressly provided herein.

IN WITNESS WHEREOF the parties hereto have caused this Contract to be executed the day and year first hereinabove written:

CITY of GIG HARBOR:

CONTRACTOR:

Charles L. Hunter, Mayor
City of Gig Harbor
date

Print Name: _____
date

Print Title: _____

ATTEST:

City Clerk
date

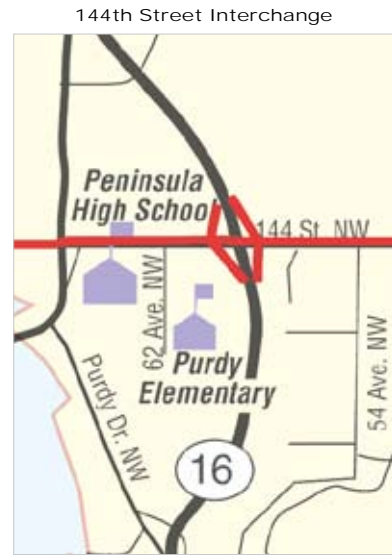
APPROVED FOR FORM:

City Attorney
date

9

144th Street Interchange on SR 16

An interchange at 144th Street on SR 16 in Gig Harbor is needed to reduce congestion and mainline back-ups at both nearby interchanges (e.g. Burnham Interchange) and local arterials. Installing a 144th Street Interchange will free up traffic capacity (and therefore economic development) for the Borgen commercial corridor as well as the Purdy area. An overpass already exists at this proposed interchange location, and much of the WSDOT right-of-way for on and off ramps has already been acquired. The traffic and economic benefits from this relatively inexpensive and simple solution will more than outweigh the cost to construct.



10

Gig Harbor Interchange Congestion

SR 16 bisects Gig Harbor for several miles with three interchanges: Olympic Drive, Wollochet / City Center, and Burnham Drive that are nearing capacity. The second Narrows Bridge has created even more traffic, shifting the bottleneck from the Narrows to the heart of Gig Harbor. Continued residential and commercial growth from both in and out of the City have impacted these interchanges to near gridlock.

Olympic Drive Interchange

The Olympic Drive and adjacent Olympic / Pt. Fosdick intersections are at capacity. Growth from the unincorporated County send more and more vehicles through the Olympic Drive interchange. Solutions include **improving the interchange to a Single Point Urban Interchange, improving on/off ramp storage capacity, and adding nearby under/over crossings** (Hunt Street for example).

Wollochet Drive/City Center Interchange

The overpass at Wollochet Drive is especially congested during morning and evening rush hours. **Widening the aging overpass will reduce congestion. Re-configuring at least one of the on-ramps** (the westbound on-ramp moved to the south side of the overpass) will also improve the intersection. Doing so will allow improved right and left turn movement and greatly relieve the congestion at that intersection on the west side of the overpass.

Burnham Interchange

Additional growth pressures from, in, and around Gig Harbor continue to clog the interchange at SR 16 and Burnham/Borgen Drives. Even with interim improvements funded by St. Anthony's Hospital, commercial developers, and state grants, extreme delays with long queues that back-up onto the freeway are forecast. Beyond these interim improvements, a long-term solution to address growth pressures and resulting congestion is desperately needed. A tax increment financing mechanism will assist the State and City of Gig Harbor in financing a portion of the long term improvements. However, **additional funding is still needed and expeditious state approval of the project is critical.**

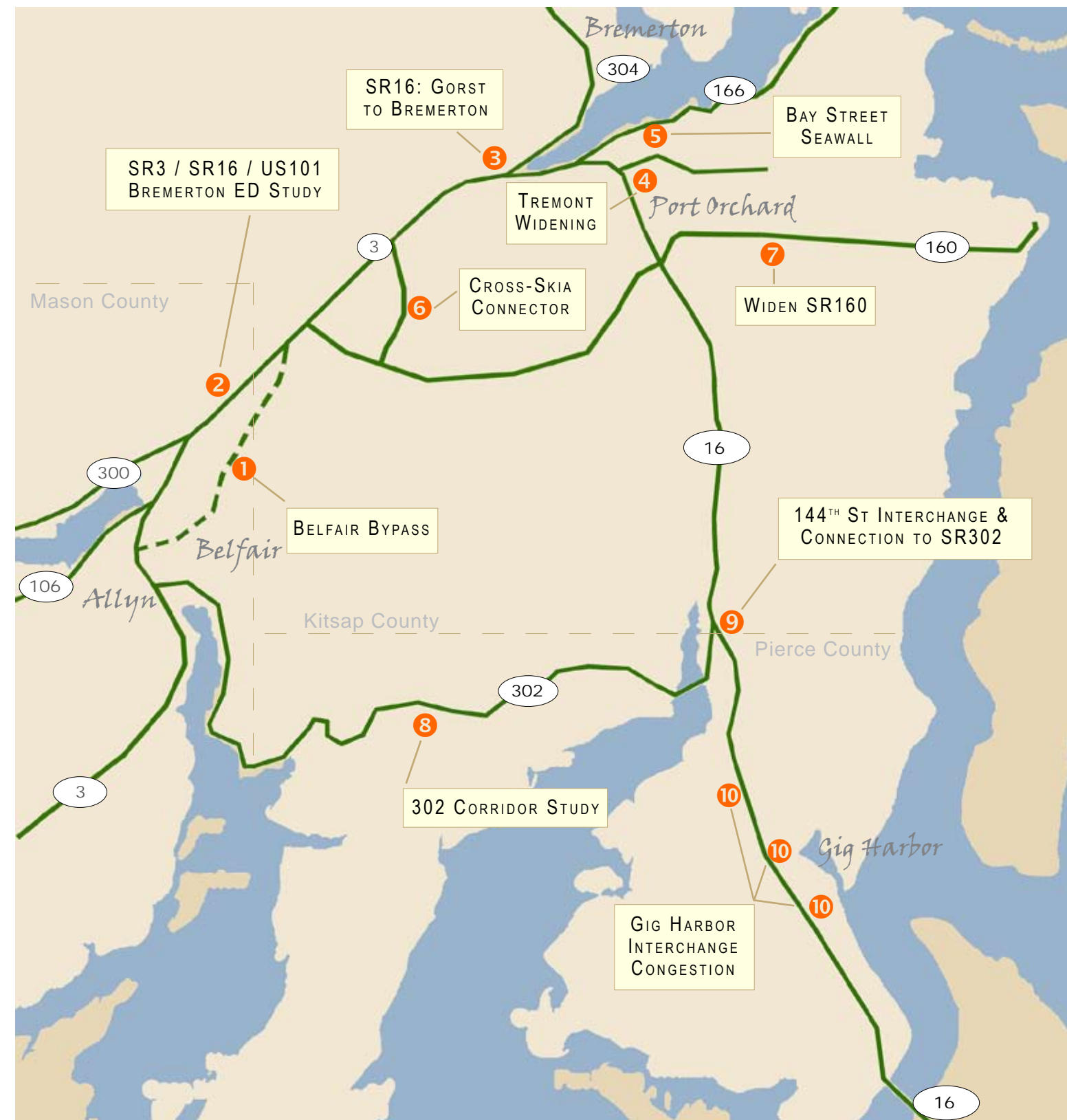


CONTACT INFORMATION

CITY OF BREMERTON	Phil Williams, PW Director	phil.williams@ci.bremerton.wa.us	(360) 475-5755
PORT OF BREMERTON	Fred Salisbury, Director/Operations	freds@portofbremerton.org	(360) 674-2381
CITY OF GIG HARBOR	Rob Karlinsey, City Administrator	karlinseyr@cityofgigharbor.net	(253) 851-8136
COUNTY OF KITSAP	Randy Casteel PE, PW Director	rcasteel@co.kitsap.wa.us	(360) 337-5777
COUNTY OF MASON	Lynda Ring Erickson	lyndare@co.mason.wa.us	(360) 427-9670
COUNTY OF PIERCE	Terry Lee, County Councilman	terry.lee@co.pierce.wa.us	(253) 798-6654
CITY OF PORT ORCHARD	Mark Dorsey PE, Public Works Dir.	mdorsey@cityofportorchard.us	(360) 876-4991

Greater PENINSULA PARTNERSHIP

CITY OF Bremerton
 PORT OF Bremerton
 CITY OF Gig Harbor
 COUNTY OF Kitsap
 COUNTY OF MASON
 COUNTY OF Pierce
 CITY OF Port Orchard



Greater PENINSULA PARTNERSHIP

Last year, leaders from Mason, Pierce and Kitsap Counties came together to create the Greater Peninsula Partnership (GPP) to identify transportation projects critical to economic development. By working together, we can plan safe highways to accommodate future growth.

"As a past Kitsap County Planning Commissioner prior to becoming Mayor, I'm well aware of our growth patterns and the need for regional planning. The GPP provides a unique opportunity to craft a joint strategy for transportation, infrastructure needs, and economic development in ways that benefit all of our citizens over the long term."
MAYOR OF PORT ORCHARD Lary Coppola



"As Chair of the Pierce County Planning Commission in the 1990's and now as a member of Pierce County Council, I have watched this region experience rapid growth. Transportation improvements need to be a priority for the greater peninsula, and connecting regional hubs needs to be a major component."

PIERCE CO COMMISSIONER
Terry Lee



"Revenue from the natural resources industry on the peninsula was critical to funding the infrastructure construction that grew the economy in the rest of this state; now it is time to fund infrastructure construction on the peninsula to move the freight and passengers that are integral to growth of our regional economy."

MASON CO COMMISSIONER
Lynda Ring Erickson



"Over the past decade, Gig Harbor and the greater Peninsula of over 60,000 residents have experienced unprecedented growth. We must work together to reduce congestion and expand our road capacities."

GIG HARBOR MAYOR
Chuck Hunter



"By working together the communities in the Greater Peninsula Partnership will solve the many transportation challenges facing our region."

CITY OF BREMERTON MAYOR
Cary Bozeman



"As a former Kitsap County Commissioner, I see the Greater Peninsula Partnership as a unique effort to identify and fund transportation projects critical to the growth of our region. Such cooperation among jurisdictions is unprecedented and can only lead to greater safety for our citizens and a climate conducive to economic development."

WA STATE REPRESENTATIVE
Jan Angel



"The GPP offers local jurisdictions a cooperative and unified approach to identify and move essential transportation projects and initiatives forward. This will greatly enhance safety and freight mobility along existing and future transportation corridors—the life-blood for continued economic development and prosperity within the region."

PORT OF BREMERTON COMMISSIONER
Cheryl Kincer



7 Sedgwick Road Safety Improvements State Route 160 from SR 16 to Long Lake Road

This project will provide **sidewalk and/or shoulder improvements along the entire route**. Between Long Lake Road and the Southworth Ferry Terminal, no additional through travel lanes are recommended. The WSDOT Access Management Plan will continue to provide guidance related to the permitting of future road approaches.

This is already funded as SR 160 Safety Improvements but should include widening to 4 lanes. Sedgwick Road from its intersection with SR 16 to its terminus at the Southworth Ferry terminal is a highly congested State Highway that is in need of both widening and safety improvements. In addition to the pressure from regular ferry commuters, the huge residential and commercial growth in the area is a key factor in prompting this much needed improvement.

8 SR 302 Corridor Study / EIS Currently Funded. Cost: \$2.5 million

Why is WSDOT studying State Route 302?

State Route 302 is an important east-west link for Key Peninsula communities to Gig Harbor as well as Tacoma and other parts of Washington. Economic development puts demands on this highway system compromising safety and increasing congestion. State Route 302 has a six-mile long high accident corridor that must be improved to ensure safety on the route.

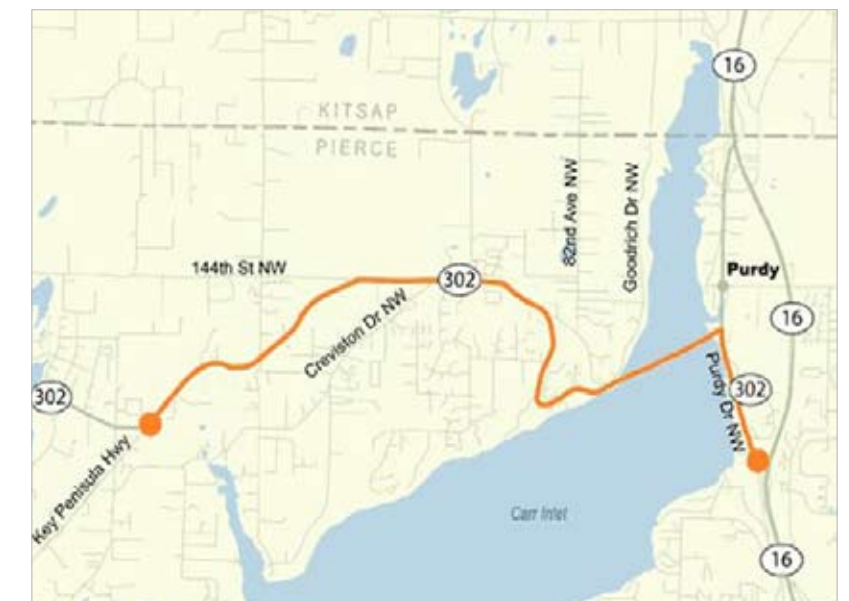
WSDOT is studying State Route 302 from the Key Peninsula Highway to SR 16. The study will evaluate the environmental impacts of creating a **new corridor or widening the existing State Route 302** to improve mobility and enhance motorist safety.

What is the project timeline?

The first phase of the environmental study began in July 2007. WSDOT spent 8 months collecting data, evaluating existing conditions and determining motorist travel patterns. The second phase of the study began in January 2008. Completion of the environmental study process is anticipated in approximately two years.

Financial Information

This project is funded through the 2005 Transportation Partnership Funding package.

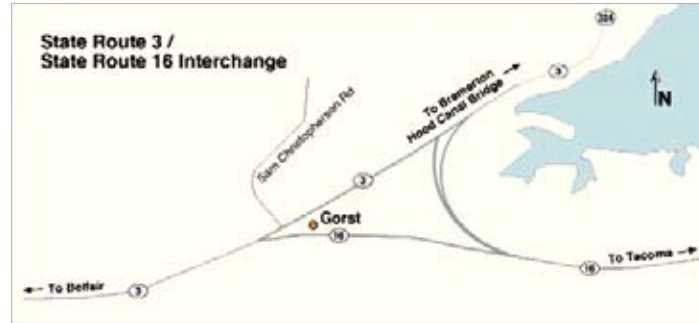


3 SR 16 from Gorst to Bremerton

As the two lanes of northbound SR 16 enter Gorst, an additional lane was added to the roadway from Bay Street (former SR 166). As the highway traverses Gorst, the outside lane is dropped from the roadway just prior to the merge of SR 16 and SR 3. Northbound SR 3 then merges into the two lanes just before the existing vintage 1947 railroad bridge. **Four lanes of traffic are merged into two lanes in less than 1500 feet.** SR 3 is the only viable route from

South Kitsap and Mason County to the City of Bremerton and north Kitsap County. Any blocking accident in this area effectively stops transportation in the entire region.

Elimination of the lane drop and extending the merge point for the two roadways beyond the railroad bridge will significantly improve regional mobility and safety. Note: the connecting 4-lane facility from SR 3-SR 16 Interchange to SR 3-SR 304 Interchange, including interchange deficiencies, is the most congested location in Kitsap County and will be the most expensive to address.



4 Tremont Widening

State Route 16 to Pottery Avenue

Existing Tremont Avenue is a two lane roadway with minimal shoulders. It is one of only two ways into Port Orchard from State Route 16 and is heavily congested. This project would **increase the roadway width to four lanes** with sidewalks curbs and gutters. Two new roundabouts will be installed at South Kitsap Boulevard and at Pottery Avenue and improvements to the existing sewer, water and storm systems are also part of this project. To date the work is funded through right-of-way acquisition. However, due to ever rising construction costs, funding is needed to complete this project. Once completed, this section of the roadway will become a gateway to Port Orchard.

5 Bay Street Seawall

1800 Block of Bay Street to Existing Seawall

The seawall in this area is failing much faster than originally thought. Because this is fast becoming an important public safety concern, the City of Port Orchard is searching for ways to replace this wall quickly. Should sufficient funding become available, the proposed trail along the waterfront, known as the Mosquito Fleet Trail, would also be completed as part of this project. To date, this project is only funded through 70% of design. Funding would be used for **replacing the seawall, adding pedestrian walkways**, and possible rerouting of a water main.

6 Cross-SKIA Connector

South Kitsap Industrial Area (SKIA)

The Port of Bremerton, South Kitsap Industrial Land Owners and Kitsap County agreed to study the need for a connecting road from SR 3 to Lake Flora Road in southwest Kitsap County. The Cross-SKIA connector was identified as a necessary component in the South Kitsap Industrial Study to foster industrial and commercial growth. SKIA has been designated one of eight regional Manufacturing Industrial Centers by the Puget Sound Regional Council (PSRC), a 4-county metropolitan planning organization. To date, WSDOT has agreed to **relocate the existing limited access point to an entrance just north of the airport property.** Design of this intersection with SR 3 is underway and construction funds are being sought for the first phase, from SR3 to the south side of the airport.



1 Belfair Bypass

SR 3 in the Belfair community has been experiencing increased traffic volumes and delays. The proposed project will improve the existing transportation system by providing a **high-speed bypass, with limited access** built to WSDOT design standards. SR 3 (through the community of Belfair) will see significant traffic improvements, including easier/safer ingress and egress to existing businesses as a result of decreased traffic volumes. The Belfair Bypass will relieve congestion around the chronically congested downtown Belfair area by providing an alternative route for through traffic. This should have a positive economic benefit by providing more convenient access and circulation within Belfair's commercial area.

What is the project timeline?

In February 2006, WSDOT evaluated the draft Belfair Bypass Environmental Assessment document that was developed in 2002 for Mason County. Due to the time lapse in the environmental process, most aspects of the environmental documentation will need to be updated to meet current permit requirements. In addition, WSDOT has evaluated the previous design proposed by Mason County in the draft Environmental Assessment and determined that significant changes are needed to bring the design up to State Highway design standards.



Bremerton Economic Development Study

SR 3 / SR 16 / US 101

During the 2007 Legislative Session, funding was provided for an economic development study focused on the SR 3 / SR 16 / US 101 vicinities. In addition to the legislature, funding was also provided by the Ports of Bremerton, Allyn and Shelton; Kitsap County; and the Cities of Port Orchard and Bremerton. **The study area spans 47 miles** along SR 3 from US 101 near Shelton to Loxie Eagans Boulevard in Bremerton; US 101 from SR 3 near Shelton to SR 102 (Dayton Airport Road); and SR 16 from Sedgwick Road (SR 160) to SR 3 in Gorst. The study will **identify and prioritize transportation improvements** that could be implemented, as funding becomes available, over the next 20 (or more) years. These improvements will help support anticipated population and job growth for the study area. A prioritized list of projects is expected to be completed spring 2009 with the final report available in the summer. Funding for a follow-on EIS will also be needed. The communities along the study corridors will be able to utilize this project's list to obtain funding for the identified transportation improvements.

The study is being led by the Washington State Department of Transportation with guidance from a stakeholders group comprised of representatives from public and private agencies in the south Kitsap, north Mason County areas. Additionally, the project has conducted an extensive public outreach to solicit feedback from citizens. More information on the study can be found on the project website:

<http://www.wsdot.wa.gov/Projects/>

