

Gig Harbor City Council Meeting

**May 29, 2012
5:30 p.m.**



**AMENDED AGENDA FOR
GIG HARBOR CITY COUNCIL MEETING
Tuesday, May 29, 2012 – 5:30 p.m.**

CALL TO ORDER:

PLEDGE OF ALLEGIANCE:

CONSENT AGENDA:

1. Approval of City Council Minutes May 14, 2012.
2. Receive and File: a) Council Retreat Minutes May 11, 2012;
3. Liquor License Action: a) Assumption: Finholm's Grocery & Deli; b) Added Privilege Red Rooster Café.
4. Appointment to Parks Commission.
5. Correspondence / Proclamation: Pierce Transit Proposed Amendments to Bylaws.
6. Skansie House Electrical Engineering Contract.
7. Skansie House Mechanical Engineering Contract.
8. Wheeler Street End Record of Survey - Consultant Services Contract/David Evans and Associates, Inc.
9. Approval of Supervisors Guild Collective Bargaining Agreement.
10. Pt. Fosdick Square (Safeway) – Termination of Obligations Relating to Outdated Agreements.
11. Eddon Boat Beach – Consultant Services Contract / Grette Associates.
12. Approval of Payment of Bills May 29, 2012: Checks #69715 through #69804 in the amount of \$504,168.25.
13. Approval of Payroll for May: Checks #6491 through #6505 and direct deposit transactions in the total amount of \$324,300.58.

PRESENTATIONS:

GHPD Employee of the Year Awards

OLD BUSINESS: None scheduled.

NEW BUSINESS:

1. Open Record Appeal Hearing – Appeal of SEPA Threshold Determination for Shoreline Master Program.

STAFF REPORT:

PUBLIC COMMENT:

MAYOR'S REPORT / COUNCIL COMMENTS:

ANNOUNCEMENT OF OTHER MEETINGS:

1. Planning/Building Committee: Mon. Jun 4 at 5:15 p.m.
2. Parks Commission: Wed. Jun 6 at 5:30 p.m.
3. Operations Committee: Thu. Jun 14 at 3:00 p.m.

EXECUTIVE SESSION: For the purpose of discussing pending litigation per RCW 42.30.110(1)(i), and property acquisition per RCW 42.30.110(1)(b).

ADJOURN:

MINUTES OF GIG HARBOR CITY COUNCIL MEETING – May 14, 2012

PRESENT: Councilmembers Ekberg, Young, Guernsey, Perrow, Malich, Payne, and Kadzik and Mayor Hunter.

CALL TO ORDER: 5:30 p.m.

PLEDGE OF ALLEGIANCE:

MOTION: Move to amend the agenda to add the appointment of attorney Scott Snyder to be hearing officer in the upcoming SEPA Appeal of the Shoreline Management Program to New Business.
Ekberg / Kadzik – unanimously approved.

CONSENT AGENDA:

1. Approval of City Council Minutes: a) Minutes of April 23, 2012; b) Special Meeting April 30, 2012; c) Special Meeting May 2, 2012.
2. Receive and File: a) GHPD 1st Quarter Report; b) Downtown Planning & Visioning Committee minutes March 21, 2012; c) 4th Quarter Finance Report.
3. Correspondence / Proclamations: a) Ready, Set, Go! 5210 Childhood Obesity.
4. Liquor License Action: a) Special Occasion – GH Yacht Club Junior Sail Program; b) Chamber of Commerce – Maritime Gig; c) ~~Added Privilege – Red Rooster Café~~; d) Renewals: Target, Puerto Vallarta, Round Table Pizza, Julep Nail Parlor.
5. Summer Sounds Concert Contracts.
6. Second Reading of Ordinance No. 1240 – Compensation for Municipal Judge.
7. Pump Station 3A Wet Well – Construction Services Contract/HDR.
8. Well #11 Production Well Development – First Amendment to Consultant Services Contract with Carollo Engineers.
9. Donkey Creek Project - Consultant Services Contract Amendment No. 2 – Parametrix.
10. Donkey Creek Project – Preparation of Final Plans and Specifications, Preparation of Bidding Documents and Final Permitting Assistance - Consultant Services Contract Amendment No. 3 – Parametrix.
11. 2012 SR16 Burnham Interchange Mitigation Improvements Wetland Monitoring – Consultant Services Contract/DEA, Inc.
12. Public Safety Testing Agreement Renewal.
13. Washington State Grant for Maritime Pier Design and Construction.
14. 2012 Traffic Model Update Contract Amendment No. 2 – David Evans & Associates.
15. 2012 Pavement Maintenance Project - Public Works Contract and Consultant Services Contract Awards.
16. Approval of Payment of Bills May 14, 2012: Checks #69577 through #69714 in the amount of \$532,359.34.
17. Approval of Payroll for the month of April: Checks # 6473 through #6490 in the amount of \$360,764.07.

MOTION: Move to adopt the Consent Agenda as presented.
Ekberg / Payne – unanimously approved.

PRESENTATIONS:

1. Ready, Set, Go! 5210 Childhood Obesity Proclamation. Mayor Hunter presented the signed proclamation to Kirstin Hawkins, YMCA Communications and Outreach Instructor. She and Christine Butorak, Senior Health and Wellness Instructor described this program to combat childhood obesity.

2. Gig Harbor Boat Club – Kayak Storage Presentation. Bruce McKean, Helix Design Group and parent of one of the racing kayakers gave a brief introduction. Alan Anderson, founder of the club and team coach, presented the club history and future plans which include a para-canoe program.

Mr. McKean then presented the basic concept for the proposed storage facility that they would like to locate at Skansie Brothers Park.

Councilmember Kadzik said he would like to make a request for the city to give staff direction to move forward with this project and to absorb as many fees as possible.

There was discussion on the steps required to develop a policy for private organizations building on city property and appropriate placement of structures. Council directed staff to work with the city attorney to work out the licensing and liability issues, and to ask the Parks Commission for an appropriate policy.

OLD BUSINESS: None scheduled.

NEW BUSINESS:

1. Washington State Heritage Grant for Eddon Boat. Mayor Hunter explained that the city has the opportunity to apply for a Washington State Heritage Capital Grant for the reconstruction of the Eddon Boat Marine Railway which would require a \$60,000 cash contribution from the city. There is \$175,500 budgeted in 2012 for Eddon Park improvements that could be used for this purpose.

Councilmember Ekberg disclosed that his company carries the insurance for Gig Harbor BoatShop, but said he didn't feel this was a conflict.

MOTION: Move to go forward and apply for the grant with the understanding that it requires a \$60,000 commitment from the city.
Young / Malich – unanimously approved.

2. Appointment of Attorney Scott Snyder as hearing officer in the upcoming appeal. City Administrator Denny Richards explained that Angela Belbeck would be representing the staff members during the upcoming appeal which means the Mayor and Council would need separate legal representation.

MOTION: Move to appoint W. Scott Snyder as hearing officer in the Frisbie appeal. The hearing officer is authorized to conduct the hearing and any required prehearing procedures, and make rulings on evidentiary and procedural matters. The Gig Harbor City Council expressly reserves its final decision-making authority and the right to overrule any ruling of the hearing officer to exclude any evidence the City Council deems relevant and material.
Ekberg / Young – unanimously approved.

STAFF REPORT:

City Administrator Denny Richards reported that this is his fifth week and he has enjoyed it so far. He stressed that we are extremely busy and gave an overview of current construction projects. He said that he met with the Port of Tacoma Government Affairs representative and will meet with Briahna Taylor from Gordon Thomas Honeywell Government Affairs next week.

PUBLIC COMMENT:

MAYOR’S REPORT / COUNCIL COMMENTS:

Councilmember Young reported that tonight there would be a decision on the tied vote for his position on the Pierce Transit Board of Commissioners. He said they are headed in the direction of a ballot this fall as a result of the fall in revenues.

Councilmember Malich gave a brief update on the Tacoma Narrows Airport Committee talks about the next generation of FAA controls and economic impacts of an airport on the communities. He said he would forward the minutes as he receives them.

Councilmember Kadzik asked if the city responds to complaint letters such as the one from Ms. Jump regarding utility rates and Donkey Creek. Mr. Richards responded that staff attempts to respond to all letters and calls. He was asked to forward a copy of any responses to Councilmembers.

ANNOUNCEMENT OF OTHER MEETINGS:

1. Open House Rainier-Cascade Water Main Improvement Project: May 16th 4-6 p.m.
2. Operations Committee: Thu. May 17th at 3:00 p.m.
3. Civic Center closed May 28th for Memorial Day.
4. City Council Meeting: **Tues.** May 29th at 5:30 p.m.

EXECUTIVE SESSION: For the purpose of discussing pending litigation per RCW 42.30.110(1)(i) and Guild Negotiations per RCW 42.30.140(4)(a).

Mayor Hunter, City Councilmembers, City Administrator Denny Richards, and City Attorney Angela Belbeck were in attendance. It was announced that no action was to be taken after the session.

MOTION: Move to adjourn to Executive Session at 6:10 p.m. for approximately 15 minutes for the purpose of discussing pending litigation per RCW 42.30.110(1)(i) and Guild Negotiations per RCW 42.30.140(4)(a).
Payne / Perrow – unanimously approved.

At 6:28, Mayor Hunter returned to the Council Chambers and announced the need to extend the Executive Session for another ten minutes.

MOTION: Move to return to regular session at 6:42 p.m.
Payne / Kadzik – unanimously approved.

ADJOURN:

MOTION: Move to adjourn at 6:42 p.m.
Payne / Kadzik – unanimously approved.

CD recorder utilized: Tracks 1002 – 1016

Charles L. Hunter, Mayor

Molly Towslee, City Clerk

Gig Harbor City Council Retreat
May 11, 2011, 8:30 a.m.
Community Room A/B

Call to order: 8:35 a.m.

Members Present: Mayor Hunter and City Councilmembers Malich, Perrow, Kadzik, Ekberg, Guernsey, and Young.
Councilmember Payne joined the meeting at 8:45 a.m.

Staff Present: Denny Richards, Mike Davis, Bill Colberg, Steve Misiurak, Jeff Langhelm, Emily Appleton, Paul Rice, David Rodenbach, Tom Dolan, Peter Katich, Jennifer Kester, Barbara Tilotta, Marco Malich, Darrell Winans, Stacy Colberg, and Molly Towslee.

After roll call, Mayor Hunter began the meeting with the first agenda item.

The group went through the agenda discussing the following:

Administration / Finance / Tourism

1. Donkey Creek Funding: David Rodenbach gave an overview of funding options. Council discussed the option to draw from several funds and HBZ money and at what percentage.

Recommendation: Go ahead utilizing the available funding sources discussed. Any funding shortage would come from the Civic Center Debt Reserve Fund with payment addressed during each budget period, and HBZ funds, the amount to be determined after the bid documents are finalized to determine what portion of the project can be allocated to transportation improvements.

2. Salary Commission: Council and staff discussed moving forward with this independent review and recommendation for Council and Mayor's salaries that was put on hold during the 2008 recession.

Recommendation: Direct the Salary Commission to move forward for a recommendation for the 2013 Budget.

3. Public Works Director Position: Denny Richards explained the need and efficiencies of having a Public Works Director. He said that he is confident he could perform a successful search to fill the position without using "headhunter" services.

There was also discussion on the need for a Human Resource person and Park Lead position. Denny explained that the HR person most likely wouldn't need to be full-time and that the Parks duties would fall to the Public Works Director. Mayor Hunter spoke to the need for more Public Works staff due to the addition of the new parks and annexation of streets.

Recommendation: Council requested a job description for the Public Works Director and what duties the position would free up with current staff to be considered during the 2013 Budget process. They also requested a breakdown of what the personnel attorney has been paid the past five years, and the job responsibilities of an HR position. They directed staff to put the HR position on a "wish list" for budget discussions.

4. Withdrawal from the Tourism Promotion Area: Councilmember Young presented the background information on the perceived lack of effectiveness of the city's participation in the Tourism Promotion Area and the request by the LTAC member Ken Braaten to start the process to ask the County Council to be released from the area. He also spoke to a request by the LTAC to ask for additional support for the Sports Commission.

Recommendation: Begin the discussion to withdraw.

Planning

1. Text Amendment Priority List. Tom Dolan introduced the list as informational only.

2. Shoreline Master Program Status. Tom Dolan explained that one appeal of the SEPA has been received with the hearing scheduled for May 29th. He explained the need for separate legal counsel for both staff and council. There was discussion on the items in which Council acts in a quasi-judicial manner and moving towards getting away from this function. Councilmembers were reminded not to discuss the SMP update with the public due to the appeal.

3. Downtown Planning / Vision Committee Status. Councilmember Guernsey gave an update report on what has been accomplished to date and where the process is headed. She stressed that this isn't just a "city vision" but includes all groups as we move forward. She described the model project being headed by members of the DRB involving several high school students.

Jenn Kester reported that a recent WWU Graduate would be interning with the Planning Department this summer and would work on the Planning/Vision Open House in September and that the Planning Commission is looking at several common sense amendments that will assist the visioning process.

4. Kayak Club Storage Building – Skansie Park. Tom Dolan explained that he is working with legal counsel for the necessary process to allow a private entity to build a structure on city property.

Councilmember Kadzik gave an overview of the Gig Harbor Boat Club proposal to build a structure at Skansie Brothers Park to house their kayaks. He said he would like the city to absorb the permitting costs and staff time to implement this project.

Council discussed the benefits, the support of marine activities, the challenges of private use of public property, and possible precedence this might set. Use of other sites was discussed.

Recommendation: Move forward to develop a policy and to define the necessary steps to move forward for further consideration. A presentation to Council by the Boat Club is scheduled for May 14th.

Public Works

1. Traffic Impact Fees. Emily Appleton presented the background information on the current and proposed traffic impact fees. She explained that a study was done in 2007 and 2008 to increase the fees, but due to the recession it was put on hold.

Recommendation: Move forward to update costs projects and costs further.

2. Harborview & Pioneer Intersection: Street Furniture, Concrete Work, and Minor Safety Improvements.

Councilmember Kadzik gave an overview of the history of this project to place a clock in honor of Connie Schick at this intersection and how that is on hold due to the property owners' objection to the scope. A new location for the clock is being discussed and the intersection project now is scaled back to sidewalk improvements and movable furniture.

Jeff Langhelm clarified that a new design replicates the pedestrian improvements planned for across the street.

Recommendation: Move forward with bulb-out pedestrian improvements across the street only.

3. Pt. Fosdick / 56th Road and Sidewalk Improvements. Denny Richards said the city will work with the businesses during construction. Steve Misiurak reported that the project was awarded to Active Construction who will do their best to minimize the impact during the one-year project.

There was discussion on utility undergrounding and additional efforts to support the businesses during the project.

Councilmember Young left for another meeting at 10:45 a.m.

Parks

1. Eddon Boat Brick House. Mayor Hunter explained that the city is eligible for 4th Phase Grants for improvements to the house in 2013. There was discussion on how to best move forward with design and it was determined the best use of the house would be to open it up for a community hall scenario, which also is the recommendation from the Parks Commission.

Recommendation: Move forward with an open design and explore a policy for using it for public and/or private functions.

2. Twawelkax Trail from Cushman Trail to Harborview Drive. Jeff Langhelm presented the recommendation from the Rotary Club at the June 2nd Parks Commission meeting to rename the trail due to the difficulty to pronounce Twawelkax. He responded to questions regarding the design of the trail.

Recommendation: Explore constructing the trail around the wetlands with the idea that it would be moved when the Haven of Rest property is developed and the wetland delineation is complete.

3. Wheeler Street End Park Options. Councilmember Perrow stressed that the city should claim this waterfront property. After discussion a recommendation came forward.

Recommendation: Move forward with the necessary title search to determine ownership then decide how to proceed.

4. KLM Veterans Park: Basketball Court and Concrete Under Shelter. Marco Malich reported that a ½ court basketball court is planned for 2013 using in-house construction at an approximate cost of \$15,000 - \$20,000. This project would include hard surfaces under the shelter.

5. City Park at Crescent Creek Master Plan. Councilmember Payne recommended developing a master plan for this park in 2013. Further discussion suggested keeping the historic and open space nature of the park, improvements to accessibility, acquisition of adjacent properties, conservation trails, the usefulness of an aerial photo, and additional restrooms up by the fields. A concern was voiced about speeding traffic and options for slowing traffic were discussed.

Recommendation: Task the Parks Commission to develop the concept and then hire a consultant for a master plan.

6. Harbor Hill Park – Use and Conceptual Design. Council discussed how they would like to proceed with design of park. Because the city already has 17 acres of trails and several open space and passive parks, the concept of a multi-use facility to serve the 2000 residents and new school that will locate in that area is what's needed.

Recommendation: Move forward with a plan for an active park with lots amenities.

7. Donkey Creek Park – Drainage. Councilmember Perrow mentioned the problem with the standing water on the grass at Donkey Creek Park. Because it is a critical area, Jenn Kester explained that significant permitting would be needed if major changes were implemented. Marco Malich said that they will begin by aerating the lawn, then shoot the grades and perhaps bring in fill to the low spots.

In addition, there is concern that the maples in the park along Harborview Drive need trimmed up and the ivy needs to be removed from all the trees.

8. Wilkinson Farm Park:

- a. Trails: Discussion on implementing more trails to open the park more.
- b. Barn – Structural Improvements/Roof: Estimate of \$250,000 to fix up the barn. There are grants available, but at a 1:1 ratio, so the city would need to budget. There is some urgency to stabilize the barn.
- c. Garden Plots: Barbara Carr is the contact to find out if any plots remain available. It's a very popular program and they would like to expand, but the farm property is at capacity, so they are looking outside the city. A suggestion was made that possible the Rowher Property on Crescent Valley Drive would be an ideal spot.
- d. Farm House Repairs: Repairs are going well. Electrical repairs will include an alarm system to the barn because of the recent break in.

- e. Pond: Kae Paterson voiced an interest in getting rid of cattails, etc. to clean out the pond. Explore using this project to mitigate wetland requirements elsewhere. Council and staff discussed the encroachment into the park by neighboring residents. Signage was recommended after the project is complete.

9. Field Reservation Policy. Councilmember Ekberg said that now the city has plenty of parks it may be time to look at a policy for reserving the fields. It was discussed and agreed that some scheduling is beneficial for team practices that depend upon set times. It was also discussed whether or not fees should be charged, and partnering with PAA.

Recommendation: Ask the Parks Commission to look into a policy for scheduling the playfields.

10. Parks Impact Fees: Councilmember Ekberg asked whether the city should consider charging commercial development with Park Impact Fees. Councilmember Payne said that the Parks Commission wants more funding to help with unfinished and new parks, whether through impact fees or other mechanisms.

There was continued discussion on the current PIF of \$1,500 per residential unit and what would be an appropriate increase, if any. Tom Dolan explained that the parks impact fee study was eliminated from the PROS Plan update consultant service contract due to the economy. Council addressed the appropriateness of charging commercial development or to explore other funding options.

Recommendation: Direct staff to get an estimate of what it would cost to do a Park Impact Fee study.

Wastewater System

1. Lift Station No. 4 at Jerisich Park: Mayor Hunter asked if Council would consider holding off on construction of the new lift station at Jerisich and suggested an alternate plan for a short-term fix until other options could be explored.

Darrel Winans gave a report on rehabilitating the current lift station. Council discussed the acquisition and placement of the lift station on the property across the street, as well as the design for the proposed structure at Jerisich.

Tom Dolan stressed the need to vest the project under the current Shoreline Master Program.

Emily Appleton passed out a drawing of the proposed structure, and Steve Misiurak responded to questions on how quickly the design could be prepared for an alternate location.

Council strongly suggested a meeting be set with the architect to sit down and discuss their concerns with the mass and scale of the current design. Moving forward with a maximum upgrade to the facility, i.e. more restroom stalls and a placeholder for showers was discussed.

Jenn Kester addressed the concern with the design explaining that the Design Review Board could recommend embellishments to meet the historical nature of the site. Peter Katich answered questions regarding the adoption of the new SMP regulations.

Recommendation: Stake the location and height of the proposed structure at Jerisich and call the Councilmembers so they can look at the impact on the views and the park before making any decisions.

2. Lift Station No. 17 on Bujacich: Steve Misiurak reported on the potential interest of the developers to participate in construction of a lift station on Bujacich after they found out the depth required to install sewer lines to hook up to the existing lines. Jeff Langhelm explained that the concern is whether to move ahead with design now or delaying the HBZ funding for this project until 2013 as Council discussed earlier.

There was discussion on who this benefits the most, (the developer), and the fact we are already halfway through 2012.

Recommendation: Move this project to 2013. If the developers come forward with funding now, the HBZ funds can be shuffled sooner.

1. Replace A/C Watermains throughout city: Jeff Langhelm reported on the two million dollar state appropriation for A/C watermain replacement and partnering with the Department of Health as the contract agency to receive the grant funds. He said they anticipate the design in 2012 and to be under construction in 2013. He stressed that due to budget constraints the roadways won't be completely overlaid where the watermains are replaced; only patching will be done. He said that the city has over 20,000 linear feet of A/C waterlines; the goal is to replace 4-5,000 feet a year. The 2 million will replace 8,000 feet.

Councilmember Payne asked that we do a better job of educating the citizens on what we are doing with their money and which funds are used for our projects. He suggested sending something out with the utility bills. Councilmembers concurred that this is a good idea.

The meeting adjourned at 1:00 p.m.

Respectfully Submitted:

Molly Towslee, City Clerk



NOTICE OF LIQUOR LICENSE APPLICATION

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: 5/08/12

TO: MOLLY TOWSLEE, CITY CLERK

RE: ASSUMPTION
From HARBORVIEW GROCERY INC
Dba FINHOLM'S MARKET AND GROCERY

APPLICANTS:

UPRISE CORPORATION

KANG, BYUNG UN 1970-08-10
YOO, HEE JUNG 1975-06-07

License: 351392 - 1U County: 27
UBI: 603-199-557-001-0001
Tradename: FINHOLM'S GROCERY & DELI
Loc Addr: 8812 N HARBORVIEW DR
GIG HARBOR WA 98335-2167

Mail Addr: 9312 S TACOMA WAY # 170
LAKEWOOD WA 98499-4466

Phone No.: 253-851-2229 BYUNG UN KANG

Privileges Applied For:
GROCERY STORE - 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
(See WAC 314-09-010 for information about this process)
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

WVG



NOTICE OF LIQUOR LICENSE APPLICATION

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: 4/24/12

TO: MOLLY TOWSLEE, CITY CLERK

RE: APPLICATION FOR ADDED PRIVILEGE

UBI: 603-005-490-001-0001
License: 085944 - 1U County: 27
Tradename: RED ROOSTER CAFE
Address: 3313 HARBORVIEW DR
GIG HARBOR WA 98335-2126

Phone No.: 253-514-8175

APPLICANTS:
RED ROOSTER CAFE, L.L.C.
ENGLISH, DELINDA LEE
(Spouse) 1949-11-20
ENGLISH, JOHN HARVEY
1945-10-01
RADCLIFFE, JAMIE E
1974-11-11

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? 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
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DATE

SIGNATURE OF MAYOR, CITY MANAGER, COUNTY COMMISSIONERS OR DESIGNEE



COMMUNITY DEVELOPMENT DEPARTMENT

May 30, 2012

Washington State Liquor Control Board
License Division
3000 Pacific
P.O. Box 43075
Olympia, WA 98504-3075

Re: *Notice of Disapproval*
Application for Added Privilege: License 085944 – 1U
Red Rooster Café
3313 Harborview Drive
Gig Harbor, Washington

Dear Sir or Madam:

The City of Gig Harbor is in receipt of the above application dated April 24, 2012. Thank you for extending time allowing the City to conduct the research necessary to determine whether or not to approve the above application.

The City of Gig Harbor disapproves the above application for the following reasons:

1. The Premises is located in the Waterfront Millville Zoning District, and operates as a Restaurant 1 use under a conditional use permit.
2. Under the Gig Harbor Municipal Code (“GHMC”), a Restaurant 1 use includes the following:

17.04.702 Restaurant 1.

“Restaurant 1” means an establishment that serves food and nonalcoholic beverages and operates without a grill or deep-fat fryer. *Beer and wine may be served* in a Restaurant 1 establishment provided the Restaurant 1 use does not exceed 1,200 square feet in size. [Italics added.]

3. Because the word “serve” is not defined in the Gig Harbor Municipal Code, GHMC 17.04.010(H) provides that Webster’s Dictionary shall apply. The applicable definition from Webster’s online provides:

5: to help persons to food: as
a : to wait at table
b : to set out portions of food or drink

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4. While beer and wine may be “served” at a Restaurant 1 establishment in the Waterfront Millville Zoning District, retail sale of beer and wine for off-premises consumption is not permitted as a Restaurant 1 use.

5. The subject application is for off premises privileges. On the form entitled “Retail Liquor License and Endorsement Descriptions and Fees Information” (LIQ 180 4/12) posted on the Washington State Liquor Control Board website, “Off-Premises” is defined as:

Allows **Beer and/or Wine Restaurant and Tavern** license holders to sell beer and/or wine for off-premises consumption in original containers. Also allows the sale of tap beer to a purchaser who provides their own sanitary container capable of holding *less than four gallons of beer*, and beer in kegs or other containers capable of holding four or more gallons of beer. [Bold and italics in original.]

6. Because an off-premises endorsement authorizes sale of beer and/or wine for off premises consumption and any such sale at the subject Premises would be inconsistent with and in violation of the City of Gig Harbor’s zoning regulations, the subject application should be denied.

Thank you for considering the City’s objection. If you require any further information from the City in support of this objection, please contact the undersigned.

Sincerely,

Molly Towslee, City Clerk



Business of the City Council
City of Gig Harbor, WA

Subject: Appointment to Parks Commission

Proposed Council Action:
A motion for the appointment of Rhana Lovrovich to serve a three-year term on the Parks Commission.

Dept. Origin: Administration
Prepared by: Boards/Commission Review Committee
For Agenda of: May 29, 2012

Exhibits:

	Initial & Date
Concurred by Mayor:	<u>CLH 5/24/12</u>
Approved by City Administrator:	<u>R 5/24/12</u>
Approved as to form by City Atty:	_____
Approved by Finance Director:	<u>SP</u>
Approved by Department Head:	_____

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

We received one application for the vacancy on the Parks Commission; Rhana Lovrovich. Ms. Lovrovich has lived in the harbor most of her life and she and her husband live in city limits.

FISCAL CONSIDERATION

N/A

BOARD OR COMMITTEE RECOMMENDATION

The Boards and Candidate Review Committee recommends the appointment of Rhana Lovrovich to fill the three-year position.

Her application was forwarded to the Parks Commission for review.

RECOMMENDATION / MOTION

Move to: A motion for the appointment of Rhana Lovrovich to serve a three-year term on the Parks Commission.



May 10, 2012

Mayor Chuck Hunter
City of Gig Harbor
3510 Grandview ST
Gig Harbor, WA 98335

Dear Mayor Hunter:

Pierce Transit is proposing to amend its code and bylaws. Pursuant to Section 2.28.070 of the Pierce Transit Code, Pierce Transit must notify all jurisdictions within the Pierce Transit service area of any proposed amendments. Please consider this as formal notification pursuant to such Section.

Enclosed are complete copies of Pierce Transit's bylaws and a draft resolution with the proposed amendments. These proposed amendments are coming as a result of the 2012 Public Transportation Improvement Conference and Board Composition review.

Any written comments on the proposed changes should be forwarded to me by June 1, 2012. This will allow the Board of Commissioners to review comments before final action is taken on June 11, 2012.

Sincerely,

A handwritten signature in blue ink that reads "Treva Percival".

Treva Percival, MMC
Assistant to the CEO/Clerk of the Board

Enclosures

c: Board of Commissioners
Lynne Griffith, CEO
Jurisdiction Clerks

Exhibit I

PIERCE TRANSIT BYLAWS

Chapters:

- 2.04 Membership
- 2.08 Meetings
- 2.12 Chairperson
- 2.16 Vice-Chairperson
- 2.20 Clerk of the Board
- 2.24 Appointed Positions
- 2.28 General Provisions

Chapter 2.04--MEMBERSHIP

Sections:

- 2.04.010 Offices.
- 2.04.020 Members of the board of commissioners.

2.04.010 Offices. The principal office of Pierce Transit as of November 19, 1987, shall be located at 3701 96th Street S.W., Lakewood, Washington 98499. Pierce Transit may have such other offices, within Pierce County as the board of commissioners may determine from time to time. (Res. 82-120 §1; Res. 84-098 §1(Ex. I(part))); Res. 04-003 (part))

2.04.020 Members of the board of commissioners.

A. The board of commissioners (hereinafter referred to as the board) shall consist of nine members and one nonvoting member who are selected as follows:

1. ~~Three-Two~~ Two elected official~~members~~ members selected by the city council of the city of Tacoma;
2. One ~~One~~ elected official~~member~~ member selected by the city council of the city of Lakewood;
3. ~~Three-Two~~ Two elected official~~members~~ members selected by the Pierce County Government;
4. One ~~One~~ elected official~~member~~ member selected by the city councils of ~~the cities of~~ Puyallup and University Place, rotating between the two jurisdictions Puyallup;
5. One ~~One~~ elected official~~member~~ member selected by the city council of University Place;
5. ~~One~~ One member selected by the representatives of city and town councils of the remaining cities and towns within the boundary of Pierce Transit.
6. One ~~One~~ at-large elected official~~member~~ member selected ~~voted on~~ by the Fife, Edgewood, and Milton City Councils.
7. One ~~One~~ at-large elected official~~member~~ member selected by the ~~representatives of city and town councils of Auburn, Fircrest, Gig Harbor, Pacific, Ruson and Steilacoom~~ representatives of city and town councils of Auburn, Fircrest, Gig Harbor, Pacific, Ruson and Steilacoom ~~the remaining cities and towns within the boundary of Pierce Transit.~~
8. One ~~One~~ non-voting labor official selected as provided by law

~~a.~~ a. Pierce Transit shall request the city and town councils of Fife, Edgewood, Milton, Fife, Edgewood, and Milton; and Auburn, Fircrest, Gig Harbor, Pacific, Ruston, and Steilacoom to nominate an elected official~~a~~ representative to the board of commissioners of Pierce Transit as provided in above. The request for nomination shall be sent on the second Wednesday in ~~February~~ January. The nomination deadline shall be the ~~fourth~~ second Wednesday in ~~March~~ February.

b. The list of prospective nominees shall be mailed to the town and city councils for a vote on the ~~fourth-second~~ Friday in ~~March~~February. The city and town councils shall have until ~~May 1st~~second Wednesday in March to return the ballots.

c. The ballots shall be accompanied by a certified copy of the council resolution or motion. The clerk of the board of Pierce Transit shall count the ballots and announce the results of the balloting to the board of commissioners.

d. A plurality of ballots cast shall determine the winner.

e. In the event of a tie, the city and town councils shall have an additional thirty days to reconsider. The ballot procedure will be repeated until a winner is selected by a plurality vote.

B. All members of the Pierce Transit board must be elected officials ~~of the jurisdiction they represent.~~

C. The members of the board of Pierce Transit shall be selected in the following manner and shall serve the following terms: members shall be selected to serve a three-year term. ~~One representative of the city of Tacoma shall be selected to the board each year. One representative of the Pierce County Government shall be selected to the board each year. All members shall serve a term of three years, with the relative balance of the City of Tacoma and Pierce County representatives preserved thereby. Each voting member shall hold office until the expiration of the term for which he/she is elected and until his/her successor has been selected and properly qualified.~~

~~An exception to the three-year term as provided in this chapter shall be the first two terms of the Puyallup/University Place representatives, which shall each consist of two years, rotating between the two municipalities. After the first two two-year terms, the term shall be for three years as provided by this chapter.~~

~~D. The members shall be selected on or before the first of May. (Res. 79-1 (part); Res. 82-120 §2; Res. 84-098 §1 (Ex. I (part)); Res. 86-082 (Ex. I (Part)))~~

Chapter 2.08--MEETINGS

Sections:

2.08.010	Regular.
2.08.020	Special.
2.08.030	Quorum.
2.08.040	Chairperson.
2.08.050	Voting.
2.08.060	Order of business.
2.08.070	Conduct.
2.08.080	Authority decisions.
2.08.090	Responsibilities.
2.08.100	Compensation.

2.08.010 Regular. The regular meetings of the board of Pierce Transit shall be held at 3701 96th Street S.W., Lakewood, Washington, at the hour of 4:00 p.m. on the second Monday of each month. However, the board may designate an alternative regular meeting location and/or an alternative regular meeting date whenever the board finds it in the best interests of Pierce Transit. (Res. 82-120 §3(a); Res. 84-098 §1(Ex. I(part)); Res. 85-099 §1; Res. 87-024 §1(Ex. I); Res. 90-028 §1; Res. 91-007 §1)

2.08.020 Special. Special meetings of the board may be called by the chairperson.

A majority of the members of the board of Pierce Transit may call a meeting by signing a request that same be called and delivering the request to the clerk of the board who shall forthwith give notice to the public and members of the board of the time and place of the meeting which notice shall be given not less than 24 hours before the time specified for such meeting and such request. (Res. 82-120 §3(b); Res. 84-098 §1(Ex. I(part)))

2.08.030 Quorum. At all meetings of the board a majority of the members of the board shall constitute a quorum for the transaction of business, but a less number may adjourn from time to time and may compel the attendance of absent members in such manner and under such penalties as may be prescribed by resolution. (Res. 82-120 §3(c); Res. 84-098 §1(Ex. I(part)))

2.08.040 Chairperson. The chairperson shall preside at all meetings of the board. In the event of his/her absence from any meeting, the vice-chairperson shall perform the duties of the chairperson, as outlined in Section 2.16.030 of these bylaws. Absence is defined as the chairperson being unable or unwilling to conduct the duties and business of the position of chairperson. (Res. 82-120 §3(d); Res. 84-098 §1(Ex. I(part)))

2.08.050 Voting. All members in attendance, including the chairperson, at board meetings shall vote on matters brought before the authority (unless excused by a majority of members in attendance). Motions drawing a tie vote shall be deemed lost. All votes taken shall be by voice vote unless a roll call is requested by a member of the board present at the meeting. (Res. 82-120 §3(e); Res. 84-098 §1(Ex. I (part)))

2.08.060 Order of business. The order of business at board meetings shall be the following, except whereby, upon a majority vote, the order of business may be suspended:

- A. Call to order;
- B. Roll call;
- C. Approval of minutes;
- D. Approval of vouchers;
- E. Public comment;
- F. Public hearings;
- G. Presentations;
- H. Consent agenda;
- I. Regular agenda;
- J. Miscellaneous board items;
- K. Miscellaneous staff items;
- L. Executive session;
- M. Adjournment.

The clerk of the board may alter the order of business for a particular board meeting for purposes of efficiency or to accommodate special needs of board members, staff or the public upon direction of, or with the approval of, the chairperson or chief executive officer. (Res. 82-120 §3(f); Res. 84-098 §1 (Ex. I(part)))

2.08.070 Conduct. Robert's Rules of Order Newly Revised shall govern the conduct of board meetings except where in conflict with these bylaws or other resolution of the board. (Res. 82-120 §3(g); Res. 84-098 §1(Ex. I(part)))

2.08.080 Authority decisions. A majority vote of the members at a meeting at which a quorum is present shall be the act of the authority. The majority vote must have at least four affirmative votes if only five members are present, or if only five members vote (excluding abstentions) on an authority act, in order to be an authority decision unless a greater number is required by law or by the bylaws. (Res. 82-120 §3 (h); Res. 84-098 §1(Ex. I (part)))

2.08.090 Responsibilities. The board shall be responsible for conducting the legislative business of Pierce Transit. The board shall also review periodically the staff administration of Pierce Transit. Nothing in these bylaws is intended to limit the general powers of the board of Pierce Transit pursuant to Chapter 36.57A RCW or hereinafter amended. (Res. 82-120 §3(i); Res. 84-098 §1(Ex. I(part)))

2.08.100 Compensation. Each board member shall be entitled to the maximum per diem compensation as set forth in RCW 36.57A.050, as enacted or hereafter amended, unless a different amount is established by resolution of the board. Each board member shall be compensated under the following circumstances:

1. For attending a regular or special meeting as defined under Pierce Transit Code Sections 2.08.010 and 2.08.020, respectively.

2. For performing prescribed duties approved by the chairperson. (Res. 90-147; Res. 90-047; Res. 87-149)

Chapter 2.12--CHAIRPERSON

Sections:

- 2.12.010 Election.
- 2.12.020 Term.
- 2.12.030 Duties.

2.12.010 Election. The chairperson shall be a member of the board elected by the members by majority vote at a regular or special meeting of the board. (Res. 82-120 §4(a)(1); Res. 84-098 §1(Ex. I(part)))

2.12.020 Term. The chairperson shall be elected from among the members at a first meeting in June of each year. In the event of a vacancy, the members will elect a new chairperson at the next regular meeting. A board member shall not serve as chairperson for more than two consecutive one-year terms, effective May 1983. (Res. 82-120 §4(a) (2); Res. 84-098 §1(Ex. I(part)))

2.12.030 Duties. In addition to the powers and duties granted by these bylaws, the chairperson shall have such other powers and duties as shall be prescribed by law or by resolution of the board. (Res. 82-120 §4(a) (3); Res. 84-098 §1(Ex. I(part)))

Chapter 2.16--VICE-CHAIRPERSON

Sections:

- 2.16.010 Election.
- 2.16.020 Term.
- 2.16.030 Duties.

2.16.010 Election. The vice-chairperson shall be a member of the board elected by the members by majority vote at a regular or special meeting of the board. (Res. 82-120 §4(b) (1); Res. 84-098 §1(Ex. I(part)))

2.16.020 Term. The vice-chairperson shall be elected from among the members at the first meeting in ~~June~~ February of each year. In the event of a vacancy, the members will elect a new vice-chairperson at the next regular meeting. A board member shall not serve as vice-chairperson for more than two consecutive one-year terms, effective May 1983. (Res. 82-120 §4(b) (2); Res. 84-098 §1(Ex. I(part)))

2.16.030 Duties. In addition to the powers and duties granted by these bylaws, the vice-chairperson shall have such other powers and duties as shall be prescribed by law or by resolution of the board. In the absence of the chairperson, the vice-chairperson shall perform the duties of the chairperson, and when so acting, shall have all the powers of and be subject to all the restrictions upon the chairperson. The vice-chairperson shall perform other duties as may be assigned to him/her by the chairperson or by the board of commissioners. (Res. 82-120 §4(b) (3); Res. 84-098 §1(Ex. I(part)))

Chapter 2.20--CLERK OF THE BOARD

Sections:

- 2.20.010 Appointment.
- 2.20.020 Duties.
- 2.20.030 Minutes.
- 2.20.040 Resolutions.
- 2.20.050 Other legal documents.

2.20.010 Appointment. The board of commissioners and the chief executive officer shall appoint a clerk of the board who shall have such power and perform such duties as prescribed by law, or action of the board. (Res. 82-120 §8(a); Res. 84-098 §1(Ex. I(part)))

2.20.020 Duties.

A. The clerk of the board serves as a liaison between the board and Pierce Transit staff. The clerk of the board shall respond to requests from members of the board. The clerk of the board, in addition to his/her other duties shall be responsible for documenting compensation paid to the board in accordance with "Meeting Compensation Guidelines" as approved by the board. The clerk of the board shall also be responsible for keeping the minutes, resolutions of the board, and all other legal documents. Such records shall be kept at the principal office of the authority and shall be made available for inspection by the public in accordance with state law.

B. The clerk of the board is designated as the employee responsible for distribution of all American Public Transportation Association transit board members committee communications to members of the board of Pierce Transit. (Res. 82-96 §1; Res. 82-120 §8(b); Res. 84-098 §1(Ex. I(part)))

2.20.030 Minutes.

A. The clerk of the board shall cause to be recorded electronically all of the regular and special Pierce Transit board meetings and shall maintain these recordings for such period of time as may be required by applicable state laws and regulations.

B. At the conclusion of each regular or special meeting of the Pierce Transit board, the

clerk of the board shall cause the minutes to be prepared in a brief and concise manner, which minutes shall contain an accurate resume of the board's official action with reference to all matters properly before it.

C. Minutes of board meetings shall be mailed to each member of the board following each meeting. The official copy for each meeting shall be signed by the chairperson and clerk of the board and shall become part of the permanent records file. (Res. 82-120 §8(c); Res. 84-098 §1(Ex. I (part)))

2.20.040 Resolutions. The clerk of the board shall cause resolutions to be prepared as documentation of certain board action. Resolutions are signed by the board chairperson and the clerk of the board and are made a part of the permanent records file. (Res. 82-120 §8(d); Res. 84-098 §1(Ex. I(part)))

2.20.050 Other legal documents. All written contractual obligations of Pierce Transit, including, but not limited to, contracts, leases, and assignments are to be referenced by the clerk of the board and made part of the agency record files, which shall be maintained as required by law. (Res. 82-120 §8(e); Res. 84-098 §1(Ex. I (part)))

Chapter 2.24--APPOINTED POSITIONS

Sections:

- 2.24.010 Chief executive officer
- 2.24.020 Legal counsel.
- 2.24.030 Committees.

2.24.010 Chief executive officer. The board shall appoint a chief executive officer who shall be responsible for the administrative functions of Pierce Transit and who shall have such power and perform such duties as shall be prescribed by law and action of the board. (Res. 82-120 §5; Res. 84-098 §1(Ex. I(part)))

2.24.020 Legal counsel. The board may appoint legal counsel as necessary. (Res. 82-120 §6; Res. 84-098 §1(Ex. I (part)))

2.24.030 Committees. Committees of the board shall be created from time to time by act of the board as needed to facilitate the conduct of business. Except where a motion is adopted with respect to a particular committee specifying a different method of appointment, the chairperson shall make the appointments to such committees. Terms of the committees should coincide with the term of the chairperson. (Res. 82-120 §7; Res. 84-098 §1(Ex. I(part)))

Chapter 2.28--GENERAL PROVISIONS

Sections:

- 2.28.010 Contracts.
- 2.28.020 Warrants.
- 2.28.030 Notes.
- 2.28.040 Deposits.
- 2.28.050 Gifts.
- 2.28.060 Resolutions.
- 2.28.070 Amendments.

2.28.010 Contracts. The board may authorize any officer or officers, agent or agents of Pierce Transit, in addition to the officers so authorized by resolution, to enter into any contract or execute and deliver any instrument in the name of and on behalf of Pierce Transit, and such authorization may be general or may be confined to specific instances. (Res. 82-120 §9 (a); Res. 84-098 §1(Ex. I (part)))

2.28.020 Warrants. All disbursements of Pierce Transit shall be by warrant drawn by the vice president, finance and administration auditor or as otherwise directed by law. All requests for warrants shall be signed as directed by board resolution. (Res. 82-120 §9 (b); Res. 84-098 §1(Ex. I (part)))

2.28.030 Notes. All notes or other evidence of indebtedness, including bills, issued or incurred in the name of Pierce Transit, shall be signed by such officer, member, agent or employee of Pierce Transit, and in such manner as shall from time to time to be determined by resolution of the board. (Res. 82-120 §9 (c); Res. 84-098 §1(Ex. I(part)))

2.28.040 Deposits. All funds of Pierce Transit shall be deposited in the appropriate funds established by resolution. The vice president, finance and administration shall be custodian of the funds and is, subject to approval by resolution of the board, authorized to invest such funds in the manner provided by law. (Res. 82-120 §9 (d); Res. 84-098 §1(Ex. I(part)))

2.28.050 Gifts. The board may accept on behalf of Pierce Transit any contribution, gift, bequest, or devise, for any purpose of Pierce Transit. (Res. 82-120 §9(e); Res. 84-098 §1(Ex. I(part)))

2.28.060 Resolutions. The vote on all formal resolutions of the board shall be recorded in the minutes, and each such resolution shall be signed by the chairperson and the clerk of the board. (Res. 82-120 §10; Res. 84-098 §1(Ex. I(part)))

2.28.070 Amendments. These bylaws may be added to or changed by an affirmative vote of five members in attendance at any board meeting where a 30-day written notice of such meeting has been sent to all legislative bodies within the jurisdiction of Pierce Transit. The 30-day written notice shall advise all of the legislative bodies within the boundaries of Pierce Transit of the proposed changes which are to be considered. (Res. 82-120 §11; Res. 84-098 §1(Ex. I (part)))

RESOLUTION NO. 12-

A RESOLUTION of the Board of Commissioners of Pierce Transit
Amending the Bylaws

WHEREAS, by Resolution No. 79-4, approved May 21, 1979, Pierce Transit adopted a set of
Bylaws; and

WHEREAS, those Bylaws were amended and codified as Part of the Pierce Transit Code in
1983; and

WHEREAS, a Public Transportation Benefit Area board composition review meeting was held
on April 12, 2012, as provided by Ch. 36.57A RCW, and a plan was approved to change the composition of the
Pierce Transit Board of Commissioners ("Board"); and

WHEREAS, as a result of the change in the Board the Fife, Edgewood and Milton City
Councils collectively will be entitled to representation by one elected official, selected by their City Councils, on
the Board; and

WHEREAS, the remaining cities and towns of Auburn, Gig Harbor, Fircrest, Pacific, Ruston,
and Steilacoom collectively will be entitled to representation by one elected official, selected by their City
Councils, on the Board; and

WHEREAS, the Cities of Lakewood, Puyallup and University Place will each be entitled to
representation by one elected official, selected by each of their City Councils, on the Board; and

WHEREAS, the City of Tacoma and Pierce County will each be entitled to representation by
two elected officials, selected by each of their City and County Councils; and

WHEREAS, in accordance with Section 2.28.070 of the Pierce transit Code, a 30-day written
notice of the proposed changes has been sent to all legislative bodies within the jurisdiction of Pierce Transit.

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Pierce Transit as
follows:

Section 1. The Bylaws of the Pierce Transit board of Commissioners are hereby amended per
Exhibit I that is attached and incorporated by reference herein.

ADOPTED by the Board of Commissioners of Pierce Transit at a regular meeting thereof held
on the 11th day of June, 2012.

Marilyn Strickland, Chair
Board of Commissioners

ATTEST:

Treva Percival, MMC
Clerk of the Board



**Business of the City Council
City of Gig Harbor, WA**

Subject:
Skansie House Improvements – Consultant Services Contract/Cross Engineers, Inc.

Dept. Origin: Engineering

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

Proposed Council Action:
Approve and authorize the Mayor to execute a Consultant Services Contract with Cross Engineers, Inc., in the not to exceed amount of \$5,385.00.

For Agenda of: May 29, 2012

Exhibits: Consultant Services Contract and Scope of Services

	Initial & Date
Concurred by Mayor:	<u>CLH 5/22/12</u>
Approved by City Administrator:	<u>R. 5/22/12</u>
Approved as to form by City Atty:	<u>via email 5/17/12</u>
Approved by Finance Director:	<u>[Signature] 5/22/12</u>
Approved by Department Head:	_____

Expenditure Required	\$5,385.00	Amount Budgeted	\$85,000.00	Appropriation Required	\$0
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INFORMATION/BACKGROUND

A budgeted 2012 Parks Objective provides for improvements to the Skansie House so that a Request for Proposals can go out to non-profit organizations wishing to utilize the first floor (excluding the front room) to benefit the community.

In order to complete the required improvements, an electrical design is needed to determine work necessary to perform electrical lighting and power system repair/upgrades.

Cross Engineers, Inc. was selected from the City's Consultant Roster under the Electrical Engineer Services category.

FISCAL CONSIDERATION

The 2012 Parks Development budget, Objective #3, provides \$85,000 to perform essential repairs on the main floor, including electrical and plumbing.

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION/MOTION

Approve and authorize the Mayor to execute a Consultant Services Contract with Cross Engineers, Inc., in the not to exceed amount of \$5,385.00.

PROFESSIONAL SERVICES CONTRACT
(Architects, Engineers, Land Surveyors, Landscape Architects)
BETWEEN THE CITY OF GIG HARBOR AND
CROSS ENGINEERS, INC.

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (the "City"), and Cross Engineers, Inc., a corporation organized under the laws of the State of Washington (the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in Skansie House Engineering Services for Electrical Design 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 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 Five Thousand Three Hundred Eighty-Five Dollars and No Cents (\$5,385.00) 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 B – Schedule of Rates and Estimated Hours. The Consultant shall not bill for Consultant's staff not identified or listed in Exhibit B or bill at rates in excess of the hourly rates shown in Exhibit B, unless the parties agree to a modification of this Contract, pursuant to Section 17 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 December 31, 2012; 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 shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits, including attorney's fees, arising out of or resulting from the acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

B. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then in the event of liability for damages arising out of bodily injury to persons or

damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees or volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

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 per occurrence. All policies and coverages shall be on an occurrence basis by an 'A' rated company licensed to conduct business in the State of Washington.

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. **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.

10. **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.

11. **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.

12. **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.

13. **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.

14. **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 Director of Operations 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.

15. **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:
CROSS ENGINEERS, INC.
ATTN: Scott Kelly
6509 6th Avenue
Tacoma, WA 98406
(253) 759-0118

CITY OF GIG HARBOR:
ATTN: Stephen Misiurak, P.E.
City Engineer
3510 Grandview Street
Gig Harbor, WA 98335
(253) 851-6170

16. **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. If applicable, any subconsultants approved by the City at the outset of this Agreement are named on **Exhibit C** attached hereto and incorporated herein by this reference as if set forth in full.

17. **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 _____, 20____.

CONSULTANT

CITY OF GIG HARBOR

By: Scott Kelly
Its: Cross Engineers, Inc

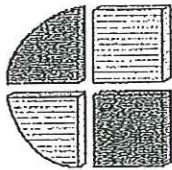
By: _____
Mayor Charles L. Hunter

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

**CROSS ENGINEERS, INC.**

May 8, 2012

City of Gig Harbor
Attn: Chuck Hunter
3510 Grandview Street
Gig Harbor, WA 98335

RE: Skansie House Electrical Work Scope

Mr. Hunter,
Please find below the electrical work scope for the Skansie:

Conceptual/ Schematic

1. As-Built existing electrical conditions.
2. Research reconditioning and energy saving retrofitting of existing light fixtures.
3. Provide conceptual/schematic lighting layout with equipment cut sheets.
4. Provide conceptual/schematic power layout of new devices as required.
(Limit the use of surface raceway wherever possible.)

Construction/ Bid Documents

1. Coordinate reconnection of existing electrical circuits to basement electrical service.
2. Prepare circuited lighting and power plans.
3. Provide connections to new mechanical equipment.
4. Indicate replacement of existing wiring from field verification of existing electrical .
5. Prepare division 16 electrical specifications.

Construction Administration

1. Respond to Contractor Request for Information (RFI's)
2. Attend Pre-Construction Meeting.
3. Final Punchlist and Backcheck.
4. Attendance at construction meetings is not required.

Our office has personnel available to permanently assign to this project with your notice to proceed and receipt of the Skansie house AutoCAD background. Please contact my office if there are additional workscope items or questions.

Sincerely,


Scott Kelly

Enclosures: Hourly Fee Breakdown for Skansie House



**Business of the City Council
City of Gig Harbor, WA**

Subject:
Skansie House Improvements – Consultant Services Contract/LNS Engineers, Inc.

Dept. Origin: Engineering

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

Proposed Council Action:
Approve and authorize the Mayor to execute a Consultant Services Contract with LNS Engineers, Inc., in the not to exceed amount of \$3,950.00.

For Agenda of: May 29, 2012

Exhibits: Consultant Services Contract and Scope of Services

	Initial & Date
Concurred by Mayor:	<u>CLH 5/22/12</u>
Approved by City Administrator:	<u>12-5/22/12</u>
Approved as to form by City Atty:	<u>via email 5/17/12</u>
Approved by Finance Director:	<u>DF 5/22/12</u>
Approved by Department Head:	_____

Expenditure Required	\$3,950.00	Amount Budgeted	\$85,000.00	Appropriation Required	\$0
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INFORMATION/BACKGROUND

A budgeted 2012 Parks Objective provides for improvements to the Skansie House so that a Request for Proposals can go out to non-profit organizations wishing to utilize the first floor (excluding the front room) to benefit the community.

In order to complete the required improvements, a mechanical design is needed to determine work necessary to perform heating and ventilation system and plumbing system repair/upgrades.

LNS Engineers, Inc. was selected from the City's Consultant Roster under the Mechanical Engineer Services category.

FISCAL CONSIDERATION

The 2012 Parks Development budget, Objective #3, provides \$85,000 to perform essential repairs on the main floor, including electrical and plumbing.

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION/MOTION

Approve and authorize the Mayor to execute a Consultant Services Contract with LNS Engineers, Inc., in the not to exceed amount of \$3,950.00.

PROFESSIONAL SERVICES CONTRACT
(Architects, Engineers, Land Surveyors, Landscape Architects)
BETWEEN THE CITY OF GIG HARBOR AND
LNS ENGINEERS, INC.

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (the "City"), and LNS Engineers, Inc., a corporation organized under the laws of the State of Washington (the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in Skansie House Engineering Services for Mechanical Design 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 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 Nine Hundred Fifty Dollars and No Cents (\$3,950.00) 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 B – Schedule of Rates and Estimated Hours**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit B** or bill at rates in excess of the hourly rates shown in **Exhibit B**, unless the parties agree to a modification of this Contract, pursuant to Section 17 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 December 31, 2012; 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 shall defend, indemnify and hold the City, its officers, officials, employees and volunteers harmless from any and all claims, injuries, damages, losses or suits, including attorney's fees, arising out of or resulting from the acts, errors or omissions of the Consultant in performance of this Agreement, except for injuries and damages caused by the sole negligence of the City.

B. Should a court of competent jurisdiction determine that this Agreement is subject to RCW 4.24.115, then in the event of liability for damages arising out of bodily injury to persons or

damages to property caused by or resulting from the concurrent negligence of the Consultant and the City, its officers, officials, employees or volunteers, the Consultant's liability hereunder shall be only to the extent of the Consultant's negligence. It is further specifically and expressly understood that the indemnification provided herein constitutes the Consultant's waiver of immunity under Title 51 RCW, solely for the purposes of this indemnification. This waiver has been mutually negotiated by the parties.

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 per occurrence. All policies and coverages shall be on an occurrence basis by an 'A' rated company licensed to conduct business in the State of Washington.

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. **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.

10. **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.

11. **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.

12. **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.

13. **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.

14. **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 Director of Operations 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.

15. **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:
LSN ENGINEERS, INC.
ATTN: Larry N. Storset, P.E.
P.O. Box 2598
Gig Harbor, WA 98335
(253) 851-5175

CITY OF GIG HARBOR:
ATTN: Stephen Misiurak, P.E.
City Engineer
3510 Grandview Street
Gig Harbor, WA 98335
(253) 851-6170

16. **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. If applicable, any subconsultants approved by the City at the outset of this Agreement are named on **Exhibit C** attached hereto and incorporated herein by this reference as if set forth in full.

17. **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 _____, 20_____.

CONSULTANT

By: 
Its: PRESIDENT

CITY OF GIG HARBOR

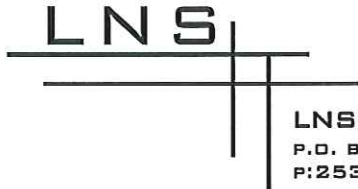
By: _____
Mayor Charles L. Hunter

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney



LNS ENGINEERS, INC.
P.O. BOX 2598, GIG HARBOR, WASHINGTON 98335
P: 253.851.5175 • E-MAIL: LARRY.STORSET@LNSENGINEERS.COM

April 16, 2012

City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335

Attn: Chuck Hunter

Re: Gig Harbor Skansie House
Mechanical Engineering Fee Proposal

We are pleased to provide the following proposal for engineering services for mechanical design of the Skansie House for the City of Gig Harbor. Engineering services shall be provided on an hourly basis **Not to Exceed \$ 3,950.00** as follows:

Skansie House:

Schematic Design Phase:

- Provide field review of existing building mechanical and plumbing systems to document extent of demolition required and document existing conditions necessary to upgrade the house to a commercial office use.
- Prepare concept designs for presentation to City of Gig Harbor for heating and ventilating the main floor of the house utilizing a gas furnace or heat pump.
- Provide heating for the upper floor to be used for storage (to be served from same furnace system serving the main floor with air transfers through the floor/ceiling assembly).
- Provide plumbing system repair/upgrade for the main floor to maintain the historic features of the house utilizing existing fixtures where feasible and new fixtures where necessary. Submit product data for City of Gig Harbor review for new fixtures (if necessary) for historic compliance.
- Submit Schematic Design for City of Gig Harbor attend review meeting on site (Skansie House)

Construction Document Design/Bid Phase:

- Prepare construction documents for public bid/permit submittal of the mechanical heating and ventilation system and plumbing system repair/upgrade utilizing the Small Works Roster.
- Prepare Washington State Energy Code Mechanical NREC Forms.
- Prepare Division 22 and 23 plumbing and mechanical bid specifications with Division 1 specifications provided by the City of Gig Harbor.
- Attend pre-bid walkthrough with prospective bidders during the bid phase.
- Prepare addenda as necessary during the bid process.

Construction Period Services:

- Provide submittal review of product data.
- Provide site observation visits during construction to review progress of work for compliance with construction documents (2 site visits during construction).
- Prepare site observation reports.
- Respond to RFI's during construction.
- Provide mechanical punch list at completion of project with follow up review.

Skansie House Mechanical Engineering Fee Proposal:

Schematic Design Phase Fee:	\$ 1,195.00
Construction Document Design/Bid Phase Fee:	\$ 1,675.00
Construction Period Services:	<u>\$ 1,080.00</u>
Skansie House Mechanical Engineering Fee Total:	\$ 3,950.00

See attached hourly breakdown of services for each phase.

Bid Drawing Preparation:

Mechanical drawings shall be prepared in AutoCad format (dwg) utilizing drawings provided by the City of Gig Harbor.

Exclusions:

- Exterior site utilities except connection to outside sewer and coordination with Puget Sound Energy for gas service if gas heating is provided.
- Cost Estimating
- As-Built Drawing preparation

Additional Services:

- Additional services will be provided on an hourly basis per the Hourly Rate Schedule below when authorized.

We look forward to working with you on this project.

Sincerely,
LNS Engineers, Inc.



Larry N. Storset, P.E., CxA, LEED AP
President

LNS Engineers, Inc. Hourly Rate Schedule

Principal:	\$ 135.00/hour
Mechanical Engineer:	\$ 125.00/hour
CAD Drafting:	\$ 65.00/hour
Clerical:	\$ 50.00/hour

LNS Engineers Fee Breakdown

Task Description	Principal	Mechanical Engineer	CAD Drafter	Clerical
Schematic Design Phase				
Field Review/As-Built Conditions	2			
Heating Load Calculations		1		
Schematic Heating & Ventilation Plan	2		2	
Schematic Plumbing Plan	1		2	
Schematic Plan Review Meeting	1			
Construction Document Design/Bid Phase				
Construction Bid/Permit Drawings	3		4	
Washington State NREC Forms	1			
Division 22 & 23 Specifications	4			4
Pre-Bid Walkthrough	1			
Construction Support Services				
Submittal Review	2			
Site Observation Visits (2 total)	2			
Site Observation Reports (2 total)	1			
Mechanical Punch List & Backcheck	3			
Total Hours	23	1	8	
Hourly Rate	\$ 135.00	\$ 125.00	\$ 65.00	\$ 50.00
Cost	\$ 3,105.00	\$ 125.00	\$ 520.00	\$ 200.00

Total Engineering Fee Proposal: \$ 3,950.00

Subject: Wheeler Street End – Record of Survey Consultant Services Contract with David Evans and Associates, Inc.

Proposed Council Action: Approve and authorize the Mayor to execute the Consultant Services Contract with David Evans & Associates, Inc. in the not-to-exceed amount of \$6,200.00.

Dept. Origin: Public Works/Engineering

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

For Agenda of: May 29, 2012

Exhibits: Consultant Services Contract
Exhibit A – Scope of Services
Tacoma Survey Hourly Rates

	Initial & Date
Concurred by Mayor:	<u>CCM 5/24/12</u>
Approved by City Administrator:	<u>R 5/24/12</u>
Approved as to form by City Atty:	<u>5/24/12 via email</u>
Approved by Finance Director:	<u>5/24/12</u>

Expenditure Required	\$6,200.00	Amount Budgeted	See Fiscal Consideration below	Appropriation Required	0
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INFORMATION / BACKGROUND

At the May 11th City Council Budget retreat, Council directed staff to perform an in depth boundary line survey in order to definitively determine the limits of city owned right of way along the Wheeler Avenue street end. This contract with David Evans and Associates, Inc. (DEA) will complete a boundary survey, monument establishment and filing a Record of Survey.

FISCAL CONSIDERATION

Available funding will come by the savings realized from the Pioneer/ Harborview Clock tower project for the budgeted amount of \$40,000 that is on hold pending selection of an alternate site location with the Gig Harbor Waterfront Association.

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION / MOTION

Move to: Approve and authorize the Mayor to execute the Consultant Services Contract with David Evans and Associates, Inc. in the not-to-exceed amount of \$6,200.00.

**CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
DAVID EVANS & ASSOCIATES, INC.**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (the "City"), and David Evans & Associates, Inc., a corporation organized under the laws of the State of Washington (the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in survey of the Wheeler Street End 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 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 Six Thousand Two Hundred Dollars and Zero Cents (\$6,200.00) 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 B – Schedule of Rates and Estimated Hours**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit B** or bill at rates in excess of the hourly rates shown in **Exhibit B**, unless the parties agree to a modification of this Contract, pursuant to Section 17 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 July 2, 2012; 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,

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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 per occurrence. All policies and coverages shall be on an occurrence basis by an 'A' rated company licensed to conduct business in the State of Washington.

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. 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.

10. 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.

11. 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.

12. 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.

13. 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.

14. 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 Director of Operations 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.

15. 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:
David Evans & Associates, Inc.
ATTN: Sean Douthett
3700 Pacific Hwy East, Suite 311
Tacoma, WA 98424

City of Gig Harbor
ATTN: Stephen Misiurak, P.E.
City Engineer
3510 Grandview Street
Gig Harbor, WA 98335
(253) 851-6170

16. 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. If applicable, any subconsultants approved by the City at the outset of this Agreement are named on **Exhibit C** attached hereto and incorporated herein by this reference as if set forth in full.

[the remainder of this page left intentionally blank]

17. **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 _____, 20____.

CONSULTANT

CITY OF GIG HARBOR

By: _____
Its: _____

By: _____
Mayor Charles L. Hunter

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney

EXHIBIT A

SCOPE OF SERVICES

CITY OF GIG HARBOR - WHEELER AVENUE PARK

RECORD OF SURVEY

INTRODUCTION

The City of Gig Harbor (CITY) intends to develop a park at the southerly end of Wheeler Avenue NW near the shoreline of Gig Harbor. David Evans and Associates, Inc. (DEA) will assist the CITY with the development of a portion of this project. DEA's work will involve completing a boundary survey, setting monuments and filing a Record of Survey.

SCOPE OF SERVICES

- DEA shall complete a boundary survey of the Wheeler Avenue public right of way between Vernhardson Street and the top of bank of Gig Harbor waterway;
- DEA shall set monuments at the intersection of the Wheeler Avenue right of way margins with the southerly right of way margin of Vernhardson Street, and with the top of bank of the Gig Harbor waterway. The monuments (4 total) will consist of a two-foot long 5/8-inch diameter rebar with plastic cap and a one-foot tall 2"x2" white witness post. New monuments will only be set if a monument does not already exist at the position;
- DEA shall prepare a record of survey and will file it with Pierce County;
- DEA shall provide internal QA/QC review and Professional Land Surveyor oversight throughout the entire design process.

DELIVERABLES

DEA shall provide four monuments set along the Wheeler Ave right of way margins, an electronic PDF copy and a mylar copy of the record of survey with County recording information, and the electronic AutoCAD V2008 file of the record of survey.

SERVICES OR INFORMATION PROVIDED BY THE CITY

- Permission to access onto adjoining private property and City rights of way;
- Provide all street right of way vacation information for Wheeler Avenue;
- Provide all available maps, plans, deeds, and other documents not available from other sources;
- Provide title reports (or subdivision guarantee), complete with all supporting documents such as deeds and encumbrances, etc., for Pierce County Tax Parcel No's 022105-2040, 226000-0130, 226000-0140, and 226000-0240.

PROJECT SCHEDULE

DEA is available to begin work immediately upon receipt of fully executed authorization of the Scope of Work, and receipt of all title reports. DEA can provide the project deliverables to the CITY within thirty (30) days.

FEES

DEA will be reimbursed on a time and expenses basis with a not to exceed fee of \$6,200.00. Reimbursable expenses are anticipated to be \$300.00. Time and expenses rates will be based on the attached DEA Tacoma Survey 2011-2012 Hourly Rates.

REIMBURSABLES

Reimbursable expenses to the extent possible will be minimized. However some expenses should be anticipated for various portions of the project. Reimbursable expenses may include:

- Fees payable to various agencies for copies of legal documents obtained during the research phase of the project.
- Vehicle mileage.
- Postage and mailing.
- County recording fees.

EXHIBIT B - SCHEDULE OF RATES
AND ESTIMATED HOURS



DAVID EVANS
AND ASSOCIATES INC.

**TACOMA SURVEY
2011-2012 HOURLY RATES**

PROFESSIONAL CLASSIFICATION	HOURLY BILLING RATE
	Regular
ADMINISTRATIVE	
Administrative Assistant (ADMA)	\$ 85.00
Contract Administrator (CONT)	\$ 95.00
SURVEYING	
Survey Manager (SVYM)	\$ 175.00
Senior Professional Land Surveyor (SPLS)	\$ 145.00
Professional Land Surveyor (PLSU)	\$ 130.00
1-Person Survey Crew	\$ 110.00
2-Person Survey Crew	\$ 160.00
3-Person Survey Crew	\$ 230.00
Laser Scanning Office Tech (SCTE)	\$ 120.00
Project Surveyor (PSVR)	\$ 120.00
Survey Technician (SVTE)	\$ 95.00
NON-LABOR EXPENSES	
3-D Laser Scanner	\$ 520.00 per day
Mileage	\$ 0.55 per mile
Per Diem: Meals	\$ 39.00 per day
Per Diem: Lodging	\$ 80.00 per day
Other Expenses	Cost plus 10%

Subject: Supervisors Guild Contract

Proposed Council Action:

Approve the Supervisory Bargaining Unit Contract for the years 2012 – 2014 as shown in Exhibit 1 to this Council Bill.

Grant Supervisory Bargaining Unit a 3% cost of living increase retroactive to January 1, 2012 and implement compensation changes as shown in Attachments A & B in Exhibit 1 to this Council Bill.

Dept. Origin: Administration

Prepared by: Dennis Richards

For Agenda of: May 29, 2012
Exhibits: Exhibit 1 – Guild Contract
Initial & Date

Concurred by Mayor:

Approved by City Administrator: DR-5/24/12

Approved as to form by City Atty: _____

Approved by Finance Director: DR 5/24/12

Approved by Department Head: _____

Expenditure	Amount	Appropriation
Required	Budgeted	Required
Approx. \$1.1million in 2012	\$1.107million	\$0

INFORMATION / BACKGROUND

The Supervisory Bargaining Unit contract expired on December 31, 2011. For the past several months, the City has been in negotiations with the Supervisory Guild for new contracts for 2012 – 2014. As a result of the negotiations, the attached agreement is before the City Council for consideration and approval. The Supervisory Bargaining Unit has agreed to let the Emergency Management Position, currently within their Guild, be removed.

FISCAL CONSIDERATION

The total compensation amounts as outlined in this proposed contract, including salaries and benefits, were assumed in the 2012 Adopted Budget.

BOARD OR COMMITTEE RECOMMENDATION

N/A

RECOMMENDATION / MOTION

Move to:

Approve the Employee Guild Contract for the Years 2012 – 2014 as shown in Exhibit 1 to this Council Bill.

Grant Supervisory Bargaining Unit employees a 3% cost of living increase retroactive to January 1, 2012 and implement compensation changes as shown in Attachment A of Exhibit 1 to this Council Bill.

AGREEMENT

By and Between

CITY OF GIG HARBOR

And

**GIG HARBOR EMPLOYEES' GUILD
SUPERVISORY BARGAINING UNIT**

2012 - 2014

PREAMBLE

This Agreement is made and entered into by and between the City of Gig Harbor, hereinafter referred to as the "Employer", and the Gig Harbor Employees' Guild Supervisory Bargaining Unit, hereinafter referred to as the "Guild". The purpose of this Agreement is to set forth the entire understanding reached between the parties with respect to wages, hours of work and conditions of employment for employees of the Employer who are represented by the Guild as set forth in Article I herein.

ARTICLE I - RECOGNITION

The Employer hereby recognizes the Guild as the exclusive bargaining representative for employees employed by the Employer as certified by the State of Washington, Department of Labor and Industries in Case No. 09524-E-91-01579, issued July 20, 1992. The bargaining unit covered by this Agreement shall include the City Engineer, Information Systems Manager, Planning Director, Building Official/Fire Marshall, Tourism Marketing Director, Court Administrator, Wastewater Treatment Plant Supervisor and Public Works Superintendent.

ARTICLE II - MEMBERSHIP

Section 1. All employees who are members of the Guild on the effective date of this Agreement and all employees who may become members thereafter during the life of this Agreement shall as a condition of employment remain members of the Guild in good standing for the term of this Agreement.

Section 2. The Employer upon permission from the Supervisory Bargaining unit, may deduct monthly dues uniformly required in the bargaining unit from employees who voluntarily execute a wage assignment authorization form. If performed, the Employer shall transmit such deduction to the Guild by check payable to its order. Upon issuance and transmission of such deduction the Employer's responsibility shall cease with respect to such deductions.

The Guild members (as listed in Article I recognition) may authorize the assignment of wages for payment of Guild dues hereby undertake to indemnify and hold the Employer harmless from all claims, demands, suits, or other forms of liability that may arise against the Employer for or on account of any deduction made from wages of such employee.

ARTICLE III - NONDISCRIMINATION

Section 1. The Employer and the Guild agree that the administration and application of this Agreement shall be consistent with applicable state and federal laws regarding nondiscrimination in employment.

Section 2. No employee covered by this Agreement shall be discriminated against because of his/her membership or non-membership in the Guild, or lawful activities on behalf of the Guild; provided, however, that such activity shall not be conducted during working hours nor be allowed to interfere with the Employer's operations except as defined herein.

ARTICLE IV - HOURS OF WORK AND OVERTIME

Section 1. Normal workweek. The normal workweek, with a period beginning on Monday and ending on Sunday, shall consist of forty (40) hours. The normal workday shall consist of eight (8) hours per day in each of five (5) consecutive days or four (4) consecutive, ten (10) hour days. The normal workday may be adjusted by the City Administrator in order to allow flexible work schedules (e.g. 9-8) or to require additional hours of work. The normal workweek and workday are goals. The normal workweek and workday schedules shall be defined by the Mayor or the Mayor's designee. The work year shall consist of two thousand and eighty (2,080) hours.

Section 2. Overtime. Overtime as used within this paragraph of the Agreement applies exclusively to the Wastewater Treatment Plant Supervisor and the Public Works Superintendent, positions. Overtime shall mean hours worked in excess of 40 hours in an established consecutive 7 day work period. Used sick leave, vacation and holidays shall count toward hours worked for the purpose of calculating overtime. Compensation for overtime shall be as set forth in subsections A through H of this article.

Overtime for managers, directors and administrators. Overtime as used within this paragraph of the Agreement applies exclusively to the City Engineer, Information Systems Manager, Planning Director, Building Official/Fire Marshall, Tourism Marketing Director and Court Administrator positions. Overtime shall be hours worked in excess of 40 hours in an established and consecutive 7 day work period. Used sick leave, vacation, and holidays shall count toward hours worked for the purpose of calculating overtime. Overtime shall be compensated at the rate of regular straight-time pay (monthly salary x 12 /2080) for the first five (5) consecutive hours of overtime worked in the work period. Hours in excess of forty-five consecutive hours in the work period shall be paid at the rate of one and one-half times the regular straight time pay. Overtime shall be compensated at the rate of two times the regular straight time pay for holidays and for hours worked on the last day off before a regular workweek (Sunday for employees working a normal Monday through Friday workweek) without regard to

the limitations set above. Overtime compensation for managers and directors is delimited by subsections A, C, D, E and F.

Sections A through H below shall apply to the Public Works Superintendent and Wastewater Treatment Supervisor.

- A.** All overtime must be authorized in advance by the City Administrator or the respective department head, except in cases of emergency.
- B.** Overtime shall be compensated at the rate of one-and-one half (1-1/2) times the regular straight-time pay (monthly salary x 12 /2080) for overtime worked as defined in this section (time worked in excess of 40 hours in a work week) except for holidays and for hours worked on the last day off before the start of the next work week. Overtime shall be compensated at the rate of two times the regular straight time pay for holidays and for hours worked on the last day off before a work week (Sunday for employees working a normal Monday through Friday work week).
- C.** Employees will receive a minimum of 3 hours of overtime pay for work requiring a return to work from home, or other non-work location during the employees regularly scheduled time off or while on call, such as for emergencies or meetings called by the employer. The pay rate for overtime worked under this paragraph will be determined according to Section 2b above.
- D.** Mandatory training on a regularly scheduled day off required by State, City or Departmental regulations as determined by the respective department head shall be compensated at one-and-one-half (1-1/2) times the employee's straight-time base hourly rate of pay with a minimum of two hours overtime compensation.
- E.** The option to compensate by compensatory time shall be arranged by mutual agreement between the Employer (City Administrator, Department Head or manager) and the Employee. The compensatory time shall be used within a reasonable period of time and may be denied by the Employer only if it would cause an undue hardship to the city's operation. Accrued compensatory time off shall be used at a time mutually agreeable to the Employer and the Employee. Employees may accrue a maximum of 80 compensatory time-off hours. If the employee works over time hours and has reached his/her maximum compensatory time hours, he/she shall be paid his/her regular pay according to Section 2b above.
- F.** Any employee required to return to work while on vacation shall earn pay at the employee's overtime rate for his/her scheduled shift. In addition, monetary compensation shall be paid to said employee for reimbursement of any actual expenses regarding the rescheduling of hotel/motel, airfare, etc.
- G.** When a member of the Guild completes an unscheduled shift in which 4 or more hours fall between the hours of 6:00 P.M. and 6:00 A.M. he/she shall be entitled to overtime

pay according to Article IV, section 2 for those hours worked between 6:00 P.M. and 6:00 A.M. In order for a shift to be scheduled, at least 24 hours notice must be given to the employee prior to the start of the shift.

- H. If a scheduled meeting occurs outside an employee's regular shift and involves the use of overtime, a minimum of one hour of overtime shall be earned. In order to qualify, the meeting must begin after 6:00 P.M.

Section 3. Workweek. The Employer retains the right to schedule the workweek in any manner, which may be required in order to meet the needs of the community.

ARTICLE V - WAGE RATES

Section 1 Wages and Salary Survey.

- A. **Wages.** Effective January 1, 2012, members of the Supervisor's Guild shall receive a cost-of-living increase in their salaries of three percent (3%). The salary schedule (see Attachment "A"), reflects adjustments required due to the salary range adjustment and to the cost of living increase for 2012.

Effective January 1, 2013, members of the Guild shall receive a cost of living wage increase in the salaries based on 100% of the annual increase of the June 2012 Seattle-Tacoma-Bremerton CPI-W, but not less than 0% nor greater than 3%.

Effective January 1, 2014, members of the Guild shall receive a cost of living wage increase in the salaries based on 100% of the annual increase of the June 2013 Seattle-Tacoma-Bremerton CPI-W, but not less than 0% nor greater than 3%.

- B. **Salary Survey.** The City shall initiate a salary survey of the Supervisor's Guild members (employee) wage rates prior to January 1st of each contract year, which shall analyze the appropriate wages for members relative to a selected group of cities agreed to by the parties. The results of this survey shall be compared with the current-year salary ranges at that time, and if the survey results disclose the salary range midpoint for any of the following positions: Tourism Marketing Director, Court Administrator, Wastewater Treatment Plant Supervisor and Public Works Superintendent positions are two and one-half percent (2.5%) or more below the survey range mid-point, then the City will make the adjustment as identified in Item 1, listed below. The City shall also initiate a salary survey of the Public Works Director position/wage rate prior to January 1st, of each contract year relative to the selected group of cities agreed to by the parties. The City will make the adjustment as identified in item 2, listed below. The City shall also initiate a salary survey of the Building Official/Fire Marshall position/wage rate prior to January 1st of each contract year relative to the selected group of cities agreed to by the parties. The City will make the adjustment as identified in item 3, listed below:

1. Adjust the salary range midpoint for an identified position (Tourism Marketing Director, Court Administrator, Wastewater Treatment Plant Supervisor and Public Works Superintendent) to conform to 100% of the salary survey midpoint.
2. If the survey results disclose the salary range midpoint for the Public Works Director is two and one-half percent (2.5%) or more below the survey range midpoint: The City Engineer, Planning Director and the Information Systems Manager salary ranges shall be adjusted to conform to eighty-seven percent (87%) of the new Public Works Director salary range midpoint. Or 100% of the annual increase of the June Seattle-Tacoma-Bremerton CPI-W (maximum 3%), whichever is greater.
3. If the survey results disclose the salary range midpoint for the Building Official/Fire Marshall (using the building official base rate PRIOR and/or MINUS the 10% premium for Fire Marshall duties) and discover the base rate for this position is two and one-half percent (2.5%) or more below the survey range midpoint: The Building Official/Fire Marshall salary range shall be adjusted to conform to 100% of the salary survey midpoint PRIOR to the 10 % premium adjustment which is made as an addition to the salary for Fire Marshall duties
4. **Section 2. Salary range.** Movement within each salary range shall be governed by the City's Personnel Regulations as shown within Attachment "B".

Section 3. Mileage. Mileage shall be paid as prescribed by City Ordinance Chapter 2.28.010.

Section 4. Education reimbursement. Upon satisfactory completion of a job related educational course, when the employee who desires to take the course has prior written approval from the City Administrator, the city shall reimburse the employee for the educational course up to a maximum rate of two hundred dollars (\$200.00) per credit hour for undergraduate courses and four hundred dollars (\$400.00) per credit hour for graduate courses. The city agrees to reimburse reasonable expenses for textbooks required for such course and will retain such textbooks in the department of the respective Department Head. No employee shall receive a total credit reimbursement of over \$1,600 for undergraduate courses and \$3,000 for graduate courses in a given budget year. All reimbursements shall be taken from specifically budgeted line items. Based on the standards of the institution, a passing grade must be obtained in a given course in order for that course to be reimbursed. Upon the request of the City Administrator, an employee who is enrolled in a program leading to a two or four year degree shall submit evidence that the employee's accumulative GPA in the academic program is equivalent to 3.0 (on a 4.0 scale). An employee in such a program must maintain a 3.0 accumulative GPA or greater in order to qualify for tuition reimbursement. Any course that does not qualify for reimbursement at the end of the evaluation period for that course shall be ineligible for retroactive reimbursement.

Section 5. Meal Pay. If a supervisor is required to work through any meal period he/she shall receive a reasonably priced meal. The employer shall provide the meal or reimbursement.

Section 6. Layoff Procedure. The City may determine to lay-off employees because of lack of work, lack of funds, or reorganization. At least one week prior to finalizing layoff plans the City will notify the Guild, in writing, to permit the Guild to consult with the City regarding the necessity to lay-off employees as well as the methods of implementing the layoff.

The primary order of layoff will be determined by length of service within a classification in a division with consideration of knowledge and skill level when length of service is equal.

No regular full-time employee will be laid off while another employee in the same classification is employed on a probationary, temporary basis. Under no circumstances shall part time positions be used to fill full time positions in order to avoid the payment of benefits. It is the intent of the city not to create part time jobs for the purpose of avoiding the payment of benefits.

The City shall provide three (3) months notice to employees scheduled for layoff and shall provide \$1,500 to an employee designated vendor or reimbursement during the three (3) month notification period, for career counseling and retraining. Approved and designated funds shall be available and maybe expended solely within twelve (12) months of the notice of termination.

Bumping Rights. An employee scheduled for layoff may exercise bumping rights to a position previously held by the employee in the Gig Harbor Employees' Guild and the Gig Harbor Supervisors' Guild as long as the employee who is exercising bumping rights pursuant to this provision has seniority. For purposes of this section, seniority is measured by cumulative length of service with the City of Gig Harbor, over the person to be bumped. Seniority shall be broken and service credits will not accumulate after an involuntary termination of employment, voluntary quit, a layoff of more than twenty-four months or an absence of more than twelve months as a result of an occupational injury, disability or illness. However, a leave of absence approved by the City in writing, or mandatory furlough shall not interrupt seniority, but service credits shall not be accrued during such leave of absence or furlough. Bumping to a position with the municipal court requires the approval of the Judge.

Timing: Notification of layoff for each position to be vacated shall be deemed to be effective when the initial notice of layoff is provided to an employee. An employee must give notice within five (5) working days from notice of layoff to exercise bumping rights.

Transfer in Lieu of Layoff. An employee scheduled for layoff may request, and the City will consider a transfer to a vacant position for which that employee is then currently qualified.

Recall Rights. An employee who has been laid off will be placed on a recall list for a period of two (2) years. If the City determines that a position from which an employee has been laid off will be filled, it will recall employees from the recall list, recalling the employee with the longest length of service, in that classification, first. The employee has the duty to maintain his/her current address with the City.

ARTICLE VI - VACATIONS

Vacations with pay shall be granted annually to all full-time employees based upon the following schedule:

Months of Service	Earned Working Hours per Month	Working Days per Year Max.
0 - 12	6.67	10

During months 13 - 192 (2nd through 16th year), an additional .67 vacation hours per month (8 additional hours per year) shall be earned. The annual earned vacation rate shall not exceed 208 hours per year. An accumulated vacation balance shall not exceed 336 hours at any one time. An accumulated vacation balance shall not exceed 240 hours at year-end (December 31). With prior written approval by the City Administrator, employees who have reached the 240 hour maximum accrued vacation balance and are not able due to no fault of their own to take a sufficient amount of time off in order to avoid losing vacation hours may sell back a maximum of 15 vacation days to the city at year-end. All other accumulated vacation hours in excess of 240 hours at year-end will be lost without compensation.

ARTICLE VII - HOLIDAYS

The following holidays shall be recognized by the city as city holidays:

New Year's Day	January 1
Martin Luther King Birthday	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	First Monday in September
Veteran's Day	November 11
Thanksgiving Day	Fourth Thursday in November
Day after Thanksgiving	Fourth Friday in November
Christmas Day	December 25
* 2 Floating Holidays	(taken at employee's discretion)

* An employee must be on the payroll a minimum of 90 days to receive the floating holiday.

If a holiday falls on a Saturday (or the day following the employee's regular workweek) it shall be observed on the preceding day. A holiday falling on a Sunday (or the day preceding the employee's regular work week) shall be observed on the following day.

If a Department Manager directs an employee to work on a paid holiday, the employee shall receive pay at two times his/her regular straight-time hourly rate for the actual time worked.

Holidays observed during vacation or sick leave shall not be charged against such leave.

ARTICLE VIII - MEDICAL BENEFITS

1. **Section 1.** In 2012 the Employer shall pay 100% of the monthly premium for the following benefit plans for the Supervisor's Guild employee plus one dependent. The employee shall contribute 5% of the medical premium for the second and third dependents each. This contribution will begin following the implementation of the Flexible Spending Account (FSA) for covered employees.

Beginning January 1st 2013, employees shall begin contributing to first dependent medical premiums at the same level (5%) as 2nd, 3rd, and 4th dependent premiums (currently the employee contribution for the first dependent is 0%).

Beginning January 1st 2014, for every dependent medical premium percentage cost increase above 10% for the city, the employee's contribution to the dependent medical premium will increase by the same amount, up to a maximum employee contribution to dependent medical premiums of 10%. **In no case shall the employee's contribution to dependent medical premiums exceed 10%.**

- 1) Medical - Association of Washington Cities Regence/Healthfirst Plan.
- 2) Dental - AWC Trust (Plan F - Washington Dental Service) with Orthodontia III.
Employee to pay cost difference in premium between Plan F and Plan A. This is to be done by pre-tax payroll deduction.
- 3) Vision - AWC Trust (Western Vision Service Plan).

Upon implementation of the Flexible Spending Account, the City will pay employees who have no dependents covered on the City-sponsored medical plan \$125 per month. When the Flexible Spending Account becomes effective the City will pay all associated administrative and monthly fees.

ARTICLE IX - LEAVES

Section 1. Sick leave. Full-time employees shall accrue sick leave at the rate of one day per calendar month for each month compensated. Sick leave is accumulated to a maximum of one hundred and eighty (180) days. Sick leave may be used for time off with pay for bona fide cases of incapacitating illness, injury, disability or for care of dependents as required by state law. Abuse of sick leave shall be grounds for suspension or dismissal.

Section 2. Return to work. A medical certificate may be required when there is cause to suspect sick leave abuse; to assist agencies in protecting the employees from returning to work too soon following an illness or injury; or to protect fellow employees or clients from contagious illness. A medical certificate must be required if the reason was personal illness as cited in WAC

Section 3. Sick leave bonus. An employee who has taken no sick leave during any six (6) month period shall receive, as a bonus, one annual day off or one day's pay (eight hours) for each period during the term of this Agreement. It shall be the responsibility of the employee to notify the City of the employee's eligibility of the bonus day(s). Upon retirement or voluntary termination twenty-five percent (25%) of unused sick leave shall be paid to an employee with five years or more of continuous city employment. Upon involuntary termination where the Mayor alone grants this benefit at the Mayor's sole discretion, twenty-five percent (25%) of unused sick leave shall be paid to an employee with five years or more of continuous city employment. Upon death, one hundred (100%) percent of sick leave will be paid.

Section 4. Use of sick leave. Sick leave may be used for the following:

- a. Personal illness or physical incapacity resulting from causes beyond the employee's control.
- b. Medical or dental treatment of the employee or his/her dependents.
- c. Illness within the immediate family (spouse or dependents) necessitating the employee's absence from work).
- d. Maternity or paternity purposes relating to childbirth or related circumstances.

Where practicable, notification of absence due to illness or injury shall be given to the relevant supervisor as soon as possible, but no later than one-half hour after the start of the work day. Failure to so notify shall cause the leave so taken to be construed as leave without pay and may result in disciplinary action.

Section 5. Bereavement Leave. A regular full-time employee may be granted up to five (5) days of leave without loss of pay because of death of a member in the immediate family. Leave over five days per death shall be charged to Sick Leave. For purposes of this section, immediate family shall be defined as husband, wife, children, step-children, mother, father, mother-in-law, father-in-law, son-in-law, daughter-in-law, grandparents, grandparents-in-law, brother or sister of the employee and others as authorized by the City Administrator.

Section 6. Military Leave. In accordance with RCW 38.40.060, eligible employees shall receive employer pay up to fifteen (15) days during each calendar year.

Section 7. Jury Duty. While on jury duty, or while appearing as a legally required witness, any jury duty pay received by the employee during such leave shall be deducted from the employee's base pay. Travel time will be granted in the calculation of this deduction.

Section 8. Funeral Participation. An employee may be granted up to three (3) hours time off, without loss of pay, accrued vacation, or sick leave, to participate in a funeral ceremony when first approved by the respective department head.

Section 9. Voting. When an employee's work schedule is such that he\she cannot vote prior to or after the normally scheduled working hours, he\she shall be allowed time off to vote without

loss of pay, accrued vacation, or sick leave.

Section 10. Emergency call-outs. Emergency call-outs before and after normal working hours. Employees shall be given the discretion to take up to six hours for rest after being called out for emergency work. Any normal work hours missed during this rest period shall be considered as sick leave time. The rest period time shall be deducted from the employee's accumulated sick leave. Any time taken in addition to the six-hour rest period shall be considered vacation time and shall be deducted from the employee's accumulated vacation time. Time taken for a rest period shall not be counted against the employee's time earned towards a bonus day off as described in Section 3 of this Article.

ARTICLE X - BENEFIT PLAN

Section 1. Statewide pension plan. The Employer shall participate in the statewide system for pension, relief, disability and retirement for qualified employees as provided in RCW 41.44.050.

Section 2. Substitute Social Security Plan. The City shall provide and maintain a benefit plan as a substitute for Social Security benefits. The City Administrator, with guild advisement, shall select the corporation(s) that will manage these benefits. The plan shall consist of three benefits:

- a. Long-term disability;
- b. Life insurance; and
- c. A deferred compensation plan for retirement income.

Section 3. Workmen's Compensation. The city shall insure city employees with the State Workmen's compensation plan. An employee receiving pay for sick leave who is eligible for time-loss payments under the workmen's compensation law, shall for the duration of such payments, receive only that portion of his regular salary which, together with said payments, will equal his/her regular salary. To avoid hardship on the employee caused by a time lag in time-loss payments he/she shall endorse such payments to the city.

ARTICLE XI - STAND-BY PAY

An employee scheduled for "standby status" shall be compensated as follows:

1. If the standby period is less than eighteen (18) hours, the employee shall receive one (1) hour of pay or compensation time at his/her overtime rate; or
2. If the standby period exceeds eighteen (18) hours but not twenty-four (24) hours, the employee shall receive two (2) hours pay or compensation time at his/her overtime hourly rate.
3. After twenty-four (24) hours, compensation is calculated by repeating the aforementioned method.

4. If the employee is called back to work while on stand-by, compensation shall be computed according to Article IV of this agreement.

Stand-by is defined as: The employee being available to respond to any call for City service during those hours and in such manner as designated by the respective department head. The method of scheduling personnel and the determination of periods for standby assignments shall be the responsibility of the respective department head or his/her designee.

ARTICLE XII – TEMPORARY APPOINTMENT

Any employee who is placed in a supervisory position, with prior approval of the City Administrator, for a minimum of two weeks shall receive a pay increase of fifteen percent (15%) (not to exceed the supervisor's actual pay) for the time exceeding two weeks. Accordingly, from two to four weeks, the employee would receive a pay increase of fifteen percent (15%). If the temporary assignment extends more than four weeks, the fifteen percent (15%) pay increase (not exceed the supervisor's actual pay) will be retroactive to the first day of the assignment.

ARTICLE XIII - RIGHT OF ACCESS-GUILD REPRESENTATION

Section 1. Duly authorized representatives of the Guild shall be permitted to enter upon the Employer's premises at reasonable times for the purpose of observing working conditions and transacting Guild business that cannot be transacted elsewhere; provided, however, that the Guild representative first secures approval from the designated Employer representative as to time and place, and that no interference with the work of the employees or the proper operation of the Employer shall result.

Section 2. The Guild agrees that Guild business conducted by Guild members, including the investigation of grievances, shall occur during nonworking hours (e.g., coffee breaks, lunch periods, and before and after regular working hours). Public Works Department employees shall be allowed one-half (1/2) hour each quarter for their use to attend Guild meetings during the half hour of 7:30 a.m. to 8:00 a.m.

ARTICLE XIV - EMPLOYEE RIGHTS

Section 1. Any employee, when being questioned by his/her employer about matters that may result in discipline has the right to:

- A. Receive the specific nature of the charge or allegation against him/her in writing.
- B. Have present his/her choice of the Guild Representative (who must be reasonably available). To a contract maximum of \$250 for all salary-related city expenses, the expense for guild representation shall be paid 50% by the employer when the meeting is requested by the employer. Subsequent to exceeding the \$250 expense maximum, the Guild employee shall be solely responsible or voting Guild members may, unilaterally in

agreement, vote responsibility for representation expenses. The employer shall allow a reasonable length of time for the representative to arrive at the place of meeting.

- C. The questioning by the Employer shall be during normal Employer business hours unless agreed to be held at other times by the Employee.
- D. The employee may receive reasonable intermissions or breaks if the questioning exceeds approximately one hour.

Section 2. City's Rules and Regulations. It is mutually agreed that the Employer has full responsibility and authority to adopt rules and regulations for the operation of the city's departments and conduct of its employees. The Guild agrees that its members shall comply in full with such rules and regulations. Nothing in this Section shall be interpreted to restrict the respective department head and/or the City Administrator the right to make decisions or to establish procedures consistent with the "emergency" nature of operating each department. Emergency shall mean an event or set circumstances which (1) demands immediate action to preserve public health, protect public property, or to provide relief to any stricken neighborhood overtaken by such circumstances, or (2) reaches such a dimension or degree of destructiveness as to warrant the City Council proclaiming the existence of a disaster or the Governor declaring a state of emergency in accordance with appropriate local and state statute.

Section 3. Maintenance of city services. In the event of any strike, walkout, slow down or work stoppage, the respective department head and/or City Administrator shall retain the right to require necessary level of staffing from the ranks of guild members in order to insure, in the city's immediate discretion, the safe maintenance of city services.

Section 4. Failure to comply with Section 3. Any employee refusing to comply with the conditions of Section 3 above will be subject to immediate dismissal.

ARTICLE XV - GRIEVANCE PROCEDURES

Grievance defined: A grievance is defined as an alleged violation of express terms and conditions of this Agreement. If any such grievance arises, it shall be submitted to the following grievance procedure.

Time limits in the following steps may be extended only by mutual written consent of the parties hereto.

Step One - The Respective Department Head.

The grievance in the first instance will be presented to the respective department head in writing within ten (10) working days of the alleged breach of the express terms and conditions of this Agreement. Every effort shall be made to settle the grievance at this Step One.

Step Two - City Administrator.

If the respective department head does not adjust the grievance to the Complainant's satisfaction

within ten (10) working days from the time the grievance was submitted in Step One, then the grievance may be presented to the City Administrator within five (5) working days (15 days after submittal of the grievance to the department head). The grievance shall be presented to the City Administrator in writing, setting forth detailed facts concerning the nature of the grievance, the contractual provisions allegedly violated, and the relief requested. Upon receipt of the written grievance, the City Administrator shall, within ten (10) working days, meet with the grievant and/or the representative of the Guild in an attempt to resolve the grievance. Within ten (10) working days after such meeting, the City Administrator shall send to the Guild a written answer stating the Employer's decision concerning the grievance.

Step Three - Mediation.

In the event the grievant, Guild and Employer are not able to resolve the grievance to the employee's satisfaction at Step Two, the parties may request the assistance of the State Mediation Service.

Step Four - Arbitration.

A grievance may be submitted to arbitration by a written demand for arbitration delivered within ten (10) working days following the decision rendered in Step Two. Within ten (10) working days after delivery of the demand for arbitration, the Employer shall select one (1) person and the Guild shall select one (1) person. Within five (5) working days, such selected persons shall then select a third impartial person who shall serve as chairman of the Arbitration Panel. A majority decision of the Arbitration Panel shall be made in writing within twenty (20) working days following the conclusion of the Arbitration hearing(s). Such decision shall be final and binding on both the Guild and the Employer. The authority of the Arbitration Panel is limited to ruling on the correct interpretation or application of the Articles of this Agreement and shall not add to or take away there from. Each party shall be responsible for their own costs and the fees and costs of the arbitrator appointed by them. The fees and costs of the third neutral arbitrator shall be borne equally between the Guild and the Employer.

ARTICLE XVI – DISCIPLINE

Disciplinary action will normally be progressive in nature. Verbal reprimands are a form of counseling, not disciplinary matters subject to the grievance procedure. Disciplinary actions relating to supervisors serving an initial probationary period, or any extension of an initial probationary period, are not subject to the grievance process, provided however, that a supervisor serving a promotional probation has the right to return to his/her former position. The right of return may be terminated only for just cause. Termination of employment status (right of return) is subject to the grievance process.

Any employee subject to discipline shall be entitled to Supervisory Guild representation and/or legal representation at all meetings which the supervisor is required to attend where discipline is being considered. Records of the discipline may be retained in supervisory files or confidential medical files to confirm the fact of disciplinary action with regard to issues such as reasonable accommodation of a disability or as a step in the process of that progressive discipline has been

followed. A summary of all internal investigation files will be retained in accordance with the Washington State Archivists retention schedule.

Section 4. Notice and Opportunity to Respond. Upon reaching the conclusion that just cause exists to discipline a Supervisor with a written reprimand, or suspension without pay, demotion or discharge, the department head or supervisor shall provide the individual, and the Guild, with the following prior to the administration of discipline:

- a. An opportunity to view and/or provided a copy of all materials which a part of or related to the investigation upon which the allegation(s) or charge(s) are based;
- b. The directives, policies, procedures, work rules, regulations or other order of the City that allegedly was violated and how these were violated;
- c. What disciplinary action is being considered.

Section 5. Employee's Response. The affected supervisor and the Guild shall have the opportunity to respond to the allegation(s) or charge(s) verbally or in writing, normally within forty-eight (48) hours of receiving the information and materials provided by the Employer, prior to or at the Pre-Disciplinary meeting, provided the Guild may request a reasonable extension of time to respond, with which the request will not be unreasonably denied by the department head, supervisor or City Administrator.

Section 6. Pre-Disciplinary Meeting. An opportunity to respond to the allegation(s) or charge(s) shall occur at a Pre-Disciplinary meeting conducted and presided over by the department head, supervisor or City Administrator, who shall have the authority to impose or to recommend the proposed disciplinary action. Reasonable advance notice of this meeting, including its time and place, shall be given to the supervisor and the Guild. This meeting shall be informal. The supervisor shall be given reasonable opportunity to be heard, to respond to the allegation(s) or charge(s), and to have the responses considered prior to the imposition of discipline.

Section 7. Representative or legal counsel. The supervisor may elect to have a representative and/or legal counsel present at the initial or subsequent interviews or at the pre-disciplinary meeting, provided that the participation of a representative and/or legal counsel does not unreasonably delay the interview or review process. An "unreasonable delay" means any delay in excess of ten (10) business days after the date of notice of delivery to the supervisor/employee.

Section 8. Employer's Decision. Within a reasonable timeframe, not to extend beyond thirty (30) calendar days from the date of the Pre-Disciplinary meeting, the department head, supervisor or City Administrator shall issue a written decision imposing discipline, exonerating the employee or taking such other action deemed appropriate

ARTICLE XVII - PERSONNEL POLICIES

Section 1. All employees of this bargaining unit, in addition to being governed by this Agreement, shall also be subject to the Personnel Policies published by the Employer having general applicability to all employees of the Employer and any subsequent personnel policies, rules and regulations that may be promulgated in the future, so long as they do not conflict with this Agreement. In case of any conflict, this Agreement shall be the controlling policy for the employees covered by this Agreement. Any changes made in the personnel policies, rules and regulations shall be approved by the Employer with Guild input.

Section 2. During the term of this Agreement, employees may submit a written request that his/her department head review that employee's job classification.

Section 3. An employee who is promoted or reclassified to a higher salary range (not transferred) shall receive an increase in salary of not less than 3%.

Section 4. Return – Promoted or transferred employees who do not satisfactorily complete a six (6) month probationary period shall have the right to return to their previous job classification without prejudice, provided that there is a vacant position in that classification. The City will not be required to create a new position for the employee to return to, nor will it be required to “bump” another employee, regardless of status, out of a position for the employee to return to. If the City needs to backfill the vacated position immediately a temporary employee will be utilized if practical, i.e.; summer help, temporary help, interns, etc. The City will notify the guild as to whether or not the position will be backfilled with temporary help during the 6 month probationary period.

Section 5. Any time a recruitment for a city position is posted externally, it shall be simultaneously posted internally as well. The City sees the value of growing its employees and recruiting/promoting from within. When and where practical and at the City Administrator’s discretion, the City shall internally post job announcements for at least one week before advertising the position externally.

ARTICLE XVIII - PERSONNEL RECORDS

The Employer and Guild recognize that effective management requires the maintenance of records regarding an employee's career development. These records may accompany an employee through succeeding management administrations. To ensure that the doctrine of fairness is applied with respect to these records, the following procedure will be adhered to:

1. Whenever any paper is entered into an employee's personnel file, a copy of same shall be provided to the employee.
2. In the case of any paper which reflects unfavorably upon an employee, the employee shall

be allowed an opportunity to respond to the content of the paper, in writing, and the employee response shall be included in the personnel file.

3. Each employee shall be allowed access to his personnel file for review of its contents at reasonable times and upon reasonable notice.
4. The Employer, through the department head, shall take measures to assure that, within the Guild, only legitimate supervisory and administrative personnel, and the employee, have access to the employee's personnel file. The confidentiality of personnel records is acknowledged to the extent permissible by law.

ARTICLE XIX - UNIFORMS AND EQUIPMENT

Safety Equipment: At the time of employment, and as needed thereafter as determined by the City Administrator, safety equipment will be assigned as required by Washington State and Federal regulations. These items are to include but are not limited to gloves, safety vests, safety goggles or hard hats.

At the time of employment, and as needed thereafter as determined by the City Administrator, the Wastewater Treatment Plant Supervisor and the Public Works Superintendent will be assigned the following uniform items:

A. Uniform:

1. 5 trousers
2. 5 short sleeve shirts
3. 3 long sleeve shirts
4. safety shoes or boots (Not to exceed \$250 per year)
5. 3 jackets
6. 5 coveralls

B. Rain Gear:

1. 1 waterproof coat
2. 1 waterproof trousers
3. 1 pair waterproof shoes or boots

C. Safety Equipment:

All safety equipment as required by Washington State and Federal regulations. These items are to include but are not limited to gloves, safety vests, safety goggles or a \$350 prescription safety glasses allowance for frames every other year, lenses every year and hard hats.

At the time of employment, and as needed thereafter as determined by the City Administrator,

ARTICLE XXII - SAVING CLAUSE

If any article or section of this Agreement should be held invalid by operation of law or by any tribunal of competent jurisdiction, the balance of this Agreement shall continue in full force and effect. The article and section held invalid shall be modified as required by law or the tribunal of competent jurisdiction, or shall be re-negotiated to a mutually agreeable resolution for the purpose of adequate replacement.

ARTICLE XXIII - COMPLETE AGREEMENT

The parties acknowledge that during the negotiations which resulted in this Agreement, each had an unlimited right and opportunity to make demands and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the understanding and agreements arrived at by the parties after the exercises of that right and opportunity are set forth in this Agreement. Therefore, the parties for the life of this Agreement voluntarily and unqualifiedly waive the right, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter referred to, or covered in this Agreement.

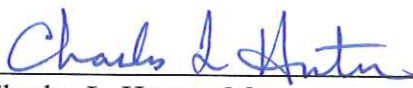
ARTICLE XXIV - TERM OF AGREEMENT

This Agreement is effective January 1, 2012, and shall continue in full force and effect to and including December 31, 2014. Notice to negotiate a new agreement shall be given within ninety (90) days prior to the expiration date.


Notice to negotiate a new agreement shall be given within ninety (90) days prior to the expiration date.

IN WITNESS WHEREOF, we attached our signatures this __ day of May, 2012.

CITY OF GIG HARBOR

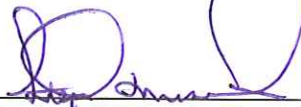


Charles L. Hunter, Mayor



Dennis Richards, City Administrator

GIG HARBOR SUPERVISORS' GUILD



Stephen Misiurak, Co-President



Kay J. Johnson, Co-President

ATTACHMENT "A"

2012 GIG HARBOR EMPLOYEE'S SALARY SCHEDULE including 3% COLA

POSITION	2012	
	RANGE	
	Minimum	Maximum
Building Official/Fire Marshall	6,756	8,445
City Engineer	6,810	8,513
Information Systems Manager	6,810	8,513
Planning Director	6,810	8,513
Tourism Marketing Director	6,111	7,639
Public Works Superintendent	6,033	7,541
Wastewater Treatment Plant Supervisor	6,033	7,541
Court Administrator	5,760	7,180

Includes cost of living adjustment calculated at 3% for 2012

ATTACHMENT "B"

PERSONNEL SALARIES

SALARY RANGES ADJUSTED ANNUALLY

1. City employees shall have the opportunity to suggest modifications in salaries and other wage supplements to the City Administrator.
2. Employees/Supervisors hired prior to March 1, 2012 who have satisfactorily completed a six month employment probationary period shall be eligible for a performance pay increase from 0% to 5%. Employees/Supervisors hired after March 1, 2012 are not eligible for a merit increase until their one-year anniversary.
3. Employees/Supervisors who have yet to reach the top of their salary range shall be eligible for performance pay increases of 0% to 5% each year. Such performance pay increases shall be added to their base rate of pay to compute the employee/supervisor's new salary. Performance pay increase shall be approved by the City Administrator. Once an employee/supervisor has reached the top of his/her salary range (control point) the employee/supervisor shall be eligible for merit/bonus compensation up to 5% of the employee/supervisor's annual base salary. Such merit/bonus pay increase shall not be added to the employee/supervisor's base pay. This merit bonus pay is separate, non-cumulative compensation and must be earned through exemplary performance each evaluation period.

MERIT/BONUS PAY

Employees/Supervisors shall be eligible for merit/bonus pay salary increases in accordance with the provisions set forth below:

1. Merit/bonus pay increases shall be within the city's budget in an appropriate fund within each Department's budget.
2. The amount of the merit/bonus pay salary increase for each employee shall be based solely on performance.
3. Merit/bonus pay salary increase shall be granted by the City Administrator and confirmed by the Mayor.



**Business of the City Council
City of Gig Harbor, WA**

Subject: Pt. Fosdick Square (Safeway) - Termination of Obligations Relating to Outdated Agreements

Proposed Council Action: Approve and authorize the Mayor to execute the Termination of Memoranda of Agreement and Termination of Obligations under Sanitary Sewer Agreement.

Dept. Origin: Public Works/Planning

Prepared by: Angela Belbeck, City Attorney (with Willy Hendrickson and Kristin Moerler)

For Agenda of: 5/29/2012

Exhibits:
1. Termination of Memoranda of Agreement and copies of agreements to be terminated
2. Termination of Obligations under Sanitary Sewer Agmt.

Concurred by Mayor:	Initial/date
Approved by City Administrator:	<u>5/24/12</u>
Approved as to form by City Atty:	<u>R. 5/24/12</u>
Approved by Finance Director:	<u>AB 5/24/12</u>
Approved by Department Head:	<u>AP 5/24/12</u>

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

Legal counsel from Safeway contacted the City requesting the City's assistance in terminating obligations of record against the property known as Point Fosdick Square. The site was developed in the 1990's prior to annexation to the City. As a part of the development review process with Pierce County, Pierce County and Point Fosdick Square/Safeway entered into certain land use obligations identified below. Because the property was annexed by the City under the "Westside Annexation" in 1997, Safeway requests the City's release of the obligations. Each agreement is more particularly identified on the Termination document, but relates to the following project approvals, with the reason the obligations should be terminated:

- SPR-11-89 was a site plan approval related to permitting a bank within the prior Safeway building—now demolished and replaced by the new site plan approvals issued by the City.
- W1-94 was a waiver to setbacks that allowed an 800 sq. foot addition at a 0' setback to the rear property line. Not only is the building to which this waiver related removed, so is the property line that this would have related to.

- SPR 27-94 was a minor amendment to the site which allowed for an 11,000 sq. foot addition to the prior Safeway Building.

In addition, in 2008 Safeway entered into a Sanitary Sewer Facilities Easement and Maintenance Agreement relating to the site. The lift station covered by that easement/agreement no longer exists and has been replaced with a gravity line under a 2011 private easement and 2011 Sanitary Sewer Easement and Maintenance Agreement with the City.

City staff concurs the prior requirements are no longer needed and have been replaced where necessary in connection with the subsequent redevelopment of the site.

FISCAL CONSIDERATION

None.

BOARD OR COMMITTEE RECOMMENDATION

None.

RECOMMENDATION/MOTION

Staff recommends that the attached termination agreements be executed to assist in removing outdated obligations from land title.

WHEN RECORDED RETURN TO:

Safeway Inc.
Real Estate Law Dept.
5918 Stoneridge Mall Rd.
Pleasanton CA 94588
Re Store No. 2949

Grantors:	Point Fosdick Square LLC, a Washington limited liability company; Safeway Inc., a Delaware corporation; City of Gig Harbor
Grantees:	Point Fosdick Square LLC, a Washington limited liability company; Safeway Inc., a Delaware corporation; City of Gig Harbor
Legal Description (abbreviated):	Southwest quarter of the southeast quarter of Section 17, Township 21 North, Range 2 East
Additional on:	N/A
Assessor's Tax Parcel ID #:	400303-001-0; 400303-002-0; 400303-003-0; 400303-004-0; 400303-005-0; 400303-006-0; 400303-007-0; 400303-008-0; 400303-009-0; 400303-010-0; 400303-011-0; 400303-012-0
Reference No. of Documents Released:	8912080069; 9502030297; 9502080074

TERMINATION OF MEMORANDA OF AGREEMENT

THIS TERMINATION is executed by the City of Gig Harbor, a Washington municipal corporation (the "City"), Point Fosdick Square LLC, a Washington limited liability company (the "Developer") and Safeway Inc, a Delaware corporation ("Safeway").

WHEREAS, Developer is the current owner of all the property more particularly described in Exhibit A attached hereto (the "Property").

WHEREAS, previous owners of portions of the Property and Safeway as tenant entered into certain agreements (collectively, the "Memoranda"), each entitled "Memorandum of Agreement," with Pierce County, as follows:

Memorandum of Agreement between Higson and Winters as owner and Pierce County, dated October 31, 1989 recorded as Instrument No. 8912080069

Memorandum of Agreement between Daniel T. & Lori J. Durr and W.A.CO, a Washington general partnership as owners and Pierce County, dated January 31, 1995, recorded as Instrument No. 9502030297

Memorandum of Agreement between Safeway and Pierce County, dated February 8, 1995, recorded as Instrument No. 9502080074

WHEREAS, the City of Gig Harbor is successor-in-interest to Pierce County by way of annexation, pursuant to the annexation known as "Westside Annexation," approved under Gig Harbor Ordinance No. 751, effective March 24, 1997.

WHEREAS, the parties agree that the terms of the Memoranda have been rendered moot by a subsequent redevelopment of the Property.

Now, therefore in consideration of the foregoing, the City, the Developer and Safeway agree as follows:

The Memoranda are hereby terminated and shall be of no further force or effect.

DATED this _____ day of _____, 2012.

CITY OF GIG HARBOR:

SAFEWAY:

SAFEWAY INC.

By: _____
Mayor Charles L. Hunter

By: W. Dan Mitchell
Its Assistant Vice-President

ATTEST/AUTHENTICATED:

By: [Signature]
Its Assistant Secretary

City Clerk Molly Towslee

ACCEPTEDE APPROVED SB/SC

[signatures continued on following page]

DEVELOPER:

POINT FOSDICK SQUARE LLC,
a Washington limited liability company

By Safeway Inc., its sole and managing member

By: 
Its Assistant Vice-President

By: 
Its Assistant Secretary

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that CHARLES L. HUNTER and MOLLY TOWSLEE are the persons who appeared before me, and said persons acknowledged that they signed this instrument, and acknowledged it as Mayor and City Clerk of the City of Gig Harbor to be the free and voluntary act and deed of such party for the uses and purposes mentioned in this instrument.

DATED: _____, 2012.

(Signature)

(Print Name)

NOTARY PUBLIC in and for Washington

Residing at _____

My commission expires: _____

STATE OF CALIFORNIA)
) ss.
COUNTY OF ALAMEDA)

On May 23, 2012 before me, **Susan Rhoades**, Notary Public, personally appeared Wendall Mitchell and Steven J. Kovic, who proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature 

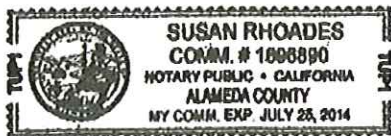


Exhibit A
Legal Description of Property

Lots 1 through 12, inclusive, Point Fosdick Square—Gig Harbor Site Plan, recorded under Recording No. 201105275001, and amended by Point Fosdick Square –Gig Harbor Site Plan Amendment, recorded under Recording Number 201201275001, records of Pierce County, Washington

Together with beneficial rights and easements as described in and disclosed by Instruments recorded under Recording Nos. 201105270283 and 201106150170, records of Pierce County, WA

SEP 15 1989
SARAWAY #541
GIB HARBOR
MC.

8912080069

VOL. 0581 PG 0091
PIERCE COUNTY

MEMORANDUM OF AGREEMENT
Recorded Notice of Special Real Property Description Agreement

County Planning File # SPR 11-89

AN AGREEMENT made and entered into this 31st day of October, 1989.

by and between Higson and Winters ("Landowner") and Pierce County, Washington, by and through the County Director of Planning and Natural Resource Management as its duly authorized agent, is herein memorialized through the concurrent execution of this Memorandum of said Agreement.

WHEREAS the above-named Landowner is the owner or the contract purchaser of that certain parcel of real property situated in Pierce County, Washington, described as follows:

The Safeway store rests on a 7.01 acre lot located at 4830 Pt. Fosdick Road Northwest, in the SE quarter of Section 17, Township 21 North, Range 2 East W.M., in an Urban Environment.

WHEREAS Pierce County, by and through the authority of the Board of Commissioners has granted approval of SPR 11-89 to the Landowner in regard to the above-described real property pursuant to the Pierce County Code. Said approval and accompanying documents have been filed in the office of the Pierce County Department of Planning and Natural Resource Management, at 2401 South 35th Street, Tacoma, Washington 98409.

NOW, THEREFORE, in order that the rights and duties of the respective parties and their successors be known for the record now and in the future, it has been agreed between the parties as follows:

1. That the Landowner has voluntarily applied for the above-stated approval which allows the Landowner and his successors the right to use or develop said real property in a certain manner, and after due consideration, Pierce County has granted said approval;
2. That compliance with the duties, conditions and requirements of said approval shall be the responsibility of the Landowner, his heirs, successors and assigns in interest in said property and that the conditions set forth in any approved accompanying Final Site Plan shall likewise be binding unless modified or amended by the mutual agreement of both parties or their successors under the appropriate provisions of the Pierce County Code;
3. That the duties, conditions and requirements imposed by said approval and memorialized by this Memorandum may be extinguished as to their continuing binding effect upon said property, but only upon execution and proper recording of a separate mutual agreement between both parties or their successors or upon revocation, modification or reclassification of approval under the appropriate provisions of the Pierce County Code; and
4. That in the event said approval is not exercised within the time specified by said approval or the applicable regulation governing such approval, then the Agreement of which this is a Memorandum shall be null and void as of the date of expiration of said approval.

Joseph A. Scorcio, Director
Pierce County Planning and Natural Resource Management
Landowner

PARTNERSHIP ACKNOWLEDGMENT

State of California }
County of Los Angeles } ss
Memorandum of Agreement between Higson & Winters & Pierce County, Washington re: International Banking Technologies

On this the 3rd day of November, 1989, before me, Reva L. King, the undersigned Notary Public, personally appeared Peter J. Satuloff

DI personally known to me
LI proved to me on the basis of satisfactory evidence to be the person(s) who executed the within instrument on behalf of the partnership, and acknowledged to me that the partnership executed it.
WITNESS my hand and official seal.

OFFICIAL SEAL
REVA L. KING
NOTARY PUBLIC - CALIFORNIA
LOS ANGELES COUNTY
My Comm. expires DEC 4, 1989

Notary's Signature

STATE OF WASHINGTON }
County of Pierce } ss

On this day personally appeared before me Joseph A. Scorcio, to me known to be the individual described in and who executed the within and foregoing instrument, and acknowledged that he signed the same in a free and voluntary act, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 15th day of November, 1989.

Cindy Willis
NOTARY PUBLIC in and for the State of Washington
residing at Tacoma



2-17M
9/

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Vol. 0581 PAGE 0092

3. The Site Plan is consistent with all of the requirements and regulations of Pierce County.

FROM THE FOREGOING CONCLUSIONS, THE EXAMINER MAKES AND ENTERS THE FOLLOWING:

DECISION:

The request to approve the Site Plan to establish a banking facility inside the entryway of the established Safeway store on a 7.91 acre lot located on Pt. Fosdick Road an urban environment in the Peninsula area of Pierce County be and the same is hereby approved upon the following terms on conditions:

1. Adequacy of existing parking in the shopping center area to serve the project shall be demonstrated or one additional parking space provided in accordance with the standards of Sec. 9.250.030-040 of the Development Regulations.
2. A remodel application shall be submitted to and approved by the Tacoma-Pierce County Health Department as a condition of continued operation of the banking facility.
3. A Memorandum of Agreement shall be executed between the applicant and the Director of Planning and Natural Resource Management and shall be recorded by the applicant with the Pierce County Auditor. This Memorandum of Agreement shall contain as an attachment the conditions of approval adopted by the Pierce County Hearing Examiner.

DATED this 17th day of July, 1989.

By: 
Deputy Hearing Examiner

TRANSMITTED this 17th day of July, 1989, to the following:

APPLICANT: International Banking Technologies
1001 Fourth Avenue Plaza, Suite 3270
Seattle WA 98154

Shawn Fond

PIERCE COUNTY PLANNING DIVISION
PIERCE COUNTY PUBLIC WORKS DEPARTMENT
PIERCE COUNTY BUILDING DIVISION
PIERCE COUNTY UTILITIES DEPARTMENT
TACOMA-PIERCE COUNTY HEALTH DEPARTMENT
FIRE PREVENTION BUREAU

89 DEC -8 AM 9:47
APR 15 1990
PIERCE COUNTY
WA 98501

8912080069

9502030297

9K1096PG3735

MEMORANDUM OF AGREEMENT

Recorded Notice of Special Real Property Limitation Agreement

County Planning File # W1-94

AN AGREEMENT made and entered into this 31 day of JANUARY, 1995,
by and between DANIEL T. & LORI J. DURK AND ("Landowner")
and W.A.CO. A WASHINGTON GENERAL PARTNERSHIP ("Landowner")
and Pierce County, Washington, by and through the County Director of Planning and Land Services as its duly authorized agent,
is herein memorialized through the concurrent execution of this Memorandum of said Agreement

WHEREAS the above-named Landowner is the owner or the contract purchaser of that certain parcel of real property
situated in Pierce County, Washington, described as follows:

LEGAL DESCRIPTION ATTACHED

WHEREAS Pierce County, by and through the authority of the [Signature]
has granted approval of W1-94 W1-94
to the Landowner in regard to the above-described real property pursuant to the Pierce County Code. Said approval and
accompanying documents have been filed in the office of the Pierce County Department of Planning and Land Services, at 2401
South 35th Street, Tacoma, Washington 98409.

NOW, THEREFORE, in order that the rights and duties of the respective parties and their successors be known for the
record now and in the future, it has been agreed between the parties as follows:

1. That the Landowner has voluntarily applied for the above-stated approval which allows the Landowner and his successors
the right to use or develop said real property in a certain manner, and after due consideration, Pierce County has granted
said approval;
2. That compliance with the duties, conditions and requirements of said approval shall be the responsibility of the Landowner,
his heirs, successors and assigns in interest in said property and that the conditions set forth in any approved accompanying
Final Site Plan shall likewise be binding unless modified or amended by the mutual agreement of both parties or their
successors under the appropriate provisions of the Pierce County Code;
3. That the duties, conditions and requirements imposed by said approval and memorialized by this Memorandum may be
extinguished as to their continuing binding effect upon said property, but only upon execution and proper recording of
a separate mutual agreement between both parties or their successors or upon revocation, modification or reclassification
of approval under the appropriate provisions of the Pierce County Code; and
4. That in the event said approval is not exercised within the time specified by said approval or the applicable regulation
governing such approval, then the Agreement of which this is a Memorandum shall be null and void as of the date of
expiration of said approval.

Kelley L. Anderson
Director or Designee
Pierce County Planning and Land Services

Stephen L. Anderson M. Parnell
Landowner
Daniel T. Durk Lori J. Durk
Landowner

RECORDED
55 FEB -3 PM 12: 60
CATHY PEARSALL-STIPEK
AUDITOR PIERCE CO. WASH

STATE OF }
County of King }

On this day personally appeared before me Stephen L. Anderson
to me known to be the individual or individuals described in and who executed the within and foregoing instrument, and
acknowledged that he ~~she~~ or they signed the same in a free and voluntary act, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 31 day of January, 1995.

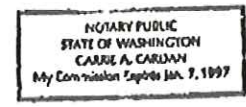


Jennifer S. Cannon
NOTARY PUBLIC in and for the State of Washington
residing at Auburn

STATE OF }
County of Pierce }

On this day personally appeared before me DANIEL T. DURK & LORI J. DURK
to me known to be the individual or individuals described in and who executed the within and foregoing instrument, and acknowledged that he
or she signed the same in a free and voluntary act, for the uses and purposes therein mentioned.

GIVEN under my hand and official seal this 31st day of JANUARY, 1995.



Carrie A. Carman
NOTARY PUBLIC in and for the State of Washington
residing at Tacoma

2-1731

17

9502030297

BK1096PG3736

WASHINGTON SHORT-FORM INDIVIDUAL ACKNOWLEDGMENT (RCW 42.44.100)

1402

State of Washington
County of Pierce

I certify that I know or have satisfactory evidence that Kelly L. Nelson (name of signer) is the person who appeared before me, and said person acknowledged that she (he/she) signed this instrument and acknowledged it to be her (his/her) free and voluntary act for the uses and purposes mentioned in the instrument.



Dated: 1-31-95

Donna Belieu Notary Public
(Signature) Title (such as "Notary Public")

My appointment expires 7-1-98

OPTIONAL SECTION

THIS CERTIFICATE MUST BE ATTACHED TO DOCUMENT DESCRIBED AT RIGHT:

Though the date requested here is not required by law, it could prevent fraudulent attachment of this form.

TITLE OR TYPE OF DOCUMENT Memoandum
NUMBER OF PAGES 1 DATE OF DOCUMENT 1-31-95
SIGNER(S) OTHER THAN NAMED ABOVE _____

9502030297

BK 1005PF3737
Order No.: 73804

EXHIBIT "A"

LEGAL DESCRIPTION OF THE LAND

PARCEL A:

Commencing at the Southwest corner of the Southeast quarter of Section 17, Township 21 North, Range 2 East of the Willamette Meridian; THENCE along the South line of said Southeast quarter, South 88 degrees 22'51" East 30 feet to a point on the East right-of-way line of 30th Avenue N.W. (Point Fosdick-Gig Harbor County Road); THENCE along said East right-of-way line North 01 degrees 05'50" East 769.06 feet to a line parallel with and 100 feet Southerly, measured radially from the revised A2 line of SR-16, M.P. 8.34 to M.P. 18.87, Narrows Bridge to Olympic Drive; THENCE Northeasterly along said parallel line, a distance of 342.26 feet and the true point of beginning; THENCE leaving said parallel line South 02 degrees 05'50" West 213.97 feet; THENCE North 87 degrees 54'10" West 135 feet; THENCE North 02 degrees 05'50" to a line parallel with and 100 feet Southerly, measured radially from the revised A2 line of SR16, M.P. 8.34 to M.P. 18.87, Narrows Bridge to Olympic Drive; THENCE Northeasterly along said parallel line to the point of beginning, in Pierce County, Washington.

Situate in the County of Pierce, State of Washington.

PARCEL B:

Commencing at the Southwest corner of the Southeast quarter of Section 17, Township 21 North, Range 2 East of the Willamette Meridian; THENCE along the South line of said Southeast quarter, South 88 degrees 22'51" East 30 feet to a point on the East line of 30th Avenue N.W., Point Fosdick-Gig Harbor County Road; THENCE along the East line of said County Road North 02 degrees 05'50" East 769.06 feet to a line parallel with and 100 feet Southerly, measured radially from the revised A2 Line of SR-16, M.P. 8.34 to M.P. 18.87, Narrows Bridge to Olympic Drive; THENCE Northeasterly along said parallel line a distance of 342.26 feet; THENCE leaving said parallel line South 02 degrees 05'50" West 249.68 feet to the true point of beginning; THENCE South 87 degrees 54'10" West 165.00 feet; THENCE North 02 degrees 05'50" East 175.00 feet; THENCE North 87 degrees 54'10" West 165.00 feet; THENCE South 02 degrees 05'50" West 175.00 feet to the true point of beginning, in Pierce County, Washington.

Situate in the County of Pierce, State of Washington.

9502030297

BK1095PG3738

Order No.: 73804

PARCEL C:

Commencing at the Southwest corner of the Southeast quarter of Section 17, Township 21 North, Range 2 East of the Willamette Meridian; THENCE along the South line of said Southeast quarter, South 88 degrees 22'51" East 30 feet to a point on the East right-of-way line of 30th Avenue N.W. (Point Foadick-Gig Harbor County Road); THENCE along said East right-of-way line, North 2 degrees 05'50" East 179.75 feet to the true point of beginning; THENCE continuing North 2 degrees 05'50" East along said right-of-way line 449.31 feet to a point which is South 2 degrees 05'50" West 140 feet from a line parallel with end 100 feet Southerly, measured radially from the revised A-2 line of SR-16, M.P. 8.34 to M.P. 18.87, Narrows Bridge to Olympic Drive; THENCE South 87 degrees 54'10" East 190 feet; THENCE North 2 degrees 05'50" East 20 feet; THENCE South 87 degrees 54'10" East 135 feet; THENCE South 2 degrees 05'50" West 35.71 feet; THENCE South 87 degrees 54'10" East 165 feet; THENCE South 2 degrees 05'50" West 598.60 feet; THENCE North 87 degrees 54'10" West 220.00 feet; THENCE North 2 degrees 05'50" East 165.00 feet; THENCE North 87 degrees 54'10" West 270.00 feet to the point of beginning, in Pierce County, Washington.

EXCEPT the most Westerly 10 feet thereof.

AND EXCEPT that portion conveyed to Pierce County by Quit Claim Deeds recorded under Auditor's File Nos. 2594930 and 2594931.

Situate in the County of Pierce, State of Washington.

PARCEL D:

Those certain rights of reciprocal ingress, egress, access, parking, pedestrian traffic and utilities as provided for in Reciprocal Grant of Easement recorded April 4, 1973 under Auditor's File No. 2493712, and as amended by instruments recorded August 3, 1973, January 27, 1983 and March 16, 1984 under Auditor's File Nos. 2513570, 8301270031 and 8403160100.

Situate in the County of Pierce, State of Washington.

9502030297

B: J95PG3739
Order No.: 73804

PARCEL E (Safeway Parcel):

Commencing at the Southwest corner of the Southeast quarter of Section 17, Township 21 North, Range 2 East of the Willamette Meridian; THENCE along the South line of said Southeast quarter, South 88 degrees 22'51" East 30 feet to a point on the East right-of-way line of 30th Avenue N.W. (Point Fosdick-Gig Harbor County Road); THENCE along said East right-of-way line North 2 degrees 05'50" East 629.06 feet to the true point of beginning; THENCE continuing North 2 degrees 05'50" East along said right-of-way line 140.00 feet to a line parallel with and 100 feet Southerly, measured radially from the revised A-2 line of SR-16, M.P. 8.34 to M.P. 18.87, Narrows Bridge to Olympic Drive; THENCE Northeasterly along said parallel line, a distance of 193.40 feet; THENCE leaving said parallel line, South 2 degrees 05'50" West 171.98 feet to a point which bears South 87 degrees 54'10" East from the true point of beginning; THENCE North 87 degrees 54'10" West 190.00 feet to the true point of beginning, in Pierce County, Washington.

EXCEPT the most Westerly 10.00 feet thereof.

TOGETHER WITH a non-exclusive easement for ingress, egress and utilities, as described in Reciprocal Grant of Easements and Declaration of Establishment of Restrictions and Covenants recorded under Auditor's No. 2493712 and a modification of said easements and covenants recorded under Auditor's Nos. 2513670, 8301270031 and 8403160100.

ALSO TOGETHER WITH a non-exclusive easement of variable width for utilities within the Southwest quarter of the Southeast quarter of Section 17, Township 21 North, Range 2 East of the Willamette Meridian, the centerline and width of said easement being described as follows:

Commencing at the Southwest corner of said subdivision; THENCE North 2 degrees 05'50" East along the West line thereof 569.00 feet; THENCE South 87 degrees 54'10" East 40.00 feet to the East margin of Point Fosdick County Road, the true point of beginning of said centerline and easement, which is 50.00 feet wide, being 25.00 feet each side of said centerline; THENCE continuing South 87 degrees 54'10" East 223.53 feet to a point hereinafter referred to as Point "A"; THENCE South 2 degrees 05'50" West 119.62 feet; THENCE South 27 degrees 22'13" East 43.65 feet; THENCE South 2 degrees 05'50" West 359.00 feet to the North line of the South 50.00 feet of said subdivision and the terminus of this portion of the described centerline and easement, together with another portion of said 50.00 foot wide easement, being 25.00 feet each side of a centerline, beginning at the aforesaid Point "A"; THENCE North 2 degrees 05'50" East 149.50 feet; THENCE South 87 degrees 54'10" East 317.48 feet to a point at which the easement becomes 30.00 feet wide, being 15.00 feet each side of said centerline; THENCE South 2 degrees 05'50" West 663.70 feet to the North line of the South 50.00 feet of said subdivision and terminus of the described centerline and easement.

ALSO TOGETHER WITH an easement for utilities over and across the South 50.00 feet of said Southwest quarter of the Southeast quarter of Section 17, Township 21 North, Range 2 East of the Willamette Meridian.

EXCEPT roads.

9502030297

BK 1096 PG 3740
Order No.: 73804

ALSO TOGETHER WITH an easement which is 50.00 feet wide, being 25.00 feet each side of the following described centerline:

Commencing at the aforesaid Point "A"; THENCE North 2 degrees 05'30" East 149.55 feet; THENCE North 87 degrees 54'10" West 25.00 feet to the true point of beginning of said centerline and easement; THENCE continuing North 87 degrees 54'10" West 18.53 feet to the terminus of the described centerline and easement.

Situate in the County of Pierce, State of Washington.

9502030297

A-4

98-C

STEWART TITLE
GUARANTY COMPANY

950208007A

K1097PG3083

MEMORANDUM OF AGREEMENT

Recorded Notice of Special Real Property Unitization Agreement

AN AGREEMENT made and entered into this 8th day of February, 1994, County of Pierce, State of Washington, between

by and between Salem Landowner and Pierce County, Washington by and through the County Director of Planning and Land Services as its duly authorized agent, is herein memorialized through the concurrent execution of this Memorandum of said Agreement.

WHEREAS the above named Landowner is the owner or the contract purchaser of that certain piece of real property situated in Pierce County, Washington described as follows:

WHEREAS Pierce County by and through the authority of the P.C. Hearing Examiner

has granted approval of SPR27-94 to the Landowner in regard to the above described real property pursuant to the Pierce County Code. Said approval and accompanying documents have been filed in the office of the Pierce County Department of Planning and Land Services at 220 South 35th Street, Tacoma, Washington 98404.

NOW THEREFORE, in order that the rights and duties of the respective parties and their successors be known for the record now and in the future, it has been agreed between the parties as follows:

1. That the Landowner has voluntarily applied for the above-stated approval, which allows the Landowner to exercise the right to use or develop said real property in a certain manner, and after due consideration, Pierce County has granted said approval;
2. That compliance with the duties, conditions and requirements of said approval shall be the responsibility of the Landowner, his heirs, successors and assigns in interest in said property and that the conditions set forth in any approved accompanying Final Site Plan shall likewise be binding unless modified or amended by the mutual agreement of both parties or their successors under the appropriate provisions of the Pierce County Code;
3. That the duties, conditions and requirements imposed by said approval and memorialized by this Memorandum shall be extinguished as to their continuing binding effect upon said property, but only upon execution and proper recording of a separate mutual agreement between both parties or their successors or upon revocation, modification or termination of approval under the appropriate provisions of the Pierce County Code; and
4. That in the event said approval is not exercised within the time specified by said approval, the approval shall be governing said approval after the Agreement of which this is a Memorandum shall be null and void as to the expiration of said approval.

Kelly Anderson
Director of Design
Pierce County Planning and Land Services

Tony He
Landowner

95 FEB - 6 AM 10:11

STATE OF WA
County of Pierce

RECORDED
CATHY PEARSALL-STEPHENS
CLERK PIERCE CO. WASH.

On this day 8th of February, 1994, I, the undersigned, a Notary Public in and for the State of Washington, do hereby certify that the within and foregoing instrument was acknowledged before me by the individual described therein and who executed the within and foregoing instrument, and that he or she acknowledged that he or she signed the same as his or her free and voluntary act for the use and purposes therein mentioned.

GIVEN under my hand and official seal this 8th day of February, 1994.

[Signature]
NOTARY PUBLIC in and for the State of Washington
residing at [Address]

STATE OF WA
County of Pierce

On this day personal appeared before me [Signature] to me known to be the individual described in and who executed the within and foregoing instrument, and that he or she signed the same as his or her free and voluntary act for the use and purposes therein mentioned.

GIVEN under my hand and official seal this 8th day of February, 1994.

[Signature]
NOTARY PUBLIC in and for the State of Washington
residing at [Address]

2 (77)

AUDITOR'S NOTE

CPWA
SA
MF

950208007A

EXHIBIT "A"

JK1077PG-084

PARCEL A:

Commencing at the Southwest corner of the Southeast quarter of Section 17, Township 21 North, Range 2 East of the Willamette Meridian; THENCE along the South line of said Southeast quarter, South 88 degrees 22'51" East 30 feet to a point on the East right-of-way line of 30th Avenue N.W. (Point Fosdick-Gig Harbor County Road); THENCE along said East right-of-way line North 01 degrees 05'50" East 769.06 feet to a line parallel with and 100 feet Southerly, measured radially from the revised A2 line of SR-16, M.P. 8.34 to M.P. 18.87, Narrows Bridge to Olympic Drive; THENCE Northeasterly along said parallel line, a distance of 342.26 feet to the true point of beginning; THENCE leaving said parallel line South 02 degrees 05'50" 213.87 feet; THENCE North 87 degrees 54'10" West 135 feet; THENCE North 02 degrees 05'50" to a line parallel with and 100 feet Southerly, measured radially from the revised A2 line of SR16, M.P. 8.34 to M.P. 18.87, Narrows Bridge to Olympic Drive; THENCE Northeasterly along said parallel line to the point of beginning, in Pierce County, Washington.

Situate in the County of Pierce, State of Washington

PARCEL B:

Commencing at the Southwest corner of the Southeast quarter of Section 17, Township 21 North, Range 2 East of the Willamette Meridian; THENCE along the South line of said Southeast quarter, South 88 degrees 22'51" East 30 feet to a point on the East line of 30th Avenue N.W., Point Fosdick-Gig Harbor County Road; THENCE along the East line of said County Road North 02 degrees 05'50" East 769.06 feet to a line parallel with and 100 feet Southerly, measured radially from the revised A2 Line of SR-16, M.P. 8.34 to M.P. 18.87, Narrows Bridge to Olympic Drive; THENCE Northeasterly along said parallel line a distance of 342.26 feet; THENCE leaving said parallel line South 02 degrees 05'50" West 243.68 feet to the true point of beginning; THENCE South 17 degrees 54'10" East 165.00 feet; THENCE North 02 degrees 05'50" East 175.00 feet; THENCE North 87 degrees 54'10" West 165.00 feet; THENCE South 02 degrees 05'50" West 175.00 feet to the true point of beginning, in Pierce County, Washington.

Situate in the County of Pierce, State of Washington.

PARCEL C:

Commencing at the Southwest corner of the Southeast quarter of Section 17, Township 21 North, Range 2 East of the Willamette Meridian; THENCE along the South line of said Southeast quarter, South 88 degrees 22'51" East 30 feet to a point on the East right-of-way line of 30th Avenue N.W. (Point Fosdick-Gig Harbor County Road); THENCE along said East right-of-way line, North 2 degrees 05'50" East 179.75 feet to the true point of beginning; THENCE continuing North 2 degrees 05'50" East along said right-of-way line 449.31 feet to a point which is South 2 degrees 05'50" West 140 feet from a line parallel with and 100 feet Southerly, measured radially from the revised A-2 line of SR-16, M.P. 8.34 to M.P. 18.87, Narrows Bridge to Olympic Drive; THENCE South 87 degrees 54'10" East 190 feet; THENCE North 2 degrees 05'50" East 20 feet; THENCE South 87 degrees 54'10" East 135 feet; THENCE South 2 degrees 05'50" West 35.71 feet; THENCE South 87 degrees 54'10" East 165 feet; THENCE South 2 degrees 05'50" West 598.60 feet; THENCE North 87 degrees 54'10" West 220.00 feet; THENCE North 2 degrees 05'50" East 165.00 feet; THENCE North 87 degrees 54'10" West 270.00 feet to the point of beginning, in Pierce County, Washington

EXCEPT the most Westerly 10 feet thereof

AND EXCEPT that portion conveyed to Pierce County by Quit Claim Deeds recorded under Auditor's File Nos. 2594930 and 2594931

Situate in the County of Pierce, State of Washington

PARCEL D:

Those certain rights of reciprocal ingress, egress, access, parking, pedestrian traffic and utilities as provided for in Reciprocal Grant of Easement recorded April 4, 1973 under Auditor's File No. 2493712, and as amended by instruments recorded August 3, 1973, January 27, 1983 and March 16, 1984 under Auditor's File Nos. 251357C, 8301270031 and 8403160100.

Situate in the County of Pierce, State of Washington

9502080074

21007PG085

PARCEL E (Safeway Parcel):

Commencing at the Southwest corner of the Southeast quarter of Section 17, Township 21 North, Range 2 East of the Willamette Meridian; THENCE along the South line of said Southeast quarter, South 88 degrees 22'51" East 30 feet to a point on the East right-of-way line of 30th Avenue N.W. (Point Fosdick-Gig Harbor County Road); THENCE along said East right-of-way line North 2 degrees 05'50" East 629.06 feet to the true point of beginning; THENCE continuing North 2 degrees 05'50" East along said right-of-way line 140.00 feet to a line parallel with and 100 feet Southerly, measured radially from the revised A-2 line of SR-16, M.P. 8.34 to M.P. 18.87, Narrows Bridge to Olympic Drive; THENCE Northeasterly along said parallel line, a distance of 193.40 feet; THENCE leaving said parallel line, South 2 degrees 05'50" West 171.98 feet to a point which bears South 87 degrees 54'10" East from the true point of beginning; THENCE North 87 degrees 54'10" West 190.00 feet to the true point of beginning, in Pierce County, Washington.

EXCEPT the most Westerly 10.00 feet thereof.

TOGETHER WITH a non-exclusive easement for ingress, egress and utilities, as described in Reciprocal Grant of Easements and Declaration of Establishment of Restrictions and Covenants recorded under Auditor's No. 2493712 and a modification of said easements and covenants recorded under Auditor's Nos. 2513570, 8301270031 and 8403160100.

ALSO TOGETHER WITH a non-exclusive easement of variable width for utilities within the Southwest quarter of the Southeast quarter of Section 17, Township 21 North, Range 2 East of the Willamette Meridian, the centerline and width of said easement being described as follows:

Commencing at the Southwest corner of said subdivision; THENCE North 2 degrees 05'50" East along the West line thereof 569.00 feet; THENCE South 87 degrees 54'10" East 40.00 feet to the East margin of Point Fosdick County Road, the true point of beginning of said centerline and easement, which is 50.00 feet wide, being 25.00 feet each side of said centerline; THENCE continuing South 87 degrees 54'10" East 223.53 feet to a point hereinafter referred to as Point "A"; THENCE South 2 degrees 05'50" West 119.62 feet; THENCE South 27 degrees 22'13" East 43.65 feet; THENCE South 2 degrees 05'50" West 359.00 feet to the North line of the South 50.00 feet of said subdivision and the terminus of this portion of the described centerline and easement, together with another portion of said 50.00 foot wide easement, being 25.00 feet each side of a centerline, beginning at the aforesaid Point "A"; THENCE North 2 degrees 05'50" East 149.55 feet; THENCE South 87 degrees 54'10" East 317.48 feet to a point at which the easement becomes 30.00 feet wide, being 15.00 feet each side of said centerline; THENCE South 2 degrees 05'50" West 663.70 feet to the North line of the South 50.00 feet of said subdivision and terminus of the described centerline and easement.

ALSO TOGETHER WITH an easement for utilities over and across the South 50.00 feet of said Southwest quarter of the Southeast quarter of Section 17, Township 21 North, Range 2 East of the Willamette Meridian.

EXCEPT roads

ALSO TOGETHER WITH an easement which is 50.00 feet wide, being 25.00 feet each side of the following described centerline:

Commencing at the aforesaid Point "A"; THENCE North 2 degrees 05'50" East 149.55 feet; THENCE North 87 degrees 54'10" West 25.00 feet to the true point of beginning of said centerline and easement; THENCE continuing North 87 degrees 54'10" West 18.53 feet to the terminus of the described centerline and easement.

Situate in the County of Pierce, State of Washington.

9502080074

WHEN RECORDED RETURN TO:

Safeway Inc.
Real Estate Law Dept.
5918 Stoneridge Mall Rd.
Pleasanton CA 94588
Re Store No. 2949

Grantors:	Safeway Inc., a Delaware corporation
Grantees:	City of Gig Harbor
Legal Description (abbreviated):	Southwest quarter of the southeast quarter of Section 17, Township 21 North, Range 2 East
Additional on:	N/A
Assessor's Tax Parcel ID #:	400303-001-0; 400303-002-0; 400303-003-0; 400303-004-0; 400303-005-0; 400303-006-0; 400303-007-0; 400303-008-0; 400303-009-0; 400303-010-0; 400303-011-0; 400303-012-0
Reference No. of Document Released:	200802190774

**TERMINATION OF OBLIGATIONS UNDER
SANITARY SEWER FACILITIES EASEMENT AND
MAINTENANCE AGREEMENT DATED FEBRUARY 11, 2008**

THIS TERMINATION is executed by the City of Gig Harbor, a Washington municipal corporation (the "City"), and Safeway Inc., a Delaware corporation (the "Developer").

WHEREAS, the City and the Developer (erroneously signing as "Safeway Inc., a Delaware limited partnership") entered into that certain Sanitary Sewer Facilities Easement and Maintenance Agreement dated February 11, 2008, recorded at Pierce County Auditor's File No. 200802190774 (the "2008 Easement Agreement"); and

WHEREAS, the 2008 Easement Agreement established terms and conditions relating to a private sanitary sewer system including but not limited to a lift station located at 4831 Point Fosdick Drive, Gig Harbor, WA 98335; and

WHEREAS, the lift station no longer exists and has been replaced with a gravity line for which a new Sanitary Sewer Facilities Easement and Maintenance Agreement has been executed, recorded at Pierce County Auditor's File No: 201104220305, eliminating the need for the 2008 Easement Agreement; now, therefore in consideration of the foregoing, the City and the Developer agree as follows:

The 2008 Easement Agreement is hereby terminated and of no further force or effect.

DATED this _____ day of _____, 2012.

CITY OF GIG HARBOR:

DEVELOPER

SAFEWAY INC.

By: _____
Mayor Charles L. Hunter

By: Wendy Wilson
Its Assistant Vice-President

ATTEST/AUTHENTICATED:

By: [Signature]
Its Assistant Secretary

City Clerk Molly Towslee

FORM APPROVED SB/28

STATE OF WASHINGTON)
) ss.
COUNTY OF PIERCE)

I certify that I know or have satisfactory evidence that CHARLES L. HUNTER and MOLLY TOWSLEE are the persons who appeared before me, and said persons acknowledged that they signed this instrument, and acknowledged it as Mayor and City Clerk of the City of Gig Harbor to be the free and voluntary act and deed of such party for the uses and purposes mentioned in this instrument.

DATED: _____, 2012.

(Signature)

(Print Name)

NOTARY PUBLIC in and for Washington

Residing at _____

My commission expires: _____

STATE OF CALIFORNIA)
) ss.
COUNTY OF ALAMEDA)

On May 23, 2012 before me, **Susan Rhoades**, Notary Public, personally appeared Wendell Mitchell and Soren J. Monig, who proved to me on the basis of satisfactory evidence to be the persons whose names are subscribed to the within instrument and acknowledged to me that they executed the same in their authorized capacities, and that by their signatures on the instrument the persons, or the entity upon behalf of which the persons acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal

Signature 





Subject: Consultants Services Contract for Grette Associates for the Eddon Beach Restoration Project.

Dept. Origin: Administration

Prepared by: Lita Dawn Stanton Special Projects

Proposed Council Action: Approve and authorize the Mayor to execute a contract with Grette Associates for wetland work for the Eddon Beach Restoration Project in an amount not to exceed \$3,970.00.

For Agenda of: May 29, 2012

Exhibits: Contract Exhibit A / B

Concurred by Mayor:
Approved by City Administrator: [Signature] 5/25/12
Approved as to form by City Atty:
Approved by Finance Director: [Signature] 5/25/12

Initial & Date

Table with 4 columns: Expenditure Required (\$3,970.00), Amount Budgeted (\$22,500), Appropriation Required, and *See Fiscal Below.

INFORMATION / BACKGROUND

As part of the 2008 Eddon Boat Park Clean-Up, a 12-foot creosote piling bulkhead was removed leaving a steep, unfinished grade down to the shoreline. The 2010 Park, Recreation and Open Space Plan identifies as Objective #10 Eddon Boat Park Development: \$300,000 to regrade for improved water access adding gravel/sand mix above and below the water line for enhanced public use. Add trail, seating and soft landing for hand-powered watercraft. In 2011, the City set aside \$22,500 to begin this work. Anchor QEA was chosen to provide design, permitting and construction management for the Eddon Boat Park Restoration Project. The City's Planning Department has requested that a Habitat Assessment/Management Plan per GH Municipal Code 18.08.186 be completed in addition to the wetland delineation work prior to permitting the proposed conceptual design. Grette Associates was chosen to do the work. Their contract and exhibits are attached.

FISCAL CONSIDERATION

Sufficient funds are available for the Grette contract in the Parks CIP ending fund balance.

BOARD OR COMMITTEE RECOMMENDATION

n/a

RECOMMENDATION / MOTION

Move to: Approve and authorize the Mayor to execute a contract with Grette Associates for wetland work for the Eddon Boat Beach Restoration Project in an amount not to exceed \$3,970.00.

**CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
GRETT ASSOCIATES**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (the "City"), and Grette Associates, a corporation organized under the laws of the State of Washington (the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in the Eddon Beach Restoration Project 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 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 nine hundred and seventy dollars and no cents (\$3,970.00) 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 B – Schedule of Rates and Estimated Hours**. The Consultant shall not bill for Consultant's staff not identified or listed in **Exhibit B** or bill at rates in excess of the hourly rates shown in **Exhibit B**, unless the parties agree to a modification of this Contract, pursuant to Section 17 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 August 30, 2012; 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,

{ASB983053.DOC;1\00008.900000\}

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 per occurrence. All policies and coverages shall be on an occurrence basis by an 'A' rated company licensed to conduct business in the State of Washington.

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. 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.

10. 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.

11. **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.

12. **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.

13. **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.

14. **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 Director of Operations 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.

15. **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:
GRETTE ASSOCIATES
ATTN: Scott Maharry
2102 North 30th Street, Suite A
Tacoma, WA 98403
(253) 573-9300

City of Gig Harbor
ATTN: Lita Dawn Stanton
3510 Grandview Street
Gig Harbor, WA 98335
(253) 851-6170

16. **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. If applicable, any subconsultants approved by the City at the outset of this Agreement are named on **Exhibit C** attached hereto and incorporated herein by this reference as if set forth in full.

17. **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 _____, 20____.

CONSULTANT

CITY OF GIG HARBOR

By: _____
Its: _____

By: _____
Mayor Charles L. Hunter

ATTEST:

City Clerk

APPROVED AS TO FORM:

City Attorney



To: Lita Dawn Stanton
City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335

Date: May 15, 2012
Project #: 250.015

Project Name: Eddon Boat Habitat
Assessment/Management
Plan

Phone: (253) 853-7609
Fax: (253) 851-8563
E-Mail: StantonL@cityofgigharbor.net

Project Manager: Scott Maharry
Client File No.: 250.001

SENT VIA:

- | | |
|-------------------------------|---|
| <input type="checkbox"/> Mail | <input type="checkbox"/> Hand Delivered |
| <input type="checkbox"/> Fax | <input checked="" type="checkbox"/> Email |

DESCRIPTION OF WORK:

Task 100 –Habitat Assessment/Management Plan

Grette Associates staff will prepare a Habitat Assessment/Management Plan per Gig Harbor Municipal Code (GHMC) 18.08.186 and will revise the Eddon Boat Park Wetland Analysis Report to address potential impacts to onsite wetlands associated with the project. The Habitat Assessment/Management Plan will address all development activity associated with the upland park improvements within 200 feet of the Special Flood Hazard Area boundary and will address the requirements detailed in Ordinance #'s 1223 and 1234 and GHMC 18.08.186.C. It is assumed that Grette Associates will be provided the current base file of Eddon Boat Park in AutoCAD format detailing the current project design. This Task includes time for coordination with WDFW regarding their comments on the Habitat Assessment/Management Plan.

An estimated budget for Task 100 is as follows:

Staff	Rate	Units	Total
Biologist 5	\$120.00	2	\$240.00
Biologist 2	\$90.00	35	\$3,150.00
Biologist 1	\$85.00	6	\$510.00
Administrative	\$70.00	1	\$70.00
TOTAL TASK 100			\$3,970.00

- TIME AND EXPENSE
- FIXED FEE
- RETAINER*

Estimated Contract Amount: \$3,970.00
Fee Amount:
Retainer Amount:



Subject: Robert Frisbie's appeal of the SEPA Determination of Non-significance issued for the city's draft Shoreline Master Program.

Proposed Council Action: Hold an open record appeal hearing and affirm the Threshold Determination of the city's SEPA Responsible Official and deny the appeal.

Dept. Origin: Planning Department

Prepared by: Tom Dolan
Planning Director

For Agenda of: May 29, 2012

Exhibits: Exhibit A-SEPA Checklist dated February 1, 2012
Exhibit B-SEPA Checklist Supplemental Sheet for Non-project Actions dated February 1, 2012
Exhibit C-Determination of Non-significance dated February 29, 2012
Exhibit D-Appeal letter from Robert Frisbie dated April 23, 2012
Exhibit E-Appellant Frisbie's comments to the Planning Commission addressing the same issues
Exhibit F-City's Memorandum in Support of Denial of Appeal

Initial & Date

Concurred by Mayor:

Approved by City Administrator:

Approved as to form by City Atty: *Per e-mail dated 5.23.12*

Approved by Finance Director:

Approved by Department Head:

CLH 5/24/12

R- 5/24/12

Per e-mail dated 5.23.12

DR 5/24/12

JH TD

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

On February 29, 2012, the city's Responsible Official for compliance with RCW 43.21C, the State Environmental Policy Act, and Gig Harbor Municipal Code Chapter 18.04 Environmental Review (SEPA), issued a Determination of Non-significance (DNS) for the city's February 29, 2012 draft Shoreline Master Program. A SEPA Threshold Determination is a procedural requirement for the legislative action by the City Council for the adoption of the updated shoreline master program, which is a "non-project" action applicable city-wide and within the city's Urban Growth Area. In issuing the DNS, the Responsible Official concluded that the adoption of the proposed master program would not result in a probable significant adverse environmental impact to the natural and built environment. The DNS was issued subject to 60-day comment and 7-day appeal periods.

ENVIRONMENTAL ANALYSIS

The SEPA Responsible Official issued a Determination of Non-Significance (DNS) for the proposed comprehensive amendments to the shoreline master program on February 29, 2012 per WAC 197-11-340(2). The appeal period for the DNS expired on May 7, 2012. On April 25, 2012, Robert Frisbie filed a timely appeal of the city's DNS. Mr. Frisbie's appeal is attached as Exhibit "D."

FISCAL CONSIDERATION

None

RECOMMENDATION / MOTION

Hold an open record appeal hearing and affirm the DNS issued by the city's Responsible Official for the update and adoption of the city's Shoreline Master Program.

STATE ENVIRONMENTAL POLICY ACT (SEPA) ENVIRONMENTAL CHECKLIST

A. BACKGROUND

1. Name of proposed project, if applicable:

City of Gig Harbor Shoreline Master Program (GHSMP)

2. Name of applicant:

City of Gig Harbor

3. Address and phone number of applicant and contact person:

Peter Katich, Senior Planner
City of Gig Harbor Planning Department
3510 Grandview Street
Gig Harbor, WA 98335
253-853-7616

4. Date checklist prepared

February 1, 2012

5. Agency requesting checklist:

City of Gig Harbor

6. Proposed timing or schedule (including phasing, if applicable):

City Council action expected in May, 2012

7. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal? If yes, explain.

The GHSMP is considered a comprehensive update to the city's existing shoreline master program, which was first adopted in 1975 and last amended in 1994. Shoreline master programs are required by the Shoreline Management Act (SMA) to be updated by amendment periodically (RCW 90.58.080). The City of Gig Harbor is required to complete its update by December 31, 2011 and conduct comprehensive update reviews every eight years thereafter. Minor amendments may be adopted at any time in accordance with the procedures set forth in WAC 173-26. The city of Gig Harbor Comprehensive Plan will be amended for consistency with the proposed GHSMP goals and policies and Gig Harbor Municipal Code (GHMC) Titles 17, 18 and 19 (zoning, critical areas and administration) will be amended for consistency with the updated master program.

8. List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal.

- Draft City of Gig Harbor Shoreline Inventory and Characterization, last revised April, 2011;
- Draft City of Gig Harbor Cumulative Impact Analysis, last revised March 17, 2011;
- Draft City of Gig Harbor Shoreline Restoration Plan, April, 2011; and,
- Draft City of Gig Harbor Shoreline Master Program, April 21, 2011, revised January 9, 2012.

9. Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain.

No pending applications or approvals would be affected. Once adopted by the Department of Ecology, the proposed GHSMMP will be used to regulate new development projects or activities/uses located within the city along Gig Harbor Bay, the Tacoma Narrows and Henderson Bay. Should existing city UGA area along Colvos Passage, the Tacoma Narrows, Henderson Bay and Burley Lagoon annex into the city in the future, the proposed master program would also regulate the shoreline jurisdiction within those areas.

10. List any government approvals or permits that will be needed for your proposal, if known.

- Review and threshold determination under the State Environmental Policy Act for Non-project actions;
- Adoption by the Gig Harbor City Council; and,
- Approval by the Washington State Department of Ecology pursuant to RCW 90.58.090.

11. Give brief, complete description of your proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page. (Lead agencies may modify this form to include additional specific information on project description.)

The proposal is a non-project action to amend the City's existing Shoreline Master Program which guides and regulates activities/uses and development along the city's shorelines. The proposed GHSMMP would replace the city's existing master program first adopted in 1975 and last amended in 1994. The city's Comprehensive Plan and GHMC Titles 17, 18 and 19 (zoning, critical areas and administration, respectively), would also be subsequently amended for consistency with the updated GHSMMP.

The proposed GHSMMP is the product of a comprehensive, city-wide update of the master program as required by RCW 90.58.080(2)(a)(iii). The updated master program has been prepared consistently with the Department of Ecology's (Ecology) guidelines set forth in WAC 173-26. The proposed GHSMMP will affect activities/uses and development along Gig Harbor Bay, Colvos Passage, the Tacoma Narrows, Henderson Bay and Burley Lagoon. Marine areas waterward of extreme low tide are designated as "Shorelines of Statewide Significance," requiring additional attention.

For the purposes of analysis, shoreline areas were divided into six (6) distinct shoreline planning segments (A-F) based broadly on the physical distinction along the shoreline, the level of ecological functions provided by each segment, as well as existing land uses and zoning designations.

Shoreline Planning Segments

Segment	Approximate Length (feet)	Approximate Segment Acreage	General Boundaries
A	1,656	4.8	Eastern Urban Growth Area (UGA) along Colvos Passage to the Gig Harbor spit
B	9,614	43.4	North of the Gig Harbor spit in UGA to North Harborview Drive NW/Rust Street Intersection in city limits
C	11,720	48.0	North Harborview Drive NW/Rust Street Intersection to Old Ferry Landing
D	13,092	52.8	Old Ferry Landing to southern UGA along the Narrows
E	4,981	19.3	Along Henderson Bay from McCormick Creek to northern city limits and continuing north in UGA to Goodnough Drive NW/Purdy Drive NW intersection (north of Goodnough Creek)
F	5,611	21.8	Goodnough Drive NW/Purdy Drive NW intersection (north of Goodnough Creek) to northwestern UGA limits along Burley Lagoon

Based on the findings of the city's April, 2011 Shoreline Inventory and Characterization Report, the six (6) shoreline planning segments were further divided into the following seven (7) Shoreline Environment Designations:

- **Natural:** Gig Harbor Spit; and Tacoma Narrows south of overwater beach cabins to southern Urban Growth Area limits;
- **Urban Conservancy:** Colvos Passage; stream mouths and estuarine wetlands of Crescent and Donkey Creeks; and stream mouths of Purdy, Goodnough, and McCormick Creeks;
- **Low Intensity:** East Gig Harbor Bay; overwater beach cabins along Tacoma Narrows; and Henderson Bay and Burley Lagoon excluding stream mouths of Purdy, Goodnough, and McCormick Creeks;
- **Purdy Commercial:** Henderson Bay and Burley Lagoon between the Urban Conservancy designation for the Goodnough Creek stream mouth and the Urban Conservancy designation for the Purdy Creek stream mouth;
- **City Waterfront:** Downtown Gig Harbor Bay excluding stream mouths and estuarine wetlands of Crescent and Donkey Creeks;
- **Historic Working Waterfront:** Downtown Gig Harbor Bay within the historic "Millville" District; and
- **Marine Deepwater:** Gig Harbor Bay, Henderson Bay and Burley Lagoon waterward of extreme low tide.

All environments extend waterward to the extreme low tide, except that the Marine Deepwater Environment extends waterward to city limits.

Shoreline Environment Designations have been determined after consideration of:

- The ecological functions and processes that characterize the shoreline, together with the degree of human alteration as determined by the 2011 Shoreline Inventory and Characterization Report and any subsequent investigations or analyses as may be required by this program;
- Existing development patterns together with the Gig Harbor Comprehensive Plan land use designations and other officially adopted plans; and
- The guidelines outlined in WAC 173-26-211, Environment Designation System.

The city's shoreline environment designations function as an overlay to provide regulations, development standards, and protective environmental measures, in addition to the regulations and standards of the underlying zoning classifications.

Goals and policies are identified for each of the shoreline environment designations. Further, general goals, policies and regulations for Shoreline Use, Marine Shoreline and Critical Areas Protection, Flood Hazard Reduction, Historic, Cultural, Scientific and Educational Resources, Public Access, Water Quality and Quantity, Vegetation Conservation, Quality Waterfront Development along Gig Harbor Bay and Restoration and Remediation have also been developed as part of the SMP update process. The GHSMMP also contains goals, policies and regulations for shoreline land use and modifications. In this regard, goals, policies and regulations have been developed for Aquaculture, Boating and Marinas: Piers, Docks and Moorage, Clearing and Grading, Commercial Uses, Commercial Fishing, Dredging and Dredge Material Disposal, Educational Facilities/Scientific, Historical Cultural, Educational Research Uses, Fill and Excavation, Historic Net Sheds, Industrial Development, In-stream Structures, Pedestrian Beach Access Structures, Recreation Uses and Development, Residential, Shoreline Habitat and Natural Systems Enhancement Projects, Shoreline Stabilization, Signs and Outdoor Advertising, Transportation Facilities and Utilities.

There is also a regulatory element in the proposed GHSMMP. In this regard, the master program contains use and modification regulations and development standards to be applied in each shoreline environment designation. Use regulations refer to the allowance or prohibition of specific uses such as residential, commercial, or industrial uses in each shoreline environment designation. Modification regulations address development activities such as dredging, clearing and grading, fill and excavation and pedestrian beach access structures that modify existing natural and altered shoreline conditions. In general, such development standards as building and structure setbacks, height limitations, native vegetation requirements, and public access requirements are also addressed by the master program. The development standards also address the management and protection of critical areas (wetlands, critical fish and wildlife habitat, steep slopes, etc.) located within the shoreline area. Some of the use, modification and development standards have been retained from the city's existing master program, others are newly created to address a specific shoreline management need or to ensure compliance with state guidelines.

Lastly, the proposed GHSMMP contains administrative procedures such as permit submittal requirements and review procedures for Shoreline Substantial Development Permit exemptions, Shoreline Substantial

Development Permits, Shoreline Conditional Use Permits and Shoreline Variance Permits, nonconforming uses and structures and enforcement actions. These elements have been updated from the existing master program to clarify procedural requirements and reflect current practice.

- 12. Location of the proposal. Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and topographic map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist.**

The city of Gig Harbor is located on the west side of the Tacoma Narrows on Puget Sound and within the greater Gig Harbor/Key Peninsula area. The corporate city limits extend from the Tacoma Narrows on the south to Henderson Bay on the north. The city is also located within Watershed Resource Inventory Area 15 (WRIA 15). The city encompasses an area of approximately seven square miles, with an additional three square miles of unincorporated area lying within its Urban Growth Area (UGA). It also contains approximately 8.8 miles of shoreline area within both the city and its UGA.

B. ENVIRONMENTAL ELEMENTS

1. Earth

- a. General description of the site (circle one): Flat, rolling, hilly, steep slopes, mountainous, other...**

Most of the city's topography consists of flat-topped hills and ridges that lie within 200 and 300 feet above sea level. Bluffs are located on all three sides of peninsula within which the city is located. The city's shoreline jurisdiction include these bluff areas as well moderate sloped and relatively level areas, and the relatively protected areas of Gig Harbor Bay and Henderson Bay.

- b. What is the steepest slope on the site (approximate percent slope)?**

Slopes in Shoreline Planning Segments A and D are the steepest within the city's planning area and vary between 45 to 75 percent.

- c. What general types of soils are found on the site (for example, clay, sand, gravel, peat, muck)? If you know the classification of agricultural soils, specify them and note any prime farmland.**

The steepest sloped areas were mainly formed in glacial till, but some formed in sandy and gravelly outwash. Hydraquents, Indianola loamy sand, Harstine gravelly sandy loam and Kitsap silt loam are also soil types commonly found within the planning area.

- d. Are there surface indications or history of unstable soils in the immediate vicinity? If so, describe.**

Shoreline Planning Segments A and D located on Colvos Passage and the Tacoma Narrows, respectively, contain erosional feeder bluffs fronted by natural, relatively unaltered shoreline area that is subject wave and current induced erosion activity.

- e. Describe the purpose, type, and approximate quantities of any filling or grading proposed. Indicate source of fill.**

No filling or grading is proposed as part of this non-project action. The proposed GHSMMP generally strengthens protection of the shoreline through new regulations for native vegetation conservation and additional provisions to address clearing and grading. All filling and grading activities would also be subject to the existing provisions of the GHMC including the clearing and grading requirements in GHMC Chapter 14.40.

- f. Could erosion occur as a result of clearing, construction, or use? If so, generally describe.**

No erosion would occur as a result of this non-project action. Erosion control would be addressed on a project level basis through excavation, grading, clearing and erosion control requirements under the city's Building Code (GHMC Title 15), surface water management requirements (GHMC Title 14) and the modification and development standards set forth in the updated shoreline master program.

- g. About what percent of the site will be covered with impervious surfaces after project construction (for example, asphalt or buildings)?**

No new impervious area is proposed as a result of this non-project action. Development standards for setbacks, buffers and lot coverage set forth in the proposed master program and existing zoning regulations would control the amount of new impervious area allowed within the shoreline area regulated by this master program. New regulations for nonconforming uses and structures have been added to the updated master program consistent with state guidelines. The new provisions allow legally established nonconforming uses and structures to remain, but prohibit the expansion of those uses and structures in a manner that increase the degree of nonconformity for such requirements as height, setbacks, lot coverage, etc.

- h. Proposed measures to reduce or control erosion, or other impacts to the earth, if any:**

The proposed GHSMMP strengthens erosion control provisions by requiring conservation of native vegetation areas within the area regulated by the document. It also contains new policies and regulations related to preservation and restoration of vegetation to benefit both habitat and slope stability within areas fronting the city's tidally influenced shorelines.

2. Air

- a. What types of emissions to the air would result from the proposal (i.e., dust, automobile, odors, industrial wood smoke, greenhouse gases) during construction and when the project is completed? If any, generally describe and give approximate quantities if known.**

No emissions would result from this non-project action.

- b. Are there any off-site sources of emissions or odor that may affect your proposal? If so, generally describe.

No

- c. Proposed measures to reduce or control emissions or other impacts to air, if any:

No measures would be necessary.

3. Water

- a. Surface:

- 1) Is there any surface water body on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? If yes, describe type and provide names. If appropriate, state what stream or river it flows into.

Bodies of water in Gig Harbor regulated under the Shoreline Management Act (SMA) and the GHSMP include marine shorelines on Colvos Passage, Gig Harbor Bay, the Tacoma Narrows, Henderson Bay and Burley Lagoon. Crescent Creek and Donkey (North) Creek are located within the city limits within Gig Harbor Bay, and McCormick Creek is located within the city limits on Henderson Bay. Goodnough Creek and Purdy Creek are both located on Henderson Bay within the city's UGA. Wetlands associated with the nearshore marine shoreline are limited in the urbanized shoreline of Gig Harbor Bay. Those found are in limited locations such as tidal fringe habitats. Potential non-tidal wetlands occur along the southwestern shore of Gig Harbor Bay. A potential wetland area occurs near the mouth of Purdy Creek that is likely within the shoreline planning area.

- 2) Will the project require any work over, in, or adjacent to (within 200 feet) the described waters? If yes, please describe and attach available plans.

No work affecting surface waters is associated with this non-project action; however, new development in the shoreline jurisdiction (which includes work in or over tidally influenced waters and within 200 feet of the Ordinary High Water Mark [OHWM]) would be subject to the provisions of the proposed GHSMP.

- 3) Estimate the amount of fill and dredge material that would be placed in or removed from surface water or wetlands and indicate the area of the site that would be affected. Indicate the source of fill material.

No filling or dredging is proposed for this non-project action. Under the proposed GHSMP, fill activities landward of the OHWM will only be allowed in association with an approved shoreline development. Fill activities waterward of the OHWM will only be allowed in conjunction with new water dependent use developments as a conditional use activity. Fill will also be allowed waterward of the OHWM for shoreline restoration and city utility activities. See GHSMP Sections 7.1.1 and Section 7.10.2.

- 4) Will the proposal require surface water withdrawals or diversions? Give general description, purpose, and approximate quantities if known.

None would be required.

5) Does the proposal lie within a 100-year floodplain? If so, note location on the site plan.

The Federal Emergency Management Agency (FEMA) has prepared Flood Insurance Rate Maps (FIRMs) that established Zone A1 and the +9.0 feet NGVD 1929 reference datum as the base flood elevation for coastal flooding. All but a small portion of Gig Harbor Bay is located within this zone. Exceptions are found at the southwest corner of the bay where Donkey (North) Creek discharges into the bay. Here, the area between North Harborview Drive and the bay is located within Zone B, while the tidally influenced portion of Donkey Creek that is bordered by North Harborview Drive, Harborview Drive and Austin Street, is located within zoned A21.

On Colvos Passage, the Tacoma Narrows, Henderson Bay and Burley Lagoon all shoreline frontage within the city limits and its UGA is located within Zone A. No riparian flood plains are located within the city's jurisdiction.

6) Does the proposal involve any discharges of waste materials to surface waters? If so, describe the type of waste and anticipated volume of discharge.

There would be no discharges associated with the proposed non-project action. Work to expand wastewater and stormwater treatment facilities would be allowed under the GHSMMP, subject to a Shoreline Substantial Development Permit, as well as other applicable state and federal regulations. The proposed GHSMMP also contains provisions to avoid, minimize and mitigate impacts from waste and stormwater facilities on surface waters. See GHSMMP Sections 6.6-Water Quality & Quantity and 7.21-Utilities.

Gig Harbor's storm drainage collection and conveyance system consists of typical components such as inlets, catch basins, piping, open ditches, natural streams, wetlands, ponds, and stormwater detention and water quality ponds. Stormwater is eventually conveyed to Gig Harbor Bay, Henderson Bay, Wollochet Bay and Puget Sound. Approximately 20 stormwater outfalls, ranging in diameter from 8 to 48 inches convey stormwater to marine waters located both in and outside the city limits and its UGA.

b. Ground:

1) Will ground water be withdrawn, or will water be discharged to ground water? Give general description, purpose, and approximate quantities if known.

No water will be withdrawn from or discharged to groundwater.

2) Describe waste material that will be discharged into the ground from septic tanks or other sources, if any (for example: Domestic sewage; industrial, containing the following chemicals; agricultural; etc.). Describe the general size of the system, the number of such systems, the number of houses to be served (if applicable), or the number of animals or humans the system(s) are expected to serve.

Not applicable. New development under the proposed GHSMP, including sewage disposal, water supply and storm drainage facilities shall be provided in full compliance with city and state health regulations.

Several community septic systems are permitted under the city's current development standards where connection to the city collection system is not feasible. Septic systems are located in residential areas within shoreline planning segments A and B and within the city's UGA. These systems are permitted by Pierce County.

c. Water runoff (including stormwater):

- 1) Describe the source of runoff (including storm water) and method of collection and disposal, if any (include quantities, if known). Where will this water flow? Will this water flow into other waters? If so, describe.**

This proposal would not generate any runoff. All new development in shoreline areas will be required to comply with the provisions of the proposed GHSMP and the city's existing surface water requirements.

- 2) Could waste materials enter ground or surface waters? If so, generally describe.**

No waste materials would enter ground or surface waters.

d. Proposed measures to reduce or control surface, ground, and runoff water impacts, if any:

No specific measures are proposed since the GHSMP is a city-wide, non-project action. In general, the updated master program strengthens goals and policies related to conservation and restoration of water quality by encouraging retention of vegetation and compliance with the city's Stormwater Management and Site Development Manual.

4. Plants

a. Check or circle types of vegetation found on the site:

deciduous tree: alder, maple, willow, cottonwood, fruit trees

evergreen tree: Douglas fir, cedar, pine, western hemlock

shrubs: Himalayan blackberry, salal, Oregon Grape

grass: lawn grass

pasture: none identified

crop or grain: none identified

wet soil plants: cattail, buttercup, bullrush, skunk cabbage, other

water plants: eelgrass, kelp, algae

other types of vegetation: kinnikinnick, wild strawberry

b. What kind and amount of vegetation will be removed or altered?

No vegetation would be removed as a result of this non-project action. Generally, the proposed GHSMMP strengthens protection of native shoreline vegetation. The proposal contains new goals, policies and regulations for the conservation and restoration of native vegetation within the area regulated by the master program. Existing regulations from the city's Critical Areas Ordinance (GHMC Chapter 18.08) have been incorporated into the proposed GHSMMP to address critical areas within shoreline jurisdiction. Specific provisions related to clearing and landscaping activities require avoiding or minimizing impacts to vegetation. Where impacts are not avoidable, mitigation will be required to achieve the SMA standard of no net loss of ecological function.

c. List threatened or endangered species or critical habitat known to be on or near the site.

Nearshore marine habitats span the supralittoral, intertidal, and subtidal zones. Riparian areas, urban natural open spaces, wetlands, and bluffs front on the nearshore areas and are located within the area regulated by the master program. There are no known endangered, threatened, or sensitive plant species in the city's shoreline jurisdiction.

d. Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any:

No specific measures are proposed. Permitted vegetation removal under the proposed master program must comply with the regulations set forth in Section 6.2 of the master program.

5. Animals

a. Circle any birds and animals which have been observed on or near the site or are known to be on or near the site (indicated by bold, underlined font):

birds: crows, hawks, great blue heron, bald eagle, songbirds, gulls, loons, grebes, cormorants, auklets, guillemots, murres, puffins, oyster catchers, mallard ducks, widgeons, shovellers, scaups, buffleheads, scoters and mergansers

mammals: deer, bear, killer whale, humpback whale and Steller sea lion, other

fish: Chinook, Coho and Chum salmon, Steelhead and Bull trout, Pacific herring, Sand lance and Surf smelt, other

Amphibians: Unknown

Reptiles: Unknown

Shellfish: Geoduck, little neck, manila, cockle, butter and horse clams, shrimp, oysters, red rock crab, Dungeness crab, mussels

b. List any threatened or endangered species known to be on or near the site.

Chinook salmon, listed as threatened under the ESA are present in Crescent and McCormick Creeks. Critical habitat for Chinook salmon has been designated in estuarine and nearshore marine areas and includes areas contiguous with the shoreline from the line of extreme high water out to a depth of 30 meters relative to mean lower low water. Steelhead trout, listed as threatened under the ESA, are present in Crescent, McCormick, Purdy and Donkey Creeks. Coho salmon, a federal species, a federal species of concern may be found in Purdy, McCormick, Crescent and Donkey Creeks. Bull trout listed as threatened under the ESA are potentially present within marine areas

surrounding Gig Harbor. Gig Harbor Bay and Henderson Bay provide habitat for rearing and outmigration of juvenile salmonids.

c. Is the site part of a migration route? If so, explain.

Yes. Gig Harbor Bay and Henderson Bay serve as migratory routes for native and hatchery salmonids that are present in Crescent, Donkey, McCormick, Goodnough and Purdy Creeks.

d. Proposed measures to preserve or enhance wildlife, if any:

The proposed GHSMMP contains goals, policies and development standards for the conservation and restoration of native vegetation within the shoreline area which provides for wildlife habitat. Provisions for the protection of critical fish and wildlife habitat areas have been incorporated into the proposed GHSMMP (see Section 6.2.4-Regulations-Critical Areas). Where impacts to wildlife or associated habitat are not avoidable, mitigation will be required to achieve the SMA standard of no net loss of ecological function.

6. Energy and natural resources

a. What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc.

Not applicable.

b. Would your project affect the potential use of solar energy by adjacent properties? If so, generally describe.

No. The proposed GHSMMP relies upon the maximum height limits allowed by underlying, existing zoning designations. Within the corporate city limits, maximum height limits vary between 16-18 feet. Within the city's UGA, a maximum height of 35 feet is allowed.

c. What kinds of energy conservation features are included in the plans of this proposal? List other proposed measures to reduce or control energy impacts, if any:

No measures are necessary for this non-project action.

7. Environmental health

a. Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste, that could occur as a result of this proposal? If so, describe.

There are no health hazards that would result from the proposed GHSMMP.

1) Describe special emergency services that might be required.

Not applicable.

2) Proposed measures to reduce or control environmental health hazards, if any:

Not applicable.

b. Noise

1) What types of noise exist in the area which may affect your project (for example: traffic, equipment, operation, other)?

Not applicable.

2) What types and levels of noise would be created by or associated with the project on a short-term or a long-term basis (for example: traffic, construction, operation, other)? Indicate what hours noise would come from the site.

Not applicable.

3) Proposed measures to reduce or control noise impacts, if any:

Not applicable.

8. Land and shoreline use

a. What is the current use of the site and adjacent properties?

The city of Gig Harbor has an established land use pattern within the shoreline jurisdiction of the master program. Within the city of Gig Harbor, the most northerly portions of shoreline planning segments B and C are developed primarily with single-family dwellings. The remaining portion of segment C contains a mix of land uses and is dominated by commercial development within the Finholm and Downtown Business Districts. Within segment C are found all of the city's marinas and other water-dependent uses. A number of water-related and water-enjoyment uses are also found within this planning segment. However, the southerly portion of segment C and the northerly half of segment D are developed primarily with single-family dwellings. Within its UGA, all of segment A and, with the exception of one nonconforming multifamily development located in the northerly portion of the planning segment, all of segment B are developed with single-family dwellings. On Henderson Bay, within the city limits in shoreline planning segment E, single-family dwellings are the principal land use. In segment F, a mix of commercial, multiple-family and single-family dwellings can be found.

b. Has the site been used for agriculture? If so, describe.

No, not in recent history.

c. Describe any structures on the site.

As describe above, the shorelines of the city of Gig Harbor are highly modified and are developed with a variety of land uses and structures. 95% of the city's shoreline adjacent to Gig Harbor Bay

and Puget Sound is lined with bulkheads. Further, 70 docks and piers are located around the perimeter of Gig Harbor Bay. Included among the docks and piers are 16 overwater historic net shed structures. One dock is present along the shoreline of Henderson Bay within the city and its UGA, while the shorelines of segments E and F are highly modified with various forms of bulkheads.

d. Will any structures be demolished? If so, what?

No structures would be removed as a result of this non-project action. The proposed GHSMMP and its Restoration Plan element encourage removal of bulkheads and the increased use of “soft-shore” stabilization approaches. Bioengineering alternatives to shoreline armoring and stabilization are also addressed in the policies and regulations of the GHSMMP.

e. What is the current zoning classification of the site?

The shoreline planning segments are zoned as follows:

- Planning Segment “A”-R-1 Single-Family Residential (Pierce County)
- Planning Segment “B”-R-1 Single-Family Residential (Pierce County) & R-1 Single Family Residential and WR Waterfront Residential (City of Gig Harbor)
- Planning Segment “C”-WC Waterfront Commercial, WR Waterfront Residential, WM Waterfront Millville, C-1 Commercial District, B-2 General Business District, DB Downtown Business District and RB-1 Residential & Business District (all City of Gig Harbor)
- Planning Segment “D”-R-1 Single-Family Residential & R-2 Medium Density Residential (City of Gig Harbor) & R-1 Single-Family Residential (Pierce County)
- Planning Segment “E”-R-1 Single Family Residential (City of Gig Harbor) and R-1 Single-Family Residential (Pierce County)
- Planning Segment “F”-R-1 Single Family Residential, Activity Center, Community Center and Community Employment (all Pierce County)

f. What is the current comprehensive plan designation of the site?

The shoreline planning segments have the following land use designations:

- Planning Segment “A”-Residential Low (Pierce County)
- Planning Segment “B”-Residential Low (Pierce County) and Residential Low and Public Institutional (City of Gig Harbor)
- Planning Segment “C”-Waterfront, Residential Low & Commercial/Business (all City of Gig Harbor)
- Planning Segment “D”-Residential Low (City of Gig Harbor & Pierce County) & Residential Medium (city of Gig Harbor)
- Planning Segment “E”-Residential Low (City of Gig Harbor) & Moderate Single Family Pierce County)
- Planning Segment “F”- Employment Center, Activity Center, Community Center & Moderate Single Family (all Pierce County)

g. If applicable, what is the current shoreline master program designation of the site?

Per the city's existing shoreline master program, "Urban and "Urban Residential" are the current shoreline environmental designations for all shoreline area within the city limits. Within the city's UGA, Pierce County has designated its shoreline area as "Conservancy," "Natural" and "Urban."

- h. Has any part of the site been classified as an "environmentally sensitive" area? If so, specify.**

No

- i. Approximately how many people would reside or work in the completed project?**

Not applicable.

- j. Approximately how many people would the completed project displace?**

No people would be displaced as a result of this non-project action.

- k. Proposed measures to avoid or reduce displacement impacts, if any:**

No applicable.

- l. Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any:**

The proposed GHSMMP includes the following shoreline environment designations:

- Natural-Intended to protect shoreline areas that are relatively free of human influence or that include intact or minimally degraded shoreline functions that would become irreversibly impaired as a result of human development and activity. These systems require that only very low intensity uses be allowed in order to maintain ecological functions and ecosystem-wide processes.
- Urban Conservancy-Intended to protect and restore ecological functions of open space, floodplain and other sensitive lands where they exist in urban and developed settings, while allowing a variety of compatible uses.
- Low Intensity-Intended to accommodate residential development in areas that are already developed with or planned primarily for residential uses. The Low Intensity Environment may also include water-oriented commercial and recreation uses and public access.
- Purdy Commercial-Intended to accommodate commercial development that provides the Purdy area and Key Peninsula residents with everyday products and services. The environment allows the continued mix of both water oriented and non-water oriented commercial uses, such as restaurants, grocery stores, and professional and product services.
- City Waterfront-Intended to accommodate and foster a unique mix of uses and activities that characterize the Gig Harbor Bay waterfront. It's an area of intensive and diverse land use. This environment is intended to protect and preserve waterfront locations for water-

dependent uses, including commercial fishing, boatyards, and marinas; allow for the continued mix of both water oriented and non-water oriented uses as allowed by the city's Zoning Code and Comprehensive Plan in recognition of historic and existing land use patterns and to maintain balance between the various land uses; protect historic resources such as overwater net shed structures; promote public access and knowledge of Gig Harbor's history; and support tourism.

- Historic Working Waterfront-Intended to recognize and preserve two of Gig Harbor's most notable historic industries: commercial fishing and boat building. The area possesses a significant concentration of historic uses and structures. This designation allows a limited range of non-water oriented uses as a means of promoting the preservation and rehabilitation of historic structures. The preferred uses for this area are commercial fishing/moorage and boatbuilding. Those properties that have been listed on the City's Register of Historic Places shall be eligible for conditional non-water oriented uses such as offices and sales, water enjoyment uses such as restaurants and small-scale marine trade businesses.
- Marine Deepwater-Intended to protect, restore, and manage the unique characteristics and resources of the marine waters in Gig Harbor.

9. Housing

- a. **Approximately how many units would be provided, if any? Indicate whether high, middle, or low-income housing.**

None

- b. **Approximately how many units, if any, would be eliminated? Indicate whether high, middle, or low-income housing.**

None

- c. **Proposed measures to reduce or control housing impacts, if any:**

No measures would be necessary.

10. Aesthetics

- a. **What is the tallest height of any proposed structure(s), not including antennas; what is the principal exterior building material(s) proposed?**

No structures are proposed in conjunction with this non-project action. The proposed GHSMMP establishes a maximum building height of 18 feet for most shoreline areas within the city's shoreline jurisdiction. A maximum height of 35 feet is allowed within the city's UGA.

- b. **What views in the immediate vicinity would be altered or obstructed?**

Not applicable. However, it should be noted that the proposed GHSMP strengthens protection of views and aesthetic visual qualities within the shoreline area it applies to.

c. Proposed measures to reduce or control aesthetic impacts, if any:

No specific measures are proposed. One of the primary goals of the SMA is to protect and preserve visual access to the shoreline. For all new development and redevelopment projects, view corridors are required by the proposed GHSMP to enhance public views of the shoreline. Further, the city's underlying zoning designations contain side yard setback requirements that are based upon the width of a site and which maintain view corridors from public rights-of-way and other upland areas across properties fronting on the shoreline. The proposed master program regulates the use of signs with the shoreline area consistent with the city's sign regulations set forth in GHMC Chapter 17.80. These measures, together with height limits and policies and regulations promoting conservation and restoration of native vegetation would minimize aesthetic impacts and potentially enhance the aesthetics of the shoreline area over time.

11. Light and glare

a. What type of light or glare will the proposal produce? What time of day would it mainly occur?

Not applicable.

b. Could light or glare from the finished project be a safety hazard or interfere with views?

Not applicable.

c. What existing off-site sources of light or glare may affect your proposal?

Not applicable.

d. Proposed measures to reduce or control light and glare impacts, if any:

No measures would be required.

12. Recreation

a. What designated and informal recreational opportunities are in the immediate vicinity?

The city of Gig Harbor and its UGA has a number of parks, open spaces and public facilities located within the shoreline area which provide public access to marine shorelines. Additionally, a number of public access opportunities have been established through the city's shoreline permit process as a condition of approval. The following is a summary of designated and informal recreational opportunities:

- **Gig Harbor Spit Lighthouse (Segment A)** – The United States Coast Guard Spit Lighthouse is located along the spit and allows limited public access at a beach area near the Gig Harbor Bay inlet. Local residents use the area as a beach and hand-powered watercraft landing area.

- **Wheeler Street Road-End** (Segment B) – This 0.4-acre road right-of-way (ROW) provides beach access. Vehicles traveling along Vernhardson Street have an opportunity for a clear view of the Crescent Creek estuary. The ownership of this ROW is contested and the site is considered undeveloped.
- **Randall Street Boat Launch** (Segment B) – This 0.2-acre two-lane boat launch is located on the northeast side of Gig Harbor Bay at the end of Randall Street. The street right-of-way has been improved by the Pierce County Department of Public Works with the development of a boat launch and temporary moorage facility.
- **City Park at Crescent Creek** (Segment B) – This 9.8-acre site is located at the head of the bay along the north side of Vernhardson Street and the east side of Crescent Creek. It is the City's oldest public park and is commonly known as "City Park" by residents. It includes a WPA constructed covered picnic/cooking facility, restrooms, viewing platform, play area and big toy, baseball field, open space, basketball and tennis court, benches, BMX facility, sand volleyball courts and picnic tables.
- **Finholm View Climb** (Segment C) – This 0.32-acre road right-of-way extends between Franklin Avenue below Harbor Ridge Middle School and the Finholm Business District. The public access area includes a wooden stairway system with overlook platforms, viewing areas, benches, and a public restroom.
- **Ruth M. Bogue Viewing Platform** (Segment C) – This 0.10-acre harbor overlook consists of a plaza located on top of a sanitary sewer pump station and is developed with benches and landscaping. The park is located on the waterfront side of North Harborview Drive.
- **Donkey Creek Park** (Segment C) – This 1.3-acre property, recently acquired by the City, formerly housed a lumberyard and associated buildings. Although the property is not located directly adjacent to the shoreline, the site falls within Segment C. Future plans include the restoration of Donkey Creek, including the "day lighting" of the creek and buffer as well as preservation of the property's natural area and scenic location.
- **Austin Estuary Park** (Segment C) – This natural habitat site located at the mouth of Donkey Creek contains a total of 8.44 acres including uplands and tidelands. It offers panoramic views of the bay, a soft-landing for hand-powered watercraft, and passive recreation with trails and seating.
- **Eddon Boat Park** (Segment C) – This 2.89-acre site located midway between the Downtown and Finholm Business Districts includes the historic Eddon Boat Building, dock and marine ways, and brick house. It also includes 0.74-acre of open space and 0.014-acre of tidelands with panoramic views of the bay.
- **Jerisich Park** (Segment C) – The park, together with Skansie Brothers Park abutting on the south, occupies 3.15 acres including tidelands, and is located within the extended Rosedale Street NW ROW. A 1,500-square foot pier with restrooms, picnic tables, and benches overlooks the harbor and adjacent marinas. An extra 352 linear foot floating pier provides day-use boat moorage and fishing access.

- **Skansie Brothers Park (Segment C)** – This property, acquired by the City in November 2002, abuts Jerisich Park on the south. The Skansie home and net shed, built in the early 1920s, are also located on the property.
- **Soundview Drive Street-End (Segment C)** – Public access in the street ROW is located in this 0.4-acre street-end situated on the west side of the Gig Harbor Bay.
- **Harborview Drive Street End/Old Ferry Landing (Segment D)** – This 1.0-acre site at the east end of Harborview Drive overlooks The Narrows and Dalco Passage at the entrance to Gig Harbor Bay. The street-end provides parking and a viewing platform with interpretive signage. A trail in the street ROW extends from the viewing platform to the beach. Most owners of the beach cabins to the south use this location as their primary access to the cabins. Opportunities exist to formalize this trail and beach access. As part of the ongoing update to the City's comprehensive parks plan, the Parks Commission has identified this location as a priority for formalizing access to the beach. The City owns the street ROW and an adjacent parcel to the south (0.31 acres) which is mostly vegetated bluff but includes beach area. Pierce County owns a parcel adjacent to the northern edge of the ROW which is entirely beach and tidelands.
- **Purdy Sand Spit (Segment F)** – 7.5 acres of undeveloped salt-water beachfront provides public access near the SR 302 Bridge along Henderson Bay. A park and boat launch owned by Pierce County is located on the spit.

b. Would the proposed project displace any existing recreational uses? If so, describe.

The GHSMMP would not displace any existing recreational uses. The proposed master program promotes the expansion of recreational opportunities along the shoreline.

c. Proposed measures to reduce or control impacts on recreation, including recreation opportunities to be provided by the project or applicant, if any:

A major goal of the SMA is to provide and enhance public access and recreational opportunities along the shorelines of the state. The proposed GHSMMP implements this goal through goals, policies and regulations that promote recreational opportunities and, in many instances, require the provision of public access as a condition of approval of shoreline development projects.

13. Historic and cultural preservation

a. Are there any places or objects listed on, or proposed for, national, state, or local preservation registers known to be on or next to the site? If so, generally describe.

A number of houses and commercial buildings potentially considered as important cultural and architectural resources are documented along the Gig Harbor Bay shoreline, in the downtown business district and in the Millville historic neighborhood, both within Segment C.

There are currently four properties within the shoreline planning area that are listed on the city's local register. One of the properties, the Skansie Net Shed, is also listed on the Washington State Heritage Register and the National Register of Historic Places. The following is a list of the properties:

- Ancich Net Shed-3618 Harborview Drive; built 1928-29. This structure is one of 17 historic net sheds in the city. This dock and net shed is listed for its historical significance, architecture, and cultural heritage importance. Listed on the city's register.
 - Eddon Boat Building Site-3805 Harborview Drive; built in 1945 and the former site of Anderson and Sons Boat Yard, built in 1920 and burned down in 1959. This historic boatyard site is listed for its historical significance, architecture, and cultural heritage importance. Listed on the city's register.
 - Fishing Vessel Shenandoah-4121 Harborview Drive; built in 1925; owned and operated by Antone Janovich and donated to the Harbor History Museum. This historic purse seine fishing vessel is listed for its historical significance, fishing vessel construction and cultural heritage. Listed on the city's register.
 - Skansie Net Shed-3207 Harborview Drive; built in the 1920's, sold to the city in the early 2000's. Listed on the city's register, State Heritage Register and National Register of Historic Places.
- b. **Generally describe any landmarks or evidence of historic, archaeological, scientific, or cultural importance known to be on or next to the site.**

Gig Harbor has the largest remaining concentration of commercial fishing net sheds remaining in Washington State. Net sheds are over-water structures built on wood-piles that are used by fisherman to store nets and fishing gear. There are 16 net sheds along the western shoreline of Gig Harbor Bay in Segment C. One net shed is located in Segment D, just south of the old ferry landing (City of Gig Harbor, 2006b). Historically, net sheds served as gathering places for skippers, crews and their families. Net sheds were built by Gig Harbor's prominent fishing families, most of whom emigrated from the Dalmatian Coast of Croatia. Net sheds still located on the shoreline were built between 1910 and 1970. They range in size (on average) from 800 to 1,600 square feet. The net sheds were listed on the 2008 Most Endangered Historic Properties List by the Washington Trust for Historic Preservation (City of Gig Harbor, 2008b). With the decline of the commercial fishing industry in recent decades, Gig Harbor has experienced a loss of net sheds through lack of maintenance and conversion to other uses. Ten of the remaining net sheds would qualify for listing in the city's Register of Historic Properties.

Further, there are approximately 18 small, modest, over-water historic homes that line the shoreline at the toe of a steep bluff just outside of Gig Harbor Bay in Segment D. This area is referred to as Nesika Beach. Originally built in the late nineteenth and early twentieth century's, many of the wood structures are built on wood pilings. Most were historically used as summer cabins, and continue to be used today.

Donkey Creek Park and Austin Estuary Park, both located within Segment C, have been identified as an archaeological site and the home of an early Native American village with two historic buildings that are no longer standing. Shell midden locations have been identified at the park sites. The shorelines could be considered a significant traditional cultural place. As such, there is a high probability of archaeological resources remaining near the marine shoreline. The

city evaluates archeological and historical resources on a parcel by parcel basis during the development review process.

c. Proposed measures to reduce or control impacts, if any:

Section 6.4 of the proposed GHSMMP includes policies and regulations that address Historic, Cultural, Scientific and Educational Resources.

14. Transportation

a. Identify public streets and highways serving the site, and describe proposed access to the existing street system. Show on site plans, if any.

State Route (SR) 16 provides primary transportation access into the City and its UGA from surrounding areas in Kitsap and Pierce Counties. State Route 302 provides access to the northeastern portion of the City's UGA as it crosses Henderson Bay near the Purdy Sand Spit in Segment F. Randall Drive NW and Goodman Drive NW provide roadway access to residential properties along the easterly shoreline of Gig Harbor Bay (Segments A and B). North Harborview Drive and Harborview Drive provide roadway access to commercial and retail waterfront areas along the north and westerly shoreline areas of Gig Harbor Bay, respectively (Segment C). Roadway access is restricted to private roads and driveways within Segment D, south of Gig Harbor Bay. Purdy Drive NW parallels the Burley Lagoon and Henderson Bay shoreline areas in Segments E and F. State Route 302 (Key Peninsula Highway) crosses Henderson Bay on the Purdy Sand Spit in Segment F, separating Henderson Bay from Burley Lagoon.

b. Is the site currently served by public transit? If not, what is the approximate distance to the nearest transit stop?

Transit services in the city of Gig Harbor and its UGA are provided by Pierce Transit.

c. How many parking spaces would the completed project have? How many would the project eliminate?

Not applicable.

d. Will the proposal require any new roads or streets, or improvements to existing roads or streets, not including driveways? If so, generally describe (indicate whether public or private).

Not applicable.

e. Will the project use (or occur in the immediate vicinity of) water, rail, or air transportation? If so, generally describe.

Not applicable.

f. How many vehicular trips per day would be generated by the completed project? If known, indicate when peak volumes would occur.

Not applicable.

g. Proposed measures to reduce or control transportation impacts, if any:

Section 7.20 of the proposed GHSMMP includes policies and regulations related to parking and transportation facilities. Use regulations and development standards related to transportation facilities are set forth in Section 7.1 and subsection 7.20.3, respectively, of the GHSMMP.

15. Public services

a. Would the project result in an increased need for public services (for example: fire protection, police protection, health care, schools, other)? If so, generally describe.

The proposed non-project action would not require additional public services.

b. Proposed measures to reduce or control direct impacts on public services, if any.

No measures would be required.

16. Utilities

a. Circle utilities currently available at the site: electricity, natural gas, water, refuse service, telephone, sanitary sewer, septic system, other.

Electricity, natural gas, water, refuse service, telephone, sanitary sewer, septic systems, other.

b. Describe the utilities that are proposed for the project, the utility providing the service, and the general construction activities on the site or in the immediate vicinity which might be needed.

Not applicable.

C. SIGNATURE

The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Signature: *Peter Katsch, Senior Planner*

Date Submitted: *2.1.12*

**ENVIRONMENTAL CHECKLIST
SUPPLEMENTAL SHEET FOR NON-PROJECT ACTIONS****SEPA CHECKLIST FILE NO.: PL-SEPA-12-0004**

Use this supplemental checklist for "non-project" actions which are different or broader than single site-specific project such as plans, policies and program. Because these questions are very general, it may be helpful to read them in conjunction with the list of the elements of the environment.

When answering these questions, be aware of the extent the proposal or the types of activities likely to result from the proposal, would affect the item at a greater intensity or at a faster rate than if the proposal were not implemented. Respond briefly and in general terms.

1. How would the proposal be likely to increase discharge to water; emissions to air; production, storage or release of toxic or hazardous substances; or production of noise?

The proposal would not directly increase discharges to water; emissions to air; production, storage or release of toxic or hazardous substances; or production of noise. The goals, policies and regulations of the proposed GHSMP discourage future projects within the shoreline area from discharging untreated pollutants and emissions. In addition to the requirements of the proposed GHSMP, all development and redevelopment within the shoreline jurisdiction would be subject to local, state and federal regulatory requirements, including building code, fire code, surface water management standards.

Proposed measures to avoid or reduce such increases are:

The proposed GHSMP includes policies and regulations that address the protection of the shoreline's ecological functions and addresses potential impacts associated with specific land uses and shoreline modifications. Generally, the proposal provides a new system of shoreline environment designations that establish more uniform and comprehensive management of the city's shoreline area. In general, the updated development standards and regulations for shoreline modifications provide additional protection for shoreline ecological processes. The updated standards and regulations are more restrictive of such activities as shoreline stabilization, construction of overwater structures and removal of native shoreline vegetation that would result in adverse impacts to shoreline functions. The restoration planning effort outlined in the proposed restoration element of the draft master program provides the city with opportunities to improve or restore ecological functions that have been impaired as a result of past development activities.

2. How would the proposal be likely to affect plants, animals, fish, or marine life?

The proposed GHSMP includes policies and regulations that require new activities and development to achieve "no net loss" of shoreline ecological functions. This is achieved through implementation of development standards, mitigation requirements and other regulatory provisions. The proposal includes several revisions to existing shoreline policies and development regulations which will encourage shoreline conservation and prohibit development activities that would cause adverse impacts to the shoreline environment. Proposed shoreline critical area regulations, and updated regulations for overwater structures, shoreline stabilization practices and aquaculture practices will provide increased protection for sensitive shoreline ecological resources.

Proposed measures to protect or conserve plants, animals, fish, or marine life are:

Proposed revisions to existing shoreline master program development standards and use regulations, and restoration planning efforts are measures proposed to protect or conserve plants, animals, fish, or marine life. In this regard, critical areas and marine shorelines will be regulated under the provisions of the proposed GHSMP. Critical areas and marine shoreline regulations have been incorporated into the master program to conserve and protect plants, animals, fish and aquatic life. In general, the proposed changes to development standards and use regulations are more protective than those set forth in the city's existing master program. New development will be required to comply with critical area and marine shoreline standards contained in the master program. As redevelopment occurs along the shoreline, the policies and regulations of the GHSMP will require that development be located and designed in a manner that avoids impacts to ecological functions and/or enhances functions where they have been degraded.

Consistent with state shoreline master program guidelines (WAC 173-26-186), the proposed GHSMP includes new sections containing goals, policies and regulations that address shoreline restoration (see Sections 6.9 & 7.17). Further, the proposed GHSMP includes a Shoreline Restoration Plan which identifies potential restoration actions for each proposed shoreline environment designation. Restoration will address both cumulative impacts to shoreline functions from existing and future development and improve functions over time above what would be accomplished through compensatory project mitigation.

3. How would the proposal be likely to deplete energy or natural resources?

The proposed GHSMP would not result in depletion of energy or natural resources. Extractive or resource based industries, such as mining, forestry and agriculture, are prohibited in all shoreline environmental designations addressed by the proposed master program.

Proposed measures to protect or conserve energy and natural resources are:

None required.

4. How would the proposal be likely to use or affect environmentally sensitive areas or areas designated (or eligible or under study) for governmental protection; such as parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, floodplains, or prime farmlands?

The proposed GHSMP establishes policies and regulations for the protection and conservation of environmentally sensitive areas and public access/recreational sites. The proposed master program provides a new system of shoreline environment designations that establishes more comprehensive management of the city's shorelines.

Proposed measures to protect such resources or to avoid or reduce impacts are:

None required.

5. How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans?

The city of Gig Harbor has an established land use pattern within the shoreline jurisdiction that predates the regulatory scheme proposed under the updated GHSMP. The pattern is generally a mix of residential, waterfront commercial, marine industrial, recreation, and open space. Shorelines within the city limits and UGA within Gig Harbor Bay are mostly developed. The number of vacant parcels is relatively low. Most major new construction along the shorelines is anticipated to be redevelopment with some minor in-fill. Outside the bay, and within the city and its UGA, new infill development and redevelopment consistent with city and county zoning code

requirements is anticipated. The city's Comprehensive Plan establishes the overall growth strategy for the city, while its zoning code implements the plan's vision for future growth. The proposed GHSMP shoreline environment designations are consistent with the provisions of the plan and zoning code.

Proposed measures to avoid or reduce shoreline and land use impacts are:

The proposed GHSMP shoreline environment designations, together with associated use and modification regulations and development standards, are designed to allow for development activity to occur along the city's shorelines consistent with the city's Comprehensive Plan, zoning code and existing development patterns. The proposed master program incorporates numerous regulatory approaches to ensure no net loss of ecological functions.

6. How would the proposal be likely to increase demands on transportation or public services and utilities?

The proposed GHSMP does not establish new patterns of land use or increased density of existing land use patterns. As described above, reasonable foreseeable development will likely be redevelopment of property rather than significant new development. Due to this situation, the proposed master program will not significantly increase demands on transportation, public service and utilities.

Proposed measures to reduce or respond to such demand(s) are:

None required.

7. Identify, if possible, whether the proposal may conflict with local, state or federal laws or requirements for the protection of the environment.

The proposed action will not conflict with local, state or federal laws or requirement for the protection of the environment. On the contrary, the proposed GHSMP has been developed consistently with the State Shoreline Master Program Guidelines (WAC 173-26) and the city's Comprehensive Plan and zoning code.



COMMUNITY DEVELOPMENT DEPARTMENT

**Determination of Nonsignificance (DNS)
W.A.C. 197-11-970**

Environmental Review Application No.: PL-SEPA 12-0004

Parcel Numbers: City and Urban Growth Area-wide within shoreline jurisdiction

Action: Year 2012 Shoreline Master Program Update

INDIVIDUAL PROPOSALS:

1. PL-ZONE-12-0004: Shoreline Master Program Update

The proposed city-sponsored comprehensive amendment to the shoreline master program would add new shoreline environmental designations, policies, regulations and other changes consistent with the State-mandated shoreline master program guidelines set forth in WAC 173-26.

Location: City and Urban Growth Area-wide within shoreline jurisdiction.

Proponent: City of Gig Harbor, Planning, 3510 Grandview Street, Gig Harbor, WA 98335

LEAD AGENCY: City of Gig Harbor

The lead agency for this proposal has determined that it does not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). This decision was made after review of a completed environmental checklist and other information on file with the lead agency. This information is available to the public upon request.

This DNS is issued under WAC 197-11-340(2); the lead agency will not act on this proposal for at least 60 days from the date below, or by the date comments are due, which ever is longer. Comments must be submitted by **April 30, 2012**.

Any interested person may appeal the adequacy of this SEPA Threshold Determination to the City of Gig Harbor City Council pursuant to the procedures set forth under Chapter 18.04 of the Gig Harbor Municipal Code if a written request for appeal is received within 7 days after the end of the comment period, or **May 7, 2012**, whichever is later. The written appeal must be submitted with a filing fee of two hundred seventy five dollars (\$275.00).

Contact: Peter Katich, Senior Planner; Phone: (253) 853-7616

SEPA Responsible Official: Tom Dolan
Position Title: Planning Director Phone: (253) 851-6170

Address: City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA. 98335

Signature Tom Dolan

Date: February 29, 2012

April 23, 2012

Robert G. Frisbie
9720 Woodworth Avenue
Gig Harbor, WA 98332
Phone: 253.224.3524
Email: bobfrisbie@foxinternet.com

Tom Dolan
Community Development Department
City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335

Subject: DNS For Shoreline Master Program (SMP) Update

Dear Tom:

Attached please find my check in the amount of \$275.00 to cover the filing fee to appeal the subject determination.

Appellant: Robert G. Frisbie, 9720 Woodworth Avenue, Gig Harbor, WA 98332,
Phone: 253.224.3524, Email: bobfrisbie@foxinternet.com.

Appellant's Standing: I am a resident of Gig Harbor and a waterfront property owner with a marina at 3521 Harborview Drive, WM District. The marina was opened in 1982. The proposed SMP creates the following conditions: 1) Makes my marina loose money, 2) Assigns financial responsibilities to the property, 3) Endangers the general welfare of the people both at the marina and the people accessing the property due to the requirements of Public Access and 4) The proposed SMP ignores technical information from NOAA regarding the threat of a tsunami in South Puget Sound and Gig Harbor in particular that will result in the probable loss of human life.

Identification of the Application: Determination of Nonsignificance (DNS), Environmental Review Application No: PL-SEPA 12-0004. Proposed SMP, Revised Date February 29, 2012.

Grounds For Appeal: The Checklist submitted either did not address or inadequately addressed the SEPA issues required under RCW 43.21C.

Specific Relief Sought: Amend the Checklist to include the facts listed below and subsequent to the Checklist being amended, amend the Draft SMP to be consistent with the final approved Checklist.

The term SMP refers to the Draft Shoreline Master Program dated April 21, 2011 and revised February 29, 2012. It is my belief that the SEPA Threshold Determination is inadequate in the following ways:

1. Throughout the SMP hard armoring is being prohibited/discouraged/encouraged to be removed.
 - a. Relief Sought
 - i. Expand the Checklist to specifically identify quantitative benefits to eliminating hard arming.
 1. Identify loss of usable land to the property owner when you remove hard armoring and go to soft armoring.
 2. Using the information provided the Planning Commission regarding the Pierce County Park on the Tacoma Narrows, identify the cost to rebuilt the soft arming to the Public due to the inability of the installation to withstand normal local storms.
 3. What are the specific benefits to the shoreline areas covered by the SMP of making this change.
 4. Defend/comment on the creation of two classes where single family residences under WAC 173-27-040 don't have to follow the SMP and can not only construct hard armoring but can install a replacement bulkhead in front of an existing bulkhead.
 5. Recognizing that single family residences comprise approximately 66% of the shoreline of the State, how can the remaining 34% pickup 300% of the burden accomplished by soft armoring without creating a hardship on the 34%.
 6. One of the arguments for soft armoring is the additional salmon fishery it will create. Quantify the size of the salmon runs using a five year average from the past highest peak period to the latest five year average. These numbers were provided the Planning Commission. The Checklist needs to include these numbers and comment on how they apply to soft armoring.
2. Throughout the SMP additional uses for over water net sheds are being allowed.
 - a. Relief Sought
 - i. Expand the Checklist to specifically identify the ramifications of a tsunami as described in NOAA's Seattle and Tacoma Fault technical paper as provided to the Planning Commission.
 1. For individuals living over the water, given the limited time to notify people of a tsunami, how many lives are expected to be lost?

2. For individuals that would be working in an office type environment within a net shed, given the limited time to notify people of a tsunami, how many lives are expected to be lost?
 3. What is the estimated dollar damage to the "upgraded" net sheds versus if the net sheds were left to be net sheds only?
- ii. RCW 43.21C.020 (2) (b) "Assures for all people of Washington safe, healthful, productive , and aesthetically and culturally pleasing surroundings." Point → NOAA's technical paper clearly identifies a risk to placing people in these net sheds. The City's Checklist needs to identify this risk and the respective mitigation.
3. Throughout the SMP Public Access enhancements are being required.
- a. Relief Sought:
 - i. Expand the Checklist to identify the dollar costs for:
 1. Property owner to give up a % of the property for Public Access.
 2. Property owner to construct the capital improvement to provide Public Access.
 3. Property owner cost to maintain the capital improvement to provide Public Access.
 4. Who provides the insurance for the public to enter on the property owners property and at what cost? Provide alternative for the City to insure the Public Access portion of the capital improvements.
 - ii. With 66% of the shoreline being used a single family residences, comment on the amount of Public Access that won't be available under the SMP.
 - iii. Identify a threshold limit based on dollar income for a facility that would exempt the SMP applicant from having to provide Public Access.
 - iv. Utilize a zoning code/SMP provision allowing additional lot coverage based on Public Access. Follow the existing provisions now in the waterfront zoning codes.
 - v. Specifically comment on whether Public Access is going to be a requirement of the Commercial Fishing industry.
 - vi. Specifically comment on whether Public Access is going to be a requirement of all property development with the exception of one single family residence?
 - vii. Comment on noise?
 - viii. Comment on the Police and Fire response to remote Public Access areas where this Public Access would be required.
 1. Police having to respond to areas they cannot drive to.
 2. Police having to respond to areas allow individuals to hide in the shadows.

3. Police having to respond to areas where they can be attached from the water and the attacker to flee to the water.
 - ix. Comment on the additional light and glare.
 - x. The City has entered into a long term lease with the Tides Tavern for use of the Street end. This lease has been in existence for +25 years. This use at the Street end prohibits Public Access to Gig Harbor Bay.
 1. Explain how this is justified.
4. Table 6-1 and other locations within the SMP have established minimum setbacks from the OHWM.
- a. Relief Sought:
 - i. Provide technical papers describing why this is being changed from the existing Master Program.
 - ii. Leave the set back requirements as they exist today, e.g. from the property line and/or tideland ownership limit.
5. Table 7.1.2 limits the maximum impervious lot coverage.
- a. Relief Sought:
 - i. Provide technical paper(s) detailing why this is being limited.
 - ii. Typical limits on impervious areas coverage are a function of ground water recharge and the ability of a storm drain system to hydraulically handle the runoff.
 1. Most if not all waterfront property owners handle their own runoff via local outfall.
 - iii. Tie the impervious lot coverage to Public Access as the existing water front zones do today.
6. On page 7-58, item 7 e) Pump out, holding and/or waste treatment facilities.....
- a. Relief Sought:
 - i. Provide a technical review and supporting waste load calculations showing the need to supersede Coast Guard regulations for a boat's waste water treatment and holding tank requirements.
 - ii. Identify the associated capital costs, connection charge, monthly cost and yearly maintenance cost for a pump out system. I believe the capital cost of such a system is approximately \$100,000 with connection charges.
 - iii. Assuming "i" above is really, really small if at all measurable, then set a marina size threshold whereby the marina would not be required to install such a facility. Otherwise, as a small business, the overhead cost of running the business will out way the income.
 - iv. The City recognized the cost of a business providing restroom facilities to the general public walking the sidewalks fronting Gig

Harbor as being cost prohibitive +30 years ago. Since that time, the City has constructed and maintains today a minimum of 5 restroom facilities for the public. I ask that the City continue to provide and maintain a wastewater pump station at their sole cost, versus my marina having to construct and maintain a duplicate system just as the City relieved the individual store and restaurant owners of this obligation for people walking the Gig Harbor waterfront.

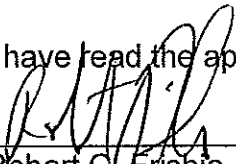
7. Regulations for Commercial Fishing Moorage, 7.11.11.

a. Relief Sought:

- i. Why is this industry not required to provide pump out stations? Provide a technical review and supporting waste load calculations showing their waste load to Gig Harbor.
- ii. Why is this industry not required to provide Public Access? The Checklist needs to identify the benefit for this exemption.

I will be traveling on business outside the USA through Saturday May 5th but will have periodic access to email if you need to contact me with any questions and/or comments.

I have read the appeal and believe the content to be true.



Robert G. Frisbie
Appellant

Date: April 23, 2012

November 14, 2010

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Robert G. Frisbie
9720 Woodworth Avenue
Gig Harbor, WA 98332
Email: bobfrisbie@foxinternet.com
Phone: 253-224-3524

Attention: Joyce Ninen, Chair
City of Gig Harbor
Planning Commission
3510 Grandview Street
Gig Harbor, WA 98335

RECEIVED BY
NOV 16 2010
CITY OF GIG HARBOR

Subject: Draft Shoreline Master Program – Comments From Bob Frisbie

Dear Planning Commission Members:

I am truly sorry that I cannot be present at the Thursday November 18, 2010 public hearing to give testimony on the Draft SMP. Please accept this letter with its supporting exhibits as my testimony.

I have been a resident of the City of Gig Harbor for 32 years and a marina owner for 29 years.

I respectfully request that this letter and its supporting exhibits in their entirety be read into the record at the hearing.

History

- I served on the committee that developed the 1994 SMP. Additionally I was on the City Council for eight years while the 1994 plan was being reviewed/considered/debated.
- The 1994 SMP was developed on the premise that anyone reading it, could reasonably be able to determine what the final development was going to look like. Therefore almost all of the "should" and "may" words were removed from the 1994 SMP. The plan writers with the concurrence/approval of the City Council and WSDOE considered this to be important. The removal of staff or Hearings Examiner's subjective decisions was considered to be important so that there would be consistent decisions being made on all SMP permits.
- Everyone recognized that the process to revise the SMP was a lengthy one and as a result a concerted effort was made to place as much objective criteria into the GHMC as possible with appropriate references back to the GHMC. Examples: Parking criteria within the various waterfront zones, public access requirements and landscaping, etc.
- In order to promote and encourage commercial fishing the parking requirements for licensed commercial fishing boats were waived.

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113

- Minimum side line setbacks over the tidelands and Harbor Area were established in order to promote ingress and egress.

Law

- The Washington State Legislature requires under WAC 173-26-201(2)(a) that in order for something to be denied in the SMP that there has to be a “white paper” or technical/scientific paper/report that positively supports the denying of a use.

1. Treated Wood Products

I respectfully request the Planning Commission remove from the Draft SMP the prohibition of creosote piling in the salt waters covered by this Draft.

The WSDOE has represented to the City that the State has the necessary “white paper(s)” as required by the WACs to deny the use of creosote piling in the salt waters of Puget Sound. This is simply not true. Please refer to Exhibits 1a, 1b, 1c, 1d, 1e, 1f, 1g, 1h and 1i.

- Exhibit 1a – Email from Frisbie to WSDOE to identify the supporting technical details.
- Exhibit 1b – Email from WSDOE to Frisbie to directing him to look at the WSDFW website for technical details
- Exhibit 1c – Email from WSDFW to Frisbie confirming the white paper on the WSDFW website does not support the prohibition of creosote piling in the salt waters of Puget Sound.
- Exhibit 1d – Email from WSDOE to Frisbie confirming there is no law or white paper on the prohibition of creosote piling but the Planning Commission should over look the WAC requirement in favor of prohibiting the use of creosote piling.
- Exhibit 1e – Letter from Frisbie to WSDOE requesting the WSDOE provide the scientific and technical information as required by WAC 173-26-201(2)(a) to support prohibiting the use of creosote piling in salt water.
- Exhibit 1f – November 11, 2010 letter from the Western Wood Preservers Institute providing background data and a recommendation on page 4 of 4 for alternative wording regarding the use of treated wood.
- Exhibit 1g – Letter from Dr. Kenneth M. Brooks the author of one of the studies cited stating that science does not support the WSDOE and WSDFW statements banning treated wood.
- Exhibit 1h – CV of Dr. Kenneth M. Brooks
- Exhibit 1i – Paper from Dr. Kenneth M. Brooks responding to ACZA treated wood structures in a Pacific NW marine environment.
- Pictures – Refer to pictures 1 through 10 inclusive. All pictures taken by Bob Frisbie on the dates written on the pictures.
 - Picture 1 & 2 – Portland, Maine waterfront showing abandoned creosote piling.

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- Picture 3 – Portland, Maine boat launch ramp with treated wood piles and bumper strip.
 - Picture 4 – Portland, Maine abandoned creosote piling in the foreground and creosote piling bulkhead in the background.
 - Picture 5 – Jacksonville, Florida, bridge over the St. Johns River with the foundations being protected with treated wood framed protective bumpers.
 - Picture 6 – St. Augustine, Florida, walkway to a private dock using treated wood piling.
 - Picture 7 – Daytona Beach, Florida, creosote piling used to support a walkway and park out over the Atlantic Ocean.
 - Picture 8 & 9 – Universal Studios Orlando, Florida, treated wood being used in their lagoon with people continuously passing by and rubbing against the treated wood.
 - Picture 10 – EPCOT Center, Walt Disney World, Orlando, Florida, treated wood being used in their lagoon as bumpers/guide for the Disney boats.
- Summary
- The WSDOE and WSDFW have failed to meet the burden of proof required to deny the use of treated wood piling in salt water.
 - The Gig Harbor Planning Commission shall now have to adopt their own findings of fact and conclusions or this provision to deny the use of creosote piling will not meet the minimum requirements under the WAC.
 - The Planning Commission has recognized by allowing creosote piling to be used in Historical structure repair that the creosote piling being manufactured today using the NOAA guidelines doesn't upset the environment.
 - Pictures 1 through 10 inclusive shows the use of treated wood piles from Maine to Florida. These Atlantic coast environments have a fishery that has been fished extensively for a longer period of time that the commercial fishery in Washington and no one is prohibiting the use of treated wood piling in these environments. Scientific facts don't change when one travels from the Pacific Coast to the Atlantic Coast. Treated wood piles when produced under the current BMP are good products for use in a marine environment.
 - Exhibit 1d from the WSDOE clearly states on lines 20, 21 and 22, "As you have learned, there is no state law or rule that specifically prohibits the use of creosote-treated materials in the marine environment." Further, State law specifically prohibits creosote materials from being used in fresh water because fish will attach their eggs to the creosote piling and there will be zero survival. Point → WSDOE and WSDFW haven't been able to prove and/or show a similar situation in salt water for the last +/-35 years.

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Therefore, WSDOE and WSDFW are trying to convince individual jurisdictions to adopt and then defend the prohibition of creosote piling because they themselves cannot defend it by scientific evidence that the WACs require.

- **I suggest that the Planning Commission call their own hearing on the pros and cons of using Treated Wood in a marine environment. Dr. Kenneth M. Brooks can represent the pros and the WSDOE and WSDFW and NOAA can represent the cons in an open discussion of the technical and scientific papers that are being cited as proofing treated wood shall be banned from the marine waters of Puget Sound. The Planning Commission can then be the judge of who is basing their position on scientific information, e.g. science versus exaggeration.**
- My recommendation is consistent with that of the Western Wood Preserver Institute. Remove the prohibition on the use of creosote piling and replace it with the following:
 1. "The use of preserved wood material may be considered for use when a site specific screening examination is performed to determine whether such use will cause an adverse environmental impact."
 2. "Where preserved wood material is identified to be acceptable it shall be specified as being in compliance with the Best Management Practices for the Use of Preserved Wood in Aquatic and Other Sensitive Environments – Western Wood Preservers Institute – 2006 or most current version and amendments, including provisions for third party certification."

2. Soft Armoring and Shaded Areas

I respectfully request the Planning Commission remove from the Draft SMP the requirement to soft armor private property and to minimize shaded areas.

The WSDOE has represented to the City that the State has the necessary "white paper(s)" as required by the WACs to deny hard armoring in the salt waters of Puget Sound. This is simply not true.

- Exhibit 1g – Dr. Kenneth M. Brooks letter, page 2 of 6, 3rd bullet.
- Exhibit 2a – The Puget Sound Chum Salmon Total Wild and Hatchery Escapement and Run Size Table from WSDFW.
- Exhibit 2b – WSDOE Single Family Residence Bulkhead Exemption

Two primary reasons are given for soft armoring in the three WSDOE papers referenced.

- The first is to promote the raising and protection of salmon.

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- None of the reports provide a reference to the history of the harvest in Puget Sound. All scientific reports need to contain objective data that allows the reader to gauge how a circumstance has either degraded or improved over time. This objective information allows everyone to track which programs are working and which programs are not working. To that end, I contacted the WSDFW, Valerie Tribble, phone: 360.902.2329 and obtained the following harvest report for Chums/Dogs in Puget Sound since that is the majority of fish returning to Donkey and Crescent Creeks.
 - The WSDFW uses a ten year average to determine a run size for the purpose of publishing data so the data will more clearly reflect the effects of the environment. Statistics began being collected in 1913.
 1. 10 year period of 1914 to 1923 (first recorded high) = 12,134,600. Average = 1,212,460/year.
 2. 10 year period of 1999 to 2008 = 20,407,157 for an average of 2,040,715/year or 168% of the previous recorded high for the ten year period of 1914 to 1923.
 3. 20 year period of 1989 to 2008 = 36,235,911 for an average of 1,811,796 or 149% of the previous recorded high for the ten year period of 1914 to 1923.
- Summary
 - The Chum/Dog run size is clearly greater than the previously recorded high for the period of 1914 to 1923. The objective numbers clearly say the removal of hard armoring and shaded areas in the Gig Harbor Shoreline Master Program area is not necessary to increase the Chum/Dog runs.
 - The Draft SMP references this report, but the report is clearly in error and is really not a "white paper".
- The second point in Technical Report 2007-04 recommends the removal of hard armoring to offset the phenomenon of global sea level rise (SLR). The paper suggests that the sea level rise between now and the year 2100 will be 3.54 inches to 34.64 inches. The paper also suggest that south Puget Sound is sinking at the rate of 1/8 inches/year (3mm/yr). This results in a sinking over 90 years of approximately 11.25 inches.
 - Summary
 - Refer to pictures 11 through 32 inclusive. All pictures were taken by Bob Frisbie on the dates written on the pictures.
 - Picture 11 through 18 were taken in Portland, Maine and clearly show that the hard armor is a way of life in Maine and certainly does not have the impact on the fishery there as WSDOE says it will have on the Puget Sound fishery.
 - Pictures 19 and 20 were taken in St Augustine, FL and clearly show that hard armor is also a way of life in Florida. This

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conclusion is further confirmed by picture 21 taken in Daytona Beach, FL.

- Pictures 22 through 32 were taken in Sicily. This is a region of the world where fishing has been a way of life for thousands of years.....and yet hard armoring is a way of life.
- As a Registered Civil Engineer in the States of Washington and Oregon, I am concerned that soft armoring is not a short term or a long term solution to property management on the waters of Puget Sound. As you may be aware, the Tacoma Narrows Bridge Contractor as a part of their mitigation removed the hard armor (rip rap/big rocks) from the Narrows Park seawall and replaced it with soft armor. This soft armor failed after \pm 3 years and was replaced this spring by the Pierce County Parks and Recreation Department at the sole cost of the Pierce County tax payers. (Source Skip Ferrucci PCP&R 253.798.4009).
 1. There had been zero problem with the rip rap seawall prior to the seawall's removal. It was removed solely because of the need for the Tacoma Narrows Contractor to fulfill the requirement to perform a certain amount of mitigation in order to receive all the necessary permits to construct the second Narrows Bridge.
 2. Removal of the hard armor walls or the requirement to build soft armoring for future developments will create a major problem/disaster at the time of a natural disaster (earthquake and/or high tide and winds or both). The area would be faced with so many failures at one time that our emergency services would not be able to respond accordingly. Lives and property would be needlessly lost.

Summary:

1. None of the papers discuss and/or recognize the loss of usable land area in Gig Harbor bay for fronting lots. At a slope of 4:1, some of the lots fronting Gig Harbor bay will loose approximately 40% of there usable land area. This is a taking of private property without compensation and is not supported by the fish harvest numbers recorded by WSDFW and the comments above.
2. Refer to Exhibit 2b. The WSDOE categorically exempts existing single family homes from having to obtain Shoreline permits for constructing and/or maintaining bulkheads. Approximately 60% of the Shorelines in Puget Sound are zoned for single family homes. The consequence of this exemption is that the State Legislature doesn't recognize that soft armoring will actually achieve the sufficient results that WSDOE has represented in their "white papers" it will.
3. Soft armoring will result in an increase in property losses and maintenance costs and places the burden on approximately 40% of the fronting land owners on Puget Sound to achieve the results

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the "white papers" represent will happen. This equates to the 40% non-single family residential land owners must now carry 250% of the burden. This is simply not fair and equitable.

4. My recommendation is to remove the requirement for soft armoring from the SMP simply because the Legislature has created two classes of land owners and it simply is not fair and equitable to burden the non-residential property owners with a requirement not supported by scientific fact.
5. Dr. Kenneth M. Brooks letter, Exhibit 1g, page 2 of 6, second bullet.

3. Public Access

The 1994 SMP combined with the applicable zoning code ordinance for a given area provided for various kinds of public access based on lot coverage. By doing this the writers of the SMP and zoning ordinances provided an incentive to the land owners. This incentive equated to a reimbursement/purchase of the public access to and/or over the waters of Gig Harbor. All the time recognizing the laws that govern "The Public Trust Doctrine".

Attached is Exhibit 3a from the WSDOE regarding The Public Trust Doctrine and what it allows the various State jurisdictions to require of land owners fronting the waters of Puget Sound. Also attached is Exhibit 3b which defines criminal trespass under RCW 9A.52.080.

- Please refer to lines 8, 9 and 10 on Exhibit 3a which read, "The Public Trust Doctrine does not allow the public to trespass over privately owned uplands to access the tidelands. It does, however, protect public use of navigable water bodies below the ordinary high water mark."
- Exhibit 3a and the other cited papers say that the SMP can only require access on the beach from ordinary high water to extreme low water. For example: My marina is located at 3521 Harborview Drive. Since the City has beach access at Eddon Boat and at the street end of Novak, the requirement for public access to my beach has been met since the public can reach the beach fronting my property from publically owned property. If a developer such as Murphy's Landing was to dredge and remove their beach, then the developer would be required to construct as Murphy's Landing did, a board walk fronting the development on the water's edge.

Summary

What has been written into the DRAFT SMP is not lawful. It is my recommendation that the Planning Commission scrap this chapter and write a chapter in a similar manner as was written into the 1994 SMP and the supporting zoning ordinances.

4. Page 2-22, Definition for Net-Shed. I recommend removing the word "existing". The reason is that someone may choose to construct a new net-shed. In the end, a net-shed is a net-shed whether it is old or new.

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5. Page 2-32, Definition for Should. I recommend removing the word "should" and either replace it with must or shall or remove the requirement altogether. This word simply promotes unlimited attorney arguments. Determine what you want the waterfront to look like and write the SMP accordingly.
6. Page 3-7, last sentence on the page. See the comments related to treated wood above. The use of the word "high" in this sentence is unique to the plan and what is being directed of the applicants. If you are to be consistent with the referenced "white papers", you need to define "high" as greater than 50 creosote piling where the fifty piles are approximately 10 feet on center.
7. Page 3-8, item number 3). Since single family residences are categorically exempt from having to comply with this per the WAC, see the comments above regarding armoring, this comment is not fair and equitable and it isn't supported by the referenced "white papers".
8. Page 3-9, item numbers 3), 4) and 5) are not supported by the WACs or "white papers".
9. Page 3-10 Items:
 - a. 1) – I agree with this recommendation. I would recommend adding a sentence such as, "Incentives to construct additional net sheds shall be established in an effort to enhance public access and/or restoration of degraded shoreline ecological functions."
 - b. 2) – This should apply to all shoreline permits and uses which shall include single family residences.
 - c. 3) – a) I don't think a navigation channel in Gig Harbor is warranted due to the physical size of the Harbor's entrance. Only small craft can enter due to the channel depth at the mouth of the Harbor. B) Side yard set backs were first established in the 1994 SMP. To my knowledge, there has been no complaints for those obtaining and/or possessing lawful permits. One complainer does not have lawful permits, the Planning Commission needs to make sure they understand the total history of this property and its respective owners before continuing with this language.
10. Remove the word "should" and replace with the word "shall".
11. Page 6-11. The current code and SMP provides for no setback requirement if the fronting tidelands are owned by the applicant. I support the existing no setback from the OHWM laws as they exist today. Those of us owning the fronting tidelands paid lawful dollars for them and taxes to own them each year. It is only fair and equitable that no setback be allowed. If you choose to require a setback, please clearly state the specific reason(s). Simply requiring a vegetation strip is without merit since lot coverage is limited and the entire parcel is required to be landscaped under the GHMC.

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12. Page 6-12. i) 2a. Armoring as discussed above is not supported by WAC or "white papers". I recommend removing this paragraph. ii) Reference to using a "registered structural engineer" should be changed to "registered engineer". The State of Washington strictly governs what an engineer can do under his/her license. This requirement to use a "registered structural engineer" is not consistent with the State Board of Registration rules.
13. Page 6-61 and Section 6.5. This entire section needs to be rewritten consistent with the laws noted above.
14. Page 6-73 and Section 6.5B. This entire section needs to be rewritten consistent with the laws noted above.
15. Page 6-77 and Section 6.9.2, 3). This section is not supported by law or the "white papers" or fact. The Section needs to be removed.
16. Page 7-10 and Section 7.1.2 and the Gig Harbor Bay Waterbody. The 12 foot setback for Boating Facilities as required by the "Ecology Guidelines" is not supported by fact. Recommend removing the 12 foot setback and replacing it with "Zero setback required from OHWM so long as the applicant owns a minimum of 12 feet of tidelands in front of the OHWM. This will achieve the same end result.
17. Page 7-24 and Section 7.4.9, 3), a). This is not supported per the discussion regarding armoring above. The statement in itself supports armoring since you cannot protect the site, based on the depth and slopes of the Gig Harbor Bay properties without armoring.
18. Page 7-26 and Section 7.4.9, 3), f). The requirement for pump outs should be changed to exclude marinas of less than 20 boats/vessels. This is an expensive operation and requires continuous maintenance. The City's Public Works group turns off the Jersich Park pump out station during the winter months because of the maintenance problems related to freezing weather. This is the pump station to keep operational year around.
19. Page 7-27 and Section 7.4.10. This reads, "New or existing marinas or moorage facilities which provide moorage and support facilities for active commercial fishing vessels shall be exempt from the parking requirements of Gig Harbor Municipal Code Title 17."
- a. The existing code exempts parking for only the active commercial fishing vessels. The existing code was adopted in the 1994 SMP.
 - b. What has been written here hopefully if a mistake.
 - i.) The existing code moved the parking to the City streets. Although this placed a burden on the local residences, the local residents accepted this knowing that the fishermen's

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vehicles would only be on the street(s) for short periods of time and then primarily only in the fall.

- ii.) This new provision exempting all parking of a facility will place a huge burden on the locals, primarily in the WM zone. The WM zone is the only zone in the City where all uses are additive relative to the parking requirements required by a owner or developer. It is this provision that has successfully controlled the development within the WM zone simply because it is objective and can be clearly interpreted by all, including the courts.
- iii.) Two specific parcels stand to benefit from this provision immediately, they are the Ancich/Tarabochia and Burten/Steele properties. These properties are at the curve of Harborview Drive. The narrow fronting lots to Harborview will add too many cars to the already congested street parking.
- iv.) If this goes forward with the recommendation of the Planning Commission, please specifically identify the reasons for this major change to the SMP and supporting zoning codes as this have a dramatic impact on the single family residences along Harborview.
- v.) An example of how this provision could be used is as follows: Use my marina, Lucca's Landing, as an example. Today we use our upland property to satisfy the parking requirements of the code. Under the proposed SMP, we could moor one commercial fishing vessel and suddenly become exempt from all parking requirements. We could then immediately construct a commercial building on the dry property and move 100% of the parking to the street. Pretty nice for us as owners, but a severe impact on the local residents.
- vi.) Recommendation → Stick with the parking requirements for active commercial fishing vessels as they are written today in both the 1994 SMP and zoning ordinances.

20. Page 7-27, Section 7.4.10

- a) Please clearly state that the only exemption given to moorages for active commercial fishing vessel's is parking.
- b) A position needs to be stated regarding
 - i.) Public Access
 - ii.) Pump outs
 - iii.) Landscaping
 - iv.) Armoring
 - v.) Etc.

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21. Page 7-28, Section 7.5. I recommend you delete this section in favor of stating that the SMP permit applicant shall comply with all related City ordinances. The City has a comprehensive Clearing and Grading ordinance, reference it so that one only has to go to one document to view the Clearing and Grading requirements for the permit. This is clearly allowed in the WACs.
22. Page 7.6.1, B Public Access. This is not consistent with the law. See above.
23. Page 7-30, Section E. LEEDs certification should not be referenced in the SMP. This adds sufficient cost to a project and is worthless to the owner. My recommendation, remove this reference.
24. Page 7-31, Section 7.6.3, 3). This is too general. If you really believe a waiver is valid, then list specific criteria under which the waiver shall be granted. This is an attorney's opportunity to argue some minor point. My recommendation, remove this reference.
25. Page 7-41, Section 7.11.1 B and 7.11.2 1), c). The conversion of historic net shed structures into a single family home would never have been considered if it weren't for Kay Paterson. Ten years ago Kay would never have consider such a use. Kay have proposed this use only because of her close friend ship with the owner of the former Ross property next to the Harborview Condo Marina.
 - a. This use goes against the City of Gig Harbor's former SMP plans.
 - b. This use if you read Section 8.11 Nonconforming Uses and Structures would never be allowed.
 - c. This is against Section 7.16.1, A, last sentence, "New overwater residences shall not be allowed." The old Ross property use is a "New" overwater residence constructed without the necessary permits and therefore should not be considered a grandfathered use/right.
 - d. I ask and recommend to the Planning Commission to not allow this provision to stay in the DRAFT SMP.
 - e. If you believe it to be appropriate to stay in the DRAFT SMP, then I request you consider adding the following:
 - a) The use shall be a contract use, with the contract recorded with the County Auditor.
 - b) A condition of the single family use is that public access shall be continuously provided to the most water ward location on the site.
 - c) The Permit holder shall post a Performance Bond to the City stating all of the conditions of the contract under (a) above shall be continuously met or the bond will be forfeited, the Permit revoked and the Permit holder further agrees to abandon the Non-Conforming Use within 30 days of a condition being violated. No grace period to be provided.

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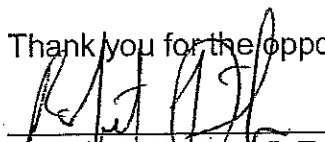
26. Section 7.20.4, 4). I recommend that parking be allowed to the OHWM/bulkhead. There is zero benefit to having a setback equal to the structures setback. If there is a benefit, please so state the benefit.
27. Section 7.21.1, E). The requirement to locate storm water detention and treatment facilities outside the shoreline jurisdiction should be removed. What is the reason for this? Let the developer determine the best use of the property and leave these kinds of statements out of the SMP.
28. Page 8-4. Add a Section below 8.1.7 titled Shorelines Hearings Board and describe its function/use.
29. Page 8-7 Section 8.2.2, 3) and 7). This is the law from the WSDOE website. However, this is not consistent with the DRAFT's words on page 7-57. The words on page 7-57 need to be amended to conform to state law.
30. Page 8-32, Section 8.11.10. I suggest you add an additional sentence to the paragraph which reads, "If the property owner holds a valid Shorelines Master Program permit for the current uses on his/her property then the following shall apply:" If the

Then add an additional last sentence which reads, "The intent of this Section is to not allow changes to property uses that never received valid Shoreline Master Program permits without the property owner applying for and receiving a valid Shoreline Master Program permit."

Point → There are several shoreline property owners who since the City adopted the first SMP have made use changes to their property without receiving the necessary permit(s). These property owners should not be granted a get out of jail free card at this time under this provision. Uses predating the first adoption of the City SMP should come under this exemption but not uses that have come into existence under the cover of darkness.

If you have any questions or require additional information, please do not hesitate to contact me on my cell or via email.

Thank you for the opportunity to comment on this most important document.



Robert G. Frisbie, P.E.

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Use your browser controls to print this window

"Katich, Peter" <KatichP@cityofgigharbor.net>,"bobfrisbie@foxinternet.com"
To: <bobfrisbie@foxinternet.com>,"Kim Vanzwalenburg <Kim.Vanzwalenburg@ecywa.gov>,"rshakra@esassoc.com"
<rshakra@esassoc.com>
Subject: City of Gig Harbor SMP
CC: bobfrisbie@foxinternet.com
Date: Wed, 17 Feb 2010 16:01:33 -0800
Status: normal
From: "bobfrisbie" <bobfrisbie@foxinternet.com>
Reply-
to: bobfrisbie@foxinternet.com

The references and bibliography is quite long and I did not see any specific reference to crosoted piles/timbers.

Can any of you pin point the document(s) the supply the technical information?

Thank you,

Bob

----- Original Message Follows -----

From: "Katich, Peter" <KatichP@cityofgigharbor.net>
To: "bobfrisbie@foxinternet.com"
<bobfrisbie@foxinternet.com>,"Kim Vanzwalenburg <Kim.Vanzwalenburg@ecywa.gov>,"rshakra@esassoc.com"
<rshakra@esassoc.com>
Subject: RE: City of Gig Harbor SMP
Date: Wed, 17 Feb 2010 12:51:18 -0800

>Bob: Chapter 14 (pages 78-79)-"References and Bibliography" of the city's draft Shoreline Inventory and Characterization Report contains the information referenced by the RCW and WAC below.

>
>-----Original Message-----

- 1 >From: bobfrisbie@foxinternet.com
- 2 >[bobfrisbie@foxinternet.com] Sent: Wednesday,
- 3 >February 17, 2010 11:33 AM To: Kim Vanzwalenburg;
- 4 >rshakra@esassoc.com Cc: Katich, Peter; Bob Frisbie
- 5 >Subject: City of Gig Harbor SMP
- 6 >
- 7 >RCW 90.58.100(1) and WAC 173-26-201 require that local
- 8 >governments assemble the most current technical, accurate
- 9 >and complete scientific information on a given subject.
- 10 >Refer to pages 24 and 25 of 100 of WAC 173-26.
- 11 >
- 12 >The draft City of Gig Harbor SMP doesn't allow the use of
- 13 >cresote or Wolman Salted piling.
- 14 >
- 15 >Also, galvanized piling is approved in the draft plan.
- 16 >Galvanizing is of course created by dipping the steel into

EXHIBIT 1a
1/2

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- 1 >molten zinc. Zinc is a heavy metal. Please direct me to
- 2 >the technical information that accurately states what
- 3 >happens to the zinc over time on a galvanized piling and
- 4 >that this is a better treatment than cresote piling.

- >
- 5 >Please forward me the information required by the above
- 6 >RCW/WAC or direct me to the information so that I may
- 7 >review it.

- >
- >Thank you,
- >
- >Bob Frisbie
- >Cell: 253-224-3524

- >
- >
- >

EXHIBIT 19

2/2

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Use your browser controls to print this window

To: <bobfrisbie@foxinternet.com>
Subject: RE: City of Gig Harbor SMP
CC: <KatichP@cityofgigharbor.net>
Date: Thu, 18 Feb 2010 08:59:08 -0800
Status: Normal

1 From: "Van Zwalenburg, Kim (ECY)" <kvan461@ECY.WA.GOV>
2 Reply-to: "Van Zwalenburg, Kim (ECY)" <kvan461@ECY.WA.GOV>
3 Bob:

4 You ask about information with regard to creosote. It is my
5 understanding that much of that information was gathered by fisheries
6 agencies (both state and federal).

7 This link will take you to a paper written that summarizes the science
8 on creosote. Look under "Overwater structures".

9 <http://wdfw.wa.gov/hab/ahg/ahgwhite.htm>

10 With regard to issues related to galvanized piling, I don't know where
11 there are specific papers though there very well may be. Again it is
12 most often fisheries agencies that are looking into these issues.

13 The issue of the use of different materials in salt and fresh waters is
14 a national one not just limited to Washington State.

15 Kim

16 Kim Van Zwalenburg
17 Shoreline Planner
18 Department of Ecology - Southwest Regional Office
19 PO Box 47775
20 Olympia, WA. 98504-7775
21 (360) 407-6520; FAX (360) 407-6305
22 e-mail: kvan461@ecy.wa.gov

-----Original Message-----

From: bobfrisbie@foxinternet.com [bobfrisbie@foxinternet.com]
Sent: Wednesday, February 17, 2010 8:04 PM
To: Van Zwalenburg, Kim (ECY)
Cc: Bob Frisbie
Subject: Fwd: City of Gig Harbor SMP

Kim, hopefully this is your correct email address.

Thank you.

Bob Frisbie

EXHIBIT 1b
1/3

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Email: bobfrisbie@foxinternet.com
Cell: 253-224-3524

----- Message Forwarded on Wed, 17 Feb 2010 20:01:42 -0800

From: "bobfrisbie" <bobfrisbie@foxinternet.com>
To: "Katich, Peter" <KatichP@cityofgigharbor.net>, "bobfrisbie@foxinternet.com"
<bobfrisbie@foxinternet.com>, Kim Vanzwalenburg <Kim.Vanzwalenburg@ecy.wa.gov>, "ishakra@esassoc.com" <ishakra@esassoc.com>
Cc: bobfrisbie@foxinternet.com
Subject: City of Gig Harbor SMP
Date: Wed, 17 Feb 2010 16:01:33 -0800

The references and bibliography is quite long and I did not see any specific reference to cresoted piles/timbers.

Can any of you pin point the document(s) that supply the technical information?

Thank you,

Bob

----- Original Message Follows -----
From: "Katich, Peter" <KatichP@cityofgigharbor.net>
To: "bobfrisbie@foxinternet.com" <bobfrisbie@foxinternet.com>, Kim Vanzwalenburg <Kim.Vanzwalenburg@ecy.wa.gov>, "ishakra@esassoc.com" <ishakra@esassoc.com>
Subject: RE: City of Gig Harbor SMP
Date: Wed, 17 Feb 2010 12:51:18 -0800

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>-----Original Message-----
>From: bobfrisbie@foxinternet.com
>[bobfrisbie@foxinternet.com] Sent: Wednesday, February 17, 2010 11:33 AM To: Kim Vanzwalenburg; ishakra@esassoc.com Cc: Katich, Peter; Bob Frisbie
>Subject: City of Gig Harbor SMP

>RCW 90.58.100(1) and WAC 173-26-201 require that local governments assemble the most current technical, accurate and complete scientific information on a given subject.
>Refer to pages 24 and 25 of 100 of WAC 173-26.

EXHIBIT 1b

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- >that this is a better treatment than creosote piling.
- >
- >Please forward me the information required by the above
- >RCW/WAC or direct me to the information so that I may
- >review it.
- >
- >Thank you,
- >
- >Bob Frisbie
- >Cell: 253-224-3524
- >
- >
- >

Exhibit 1b

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/ 113

1 To: <bobfrisbie@foxinternet.com>
 2 Subject: RE: City of Gig Harbor Draft SMP - FACT CHECK - Creosote Pile Use
 3
 4 CC: "Reema Shakra" <rshakra@esassoc.com>, "Van Zwalenburg, Kim (ECY)" <kvan461@ECY.WA.GOV>, "Peter
 5 Katich" <katichp@cityofgigharbor.net>, "Tom Dolan" <dolan@cityofgigharbor.net>
 6 Date: Tue, 23 Feb 2010 12:05:40 -0800
 7 Status: Normal
 8 From: "Carman, Randy E (DFW)" <Randy.Carman@dfw.wa.gov>
 9 Reply-
 10 to: "Carman, Randy E (DFW)" <Randy.Carman@dfw.wa.gov>

11 Bob -

12 Thanks for the call today and the follow-up. I would add only a minor
 13 correction to your phone discussion account. We were discussing
 14 regulatory authority of the Department of Fish and Wildlife, not the
 15 entire state. Therefore the statements would be true if you substitute
 16 "Department of Fish and Wildlife" for State of Washington in both
 17 instances.

18 Randy

19 Randy Carman
 20 Habitat Program
 21 Washington Department of Fish and Wildlife
 22 600 Capitol Way North
 23 Olympia, WA 98501
 24 (360) 902-2415

25 -----Original Message-----

26 From: bobfrisbie@foxinternet.com [bobfrisbie@foxinternet.com]
 27 Sent: Tuesday, February 23, 2010 9:52 AM
 28 To: Carman, Randy E (DFW)
 29 Cc: Reema Shakra; Van Zwalenburg, Kim (ECY); Peter Katich; Tom Dolan;
 30 Bob Frisbie
 31 Subject: City of Gig Harbor Draft SMP - FACT CHECK - Creosote Pile Use

32 To: Randy Carman
 33 Department of Fish and Wildlife
 34 State of Washington

35 Please confirm by return email that the following is a true
 36 account of our phone conversation this morning.

- 37 1. The State of Washington has no law prohibiting the use
 38 of creosote piling in the salt waters of the State.
- 39 2. The State of Washington has a law prohibiting the use of
 40 creosote piling in the fresh waters of the State.

41 Thank you,

42 Bob Frisbie
 43 Phone: 253-224-3524
 44 Email: bobfrisbie@foxinternet.com

EXHIBIT 1c

1/1

19 / 113

Use your browser controls to print this window

1 To: <bobfrisbie@foxinternet.com>
2 Subject: RE: City of Gig Harbor Draft SMP - FACT CHECK - Creosote Pile Use
3 CC: "Reema Shakra" <rshakra@esassoc.com>, "Peter Katich" <katichp@cityofgigharbor.net>, "Tom Dolan"
4 <dolant@cityofgigharbor.net>, "Carman, Randy E (DFW)" <Randy.Carman@dfw.wa.gov>
5 Date: Thu, 25 Feb 2010 15:41:28 -0800
6 Status: Normal
7 From: "Van Zwalenburg, Kim (ECY)" <kvan461@ECY.WA.GOV>
8 Reply- "Van Zwalenburg, Kim (ECY)" <kvan461@ECY.WA.GOV>
to:

9 Mr. Frisbie:

10 I believe Randy Carman with Washington Department of Fish and Wildlife
11 has provided you with the technical information relating to the use of
12 creosote-treated materials in marine waters that you requested in your
13 letter to me dated February 20, 2010.

14 I think he also provided you with information on the extensive effort
15 over the last couple of years to clean up creosote in Puget Sound.
16 Department of Natural Resources efforts, along with related links can be
17 found here:

18 <http://www.dnr.wa.gov/ResearchScience/Topics/AquaticCleanUp/Restoration>
19 [Pages/aqr_aquatic_clean_restoration.aspx](http://www.dnr.wa.gov/ResearchScience/Topics/AquaticCleanUp/Restoration/Pages/aqr_aquatic_clean_restoration.aspx)

20 As you have learned, there is no state law or rule that specifically
21 prohibits the use of creosote-treated materials in the marine
22 environment. However, the Shoreline Management Act makes very clear that
23 permitted uses in the shorelines of the state shall minimize damage to
24 the ecology and environment of the shoreline area. The City of Gig
25 Harbor is charged with developing a shoreline master program that is
26 consistent with that state policy.

27 I am sure that the City will consider all comments received during their
28 update process. Thank you for your interest.

29 Kim Van Zwalenburg
30 Shoreline Planner
31 Department of Ecology - Southwest Regional Office
32 PO Box 47775
33 Olympia, WA. 98504-7775
34 (360) 407-6520; FAX (360) 407-6305
35 e-mail: kvan461@ecy.wa.gov

EXHIBIT 1d

1/3

-----Original Message-----

From: bobfrisbie@foxinternet.com [mailto:bobfrisbie@foxinternet.com]

Use your browser controls to print this window

20/1/13

Sent: Wednesday, February 24, 2010 8:21 AM
To: Van Zwalenburg, Kim (ECY)
Cc: Reema Shakra; Peter Katich; Tom Dolan; Bob Frisbie
Subject: City of Gig Harbor Draft SMP - FACT CHECK - Creosote Pile Use

Kim, will the WSDOE be adding anything to the comments from the Department of Fish and Wildlife as noted below?

Thank you,

Bob Frisbie
Phone: 253-224-3524

----- Message Forwarded on Wed, 24 Feb 2010 08:17:36 -0800

From: "Carman, Randy E (DFW)" <Randy.Carman@dfw.wa.gov>
To: <bob.frisbie@foxinternet.com>
Cc: "Reema Shakra" <reema@reemashakra.com>, "Van Zwalenburg, Kim (ECY)" <kim@dfw.ecy.wa.gov>, "Peter Katich" <katichp@cityofgigharbor.net>, "Tom Dolan" <tdolan@cityofgigharbor.net>
Subject: RE: City of Gig Harbor Draft SMP - FACT CHECK - Creosote Pile Use
Date: Tue, 23 Feb 2010 12:05:40 -0800

Bob -

Thanks for the call today and the follow-up. I would add only a minor correction to your phone discussion account. We were discussing regulatory authority of the Department of Fish and Wildlife, not the entire state. Therefore the statements would be true if you substitute "Department of Fish and Wildlife" for State of Washington in both instances.

Randy

Randy Carman
Habitat Program
Washington Department of Fish and Wildlife
600 Capitol Way North
Olympia, WA 98501
(360) 902-2415

-----Original Message-----

From: bob.frisbie@foxinternet.com
[bob.frisbie@foxinternet.com] Sent: Tuesday, February 23, 2010 9:52 AM
To: Carman, Randy E (DFW)
Cc: Reema Shakra; Van Zwalenburg, Kim (ECY); Peter Katich; Tom Dolan; Bob Frisbie
Subject: City of Gig Harbor Draft SMP - FACT CHECK -

EXHIBIT 1d

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Use your browser controls to print this window

Creosote Pile Use

To: Randy Carman
Department of Fish and Wildlife
State of Washington

Please confirm by return email that the following is a true account of our phone conversation this morning.

1. The State of Washington has no law prohibiting the use of creosote piling in the salt waters of the State.
2. The State of Washington has a law prohibiting the use of creosote piling in the fresh waters of the State.

Thank you.

Bob Frisbie
Phone: 253-224-3524
Email: bobfrisbie@foxinternet.com

EXHIBIT 1d

3/3

February 20, 2010

22 / 113

Robert G. Frisbie, P.E.
9720 Woodworth Avenue
Gig Harbor, WA 98332
Email: bobfrisbie@foxinternet.com
Phone: 253-224-3524

Kim Van Zwalenburg
Shoreline Planner
Department of Ecology
Southwest Regional Office
PO Box 47775
Olympia, WA 98504-7775
Phone: (360) 407-6520
Email: kvan461@ecy.wa.gov

Subject: City of Gig Harbor Draft SMP
Fact Check

Dear Kim:

WAC 173-26-201(2)(a) requires the WSDOE to present the most current, accurate, and complete scientific and technical information available that is applicable to the issues of concern in order to support the department's rules included in an individual SMP.

The WSDOE has directed the City of Gig Harbor to place into their Draft SMP a prohibition on the use of creosote piles.

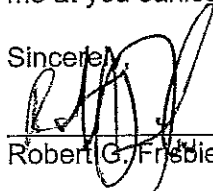
I contacted you via email on Wednesday February 17th and requested the technical/white papers supporting the department's position. You emailed me on Thursday February 18th identifying the location of the white paper on the Fish and Wildlife web page under "Overwater Structures". I have attached the PDF file of the Executive Summary from that white paper dated October 18, 2001.

The white paper clearly shows the need to prohibit creosote piles in the fresh water spawning creeks and rivers. However the white paper does not show/prove the need to prohibit creosote piles in salt waters of Gig Harbor itself. Refer to page 3 of 6 and lines 18 through 32 inclusive; refer to page 4 of 6 and lines 1 through 6 inclusive; and page 6 of 6 and lines 12 through 29 inclusive of the executive summary.

If the referenced white paper has been superceded, then please forward the new white paper. Otherwise, I respectfully request the WSDOE withdraw their direction to the City of Gig Harbor to prohibit the use of creosote piles in the salt waters of Gig Harbor.

If you have any questions and/or require additional information, please do not hesitate to contact me at you earliest convenience.

Sincerely,


Robert G. Frisbie, P.E.

Cc: COGH (Katich, Dolan and Planning Commission Members)

EXHIBIT 1e

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23/113



7017 N.E. Highway 99, Suite 108 Vancouver, WA 98665 360/693-9958 Fax 360/693-9967 E-Mail: info@wwpinstitute.org

November 11, 2010

Attn: Joyce Ninen, Chair
City of Gig Harbor
Planning Commission
3510 Grandview Street
Gig Harbor, WA 98335

Subject: DRAFT SHORELINE MASTER PROGRAM – PRESERVED WOOD

Dear Ms. Ninen,

The Western Wood Preservers Institute (WWPI) is interested in the drafting of the City of Gig Harbor's Draft Shoreline Management Program (SMP) as we believe it will create an unwarranted economic hardship on our industry and community users. Therefore, we would like to take this opportunity to offer the following comments.

WWPI is a non-profit trade association representing wood preservative companies and small independently owned wood preserving manufacturers throughout western North America, including the state of Washington. We are headquartered in Vancouver, WA.

WWPI has devoted a significant amount of time in evaluating the environmental performance of preserved wood material to ensure they are appropriately used in aquatic environments. To that end, for the last fifteen years the industry has allocated considerable resources to understanding the environmental performance of preserved wood, conducting research, developing analytical models and establishing specification and environmental guidance for selecting, installing and managing wood preservative systems in aquatic and sensitive environments, such as the *Best Management Practices for the Use of Preserved wood in Aquatic and Other Sensitive Environments 2006 (BMPs)* and the companion document *Preserved Wood in Aquatic Environments – A Specification and Environmental Guide*. These documents can be viewed online at <http://www.wwpinstitute.org/mainpages/thebmpswoodinaquat.shtml> http://www.wwpinstitute.org/mainpages/documents/Aquatic%20Guide_August06.pdf or hard copies can be provided.

The intent of these two documents is to provide recommended guidance to ensure the appropriate product is selected, produced and installed to minimize environmental risks. The specific intent of the BMPs is to produce products having effective levels of protection with minimum environmental impact by minimizing the potential for migration or leaching of the preservative chemicals from the preserved wood material.

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In addition, NOAA Fisheries-Southwest Region in 2009 released final guidelines titled *The Use of Preserved Wood Material In Aquatic Environments: Guidelines to West Coast NOAA Fisheries Staff for Endangered Species Act and Essential Fish Habitat Consultations in the Alaska, Northwest and Southwest Regions*. The guidelines can be viewed online at http://www.wwpinstitute.org/mainpages/documents/NOAAFINALTWGUIDELINES_10.09.pdf

The NOAA guidelines represent the best and most concise review of all the available science on all the various risk factors and scientific tools available for evaluating and mitigating the environmental aspects of using preserved wood in aquatic applications. The guidelines specifically state that the use of preserved wood material under certain circumstances is acceptable and that in many situations may have no adverse environmental effect. They also strongly embrace the use of the BMPs, as well as recognizing the value of using industry assessment models to determine the potential environmental effects, and the need for conducting site specific screening level examinations to make consistent effects determinations on projects.

The result of this thorough review of the science by both industry and government biologists clearly shows that preserved wood material is environmentally safe and appropriate for use in most aquatic applications and that risks are minimized and manageable when site conditions are correctly evaluated. The industry assessment model can be directly accessed at <http://www.wwpinstitute.org/mainpages/thesciencewoodinaquat.shtml> and other aquatic information referenced can be found in the "Aquatic" section of WWPI's website at www.wwpinstitute.org.

As background, the most commonly available preservative systems selected for use in brackish and saltwater are Creosote, Ammonical Copper Zinc Arsenate (ACZA), and Chromated Copper Arsenate (CCA). Copper Napthenate and Pentachlorophenol are approved for out of water use, but can be subject to saltwater splash. There are also preservative systems, such as Alkaline Copper Quat (ACQ) and Copper Azole (CA-B) that are approved for use in above ground freshwater and above salt water, but subject to splash.

In addition, all preservatives used in the manufacture of preserved wood material are fully regulated by the US Environmental Protection Agency (EPA) for their intended use and undergo a very rigorous registration and re-registration process. The EPA considers wood preservative systems as antimicrobial pesticides and requires: *"These pesticides must be supported with complete scientific analysis and show that they can be used without causing unreasonable adverse effects to human health or the environment."* The requirements are very extensive, and include toxicological data, environmental fate data, wildlife and aquatic organism data, and information on potential adverse effects.

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WWPI has gone through great lengths to work with local, state and federal agencies for a number of years to assure the environmental objectives are met for the use of preservative wood. For example, the development of an August 1995 Memorandum of Agreement between the Washington Department of Fish and Wildlife and the Department of Ecology provides guidance for the use of preserved wood in state waters. This guidance clearly allows for consideration of environmental, structural and economic factors. In situations where there is concern for higher environmental risk, it places the onus on the proponent to evaluate the factors to determine if preserved wood material is appropriate. As previously mentioned, WWPI and NOAA Fisheries have also allocated considerable resources evaluating the science and appropriate uses of preserved wood material, along with providing site specific screening examination tools to meet this end.

Though a bias against the use of preserved wood material exists among some public agencies, there is no federal or state law or regulation prohibiting the City of Gig Harbor from using any of the above listed preservative systems. In addition, we do not know of any documented cases or empirical studies that link the use of preserved wood directly to the loss of fisheries or other aquatic organisms when the risks are properly evaluated and the wood is preserved to industry standards and the recommended BMPs. Much of the environmental issues raised about preservative wood products in aquatic environments, such as the use of creosote preserved piling, are legacy issues that should not be compared to the preserved products being produced to the BMPs today for use in aquatic and/or marine environments.

Considering all the supporting science and tools available to proponents for evaluating the environmental risks associated with the use of preserved wood material, WWPI is extremely disappointed to see that the City of Gig Harbor's draft SMP prohibits the use of preservative wood material in lieu of alternative materials, specific reference to **Chapter 7 Sections: 7.4.1 K; 7.4.7 (5) & (6d); 7.48 (7d), and Chapter 6 Section: 6.6.2 (4)**. It has been well established that the alternative products have their own adverse environmental impacts and are significantly more expensive. We also believe they should be held to the same level of environmental scrutiny as preservative wood, which has been extensively researched, and when the risks are evaluated the environmental impact can be minimized and managed. In addition, preserved wood material represents the only sustainable product for aquatic applications that sequesters carbon and requires less energy to produce than alternative materials, a key environmental attribute.

Therefore, WWPI urges you to remove all reference in the SMP prohibiting the use of preserved wood material and that the use of such material remains an option for managers. We further recommend that the determination to use or not use preserved wood materials be based on a site specific screening examination, as recommended by the NOAA Fisheries guidelines.

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We offer the following wording for inclusion in lieu of prohibited wording in the SMP:

“The use of preserved wood material may be considered for use when a site specific screening examination is performed to determine whether such use will cause an adverse environmental impact.”

“Where preserved wood material is identified to be acceptable it shall be specified as being in compliance with the *Best Management Practices for the Use of Preserved Wood in Aquatic and Other Sensitive Environments* – Western Wood Preservers Institute – 2006 or most current version and amendments, including provisions for third party certification.”

I would also like to suggest that before making a decision to arbitrarily prohibit the use of preservative wood material, which appears to be based on limited or unrelated scientific data, the city should first determine what, if any, environmental impacts are occurring in the harbor as a result of using preservative wood. Knowing what the actual rather than the perceived impacts might be is surely warranted when considering the apparent level of environmental concern, as well as the potential economic impact to producers and community users. We would also urge that the referenced materials provided in our comments be fully evaluated and included as references in the SMP.

Thank you for considering our concerns and should you have need for additional material or if we can be of further assistance, please do not hesitate to call. Please keep us posted on the process including opportunity for further review and input.

Sincerely,



Ted J. LaDoux
Executive Director
Western Wood Preservers Institute

EXHIBIT 1f

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Dr. Kenneth M. Brooks
Aquatic Environmental Sciences
644 Old Eaglemount Road
Port Townsend, WA 98368
(360) 732-4464
brooksas@embarqmail.com

November 14, 2010

Attention: Joyce Ninen, Chair
City of Gig Harbor
Planning Commission
3510 Grandview Street
Gig Harbor, WA 98335

Dear Planning Commission Members,

The purpose of this letter is to express concerns with Sections 3.1.5 (Shoreline Alterations), 6.6.2 (Regulations) and 7.4.2 (Policies for Marinas) of the *Preliminary Planning Commission Draft* of the Gig Harbor Shoreline Master Program (SMP).

Authors qualifications. Dr. Brooks has been studying and modeling the environmental response to all forms of pressure treated wood used in and over aquatic environments since 1992. Much of this work has been peer reviewed and published. All of the studies and models cited in this letter have been peer reviewed and are now being published in a book edited by Oregon State University. These studies have included detailed leaching studies of commodity size sections of pressure treated wood; models to predict the transport and fate of the metals and organic biocides used to preserve wood; and detailed studies describing the actual environmental response to real treated wood structures. These studies have been undertaken throughout the United States and Canada. A copy of my CV is attached along with electronic copies of the Puget Sound creosote and ACZA studies and the recently peer reviewed and published risk assessment model that has been endorsed by NOAA Fisheries. Copies of the other papers cited in this letter are available on request.

Background. Studies of pressure treated wood began in 1991 at the request of a dentist in Whatcom County who had been denied use of creosote treated piling for constructing a pier and float at his residence. In response, a model was developed to predict the accumulation of polycyclic aromatic hydrocarbons (PAH) released from the piling. Whatcom County's decision was overturned by their Hearings Examiner and the pier and float were constructed using creosote treated piling and CCA-C treated sawn decking. This led to a decade's long debate with WDFW regarding the environmental response to pressure treated wood. The use and interpretation of science has been at the core of that debate. I strongly urge all policy makers to carefully examine the science presented to them in support of developing public policy. That science should:

- Be balanced with citations supporting both the pros and cons of any activity.
- Be appropriate to the policy being developed.
- Accurately interpret and report the results of the studies being cited.

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Specific concerns with the Commission's Draft SMP. Please consider the following concerns, which are presented by section in the draft document.

3.1.5 Shoreline Alterations – first paragraph. Public policy should be based on a demonstrated need to prevent significant environmental harm. Environmental activists often cite the *Precautionary Approach* as justification for denying human activity. This approach, which has been endorsed by many nations, was formally defined in Declaration 15 of the 1992 Rio Conference. It states that:

"Nations shall use the precautionary approach to protect the environment. Where there are threats of serious or irreversible damage, scientific uncertainty shall not be used to postpone cost-effective measures to prevent environmental degradation."

The approach does not state that if there is a possibility of environmental harm, then a proponent must demonstrate that no harm will result from a proposed project. Consistent with traditional American values and Precautionary Approach, the first step in imposing restrictions, requires a demonstration of *serious irreversible damage*. Responsible public policy must demand rigorous (but not unequivocal) evidence of harm before imposing penalties on citizens (denying a permit). There are several statements in section 3.1.5 that do not appear to be based on rigorous science.

- What empirical evidence has been presented to the Commission demonstrating that shoreline armoring "typically impedes sediment supply to down-drift beaches and nearshore habitats. The lack of sediment supply can cause or heighten erosion along down-drift shores, and can lead to changes in nearshore substrate composition from sand or mud to coarse sand, gravel and finally hardpan."?
- Your draft should cite the specific studies quantifiably demonstrating that shoreline armoring *typically* decreases eelgrass, increases kelp abundance, and or reduces or eliminates forage fish spawning areas. If these effects are rigorously demonstrated and cannot be mitigated through environmentally sensitive design, then a general statement like that found in the draft would be appropriate. Otherwise the statement should be removed.
- The draft states that "Overwater structures deprive eelgrass of light." My own research indicates that this is not necessarily true. The dentist's float had a solid deck and was situated directly over an eelgrass meadow. After several years, the substrate directly under the float was devoid of eelgrass. Eelgrass on the perimeter of the float continued to flourish. In contrast, Brooks (2004b) reported the environmental response of an ACZA pressure treated pier and float constructed in Sequim Bay, Washington. The pier traversed an eel grass meadow. It had an elevated expanded, light permeable aluminum deck. Five years of monitoring the eelgrass density under the deck found no effects. It should also be noted that in comparison with mussels collected at a reference site, mussels growing directly on the piling did not contain elevated concentrations of arsenic, copper or zinc and were safe to eat. Clams growing within 0.5 meters of the piling did not accumulate metals and were also safe to eat.

My point in this discussion is not that shoreline armoring has no effect on sediment transport or local biology or that piers and floats can never have an adverse environmental effect. My

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point is that studies of actual structures have shown that shading effects can be managed through good engineering and that you have not cited actual studies demonstrating any effect (one way or another) associated with shoreline armoring. The statements made in Section 3.1.5 are not supported by the limited information presented. Rather, these statements appear to be driven by agenda driven opinion.

3.1.5 Shoreline Alterations – second paragraph. My involvement in pressure treated wood began with opposition from the National Marine Fisheries Service (NMFS) and WDFW to the use of creosote treated wood. NMFS criticized my first creosote model noting that it grossly underestimated the concentrations of accumulated PAH in sediment. Their analysis indicated that the concentrations would be in the range of 14,000 to 16,000 milligrams of PAH/kilogram (mg/kg) of sediment downstream from a single piling whereas my models predicted variable accumulations that were generally less than 10 to 20 mg/kg. In 1995, Darcy Goyette (Environment Canada) and I undertook the Sooke Basin study, which examined the environmental response to six piling dolphins (teepees) constructed using Class A creosote treated piling. One dolphin was constructed of newly treated piling; one of 8 year old piling pulled by the Port of Vancouver specifically for the study and one dolphin was constructed of untreated Douglas fir piling. The structures were constructed in a worst case environment at Sooke Basin where currents were very slow (1.89 cm/sec) and sediments were fine grained and biologically active. The ten year study demonstrated low sediment PAH concentrations; essentially no dissolved PAH in the water column; and little or no accumulation of creosote in mussels living directly on the piling. The unexpected finding was the speed at which the piling became fouled with a highly diverse and extremely abundant community of invertebrates (Goyette and Brooks, 1998, 2000; Brooks, *et al.*, 2006). It should be noted that the Sooke Basin studies demonstrated that the primary adverse effect of the structures was associated with anaerobic decomposition of detritus raining down from the fouling communities. This anaerobic catabolism resulted in elevated sediment free sulfides that did affect the benthic community. Sediment PAH from the treated wood remained relatively low and they were well predicted by the creosote model throughout the study. Even lower sediment concentrations of PAH were observed by Weston (2006) in a study that examined sediment concentrations of PAH before, during and after removal of an extensive field of creosote treated piling used to anchor log rafts in Sequim Bay, Washington.

The Sooke Basin studies were followed on by an examination of creosote and ACZA treated structures in Puget Sound (Brooks, 2004a, 2004b). The Fort Worden ammunition pier (now the Marine Science Center) had nearly a thousand piling. In all cases, sediment concentrations of PAH immediately adjacent to the structures were low and did not exceed Washington State's sediment quality standards (WAC 173-204). In all of these studies, the diversity and abundance of benthic invertebrates was as high, or higher, near the structures than it was at local reference stations where there were no anthropogenic disturbances. In addition, all of these structures supported highly diverse and abundant invertebrate communities (Figure 1) with abundant fish populations around the piling.

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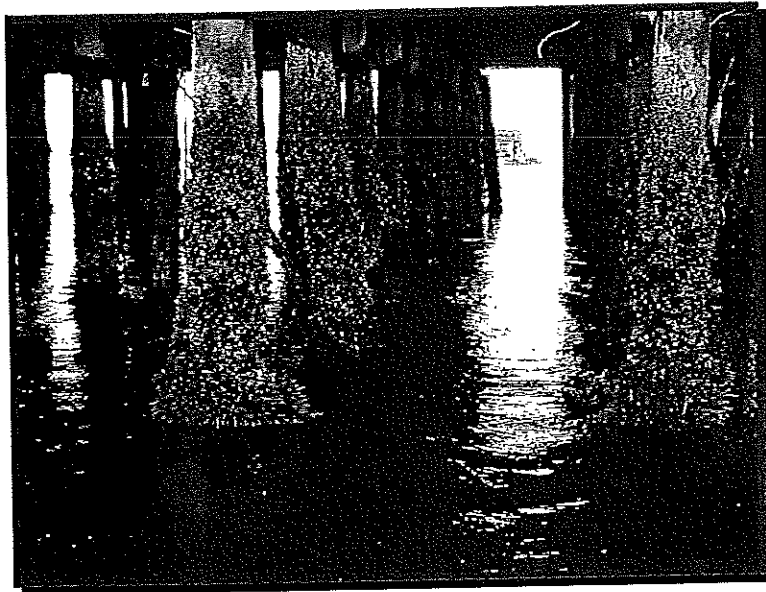


Figure 1. Creosote treated piling supporting the Fort Ward wharf in Rich Passage, Washington. This large wharf has an ACZA pressure treated wood deck.

6.6.2 4). Regulations. As noted above, there is no scientific basis for prohibiting the use of pressure treated wood in or over aquatic environments. If Gig Harbor adopts the restrictions proposed in 6.6.2. 4), what you will accomplish is to replace pressure treated wood with other construction materials that have both known and unknown environmental effects. Figure 2 describes plastic piling used at the Fort Casey ferry terminal. In addition, you will eliminate the vibrant invertebrate and vertebrate communities that are well documented to reside on creosote treated wood structures in the Pacific Northwest (Figure 3). Steel piling coated with zinc or protected using zinc anodes have been documented by the Coast Guard in Alaska to loose as much as 45 pounds of zinc per year to marine environments. Sedimented zinc is nearly as toxic as copper (zinc sediment quality standard is 410 mg Zn/kg dry sediment and copper is 390 mg/kg).



Figure 2. Abraded plastic coated piling at the Fort Casey ferry terminal on Whidbey Island.

The Vines (2000) study bears comment. This was a laboratory study that exposed herring eggs to pieces of creosote treated wood that were not fouled. The eggs and wood were contained in beakers with no water circulation. While the study is interesting, many researchers have recognized the inappropriateness of extrapolating environmental effects from this laboratory study. Dr. Robert Perkins (a professor at the University of Alaska) is in the process of repeating this study under more realistic conditions. In contrast, Goyette and Brooks (1998) conducted reproductive bioassays using mussels growing on the Sooke Basin creosote treated piling. No significant differences were observed in larval development to the trochophore stage in that study. These studies are well known to WDFW.

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7.4.2. Policies for Marinas. Brooks (2001, 2004c) examined sediment chemistry at 14 Southern California marinas where delayed release white sea bass were being raised by Hubbs SeaWorld. The results indicated that zinc and copper concentrations exceeded Washington State sediment quality criteria in the marinas. The source of the copper was judged to be antifouling paint on boats and the zinc was assumed to be coming from the steel piling and sacrificial anodes on watercraft. It should be noted that one 400 foot freighter loses as much copper each day as 27,000 CCA-C treated piling.

Summary and recommendations. I believe that government has a responsibility to rigorously review all of the science pertinent to development of policies that affect citizens. The draft SMP has not reviewed all of the

appropriate science and is not defensible. If Gig Harbor imposes all of the restrictions proposed in sections 6.6.2 and 7.4.2 you will deny your citizens the right to use pressure treated wood, which is a valuable renewable resource. Extensive studies and surveys conducted throughout the United States indicate that this action will provide no environmental benefit. In fact, denying the use of creosote treated piling, will deny marine invertebrates valuable habitat that has been shown to support vibrant communities (Figure 3). Your recommendations for alternative



Figure 2. Invertebrate community on creosote treated piling in the Sooke Basin study.

materials are naïve in that they ignore the documented environmental effects associated with steel and plastic. I have been a dedicated conservationist since retiring from the U.S. Navy in 1979. I strongly believe that if we are to sustain the public's commitment to good environmental stewardship, then regulations must be based on rigorous science with a demonstration of harm before penalties are imposed. It may be possible for large pressure treated wood structures placed in very poorly circulated environments or those with anaerobic sediments to create adverse conditions. The purpose of the attached model is to help insure that those situations are avoided. My recommendation is that Gig Harbor follow the lead of NMFS in requiring use of the model for screening and/or detailed risk assessments where pressure treated wood structures are proposed. The Western Wood Preservers Institute (WWPinstitute.org) has developed a risk assessment guide to assist project proponents and permit writers in assessing treated wood projects.

Sincerely,

Dr. Kenneth M. Brooks

EXHIBIT 1g 5/p

32 / 113

References

- Brooks, K.M. 2001. Environmental assessment and monitoring program associated with aquaculture production facilities operated by Hubbs SeaWorld Research Institute at the Grace oil drilling platform in the Santa Barbara Channel, California. Technical report prepared for Hubbs SeaWorld Research Institute, 2595 Ingraham Street, San Diego, California 92109. 26 pp.
- Brooks, K.M. 2004a. Environmental response to creosote treated wood structures in Puget Sound, Washington. Technical report prepared for U.S. Creosote Council II, care-of Mr. David Webb, 357 Browns Hill Road, Valencia, PA 16059. 52 pp. **Attached**
- Brooks, K.M. 2004b. Environmental response to ACZA treated wood structures in Pacific Northwest marine environments. Technical report prepared for J.H. Baxter and Company, 1700 South El Camino Real, San Mateo, CA 94402. 30 pp. **Attached**
- Brooks, K.M. 2004c. September 2004 sediment physicochemical monitoring at Hubbs-SeaWorld Research Institute's enhancement netpens located at Santa Catalina Island, Aqua Hedionda Laboon and San Diego Bay. Technical report prepared for Hubbs-SeaWorld Research Institute 2595 Ingraham Street, San Diego, CA 92109. 29 pp.
- Brooks, K.M., D. Goyette and S. Christie. 2006. Sooke Basin Creosote Evaluation – Results of the October 2005 Reconnaissance Survey. Creosote Evaluation Committee, Fisheries and Oceans Canada, Pacific Yukon Region, 201-401 Burrard Street, Vancouver, British Columbia, Canada V6C 3S5. 150 pp.
- Goyette, D. and K.M. Brooks. 1998. Creosote Evaluation: Phase II. Sooke Basin Study – Baseline to 535 Days Post Construction 1995 – 1996. Published by Environment Canada. 224 West Esplanade, North Vancouver, British Columbia, Canada V7M 3H7. 568 pp.
- Goyette, D. and K.M. Brooks. 2000. Addendum Report – Continuation of the Sooke Basin Creosote Evaluation Study (Goyette and Brooks, 1998). Year 4 – Days 1360 and 1540. Published by Environment Canada. 224 West Esplanade, North Vancouver, British Columbia, Canada V7M 3H7. 51 pp.
- Weston. 2006. Jimmycomelately Piling Removal Monitoring Project – Final Report. Technical report prepared for the Jamestown S'Klallam Tribe by Weston Solutions, P.O. Box 216, 4729 NE View Dr., Port Gamble, Washington 98364 and Pascoe Environmental Consulting, 210 Taylor Street, Room 15, Port Townsend, Washington 98368. 116 pp.

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Dr. Kenneth M. Brooks
644 Old Eaglemount Road
Port Townsend, WA 98368
(360) 732-4464 email: brooks@olympus.net

EDUCATION

- > Bachelor of Science in Physics (Cum Laude), Naval Postgraduate School (NPS), 1973
- > Master of Science in Physics (With Distinction), Naval Postgraduate School, 1974
- > Doctor of Philosophy, University of Washington, 1991

EMPLOYMENT

1959-1979	United States Navy Officer, retired in 1979.
1979-2001	Own a 185 acre farm in Port Townsend, WA.
1982-1992	Washington State - Environmental mediation and Chairman, Washington State Conservation Commission.
1986-1988	Doctorate, College of Ocean Sciences and Fisheries, University of Washington
1988-1990	Battelle Marine Science Laboratory, NORCUS grant
1993-1997	Director, Fisheries Technology Program, Peninsula College
1989-2005	Owner, Aquatic Environmental Sciences

ANALYSIS OF EXPERIENCE

Research: Biological studies focus on understanding organismal, population and community effects associated with natural and anthropogenic changes in aquatic ecosystems. Dr. Brooks has completed a number of benthic ecology studies examining the impact of organic loading and potentially toxic contaminants on invertebrate communities in marine and freshwater environments for government and industry. He has a broad range of mathematical tools, is competent in biometrics analysis, and has experience in developing analytically descriptive computer models.

Pressure treated wood. Ongoing research includes investigations of the aquatic risks posed by polycyclic aromatic hydrocarbons (PAH) and metals lost to aquatic environments in association with the use of treated wood under contract with the U.S. and Canadian governments and the wood treating industry. These studies are documented in a series of risk assessments, which include computer models predicting the environmental transport and fate of the preservatives. He has completed five major environmental scale risk assessments describing the environmental response to the use of pressure treated wood for the Canadian Government, the U.S. Forest Service, U.S. Environmental Protection Agency and industry.

Aquaculture. Dr. Brooks has seventeen years experience in evaluating the environmental effects associated with organic and inorganic waste and exotic species introductions in support of intensive aquaculture. His laboratory monitors ten of the 13 active salmon farms in Washington State and one-third of the farms in British Columbia. In addition, he has completed a series of intensive studies documenting the environmental effects associated with Atlantic salmon culture in British Columbia and is currently completing a series of similar studies describing the environmental response to intensive mussel culture in Totten Inlet, Washington. He has been under contract to the U.S. National Marine Fisheries Service since 1999 as part of a team conducting environmental risk assessments for various aspects of marine aquaculture. Dr. Brooks has been a member of the United Nations Joint Group of Experts on the Scientific Aspects of Marine Environmental Protection (GESAMP) since 2001 and is currently a member of two working groups evaluating the environmental risks associated with coastal aquaculture; developing management recommendations for member nations; and comparing the environmental costs associated with aquaculture with capture fisheries and terrestrial agriculture.

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Shellfish enhancement. A five-year study evaluating intertidal shellfish resources in South Central Alaska and developing hatchery and growout protocols for native little neck clams and cockles to enhance Native American subsistence shellfish resources was completed in 2001 with funding from the Exxon Valdez Trustees. Additional shellfish research involves long-term genetic and epizootiological studies of Washington State mussel populations to evaluate the potential for cultured *Mytilus edulis galloprovincialis* to displace *M. e. trossulus* and other intertidal organisms and an investigation into the disappearance of razor clams from traditional harvest beaches near Cordova, Alaska with funding from the U.S. Fish and Wildlife Service.

Wetland science. Dr. Brooks has 18 years experience delineating wetlands in Western Washington and designing and construction wetland mitigation projects. He inventoried all wetlands (211 wetlands) for the City of Ocean Shores with funding from the Department of Ecology. Over the last 18 years, he has delineated and rated nearly 400 wetlands in Western Washington and designed, constructed and monitored seven wetland mitigation projects, most of which were approved by the U.S. Army Corps of Engineers. In 1995 and 1996, he included a three week course on wetland functions and delineation as part of the Freshwater Ecology Course at Peninsula College.

Resource Management: The management skills developed in numerous management positions have been valuable in fulfilling the duties associated with the following resource management positions held in Washington State:

- o Chairman - Washington State Conservation Commission 1987 through 1989
- o Chairman - Washington Agriculture Natural Resource Forum (ANRF) 1988 through 1990
- o Chairman - Puget Sound Association of Conservation Districts 1984 - 1989
- o Chairman - Jefferson County Conservation District 1982 - 1987

These positions demanded creativity to generate new programs such as the Agriculture-Natural Resources Forum, leadership to encourage participation in voluntary programs and fiscal responsibility to manage budgets approaching two million dollars per year. The Conservation Commission includes the directors of the various state natural resource agencies and holds a legislated mandate to help coordinate their efforts to improve natural resource management. The commission elects the chairman annually. During this period, Dr. Brooks provided environmental mediation services for Governor Gardner's administration. He successfully mediated several natural resource issues of state-wide significance.

Teaching: Professor Brooks was the Director of the Fisheries Technology Program at Peninsula College for five years. In addition to administering the program, he taught courses in Freshwater and Marine Ecology, Biostatistics, Mathematical Assessment of Populations I and II, Fish Physiology, Life History and Ecology of Fishes, Taxonomy of Fishes; Invertebrate Taxonomy; Invertebrate Physiology; Communications; and Computer Skills for Biometricians. Several of these courses were accepted for upper division credit at the University of Washington.

Professional Affiliations:

- o National Shellfisheries Association
- o Sigma Xi
- o Society of Environmental Toxicologists and Chemists

HONORS

- o Recognized by the Daughters of the American Revolution as the outstanding U.S. Navy Pilot in 1961.
- o Awarded a gold watch by President John F. Kennedy as the Outstanding U.S. Naval Aviator in 1962.
- o Faculty Merit Award for Academic Achievement (Presented to the graduate student with the highest academic achievement during the previous year) - University of Washington, 1991.
- o Chapman Scholarship - University of Washington, 1988.
- o All degrees awarded with honours, Naval Postgraduate School, 1973 and 1974.

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- o Mewborne Research Award - Presented annually by the Secretary of the Navy for the "most scholarly and significant research conducted at a naval institution." 1975.
- o Dr. Edward Teller Program Award for the first imaging of the laser induced thermonuclear burn, Lawrence Livermore Laboratories, 1976.

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Dr. Kenneth M. Brooks

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Selected Publications:

- Brooks, K. M. and Elston, R. A. 1989. Epizootiology of hemic neoplasia in *Mytilus trossulus* in Washington State, Part I. *J. Shellfish Res.*, 8:411
- Elston, R., Bonar, D., Brooks, K., Gee, A., Miahle, E., Moore, J., Noel, D., and Stephens, L. 1990b. Studies on pathogenesis and etiology of circulating sarcomas in *Mytilus*. 4th Internat. Colloq. Pathol. Marine Aquacul., 17-21 Sept., Vigo (Pontevedra), Spain, p. 119.
- Brooks, K. M. and Elston R. A. 1991. Epizootiology of hemic neoplasia in *Mytilus trossulus* in Washington State, Part II. *J. Shellfish Res.*, 10:223
- Brooks, K. M. 1991. The Genetics and Epizootiology of Hemic Neoplasia in *Mytilus edulis*. 1991. Ph.D. dissertation, University of Washington, Seattle, WA. 282 pp.
- Brooks, K.M. 1991. Shellfish Inventory and Management Considerations associated with the intensive cultivation of *Crassostrea gigas* in California and Washington by Coast Oyster Company. Report prepared for First Interstate Bank, Seattle, Washington.
- Brooks, K. M. 1992. Infaunal community structure changes associated with organic loading at an intensive salmon husbandry site. Report to the Washington State Department of Natural Resources, Olympia, Washington. 19 pp.
- Brooks, K. M. 1992. Review of bacterial and toxicant contamination in Dyes Inlet, WA and request for shellfish harvest certification of Chico Bay, Phiney Bay and the east side of Erland Point, all in Dyes Inlet, Kitsap County, Washington. 21 pp.
- Brooks, K.M. 1993. Literature Review and Assessment of the Environmental Risks Associated with the Use of Treated Wood Products in Aquatic Environments. Report prepared for, and published by, the Western Wood Preservers Association, 601 Main Street, Suite 401, Vancouver, WA 98550.
- Brooks, K.M. 1993. Impacts on Benthic Invertebrate Communities Associated with the Aerial Application of Carbaryl to Control Burrowing Shrimp on Cultivated Oyster Beds in Willapa Bay for the U.S. Environmental Protection Agency. 63 pp.
- Brooks, K.M. 1993. Integrated Pest Management Program Development. Differential pesticide impacts on closely related invertebrate species in eelgrass meadows of Pacific Northwest estuaries. Pacific Estuarine Research Society Annual Meeting, Long Beach, WA, May 14, 1993. 47 pp.
- Brooks, K.M. 1993. Recovery of benthic communities associated with interrupted production at a commercial salmon net-pen in Port Townsend, WA. Report to the Washington State Department of Natural Resources. (Included in the annual monitoring report for the Paradise Bay net pen site.)

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- Brooks, K.M. 1993. Changes in arthropod and mollusk populations associated with the application of Sevin™ to control burrowing shrimp in Willapa Bay, Washington - July to September, 1992. Report to the US EPA, Contract BSCC 692. 31 pp. plus appendices.
- Brooks, K.M. 1994. Histopathological Examination of Archived Bivalves *Mytilus edulis trossulus* and *Protothaca staminea* in Support of the Prince William Sound Long Term Monitoring Program. Report to NOAA/ORCA/HMRAD/ORCA32. 7600 Sand Point Way NE, Seattle, WA 98115. 40 pp.
- Brooks, K.M. 1995. Literature Review, Computer Model and Assessment of the Potential Environmental Risks Associated With Creosote Treated Wood Products Used in Aquatic Environments. Published by the Western Wood Preservers Institute, 601 Main Street, Suite 401, Vancouver, WA 98660. 137 pp.
- Brooks, K.M. 1995. Assessment of the Environmental Risks Associated with the Use of Treated Wood in Lotic Systems. Published by the Western Wood Preservers Institute, 601 Main Street, Suite 401, WA 98660. 17 pp.
- Brooks, K.M. 1995. Aquatic Environmental Risk Assessments and a Spreadsheet Model Predicting Creosote Treated Wood Contributions of Polycyclic Aromatic Hydrocarbons to the Water Column and Sediments. ASTM Conference Proceedings. Fifth Symposium on Environmental Toxicology and Risk Assessments: Biomarkers and Risk Assessment. Sponsored by: ASTM Committee E-47 on Biological Effects and Environmental Fate. April 3 - 5, 1995. Denver, Colorado.
- Brooks, K.M. 1995. Long Term Response of Benthic Invertebrate Communities Associated with the Application of Carbaryl (Sevin™) to Control Burrowing Shrimp, and an Assessment of the habitat Value of Cultivated Pacific Oyster (*Crassostrea gigas*) Beds in Willapa Bay, Washington to Fulfill Requirements of the EPA Carbaryl Data Call In. Report to the U.S. EPA under Contract BSCC 692. 69 pp.
- Brooks, K.M. 1996. Evaluating the environmental risks associated with the use of chromated copper arsenate-treated wood products in aquatic environments. *Estuaries* Vol. 19, No. 2A, p. 296-305.
- Brooks, K.M., D.E. Konasewich, H.C. Bailey, E.B. Szenasy and G.E. Brudermann. 1996. Antisapstain chemical Technical Review. Prepared for the British Columbia Ministry of Environment; Subcommittee on Antisapstain chemical Waste Control Regulation Amendments of the B.C. Stakeholder Forum on Sapstain Control. 133 pp.
- Brooks, K.M. 1996. Baseline Shellfish Surveys of Tidelands Near the Tatitlek, Nanwalek and Port Graham Villages in Support of the Nanwalek/Port Graham/Tatitlek Clam Restoration Project; Exxon Valdez Oil Spill Trustee Council Project Number 95131. 52 p. plus appendices.

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- Brooks, K.M. 1996. Assessment and Management of Wastes Associated with the Intensive Culture of Salmon in British Columbia, Canada. Prepared for the B.C. Salmon Farmers Association, Vancouver, B.C. 47 pp.
- Brooks, K.M. 1996. September, 1996, Baseline electrophoretic survey of mussels, *Mytilus edulis trossulus* and *Mytilus edulis galloprovincialis* in Holmes Harbor, Washington. Produced for Taylor United, Inc. Southeast 130 Lynch Road, Shelton, Washington 98584 in fulfillment of conditions of Island County Shoreline Substantial Development Permit SPD 013/94 and Army Corps of Engineers Permit COE (94-1-00327). 13 pp.
- Brooks, K.M. 1996. City of Ocean Shores Wetland Inventory. Produced for the City of Ocean Shores under Department of Ecology Grant G9600033. 28 pp. plus appendices.
- Brooks, K.M. 1997. Literature Review and Assessment of the Environmental Risks Associated with the Use of ACZA Treated Wood Products in Aquatic Environments. Second Edition. Prepared for the Western Wood Preservers' Institute 7017 NE Highway 99, Suite 108, Vancouver, WA 98665. 98 pp.
- Brooks, K.M. 1997. Literature Review and Assessment of the Environmental Risks Associated With the Use of CCA Treated Wood Products in Aquatic Environments. 3rd Edition. Prepared for the Western Wood Preservers Institute, 7017 NE Highway 99 Ste. 108, Vancouver, WA 98665. 100 pp.
- Brooks, K.M. 1997. Final Report – PAH Sediment Sampling Study in River South Parcel – July 17, 1996 to August 26, 1997. Prepared for Commonwealth Edison Company, Environmental Services Department, One First National Plaza, 10 South Dearborn, Chicago, Illinois 60690. 21 pp. plus appendices.
- Brooks, K.M. 1998. Literature Review and Assessment of the Environmental Risks Associated With the Use of ACQ Treated Wood Products in Aquatic Environments. Prepared for: Western Wood Preservers Institute, 7017 NE Highway 99, Suite 108, Vancouver, WA 98665.
- Brooks, K.M. 1998. Literature Review, Computer Model and Assessment of the Potential environmental risks Associated with Pentachlorophenol Treated Wood Products Used in Aquatic Environments. Prepared for: Western Wood Preservers Institute, 7017 NE Highway 99, Suite 108, Vancouver, WA 98665.
- Brooks, K.M. 1998. 1998 Annual Report of the Evaluation of Polycyclic Aromatic Hydrocarbon Migration From Railway Ties Into Ballast and Adjacent Wetlands – a Mesocosm Study. Prepared for Dr. Richard Monzingo, Commonwealth Edison, P.O. Box 767, Chicago, IL 60690-0767 for submission to the U.S. Fish and Wildlife Service. 34 pages plus appendices.
- Brooks, K.M. 2000. Environmental effects associated with the use of CCA-C, ACZA and ACQ-B pressure treated wood used to construct boardwalks in wetland areas. U.S. Department of

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- Agriculture – Forest Products Laboratory, Research Paper FPL-RP-582. 126 pp. plus appendices.
- Brooks, K.M. 2000. Assessment of the environmental effects associated with wooden bridges preserved with creosote, pentachlorophenol or chromated-copper-arsenate (CCA-C). U.S. Department of Agriculture – Res. Pap. FPL-RP-587. Madison, WI: U.S. Department of Agriculture, Forest Service, Forest Products Laboratory, 100 pp.
- Brooks, K.M. 1999. Stolt Canada Arrow Pass Salmon Farm Benthic and Shellfish Effects Study 1996 – 1997. Produced for Stolt Sea Farm Incorporated, 1405 Spruce Street, Campbell River, British Columbia, Canada V9W 7K1. 107 pp. plus appendices.
- Brooks, K.M. 2000. Final Report – Evaluation of Polycyclic Aromatic Hydrocarbon Migration From Railway Ties Into Ballast and Adjacent Wetlands. Midwest Generation, Corporate EH&S Group, 440 S Lasalle Street, Suite 3500, Chicago, IL 60605. 94 pp.
- Brooks, K.M. 2000. Sediment concentrations of sulfides and total volatile solids near salmon farms in British Columbia, Canada, during the period June through August, 2000 and recommendations for additional sampling. Prepared for the British Columbia Ministry of Environment and the British Columbia Salmon Farmers' Association. 16 pp.
- Brooks, K.M. 2000. Literature review and model evaluation describing the environmental effects and carrying capacity associated with the intensive culture of mussels (*Mytilus edulis galloprovincialis*). Technical appendix for an Environmental Impact Statement prepared for Taylor Resources, Southeast 130 Lynch Road, Shelton, WA 98584. 129 pp.
- Brooks, K.M. 2000. Determination of copper loss rates from Flexgard XI™ treated nets in marine environments and evaluation of the resulting environmental risks. Report prepared for the British Columbia Ministry of Environment and the British Columbia Salmon Farmers Association. 24 pp.
- Brooks, K.M. 2000. Sediment concentrations of zinc near salmon farms in British Columbia, Canada during the period June through August 2000. Report prepared for the British Columbia Ministry of Environment and the British Columbia Salmon Farmers Association. 12 pp.
- Brooks, K.M. 2000. Results of the June 2000 interim salmon farm monitoring at Stolt Sea Farm, Inc. salmon aquaculture tenures located in British Columbia. Report prepared for Stolt Sea Farm, Inc. 1261 Redwood Street, Campbell River, British Columbia, Canada V9W 3K7. 93 pp.
- Brooks, K.M. 2000. Results of the June 2000 interim salmon farm monitoring at Pacific National Group netpens located in Clayoquot Sound, British Columbia. Report prepared for Pacific National Group, 737 Yates Street – Suite 310, Victoria, British Columbia, Canada V8W 1L6. 35 pp.

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- Brooks, K.M. 2000. Database report describing sediment physicochemical response to salmon farming in British Columbia from 1996 through April 2000. Report prepared for the British Columbia Ministry of Environment and the British Columbia Salmon Farmers Association, 408 West Pender Street, Vancouver, British Columbia, Canada V6E 2S9. 41 pp.
- Brooks, K.M. 2000. Results of the Fall 2000 interim salmon farm monitoring at tenures operated by Stolt Sea Farms and Pacific National Aquaculture in British Columbia. Prepared for the British Columbia Salmon Farmers' Association. Number 408 – 1200 West Pender Street, Vancouver, British Columbia, Canada V6E 2S9. 15 pp.
- Brooks, K.M. 2000. Recommended interim sediment quality guidelines for evaluating the environmental response to marine netpen culture operations. Prepared for the British Columbia Salmon Farmers' Association, Number 408 – 1200 West Pender Street, Vancouver, British Columbia, Canada V6E 2S9. 11 pp.
- Brooks, K.M. 2001. Final Report – Chugach Regional Resources Commission Bivalve Enhancement Program – Bivalve inventories and native littleneck clam (*Protothaca staminea*) culture studies – Exxon Valdez Oil Spill Trustee Council Project Number 95131. 189 pp.
- Brooks, K.M. 2001. Chapter 4. Salmon Farming and the Environment. In: Nash (2001) The Net-pen Salmon Farming Industry in the Pacific Northwest. NOAA Technical Memorandum NMFS-NWFS-NWFSC-49. pp. 36 – 73.
- Brooks, K.M. 2001. An evaluation of the relationship between salmon farm biomass, organic inputs to sediments, physicochemical changes associated with those inputs and the infaunal response – with emphasis on total sediment sulfides, total volatile solids, and oxidation-reduction potential as surrogate endpoints for biological monitoring – Final Report. Technical report produced for the Technical Advisory Group (TAG) to the British Columbia Ministry of Environment, 2080-A Labieux Road, Nanaimo, British Columbia, Canada V9T 6J9. 186 pp. plus appendices.
- Brooks, K.M. 2001. Dungeness crab (*Cancer magister*) and spot prawn (*Pandalus platyceros*) holding and feeding studies in support of Emamectin Benzoate acute toxicity testing. Technical report produced for Dr. Rejean Berman, Schering-Plough Animal Health, 3535 Trans-Canada Highway, Pointe-Claire, Quebec, Canada H9R 1B4. 50 pp.
- Brooks, K.M. 2001. Results of Summer 2001 interim salmon farm monitoring at Pacific National Aquaculture netpens located in Clayoquot Sound, British Columbia. Technical report prepared for Pacific National Aquaculture, 1001 Wharf Street – Suite 300, Victoria, British Columbia, Canada V8W 1T8. 65 pp.
- Brooks, K.M. 2001. Results of the July 2001 interim salmon farm monitoring at Stolt Sea Farm, Inc. salmon aquaculture tenures located in British Columbia. Technical report prepared for Stolt Sea Farm, Inc. 1261 Redwood Street, Campbell River, British Columbia, Canada V9W 3K7. 64 pp.

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- Brooks, K.M. 2001. New salmon net-pen site assessments and baseline surveys at Beddingfield and South Millar Channel, Clayoquot Sound, British Columbia. Technical report prepared for Pacific National Aquaculture, 1001 Wharf Street – Suite 300, Victoria, British Columbia, Canada V8W 1T8. 21 pp.
- Brooks, K.M. 2001. Native littleneck clam (*Protothaca staminea*) culture and associated environmental effects in Alaska. Technical paper presented at the November 13 – 14, 2001 Alaska Sea Grant Program conference in Anchorage, Alaska. 23 pp.
- Brooks, K.M. 2001. Recommendations to the British Columbia Farmed Salmon Waste Management Technical Advisory Group for Biological and Physicochemical Performance Standards Applicable to Marine Netpens. Technical report produced for the Technical Advisory Group of the British Columbia Ministry of Environment, 2080-A Labieux Road, Nanaimo, British Columbia, Canada V9T 6J9. 24 pp.
- Brooks, K.M. 2001. Environmental assessment and monitoring program associated with aquaculture production facilities operated by Hubbs SeaWorld Research Institute at the Grace oil drilling platform in the Santa Barbara Channel, California. Technical report prepared for Hubbs SeaWorld Research Institute, 2595 Ingraham Street, San Diego, California 92109. 26 pp.
- Brooks, K.M. 2002. Results of the July 2001 interim salmon farm monitoring at Stolt Sea Farm, Inc. salmon aquaculture tenures located in British Columbia. Technical report prepared for Stolt Sea Farm, Inc. 1261 Redwood Street, Campbell River, British Columbia, Canada V9W 3K7. 81 pp.
- Brooks, K.M. 2002. Copper loss from copper naphthenate treated piling immersed in fresh water. Technical report prepared for Mr. James A. Brient, Naphthenic Acid Technology Manager, Merichem Company Research Center, 1503 Central, Houston, Texas 77012-2797. 9 pp. plus appendices.
- Brooks, K.M. 2002. Literature review, computer model and assessment of the potential environmental risks associated with copper naphthenate treated wood products used in aquatic environments. Technical report prepared for Mr. Gerald E. Davis, Merichem Chemicals and Refinery Services LLC, 2701 Warrior Road, P.O. Box 40777, Tuscaloosa, Alabama 24404. 22 pp.
- Brooks, K.M. 2002. Characterizing the environmental response to pressure treated wood. Proceedings. In: Enhancing the Durability of Lumber and Engineered Wood Products”, Forest Products Society, 2801 Marshall Court, Madison, WI 53705-2299. pp. Annual Meeting, February 11 – 13, 2002, Kissimmee, Florida. Pp. 59-71.
- Brooks, K.M., C. Mahnken and C. Nash. 2002. Environmental Effects Associated with Marine Netpen Waste with Emphasis on Salmon Farming in the Pacific Northwest. In: Responsible Marine Aquaculture, Eds: Stickney and McVey. CABI Publishing, Wallingford, United Kingdom pp. 159 – 204.

EXHIBIT 1h

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- Brooks, K.M. and C.V.W. Mahnken. 2003. Interactions of Atlantic Salmon in the Pacific Northwest Environment. II. Organic Wastes. Fisheries Research, Vol. 62, Issue 3, pp. 255 – 293.
- Brooks, K.M. and C.V.W. Mahnken. 2003. Interactions of Atlantic salmon in the Pacific Northwest Environment. III. Accumulation of zinc and copper. Fisheries Research, Vol. 62, Issue 3, pp. 295-305.
- Brooks, K.M., A.R. Stierns, C.V.W. Mahnken and D.B. Blackburn. 2003. Chemical and biological remediation of the benthos near Atlantic salmon farms. Aquaculture, Volume 219, Issues 1-4, pp. 355-377.
- Brooks, K.M. 2003. Chemical and Biological Remediation at the Upper Retreat Atlantic Salmon Farm in Retreat Passage, Broughton Archipelago, British Columbia – Tenure 1404379. Technical report prepared for Stolt Sea Farms, 1761 Redwood Street, Campbell River, British Columbia, Canada V9W 3K7. 34 pp.
- Brooks, K.M. 2003. An assessment of whether pink salmon (*Oncorhynchus gorbuschai*) runs in the Broughton Archipelago of British Columbia, Canada are threatened by sea lice (*Lepeophtheirus salmonis*) infections originating on cultured Atlantic salmon (*Salmo salar*). Legal affidavit prepared for Mr. Christopher Harvey, Q.C., MacKenzie Fujisawa Barristers & Solicitors, 1600-1095 West Pender Street, Vancouver, British Columbia Canada V6E 2M6 57 pp.
- Brooks, K.M. 2003. Comments regarding the Environmental Protection Agencies Draft preliminary Risk Assessment on Creosote. Technical response provided to U.S. Creosote Council II, care-of Mr. David Webb, 357 Browns Hill Road, Valencia, PA 16059. 47 pp.
- Brooks, K.M. 2003. Comments regarding the Environmental Protection Agency's Draft Preliminary Risk Assessment for Arsenical Wood Preservatives. Technical response provided to the Arsenical Wood Preservatives Task Force, American Chemistry Council, care-of Mr. Has Shah, 1300 Wilson Blvd., Arlington, VA 22209. 41 pp.
- Brooks, K.M. 2003. Environmental Risk Assessment for CCA-C and ACZA Treated Wood. Technical report prepared for the Western Wood Preservers Institute, 7017 NE Highway 99 Ste. 108, Vancouver, WA 98665. 40 pp.
- Brooks, K.M. 2003. Metal loss rates from southern yellow pine treated with ACQ-C preservative amended with and without water repellents and from CCA-C treated wood. Technical report produced for Chemical Specialties Inc. One Woodlawn Green, Suite 250, Charlotte, North Carolina 28217. 31 pp. plus appendices.
- Brooks, K.M. 2003. Metal loss rates as a function of rainfall from southern yellow pine treated with ACQ-C preservative amended with and without water repellents. Technical report produced for Chemical Specialties Inc. One Woodlawn Green, Suite 250, Charlotte, North Carolina 28217. 31 pp. plus appendices. 22 pp. plus appendices.

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- Brooks, K.M. 2003. Environmental response to the use of ACQ-C, CCA-C Tebuconazole, and Untreated southern yellow pine floats and posts in Montgomery's Pond. Technical report produced for Chemical Specialties Inc. One Woodlawn Green, Suite 250, Charlotte, North Carolina 28217. 31 pp. plus appendices. 141 pp. plus appendices.
- Brooks, K.M. 2003. Application of the Infaunal Trophic Index to the evaluation of macrobenthic effects associated with salmon farming in British Columbia. Technical report prepared for the British Columbia Ministry of Agriculture, Food and Fisheries. 30 pp.
- Brooks, K.M. 2003. Measurement of nutrients in bottom water under and adjacent to the Deepwater Point mussel farm in Totten Inlet, Washington. Prepared for the Pacific Shellfish Institute, 120 State Avenue NE #142, Olympia, Washington as part of Department of Commerce Award No. NA16RG1591. 9 pp.
- Brooks, K.M. 2004. Metal loss rates in a dynamic leaching system from Strong-Seal™ fibreglass wrapped CCA-C treated wood. Technical report prepared for Wood Preservers Incorporated, P.O. Box 158, Warsaw, Virginia 22572. 8 pp.
- Brooks, K.M. 2004. Environmental response to creosote treated wood structures in Puget Sound, Washington. Technical report prepared for U.S. Creosote Council II, care-of Mr. David Webb, 357 Browns Hill Road, Valencia, PA 16059. 52 pp.
- Brooks, K.M. 2004. Creosote treated piling – perceptions versus reality. Public outreach document prepared for U.S. Creosote Council II, care-of Mr. David Webb, 357 Browns Hill Road, Valencia, PA 16059. 15 pp.
- Brooks, K.M. 2004. Baseline inventory of macrobenthos at Stolt Sea Farms' Humphrey Rocks Tenure in Tribune Channel, Broughton Archipelago, British Columbia. Technical report prepared for Stolt Sea Farms, 1761 Redwood Street, Campbell River, British Columbia, Canada V9W 3K7. 18 pp.
- Brooks, K.M. , A.R. Stierns and C. Backman. 2004. Seven year remediation study at the Carrie Bay Atlantic salmon (*Salmo salar*) farm in the Broughton Archipelago, British Columbia, Canada. Aquaculture. Aquaculture 239, pp. 81-123.
- Brooks, K.M. 2004. Evaluation of the macrobenthic community at the edge of tenure on the 300 °T transect at Stolt Sea Farms' Swanson Island Tenure (Number 1304381) in the Broughton Archipelago, British Columbia. Technical report prepared for Stolt Sea Farms, 1761 Redwood Street, Campbell River, British Columbia, Canada V9W 3K7. 12 pp.
- Brooks, K.M. 2004. Polycyclic Aromatic Hydrocarbon Migration From Creosote-Treated Railway Ties Into Ballast and Adjacent Wetlands. Res. Pap. FPL-RP-617. Madison, WI: U.S. Department of Agriculture, Forest Service, Forest Products Laboratory. 53 pp.

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- Brooks, K.M. 2004. Modelling, managing and assessing the environmental risks associated with the use of creosote treated wood products. Technical report prepared for Creosote Council Europe, care of Per Bech A/S, Koppers Denmark, Avernakke, 5800, Nyborg, Denmark. 84 pp.
- Brooks, K.M. 2004. Environmental feasibility study for aquaculture in Port Angeles Harbor and the Straits of Juan de Fuca. Technical report prepared for Olympic Aqua Ventures, L.L.C., 111 Hurricane View Lane Port Angeles, WA 98362 42 pp.
- Brooks, K.M. 2004. September 2004 sediment physicochemical monitoring at Hubbs-SeaWorld Research Institute's enhancement netpens located at Santa Catalina Island, Aqua Hedionda Laboon and San Diego Bay. Technical report prepared for Hubbs-SeaWorld Research Institute 2595 Ingraham Street, San Diego, CA 92109. 29 pp.
- Brooks, K.M. 2004. Environmental response to ACZA treated wood structures in Pacific Northwest marine environments. Technical report prepared for J.H. Baxter and Company, 1700 South El Camino Real, San Mateo, CA 94402. 30 pp.
- Brooks, K.M. 2005 (In-review) Computer model and risk assessment predicting the aquatic environmental response to bridges constructed using creosote preserved wood. Technical report prepared for the U.S. Department of Agriculture, Forest Service, Forest Products Laboratory, Madison, WI 53705. Timber Bridge Joint Venture Agreement 01-JV-11111136-104. 86 pp.
- Brooks, K.M. 2005. The epibenthic community observed in association with the intensive raft culture of *Mytilus edulis galloprovincialis* in Totten Inlet, Washington. Funded by the U.S. Department of Commerce Award No. NA16RG1591. Submitted to Pacific Shellfish Institute, 120 State Avenue NE #142, Olympia, WA 98501.
- Brooks, K.M. 2005. Copper and tebuconazole loss rates from southern yellow pine treated to a retention of 0.246 pounds per cubic foot with CA-B preservative. Technical report produced for Arch Wood Protection, 1955 Lake Park Drive, Smyrna, Georgia 30080. 38 pp. plus appendices.
- Brooks, K.M. 2005. Baseline information describing sediment physicochemistry of Totten Inlet and the macrobenthos of the proposed North Totten Inlet mussel farm. Technical report prepared for Taylor Resources, Southeast 130 Lynch Road, Shelton, WA 98584. 53 pp.
- Brooks, K.M. 2005. Benthic response at the Deepwater Point mussel farm in Totten Inlet, Puget Sound, Washington State USA. Technical report prepared for Taylor Resources, Southeast 130 Lynch Road, Shelton, WA 98584. 45 pp.
- Brooks, K.M. 2005. Biological evaluation and essential fish habitat assessment – road crossing over the Middle Branch of Cassalery Creek and adjacent wetlands. U.S. Army Corps of Engineers Reference D200401495-3755. Prepared for Four Seasons Engineering, Port Angeles, Washington 98362. 19 pp.

Exhibit 16

- Brooks, K.M. 2005. Metal loss rates to rainfall falling on 2"x6" lumber treated with Ammoniacal Copper Zinc Arsenate (ACZA) preservative. Technical report produced for J.H. Baxter and Company, 1700 South El Camino Real, San Mateo, CA 94402. 12pp.
- Brooks, K.M. 2005. Copper, zinc and arsenic loss rates from Douglas fir piling treated to a nominal retentions 1.0 and 1.5 pounds per cubic foot with Ammoniacal Copper Zinc Arsenate (ACZA) preservative and receiving four different post treatment Best Management Practices designed to minimize metal losses to fresh- and saltwater environments. Technical report prepared for J.H. Baxter and Company, 1700 South El Camino Real, San Mateo, CA 94402. 41 pp.
- Brooks, K.M. 2005. The affects of water temperature, salinity and currents on the survival and distribution of the infective copepodid stage of sea lice (*Lepeophtheirus salmonis*) originating on Atlantic salmon farms in the Broughton Archipelago of British Columbia, Canada. Reviews in Fisheries Science. 13:177-204.
- Brooks, K.M. (In-Review). The frequency of *Mytilus edulis galloprovincialis* alleles in Washington State marine waters where the species is commercially cultivated. 14 pp.
- Brooks, K.M. 2006. Supplemental study of dissolved nutrients and particulate organic matter in waters near the proposed mussel farm in North Totten Inlet, Washington State, USA. Technical report prepared for Taylor Resources, Southeast 130 Lynch Road, Shelton, WA 98584. 48 pp.
- Brooks, K.M. and D.J. Stucchi. 2006. The Effects of Water Temperature, Salinity and Currents on the Survival and Distribution of the Infective Copepodid Stage of the Salmon Louse (*Lepeophtheirus salmonis*) Originating on Atlantic Salmon Farms in the Broughton Archipelago of British Columbia, Canada (Brooks, 2005) – A Response to the Rebuttal of Krkosek *et al.* (2005a). Reviews in Fisheries Science. 14:13-23.
- Brooks, K.M. 2006. Assessing the environmental costs associated with the netpen culture of Atlantic salmon in the Northeast Pacific. 59 pp. Food and Agriculture Organization of the United Nations (FAO) and World Fisheries Trust (WFT) Workshop on Comparative Environmental Costs of Aquaculture and Other Food Production Sections – 24-28 April 2006, Vancouver, British Columbia, Canada. In-press by FAO.
- Brooks, K.M. 2006. Sediment physicochemical monitoring at delayed release netpens and raceways for white seabass located in southern California during 2004 and 2005. Report prepared for Hubbs-Sea World Research Institute, California Department of Fish and Game and Advisors to the Ocean Resources Enhancement and Hatchery Program (OREHP). Aquatic Environmental Sciences, 644 Old Eaglemount Road, Port Townsend, WA 98368. 97 pp.
- Brooks, K.M., D. Goyette and S. Christie. 2006. Sooke Basin Creosote Evaluation – Results of the October 2005 Reconnaissance Survey. Creosote Evaluation Committee, Fisheries and Oceans Canada, Pacific Yukon Region, 201-401 Burrard Street, Vancouver, British Columbia, Canada V6C 3S5. 150 pp.

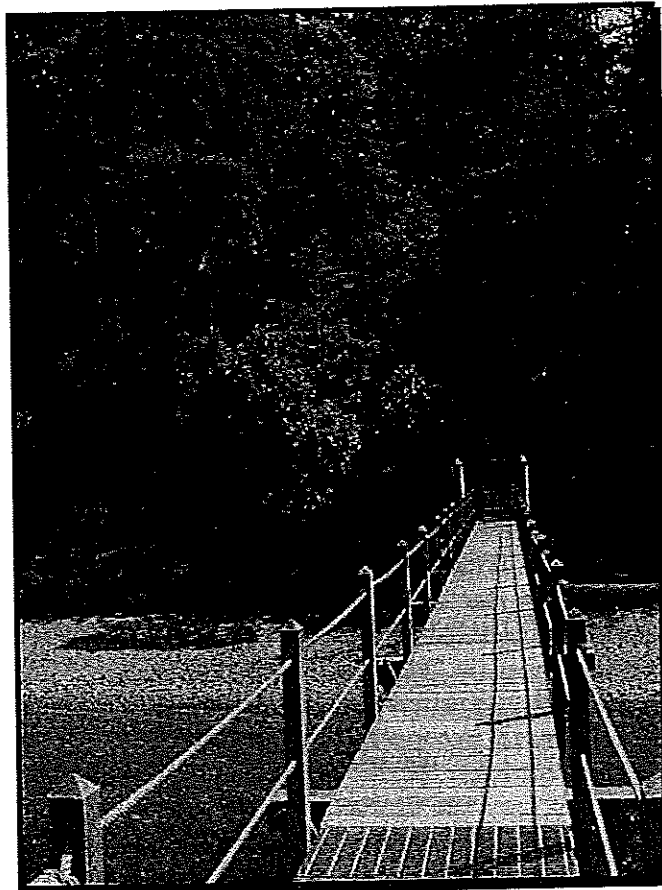
EXHIBIT 1h

- Brooks, K.M. 2007. An analysis of sediment sulfide and macrobenthic data for purposes of assessing the concept of ecological threshold in monitoring the benthic effects of fish farms. British Columbia Ministry of Environment Contract CNAEN07029. Technical report produced for the British Columbia Ministry of Environment 2080-A Labieux Road, Nanaimo, British Columbia V9T 6J9. 63 pp., plus appendices
- Brooks, K.M. 2007. Sediment physicochemical monitoring at delayed release netpens and raceways for white seabass located in Southern California during the period 2004 through 2006. Technical report produced for Hubbs-Sea World Research Institute, California Department of Fish and Game, and Advisors to the Ocean Resources Enhancement and Hatchery Program (OREHP). 118 pp.
- Brooks, K.M. 2007. Concentrations of Tebuconazole, Imidacloprid and Propiconazole in rainwater runoff from western Hem-fir decking treated to a retention of 0.02 pounds per square inch with Wolman AG™ preservative. Technical report produced for Arch Treatment Technologies, Inc., 1955 Lake Park Drive, Smyrna, Georgia 30080. 26 pp.
- Brooks, K.M. and S.R.M. Jones. 2008. Perspectives on pink salmon and sea lice: scientific evidence fails to support the extinction hypothesis. *Reviews in Fisheries Science* 16(4) 1-10.
- Dumbauld, B.R., K.M. Brooks and M.H. Posey. 2001. Response of an Estuarine Benthic Community to Application of the Pesticide Carbaryl and Cultivation of Pacific Oysters (*Crassostrea gigas*) in Willapa Bay, Washington. *Marine Pollution Bulletin* Vol. 42, No. 10, pp. 826 - 844.
- Elston, R.A., J.D. Moore and K.M. Brooks. 1992. Disseminated Neoplasia of Bivalve Mollusks. *Reviews in Aquatic Sciences*, 6(5,6): 405-466.
- Goyette, D. and K.M. Brooks. 1998. Creosote Evaluation: Phase II. Sooke Basin Study – Baseline to 535 Days Post Construction 1995 – 1996. Published by Environment Canada. 224 West Esplanade, North Vancouver, British Columbia, Canada V7M 3H7. 568 pp.
- Goyette, D. and K.M. Brooks. 2000. Addendum Report – Continuation of the Sooke Basin Creosote Evaluation Study (Goyette and Brooks, 1998). Year 4 – Days 1360 and 1540. Published by Environment Canada. 224 West Esplanade, North Vancouver, British Columbia, Canada V7M 3H7. 51 pp.
- Lebow, S. and K.M. Brooks 2002. Environmental Impact of Treated Wood in Service. Proceedings: "Enhancing the Durability of Lumber and Engineered Wood Products", February 11 – 13, 2002, Kissimmee, Florida. 25 pp.
- Nash, C.E., K.M. Brooks, W.T. Fairgrieve, R.N. Iwamoto, C.V.W. Mahnken, M.B. Rust, M.S. Strom and F.W. Waknitz. 2001. The Net-pen Salmon Farming Industry in the Pacific Northwest. NOAA Technical Memorandum NMFS-NWFSC-49. 125 pp.

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Environmental response to ACZA treated wood structures
in a Pacific Northwest marine environment



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Environmental response to ACZA treated wood structures in a Pacific Northwest marine environment

Background. The environmental industry and a few regulators within state and federal governments in the United States have raised concerns regarding the use of ACZA treated piling in marine environments. These concerns are based on perceptions that copper, arsenic and zinc, leached from the preserved wood will increase water and sediment concentrations to levels where adverse effects, particularly associated with copper, would be observed in marine biota. Brooks (1997) described the losses of preservative from ACZA treated wood in freshwater and marine environments and provided a computer model for predicting increases of both water and sediment concentrations of ACZA metals as a function of a number of environmental physicochemical parameters and the amount of immersed treated wood. The loss rate algorithm predicts a copper loss rate of $32.5 * \exp^{-0.1114 * \text{time (in days)}}$ ($\mu\text{g Cu/cm}^2\text{-day}$) for marine environments where the salinity is ca. 30 parts per thousand. On the first day of immersion the loss is $32.5 \mu\text{g Cu/cm}^2\text{-day}$. This value declines exponentially to $0.013 \mu\text{g Cu/cm}^2\text{-day}$ at the end of the first week. Concerns have also been raised that arsenic, lost at ca. $0.10 \mu\text{g As/cm}^2\text{-day}$ from ACZA treated wood at all times post construction, would bioconcentrate in shellfish tissues to levels posing a health risk to humans. The greatest risk in this regard would be from consumption of mussels (*Mytilus edulis trossulus*) growing directly on the piling or from clams living in sediments at the base of the piling. There is no empirical evidence describing the actual concentration of copper, arsenic or zinc in proximity to ACZA treated wood structures in marine environments. Concentrations of metal in wetland soils under and adjacent to the ACZA treated portions of the Wildwood Boardwalk in Oregon were described by and Lebow *et al.* (1999) and Brooks (1999) described metals and invertebrate communities under and around inundated portions of the boardwalk. Increases in copper, arsenic and zinc were observed in soils, water and sediments adjacent to the boardwalk, but the invertebrate community was unaffected by the small increases.

The purpose of this study is to determine water, sediment and shellfish concentrations of copper, arsenic and zinc in the immediate vicinity of ACZA treated structures. The risk assessment relies on a direct assessment of macrobenthic communities in the vicinity of ACZA treated structures and on regulatory criteria for marine sediments and water. Human health risks associated with the consumption of mussels and clams from the vicinity of ACZA treated structures are based on recommendations made by the U.S. Food and Drug Administration (FDA 1993).

Site Description. The primary structure evaluated in this assessment is a personal use pier, ramp and float constructed during 1999 in Sequim Bay, Washington (cover and Figure 1). Excepting the handrails, which were constructed of CCA-C preserved wood, the entire structure was treated with ACZA, with nominal retentions of 2.5 pounds ACZA per cubic foot (*pcf* in the treated zone) for piling and sawn lumber used below the high tide line (AWPA 2001, C2 and C18) and 0.6 *pcf* for sawn lumber used out of water but subject to salt water splash (AWPA 2001, C18). Figure 2 is a plan drawing of the facility with the location of the sample stations annotated. Sediment samples were also collected and analyzed for copper, arsenic and zinc under the Port Townsend City Pier and under the Fort Worden wharf. Both of these structures sit on creosote treated wood piling, but have expansive decks constructed of 3" by 8" ACZA treated hem-fir. Table 1 summarizes information for the three locations examined in this study.

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Table 1. Characteristics of the four sites at which the environmental response to ACZA preserved piling and decking were evaluated in Puget Sound.

Site	Number of piling	Footprint (m ²)	Notes
Sequim Bay pier and float	23	102.6	Rural area
Fort Ward wharf and pier	292	1,635.8	Rural area
Port Townsend City pier	85	Not measured	Urban area

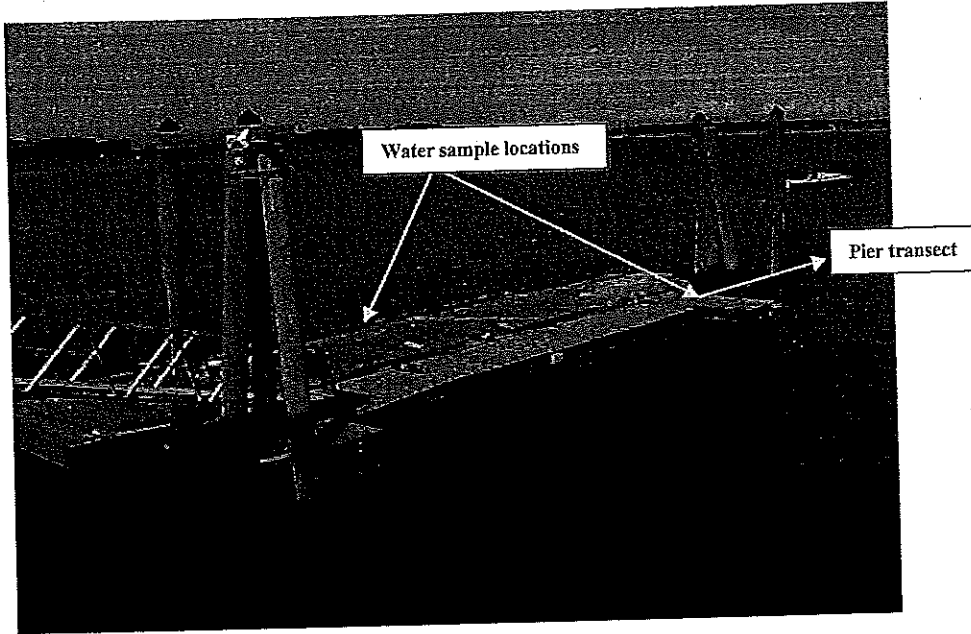


Figure 1. ACZA treated float in Sequim Bay, Washington that was subject of a risk assessment conducted on October 18, 2002. Triplicate water samples were collected at a local reference location and at the indicated locations adjacent to the structure during a rainstorm on December 13, 2002. Water collection depth was 0.1 m along side the float and 0.5 m in the center of the dolphin.

Water and sediment quality criteria. Table 2. Provides a summary of Washington State's marine sediment quality criteria (WAC 173-204) and the U.S. EPA acute and chronic marine water quality criteria for copper, arsenic and zinc.

Table 2. Regulatory sediment and water quality criteria for copper, arsenic and zinc.

Metal	Washington Sediment Quality Criteria (µg/g dry sediment)	
Copper	390	
Arsenic	57	
Zinc	410	
Marine water quality criteria		
Metal	USEPA acute (µg/L)	US EPA chronic (µg/L)
Copper	4.8	3.1
Arsenic	69.0	36.0
Zinc	84.6	76.6

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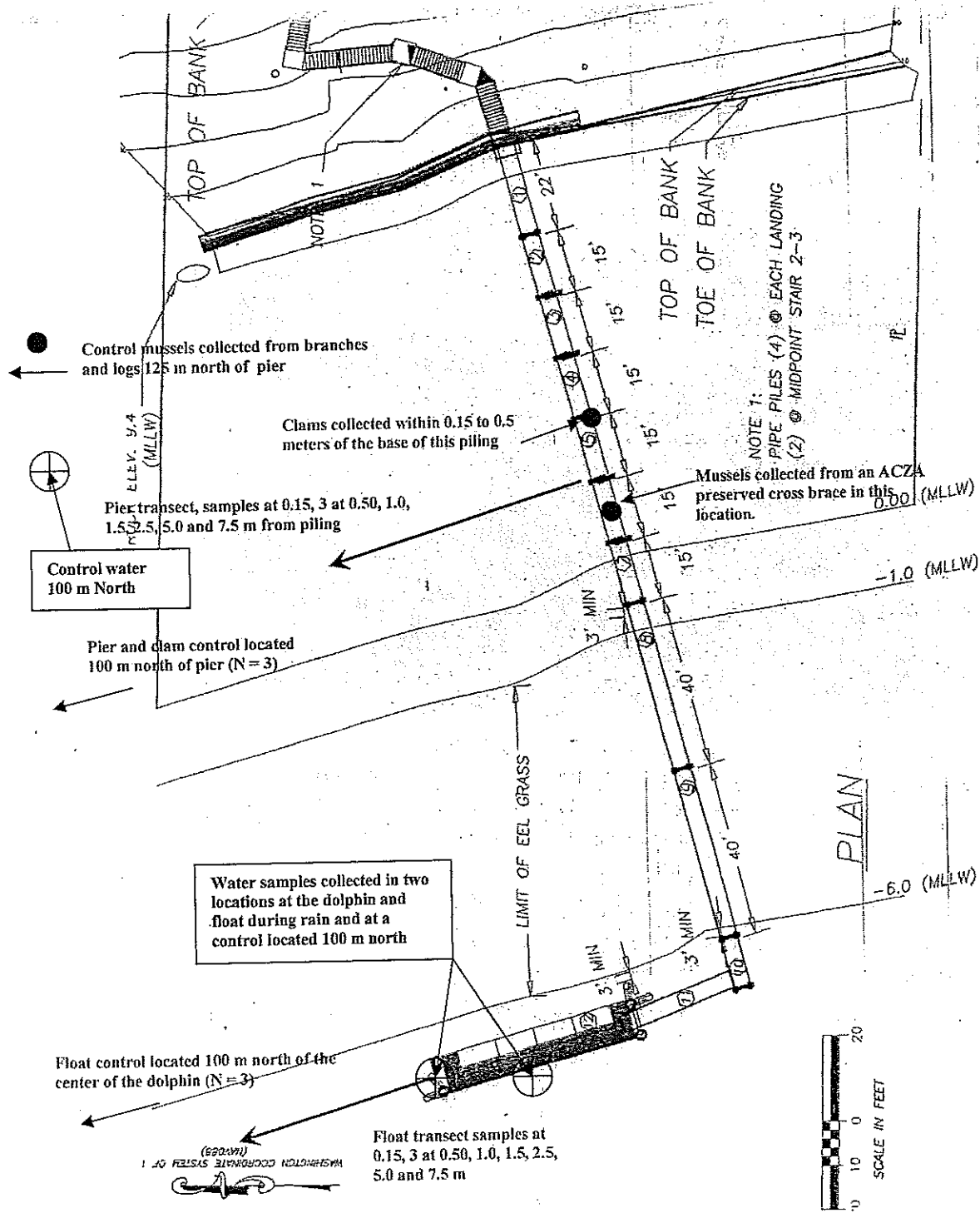


Figure 2. Plan of the pier and float located in Sequim Bay, Washington. The location of all sample stations is provided.

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Arsenic in shellfish. The U.S. Food and Drug Administration (FDA 1993) reviews arsenic surveys in shellfish. The National Marine Fisheries Service (1978) reported arsenic concentrations of 3.0 to 4.0 $\mu\text{g As/g}$ wet hardshell clam or oyster tissue with a mean concentration of 2.8 to 3.8 $\mu\text{g/g}$ for all molluscan bivalves. Higher mean concentrations (8.6 to 10.6 $\mu\text{g As/g}$) were found for crustaceans and the highest concentrations were recorded in Pacific spiny lobster tails (20.0 to 30.0 $\mu\text{g As/g}$). The FDA concluded that ten percent of the total arsenic in shellfish is inorganic and that the tolerable daily intake for inorganic arsenic is 130 $\mu\text{g As}$ for a 60 kg person. This would be equivalent to 1,300 μg total arsenic in shellfish tissues. Using survey results for mean molluscan shellfish consumption in the United States, FDA calculated an arsenic level of concern of 130 $\mu\text{g Total As/g}$ wet tissue weight. This value will be used in this analysis as a benchmark.

Methods. Samples were collected by Mr. Lynn Goodwin of Strait and Sound Consulting using scuba equipment and the stainless steel fixture described in Figure 3. The fixture has a footprint of 0.032 m^2 . Transect lines were laid out using a 100 m fiberglass tape and two samples were collected adjacent to the required distance on the left and right side of the tape.

The first sample was used for physicochemical and the second for biological analyses. The lid of this sampler was inserted into the sediments and pulled toward the diver to create a shelf. The sampler was then pushed horizontally against the shelf to enclose samples that were ca. 10 cm deep. The lid was closed while the sampler was in the substrate, enclosing the sample for retrieval. At the surface, physicochemical samples were taken from the top two cm of the sampler and placed in precleaned glass containers for metal analysis and into 125 ml LDPE urine specimen bottles for other physicochemical analyses. The second sample, collected at the same time using a separate sampler, was washed into a five-gallon bucket using 125 μm filtered seawater for sieving and fixing on the day of collection. Samples for physicochemical analyses were placed on ice in a cooler while in the field. Samples were held at 4 $^{\circ}\text{C}$ until analyzed. Sulfide and redox analyses were conducted in the field within 15 minutes of collection. Mussels and clams were placed in ZiplocTM bags upon collection and held on ice in a cooler until shucked and shipped via an overnight delivery service on phase change ice packs to the analyzing laboratory.

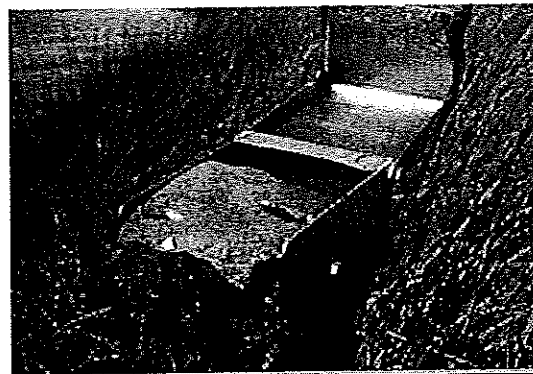


Figure 3. Benthic sampler used by scuba divers to collect fully enclosed sediment samples

Sample dates. Samples were collected in Sequim Bay on October 18, 2002. Additional sediment samples were collected on January 6, 2002 at the Port Townsend City dock and at Fort Ward in Rich Passage, Washington on January 8, 2002. Water samples in Sequim Bay were collected on December 16, 2002 during a light rain.

Sample documentation and shipping. Samples were shipped in coolers on phase change ice packs by overnight delivery service to the appropriate analytical laboratory using chain of custody procedures that comply with the requirements of ASTM D4840-88.

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Equipment and sample bottle cleaning. Multiple sampling fixtures, identical to that shown in Figure 3, were washed in hot water and detergent followed by soaking in 10% reagent grade nitric acid and a final rinse in distilled water. Fixtures were stored, along with similarly cleaned stainless steel sampling utensils constructed with a 2 cm high square shoulder, in new one gallon Ziploc™ bags until required in the field. Two freshly cleaned samplers and utensils were used for each transect. Sampling began at the local reference station and proceeded from the furthest to the closest station along the designated transects. Laboratory cleaned 250 ml wide-mouth bottles were supplied by the laboratories conducting the sediment and tissue metal analyses. New 125 ml urine specimen jars were used for storage of sediments for other physicochemical analyses (TVS, S⁼, redox, SGS).

List of measured endpoints. The following endpoints were assessed at the Sequim Bay pier and float. Only SGS, TVS and sediment Cu, As and Zn concentrations were assessed at the Port Townsend City and Fort Ward piers. Physicochemical endpoints were measured only in the surficial sediment (0 - 2.0 cm) layer (PSEP, 1996).

Metals. All mussel and clam tissues, sediment and water samples were analyzed for copper, arsenic and zinc by Washington State Department of Ecology accredited laboratories.

Biological Endpoints. The entire contents of the 0.032 m² grab samples were sieved on 1.0 mm sieves and identified to the lowest level possible – generally to species.

Additional Tests

- Sediment free sulfide concentrations
- Sediment redox potential
- Sediment Grain Size Distribution
- Sediment Total Volatile solids

Sediment copper, arsenic and zinc concentrations were determined by Analytical Resources Incorporated in Seattle, Washington using EPA 6010B for copper and zinc and EPA 7060A for arsenic following a strong acid digestion using method 3050B. Method reporting limits were 0.3 mg As/kg dry sediment; 0.2 mg Cu/kg; and 0.7 mg Zn/kg. Quality assurance tests were all within data qualification limits (PSEP 1996) and included a standard reference material (Lot 247); a method blank (analyte not detected); and a spike (reported under tissues).

Seawater concentrations of copper, arsenic and zinc were collected at slack tide during a light rain and analyzed at the Battelle Marine Science Laboratory in Sequim, Washington using ICP/MS with detection limits of 0.1 µg As/L, 0.023 µg Cu/L, and 0.062 µg Zn/L. Total metal concentrations are reported (the samples were not filtered). Quality assurance tests included a laboratory blank in which copper was detected at 0.136 µg/L and zinc at 0.123 µg Zn/L. Analysis of a standard reference material (SRM) gave results within the data qualification limits (6% RPD for As; 4% for Cu and 20% for Zn).

Mussel (*Mytilus edulis trossulus*) and clam (*Protothaca staminea*) tissue concentrations of copper, arsenic and zinc were determined by Analytical Resources Incorporated in Seattle, Washington using EPA 6010B for copper and zinc and EPA 7060A for arsenic with a detection limit of 10 µg/kg following a strong acid digestion using method EPA 3050B. Quality assurance included recovery of a standard reference material (Lot 247) with

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results for all three metals in their advisory range, matrix spikes (100% recovery for As; 95% for Cu; and 94% for Zn); and one duplicate run (RPD = 6.5% for As; 0.0% for Cu; and 1.4% for Zn). A method blank revealed small amounts of all three metals. However, because the blank concentrations of metal were at the reporting limits of 0.1 mg As/kg; 0.2 mg Cu/kg; and 0.6 mg Zn/kg, and were at least an order of magnitude less than the concentrations reported in tissues, no corrective action was taken. All results were reported on a wet tissue weight basis.

Total volatile solids (TVS) analyses were accomplished on 50-gram surficial sediment samples (PSEP 1996). Samples were dried at $103 \pm 2^\circ \text{C}$ in aluminum boats that had been tared following combustion at 550°C for 30 minutes. Drying was continued until no further weight reduction was observed (generally overnight). The samples were then combusted at 550°C for 2 hours or until no further weight loss was recorded. TVS were calculated as the difference between the dried and combusted weights. Triplicate analyses were completed on 5% of the samples or on a minimum of one per batch (PSEP 1996).

Sediment Grain Size Distribution (SGS) analyses were accomplished using 50 ± 15 grams of surficial sediment taken from the top two cm of the sediment column. The sample was wet sieved on a $0.64 \mu\text{m}$ sieve. The fraction retained on the $0.64 \mu\text{m}$ sieve was dried in an oven at 92°C and processed using the dry sieve and pipette method of Plumb (1981). The sieves used for the analysis had mesh openings of 2.0, 0.89, 0.25 and $0.064 \mu\text{m}$. Particles passing the $0.064 \mu\text{m}$ sieve during wet sieving were analyzed by sinking rates in a column of water (pipette analysis). Triplicate analyses were conducted on one, or a minimum of 5 percent, of the samples. The Root Squared Deviation (RSD) was $\leq 20\%$ for these triplicate samples.

Benthic infaunal analysis. The entire contents of infaunal grab samples (including the overlying water) were washed from the grab into a five-gallon bucket using $125 \mu\text{m}$ filtered seawater. Samples were then sieved on 1.0 mm stainless steel screens. The retained material was placed in 1.0 or 2.0 liter HDPE bottles and fixed using 15% buffered formalin in seawater on the day of collection. Each sample jar had matching inside, outside and cap labels. Fixed samples were washed with filtered fresh water and preserved in 70% isopropyl alcohol after four days. Infaunal organisms were sorted from the background matrix under 10 x magnifications. A different technician repicked twenty percent of each sample. Quality assurance guidelines required a picking efficiency of $>95\%$. Any sample failing this QA benchmark was completely repicked. Infauna were identified to the lowest level practicable – generally to species. All taxa were compared with verified specimens in a reference collection (Aquatic Environmental Sciences), or will be verified by an outside expert.

Redox potential (Eh) was measured in the field using an Orion™ advanced portable ISE/pH/mV/ORP/temperature meter Model 290A equipped with a Model 9678BN Epoxy Sure-Flow Combination Redox/ORP probe. The stated accuracy of the meter in the ORP mode is $\pm 0.2 \text{ mV}$ or $\pm 0.05\%$ of the reading, whichever is greater. Detailed protocols for preparation of standards and conducting the analyses are provided in Wildish (1999). Quality assurance required checking of the meter against two standards at the beginning and end of each batch of samples and triplicate analyses completed on 5% of the samples with a minimum of one per batch.

Free sediment sulfides (S^-) were evaluated using an Orion™ advanced portable ISE/pH/mV/ORP/temperature meter Model 290A equipped with a Model 9616 BNC Ionplus

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Silver/Sulfide electrode. The meter has a concentration range of 0.000 to 19,900 μM and a relative accuracy of $\pm 0.5\%$ of the reading. The probe and meter were three point calibrated using 100, 1,000 and 10,000 μM standards every three hours. Detailed protocols are provided in Wildish *et al.* (1999). Quality assurance required frequent checking of the meter against standards and triplicate analyses completed on 5% of the samples with a minimum of one per batch.

Statistical analyses. The experimental design and analyses relied on correlation, principle components and linear and non-linear regression analyses for single samples collected along transects and on analysis of variance for triplicate samples collected at treatment and reference stations. Raw data was entered into a Microsoft Excel™ spreadsheet and imported into Statistica™ software for analysis. Proportional data (TVS and SGS) were arcsine(square-root) transformed prior to inferential analyses (Zar 1984). Biological count data were transformed ($\text{Ln}(N+1)$) prior to determination of Pearson correlation coefficients. Biological responses were summarized in three-dimensional contour graphs using Statistica's distance weighted least squares subroutine. Statistical significance throughout this report is associated with the probability of making a Type I error of 0.05.

Shannon's Index (Shannon and Weaver, 1949). This index provides the average uncertainty per species in an infinite community of taxa. The form of the index used in this analysis is:

$$\text{Shannon's Index} = H' = -\sum_{\text{over species}} (n_i/n) * \ln(n_i/n)$$

The value of the index is zero when a single species is present. It is maximized when there are a large number of equally represented species and it is reduced in communities dominated by a few highly abundant species. The value of Shannon's Index in a sample containing 20 taxa equally represented in a total abundance of 600 animals would be 3.0.

Pielou's Index (Pielou 1977) is a commonly used measure of community evenness. It expresses the observed value of Shannon's Index relative to the maximum possible value ($\ln(S)$). Where (S) is the number of taxa present. Pielou's index varies between 0 and 1.0 and generally co-varies with Shannon's Index.

$$\text{Pielou's Index} = J' = H'/\ln(S).$$

Temperature, salinity, dissolved oxygen and pH. Temperature was measured in the field using the temperature feature on a Yellow Springs Instrument Company (YSI) Model 33 SCT meter, which was also used to determine salinity. A YSI Model 57 dissolved oxygen meter was used to measure dissolved oxygen *in-situ*.

Results and discussion. Physicochemical endpoints used to characterize sediments in Sequim Bay, Fort Ward and Port Townsend are detailed in Table 3. Sediments at all of the sample locations were dominated by sand. The proportions TVS in Sequim Bay were high because the pier transect ran through an eelgrass meadow and the float transect was offshore by only about two meters from the outer edge of the meadow. As expected, sulfide concentrations were higher, and redox generally lower in the eelgrass meadow (pier transect) than in the offshore area. Concentrations of organic carbon and free sediment sulfides were relatively high near clusters of piling and lower near single piling or at reference locations. Eelgrass meadows are noted as valuable habitats in the Pacific northwest. However, note that the sulfide concentrations in the

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meadow were as high as 637 $\mu\text{M S}^-$ and the redox potential correspondingly low (-342 mV). These sulfide concentrations are within the range where Brooks and Mahnken (2003a) demonstrated the exclusion of 30 to 50% of macrobenthic taxa (Figure 4).

Table 3. Physicochemical endpoints characterizing sediments at Sequim Bay, Fort Ward and Port Townsend.

Site	Date	Distance (m)	Code	Gravel (%)	Sand (%)	Fines (%)	TVS (proportion)	Redox (mV)	Sulfides (μM)
Sequim Bay Float	10/18/02	0.15	BF(1)	3.36	89.34	7.30	0.093	-47.8	73.7
Sequim Bay Float	10/18/02	0.50	BF(2)	4.14	85.28	10.57	0.131	-24.9	55.5
Sequim Bay Float	10/18/02	0.50	BF(3)	6.09	83.02	10.89	0.131	-25.3	84.7
Sequim Bay Float	10/18/02	0.50	BF(4)	7.99	81.18	10.83	0.121	57.5	62.8
Sequim Bay Float	10/18/02	1.00	BF(5)	1.77	86.38	11.85	0.116	92.2	67.8
Sequim Bay Float	10/18/02	1.5	BF(6)	0.73	90.76	8.51	0.099	62.6	38.7
Sequim Bay Float	10/18/02	2.5	BF(7)	0.56	92.63	6.81	0.089	79.7	42.8
Sequim Bay Float	10/18/02	5.0	BF(8)	3.99	88.26	7.75	0.105	-106.2	50.3
Sequim Bay Float	10/18/02	7.5	BF(9)	0.53	89.79	9.68	0.102	-113.8	36.8
Sequim Bay Float	10/18/02	100	BF(10)	0.47	90.22	9.31	0.118	-268.1	70.7
Sequim Bay Float	10/18/02	100	BF(11)	0.47	90.22	9.31	0.116	-77.2	118.0
Sequim Bay Float	10/18/02	100	BF(12)	0.47	90.22	9.31	0.127	55.6	43.2
Sequim Bay Pier	10/18/02	0.15	BP(1)	2.66	91.67	5.67	0.086	-245.0	493.0
Sequim Bay Pier	10/18/02	0.50	BP(2)	0.87	93.53	5.60	0.094	-321.6	260.0
Sequim Bay Pier	10/18/02	0.50	BP(3)	0.87	93.53	5.60	0.084	-342.9	637.0
Sequim Bay Pier	10/18/02	0.50	BP(4)	0.87	93.53	5.60	0.111	-322.6	409.0
Sequim Bay Pier	10/18/02	1.00	BP(5)	3.51	90.81	5.68	0.099	-309.6	406.0
Sequim Bay Pier	10/18/02	1.5	BP(6)	2.61	91.89	5.50	0.091	-311.0	297.0
Sequim Bay Pier	10/18/02	2.5	BP(7)	12.77	82.58	4.65	0.088	63.4	106.0
Sequim Bay Pier	10/18/02	5.0	BP(8)	21.14	74.18	4.68	0.081	-233.8	246.0
Sequim Bay Pier	10/18/02	7.5	BP(9)	36.38	58.93	4.69	0.091	27.4	325.0
Sequim Bay Pier	10/18/02	100	BP(10)	11.81	82.83	5.36	0.087	75.5	316.0
Sequim Bay Pier	10/18/02	100	BP(11)	9.28	83.57	7.15	0.094	59.2	245.0
Sequim Bay Pier	10/18/02	100	BP(12)	9.66	85.35	5.00	0.092	-227.8	162.0
Port Townsend	4/19/2002	0.15	PT-S3(1)	24.40	56.38	19.22	0.030	-120.2	191.4
Port Townsend	4/19/2002	0.15	PT-S3(2)	22.78	57.01	20.21	0.030	-175.7	128.4
Port Townsend	4/19/2002	0.15	PT-S3(3)	25.17	55.50	19.34	0.030	-163.9	116.1
Fort Ward Pier	4/26/2002	0.3	FWP-S1					-102.4	119.4
Fort Ward Pier	4/26/2002	0.3	FWP-S2					-90.8	134.3
Fort Ward Pier	4/26/2002	0.3	FWP-S3					-96.3	158.2

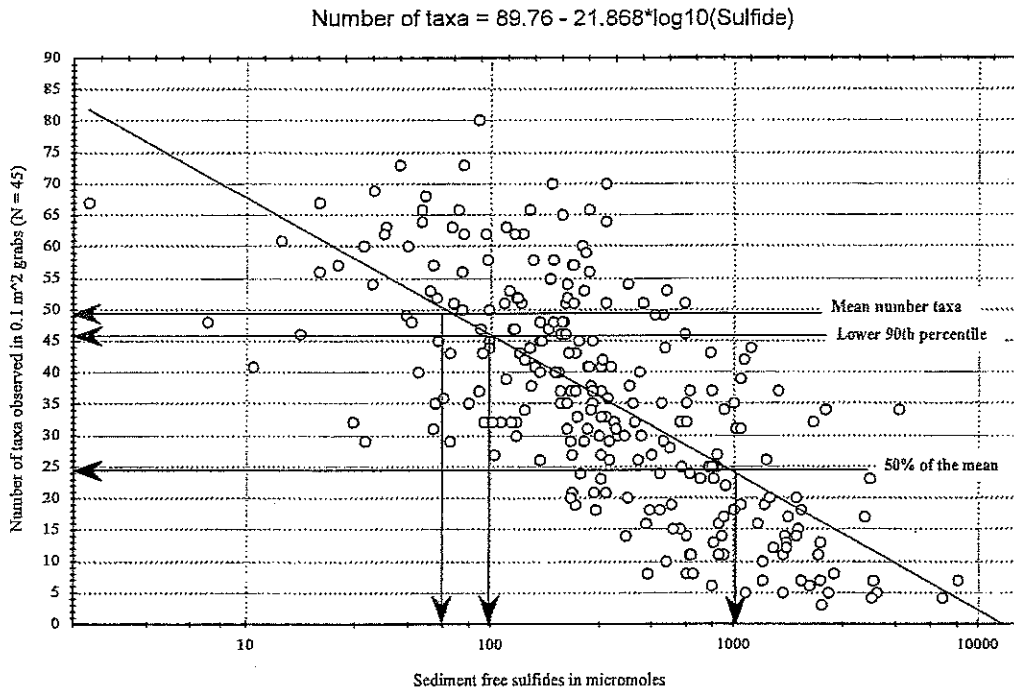


Figure 4. Number of taxa observed in British Columbia sediments as a function of the concentration of Free Sediment Sulfides (S^-). Graph from Brooks and Mahnken (2003a).

Free sediment sulfide concentrations adjacent to the Fort Ward wharf ($2,706 \mu\text{M } S^-$) were nearly as high as those observed by Goyette and Brooks (1998) at the Sooke Basin dolphins. Figure 5 depicts support piling on the north face of the Fort Ward wharf. Biodeposits from the fouling community were likely exceeding the assimilative capacity of the sediments creating localized anaerobic conditions leading to high sulfide concentrations. The point is that these high sulfide concentrations would confound macrobenthic affects associated with sediment metal concentrations. Sediment



Figure 5. Piling supporting the Fort Ward wharf in Rich Passage, Washington. The wharf's deck is constructed of ACZA treated 3" x 8" lumber.

samples at Fort Ward were collected from under the ACZA treated pier deck within 30 cm of support piling at about 1.0' Mean Lower Low Water (MLLW). The Fort Ward pier pilings were fouled at this higher intertidal elevation, but not nearly to the degree seen in Figure 5 and as seen in Table 3, free sediment sulfides were $<160 \mu\text{M}$.

Metal concentrations in sediments. Table 4 summarizes all sediment concentrations of arsenic, copper and zinc observed in this assessment. Sediment concentrations of arsenic varied between 1.56 and 6.7 µg As/g dry sediment at all stations located ≤ 7.5 m from ACZA treated structures and between 0.49 and 6.34 µg/g at the reference stations. Highest arsenic concentrations were found at the Fort Ward pier and control stations. To put these concentrations

Table 4. Sediment concentrations of arsenic (As), copper (Cu) and zinc (Zn) observed at ACZA treated structures and reference locations in Sequim Bay, Port Townsend and Fort Ward in Washington State.

Location	Date	Structure	Distance (m)	Replicate	As (mg/kg)	Cu (mg/kg)	Zn (mg/kg)
Sequim Bay	10/18/2002	Pier piling	0.2	1	2.60	13.20	23.80
Sequim Bay	10/18/2002	Pier piling	0.5	1	2.20	7.30	22.30
Sequim Bay	10/18/2002	Pier piling	0.5	2	2.00	7.00	22.30
Sequim Bay	10/18/2002	Pier piling	0.5	3	2.00	6.60	20.80
Sequim Bay	10/18/2002	Pier piling	1.0	1	1.80	7.20	23.50
Sequim Bay	10/18/2002	Pier piling	1.5	1	1.90	6.90	22.40
Sequim Bay	10/18/2002	Pier piling	2.5	1	1.90	7.00	20.40
Sequim Bay	10/18/2002	Pier piling	5.0	1	1.70	6.60	20.00
Sequim Bay	10/18/2002	Pier piling	7.5	1	1.56	6.80	20.60
Sequim Bay	10/18/2002	Pier piling	100.0	1	2.00	7.30	24.00
Sequim Bay	10/18/2002	Pier piling	100.0	2	1.90	8.50	22.70
Sequim Bay	10/18/2002	Pier piling	100.0	3	2.00	7.10	23.90
Sequim Bay	10/18/2002	4 piling dolphin at the float	0.2	1	3.00	19.80	22.80
Sequim Bay	10/18/2002	4 piling dolphin at the float	0.5	1	3.50	16.30	32.40
Sequim Bay	10/18/2002	4 piling dolphin at the float	0.5	2	3.70	12.90	26.80
Sequim Bay	10/18/2002	4 piling dolphin at the float	0.5	3	3.30	12.50	25.70
Sequim Bay	10/18/2002	4 piling dolphin at the float	1.0	1	3.20	9.60	23.70
Sequim Bay	10/18/2002	4 piling dolphin at the float	1.5	1	2.90	6.60	19.00
Sequim Bay	10/18/2002	4 piling dolphin at the float	2.5	1	2.60	5.50	19.80
Sequim Bay	10/18/2002	4 piling dolphin at the float	5.0	1	2.90	6.30	21.60
Sequim Bay	10/18/2002	4 piling dolphin at the float	7.5	1	3.10	6.10	20.40
Sequim Bay	10/18/2002	4 piling dolphin at the float	100.0	1	3.40	7.00	23.90
Sequim Bay	10/18/2002	4 piling dolphin at the float	100.0	2	3.50	6.20	22.20
Sequim Bay	10/18/2002	4 piling dolphin at the float	100.0	3	3.20	6.00	21.50
Port Townsend	4/26/2002	3 piling dolphin at the pier	0.3	1	2.86	10.00	44.20
Port Townsend	4/26/2002	3 piling dolphin at the pier	0.3	2	3.06	15.30	39.00
Port Townsend	4/26/2002	3 piling dolphin at the pier	0.3	3	7.44	77.90	53.50
Port Townsend	4/26/2002	3 piling dolphin at the pier	100.0	1	0.49	6.02	24.70
Port Townsend	4/26/2002	3 piling dolphin at the pier	100.0	2	0.49	3.91	18.80
Port Townsend	4/26/2002	3 piling dolphin at the pier	100.0	3	0.49	5.83	24.90
Fort Ward	4/19/2002	Pier piling	0.3	1	6.70	9.31	71.00
Fort Ward	4/19/2002	Pier piling	0.3	2	6.25	6.81	76.40
Fort Ward	4/19/2002	Pier piling	0.3	3	5.91	9.78	57.60
Fort Ward	4/19/2002	Pier piling	100.0	1	3.85	11.20	32.10
Fort Ward	4/19/2002	Pier piling	100.0	2	4.34	7.50	31.80
Fort Ward	4/19/2002	Pier piling	100.0	3	6.34	8.71	34.30

into perspective, recall from Table 2 that the Washington State marine sediment quality criterion (SQC) for arsenic is 57 $\mu\text{g As/g}$. Thus all of the observed concentrations are less than the SQC by an order of magnitude.

More copper was lost from ACZA treated structures than arsenic and sediment copper concentrations at the treated structures generally ranged between 5.5 and 19.8 $\mu\text{g Cu/g}$ dry sediment with the exception of one sample collected from the center of a three piling dolphin at the Port Townsend City pier which was 77.9 $\mu\text{g Cu/g}$. The SQC for copper is 390 $\mu\text{g Cu/g}$ and in general the observed copper concentrations within even 15 cm of ACZA treated piling were an order of magnitude less than the SQC. The single sample at Port Townsend was 20% of the SQC. Copper concentrations at the four reference locations were uniformly low varying between 5.8 and 11.2 $\mu\text{g/g}$.

Except for the Fort Ward pier, zinc concentrations near ACZA treated structures were in the range 20 to 53.5 $\mu\text{g Zn/g}$ and they were 22.7 to 34.3 $\mu\text{g/g}$ at the four reference stations. The Fort Ward pier and wharf complex serves a local fish farm. Brooks and Mahnken (2003b) described increases in sediment zinc associated with aquaculture. These usually small increases are associated with uneaten feed and fish feces, because Zn is added to fish feeds as a micronutrient. Fish feed is delivered by truck and stored on the Fort Ward wharf prior to being transferred to lighters for delivery to the fish. This study was not designed to determine cause and effect. However, the higher zinc concentrations observed at Fort Ward's reference station may result from the dispersal of finely divided food particles abraded from the fed pellets (hypothesis). Under any circumstances, all of the measured concentrations are well below Washington State's marine zinc SQC of 410 $\mu\text{g Zn/g}$.

Figure 6, taken from the South side of the pier looking North, shows the location of the treatment and reference transects and piling and bracing where clams and mussels were collected for tissue analyses of metals. Sediment concentrations of Cu, As and Zn at the Sequim Bay pier, where macrobenthic samples were collected are summarized in Figure 7.

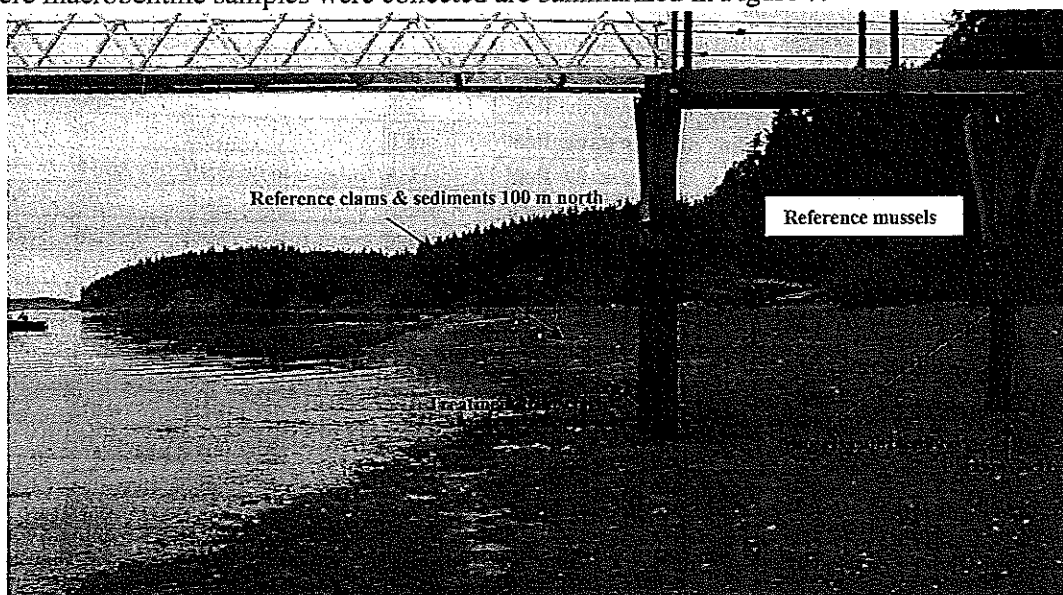


Figure 6. Location of sampling and reference transects and bivalve collection points in Sequim Bay, Washington.

Zinc concentrations were reduced in samples collected between 2.5 and 7.5 meters from the pier pilings in comparison with samples collected closer to the piling or at the reference location. These data suggest that metals lost from the piling were generally sedimented at distances not exceeding 2.5 m from the double piling. However, as previously noted all of the concentrations are low in comparison with SQC considered necessary to protect aquatic life. No adverse biological effects could reasonably be predicted at the observed metal concentrations.

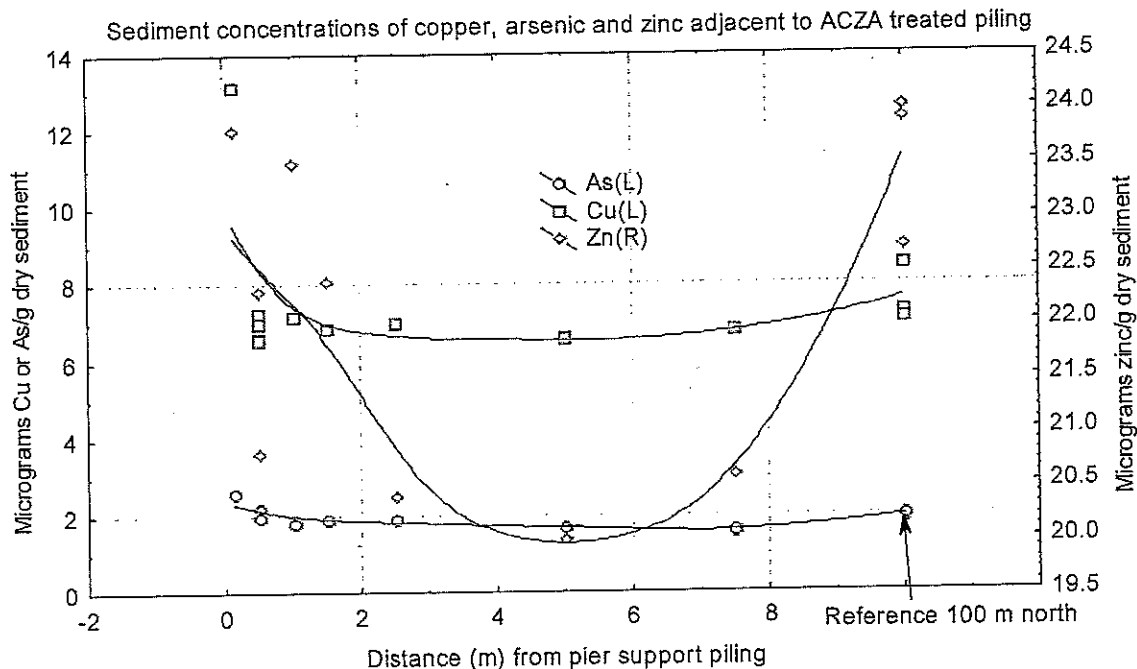


Figure 7. Sediment concentrations of copper, arsenic and zinc adjacent to ACZA treated piling supporting a pier constructed of ACZA treated lumber.

Macrobenthic samples were also collected in deeper water starting in the center of a four piling dolphin supporting the facilities mooring float. Figure 8 describes sediment concentrations of Cu, As and Zn as a function of distance from the center of the dolphin anchoring the North end of the float located over a bottom at ca. -7' MLLW (Figure 2). Both the float and the piling were constructed of ACZA treated wood and both would contribute metals to the water and sediments. Sediment concentrations were increased at those stations located ≤ 1.5 m from the closest piling near the center of the structure. The significance of differences between the triplicate samples collected at 0.5 meters (within the footprint of the dolphin) and those collected at the reference location is explored in Table 5 using a *t-test*. Differences in sediment concentrations of arsenic and zinc were small and not significant. The observed copper concentration in the center of the dolphin (13.9 µg/g) was significantly higher ($t = 6.03$; $p = 0.004$) than at the reference location (6.4 µg Cu/g). These data suggest that the structure, which was four years old when this survey was completed, had increased sediment concentrations within the dolphin's footprint from 6.4 to 13.9 µg/g, a final value that is only 0.35% of the SQC. However, it should be noted that a large sailboat, whose bottom is coated with copper based antifouling paint is moored here during the summer months. The contribution of copper from this source is unknown.

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T-tests, Grouping: Distance (Sequim Bay) Group 1: 0.5; Group 2: Reference					
Variable	Mean 0.5	Mean Reference	t-value	df	p
As	3.500	3.367	0.918	4.000	0.411
Cu	13.900	6.400	6.031	4.000	0.004
Zn	28.300	22.533	2.629	4.000	0.058

Table 5. Results of a *t*-test to examine the significance ($\alpha = 0.05$) of differences in mean values of arsenic, copper and zinc ($N = 3$) in sediments collected from the center of an ACZA preserved four piling dolphin supporting an ACZA treated float and reference sediments in Sequim Bay, Washington.

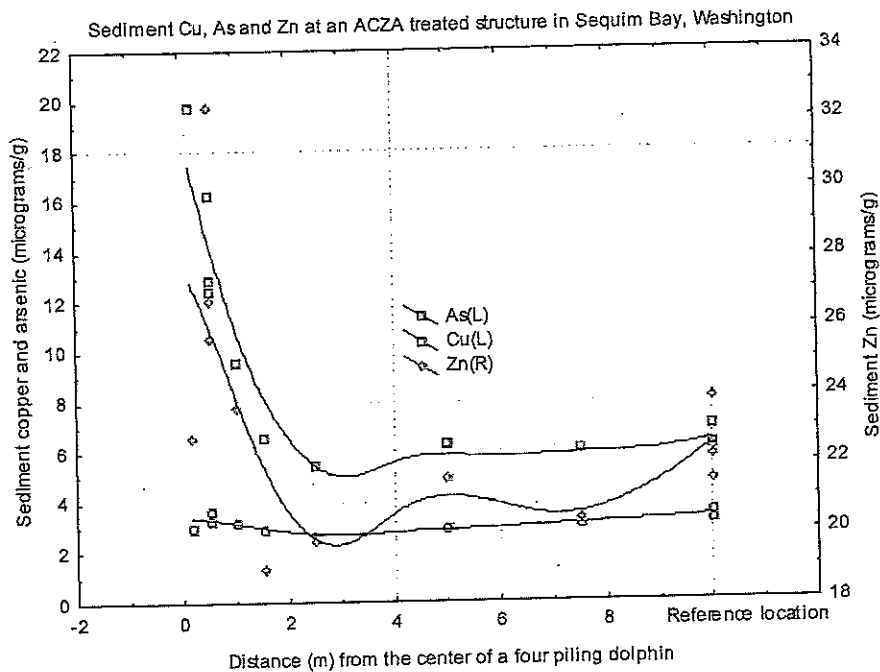


Figure 8. Sediment concentrations of copper, arsenic and zinc as a function of distance from the closest ACZA treated piling in a four piling dolphin supporting an ACZA treated float in Sequim Bay, Washington.

Sediment concentrations of copper, arsenic and zinc at the Port Townsend City and Fort Ward piers. Triplicate sediment samples were collected within 30 cm of one of three piling in a dolphin at the Port Townsend City pier and within 30 cm of one piling in a bent of pilings at the Fort Ward pier. Reference samples were collected at both locations. Analysis of variance followed by post hoc testing using Duncan's test with multiple ranges (Table 6) was used to assess differences in a) arsenic; b) copper; and c) zinc concentrations at the two treatment and two reference locations. Sediment concentrations of arsenic were significantly lower at Port Townsend's reference station than at all other locations. The observed concentration of 0.49 μg Cu/g is exceptionally low for any marine sediment. Other arsenic values were consistent with typical reference values and significant differences were not observed between other values.

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Table 6. Results of analysis of variance followed by post hoc testing using Duncan's test to evaluate the significance of differences in sediment concentrations ($\mu\text{g/g}$ dry sediment) of a) arsenic; b) copper; and c) zinc at wood structures in Port Townsend and Sequim Bay preserved with ACZA and at local reference stations.

Analysis of Variance (Sequim) Marked effects are significant at $p < .05000$								
Variable	SS Effect	df Effect	MS Effect	SS Error	df Error	MS Error	F	p
As	55.464	3.000	18.488	17.194	8.000	2.149	8.602	0.007

Duncan test; Variable: As (Sequim) Marked differences are significant at $p < .05000$					
Site	Distance	{1}	{2}	{3}	{4}
		M=4.4533	M=48.667	M=6.2867	M=4.8433
Townsend	0.3 {1}		0.011	0.180	0.753
Townsend	Reference {2}	0.011		0.002	0.008
Ward	0.3 {3}	0.180	0.002		0.263
Ward	Reference {4}	0.753	0.008	0.263	

a) Arsenic

Analysis of Variance (Sequim) Marked effects are significant at $p < .05000$								
Variable	SS Effect	df Effect	MS Effect	SS Error	df Error	MS Error	F	p
Cu	1633.832	3.000	544.611	2867.360	8.000	358.420	1.519	0.282

Duncan test; Variable: Cu (Sequim) Marked differences are significant at $p < .05000$					
Site	Distance	{1}	{2}	{3}	{4}
		M=34.400	M=5.2533	M=8.6333	M=9.1367
Townsend	0.3 {1}		0.114	0.149	0.141
Townsend	Reference {2}	0.114		0.833	0.816
Ward	0.3 {3}	0.149	0.833		0.975
Ward	Reference {4}	0.141	0.816	0.975	

b) Copper

Analysis of Variance (Sequim) Marked effects are significant at $p < .05000$								
Variable	SS Effect	df Effect	MS Effect	SS Error	df Error	MS Error	F	p
Zn	3480.489	3.000	1160.163	323.060	8.000	40.383	28.729	0.000

Duncan test; Variable: Zn (Sequim) Marked differences are significant at $p < .05000$					
Site	Distance	{1}	{2}	{3}	{4}
		M=45.567	M=22.800	M=68.333	M=32.733
Townsend	0.3 {1}		0.003	0.002	0.039
Townsend	Reference {2}	0.003		0.000	0.092
Ward	0.3 {3}	0.002	0.000		0.000
Ward	Reference {4}	0.039	0.092	0.000	

c) Zinc

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Differences in sediment copper were not significant. The single value of 77.9 µg Cu/g observed at Port Townsend increases the mean there, but it also increased the variance. Deleting this high value and reanalyzing the database indicated that copper at the Port Townsend City pier (12.65 µg Cu/g) was significantly higher ($F = 5.42$; $p = 0.03$) than at Port Townsend's reference location (5.25 µg Cu/g). Sediment Cu was not significantly higher at Fort Ward's pier than at either reference station.

Sediment zinc was significantly higher at the two treatment stations (45.6 and 68.3 µg/g) than at either reference station (22.8 and 32.7 µg/g). The two reference stations were not significantly different, but the value at Port Townsend, where some of the piling were zinc plated steel, were significantly higher than at Fort Ward, where all of the piling were wood preserved with creosote or ACZA.

Water column concentrations of arsenic, copper and zinc at the Sequim Bay structure. Triplicate water samples were collected at 0.5 m depth in the center of a four piling dolphin and at the Sequim Bay reference station. Three additional samples were collected under the dripline of the float at a depth of 15 cm during a slow steady rain in December, 2002. The results are summarized in Table 7. Highest mean values of all three metals were observed in the center of the four piling dolphin. Water under the drip line of the float contained less copper and zinc than observed at the reference station. Arsenic means were similar. The statistical significance of these values is explored in an analysis of variance summarized in Table 8. None of the differences were significant at $\alpha = 0.05$ or 0.10.

Table 7. Summary statistics describing concentrations of arsenic, copper and zinc in Sequim Bay marine water collected from the center of a four piling ACZA preserved dolphin supporting an ACZA treated float; under the drip line of the float and at a reference location. All values are in µg/L.

Breakdown Table of Descriptive Statistics (Sequim Water) N=9 (No missing data in dep. var. list)									
Location	As Means	Confidence -95.000%	Confidence +95.000%	Cu Means	Confidence -95.000%	Confidence +95.000%	Zn Means	Confidence -95.000%	Confidence +95.000%
Pier	2.257	-0.244	4.757	1.906	-1.244	5.056	7.233	-2.760	17.227
Float	1.293	1.179	1.408	0.775	0.564	0.985	2.113	1.745	2.482
CI	1.230	1.092	1.368	1.690	-0.033	3.413	4.120	0.270	7.970
All Grps	1.593	1.048	2.138	1.457	0.772	2.142	4.489	2.102	6.876

Table 8. Results of an analysis of variance assessing the significance of the data provided in Table 7.

Analysis of Variance (Body Water) Marked effects are significant at $p < .05000$								
Variable	SS Effect	df Effect	MS Effect	SS Error	df Error	MS Error	F	p
As	1.986	2.000	0.993	2.037	6.000	0.339	2.926	0.130
Cu	2.164	2.000	1.082	4.192	6.000	0.699	1.549	0.287
Zn	39.934	2.000	19.967	37.215	6.000	6.202	3.219	0.112

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Tissue concentrations of arsenic, copper and zinc in mussel and clam tissues. Three composite samples of 15 to 20 clams each were collected from within 0.5 meters distance within 120 degree sectors around the piling shown in Figure 6. Three composite samples of 15 mussels were collected from the ACZA preserved bracing seen in the same figure. Additional triplicate samples were collected at reference stations located ≥ 100 m north of the pier and float in Sequim Bay. Summary statistics describing the results of tissue analyses for arsenic, copper and zinc are provided in Table 9. The statistical significance of the differences in tissue concentrations of the three metals are explored in Table 10. Because of environmental and physiological differences between mussels and clams, the two species were treated separately using *t-tests*. The only significant ($\alpha = 0.05$) difference was that mussel tissues from the reference location (14.7 $\mu\text{g Zn/g}$ wet tissue) contained more zinc than mussels from the control (12.4 $\mu\text{g Zn/g}$). Tissue concentrations of arsenic were all less than the FDA (1993) level of concern of 130 $\mu\text{g As/g}$ wet tissue.

Table 9. Summary statistics describing tissue concentrations of arsenic, copper and zinc in mussel (*Mytilus edulis trossulus*) and clam (*Protothaca staminea*) tissues collected at an ACZA treated structure and at a reference location in Sequim Bay, Washington.

Breakdown Table of Descriptive Statistics (Tissues) N=12 (No missing data in dep. var. list)						
Sample	As Means	Confidence +95.000%	Cu Means	Confidence +95.000%	Zn Means	Confidence +95.000%
Clams from treated piling	3.130	4.595	3.727	8.126	12.900	18.069
Clams from reference area	2.077	3.181	1.520	2.309	13.367	14.487
Mussels from treated piling	0.963	0.978	1.653	2.476	12.433	15.675
Mussels from reference area	0.983	1.238	1.647	2.318	14.733	15.737
All Grps.	1.788	2.416	2.137	2.926	13.358	14.250

Table 10. Results of *t-tests* assessing differences in a) clam (*Protothaca staminea*) and b) mussel (*Mytilus edulis trossulus*) tissues collected at an ACZA treated wood structure (PC & PM) and at reference stations (CC & CM) in Sequim Bay, Washington.

T-tests; Grouping: Sample (Tissues) Group 1: Clams from piling (PC) Group 2: Clams from control (CC)											
Variable	Mean PC	Mean CC	t-value	df	p	Valid N PC	Valid N CC	Std.Dev PC	Std.Dev CC	F-ratio Variances	p Variances
As	3.130	2.077	2.470	4.000	0.069	3.000	3.000	0.590	0.445	1.758	0.725
Cu	3.727	1.520	2.125	4.000	0.101	3.000	3.000	1.771	0.318	31.077	0.062
Zn	12.900	13.367	-0.380	4.000	0.724	3.000	3.000	2.081	0.451	21.295	0.090

a) clam tissues

T-tests; Grouping: Sample (Tissues) Group 1: Pier mussels (PM) Group 2: Control Mussels (CM)											
Variable	Mean PM	Mean CM	t-value	df	p	Valid N PM & CM	Std.Dev PM	Std.Dev CM	F-ratio Variances	p Variances	
As	0.963	0.983	-0.337	4.000	0.753	3.000	0.006	0.103	316.000	0.006	
Cu	1.653	1.647	0.027	4.000	0.980	3.000	0.331	0.270	1.503	0.799	
Zn	12.433	14.733	-2.916	4.000	0.043	3.000	1.305	0.404	10.429	0.175	

b) mussel tissues

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Macroinvertebrate response to the Sequim Bay pier and float. A total of 5,545 invertebrates were inventoried in the 24 samples, each of which had a footprint of 0.032 m². Statistics describing some of the biological endpoints evaluated in this study are provided in Table 11. Brooks (2001) has shown that macroinvertebrate communities are very sensitive to sediment free sulfides and redox potential. Analysis of variance indicated that redox potential was significantly lower (p = 0.034) and free sediment sulfides higher (p < 0.00) along the pier transect that ran through the eelgrass meadow than along the float transect located in deeper water outside the meadow. Therefore it is reasonable to expect differences in these two communities. Analysis of variance confirmed that the mean abundances and numbers of taxa were not significantly different between each transect and its reference station. However, a higher abundance was observed along the piling transect (401.2) than along the float transect (107.4) or either reference station (152.7 to 169.7) and the number of taxa was higher at the float control (29.7) than at other locations (17.7 at the pile control to 24.2 at the float).

Table 11. Summary statistics describing free sediment sulfides (µM), macrofaunal abundance (number/0.032 m²), number of Taxa (number/0.032 m² sample), values of Shannon's Index and the Infaunal Trophic Index (ITI) observed on the intertidal Piling transect, subtidal Float transect and their two reference locations in Sequim Bay.

Breakdown Table of Descriptive Statistics (Sequim Bay)									
N=24 (No missing data in dep. var. list)									
Transect	Sulfide Means	Confidence -95.000%	Abundance Means	Confidence +95.000%	Taxa Means	Confidence +95.000%	Shannon Means	ITI Means	N
Piling	353.222	472.064	401.222	550.662	20.444	23.884	1.839	88.538	9
Float	57.011	69.724	107.444	134.147	24.222	27.433	2.690	67.624	9
Control Pile	241.000	432.472	152.667	368.834	17.667	25.256	2.205	76.860	3
Control Float	77.300	171.285	169.667	225.232	29.667	33.461	2.910	66.329	3
All Grps	193.625	264.759	231.042	307.600	22.667	24.844	2.338	76.459	24

Ninety-six (96) taxa were identified including 43 annelids, 35 mollusks, 17 arthropods and 1 "other" grouping that included colonial animals like bryozoans, sponges, hydroids. The mean observed abundance in the 24 samples was 231/0.032 m² sample, which is equivalent to an abundance of 719/0.1 m², the area upon which the Washington State Department of Ecology SEDQUAL database is constructed. Macrofaunal abundances and Shannon's Indices at all locations excepting the float transect (331/0.1 m²) in Sequim Bay were as high or higher than observed generally for Puget Sound. The number of taxa observed in 0.032 m² samples at Sequim Bay was lower than observed in Puget Sound. However, this metric is not directly comparable between the two databases because the area included in each Puget Sound sample was three times larger than in Sequim Bay. These data indicate that macroinvertebrate communities in the studied area of Sequim Bay were more abundant, perhaps slightly less diverse, but more evenly distributed than observed in similar Puget Sound environments.

Macroinvertebrate endpoints are summarized as a function of distance from the double pier support piling in Figure 9. All of the fits were achieved using Statistica's Distance Weighted Least Squares routine. Macrofauna abundance was highest near the piling and declined with increasing distance. The significance of differences in biological endpoints assessed in triplicate samples collected at 0.5 m from the base of the ACZA treated piling and at the reference station was evaluated using *t-tests* (Table 13). The only significant ($\alpha = 0.05$) difference was in the Infaunal Trophic Index, which was significantly higher at 0.5 m than at the reference location.

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Table 12. Summary statistics comparing macrobenthic community endpoints in Sequim Bay samples with mean values from Striplin (1996) for Puget Sound environments located in water depths <150' and sediments having <20% silt and clay. Abundance values for Sequim Bay were corrected to number/0.1 m² to correspond with Striplin (1996).

Site	Puget Sound Abundance	Puget Sound Taxa	Puget Sound Shannon	Sequim Bay Abundance	Sequim Bay Taxa	Sequim Bay Shannon
Sequim Piling	491.400	68.700	1.340	1251.700	46.000	2.440
Sequim Float	491.400	68.700	1.340	335.100	53.000	2.460
Pile Control	491.400	68.700	1.340	476.400	33.000	2.480
Float Control	491.400	68.700	1.340	529.400	64.000	2.820
All Groups	491.400	68.700	1.340	719.700	42.000	2.410

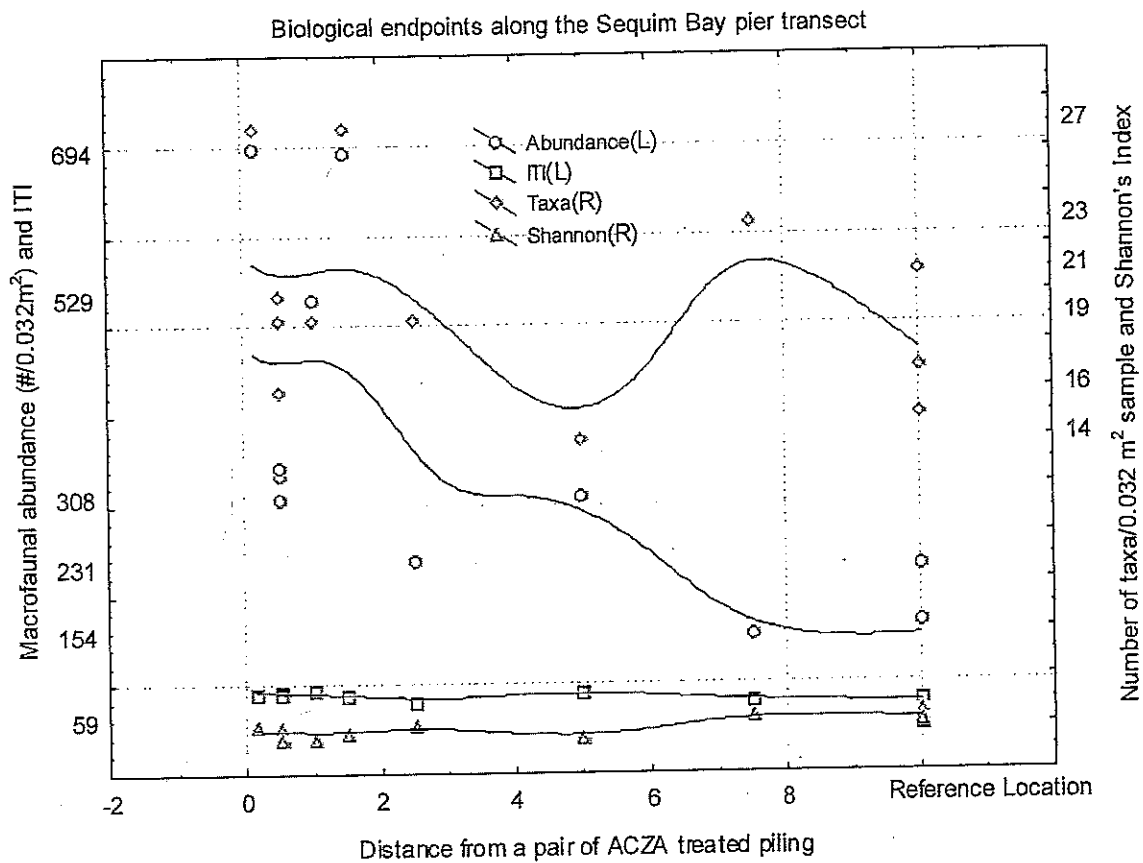


Figure 9. Biological endpoints as a function of distance from a pair of ACZA treated piling in Sequim Bay, Washington

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Table 13. Results of *t*-tests assessing the significance of differences in four biological endpoints in triplicate samples collected 0.5 m from the base of a pair of ACZA treated pilings and at a local reference station in Sequim Bay, Washington. Abundance and number of taxa were transformed ($\text{Log}_{10}(N + 1)$) prior to the analysis. $N = 3$ at both stations.

Variable	T-tests; Grouping: Distance (Sequim Bay)				
	Group 1: 0.5 m		Group 2: 100 m		p
	Mean 0.5	Mean 100	t-value	df	
Shannon	1.79	2.20	-2.02	4	0.114
ITI	91.19	76.86	7.22	4	0.002
Abundance	2.52	2.12	2.22	4	0.091
Taxa	1.28	1.27	0.35	4	0.742

Differences in abundance were not significant when comparing the 0.5 m station with the reference location. However, abundance was nearly twice as high in the single samples collected at other stations located ≤ 1.5 m from the piling. Table 14 summarizes the abundance of those taxa representing $\geq 1\%$ of the total abundance. Native littleneck clams (*Protothaca staminea*) dominated these samples. All of these clams had valve lengths < 1.0 cm and likely recruited during the year of the survey. Native little neck clams are typically found intertidally to heights of +5.0' MLLW. Their abundance in Puget Sounds is greatly reduced subtidally. Possible reasons for the observed distribution of members of the macrobenthic community were explored using Pearson correlation analysis in Table 15.

Table 14. Taxa found in an abundance $\geq 1\%$ of the total abundance along the piling transect in Sequim Bay, Washington and at the reference stations. Values are numbers/0.032 m² sample. Values at 0.5 m and at the reference stations (100 m) are the mean of three replicate 0.032 m² samples. Other values are for single 0.032 m² samples.

Species	Distance (m) from the base of two ACZA treated pilings								Total
	0.2	0.5	1.0	1.5	2.5	5.0	7.5	100.0	
<i>Protothaca staminea</i>	376.0	197.6	325	349	68	176	50	45.7	1784
<i>Polydora kemp</i>	86.0	43	105	127	13	52	8	22.3	587
<i>Spio butleri</i>	57.0	43	105	127	13	52	8	27.3	351
<i>Mysella tumida</i>	58.0	19.7	21	43	39	7	13	23	275
<i>Glycera sp.</i>	8.0	1	17	56	51	24	8	1.5	169
<i>Decamastus gracilis</i>	0.0	9.3	10	17	14	17	1	0.7	89
<i>Cirrepedia</i>	46.0	3.7	1	4	19	0	2	0.7	85
<i>Cooperilla subdiaphana</i>	0.0	3.3	4	6	2	3	0	10	55
<i>Macoma secta</i>	7.0	3.7	4	4	2	3	5	5.3	49
<i>Nereis juveniles</i>	0.0	0.7	0	0	0	1	7	8.3	35
<i>Hemigrapsus oregonensis</i>	0.0	0	0	1	15	1	4	0	21
<i>Clinocardium sp.</i>	0.0	3	1	2	1	0	0	1.7	18

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Table 15. Pearson correlation coefficients illustrating the correlation between dominant taxa along a transect originating at the base of two ACZA treated piling and proceeding north, away from the pier and physicochemical endpoints measured in sediments.

Variable	Correlations (Sequim Bay Pier) Marked correlations are significant at p < .05000 N=12 (Casewise deletion of missing data)							
	Distance	As	Cu	Zn	Fines	TVS	Sulfide	Redox
Decamastus gracilis	-0.45	-0.44	-0.49	-0.56	-0.23	0.11	0.08	-0.34
Glycera sp.	-0.35	0.06	-0.20	-0.17	0.13	0.20	0.69	-0.42
Nereis sp.	0.90	-0.31	-0.23	0.21	-0.11	-0.05	-0.22	0.48
Polydora kempfi	-0.63	0.41	0.22	0.37	0.03	-0.04	0.33	-0.78
Spio Butleri	-0.21	0.35	0.23	0.46	-0.15	0.04	0.31	-0.59
Clinocardium sp.	-0.29	0.14	-0.36	0.13	-0.05	0.27	0.08	-0.61
Cooperilla subdiphana	0.34	-0.21	-0.44	0.33	-0.03	0.02	-0.06	-0.05
Macoma secta	0.00	0.55	0.35	0.63	-0.04	0.14	0.15	-0.42
Mysella tumida	-0.64	0.46	0.32	0.10	-0.28	0.04	0.28	-0.23
Protothaca staminea	-0.75	0.23	0.09	0.00	-0.34	0.05	0.41	-0.75
Shannon	0.60	0.02	0.24	0.14	0.22	-0.21	-0.24	0.68
Pielou	0.72	-0.07	0.08	0.09	0.26	-0.25	-0.33	0.75
IT	-0.86	0.22	0.01	-0.11	-0.13	0.10	0.53	-0.87
Abundance	-0.80	0.39	0.23	0.11	-0.27	0.00	0.37	-0.75
Number taxa	-0.32	0.28	0.43	0.18	-0.02	0.14	0.25	-0.22

No biological effects were anticipated in association with the low concentrations of copper, arsenic and zinc released from the ACZA treated piling that accumulated in sediments and none were observed. The only significant correlation between metals and biological endpoints was zinc and the bivalve *Macoma secta*, a surface deposit feeder and the correlation was positive. Of the 45 coefficients relating metal concentrations to biological endpoints, 12 were negative and 33 were positive.

Biological response in the subtidal habitat adjacent to the float structure in Sequim Bay. This transect and its reference station were located in subtidal substrates at -7' MLLW. The substrates were dominated by sand having relatively lower sulfide concentrations than were observed in the eelgrass meadow. A total of 1,476 macrobenthic organisms in 70 taxa were identified in twelve 0.032 m² samples. Mean abundance in this deeper water was 124/0.032 m² sample, which is equivalent to 384/0.1 m². The number of taxa observed here is less than the mean of 68 found in similar Puget Sound sediments. But as previously noted, the smaller grab size used in this study is at least partly responsible for that. Summary statistics for macroinvertebrates collected along the float transect and its reference station are provided in Table 16. Table 17 describes the abundance of individual taxa representing > 1% of the total abundance at this site. Juvenile native littleneck clams were present at this depth, but did not dominate the community the way they did higher in the intertidal. Higher abundances of annelids, gastropods and crustaceans were found in the deeper water. Figure 10 summarizes the biological endpoints evaluated in this study as a function of distance from the center of the ACZA treated dolphin.

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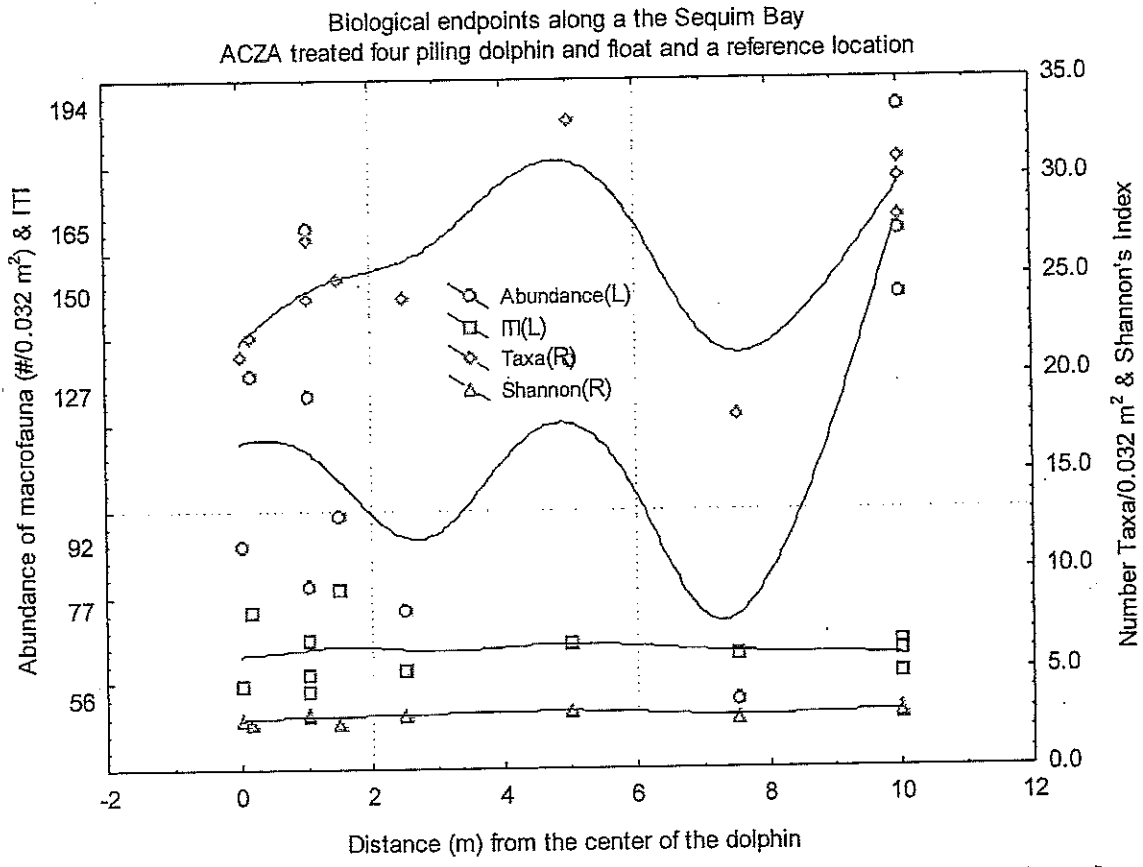


Figure 10. Biological endpoints as a function of distance from a four piling dolphin and float constructed of ACZA treated piling in Sequim Bay, Washington

Table 16. Summary statistics describing sediment sulfide concentrations and macrofaunal abundance, number of taxa, Shannon's Index and the ITI in 0.032 m² samples collected along a transect running north from the center of a four piling dolphin and float constructed of ACZA preserved wood and at a reference location.

Breakdown Table of Descriptive Statistics (Sequim Float)									
N=12 (No missing data in dep. var. list)									
Transect	Sulfide Means	Confidence +95.000%	Abundance Means	Confidence +95.000%	Taxa Means	Confidence +95.000%	Shannon Means	ITI Means	N
Float transect	57.011	69.724	107	134	24	27	2.690	67.624	9
Control Float	77.300	171.285	170	225	30	33	2.910	66.329	3
All Grps	62.083	76.894	123	150	26	28	2.745	67.300	12

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Table 17. Taxa found in an abundance $\geq 1\%$ of the total abundance along the transect running north from the center of a four piling dolphin and float treated with ACZA preservative in Sequim Bay, Washington and at the float's reference station. Values are numbers/0.032 m² sample. Values at 0.5 m and at the reference stations (100 m) are the mean of three replicate 0.032 m² samples.

Species/distance	0.2	0.5	1	1.5	2.5	5	7.5	100	Total
<i>Owenia sp.</i>	46	15	5	41	4	16	5	16	211
<i>Mysella tumida</i>	14	15	15	3	12	5	11	9	133
<i>Nereis sp.</i>	3	9	23	3	12	17	1	11	119
<i>Macoma secta</i>	13	6	3	0	0	15	6	19	113
<i>Alvania sp.</i>	4	7	6	8	4	8	3	19	110
<i>Alia caurinata</i>	2	6	7	3	6	6	4	9	72
<i>Protothaca staminea</i>	5	8	0	3	2	1	0	9	60
<i>Alia gaussipata</i>	3	4	5	1	3	2	3	10	60
<i>Clinocardium sp.</i>	7	2	0	4	2	1	2	12	58
Spiochaetoptera sp.	0	4	3	0	0	5	5	9	52
<i>Goniada sp.</i>	3	3	3	4	1	4	3	7	46
<i>Armandia brevis</i>	2	12	2	1	0	0	0	0	41
<i>Pectinaria granulata</i>	0	6	2	1	1	3	0	2	30
<i>Platynereis bicanaliculata</i>	1	1	0	0	0	5	2	6	29
<i>Decamastus gracilis</i>	0	4	0	1	2	8	0	0	23
<i>Aoroides sp.</i>	0	1	6	2	4	1	0	0	17
<i>Photis sp.</i>	0	1	0	1	4	4	0	1	16
<i>Polydora sp.</i>	2	1	0	4	0	1	0	2	15
<i>Polydora kempii</i>	0	2	0	4	1	0	0	1	12
<i>Cooperilla subdiaphana</i>	4	0	0	0	0	0	0	2	11
<i>Macoma nasuta</i>	2	1	0	0	0	1	1	1	11

The significance of differences between mean values in samples collected at 0.5 m near the center of the ACZA preserved dolphin and the reference location is explored using a two tailed *t*-test with $\alpha = 0.05$ in Table 18. Only the number of taxa was significantly different ($t = -3.48$; $p = 0.025$)

Table 18. Results of *t*-tests assessing the significance of differences in four biological endpoints in triplicate samples collected 0.5 m from the center of a four piling ACZA treated dolphin and at a local reference station in Sequim Bay, Washington. Abundance and number of taxa were transformed ($\text{Log}_{10}(N + 1)$) prior to the analysis. $N = 3$ at both stations.

Variable	T-tests; Grouping: Distance (Sequim Float)						
	Mean 0.5 m	Mean Reference	t-value	df	p	F-ratio Variances	p Variances
Sulfide	67.667	77.300	-0.409	4	0.703	6.199	0.278
Shannon	2.825	2.910	-0.878	4	0.429	4.489	0.364
ITI	63.636	66.329	-0.667	4	0.541	2.696	0.541
Abundance	2.085	2.230	-1.563	4	0.193	7.183	0.244
Number Taxa	1.414	1.486	-3.479	4	0.025	1.696	0.742

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Even though the abundance values were not significantly different between the 0.5 m station and the control, there was an apparent trend toward increasing abundance and number of taxa with distance from the dolphin and float. Possible relationships between physicochemical and biological endpoints were explored using Pearson Correlation Coefficients in Table 19.

Table 19. Pearson coefficients describing the correlation between taxa and their summary statistics observed along the Sequim Bay float and its reference station. Only those variables for which at least one significant ($\alpha = 0.05$) coefficient were found are reported.

Variable	Correlations (Sequim Bay Float)									
	Distance	As	Cu	Zn	Gravel	Sand	Fines	TVS	Sulfide	Redox
<i>Armandia brevis</i>	-0.67	0.51	0.70	0.76	0.82	-0.88	0.58	0.50	0.16	0.22
<i>Decamastus gracilis</i>	-0.42	-0.16	0.03	0.14	0.68	-0.48	-0.07	0.01	-0.19	0.20
<i>Eteone longa</i>	-0.12	-0.60	-0.27	-0.30	-0.26	0.45	-0.54	-0.51	-0.26	0.32
Hesionidae	0.64	0.31	-0.22	0.24	-0.21	0.17	-0.03	0.43	0.21	-0.48
Maldanidae	-0.27	0.11	0.19	0.20	0.57	-0.61	0.30	0.18	0.01	0.25
<i>Nephtys sp.</i>	0.22	0.00	0.03	-0.12	-0.29	0.31	-0.23	-0.17	0.04	-0.58
<i>Prionospio steenstrupi</i>	0.61	0.14	-0.32	-0.19	-0.39	0.26	0.01	0.35	0.07	0.17
<i>Platynereis bicanaliculata</i>	0.74	0.24	-0.33	-0.17	-0.24	0.21	-0.11	0.27	0.12	-0.61
<i>Polydora kempfi</i>	-0.32	-0.07	-0.01	0.03	0.19	-0.21	0.09	0.17	-0.39	0.61
<i>Spio butleri</i>	0.35	0.51	-0.16	0.14	0.07	-0.11	0.08	0.33	0.55	-0.67
Spionidae	0.49	0.12	-0.06	-0.07	-0.22	0.28	-0.29	-0.08	0.40	-0.83
<i>Spiochaetopterus sp.</i>	0.66	0.43	-0.27	0.27	-0.24	0.00	0.33	0.45	0.25	-0.54
<i>Syllis spongiphila</i>	-0.27	0.31	0.45	0.78	0.25	-0.27	0.25	0.40	-0.09	0.00
<i>Axinopsida serricata</i>	-0.27	0.11	0.19	0.20	0.57	-0.61	0.30	0.18	0.01	0.25
<i>Clinocardium nuttallii</i>	0.60	-0.05	-0.14	-0.27	-0.47	0.48	-0.36	-0.03	0.05	-0.17
<i>Macoma inquinata</i>	-0.30	-0.19	0.68	-0.04	0.17	0.10	-0.42	-0.41	0.16	-0.06
<i>Modiolus sp.</i>	-0.30	-0.19	0.68	-0.04	0.17	0.10	-0.42	-0.41	0.16	-0.06
<i>Tellina modesta</i>	0.40	0.43	-0.23	0.06	0.05	-0.05	-0.00	0.26	0.60	-0.65
<i>Arctomelon stearnsii</i>	0.45	0.21	-0.17	0.05	-0.29	0.19	0.00	0.12	0.12	-0.72
<i>Alia gaussipaula</i>	0.58	0.55	-0.10	0.22	-0.24	-0.01	0.34	0.63	0.37	-0.17
<i>Margarites pupillus</i>	0.66	0.39	-0.29	-0.03	-0.43	0.28	0.01	0.15	0.65	-0.65
Opisthobranchiata	0.86	-0.25	-0.74	-0.50	-0.64	0.64	-0.42	-0.20	-0.08	-0.45
Volutidae	-0.27	0.11	0.19	0.20	0.57	-0.61	0.30	0.18	0.01	0.25
Unidentified Crustacea	0.45	0.21	-0.17	0.05	-0.29	0.19	0.00	0.12	0.12	-0.72
<i>Leptochaelia savignyi</i>	-0.27	0.31	0.45	0.78	0.25	-0.27	0.25	0.40	-0.09	0.00
Cirripedia	-0.40	0.06	0.73	0.10	0.35	-0.12	-0.25	-0.19	0.29	-0.06
<i>Hemigrapsus oregonensis</i>	-0.38	0.39	0.17	0.25	0.29	-0.47	0.59	0.36	0.28	0.26
<i>Cancer gracilis</i>	0.69	0.03	-0.46	-0.18	-0.22	0.27	-0.25	0.10	0.14	-0.60
Abundance	0.41	0.26	0.05	0.17	0.06	-0.09	0.02	0.42	0.24	-0.17
Taxa	0.46	0.06	-0.34	-0.05	0.01	0.07	-0.21	0.27	0.11	-0.25
Shannon	0.46	0.31	-0.32	0.23	0.11	-0.16	0.09	0.48	0.11	-0.40
Pielou	0.25	0.35	-0.16	0.32	0.12	-0.27	0.32	0.39	-0.00	-0.35
ITI	-0.07	-0.34	0.14	-0.24	-0.20	0.41	-0.51	-0.48	-0.17	-0.20
Transformed Abundance	0.30	0.27	0.12	0.22	0.13	-0.12	0.00	0.40	0.30	-0.15
Transformed Taxa	0.41	0.08	-0.30	-0.02	0.03	0.05	-0.20	0.28	0.15	-0.21

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Significant negative correlations were observed between the annelid *Eteone longa* and sediment concentrations of arsenic and between Opisthobranch mollusks and sediment copper. In addition to the two negative correlations, there are seven positive correlations between individual taxa and sediment concentrations of arsenic, copper or zinc. Of the 105 coefficients relating biological endpoints to sediment concentrations of metal, there were 2 significant negative and 7 significant positive. Of the total 37% were negative and 63% were positive indicating increased abundance or value with increasing concentrations of at least one of the metals. These data do not suggest any adverse effects associated with concentrations of arsenic, copper or zinc in Sequim Bay sediments.

None of the summary metrics were significantly correlated with any of the physicochemical endpoints. More negative correlations were associated with redox potential (9) than with any other physicochemical endpoint. These negative correlations indicate increasing abundance or value with decreasing redox potential. That result is not expected in productive environments, but is more indicative of areas where there is marginally reduced food (TVS). That possibility is supported by the positive (but not statistically significant) correlations between abundance and number of taxa with TVS and sulfide. Free sediment sulfide concentrations generally increase with increasing TVS (food), which increases biological oxygen demand and decreases redox potential. The float transect was located on the northern side of the structure and shaded the benthos along this entire transect. This shading could have reduced the production of benthic diatoms – a significant source of organic carbon in shallow benthic environments.

The differences in biological endpoints along the Float Transect were small and this study was not designed to assess sources of organic carbon to the benthos or of benthic primary productivity. Figure 11 compares sediment TVS and redox potential with the abundance of macrofauna and number of taxa. Goyette and Brooks (1998, 2001) and Brooks (2004) have described the epibenthic communities resident on creosote treated piling in the Pacific Northwest. These reports also described increases free sediment sulfides and decreased redox potential near the base of treated wood structures created by biodeposits from the fouling community, which enrich sediments.

High sediment sulfide and TVS concentrations were reported at the 0.5 m ($1,870 \mu\text{M S}^-$ and 6.090 % TOC) and 1.0 m ($500.8 \mu\text{M S}^-$ and 6.180% TOC) stations located within the footprint of a similar dolphin located at Fort Ward (see Figure 5). Note that Striplin Environmental Associates (1996) reported mean percent TOC in sediments containing 0 to 20% fines and water depths <150' that varied between 0.14% in the northern parts of Puget Sound to 0.37% in southern Puget Sound. The TVS values reported at this site were converted to Total Organic Carbon (see Brooks and Mahnken, 2003a). A mean TOC concentration of 1.04% was observed at the 0.5 m station in Sequim Bay. This value is over seven times higher than the mean value for Northern Puget Sound, but less than reported for sediments around the highly fouled Fort Ward piling. The beginnings of an epibenthic community of mussels, barnacles and other undetermined invertebrates had settled on the Sequim Bay piling, but it was not as well developed as the communities reported by Brooks (2004). Biodeposits from this nascent community likely increased TOC near the dolphin in comparison with similar Puget Sound sediments. However, this newly established epibenthic community did not enrich the benthos to the degree seen at the older Fort Ward wharf. One interpretation of the TVS and sulfide record summarized in Figure 11 is that TVS within the footprint of the dolphin (i.e. distances ≤ 1.0 m) was enhanced by biodeposits from the piling's epibenthic community to values equaling those

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found at the reference station. Sediments just north of the float and dolphin were shaded and this may have reduced benthic primary production, resulting in TVS concentrations that were less than those observed at the un-shaded reference location. The sulfide record reflects the labile nature of the animal waste associated with the dolphin's biodeposits and the lower BOD associated with plant detritus, which likely dominated organic carbon at the reference location. All of the differences seen in Figure 10 are subtle. However, there was a small but consistent reduction in the number of taxa where sulfide concentrations were increased and vice-versa. Highest abundances were observed where TVS was highest and somewhat reduced within the area shaded by the float where TVS was reduced.

Redox potential, 10*Total Volatile Solids (TVS), $\text{Log}_{10}(\text{abundance} + 1)$ and $\text{Log}_{10}(\text{Taxa} + 1)$ along the Dolphin and Float transect in Sequim Bay

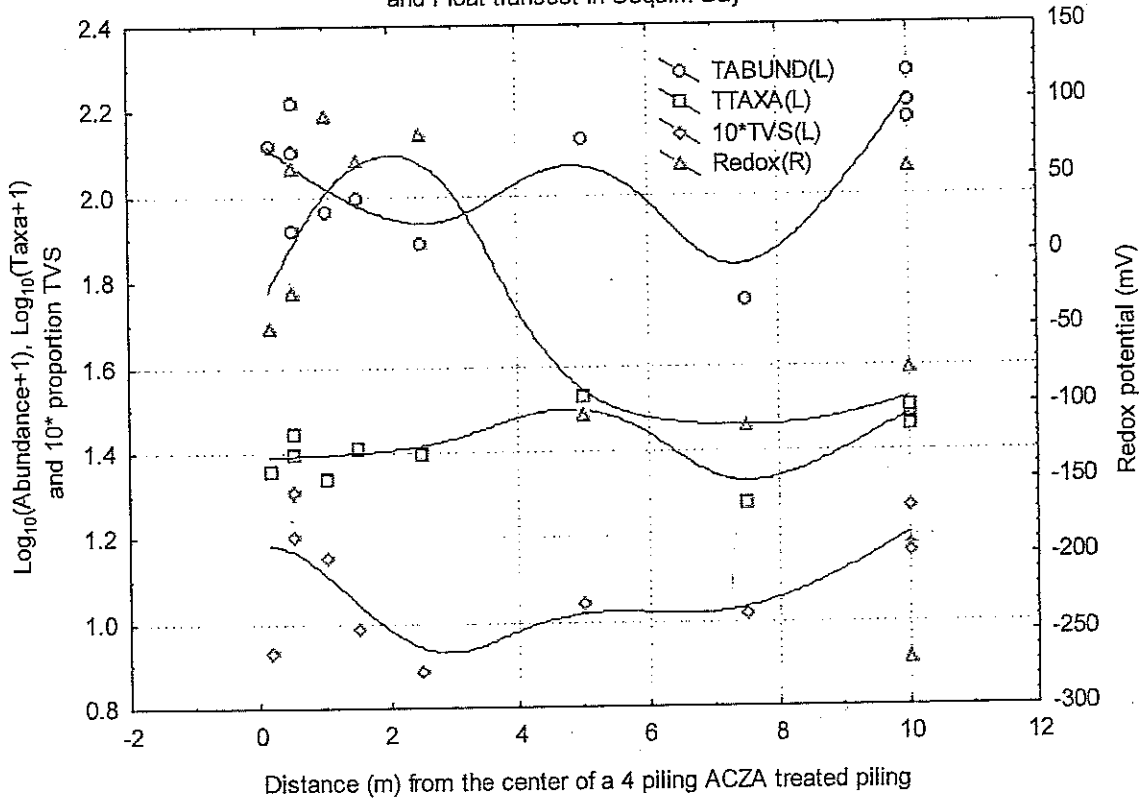


Figure 11. Redox potential (mV), 10 times the proportion sediment arcsin(sqrt) transformed TVS concentrations, $\text{Log}_{10}(\text{Abundance} + 1)$ and $\text{Log}_{10}(\text{Taxa} + 1)$ as a function of distance (meters) from the center of a four piling ACZA treated dolphin and float in Sequim Bay, Washington.

The bottom line in this analysis is that small, but not statistically significant, changes in the macrobenthic community were observed at this site. More taxa were positively correlated with sediment concentrations of metals lost from ACZA treated wood than were negatively correlated. While this study was not designed to determine cause and affect relationships and benthic primary production was not measured; a hypothesis has been developed that suggests

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that the subtle changes in the macrobenthic community were likely associated with biodeposits from the pilings' epibenthic community and with reduced primary production associated with shading by the float.

Summary. Metal concentrations in water and sediments from intertidal and subtidal areas of Sequim Bay adjacent to substantial ACZA preserved wood structures were determined and compared with sediment and water quality criteria and with macrobenthic communities near the structures and at local reference stations. To assess the potential for the bioconcentration of metals lost from ACZA and movement through the food chain, samples of clams and mussels growing on or as close to ACZA treated wood as possible were analyzed for arsenic, copper and zinc. Additional sediment samples were collected under marine structures decked with ACZA preserved wood at the Port Townsend City and Fort Warden piers. In all instances, samples were collected at locations where the highest concentrations of ACZA metals were expected to be found. In that sense, these are worst case assessments. The results indicate the following:

- Sediments at the Sequim Bay site revealed above average sediment concentrations of TVS and sulfide and reduced redox potential, particularly in the eelgrass meadow. The abundance of macrofauna was as high or higher in both areas as is than found in other areas of Puget Sound. Macrobenthic communities were different at the intertidal site located in an eelgrass meadow when compared with the subtidal site located outside the meadow. More bivalves, particularly native littleneck clams, were found in the intertidal, whereas more crustaceans and annelids were present in the subtidal area.
- Significantly more copper ($13.9 \mu\text{g Cu/g}$ dry sediment) was observed in sediments from the center of the four piling dolphin supporting the float when compared with values at the subtidal reference ($6.4 \mu\text{g/g}$). However, the highest concentrations were a small proportion of Washington State's copper SQC of $390 \mu\text{g/g}$. Significant differences in sediment copper were not observed between sediments collected within 0.3 m of ACZA treated structures and their reference locations at the other three locations examined in this study. All of the sediment copper values measured in this study were well below Washington State's SQC.
- Sediment concentrations of arsenic were all less than $3.7 \mu\text{g As/g}$ in Sequim Bay representing less than 10% of the $57 \mu\text{g As/g}$ Washington State SQC. Slightly higher concentrations of $<7.44 \mu\text{g/g}$ were observed at Port Townsend and Fort Ward. The only statistically significant difference in sediment arsenic was the lower concentration at Port Townsend's reference station ($0.49 \mu\text{g/g}$) in comparison with all other stations in Port Townsend or Fort Ward.
- Sediment zinc was not significantly different between those stations closest to ACZA treated wood (20.8 to $32.4 \mu\text{g/g}$) and reference locations in Sequim Bay (18.8 to $24.9 \mu\text{g/g}$). Sediment zinc was significantly higher under the Port Townsend City pier ($45.6 \mu\text{g/g}$) when compared with the local reference station ($22.8 \mu\text{g/g}$). No other significant differences in sediment zinc were observed between paired treatment and reference locations. All of the observed zinc concentrations were well below Washington State's SQC of $410 \mu\text{g Zn/g}$.

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- Water column concentrations of arsenic, copper and zinc were not significantly different at the two Sequim Bay locations adjacent to ACZA treated structures in comparison with the local reference station and all of the metals were below their respective U.S. EPA water quality criteria. These samples were collected at slack tide during a light rain and likely represent the maximum concentrations observed at the site three years following construction. Highest metal concentrations would occur within a few day following construction and the long term concentrations observed in December 2002 were likely achieved by the end of the first week post construction.
- Tissue concentrations of arsenic, copper and zinc from mussels growing on ACZA treated wood and within half a meter of the base of an ACZA treated piling were not significantly increased above metals in the same species retrieved from reference areas. Zinc in mussels taken directly from ACZA treated piling was significantly less than found in mussels from the reference area. Arsenic concentrations in all samples (0.96 to 3.13 $\mu\text{g As/g wet tissue}$) were well below the Food and Drug Administration level of concern of 130 $\mu\text{g As/g wet tissue}$.
- As many or more macrofauna were found near the ACZA treated structures than were found at the local reference areas. The abundance of macrofauna, particularly native littleneck clams were nearly three times higher immediately adjacent to the ACZA treated piling than are generally found in similar Puget Sound sediments or at the intertidal control station in Sequim Bay. However, while the difference was significant at $\alpha = 0.1$, it was not significant at $\alpha = 0.05$. Significantly fewer taxa were found in the center of the float's four piling support dolphin when compared with the subtidal reference station. Significant differences were not found in macrofaunal abundance or in Shannon's Index or the Infaunal Trophic Index.
- Correlation analysis suggested that the subtle differences in biological end points near the float were not associated with metal concentrations in sediments. One hypothesis supported by the studies evidence is that shading by the float has reduced benthic diatom production leading to reduced TVS north of the float and therefore reduced macrobenthic production. However, it should be emphasized that the study was not designed to establish cause and effect relationships and that direct measurements of benthic pigments (chlorophyll, etc.) were not made.

In summary, the results of this study indicate very small, and in most cases, insignificant increases in either water or sediment concentrations of arsenic, copper or zinc associated with the use of ACZA preserved wood in Pacific Northwest marine environments. The evidence indicates minimal organismal uptake of these metals in close proximity to treated wood and very little or no potential for movement of these metals into the food chain. Arsenic concentrations in mussels growing directly on ACZA treated wood and in clams retrieved from within half a meter of ACZA treated piling were a small fraction of the FDA level of concern for arsenic in mollusks. Neither of the structures had any significant overall effect on macrobenthic communities resident as close as 0.3 m from ACZA treated wood. Subtle differences in the macrobenthic community north of the float appear to be associated with some factor other than

EXHIBIT 1i

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sedimented metals and it is hypothesized that shading from the float may be the cause. The reason for the increased macrofaunal abundance near the pier's ACZA piling was not investigated. Overall, this study did not find any adverse effects associated with the use of ACZA preserved wood in the Pacific Northwest marine environments studied.

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References

- American Wood-Preservers' Association – Standards 2001. Published by the American Wood-Preservers' Association, P.O. Box 5690, Granbury, Texas 76049. 518 pp.
- Brooks, K.M. 1997. Literature Review and Assessment of the Environmental Risks Associated with the use of ACZA treated wood products in aquatic environments. Produced for the Western Wood Preservers Association, 7017 N.E. Highway 99, Suite 108, Vancouver, WA 98665. 63 pp.
- Brooks, K.M. 1999. Environmental effects associated with the use of CCA-C, ACZA and ACQ-B pressure treated wood used to construct boardwalks in wetland areas. U.S. Department of Agriculture - Forest Products Journal. 85 pp. plus appendices.
- Brooks, K.M. 2001. An evaluation of the relationship between salmon farm biomass, organic inputs to sediments, physicochemical changes associated with those inputs and the infaunal response – with emphasis on total sediment sulfides, total volatile solids, and oxidation-reduction potential as surrogate endpoints for biological monitoring – Final Report. Technical report produced for the Technical Advisory Group (TAG) to the British Columbia Ministry of Environment, 2080-A Labieux Road, Nanaimo, British Columbia, Canada V9T 6J9. 186 pp. plus appendices.
- Brooks, K.M. and C.V.W. Mahnken. 2003a. Interactions of Atlantic salmon in the Pacific northwest environment, II. Organic wastes. Fisheries Research 62, pp. 255-293.
- Brooks, K.M. and C.V.W. Mahnken. 2003b. Interactions of Atlantic salmon in the Pacific Northwest Environment. III. Inorganic Compounds. Fisheries Research, Vol. 62, Issue 3, pp. 295-305.
- Brooks, K.M. 2004. Environmental response to creosote treated wood structures in Puget Sound, Washington. Produced for Creosote Council II, 357 Browns Hill Road, Box 160, Valencia, PA 16059. 53 pp.
- FDA, 1993. Guidance Document for Arsenic in Shellfish. Center for Food Safety and Applied Nutrition. United States Food and Drug Administration, 200 C St. S.W., Washington, D.C. 20204.
- Goyette, D. and K. Brooks. 1998. Creosote Evaluation: Phase II – Sooke Basin Study – Baseline to 535 Days Post Construction (1995 – 1996). Regional Program Report PR00-03, Environment Canada, 224 West Esplanade, North Vancouver, British Columbia, Canada V7M 3H7. 563 pp.
- Goyette, D. and K. M. Brooks. 2001. Continuation of the Sooke Basin Creosote Evaluation Study (Goyette and Brooks, 1998). Year Four – Day 1360 & Day 1540. Regional Program Report PR00-03, Environment Canada, 224 West Esplanade, North Vancouver, British Columbia, Canada V7M 3H7. 74 pp.

EXHIBIT 1; 30/31

- Plumb, R. H. 1981. Procedures for handling and chemical analysis of sediment and water samples. Technical Report EPA/CE-81-1. U.S. Army Corps of Engineers, Vicksburg, MS.
- PSEP. 1986. Puget Sound Protocols. Prepared for U.S. Environmental Protection Agency, Region 10, Seattle, WA.
- Striplin Environmental Associates, Inc. 1996. Final Report – Development of Reference Value Ranges for Benthic Infauna Assessment Endpoints in Puget Sound. Prepared for the Washington State Department of Ecology, Sediment Management Unit, P.O. Box 47600, Olympia, Washington 98504-7600. SEA Contract No. A94-01. 45 pp. plus appendices.

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By
Data Averaging
Bob Frisbie

Information provided by Valerie Tribble, DFW, 360-902-2329 and Valerie.Tribble@dfw.wa.gov on Tuesday 3/9/2010

PUGET SOUND CHUM SALMON TOTAL WILD AND HATCHERY ESCAPEMENT AND RUNSIZE
(Summer - Fall - Winter Timings Combined)

Return Year	Wild Escapement	Wild Runsize	Hatchery Escapement*	Hatchery Runsize*	Total Puget Sound Escapement	Total Puget Sound Runsize
1968	**	**	**	**	**	**
1969	**	**	**	**	**	**
1970	**	**	**	**	**	**
1971	**	**	**	**	**	**
1972	**	**	**	**	**	**
1973	**	**	**	**	**	**
1974	446,310	645,779	42,163	55,651	488,473	701,430
1975	114,488	186,926	15,576	18,970	130,064	205,896
1976	328,997	817,183	60,324	112,229	389,321	929,412
1977	207,144	546,158	44,156	115,347	251,300	661,505
1978	489,772	1,137,983	62,249	335,166	552,021	1,473,149
1979	123,016	176,604	62,278	110,538	185,294	287,142
1980	255,678	690,637	77,277	314,766	332,953	1,005,403
1981	204,099	522,004	38,648	201,898	242,747	723,702
1982	392,703	975,492	56,274	373,037	438,977	1,348,529
1983	96,799	348,690	43,544	252,417	140,343	601,107
1984	328,427	691,814	91,866	452,347	420,293	1,144,161
1985	400,254	1,026,226	98,435	431,795	498,689	1,460,021
1986	404,278	1,068,291	93,889	482,285	498,167	1,550,576
1987	383,945	1,026,283	92,764	730,632	476,709	1,756,915
1988	521,776	1,375,085	94,765	657,820	616,541	2,032,805
1989	154,219	547,596	85,881	493,563	240,100	1,041,159
1990	369,179	1,053,003	61,663	303,770	430,842	1,356,773
1991	249,928	702,333	139,512	553,999	389,440	1,256,332
1992	488,290	1,326,019	175,555	593,345	663,845	1,919,364
1993	327,035	857,171	160,732	600,953	487,767	1,458,124
1994	973,206	1,791,283	301,558	785,306	1,274,764	2,576,589
1995	533,260	995,932	155,339	402,888	688,599	1,388,820
1996	996,092	1,557,395	214,918	451,068	1,211,010	2,008,463
1997	201,125	384,993	105,954	347,696	307,079	732,689
1998	1,044,849	1,489,084	248,535	601,357	1,293,364	2,090,441
1999	379,050	561,390	77,180	134,462	456,230	695,852
2000	235,986	452,793	45,553	115,904	281,539	568,697
2001	769,789	1,640,831	244,135	945,564	1,012,924	2,586,395
2002	1,351,241	2,518,451	305,877	873,436	1,657,118	3,391,587
2003	821,019	1,490,728	269,948	1,062,486	1,090,967	2,553,214
2004	1,147,506	2,477,532	157,097	804,917	1,304,603	3,282,449
2005	374,137	823,715	81,886	286,947	456,023	1,110,662
2006	950,878	1,959,096	169,186	698,912	1,120,064	2,658,008
2007	613,494	1,471,653	144,250	745,534	757,744	2,217,187
2008	319,810	904,964	67,245	438,142	387,055	1,343,106

* Hood Canal and Strait of Juan de Fuca summer chum data are combined wild and hatchery (supplementation) estimates. All Hood Canal summer chum are included in the wild totals here.

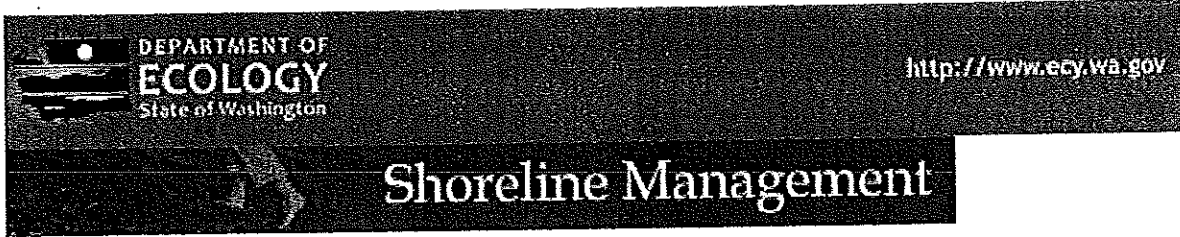
** Summer chum escapement and runsize databases for Hood Canal and the Strait of Juan de Fuca begin with the 1974 return. Puget Sound totals cannot be calculated for years prior to 1974.

1,041,159
1,356,773
1,256,332
1,919,364
1,458,124
2,576,589
1,388,820
2,008,463
732,689
2,090,441
695,852
568,697
2,586,395
3,391,587
2,553,214
3,282,449
1,110,662
2,658,008
2,217,187
1,343,106
36,235,911
1,811,796

149%
168%
Average Total Runsize
Average Total Runsize
% Increase Over the 1914 to
1923 Previous 10 Average High

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[SEA Program Home](#) > [Shoreline Management Home](#) > The Public Trust Doctrine

The Public Trust Doctrine

1 The Public Trust Doctrine is a legal principle derived from English Common Law. The essence of the
 2 doctrine is that the waters of the state are a public resource owned by and available to all citizens
 3 equally for the purposes of navigation, conducting commerce, fishing, recreation and similar uses
 4 and that this trust is not invalidated by private ownership of the underlying land. The doctrine limits
 5 public and private use of tidelands and other shorelands to protect the public's right to use the
 6 waters of the state. (Visit the [MSRC Web site](#) and search for the State Supreme Court case *Caminiti*
 7 *v. Boyle*, 107 Wn. 2d 662, 732 P.2d 989)

8 The Public Trust Doctrine does not allow the public to trespass over privately owned uplands to
 9 access the tidelands. It does, however, protect public use of navigable water bodies below the
 10 ordinary high water mark.

11 Protection of the trust is a duty of the State, and the Shoreline Management Act is one of the
 12 primary means by which that duty is carried out. The doctrine requires a careful evaluation of the
 13 public interest served by any action proposed. This requirement is fulfilled in major part by the
 14 planning and permitting requirements of the Shoreline Management Act. (Court case: [MSRC Web](#)
 15 [site](#) and search for *Portage Bay v. Shorelines Hearings Bd.*, 92 Wn.2d 1, 593 P.2d 151)

16 Local governments should consider public trust doctrine concepts when developing comprehensive
 17 plans, development regulations and shoreline master programs. There are few "bright lines,"
 18 however, as the Public Trust Doctrine is common law, not statutory law. The extent of its
 19 applicability can only be determined by state court decisions. The document below is a good
 20 introduction to the case law in Washington State.

21 • The [Public Trust Doctrine and Coastal Zone Management in Washington State](#),
 22 Johnson, Ralph W., Craighton Goepple, David Jansen and Rachel Pascal, 1991.

23 For a national perspective, consider:

24 • [Putting the Public Trust Doctrine to Work](#), 2nd Ed., by David Slade, examines the issue
 25 from a national perspective. Copies available for purchase from the [Coastal States](#)
 26 [Organization](#).

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[SEA Program Home](#) > [Shoreline Management Home](#) > Bulkhead exemption

Bulkhead exemption

The SMA exempts construction of the "normal protective bulkhead common to single-family residences" from SDP procedural requirements.

Under state rules, a "normal protective" bulkhead is exempt only if:

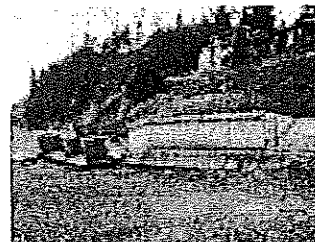
- it is installed **at or near the ordinary high water mark, and**
- it is for the sole purpose of **protecting an existing single-family residence and/or appurtenant structures** from loss or damage by erosion.

Bulkheads proposed for *undeveloped property* are not covered under this exemption and require a permit.

A normal protective bulkhead is not exempt if constructed for the purpose of **creating dry land**. For example, a proposal for a bulkhead that extends waterward of the ordinary high water line and then backfilled to create a recreation area, would not be exempt. When a vertical or near vertical wall is being constructed or reconstructed under this exemption, not more than one cubic yard of fill per one foot of wall may be used as backfill.

When an existing bulkhead is being **repaired** by construction of a vertical wall waterward of the existing wall, it must be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings.

When a bulkhead has deteriorated such that an ordinary high water mark has been established by the presence and action of water landward of the bulkhead then the replacement bulkhead must be located at or near the actual ordinary high water mark.



Beach nourishment and bioengineered erosion control projects may be considered a normal protective bulkhead when any structural elements are consistent with the above requirements and when the project has been approved by the state Department of Fish and Wildlife.

For more information

Law: [RCW 90.58.030\(3\)\(e\)\(ii\)](#)

Rule: [WAC 173-27-040\(2\)\(c\)](#)

Other: [Basic information on bulkheads and alternatives to "hard" shoreline protection](#)

For specific information about a city or county permit process, visit the [Local Planning Page](#) and click on the map, or contact a shoreline specialist at the appropriate [Ecology regional office](#).

[Back to Exempt Developments page](#)

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EXHIBIT 26 1/1



[RCWs](#) > [Title 9A](#) > [Chapter 9A.52](#) > [Section 9A.52.080](#)

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[9A.52.070](#) << [9A.52.080](#) >> [9A.52.090](#)

RCW 9A.52.080

Criminal trespass in the second degree.

(1) A person is guilty of criminal trespass in the second degree if he knowingly enters or remains unlawfully in or upon premises of another under circumstances not constituting criminal trespass in the first degree.

(2) Criminal trespass in the second degree is a misdemeanor.

[1979 ex.s. c 244 § 13; 1975 1st ex.s. c 260 § [9A.52.080](#).]

Notes:

Effective date -- 1979 ex.s. c 244: See RCW [9A.44.902](#).

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- * Bill Information
- * Laws and Agency Rules
- * Legislative Committees
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- * TVW
- * Washington Courts
- * OFM Fiscal Note Website

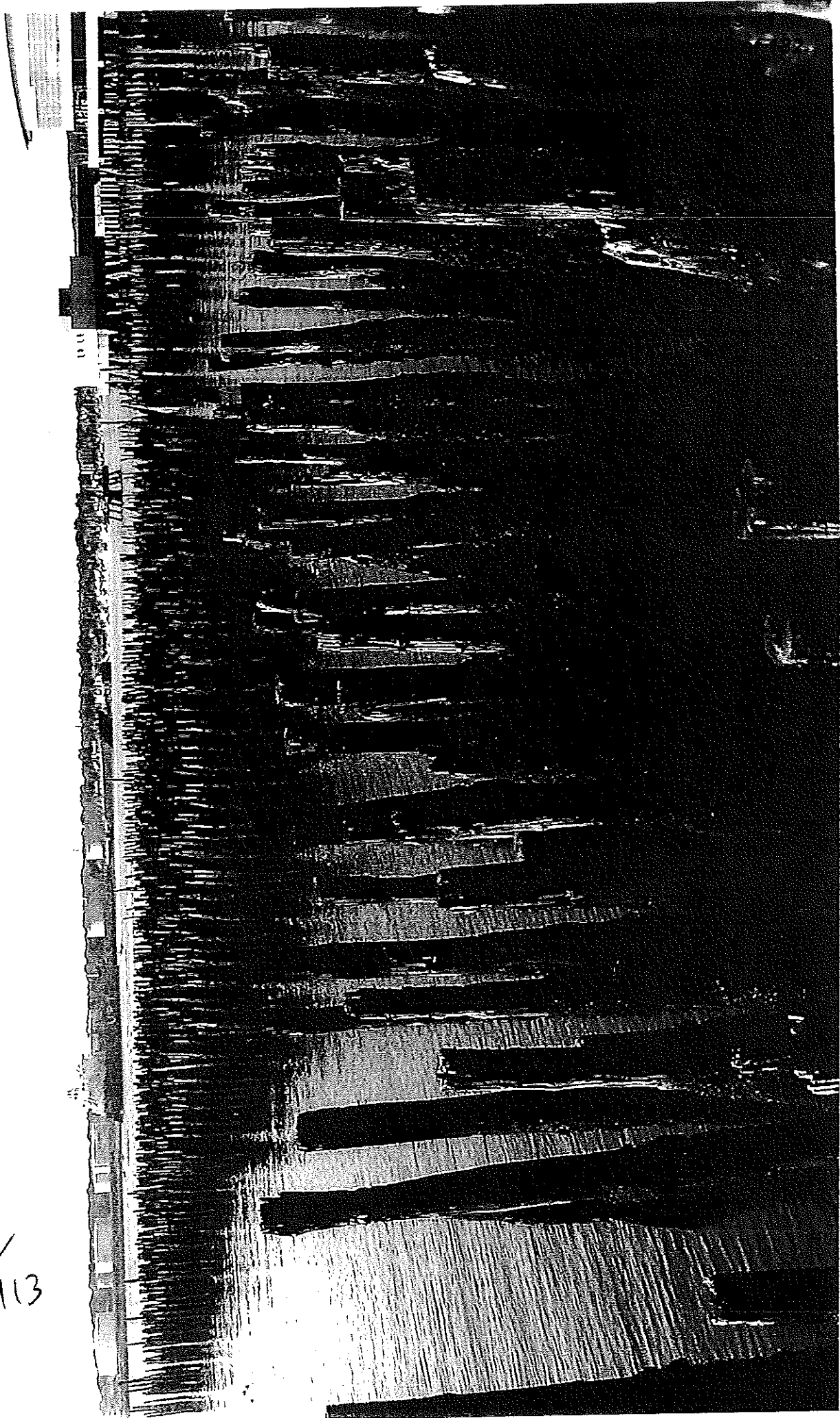


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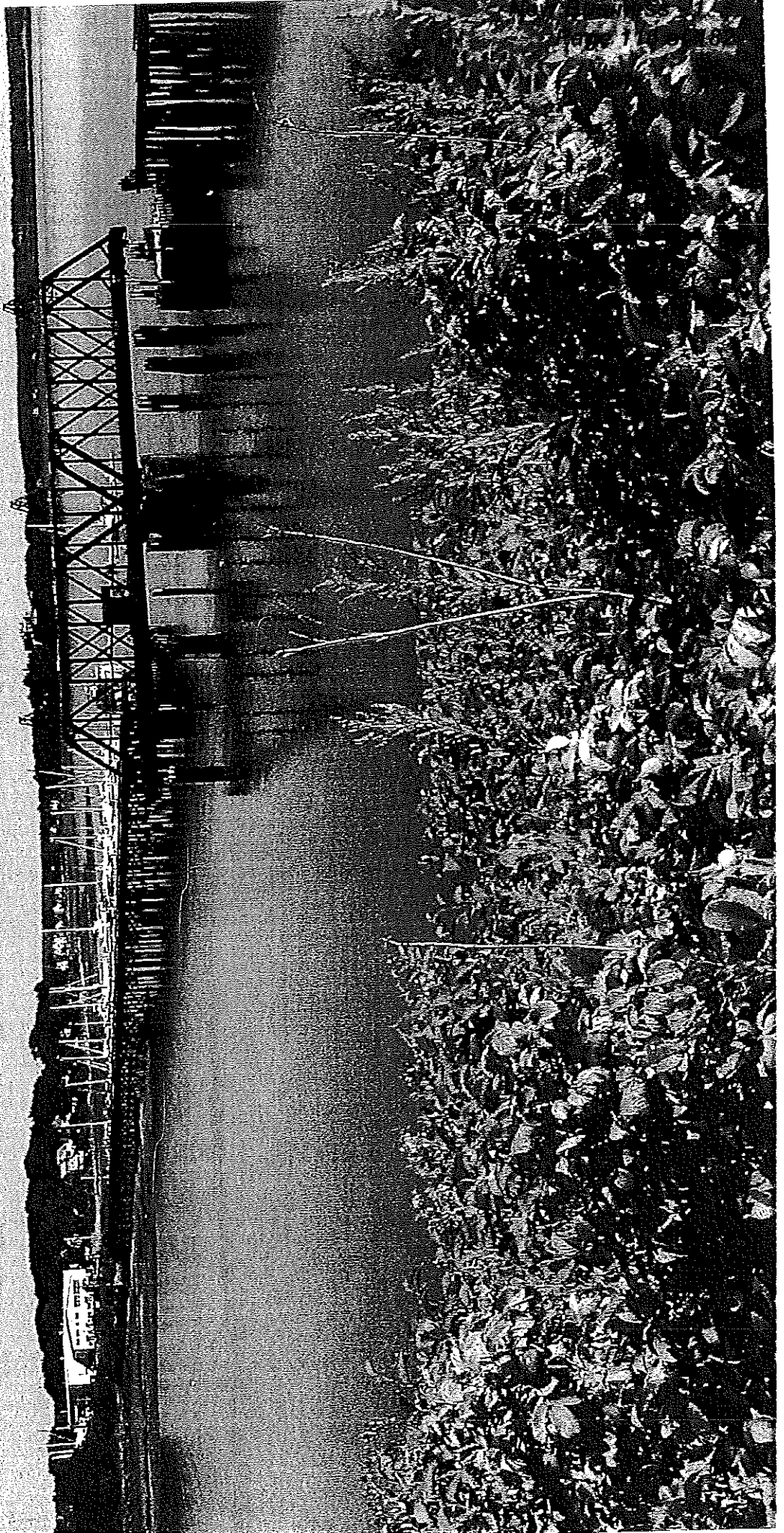
Portland, Maine
August 2010
Picture 1

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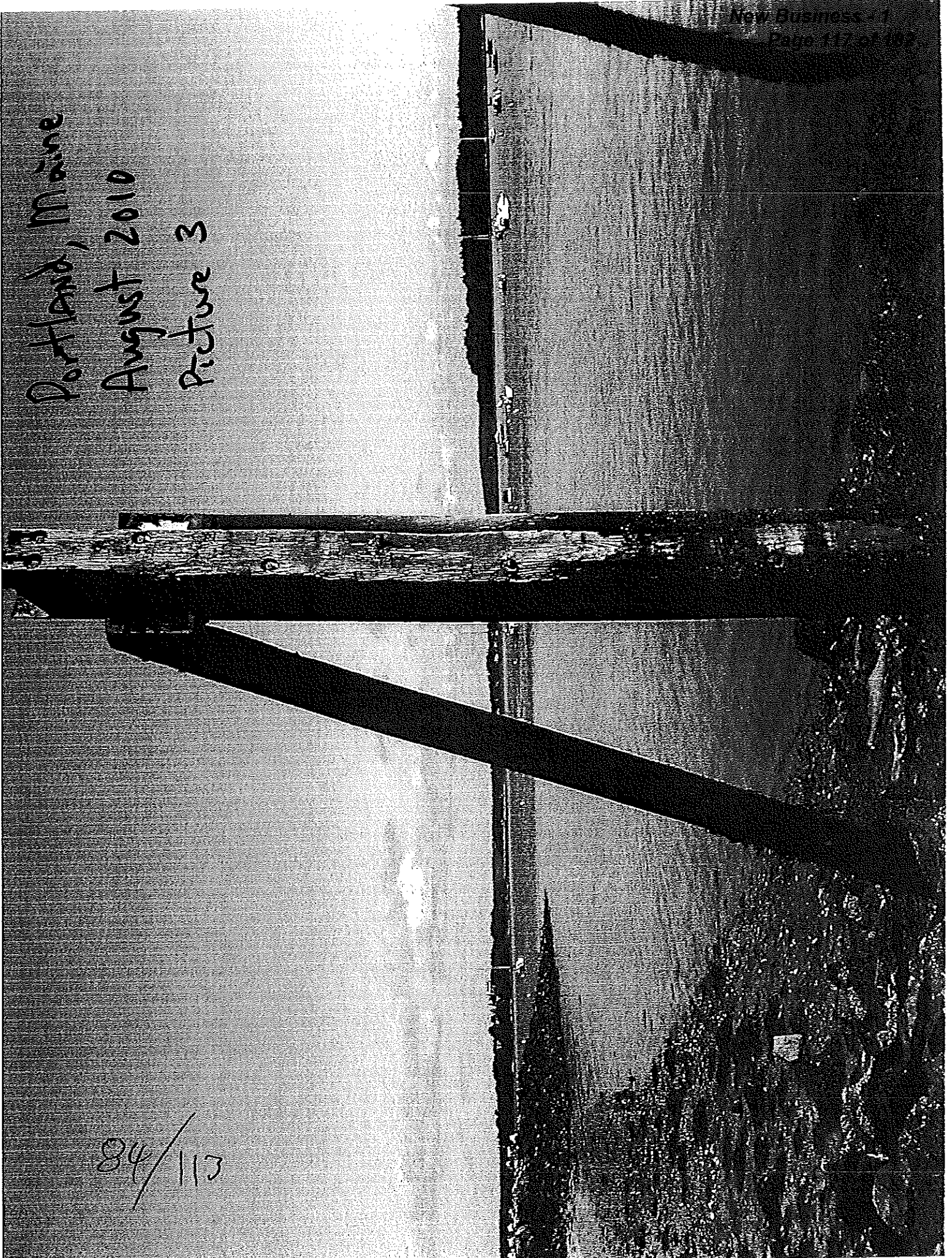
Portland, Maine
August, 2010
Picture 2

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Portland, Maine
August 2010
Picture 3

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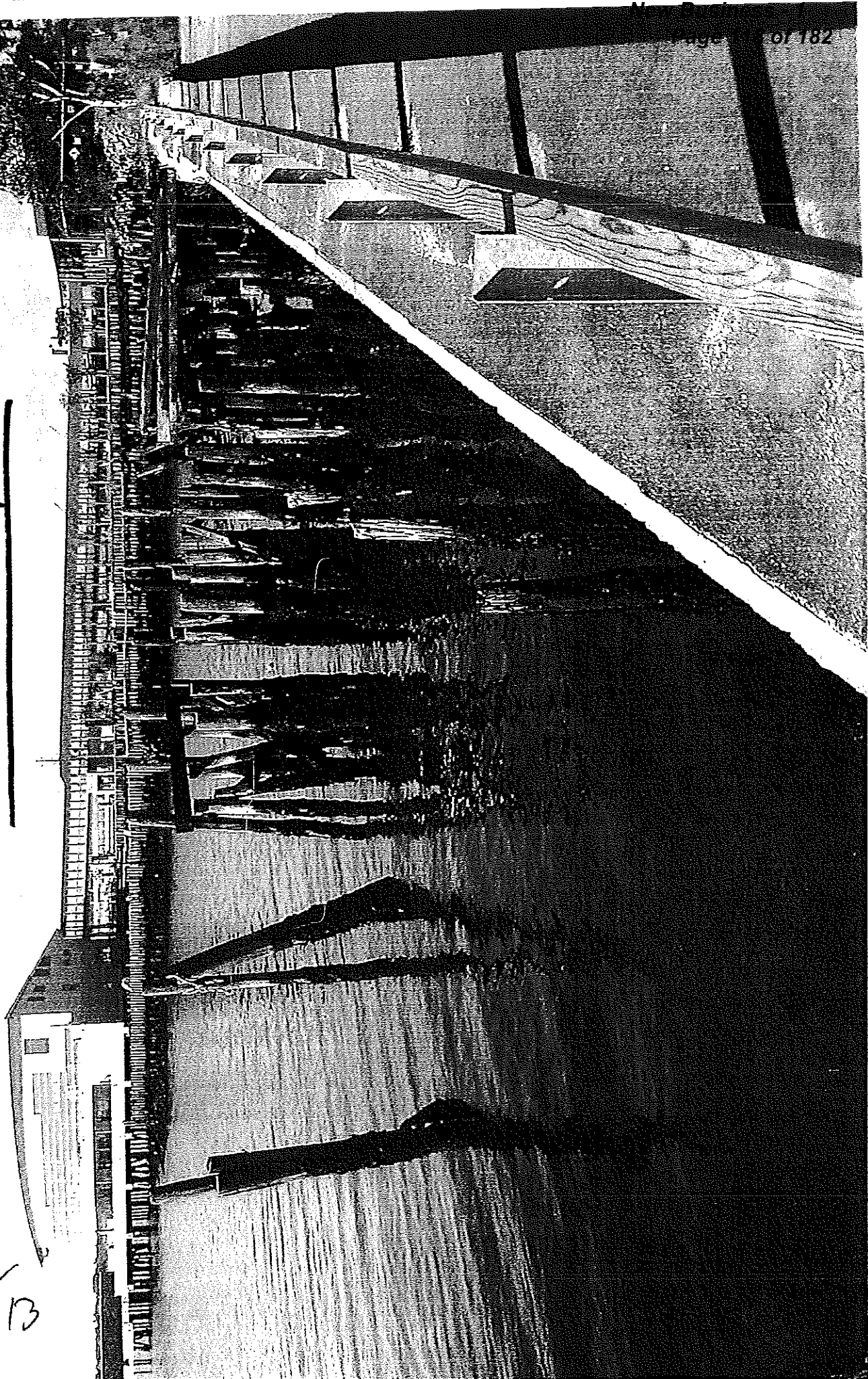


Portland, Maine

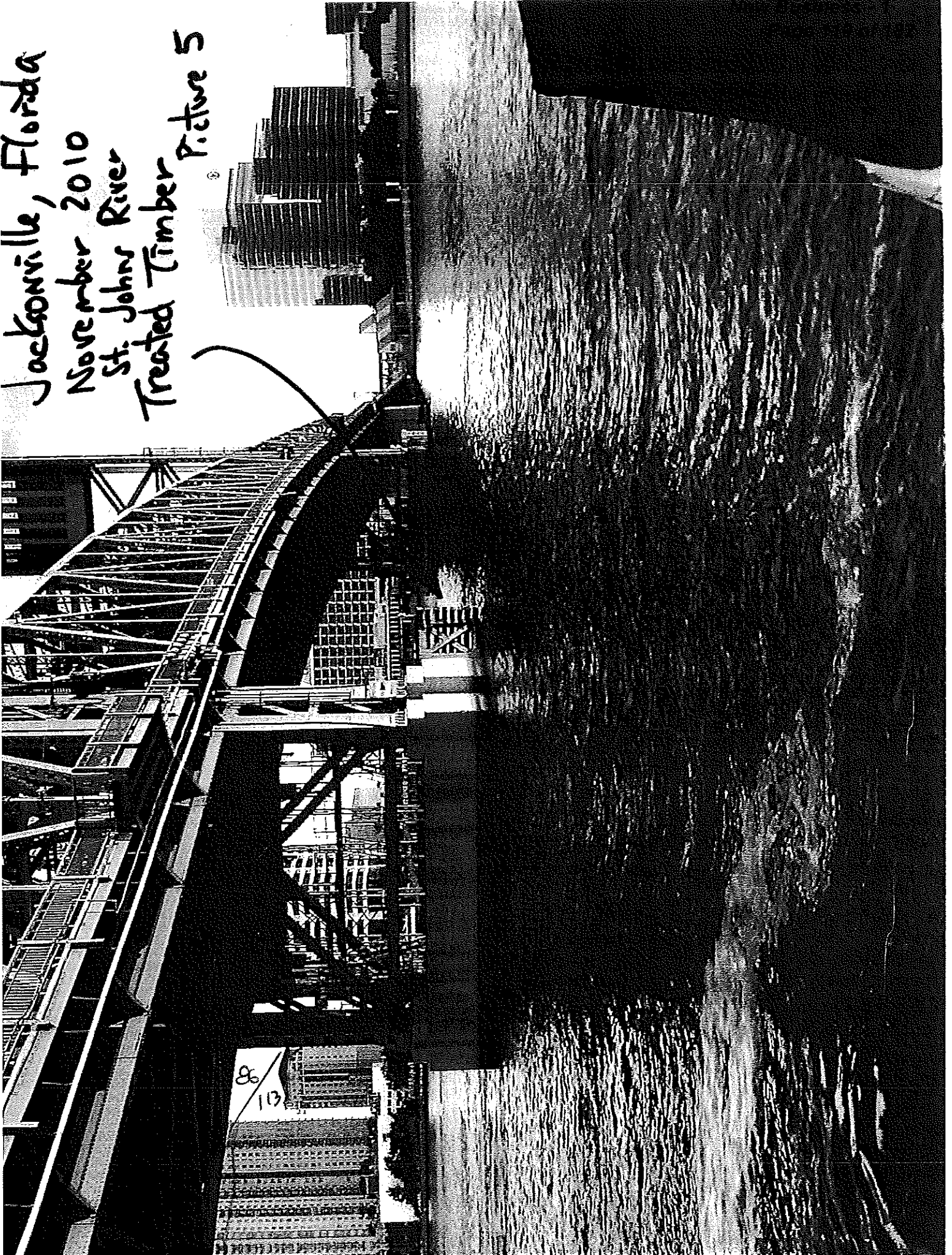
August 2010

Treated Wood Everywhere! Picture 4

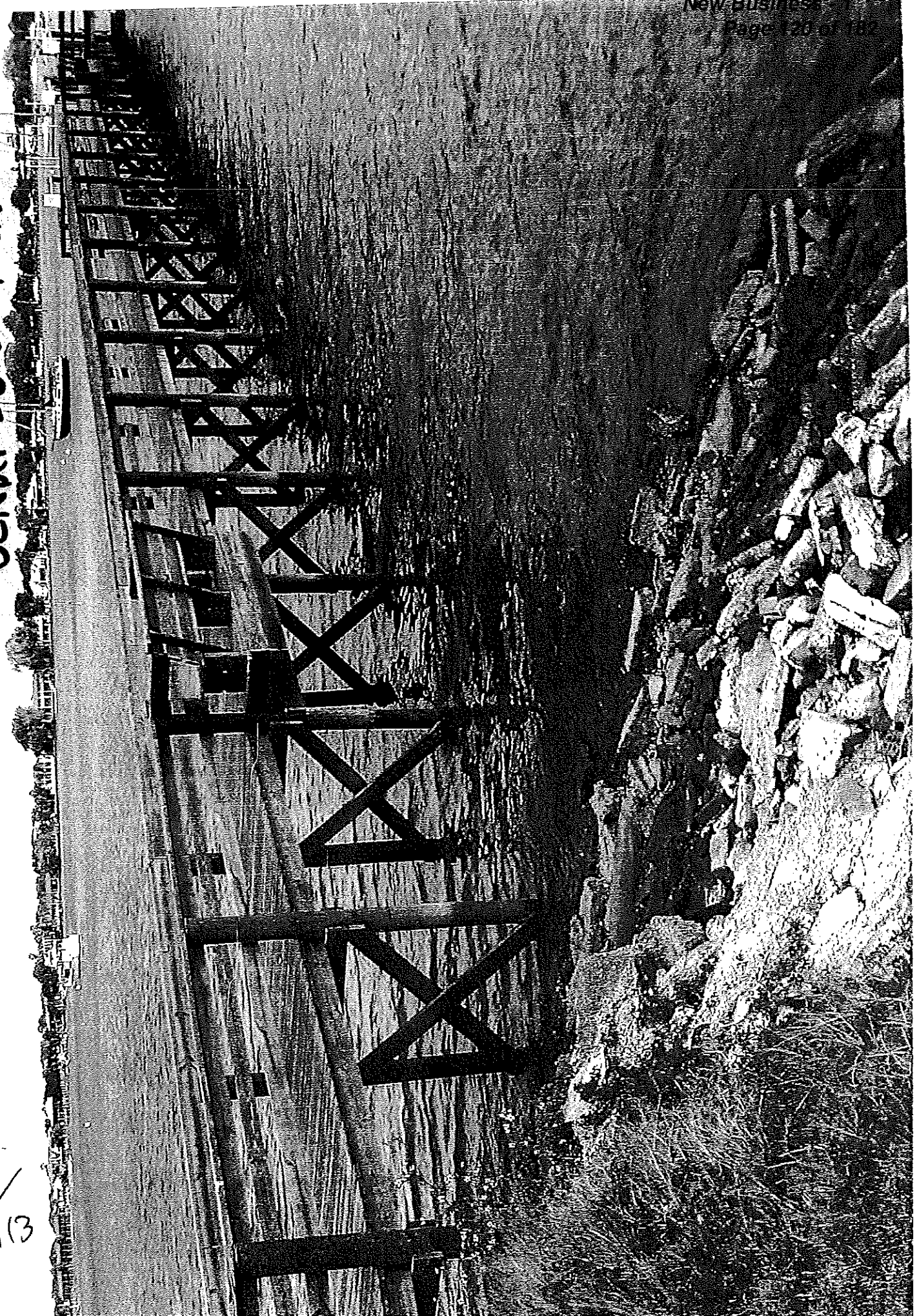
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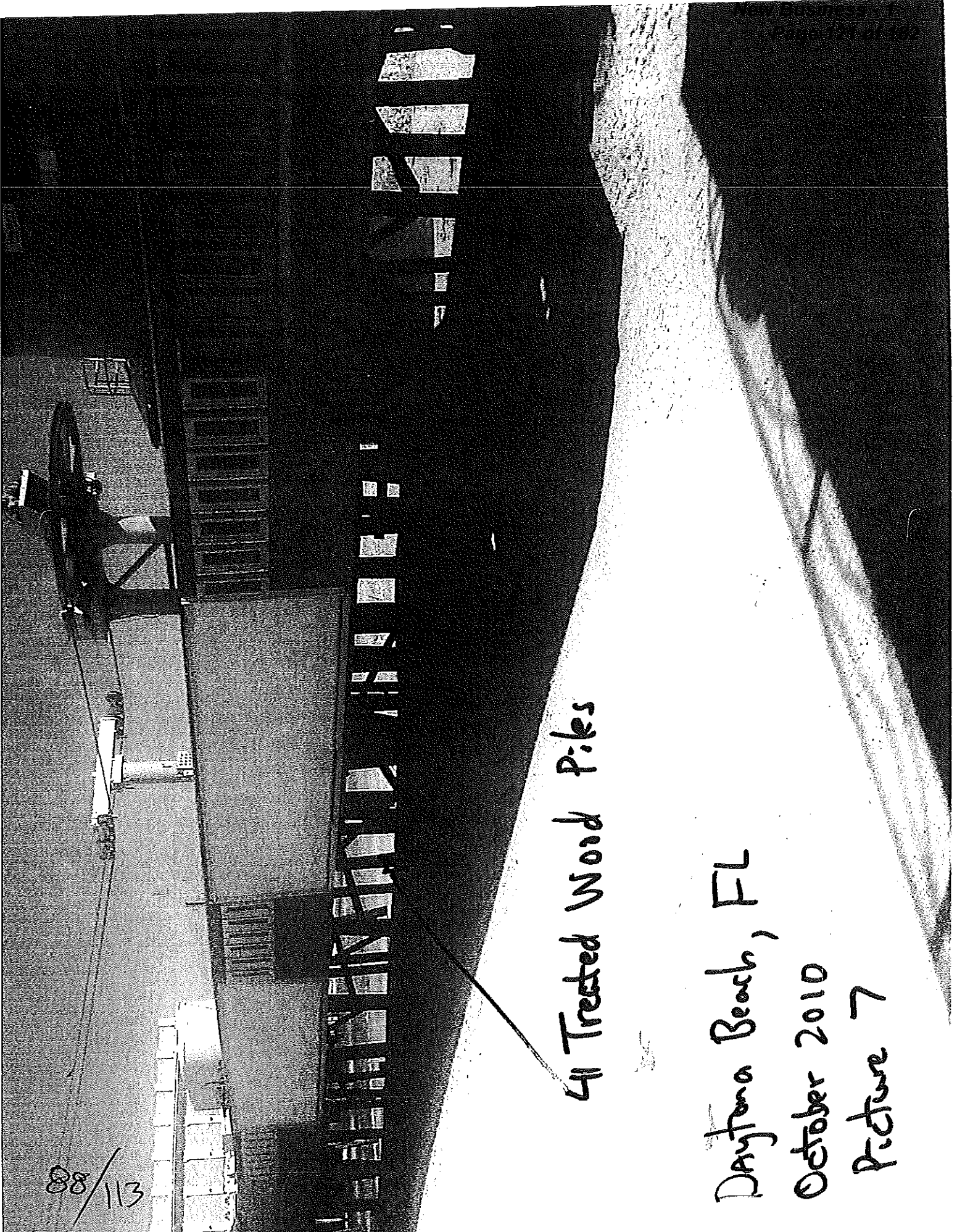
Jacksonville, Florida
November 2010
St. Johns River
Treated Timber
Picture 5



St. Augustine, FL
October 2010 Picture 6



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41 Treated Wood Piles

Daytona Beach, FL
October 2010
Picture 7

Universal Studios

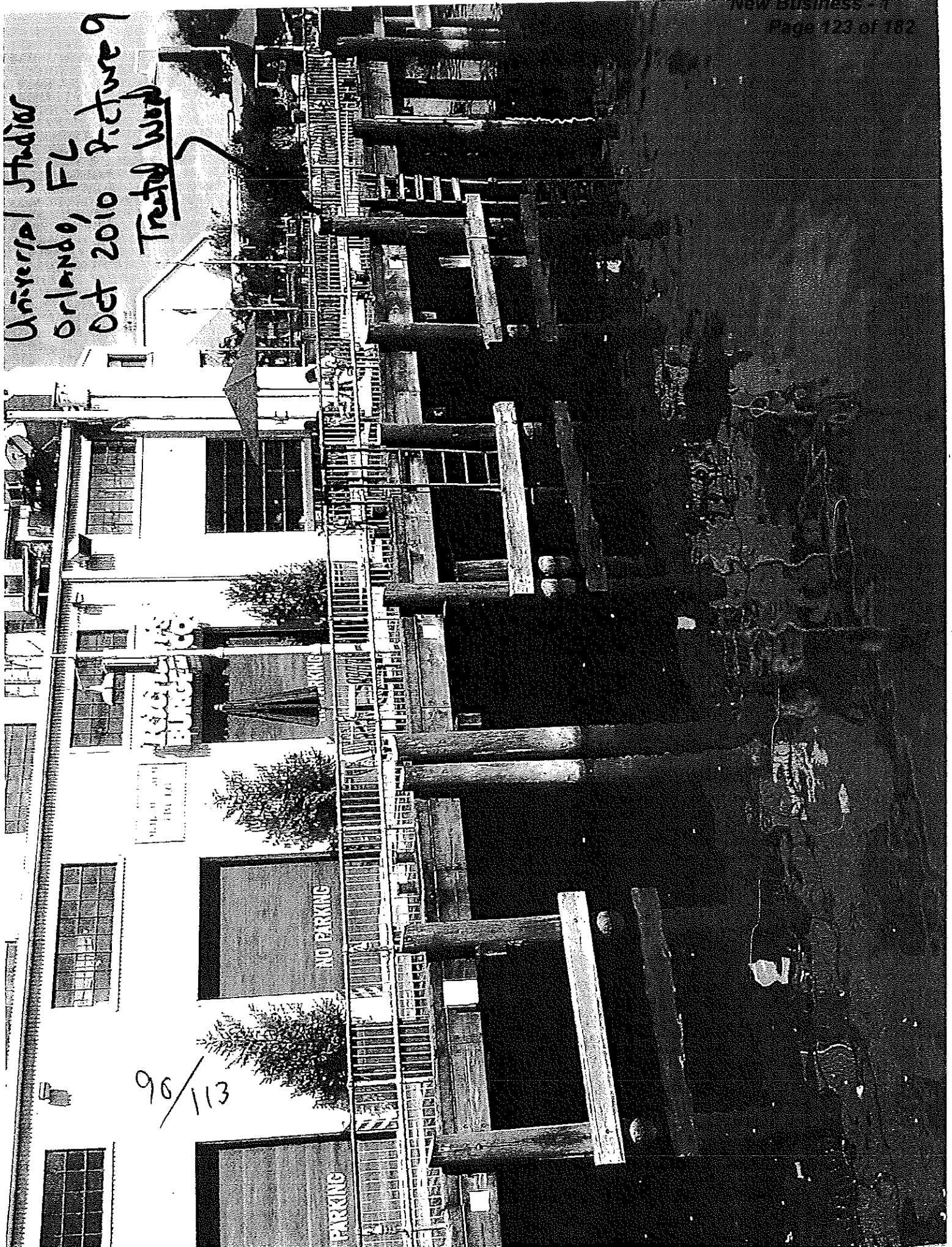
Orlando, Florida

Treated Timber - Picture 8

October 2010

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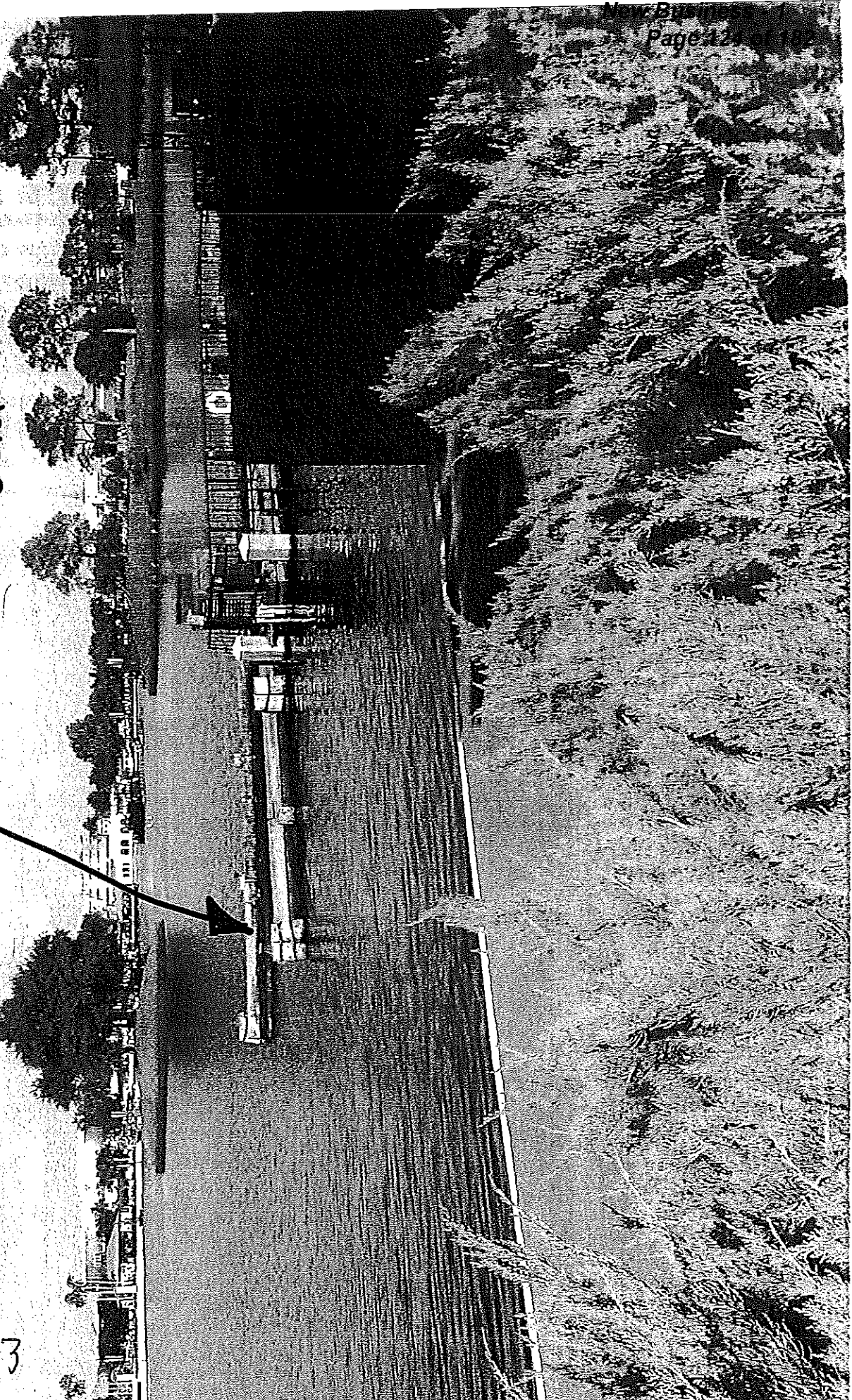
Universal Studios
Orlando, FL
Oct 2010 Picture 9
Treated wood



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EPCOT
Walt Disney World
Orlando, FL
October 2010 Picture 10

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Treated Wood

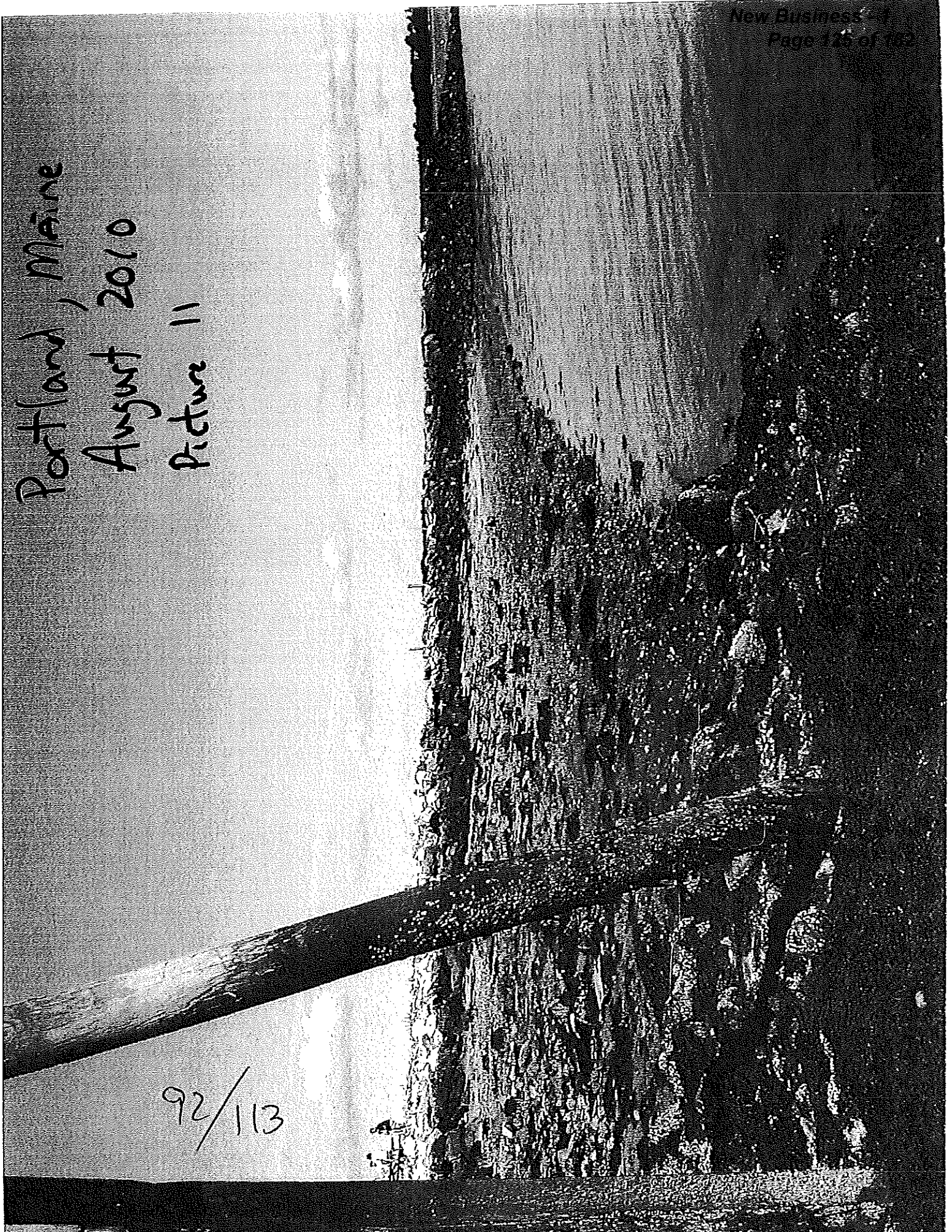


Portland, Maine

August 2010

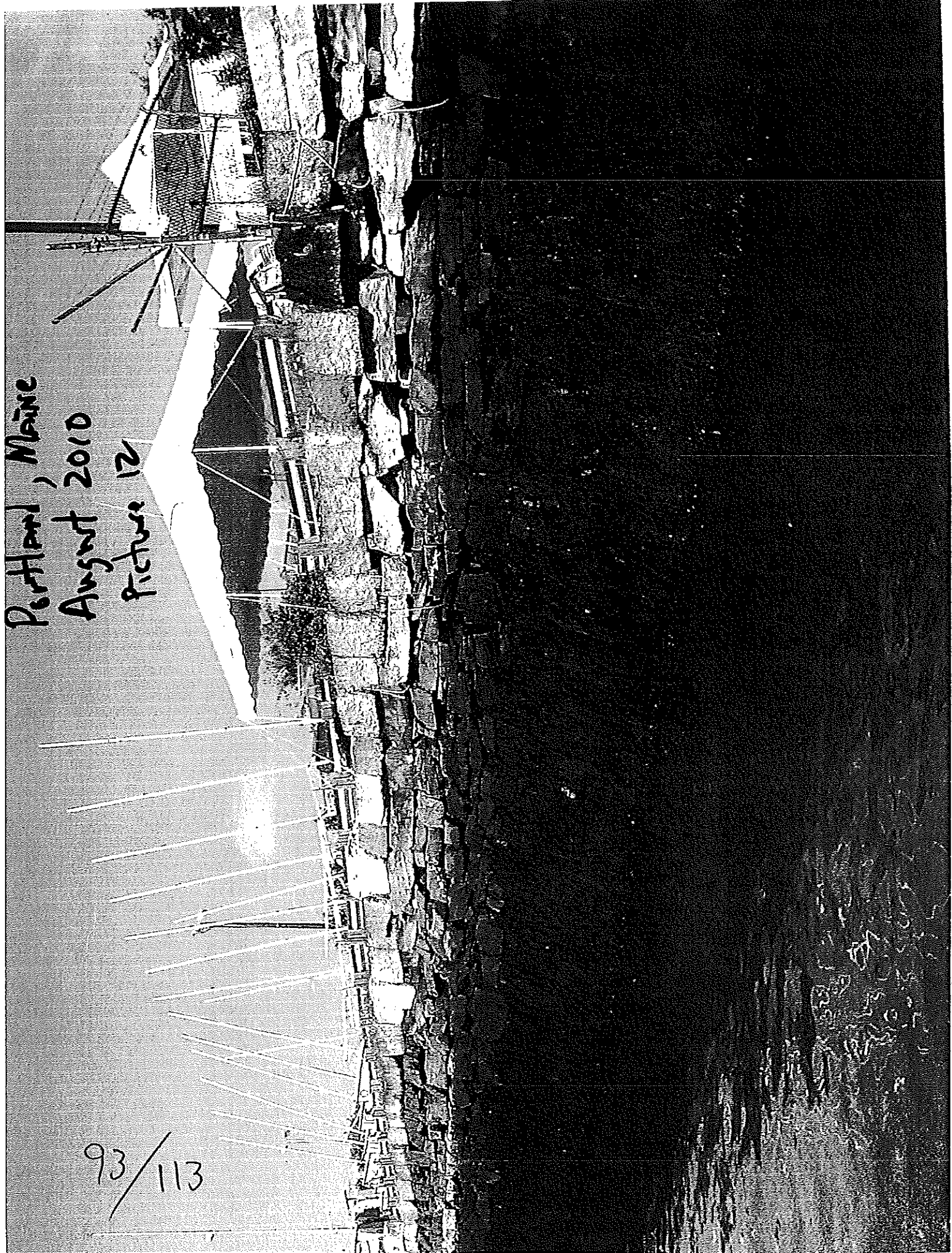
Picture 11

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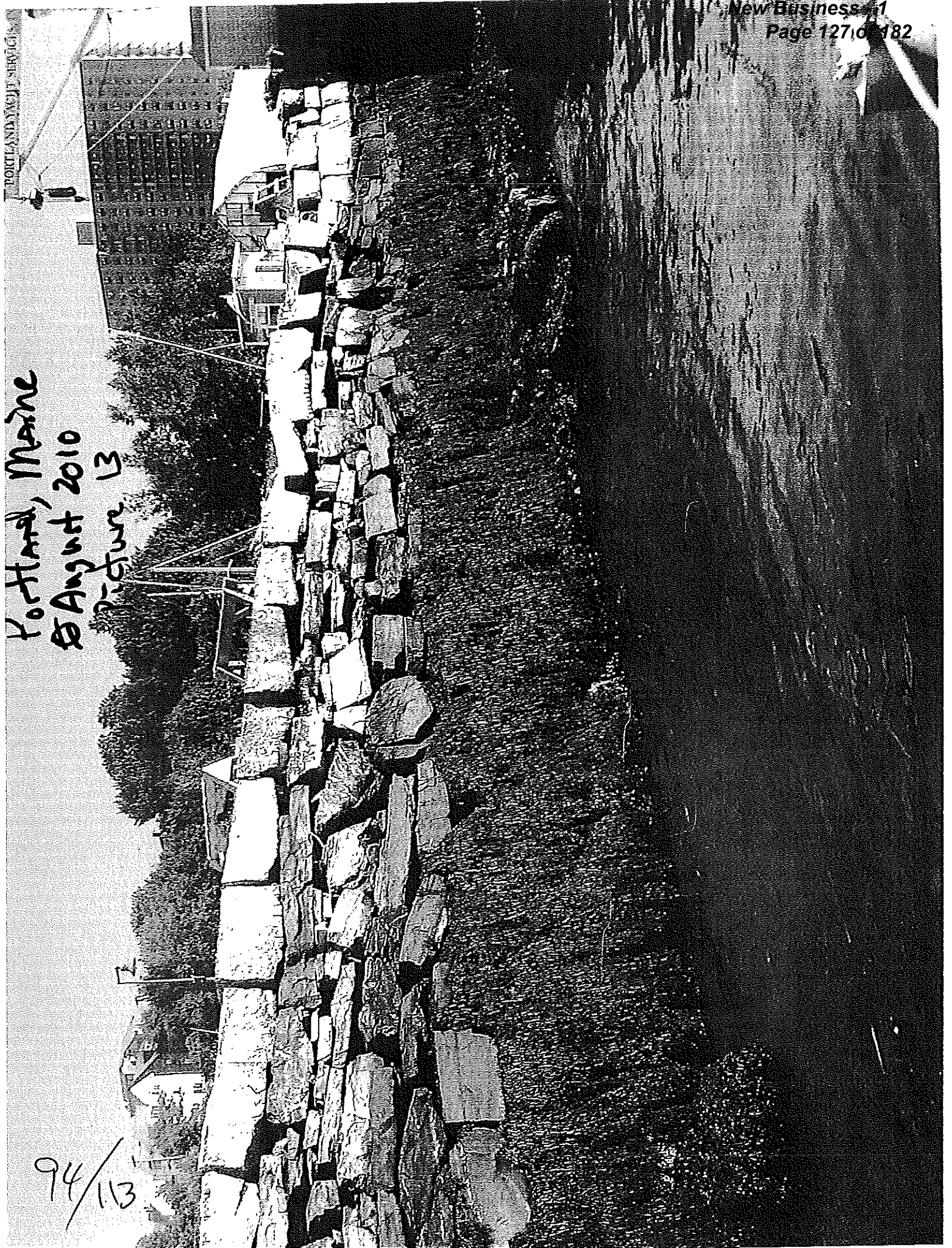
Portland, Maine
August 2010
Picture 12

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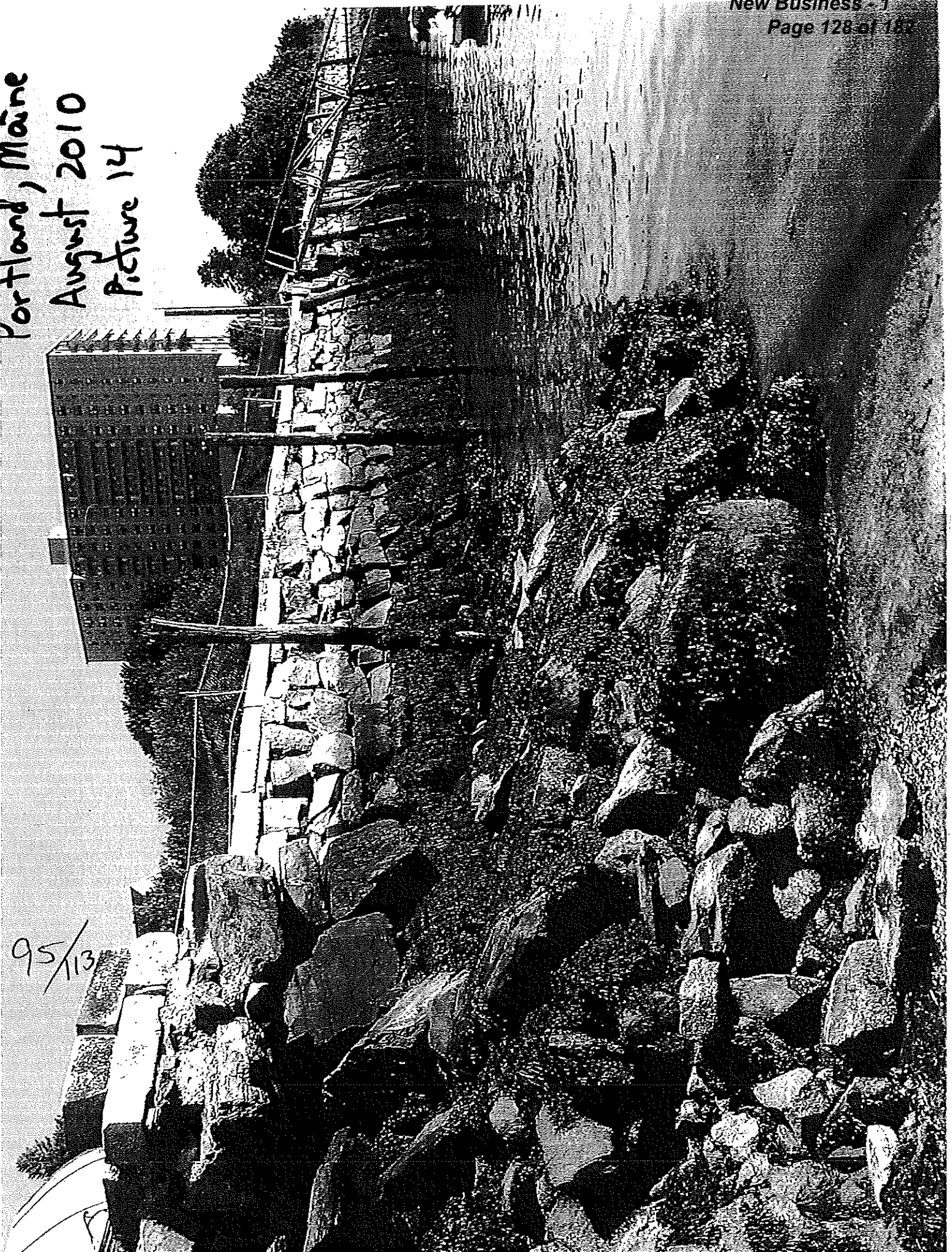
Portland, Maine
8 August 2010
Picture 13

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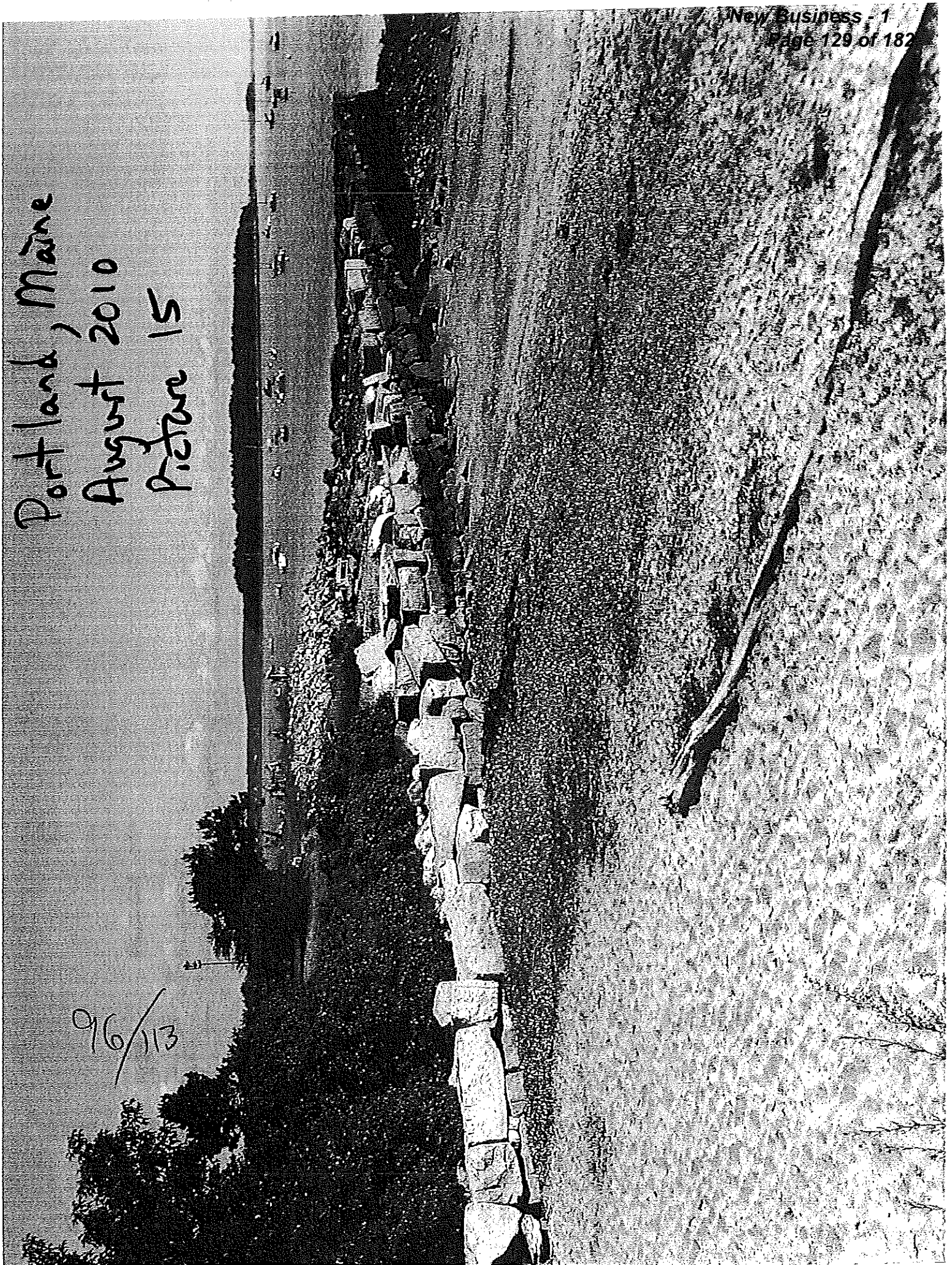


Portland, Maine
August 2010
Picture 14

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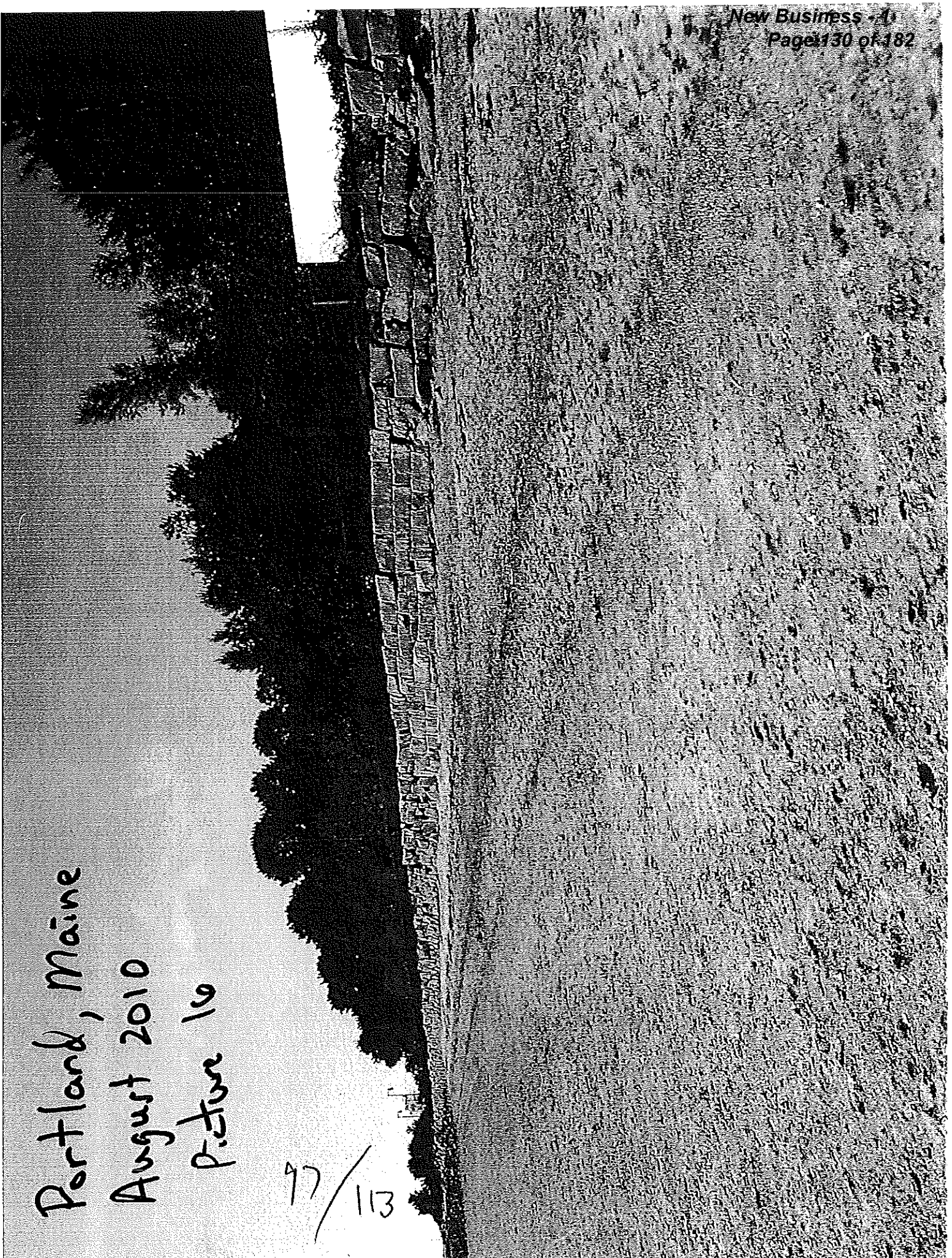
Portland, Maine
August 2010
Picture 15



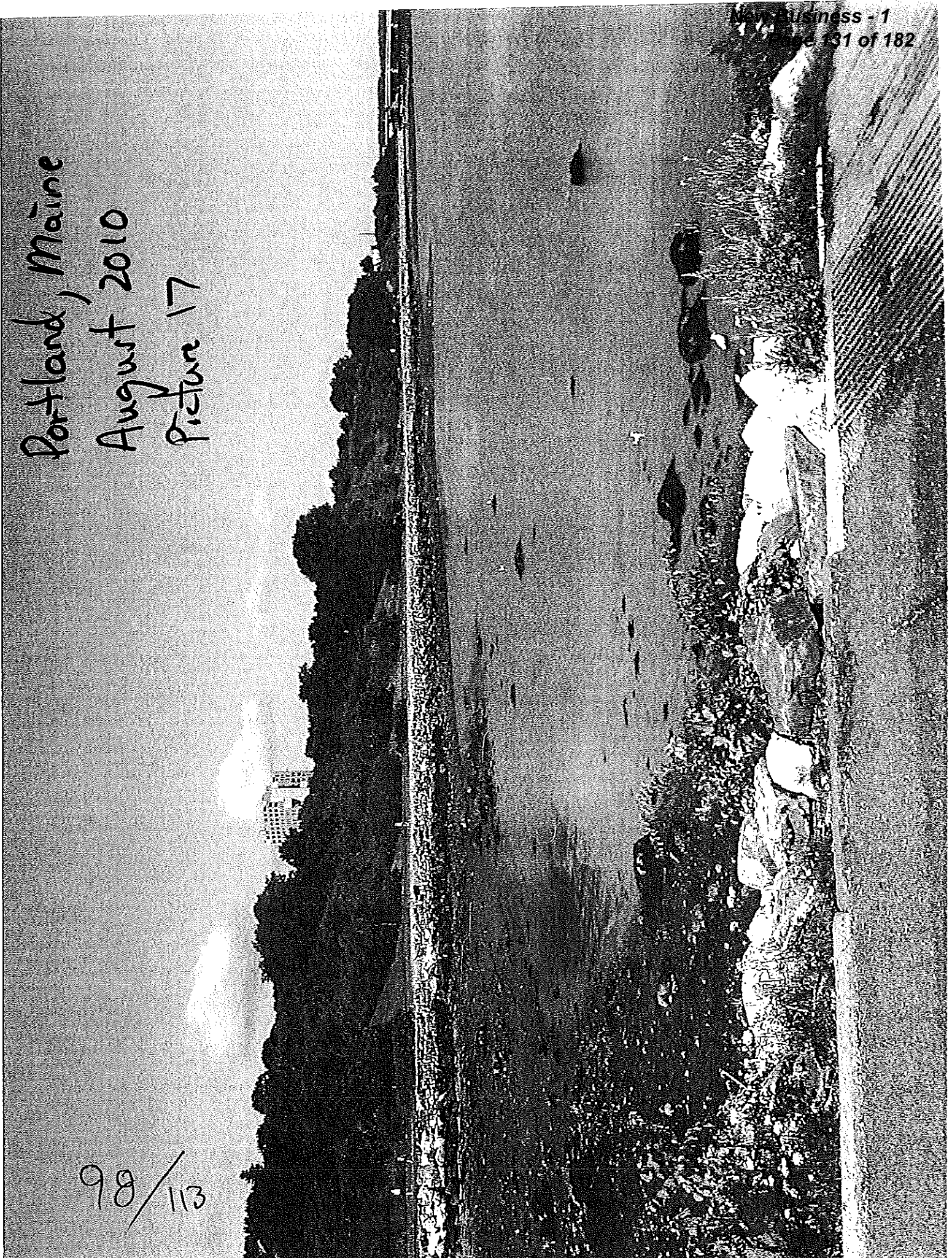
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Portland, Maine
August 2010
Picture 16

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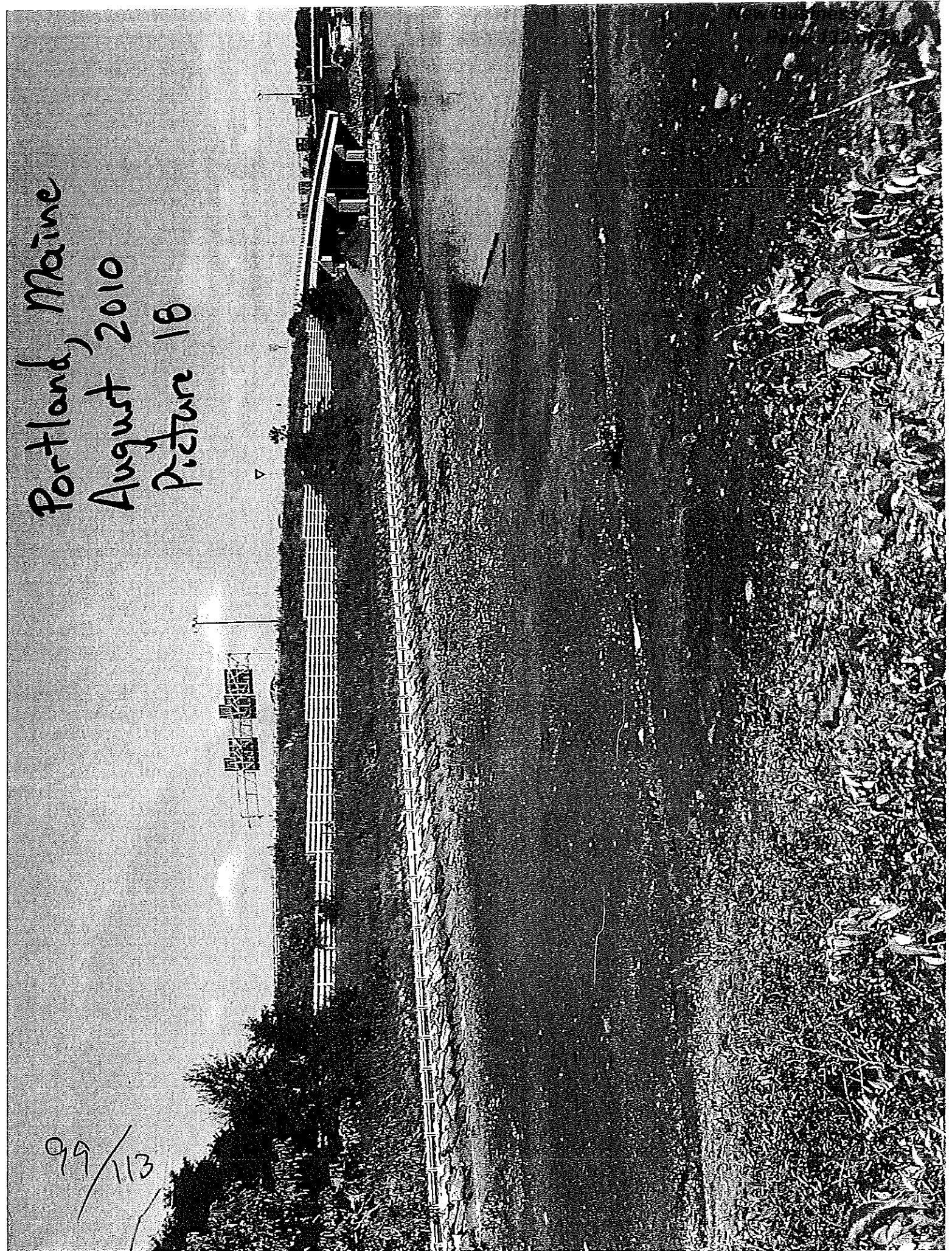
Portland, Maine
August 2010
Picture 17



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Portland, Maine
August 2010
Picture 18

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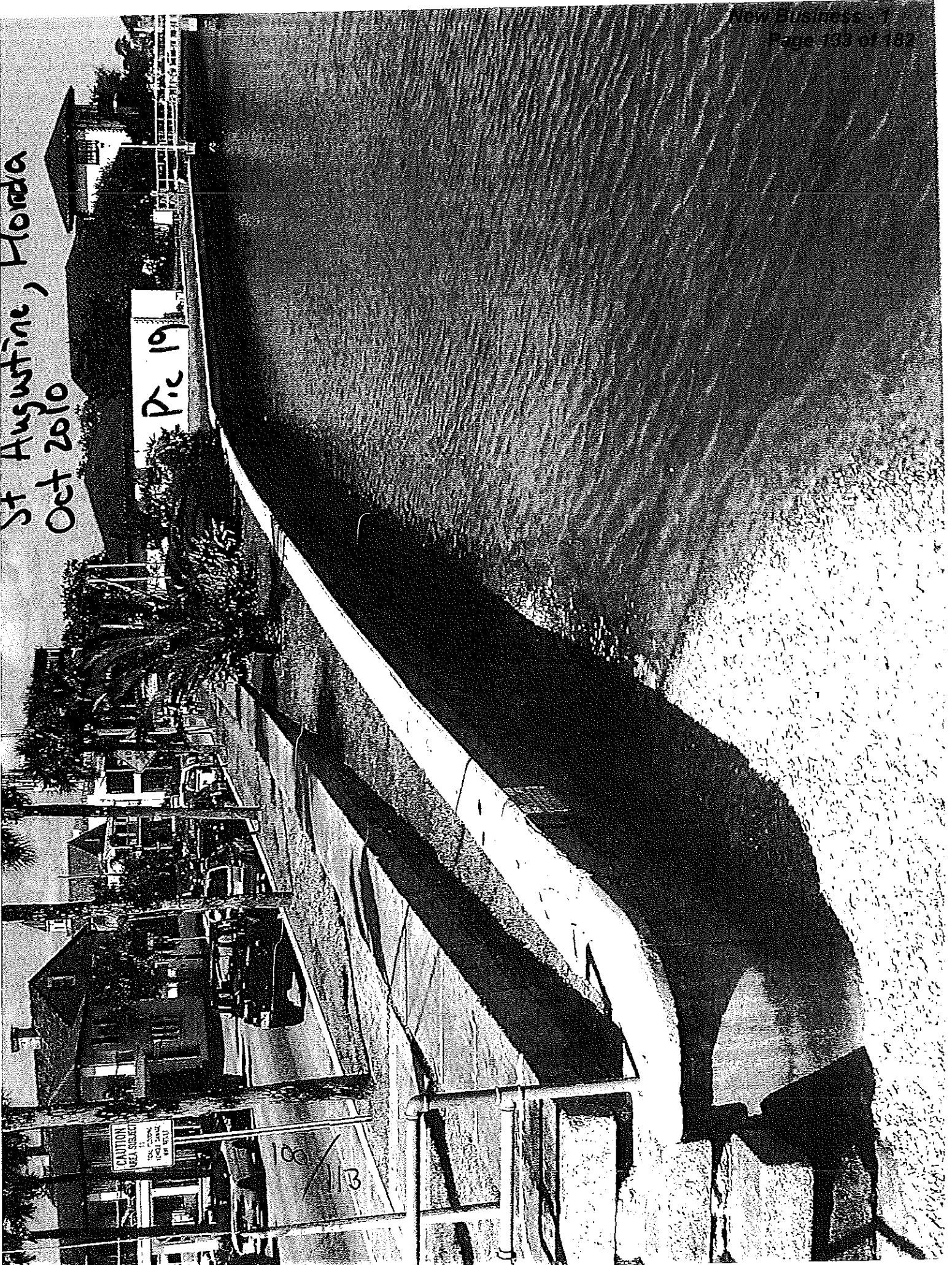


St Augustine, Florida
Oct 2010

Pic 19

CAUTION
SEA LEVEL
FOR PARKING
FOR TRUCKS
AND BUSES

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St. Augustine, FL
Oct 2010
Pic 20

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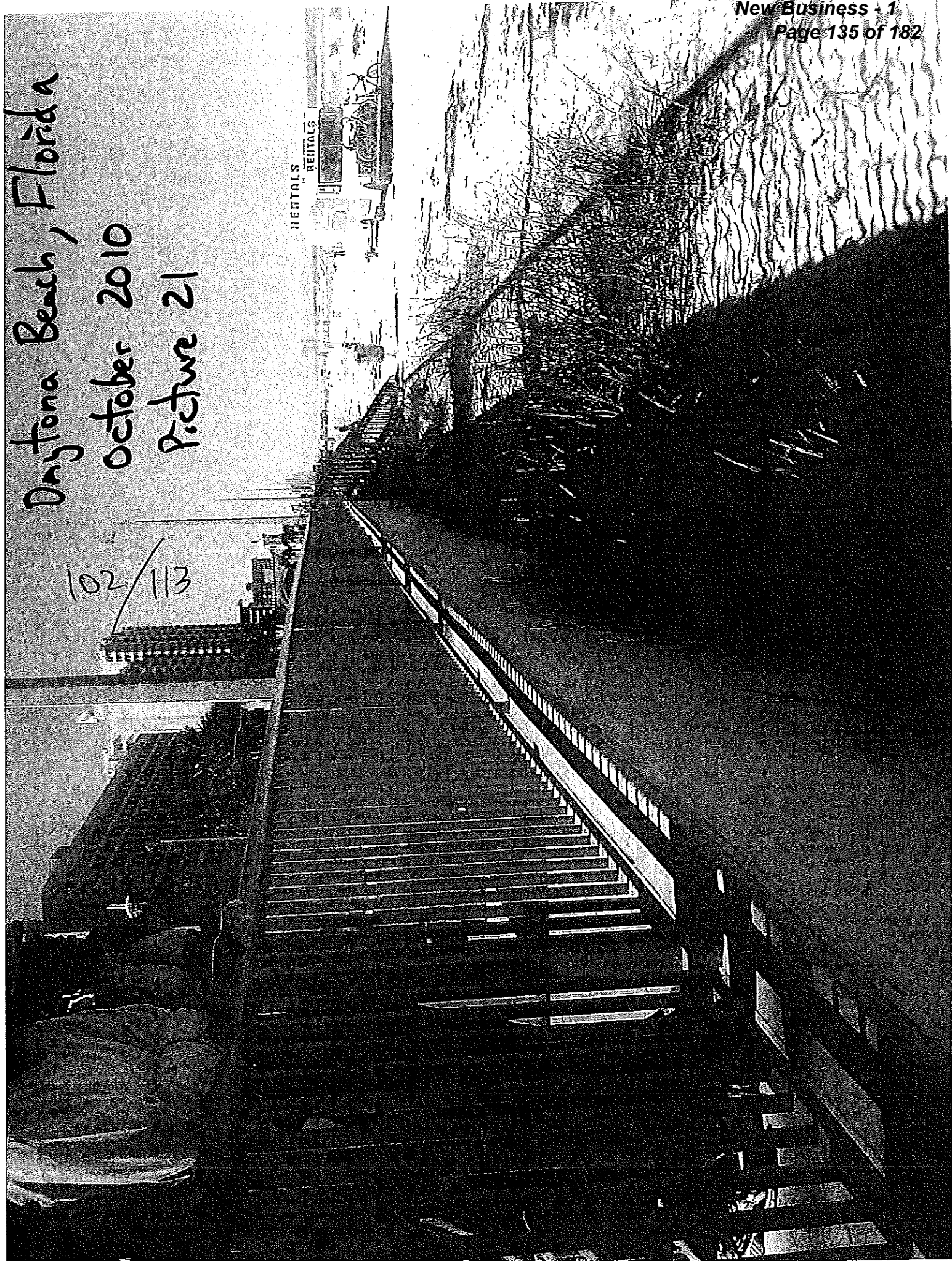


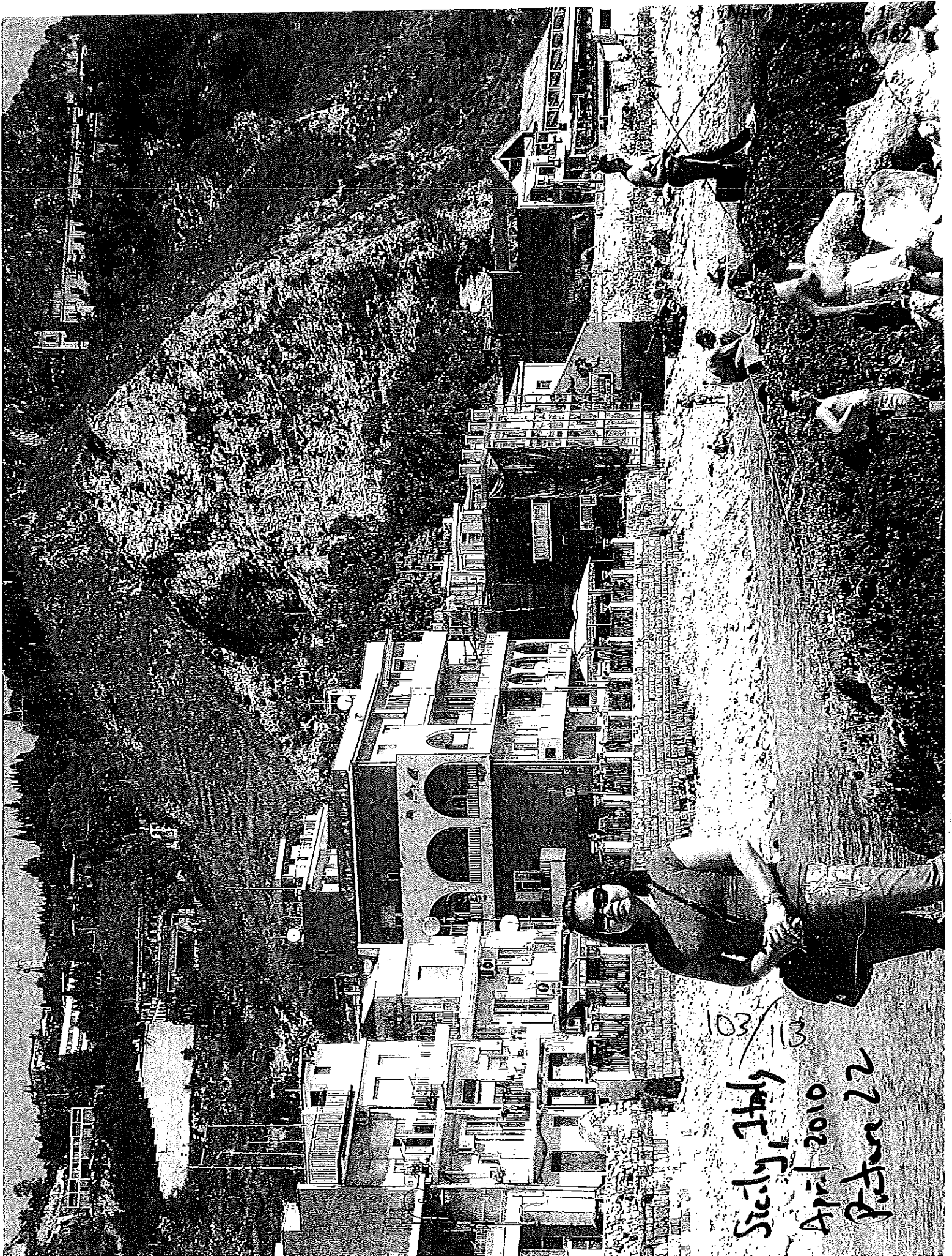
Daytona Beach, Florida

October 2010

Picture 21

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Sicily, Italy

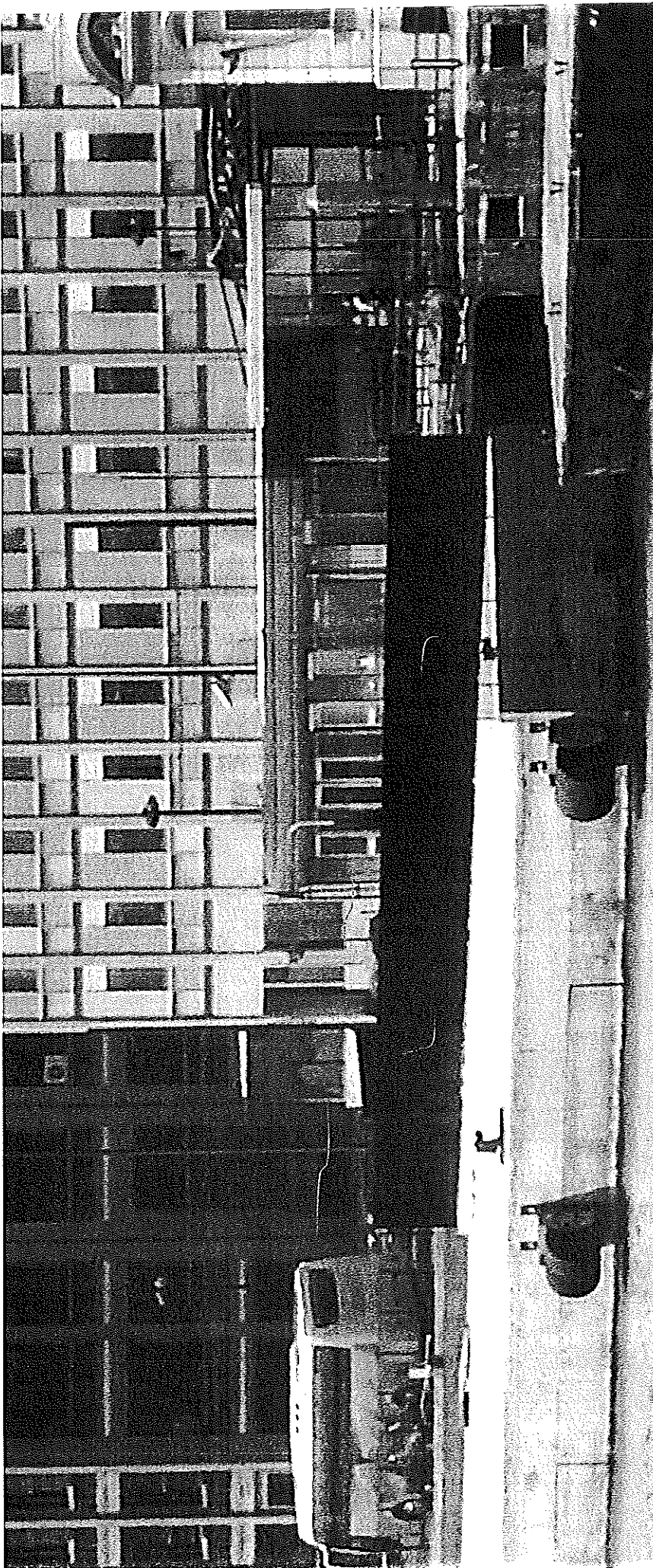
April 2010

Picture 22

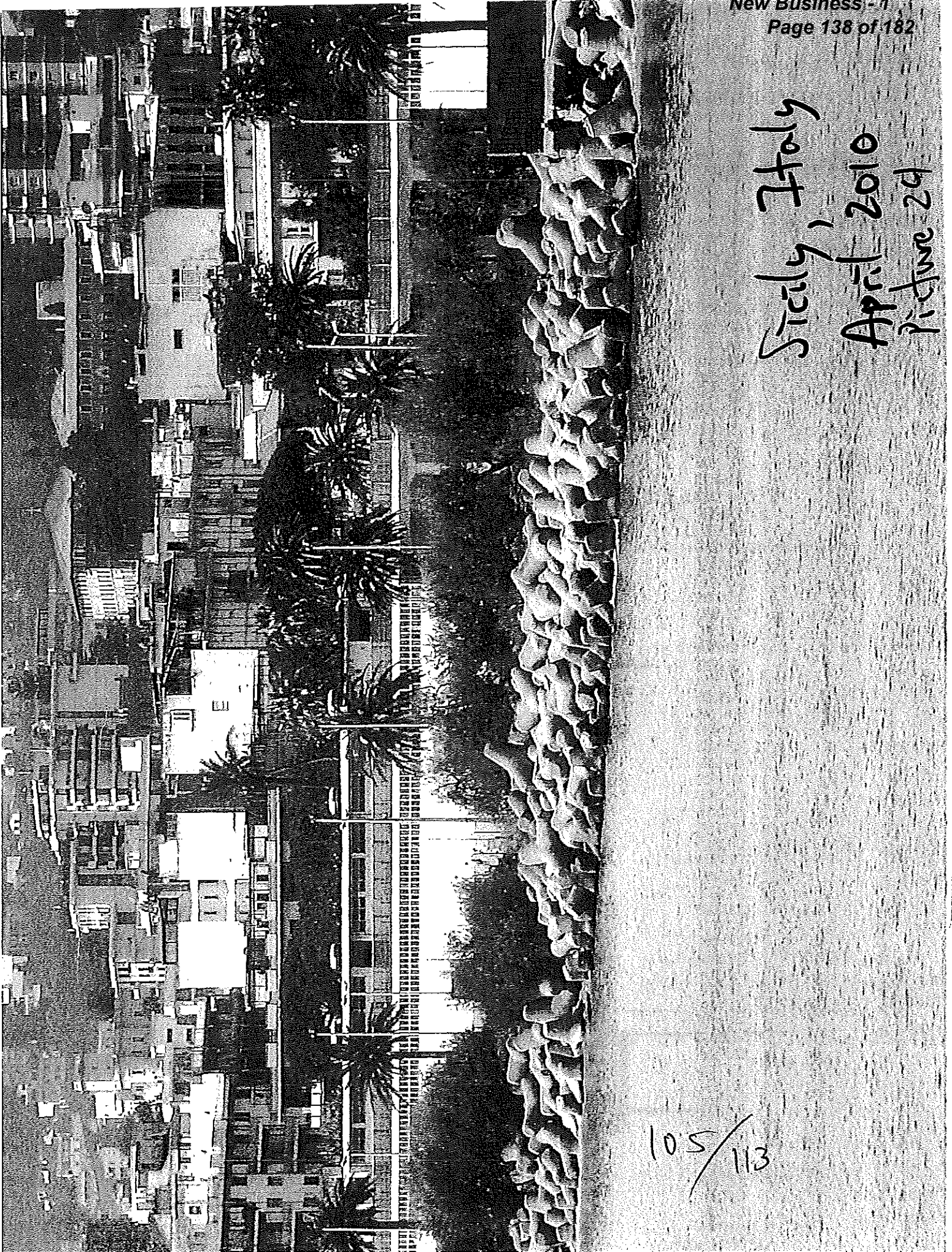
Sicily, Italy

April 2010

Picture 23



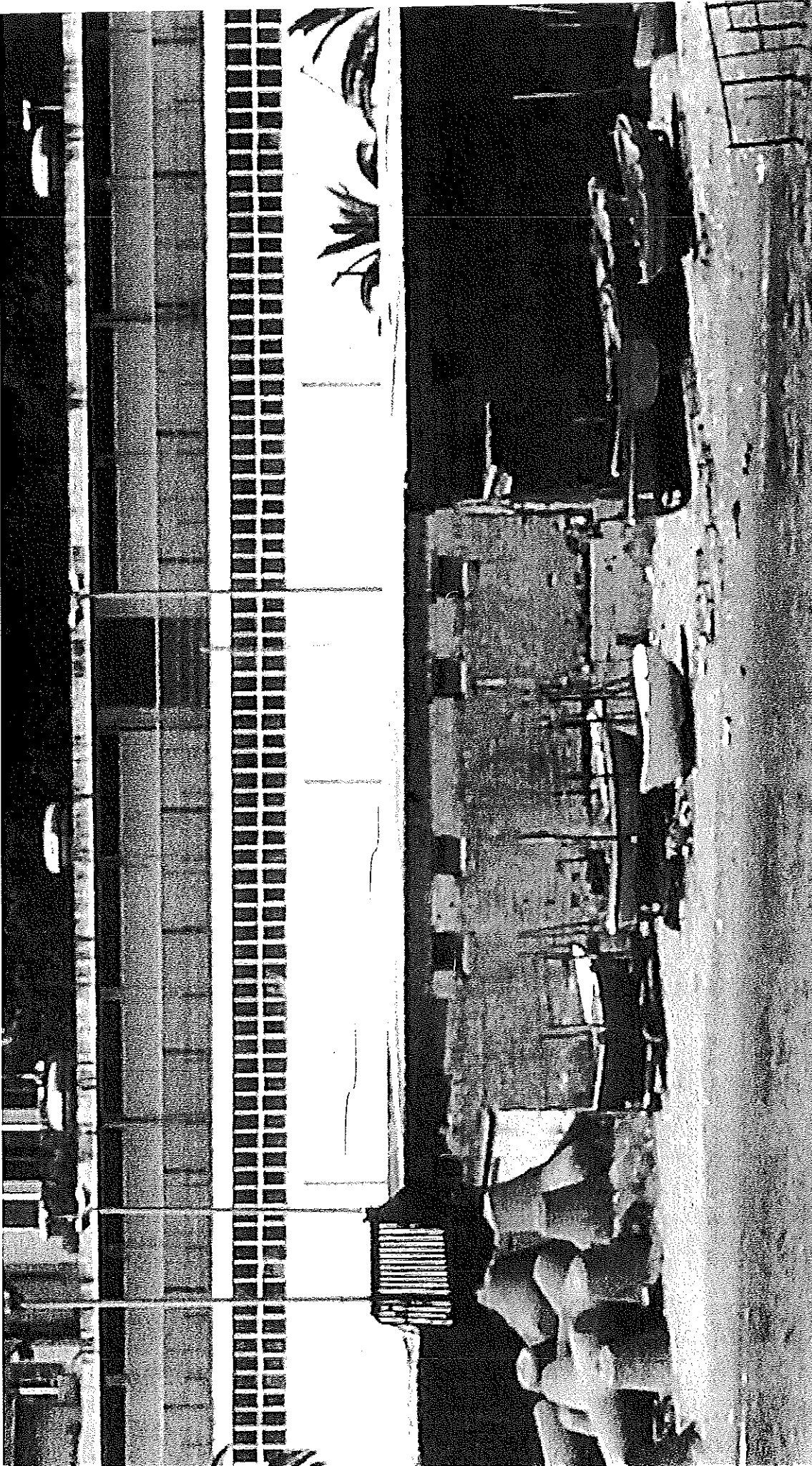
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Sicily, Italy
April 2010
Picture 29

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Sicily, Italy
April 2010
Picture 25

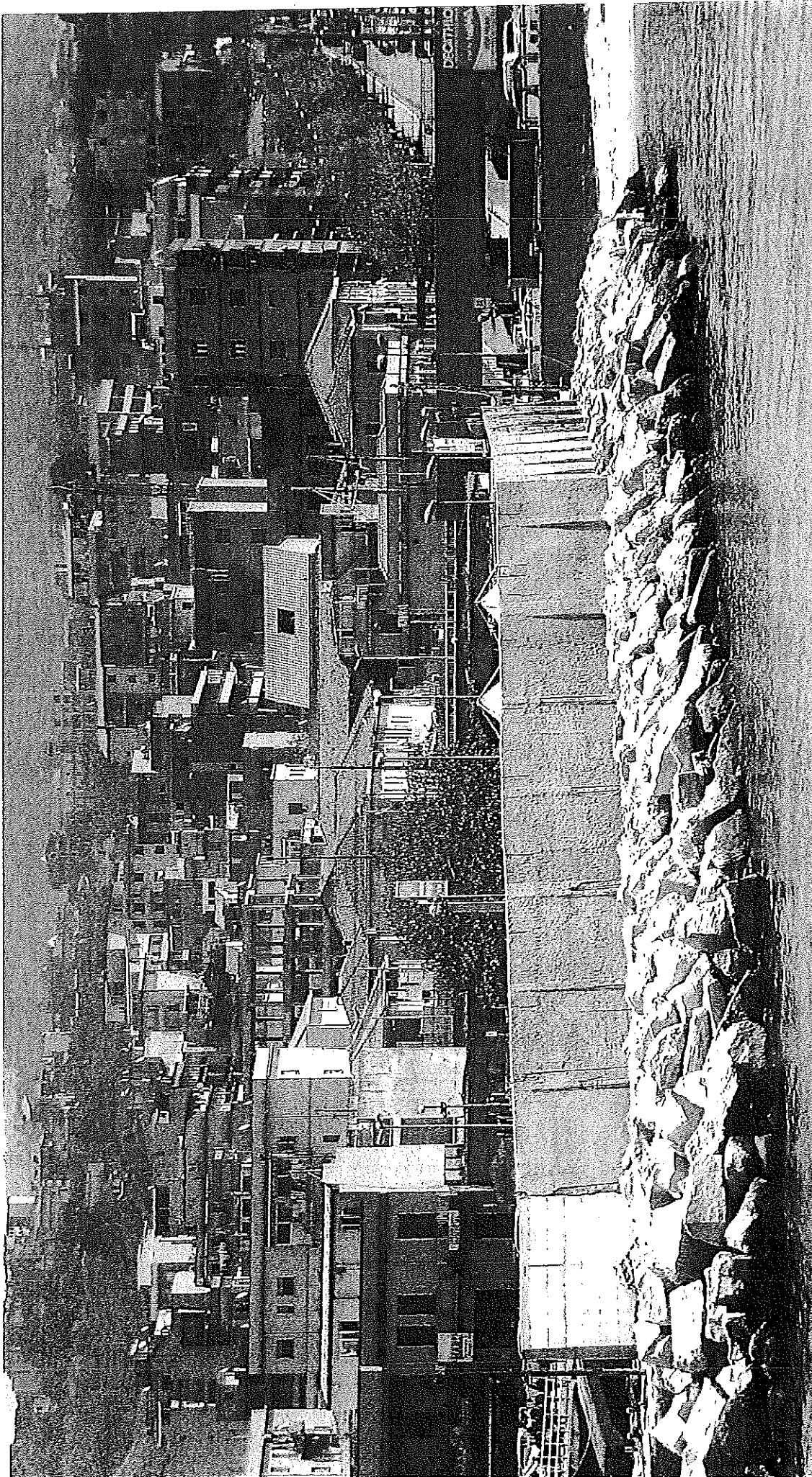


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Sicily, Italy
April 2010
Pic 26



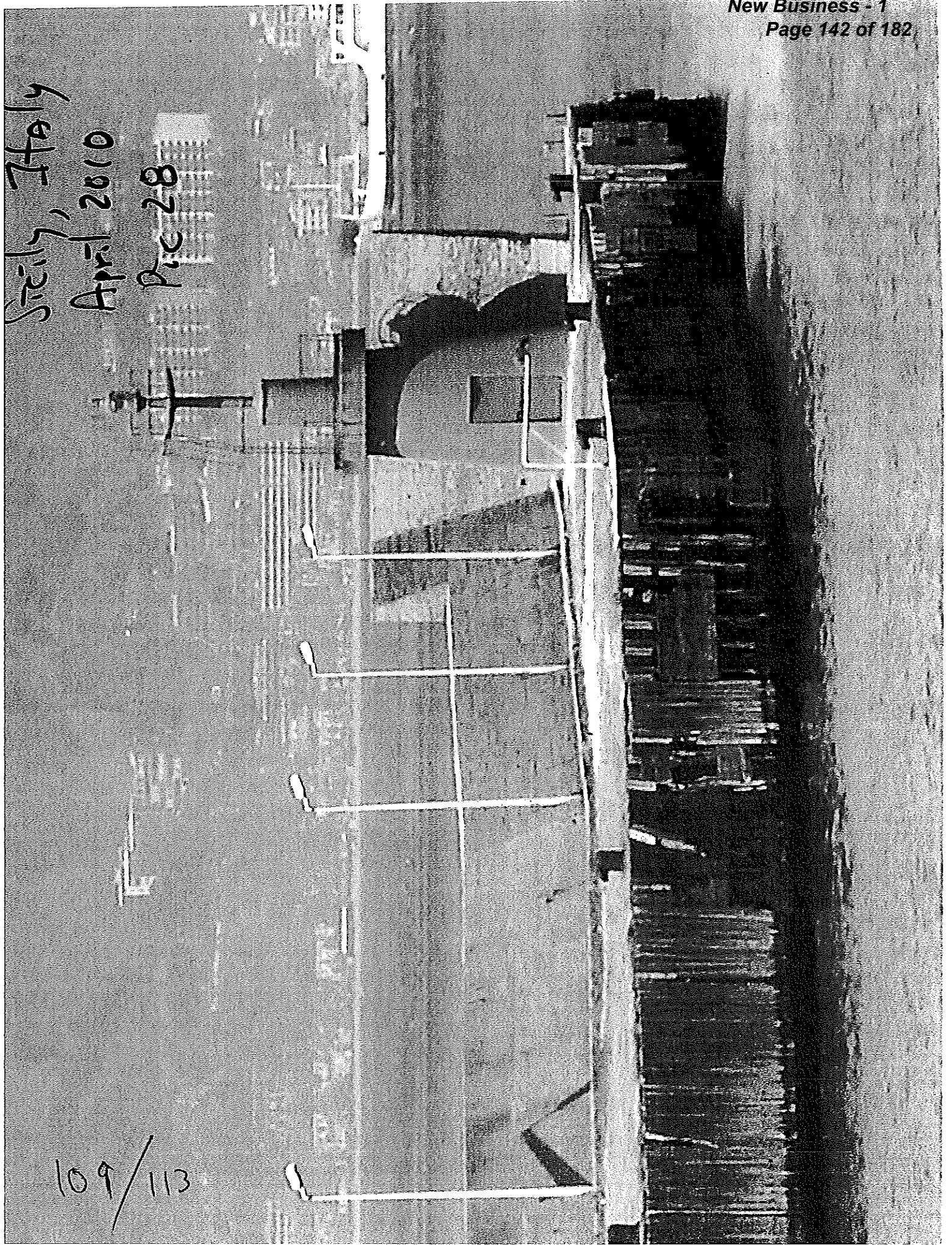
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Stedly, Holly
April 2010
Pic 27

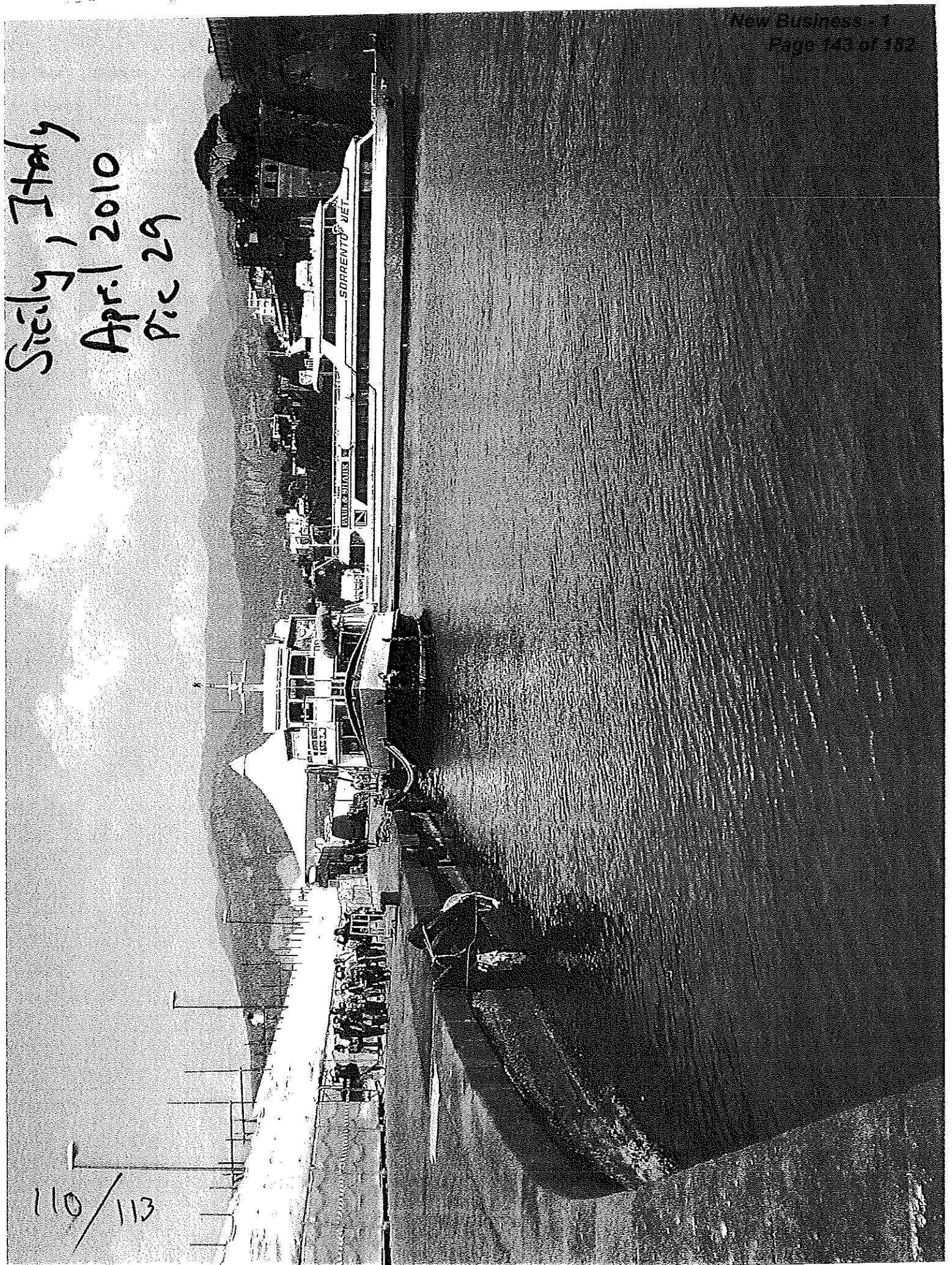
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Sicily, Italy
April 2010
Pic 28



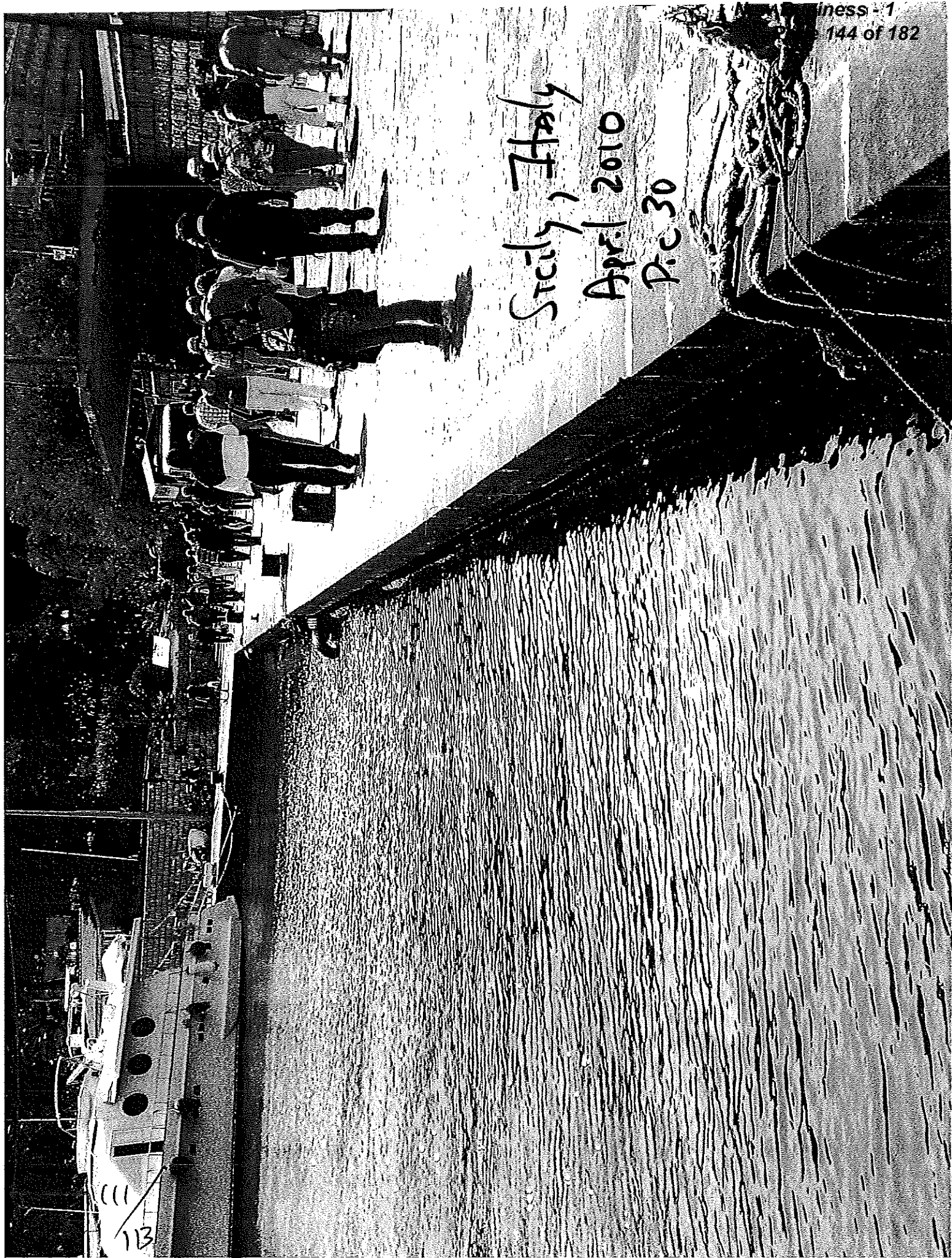
109/113

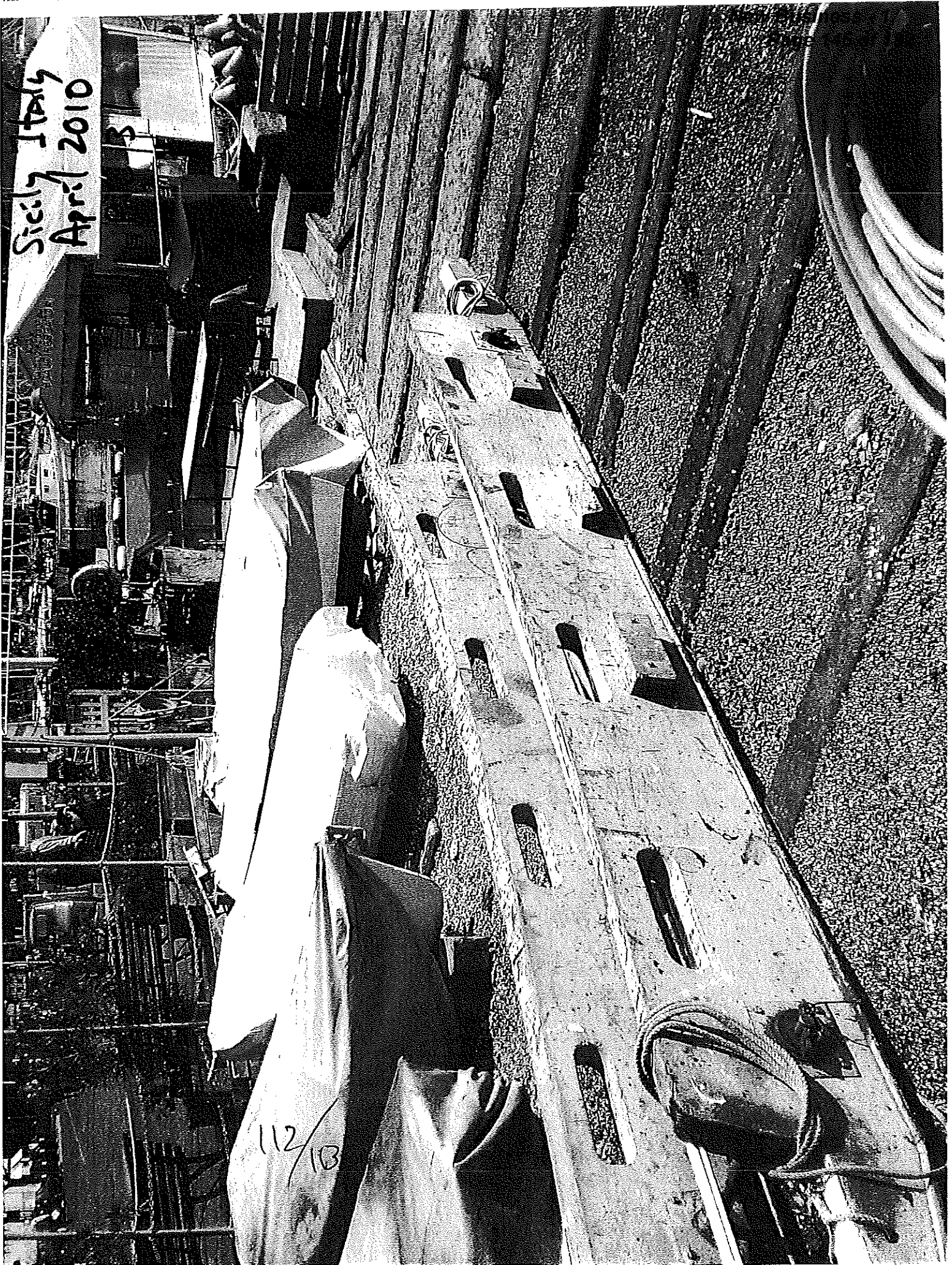
Sicily, Italy
Apr. 1 2010
Pic 29



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Sticly, Italy
April 2010
P.C. 30



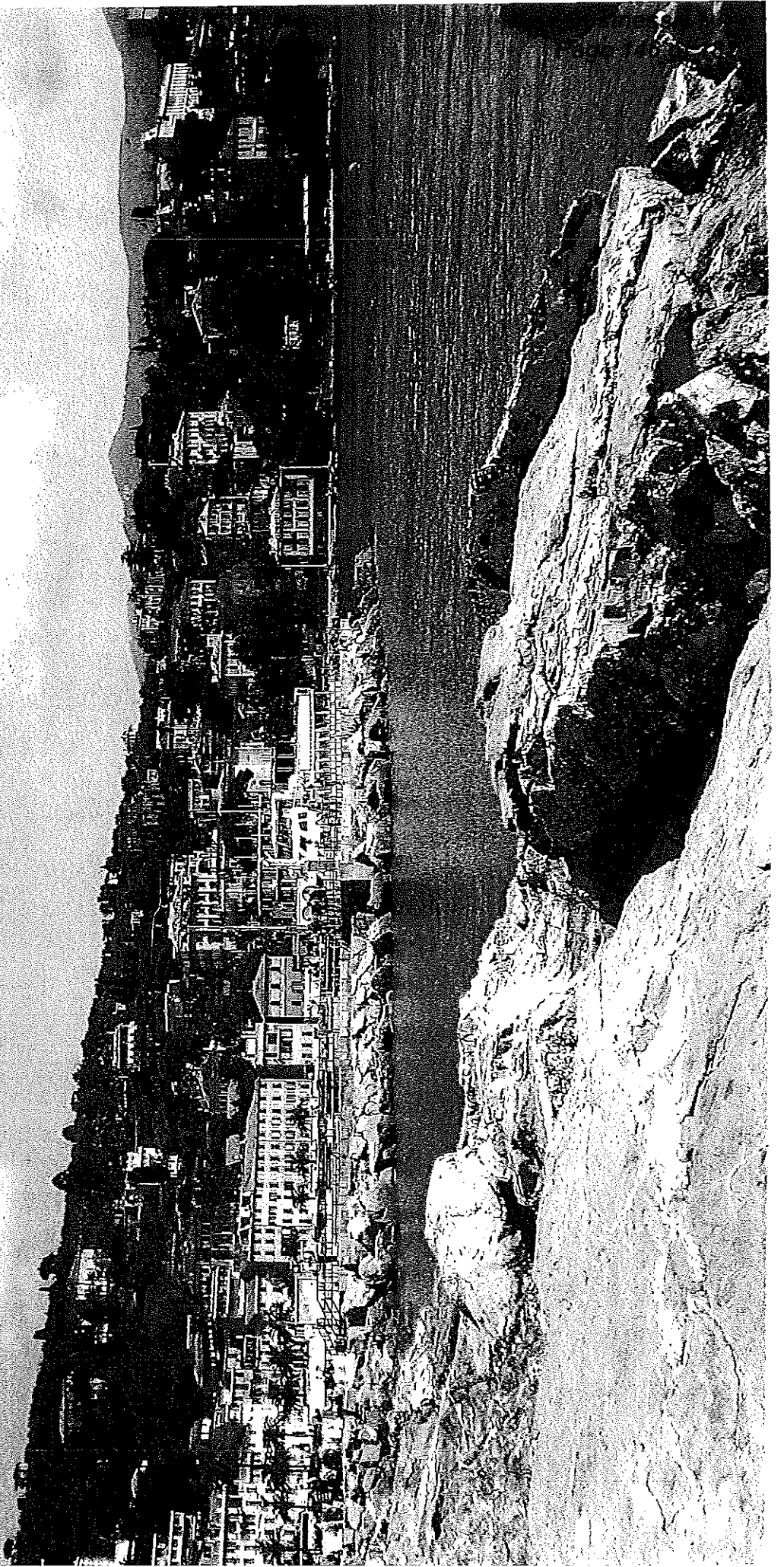


Sicily Italy
April 2010

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Sicily, Italy
April 2010
Pic 32

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COMMUNITY DEVELOPMENT DEPARTMENT

City of Gig Harbor Shoreline Master Program Update

TO: Harris Atkins, Chair
Gig Harbor Planning Commission

FROM: Tom Dolan, Planning Director 
Gig Harbor Planning Department

SUBJECT: Robert Frisbie Comments-November 4, 2010 Draft Shoreline Master Program

DATE: January 6, 2011

On November 18, 2010, the Planning Commission conducted a public hearing on the city's proposed draft November 4, 2010 Shoreline Master Program (SMP). Robert Frisbie, 9720 Woodworth Avenue, Gig Harbor, WA, 98332, submitted comments on the draft master program.

The following is a review of the comments together with a city response to each of the issues identified.

1. **Treated Wood Products:** Mr. Frisbie requests that the Commission remove from the draft SMP the "prohibition" on the use of creosote piling in the salt (marine) waters addressed by the draft document. Mr. Frisbie provides numerous exhibits to support his position that are attached to his letter. He suggests that the Commission conduct a public hearing on the "pros and cons" of using treated wood in the marine environment. He also suggests proposed language to address the use of treated materials in the marine environment.

Staff Response: Subsections 7.4.1.K, 7.4.7.5, 7.4.7.6.d and 7.4.8.7.d (Boating and Marina's: Piers, Docks and Moorage, Pages #7-18, 7-22 and 7-23, respectively) of the draft master program address the proposed policies and development standards for the use of piling and other building materials in the marine environment. Subsections 6.6.1.B and 6.6.2.4 (Water Quality and Quantity, page #6-66 through 6-

68) address the proposed policies and regulations for the use of materials that come into contact with the water.

Subsection 7.4.1.K provides the following policy statement concerning piling:

"Replace existing piling with non-toxic materials, including but not limited to steel, concrete and non-toxic wood. The replacement of piling that support historic structures listed on the city's Register of Historic Places should be exempt from this provision. New piling should be made of non-toxic material approved by applicable state agencies."

Subsection 7.4.7.5 states the following regarding new or expanded non-residential docks, piers, floats and lifts:

"New and substantially expanded non-residential docks, piers, floats and lifts shall be constructed of materials that will not adversely affect water quality or aquatic plants and animals over the long term. Materials for any portions of the dock, pier, float, lifts, framing, or decking that come into contact with water shall be approved by applicable state agencies for use in water. **For example, wood treated with creosote, pentachlorophenol or other similarly toxic materials is not allowed.**" (Emphasis supplied)

Subsection 7.4.7.6.d states the following regarding the use of piling for non-residential piers, docks, floats and lifts:

"Use of non-toxic materials, including, but not limited to steel, concrete and non-toxic wood shall be approved by applicable state agencies."

Subsection 7.4.8.7.d states the following regarding the use of piling for piers, docks floats and lifts that are accessory to a residential use:

"Use of non-toxic materials, including, but not limited to steel, concrete, and non-toxic wood shall be approved by applicable state agencies."

Subsection 6.6.1.B provides the following policy statement regarding "contaminating and polluting activities":

"Define and regulate activities which can possibly contaminate or pollute the harbor and shorelines including the use or storage of chemicals, pesticides, fertilizers, fuels, and lubricants, animal and human wastes, and construction materials that will have contact with the water."

Lastly, subsection 6.6.2.4 states the following regarding regulations for materials that come into contact with the water:

"All materials that may come into contact with water shall be constructed of materials, such as untreated wood, concrete, approved plastic composites or steel, that will not adversely affect water quality or aquatic plants and animals. Materials used for decking or other structural components shall be approved by applicable state agencies for contact with water to avoid discharge of pollutants from wave splash, rain, or runoff. Placement of wood treated with creosote, copper chromium arsenic or pentachlorophenol is prohibited in shoreline water bodies." (Emphasis supplied).

As previously addressed, the city's Shoreline Master Program update effort is subject to compliance with the State Shoreline Management Act (RCW 90.58) and the State Shoreline Master Program Guidelines (WAC 173-26). WAC 173-26-231(3)(b) (Piers and Docks) states in pertinent part the following:

"Piers and docks, including those accessory to single-family residences, shall be designed and constructed to avoid or, if that is not possible, to minimize and mitigate the impacts to ecological functions, critical areas resources such as eelgrass beds and fish habitats and processes such as currents and littoral drift. See WAC 173-26-221(2)(c)(iii) and (iv). Master programs should require that structures be made of materials that have been approved by applicable state agencies." (Emphasis supplied).

In the original November, 2009 draft master program, the proposed policy and regulatory provisions that address Piers, Docks, and Floats and Water Quality/Quantity contained language that specifically prohibited the use of wood, including piling that had been treated with creosote, in the marine environment. Based on the Commission's direction, this language was removed from all but draft subsections 7.4.7.5 (Piers, Docks, Floats, and Lifts-Non-Residential Regulations) and 6.6.2.4 (Water Quality and Quantity Regulations) which continues to contain a reference to creosote treated piling as well as those treated with copper chromium arsenic or pentachlorophenol. Staff would note that the retention of this language was an inadvertent oversight as it should have been removed as was the case in all other instances where creosote and other known toxic materials were specifically addressed.

As previously noted the State Shoreline Master Program Guidelines address shoreline modifications such as piers and docks and require that such structures be made of materials that have been approved by applicable state agencies. Staff believes that with the exception of the draft regulatory language in subsections 7.4.7.5 and 6.6.2.4, all policy and regulatory language in the draft master program is

"treated material neutral" relative to the use of building materials, such as piling, in the marine environment, and has been developed consistently with the Shoreline Master Program Guideline requirement set forth in WAC 173-26-231(3)(b). Staff would recommend that draft subsections 7.4.7.5 and 6.6.2.4 be revised to delete all references to creosote or other wood treatment products and only reference the language in the WAC guideline that addresses the use of materials that have been approved by applicable state agencies.

2. Soft Armoring and Shaded Areas: Mr. Frisbie requests that the Planning Commission remove from the draft master program the requirement for "soft" armoring, i.e., soft structural shoreline stabilization. In support of his request, he indicates that the primary purpose of soft armoring per the reports cited as the basis for the State Shoreline Master Program Guideline (WAC 173-26) requirements is to promote the raising and protection of salmon and to offset the impacts of global sea level rise. His letter dated November 14, 2010 contains his justification for the request.

Staff Response: Mr. Frisbie has raised issue with the science cited by the Department of Ecology (DOE) as the basis for the shoreline master program guideline requirement that local shoreline master programs implement principles and utilize standards designed to avoid the individual and cumulative loss of ecological functions associated with shoreline stabilization. Staff believes that Mr. Frisbie's criticism of and opposition to the proposed master program requirement is misdirected. The DOE, through its rule making authority and as required by the State Shoreline Management Act (RCW 90.58), adopted WAC 173-26 after a lengthy process that was subject to public review. The city of Gig Harbor is required pursuant to RCW 90.58 and WAC 173-26 to update its local shoreline master program consistent with the requirements of the state master program guidelines. The city's shoreline stabilization regulations set forth in Section 7.18 of the draft master program (pages 7-55 through 7-57) are consistent with the requirements of WAC 173-26-231 that apply to shoreline stabilization practices. Therefore, staff recommends that no revisions be made to the draft requirements.

3. Public Access: Mr. Frisbie argues that the city's proposed public access requirements are unlawful. He cites a portion of "The Public Trust Doctrine" in support of his position and refers to a DOE prepared publication that addresses the Doctrine in his letter (see Exhibit 3a, page 80). He recommends that the city "scrap" the requirements and write them in a manner similar to those in the existing master program.

Staff Response: Mr. Frisbie appears to rely on The Public Trust Doctrine as support for his position. Staff would note that the doctrine is a legal principle derived

from English Common Law that recognizes the waters of the state as a public resource for the purposes of navigation, conducting commerce, fishing, recreation and similar uses. The doctrine limits public and private use of tidelands and other shorelands to protect the public's right to use the waters of the state. While the doctrine does not allow the public to trespass over privately owned uplands to access tidelands, it does protect public use of navigable water bodies below the Ordinary High Water Mark. As noted in the DOE publication that Mr. Frisbie cites in his arguments, protection of the "trust" is a duty of the State; that the State Shoreline Management Act is one of the primary means by which that duty is carried out; that the doctrine requires a careful evaluation of the public interest served by any action proposed; and that this requirement is fulfilled in major part by the planning and permitting requirements of the State Shoreline Management Act.

As is the case with the shoreline stabilization issue, the city is required by WAC 173-26 to include provisions in its master program that address public access to the shorelines of the state. The WAC rules that address public access are promulgated through the requirements of the State Shoreline Management Act.

The public access requirements of the draft master program set forth in Section 6.5, pages 6-61 through 6-65 have been developed consistently with the state shoreline master program guideline requirements for public access. At the direction of the Planning Commission, they have, to a significant degree, utilized the same approach addressed by the city's existing master program requirements for public access. They have also been developed consistently with additional zoning based performance standards set forth in both the WC Waterfront Commercial and WM Waterfront Millville Zoning Districts that included an incentive for increasing impervious coverage based on increased numbers of water view/access opportunities.

Based on the proceeding, staff recommends no changes to the proposed public access requirements based on Mr. Frisbie's comments.

4. Definition for Net Shed (Page 2-22): Mr. Frisbie recommends removing the word "existing" from the definition for net sheds in recognition that someone may choose to build a new net shed. He notes that in the end, "a net shed is a net shed whether it is new or old."

Staff Response: The Historic Net Sheds section of the draft master program set forth in Section 7.11, pages 7-41 through 7-42 are intended to encourage the preservation and adaptive reuse of the city's 17 existing "historic" net sheds. As has been documented in the city's Shoreline Inventory and Characterization Report, only a handful of the existing net sheds are being utilized to support commercial fishing

activities and many of them are in danger of falling into such disrepair that they will be lost as an historic resource for the city if action isn't taken soon.

To that end, policies and regulations have been prepared that are intended to provide a more flexible approach for the use of existing overwater net sheds located within the city. While the existing draft requirements will be revised to address public and city staff comments submitted to date on the draft, this section of the master program was never intended to apply to new net sheds. If such a development and use was proposed, it could be permitted as a "marine industrial" use within the City Waterfront Environmental Designation, subject to all applicable requirements of the draft master program, but not those set forth in the Historic Net Sheds Section.

Based on the preceding, staff recommends no changes to the proposed net shed definition.

5. Definition for Should (Page 2-32): Mr. Frisbie recommends removal of the word "should" and its replacement with "must" or "shall", or remove it altogether. He notes that the word promotes unlimited attorney arguments.

Staff Response: The term "should" is defined by the definitions set forth in WAC 173-26 as, "Should means that the particular action is required unless there is a demonstrated, compelling reason, based on policy of the Shoreline Management Act and this chapter, against taking the action." Including the definition in the Chapter 2 of the draft master program (Definition Chapter), is appropriate and staff recommends that the term be retained in the draft.

6. Last sentence, page 3-7 regarding the use of the word "high" in association with creosote treated wood and structures: Mr. Frisbie suggests that the word "high" as used in subsection 3.1.5, Shoreline Alterations, and set forth in Chapter 3, Shoreline Inventory and Restoration Summary, be defined as greater than 50 creosote piling where 50 piles are approximately 10 feet on center to ensure consistency with "white papers" cited as basis for the use of best scientific and technical information pursuant to WAC 173-26-201(2)(a).

Staff Response: No definition is necessary in this instance as the term "high" is merely used as an adjective in the Shoreline Alterations subsection of Chapter 3 to describe the presence of increased levels of pollutants often associated with certain practices and types of development in the marine environment. Therefore, staff recommends no change in response to this comment.

7. Page 3-8, item number 3: Mr. Frisbie states that single family residences are categorically exempt from having to comply with this provision (Key Finding #3, subsection 3.2.1-Summary of Recommendations, Protection and Restoration of

Shoreline Ecological Functions). He refers to his comments on armoring and indicates that this comment is not fair and equitable and isn't supported by the referenced "white papers."

Staff Response: Item #3 is a "key finding" of the draft master program relative to priorities for shoreline restoration. No reference is made in the finding to single-family residences. Staff recommends retaining the finding as written.

8. Page 3-9, items 3, 4, & 5: Mr. Frisbie indicates that none of the three "key recommendations" referenced are supported by the WACs or "white papers."

Staff Response: Staff disagrees with this comment. Item 3 recommends that a "demonstration" of need for hard armoring be required before approval of such an approach. WAC 173-26-231(3)(a) addresses this requirement. Item 4 addresses the use of incentives to encourage property owners to replace existing hard armoring with fish friendly structures or to remove the structures when shore armoring isn't necessary. WAC 173-26-186(8)(e) addresses the use of incentives as an approach for protecting shoreline ecological functions. Lastly, WAC 173-26-186(8) and 173-26-201(2)(c) support the use of buffers and setbacks to meet the no net loss of ecological functions requirement that is a central theme of the State Shoreline Master Program Guidelines.

Staff recommends no changes to the existing draft recommendations.

9. Page 3-10, Items a, b & c: Mr. Frisbie's comments address several of the "key recommendations" set forth in subsection 3.2.2-Shoreline Use and Public Access. In regard to the first recommendation, he expresses his support for it, but recommends it be revised to address "additional" or new net sheds. In regard to the second recommendation, he suggests that it be revised to address all shoreline permits and uses which should include single-family residences. In regard to the third recommendation, he indicates that a navigation channel isn't warranted due to the physical size of the harbor's entrance, and, further, increased side yard setbacks for proposed docks and marinas to minimize conflicts between pleasure craft and commercial fishing vessels and related operations should be carefully studied by the Commission before it moves forward with such a proposed regulation.

Staff Response: In regard to the first recommendation, as previously noted the purpose of the recommendation and the city's proposed net shed regulations is to address existing, "historic" net sheds that are associated with the city's commercial fishing industry. A new over water net shed would be allowed as a "marine industrial" use activity and subject to development standards that address over water construction. In regard to the second recommendation, staff would note that the Commission determined that the "in lieu fee" program should not be pursued as part

of the master program update and, therefore, it has not been included as part of the city's public access requirements in Section 6.5. Lastly, with regard to the third recommendation, the establishment of a formal navigation channel is not addressed by the draft master program, and the required side yard setback proposed for marinas and docks is 12 feet; the same setback as required by the city's existing shoreline master program.

Staff recommends no change to the existing recommendations.

10. Remove the word "should" and replace it with the word "shall."

Staff Response: See response to item #5. Staff recommends no change to the existing draft language.

11. Page 6-11, required setback from the Ordinary High Water Mark (OHWM): Mr. Frisbie expresses his support for the existing shoreline master program approach that requires no setback from the OHWM or bulkhead line of property with shoreline frontage. He notes that those people owning property fronting tidelands paid lawful dollars for them and taxes to own them each year. It's only fair and equitable that no setback be allowed. If a setback is required, please clearly state the reasons.

Staff Response: The proposed Vegetation Conservation Strip and Building Setbacks for Marine Shorelines requirements set forth in Table 6-1, subsection 6.2.3.2, has been developed in response to the requirements of WAC 173-26. As previously addressed, WAC 173-26-186(8) and WAC 173-26-201(2)(c) provide the basis for the proposed vegetation conservation strip and marine setback requirements.

Staff recommends no change to the proposed requirements.

12. Page 6-12, subsection 2.a-City's armoring approach is not supported by the WAC or white papers. Mr. Frisbie recommends removal of this paragraph. He notes that the reference to a "registered structural engineer in the State of Washington" should be revised to "registered engineer" as the former reference is inconsistent with the State Board of Registration rules.

Staff Response: As noted under the response to item #8 above, WAC 173-26-231(3)(a) addresses the requirement for shoreline stabilization, including both hard and soft armoring approaches. The requirement that "a registered structural engineer in the State of Washington" provide a recommendation on the required setback from the OHWM for non-armored shorelines was intended to accurately address the engineering discipline that would typically have expertise in such matters. The reference should be consistent with industry practices.

Staff recommends no change to the proposed regulation, but would recommend revising the reference as suggested by Mr. Frisbie to "registered engineer" as it would more accurately reflect industry practices.

13. Page 6-61 and Section 6.5-entire section needs to be rewritten consistent with the laws noted above.

Staff Response: Section 6.5 addresses the proposed public access policies and regulations. The proposed policies are new to the proposed draft. The proposed regulations are substantially the same as those in the city's existing master program. Staff recommends no change to this existing section.

14. Page 6-73, Section 6.5.B-this entire section needs to be rewritten consistent with the laws noted above.

Staff Response: Page 6-73 addresses proposed Section 6.8-Quality Waterfront Development along Gig Harbor Bay. Mr. Frisbie's reference to Section 6.5.B appears to be intended as a reference to subsection 6.8.1.B, policy language that addresses the provision of public access amenities in conjunction with new development activity. As previously addressed above, the requirement for new development projects to provide public access is addressed by WAC 173-26 and the city's proposed approach is generally consistent with that set forth in its existing master program.

Staff recommends no change to the proposed policy language.

15. Page 7-77 & Section 6.9.2.3-this section is not supported by law or the white papers or fact. The section needs to be removed.

Staff Response: Section 6.9-Restoration and Remediation addresses improving ecological functions and processes through development incentives and community involvement. It is intended to provide support for the proposed Restoration Plan element of the master program. Subsection 6.9.2.3 is intended as an incentive to encourage shoreline property owners to remove bulkheads and perform other beneficial shoreline restoration actions in advance of actual development or redevelopment of the property in order to receive mitigation credit for the actions.

Staff recommends no change to the proposed regulation.

16. Page 7-10, Section 7.1.2-proposed 12 foot setback for Boating Facilities: Mr. Frisbie indicates that the 12 foot setback proposed for boating facilities as required by Ecology Guidelines is not supported by fact. He recommends removing the

requirement and replacing it with a zero setback required from the OHWM as long as the applicant owns a minimum of 12 feet of tidelands in front of the OHWM.

Staff Response: Staff ^{note} would that the state master program guidelines don't recommend a specific standard for boating facility setbacks. The source of the proposed 12 foot setback is the city's existing shoreline master program (see Part 3.11, Regulation 7, page #30). The proposed setback regulation is not intended to apply to upland development, but to boating facilities, such as marinas, that are located on the water. The regulation, as proposed, is intended to apply to the side yard setback and rear yard setback when the rear property line is located water ward of the OHWM on either private or state owned tidelands. Table 7-3 set forth in subsection 7.1.2-Bulk Dimensional Standards, addresses the proposed setback requirement. Subsection 7.4.4.2 (General Marina Regulations, page 7-19) further addresses the requirement and provides additional information concerning the intent of the 12 foot setback regulation. Footnote #1 that applies to Boating Facilities in Table 7-3, references subsection 7.4.4.

Staff recommends no change to the requirement.

17. Page 7-24, Section 7.4.9.3.a-statement is not supported per the discussion regarding armoring above: Mr. Frisbie raises issue with the proposed marina regulation that addresses the minimum use of armoring necessary to protect marina infrastructure, and requires the use of softshore stabilization measures unless such an approach is determined to be infeasible or inadequate to protect the site through geotechnical analysis.

Staff Response: The proposed approach is consistent with the requirements of WAC 173-26 pertaining to shoreline stabilization and consistent with the city's shoreline stabilization requirements set forth in draft Section 7.18.

Staff recommends no change to the proposed regulation.

18. Page 7-26, Section 7.4.9.3.f-the requirement for sanitary waste pump-outs should be changed to exclude marinas of less than 20 boats/vessels. Mr. Frisbie notes that this is an expensive operation and requires continuous maintenance. He suggests that the city pump-out station at Jerisich Park, which he indicates is "turned off" during winter months because of maintenance problems related to freezing weather, be kept operational year around to address this need.

Staff Response: The city's existing marina regulations require new, expanded or renovated existing marinas to provide pump-out, holding, and/or treatment facilities for sewage generated by boats and/or vessels. No size threshold exists to "trigger" the requirement. WAC 173-26-241(3)(c) addresses the master program guideline

requirements for boating facilities, which exclude docks serving four or fewer single family residences, and require provisions that assure such facilities meet health, safety and welfare requirements. The city's draft master program defines a marina as "a water dependent commercial facility consisting of a system of piers, buoys, or floats which provide moorage for lease, rent, or sale of more than four slips." The city's proposed approach is consistent with the state guidelines and existing master program requirements.

Staff recommends no change to the regulation.

19. Page 7-27, Section 7.4.10-the proposed regulation improperly exempts active commercial fishing vessels from the off-street parking requirement of the city's zoning code. Mr. Frisbie notes that as written, subsection 7.4.10.1 (Regulations-Commercial Fishing Moorage) exempts new and existing marinas and moorage facilities which provide moorage and support facilities for active commercial fishing vessels from the city's off-street parking requirement. He provides additional justification for his position that the city's existing approach for such moorage be utilized, i.e., that no parking be required to serve the vessel moored within the marina or moorage facility, but that parking be required for all other vessels moored within the facility.

Staff Response: This issue was previously addressed by Guy Hoppen in his comments and the city's response contained in the memorandum dated December 2, 2010.

- Staff agrees with both Mr. Hoppen and Mr. Frisbie that the regulation should be revised to be consistent with the approach in the city's existing shoreline master program.

20. Page 7-27, Section 7.4.10-the same parking issue is addressed as noted under item #19 above and a request is made to establish a "position" relative to public access, pump-outs, landscaping, armoring, etc.:

Staff Response: The parking issue has previously been addressed under item #19 above. The master programs requirements relative to public access, pump-outs, landscaping and armoring are all clearly addressed by the applicable sections of the draft master program. They would all apply to proposed marina development.

Staff recommends no change to the existing draft policies and regulations.

21. Page 7-28, Section 7.5-recommend deletion of draft Section 7.5-Clearing and Grading: Mr. Frisbie recommends that the draft master program refer to existing city ordinances that address the same issue so potential applicants only have to review

one and not multiple code documents when addressing clear and grade requirements.

Staff Response: The existing draft policy and regulatory language has been developed consistently with the city's existing clear and grade ordinance. WAC 173-26-221(5)(b) (Shoreline Vegetation Conservation) addresses the establishment of such requirements, and they have been included in the master program consistent with the requirement, and in recognition that this form of shoreline modification is a required component of any shoreline development proposal, and should be addressed as part of the city's scheme for addressing all shoreline modification activities.

Staff recommends no change to the requirements.

22. Page 7.6.1.B Public Access-this is not consistent with state law. See above.

Staff Response: The proposed policy addresses the provision of public access to serve proposed commercial development. The proposed requirement is consistent with the requirements of the city's existing shoreline master program, the policies of the State Shoreline Management Act and the requirements of WAC 173-26. See staff response to item #3 and #13 for additional information on this issue.

23. Page 7-30, Section E-Leed certification should not be referenced in the SMP. This adds sufficient cost to a project and is worthless to the owner. Mr. Frisbie recommends removal of this reference.

Staff Response: Subsection 7.6.1.E (Commercial Use Policies) addresses "green building development." This policy is intended as an expression of city support for such approaches; however, no regulations are being proposed to implement it and any use of such an approach would be on a voluntary, not a regulatory basis.

Staff recommends retaining the policy. However, it can be removed without creating an inconsistency with the requirements of WAC 173-26 as said requirements do not address this issue.

24. Page 7-31, Section 7.6.3.3-public access requirement for non-water oriented development: Mr. Frisbie notes that the requirement is too general. He suggests that specific criteria be developed to address the waiver of the requirement.

Staff Response: Subsection 7.6.3.3.a addresses limitations that apply to potential restoration opportunities on a development site and not public access opportunities. It should be further revised and clarified to address the restoration requirement set

forth in subsection 7.6.3.2.a & b and not the public access requirement. With that revision, the standard set forth in subsection 7.6.3.3.a can be properly administered.

Staff recommends revising the requirement as noted above.

25. Page 7-41, Section 7.11.1.B and 7.11.2.1.c-conversion of historic net sheds into a single family home. Mr. Frisbie opposes the proposed historic net shed policies and regulations set forth in Section 7.11-Historic Net Sheds that would allow the conversion of an existing over water net shed into an "extension" of an associated upland single-family residential use. He notes that should the draft remain unchanged relative to this issue, several additional requirements should be added to the subject section. They include making such a use subject to a "contract" with the city that would be recorded with the Pierce County Auditor; that public access be provided to the most water ward location on the site; and that a performance bond be posted with the city to guarantee compliance with all requirements of the required contract.

Staff Response: The proposed residential use provision in the historic net shed section would not allow a net shed to be used as a separate, "stand alone" single-family dwelling. Any residential use would be limited to that of an "extension" of an existing single-family dwelling located on the uplands of a site that contains an overwater net shed. Accommodations that would allow two families or parties to live independently of one another, i.e., bedrooms, would not be allowed.

Staff has no objections to the contract and performance bond requirements as both could provide additional certainty that the net shed use remains consistent with the requirements of the master program. However, the suggested condition that public access be required as a condition of such a net shed use is inconsistent with case law that addresses this issue. In this regard, staff would refer the Commission to item #1 and the response to William Lynn's comments set forth in the December 2, 2010 memorandum that responds to public comments on the November 4, 2010 draft master program.

26. Section 7.20.4.4-recommend that parking be allowed to the OHWM/bulkhead: Mr. Frisbie indicates there is zero benefit to this provision and if there is one, please so state the benefit.

Staff Response: This comment addresses subsection 7.20.4.4 that states, "Parking areas shall be located no closer to the site's OHWM than allowed for structures on the site." Staff would note that under WAC 173-26, parking facilities are not a preferred use within the area regulated by the master program and are only allowed to support an authorized use. The guidelines require that master programs include policies and regulations to minimize the environmental and visual impacts of parking

facilities. To this end, the draft master program policies and regulations have been developed to address the design and location of parking facilities. The provision to require parking facilities to meet the same setbacks as buildings is intended to minimize the area of a shoreline property devoted to parking and to limit the impact of the area on sensitive ecological functions that occur in proximity to the OHWM. The proposed approach is supported by proposed Section 6.2-Marine Shoreline and Critical Areas Protection policies and regulations and is a necessary requirement to ensure no net loss of ecological functions.

Staff recommends no change to the proposed regulation.

27. Section 7.21.1.E-the requirement to locate storm water detention and treatment facilities outside the shoreline jurisdiction should be removed. Mr. Frisbie questions the reason for the requirement and indicates that the developer should be able to determine the best use of the property.

Staff Response: The provision referenced by Mr. Frisbie is a policy that states, "Locate stormwater detention and treatment facilities serving allowed uses outside of the shoreline jurisdiction unless it can be demonstrated that no other feasible alternative exists." The associated regulations set forth in subsection 7.21.2 includes standards that must be addressed to demonstrate that no other feasible alternative exists for the location of such facilities. Like parking facilities, detention and treatment facilities are not a preferred shoreline use under WAC 173-26 and the city's draft master program in recognition of the value of such property and the limited amount of it.

Staff recommends no change to the policy.

28. Page 8-4-Add a section below 8.1.7 titled Shoreline Hearings Board and describe its function/use.

Staff Response: Section 8-1-Administration addresses the duties, roles and responsibilities of various decision makers in the shoreline permit review process at the local and state level. Staff has no objection to adding the function of the State Shoreline Hearings Board to the section as that appointed state board hears appeals of shoreline permits authorized by local government and the DOE.

29. Page 8-7, Section 8.2.2.3 and 7-the two draft subsections are not consistent with the corresponding state WAC provisions set forth in WAC 173-27-040.

Staff Response: Mr. Frisbie is correct as the two provisions are slightly different than the associated WAC provisions. Staff recommends that they be revised consistently with the WAC.

30. Page 8-32, Section 8.11.10-addition of language to subsection 8.11.10.1 that ensures only changes to structures that have valid shoreline permits be allowed under the proposed nonconforming provisions of the draft master program. Mr. Frisbie notes that there are several shoreline property owners that have made changes to their properties since the adoption of the original shoreline master program without obtaining valid shoreline permit authorization to do so. He notes that uses that predate the original master program should be addressed by this provision but not those that have come into existence "under the cover of darkness."
Staff Response: It's commonly excepted, well-known law in this state and country that only legally existing nonconforming uses and structures maintain legally protected rights to such uses and structures. In Gig Harbor's instance, those legally existing nonconforming uses and structures that pre-date the city's original master program adopted in 1975, and last amended in 1994, would qualify under the draft nonconforming provisions of the draft if the owner/developer obtained all required permits at the time the use or structure was established. Likewise, with the adoption of the updated master program, any use or structure legally established prior to the adoption of the new program would qualify for nonconforming use or structure status under the updated and newly adopted program.

Staff believes the addition of language to provide the clarification suggested by Mr. Frisbie is not necessary, but could be added at the discretion of the Commission.

January 11, 2011

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To: Harris Atkins, Chair
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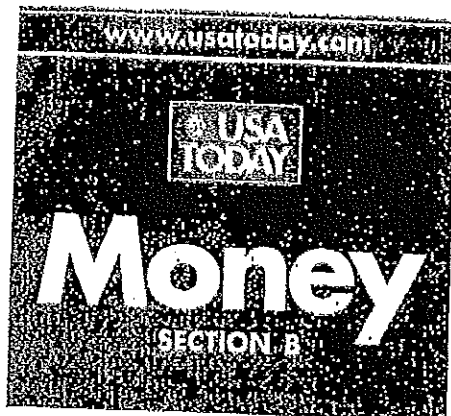
From: Bob Frisbie

Subject: Draft Shoreline Master Program & January 6, 2011 Staff Comments To Robert Frisbie Comments.

I would like to take this opportunity to make a few brief comments on the staff's comments to my November 4th letter to the Planning Commission.

- I requested that the technical papers be specifically identified that support the SMP's language to prohibit a number of items in the plan. Staff avoided identifying these technical papers. The identification of these technical papers is a requirement under the WACs. It is simply not sufficient to reference WSDOE guidelines as the staff did in their response. This does not meet the law.
- Attached is a short article from USA Today from a retiring NOAA fishery scientist noting that for first time since 1900 U.S. fishermen won't be taking too much of any species from the sea. This supports my comments regarding the size of the Puget Sound salmon run that is common to Gig Harbor. Please note, I specifically cited technical information in my November 4th letter, but the staff response avoided talking about specifics contained in my letter.
- The staff response specifically avoided talking about the exemptions given to the single family home owners and that the commercial properties will be carrying 250% of the burden for building fisheries runs, e.g. soft armoring and bulkheads.
- The staff response mentioned my request for an open public hearing on the pros and cons of several issues using technical information. However, the staff didn't support this concept. Please don't become a commission that comes to rely on exaggeration and then silence to convince the public of an issue. I encourage you to embrace an open debate on the technical issues. The City of Gig Harbor, WSDOE, WSDFW and NOAA all have technical people available to debate myself and several technical people I would bring to a hearing. Surely such a debate would quickly prove their points, if in fact they have the proof, otherwise the hearing might just show the commission that the proof does not exist.

Thank you for your consideration of my comments.



Monday, January 10, 2011

.....
Scientist says fishermen hit balance

For the first time in at least a century, U.S. fishermen won't take too much of any species from the sea, one of the nation's top fishery scientists says. Steve Murawski said that for the first time in written fishing history, which dates to 1900, "As far as we know, we've hit the right levels, which is a milestone." Murawski retired last week as chief scientist at the National Oceanic and Atmospheric Administration's Fisheries Service.

Katich, Peter

From: bobfrisbie@foxinternet.com on behalf of bobfrisbie [bobfrisbie@foxinternet.com]
Sent: Tuesday, January 11, 2011 7:01 PM
To: Katich, Peter; Ben Coronado; Bill Coughlin; Harris Atkins; Jill Guernsey; Jim Pasin; Michael Fisher
Cc: Dolan, Tom; Kester, Jennifer; 'Reema Shakra'; 'Van Zwalenburg, Kim (ECY)'; carole@isellgigharbor.com; 'bobfrisbie@foxinternet.com'; Malich, Ken
Subject: Frisbie Comments To Staff Comment Letter
Attachments: 1~10~11 Fish Harvest Article.pdf; January 11 Letter.doc

Please consider my one page memo regarding the staff comments to my November 4th comments letter.

In summary, I believe the staff avoided identifying the technical reports that support the Commission adopting laws prohibiting certain items in the Draft SMP.

Please ask for these technical papers and them referenced in the plan as required under the WAC.


Thanx,

Bob Frisbie



COMMUNITY DEVELOPMENT DEPARTMENT

TO: Harris Atkins, Chair
Gig Harbor Planning Commission

FROM: Tom Dolan, Director 
Gig Harbor Planning Department

Subject: January 11, 2011 Robert Frisbie comment letter on November 4, 2010 draft Shoreline Master Program and staff response to his November 14, 2010 comment letter

Date: January 13, 2011

On January 11, 2011, Robert Frisbie e-mailed the Commission a letter dated January 11, 2011 that addresses the staff response to his comment letter of November 14, 2010 on the city's November 4, 2010 draft Shoreline Master Program. Attached, is a copy of the letter.

Mr. Frisbie raises four additional issues relative to his original comments and the staff response to them. The following addresses the issues and the staff response to each:

1. I requested that the technical papers be specifically identified that support the SMP's language to prohibit a number of items in the plan. Staff avoided identifying these technical papers. The identification of the papers is a requirement under the WACs. It is simply not sufficient to reference WSDOE guidelines as the staff did in their response. This does not meet the law.

Staff Response: WAC 173-26-201(2)(a) states the following in pertinent part regarding the use of scientific and technical information in the shoreline master program update process:

First, identify and assemble the most current, accurate, and complete scientific and technical information available that is applicable to the issues of concern. The context, scope, magnitude, significance, and potential limitations of the scientific information should be considered. At a minimum, make use of and, where applicable, incorporate all available scientific information, aerial photography, inventory data, technical assistance materials, manuals and services from reliable sources of science. Local governments should also contact relevant state

agencies, universities, affected Indian tribes, port districts and private parties for available information. While adequate scientific information and methodology necessary for development of a master program should be available, if any person, including local government, chooses to initiate scientific research with the expectation that it will be used as a basis for master program provisions, that research shall use accepted scientific methods, research procedures and review protocols. Local governments are encouraged to work interactively with neighboring jurisdictions, state resource agencies, affected Indian tribes, and other local government entities such as port districts to address technical issues beyond the scope of existing information resources or locally initiated research.

Local governments should consult the technical assistance materials produced by the department. When relevant information is available and unless there is more current or specific information available, those technical assistance materials shall constitute an element of scientific and technical information as defined in these guidelines and the use of which is required by the act.

Second, base master program provisions on an analysis incorporating the most current, accurate, and complete scientific or technical information available. Local governments should be prepared to identify the following:

(i) Scientific information and management recommendations on which the master program provisions are based;

(ii) Assumptions made concerning, and data gaps in, the scientific information;
and

(iii) Risks to ecological functions associated with master program provisions. Address potential risks as described in WAC 173-26-201 (3)(d).

The requirement to use scientific and technical information in these guidelines does not limit a local jurisdiction's authority to solicit and incorporate information, experience, and anecdotal evidence provided by interested parties as part of the master program amendment process. Such information should be solicited through the public participation process described in WAC 173-26-201 (3)(b). **Where information collected by or provided to local governments conflicts or is inconsistent, the local government shall base master program provisions on a reasoned, objective evaluation of the relative merits of the conflicting data.** (emphasis supplied)

Pursuant to the aforementioned requirements, the city and its consultant, ESA Adolfson, prepared a Shoreline Inventory and Characterization Report last revised January, 2010.

The report has previously been provided to each member of the Planning Commission and is posted to the city's shoreline master program update web site at: www.gigharborshorelineupdate.com.

The report addresses the city's planning area, the current regulatory framework that applies to the planning area, land and shoreline use patterns, nearshore physical characterizations, critical areas, "opportunity areas," recommendations, and references and bibliography. References are provided throughout the document to the source of science and technical information that serve as the basis for findings contained in the document. The referenced science and technical documents are set forth in Chapter 14, References and Bibliography of the Shoreline Inventory and Characterization Report. The information is further addressed by the Map Folio appended to the report, as well as in Appendix A, B, and C.

Chapter 4 of the Report, Nearshore Physical Characterization, provides an example of the use of scientific and technical information to support the findings of the report which in turn provide the basis for the establishment of the proposed environmental designations and the policies and regulations that address each of the designations. Section 4.4, Shoreline Modifications, addresses modifications to the physical shoreline environment due to shoreline armoring and docks, piers and overwater structures. The section addresses the extent of the modifications and identifies adverse impacts to the aquatic environment associated with them. The section references the scientific and technical information, i.e., "white papers" that provide support for the city's proposed approach in its updated master program. Chapter 14 of the report further addresses those documents.

The attached e-mail dated January 13, 2011 from Katie Knight of the Washington Department of Fish and Wildlife (WDFW), provides a discussion on the distinction between the WDFW's role in the administration of the state Hydraulic Code (WAC 222-110) and that agencies support of the state shoreline master program update process, including the use of scientific and technical information that addresses overwater structures and the use of treated wood products. The "Nearshore Guidance" (Envirovision et al. updated June 2010) addressed in the last paragraph of page one of the e-mail addresses the report that is the source of the list of preferred materials and treated wood applications for use in the marine environment (the same list of materials that the Planning Commission requested from staff at their meeting on January 6, 2011). This report is also referred to in Chapter 14, References and Bibliography, of the city's Shoreline Inventory and Characterization Report and provides support for the city's policies and regulations that address the use of piling and other building materials in the marine environment.

It's staff's position that the city has complied with the requirements of WAC 173-26-201(2)(a) regarding the use of scientific and technical information, and no changes to the

draft master program should be made in response to Mr. Frisbie's comments regarding this issue.

2. Attached is a short article from USA Today from a retiring NOAA fishery scientist noting that for the first time since 1900 U.S. Fisherman won't be taking too much of any species from the sea. This supports my comments regarding the size of the Puget Sound Salmon run that is common to Gig Harbor. Please note, I specifically cited technical information in my November 4th letter (the letter is dated November 14, 2010), but the staff response avoided talking about specifics contained in my letter.

Staff Response: In Mr. Frisbie's letter of November 14, 2010, he addresses the health of Puget Sound Chum Salmon populations, that together with the USA Today article referenced by his January 11, 2011 letter, addresses fish populations as a whole and harvest levels by U.S. fisherman. What Mr. Frisbie doesn't address is that the state shoreline master program guidelines (WAC 173-26) require that local jurisdiction master programs address no net loss of ecological functions necessary to sustain natural resources (see WAC 173-26-201(2)(c), and that other fish species, such as chinook salmon and bull trout, are both listed as "Threatened" under the Federal Endangered Species Act and known to utilize the city's planning area for habitat purposes and as part of their migratory path to native spawning streams. As previously addressed above, the scientific and technical information addressed by the city's Shoreline Inventory and Characterization Report provide the city's basis for the policy and regulatory approach that addresses such shoreline modifications as piers and docks and shoreline stabilization structures that are the focus of Mr. Frisbie's comments. Staff recommends no change to the draft shoreline master program based on the comments.

3. The staff response specifically avoided talking about the exemptions given to single family home owners and that commercial properties will be carrying 250% of the burden for building fisheries runs, e.g. soft armoring and bulkheads.

Staff Response: The exemption that Mr. Frisbie refers to in both of his letters is addressed by WAC 173-27-040(2)(c) which states:

"Construction of the normal protective bulkhead common to single-family residences. A "normal protective" bulkhead includes those structural and nonstructural developments installed at or near, and parallel to, the ordinary high water mark for the sole purpose of protecting an existing single-family residence and appurtenant structures from loss or damage by erosion. A normal protective bulkhead is not exempt if constructed for the purpose of creating dry land. When a vertical or near vertical wall is being constructed or reconstructed, not more than one cubic yard of fill per one foot of wall may be used as backfill. When an existing bulkhead is being repaired by construction of a vertical wall fronting the existing wall, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings. When a bulkhead has

deteriorated such that an ordinary high water mark has been established by the presence and action of water landward of the bulkhead then the replacement bulkhead must be located at or near the actual ordinary high water mark. Beach nourishment and bioengineered erosion control projects may be considered a normal protective bulkhead when any structural elements are consistent with the above requirements and when the project has been approved by the department of fish and wildlife."

The aforecited provision provides an "exemption" from the substantial development permit requirement. However, WAC 173-27-040(1)(b) states the following regarding exemptions:

"An exemption from the substantial development permit process is not an exemption from compliance with the act or the local master program, nor from any other regulatory requirements. To be authorized, all uses and developments must be consistent with the policies and provisions of the applicable master program and the Shoreline Management Act. A development or use that is listed as a conditional use pursuant to the local master program or is an unlisted use, must obtain a conditional use permit even though the development or use does not require a substantial development permit. When a development or use is proposed that does not comply with the bulk, dimensional and performance standards of the master program, such development or use can only be authorized by approval of a variance." (emphasis supplied)

What the aforecited provision means is that an exemption must comply with the policies and regulations of the local shoreline jurisdiction master program. The city is proposing new policies and regulations for shoreline stabilization structures pursuant to WAC 173-26 that any applicant for a new bulkhead must comply with. Further, if the local jurisdiction determines that such a shoreline modification should fall into the conditional use permit category rather than the substantial development permit category under its master program shoreline modification requirements, as Gig Harbor is proposing to do for "hard armoring" in several of the proposed environmental designations, the modification would not be subject to the exemption set forth in WAC 173-27-040(2)(c). Based upon the proceeding, staff recommends no change to the draft shoreline master program based on Mr. Frisbie's comments.

4. The staff response mentioned my request for an open public hearing on the pros and cons of several issues using technical information. However, the staff didn't support this concept. Please don't become a commission that comes to rely on exaggeration and then silence to convince the public of an issue. I encourage you to embrace an open debate on the technical issues. The city of Gig Harbor, WSDOE, WSDFW and NOAA all have technical people available to debate myself and several technical people I would bring to the hearing. Surely such a debate would quickly prove their points, if in fact they

have the proof, otherwise the hearing might just show the commission that the proof does not exist.

Staff Response: The Planning Commission and staff have discussed conducting a combination open house/second public hearing to solicit comments on the draft shoreline master program. A tentative date of March 31, 2011 has been discussed to date. The final date for the open house/hearing will be confirmed once other master program related issues are resolved. Mr. Frisbie and his technical people can attend that open house/hearing and provide their comments and testimony at that time.

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**BEFORE THE CITY COUNCIL
GIG HARBOR, WASHINGTON**

In re:)	No. APP-12-0001
Robert Frisbie SEPA Appeal)	CITY STAFFS' MEMORANDUM IN
(PL-SEPA 12-0004))	SUPPORT OF DENIAL OF APPEAL
)	Hearing Date: May 29, 2012

I. INTRODUCTION

The State Environmental Policy Act, codified at chapter 43.21C of the Revised Code of Washington ("SEPA") is a legislative pronouncement of the state's environmental policy. *Anderson v. Pierce Cy.*, 86 Wn. App. 290, 300, 936 P.2d 432 (1997). It requires local governments to consider the environmental effects of major actions. RCW 43.21C.030. Before a local government undertakes an action which may affect the environment, the "responsible official" of the agency is required to make a threshold determination of whether the project is a "major action significantly affecting the quality of the environment." RCW 43.21C.030(2). A major action significantly affects the environment "whenever more than a moderate effect on the quality of the environment is a reasonable probability." *Norway Hill Preservation Ass'n v. King Cy. Council*, 87 Wn.2d 267, 278, 552 P.2d 674 (1976). The local government uses an environmental checklist to review the "proposed activities, alternatives, and impacts . . . in

1 accordance with SEPA's goals and policies" in connection with a proposal. Section 197-11-060
2 of the Washington Administrative Code ("WAC"). The checklist is a standard form designed to
3 elicit sufficient information about the proposal and its environmental impacts so that an
4 intelligent threshold determination can be made. R. Settle, *The Washington State Environmental*
5 *Policy Act*, Ch. 13, § 13.01[4][c] (2011). It includes questions about potential impacts of the
6 proposal on each element of the environment (such as earth, water, land use, etc.) See WAC
7 197-11-315; WAC 197-11-960. After review of the environmental checklist, if the responsible
8 official determines a proposal is likely to have probable significant adverse environmental
9 impacts, the responsible official issues a Determination of Significance and an environmental
10 impact statement must be prepared. WAC 197-11-360. If a proposal will not result in probable
11 significant adverse environmental impacts, the responsible official may issue a Determination of
12 Nonsignificance ("DNS"). WAC 197-11-340.

15 In this matter, the City of Gig Harbor's Planning Director¹ conducted the SEPA review
16 process in connection with the proposed City-sponsored comprehensive amendment to the
17 Shoreline Master Program ("SMP update"), a legislative action that would add new shoreline
18 environmental designations, policies, regulations and other changes consistent with the State-
19 mandated shoreline master program guidelines set forth in chapter 173-26 WAC. After a
20 thorough review of the environmental checklist and the associated Supplemental Sheet For Non-
21 Project Actions prepared for the SMP update by the Planning Department staff, attached
22 respectively as **Exhibit A** and **Exhibit B** to the Council Bill for this hearing ("Council Bill") and
23
24

25 ¹ The Gig Harbor Municipal Code ("GHMC") designates the Planning Director as the SEPA responsible official.
26 GHMC 18.04.040(A).

1 incorporated into this Memorandum by this reference, the Planning Director determined the
2 proposal would not result in probable significant adverse environmental impacts and issued a
3 DNS on February 29, 2012. A copy of the DNS is attached to the Council Bill as **Exhibit C** and
4 incorporated into this Memorandum by this reference. Pursuant to GHMC 18.04.160, the City
5 provided public notice of the DNS in the February 29, 2012 edition of the Peninsula Gateway.
6 The City also provided notice to all parties of record to the Shoreline Master Program update.
7 Per WAC 197-11-340(2), a 60-day comment period was provided for those persons who desired
8 to comment on the DNS. One party provided the City with non-SEPA related comments that
9 raised issue with proposed approaches for regulating development along the shoreline. No other
10 parties provided SEPA-related comments in response to the notice of the DNS and 60-day
11 comment period.
12

13
14 Appellant Robert Frisbie ("Appellant") appeals the issuance of the DNS by the Planning
15 Director. See **Exhibit D**, attached to the Council Bill and incorporated into this Memorandum
16 by this reference.
17

18 **II. ARGUMENT**

19 **A. Jurisdiction and Burden of Proof.**

20 In the City of Gig Harbor the City Council hears administrative SEPA appeals relating to
21 legislative action in an open record appeal hearing. GHMC 18.04.230(A)(1)(a); GHMC
22 18.04.230(M). Rules relating to open record hearings are set forth in chapters 19.05 and 19.06 of
23 the GHMC. While SEPA appeals relating to project permits are generally required to be
24 consolidated with the hearing on the underlying project permit, a separate appeal hearing may
25 take place for an appeal relating to a non-project action, such as the City's SMP update. GHMC
26

1 18.04.230(E)(2). GHMC 19.06.004(A)(6) places the burden of proof on the appellant. As such,
2 the burden lies with the appellant to prove that the City's issuance of the DNS for the SMP
3 update was invalid. A DNS is properly issued where SEPA's procedures are complied with and
4 the proposal being evaluated will have no probable significant adverse environmental impacts.
5 WAC 197-11-340(1). Because compliance with SEPA procedures is not at issue here, the
6 Appellant must prove that the City's responsible official incorrectly determined that the Shoreline
7 Master Program update would have no probable significant adverse environmental impacts. This
8 the Appellant has not done and cannot do.

9
10 **B. Standard of Review.**

11 On appeal the reviewing body reviews a responsible official's decision to issue a DNS
12 under the "clearly erroneous" standard. *Boehm v. City of Vancouver*, 111 Wn. App 711, 47 P.3d
13 137 (2002), *Anderson*, 86 Wn. App. at 302. A decision is "clearly erroneous" only when the
14 reviewing body on the record is "left with the definite and firm conviction that a mistake has
15 been committed." *Norway Hill*, 87 Wn.2d at 278 (1976) (emphasis added); *Anderson*, 86
16 Wn. App. at 302. When considering the decision, it is well established that the responsible
17 official's threshold determination must be accorded "substantial weight." *Boehm*, 111 Wn. App.
18 at 718; *Leavitt v. Jefferson Cy.*, 74 Wn. App. 668, 687, 875 P.2d 681 (1994); *see also*
19 RCW 43.21C.090; WAC 197-11-680(3)(a)(iv); GHMC 19.06.004(A)(7). As such, the City
20 Council is required to give deference to the determination of the responsible official.
21
22

23 **C. Appellant's Grounds for Appeal are Outside the Scope of the SEPA**
24 **Review Process.**

25 An appeal of a SEPA threshold determination must address the "grounds for appeal and
26 the facts upon which the appeal is based with specific references to the facts in the record."

1 GHMC 18.04.230(J)(5). Other than procedural issues which are not at issue here, the basis for
2 appeal of a SEPA threshold determination must relate to the environmental elements addressed
3 by WAC 197-11-444. See WAC 197-11-960. In this instance, the Appellant identified seven
4 categories of issues relating to the Appellant's opposition to many of the proposed use and
5 development regulations set forth in the Shoreline Master Program update and not relating to
6 potential adverse environmental impacts.

8 For example, the Appellant asks the City to address the benefits of proposed regulatory
9 approaches such as those proposed for shoreline stabilization. Ex. D, #1. The SEPA threshold
10 determination process is meant to flush out potential adverse environmental effects, not the
11 benefits of regulatory approaches. See WAC 197-11-330.

13 The Appellant also asks the City to address the effects of potential Tsunamis on
14 overwater net sheds used for non-water dependent purposes. Ex. D, #2. Such event is
15 speculative at best and if it occurred, would impact the region whether or not the Shoreline
16 Master Program is updated.

18 The Appellant also challenges the City to address the costs of various regulatory
19 approaches in the Shoreline Master Program update such as those relating to public access
20 requirements. Ex. D, #2 and #3. Issues related to the economics associated with the
21 implementing regulations set forth in the Shoreline Master Program are "not within the zone of
22 interests protected by SEPA." See *Alliance v. Snohomish County*, 76 Wn. App. 44, 52, 882 P.2d
23 807 (1994), review denied 125 Wn.2d 1025 (1995). In addition, cost-benefit analysis is not
24 required under the SEPA rules. WAC 197-11-450.

1 Appellant further challenges the need to create new marine setbacks from the shoreline's
2 edge or reduce impervious lot coverage. Ex. D, #4 and #5. Requirements relating to the
3 creation of marine setbacks and reduction of impervious lot coverage are intended to benefit the
4 environment, not adversely affect the environment. Appellant further references "pump out,
5 holding and/or waste treatment facilities," asking for justifications for regulations that provide
6 more environmental benefit, and also wanting to know why the fishing industry is not subject to
7 more regulations. Ex. D, #6 and #7. Again, these are not statements relating to potential
8 adverse environmental impacts from the SMP update.
9

10 The Appellant has essentially resubmitted the issues he presented to the Planning
11 Commission in its review and consideration of the draft Shoreline Master Program during the
12 Planning Commission's public comment period and public hearing on November 4, 2010. See
13 Exhibit E, attached to the Council Bill and incorporated into this Memorandum by this
14 reference. The Planning Commission made several revisions to the draft Shoreline Master
15 Program based on the comments it received, while electing to take no action on other issues.
16 These issues are more properly addressed by the City Council and Appellant will have an
17 opportunity to provide such comments at the upcoming public hearing on the SMP update.
18
19

20 Appellant's failure to provide specific references to the SEPA checklist environmental
21 elements and the City's responses to the questions contained in the checklist and supplemental
22 sheet is a procedural defect in the appeal. The Appellant's appeal falls short of raising any
23 legitimate SEPA issues and should be denied.
24

25 //

26 //

1 **E. Even if Appellant's Grounds were found to be appropriate for appeal,**
2 **the Responsible Official Properly Issued the Determination of**
3 **Nonsignificance.**

4 A DNS must be issued if the proposed project poses no probable significant adverse
5 environmental impact. WAC 197-11-340. As stated above, prior to issuing a threshold
6 determination, the responsible official must review the environmental checklist. Prior to issuing
7 the DNS here, the Planning Director thoroughly reviewed the environmental checklist and the
8 associated Supplemental Sheet For Non-Project Actions prepared for the SMP update. See Ex. A
9 and Ex. B. The City's SEPA checklist addresses the project scope and a series of specific
10 questions regarding the proposed Shoreline Master Program's potential to adversely affect 16
11 environmental elements that comprise the natural and built environment, including earth, air,
12 water, plants, animals, energy and natural resources, environmental health, land and shoreline
13 use, housing, aesthetics, light and glare, recreation, historic and cultural preservation,
14 transportation, public services and utilities. WAC 197-11-960B. The administrative record
15 clearly reflects that the Planning Director's threshold determination properly evaluated the
16 potential, probable, significant adverse impacts associated with the adoption of the City's draft
17 Shoreline Master Program. In fact, the environmental checklist and supplement are replete with
18 references to the beneficial impact on the environment, for example:
19

- 20
- 21 • The development standards also address the management and protection of critical
22 areas (wetlands, critical fish and wildlife habitat, steep slopes, etc.) located within
23 the shoreline area. [Ex. A, p. 4]
 - 24 • The proposed GHSMMP generally strengthens protection of the shoreline through
25 new regulations for native vegetation conservation and additional provisions to
26 address clearing and grading. [Ex. A, p. 6 at B(1)(e)]

- 1 • The proposed GHSMP strengthens erosion control provisions. . . . It also contains
2 new policies and regulations related to preservation and restoration of vegetation
3 to benefit both habitat and slope stability. . . . [Ex. A, p. 6 at B(1)(h)]
- 4 • In general, the updated master program strengthens goals and policies related to
5 conservation and restoration of water quality. . . . [Ex. A, p. 9 at B(3)(d)]
- 6 • Generally, the proposed GHSMP strengthens protection of native shoreline
7 vegetation. [Ex. A, p. 10 at B(4)(b)]
- 8 • The proposed GHSMP contains goals, policies and development standards for the
9 conservation and restoration of native vegetation within the shoreline area which
10 provides for wildlife habitat. Provisions for the protection of critical fish and
11 wildlife habitat areas have been incorporated. . . . [Ex. A, p. 11 at B(5)(d)]
- 12 • The proposed GHSMP includes policies and regulations that address the
13 protection of the shoreline's ecological functions and addresses potential impacts
14 associated with specific land uses and shoreline modifications. . . . In general, the
15 updated development standards and regulations for shoreline modifications
16 provide additional protection for shoreline ecological processes. [Ex. B, p. 1, §1]
- 17 • This proposal. . . will encourage shoreline conservation and prohibit development
18 activities that would cause adverse impacts to the shoreline environment. [Ex. B,
19 p. 1, §2]
- 20 • Proposed revisions. . . are measures proposed to protect or conserve plants,
21 animals, fish, or marine life. [Ex. B, p. 2, §2]
- 22 • The proposed GHSMP establishes policies and regulations for the protection and
23 conservation of environmentally sensitive areas and public access/recreational
24 sites. [Ex. B, p. 2, §4]
- 25 • The proposed master program incorporates numerous regulatory approaches to
26 ensure no net loss of ecological functions. [Ex. B, p. 3, §5]

21 The Shoreline Master Program is intended to carry out the provisions of chapter 90.58
22 RCW, the State Shoreline Management Act, one of this state's primary environmental statutes.
23 One of the key principles of the State Shoreline Master Program is the protection of shoreline
24 ecological systems. See WAC 173-26-186(8). The City's SMP update provides goals, policies
25 and implementing regulations for managing the City's shorelines in a manner that protects
26

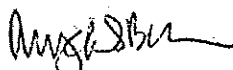
1 property rights and allows development, while protecting important ecological functions. The
2 Planning Director properly determined the absence of probable significant adverse environmental
3 impacts.

4
5 **III. CONCLUSION**

6 Community displeasure is not enough to overturn the decision of a SEPA responsible
7 official. *See Anderson*, 86 Wn. App. at 305. Likewise, Appellant's mere discontent and
8 generalized objections to provisions of the proposed SMP update are insufficient to overturn the
9 Planning Director's threshold determination. Appellant failed to meet his burden of proving that
10 the Planning Director's SEPA determination was clearly erroneous. The City Council should
11 find that the Planning Director properly issued the DNS for the reasons set forth above and that
12 the appeal should be denied.

13
14 DATED this 23rd day of May, 2012.

15 OGDEN MURPHY WALLACE, P.L.L.C.

16 By: 
17 Angela S. Belbeck, WSBA No. 24482
18 Attorneys for City of Gig Harbor

1/65

May 29, 2012

Appellant: Robert G. Frisbie
9720 Woodworth Avenue
Gig Harbor, WA 98332
Phone: 253.224.3524
Email: bobfrisbie@foxinternet.com

Gig Harbor City Council
City of Gig Harbor
3510 Grandview Street
Gig Harbor, WA 98335

Subject: May 29, 2012 Appeal Hearing
DNS For Shoreline Master Program (SMP) Update

I would like to initially tell you that my sole intent in filing the Appeal is to get the City to expand the Checklist to include the items I have identified. The expanded Checklist would identify alternatives to the items below and recommend mitigation measures that would ultimately be considered for incorporation into the final SMP.

I believe the Checklist could be expanded using City staff in one to two work weeks.

Reason For Concern:

1. The current SMP dated 1994 is 74 pages in length.
2. The DRAFT plan with an issue date of March 17, 2011 was 298 pages in length.
3. The DRAFT plan with an issue date of February 29, 2012 is 333 pages in length.

My experience tells me that anytime you go from a 74 page document to a 333 page document, major additions have been added to the development regulations, hence my review and this appeal.

The term SMP refers to the Draft Shoreline Master Program dated April 21, 2011 and revised February 29, 2012. It is my belief that the SEPA Threshold Determination is inadequate in the following ways:

1. Throughout the SMP hard armoring is being prohibited/discouraged/encouraged to be removed.
 - a. Relief Sought
 - i. Expand the Checklist to specifically identify quantitative benefits to eliminating hard armoring.
 1. Identify loss of usable land to the property owner when you remove hard armoring and go to soft armoring.

- Refer to **Exhibit "A"**. Soft armoring will reduce the usable lot area of my property by 6%. Assuming a 2:1 slope from the OHWM and a 6 foot high seabed to OHWM elevation, then 12 feet will be lost in usable physical property.
- If the engineer was to use the more conservative 4:1 slope design, then 24 feet of usable physical property would be lost. This equates to 12% of the usable property being lost.
- With the proposed 50 foot setback from the OHWM, I will then lose $12' + 50' = 62$ feet of property or 31% of my lot area will be lost. Using the 4:1 slope I would lose $24' + 50' = 74'$ feet of property or 37% of my lot area will be lost.
- ✓ RCW 43.21C.030 (c)(**Exhibit "B"**) reads," Include in every recommendation or report on proposals for legislation and other major actions significantly affecting the quality of the environment, a detailed statement by the responsible official on:
 - (i) the environmental impact of the proposed action;
 - (ii) any adverse environmental effects which cannot be avoided should the proposal be implemented;
 - (iii) alternatives to the proposed action;
 - (iv) the relationship between local short-term used of the environment and the maintenance and enhancement of long-term productivity; and
 - (v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented;"
- ✓ **Conclusion: The property owner is losing the use of a portion of his physical property due to these new regulations. Therefore, follow the requirements of RCW 43.21C.030(c) and expand the checklist to address all five (5) of the above points.**
- Refer to "**Exhibit "C"**" pages 1, through 5. This Exhibit is an email to staff, WSDOE and the Planning Commission providing background on the size of the salmon runs in Puget Sound dating back to 1914.
 - The three technical papers referenced by the WSDOE and used by staff and the Planning Commission (PC) identify the two primary reasons for soft armoring as:
 1. The raising and protection of salmon.

- a. The numbers detailed on Exhibit "C" and provided to the staff, WSDOE and PC on approximately Tuesday March 9, 2010 clearly show the salmon runs to be 149% to 168% of the 1914 earliest high recorded catches. No one has in the last 26 months questioned the validity of these numbers. Therefore I submit to you that the numbers are real and the reason given in the technical report/white paper to support soft armoring is either exaggerated, misleading, incomplete and/or just plain wrong. I submit that the real problems with the salmon runs is not the lack of soft armoring but a combination of highly efficient commercial fishing gear, the ever increasing numbers of sports fisherman, the number of Indian fisherman and the efficiency of their gear and the number of fish taken by the Canadian fisherman. The Checklist needs to identify all of the above variables and assign % weights to the individual problem so that all of us can judge just how big an impact soft armoring in the Gig Harbor SMP area will have on the salmon runs.
2. Offset the phenomenon of global sea level rise (SLR). Refer to Technical Report 2007-04. This report provides information that is all over the spectrum. First the report tells you that between now and the year 2100 there will be a 3.54 inch to 34.64 inch rise in the OHWM. Then the report tells the reader that south Puget Sound is sinking at the rate of 1/8 inch per year. This equates to a sinking over the next 90 years of approximately 11.25 inches. In other words the OHWM may in fact go down versus increase in height depending on mother nature, which of course no one controls.

Additionally, the scientists of the world who have been studying the rise/fall of the oceans levels have reported that the oceans appear to have lowered slightly over the last ten years. They have agreed to study/report on this

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condition for an additional three (3) years to verify this trend.

Conclusion: The reports relied upon by staff and PC and WSDOE do not in fact support soft armoring. → Expand the Checklist to find scientific data that supports soft armoring or just plain state that it would be a nice to do for specifically stated reasons/criteria. In any case, don't rely on papers that in fact don't support soft armoring.

Soft Armoring Continued:

The hearings process called out in the RCWs and WACs call upon local citizens to bring forth information that will aid in the development of a complete plan. Example of the cost of soft armoring: I am concerned that soft armoring is not a short term or a long term solution to property management on the waters of Puget Sound. As you may be aware, the Tacoma Narrows Bridge Contractor as a part of their mitigation removed the hard armor (rip rap/big rocks) from the Narrows Park seawall and replaced it with soft armor. This soft armor failed after \pm 3 years and was replaced in the spring circa 2010 by the Pierce County Parks and Recreation Department at the sole cost of the Pierce County tax payers. (Source Skip Ferrucci PCP&R 253.798.4009).

1. There had been zero problems with the rip rap seawall prior to the seawall's removal. It was removed solely because of the need for the Tacoma Narrows Contractor to fulfill the requirement to perform a certain amount of mitigation in order to receive all the necessary permits to construct the second Narrows Bridge.
2. Removal of the hard armor walls or the requirement to build soft armoring for future developments will create a major problem/disaster at the time of a natural disaster (earthquake and/or high tide and/or high winds or a combination incidents all occurring at the same time). The area would be faced with so many failures at one time that our emergency services would not be able to respond accordingly. Lives and property would be needlessly lost.

Conclusion: Add a section to the Checklist identifying the local failure of a major soft armoring retrofit project with the associated costs, benefits and potential negative impacts.

Add a Section to the Checklist that defends the creation of two classes whereby single family residences under WAC 173-27-040 don't have to follow the City's SMP and can not only construct hard armored bulkheads but can also construct a new hard armored bulkhead in front of an existing bulkhead. The Checklist needs to recognize that approximately 66% of the shoreline of the State is comprised of single family residences. Therefore, the remaining 34% must pick up 300% of the burden accomplished by soft armoring. The Checklist needs to show how there is equity in this proposed regulation and just how the 34% can actually accomplish the stated purpose of the white papers and WSDOE. The consequence of the single family exemption is that the State Legislature doesn't recognize the arguments made by the "white papers" presented by the WSDOE to be a fact that actually will have a significant impact.

Soft Armoring Continued:

RCW 43.21C.030 requires under (f) "Recognize the worldwide and long-range character of environmental problems and where consistent with state policy, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of the world environment." **Refer to Exhibit "I", pages 1 through 9. The States of Maine and Florida both use Hard Armoring as does Italy and Sicily. Maine is a major source for Atlantic salmon in spite of using hard armoring. Italy and Sicily have been fishing from their shores for +5,000 years; refer to pages 6, 7, 8 & 9. If soft armoring is really that beneficial, then the question has to be asked why other parts of the world are not adopting this concept.**

POINT → Scientific principles do not change when one considers environmental issues in different parts of the world. Those basic principles are going to be the same in Washington/Maine/Florida/Sicily/Italy/China.

2. Throughout the SMP additional uses for over water net sheds are being allowed.
 - a. Relief Sought
 - i. Expand the Checklist to specifically identify the ramifications of a tsunami as described in NOAA's Seattle and Tacoma Fault technical paper. Refer to Exhibit "D".

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1. For individuals living over the water, given the limited time to notify people of a tsunami, how many lives are expected to be lost?
 2. For individuals that would be working in an office type environment within a net shed, given the limited time to notify people of a tsunami, how many lives are expected to be lost?
 3. For the \pm 18 small homes/cabins on the Nesika beach, given the limited time to notify people of a tsunami, how many lives are expected to be lost?
 4. What is the estimated dollar damage to the "upgraded" net sheds versus if the net sheds were left to be net sheds only?
- ii. RCW 43.21C.020 (2) (b) "Assures for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings." Point \rightarrow NOAA's technical paper clearly identifies a risk to placing people in these net sheds. The City's Checklist needs to identify this risk and the respective mitigation.
 - iii. The referenced NOAA report clearly identifies Gig Harbor as receiving an 11.48 high wave, 19 minutes after a 7.3 magnitude earthquake at the Seattle fault. Refer to the table on Exhibit "D" page 2 of 7. For a 7.3 magnitude earthquake at the Tacoma fault, the wave height will be 6.56 feet 8 minutes after the quake.

Conclusion: Add a Section to the Checklist identifying the hazards of people living in the net sheds over the water in terms of the potential for lives to be lost, added burden in an tsunami for emergency crews to try and respond to save the lives of those in the net sheds and the additional property loss due to the net shed improvements proposed to be allowed by this regulation change.

The International Building Code (IFC/ASCE) and its earlier version(s) all contain or contained requirements to meet seismic requirements for a given region. The proposed regulation ignores these codes and the tsunami events of the recent past. The Checklist needs to be expanded to identify the pros and cons of this action in terms of dollars/cents, human lives and burden on emergency services at a minimum.

3. Throughout the SMP Public Access enhancements are being required.
 - a. Relief Sought:
 - i. Expand the Checklist to identify the dollar costs for:
 1. Property owner to give up a % of the property for Public Access.
 2. Property owner to construct the capital improvement to provide Public Access.

3. Property owner's cost to maintain the capital improvement to provide Public Access.
 4. Who provides the insurance for the public to enter on the property owners property and at what cost? Provide alternative for the City to insure the Public Access portion of the capital improvements.
- ii. With 66% of the shoreline being used as single family residences, comment on:
 1. The amount of Public Access that won't be available under the SMP because the access will be blocked by a single family residence.
 2. The amount of Public Access that won't be available under the SMP because the access will be blocked by an in place development operating under an old permit.
 3. The amount of Public Access that won't be available because the access is blocked by a physical obstruction such as cliff, structure, dredged area etc.
 - iii. Identify a threshold limit based on dollar income for a facility that would exempt the SMP applicant from having to provide Public Access.
 - iv. Utilize a zoning code/SMP provision allowing additional lot coverage based on Public Access. Follow the existing provisions now in the waterfront zoning codes.
 - v. Specifically comment on whether Public Access is going to be a requirement of the Commercial Fishing industry.
 - vi. Specifically comment on whether Public Access is going to be a requirement of all property development with the exception of one single family residence?
 - vii. Comment on the additional noise brought about by the Public Access provisions for both daylight and night time hours and the associated disruption to the single family residences in the neighbor? Additionally comment on the fact that Waterfront Millville recognized this problem +20 years ago when they petitioned the Council and the Council concurred by prohibiting outdoor pay telephones in the WM Zone. At that time, young people would gather around the pay phone in front of Linda's Deli to talk to their friends late into the night.
 - viii. Comment on the Police and Fire response to remote Public Access areas where this Public Access would be required.
 1. Police having to respond to areas they cannot drive to.
 2. Police having to respond to areas that allow individuals to hide in the shadows.
 3. Police having to respond to areas where they can be attacked from the water and the attacker is free to flee to the water.

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- ix. Comment on the additional light and glare that will come about due to the lighting of pathways/sideways/boardwalks etc.
- x. The City has entered into a long term lease with the Tides Tavern for use of the Street end. This lease has been in existence for +25 years. This storage shed use at the Street end prohibits Public Access to Gig Harbor Bay.
 - 1. Explain how this is justified.
 - 2. Explain how the Tides Tavern is allowed to park on City property that would be better served by a large park serving the public at large.
 - 3. Explain why my property is being required to provide Public Access when the public property being used by the Tides Tavern was purchased using Public moneys and was generally developed with Public money and is now blocking Public Access to the water's edge.
 - 4. Explain why the proposed new regulation encourages parking to not be located on the shoreline area but the City has parking at the Tides Tavern and the new pier.

Conclusion:

- 1) **Expand the Checklist to cover all of the above. If the alternatives with the associated pros and cons identify an impact/inconsistency/problem, then modify the new SMP regulations to eliminate the current language.**
- 2) **Expand the Checklist to specifically identify the authority of the City to take my private property for "public use". The "Takings Clause", the last clause of the Fifth Amendment to the United States Constitution, limits the power of eminent domain by requiring that "just compensation" be paid if private property is taken for public use. The Supreme Court of the USA has upheld this clause.**

Additionally, the just compensation provision of the Fifth Amendment did not originally apply directly to the states, but the federal courts now hold that the Fourteenth Amendment extended the effects of that provision to the states. The federal courts, however, have shown much deference to the determinations of Congress, and even more so to the determinations of the state legislatures, what constitutes "Public Use". The property need not actually be used by the public; rather, it must be used or disposed of in such a manner as to benefit the public welfare or public interest. Refer to Exhibit "H" page 10 of 12.

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POINT → The Checklist needs to be expanded to identify Public Access costs and the alternative ways to fund/pay for this Public Access.

- 3) Expand the Checklist to list Exhibit “K” as an alternative to the individual property owner providing Public Access at their sole cost. Specifically refer to page 1 of 7. This Washington State Recreation and Conservation Office publication details various grants offered by their office. Note under “Park Grants” that money is available for 1) Developing and renovating public waterfront areas and 2) Creating access to the water. Additionally note under “Examples” that money is available for: 1) Removing bulkheads and restoring the beach to its natural function, 2) Building trails along the shoreline and 3) Building waterfront boardwalks.**

Point → The state is offering grants as detailed above, the Checklist needs to address why Public Access is being required by the DRAFT SMP regulation when the state is willing and able to pay for such access. Why has this burden been placed on the individual property owner? The Checklist needs to answer this question as well as all others on this issue.

The state recognizes the need to pay for Public Access as proven by Exhibit “K” wherein the state is providing funding for:

- **Developing & renovating public waterfront areas**
- **Creating access to the water**
- **Removing bulkheads and restoring the beach to its natural function**
- **Building trails along the shoreline**

Building waterfront boardwalks

- 4. Table 6-1 and other locations within the SMP have established minimum setbacks from the OHWM.**
- a. **The proposed regulation call for a 50 foot setback from OHWM. Refer to Exhibit “A”.**
 - i. **Since circa 1994 the setback has been zero so long as the dry land owner owned the fronting tidelands to his/her property.**
 - ii. **For the property which is Lot 5 in Millville, approximate address 3525 Harborview Drive, this 50 foot setback will eliminate approximately 50% of the use of this property.**

- b. Relief Sought:
 - i. Provide technical papers describing why this is being changed from the existing Master Program.
 - ii. Expand the Checklist to identify the pros and cons of this setback being required, recognizing that for my property, this takes away 25% of my usable dry land area and for others 50%.
 - iii. Leave the set back requirements as they exist today, e.g. from the property line and/or tideland ownership limit.
5. Table 7.1.2 limits the maximum impervious lot coverage.
- a. Relief Sought:
 - i. Provide technical paper(s) detailing why this is being limited.
 - ii. Typical limits on impervious areas coverage are a function of ground water recharge and the ability of a storm drain system to hydraulically handle the runoff.
 - 1. Most if not all waterfront property owners handle their own runoff via local outfall.
 - iii. Tie the impervious lot coverage to Public Access as the existing water front zones do today.
 - b. Expand the Checklist to specifically detail why this requirement is required is the individual property owner handle their own surface water runoff.
6. On page 7-58, item 7 e) Pump out, holding and/or waste treatment facilities.....
- a. Relief Sought:
 - i. Provide a technical review and supporting waste load calculations showing the need to supersede Coast Guard regulations for a boat's waste water treatment and holding tank requirements.
 - ii. Identify the associated capital costs, connection charge, monthly cost and yearly maintenance cost for a pump out system. I believe the capital cost of such a system for my marina is approximately \$100,000 with connection charges.
 - iii. Assuming "i" above is really, really small if at all measurable, then set a marina size threshold whereby the marina would not be required to install such a facility. Otherwise, as a small business, the overhead cost of running the business will out way the income.
 - iv. The City recognized the cost of a business providing restroom facilities to the general public walking the sidewalks fronting Gig Harbor as being cost prohibitive +30 years ago. Since that time, the City has constructed and maintains today a minimum of 5 restroom facilities for the public. I ask that the City continue to provide and maintain a wastewater pump station at their sole cost, versus my marina having to construct and maintain a duplicate system just as the City relieved the individual store,

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business and restaurant owners of this obligation for people walking the Gig Harbor waterfront.

- v. Refer to Exhibit "G" and Table 7 for Gig Harbor. Update the category listing for Gig Harbor considering: 1) The outfall is operational outside the Harbor, 2) The estimated waste load from the septic tank drain fields on the County side of the Harbor, 3) The estimated waste load for the Canadian Geese and other water fowl, 4) The estimated waste load for livestock/wild animals and/or pets 5) The estimated waste load from the boats visiting Gig Harbor not tied to permanent moorage, 6) The estimated waste load from the boats tied to permanent moorage in Gig Harbor and 7) The estimated waste load from commercial fishing vessels moored in Gig Harbor.

Conclusion: Once all of the above data is collected, provide a Table in the Checklist detailing the data in rank order form. In this way, we will all know how to write the final regulations. Refer to Exhibit "J" page 2 of 2. Bacteria sources were studied on three (3) rivers in the Washington DC area. The average results from these three studies were as follows: Pets = 17.8%, Livestock = 6.7%, Humans = 20.6% and Wildlife = 54.9%. Wildlife included: Geese, deer, raccoons and muskrats. Point → Available technical data would indicate that the City's wastewater pump out station at the City dock will provide the necessary service for Gig Harbor Bay.


7. Regulations for Commercial Fishing Moorage, 7.11.11.

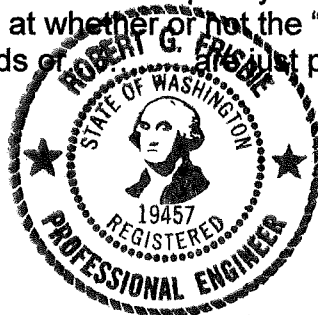
a. Relief Sought:

- i. Why is this industry not required to provide pump out stations? Provide a technical review and supporting waste load calculations showing their waste load to Gig Harbor.
- ii. Why is this industry not required to provide Public Access? The Checklist needs to identify the benefit for this exemption.

Answering all of the above issues should be accomplished very quickly in an expanded Checklist considering the number of times the Staff and Planning Commission has stated in the record that all of the new regulations are backed up/supported by "White" and "Technical" papers.

If answers to the above issues are not quickly forthcoming, then I would suggest the Council look very carefully at whether or not the "White/Technical" papers really meet minimum industry standards or if they are just papers based on someone's wish list.


 Robert G. Frisbie, P.E.
 Appellant



EXPIRES: 2/8/13

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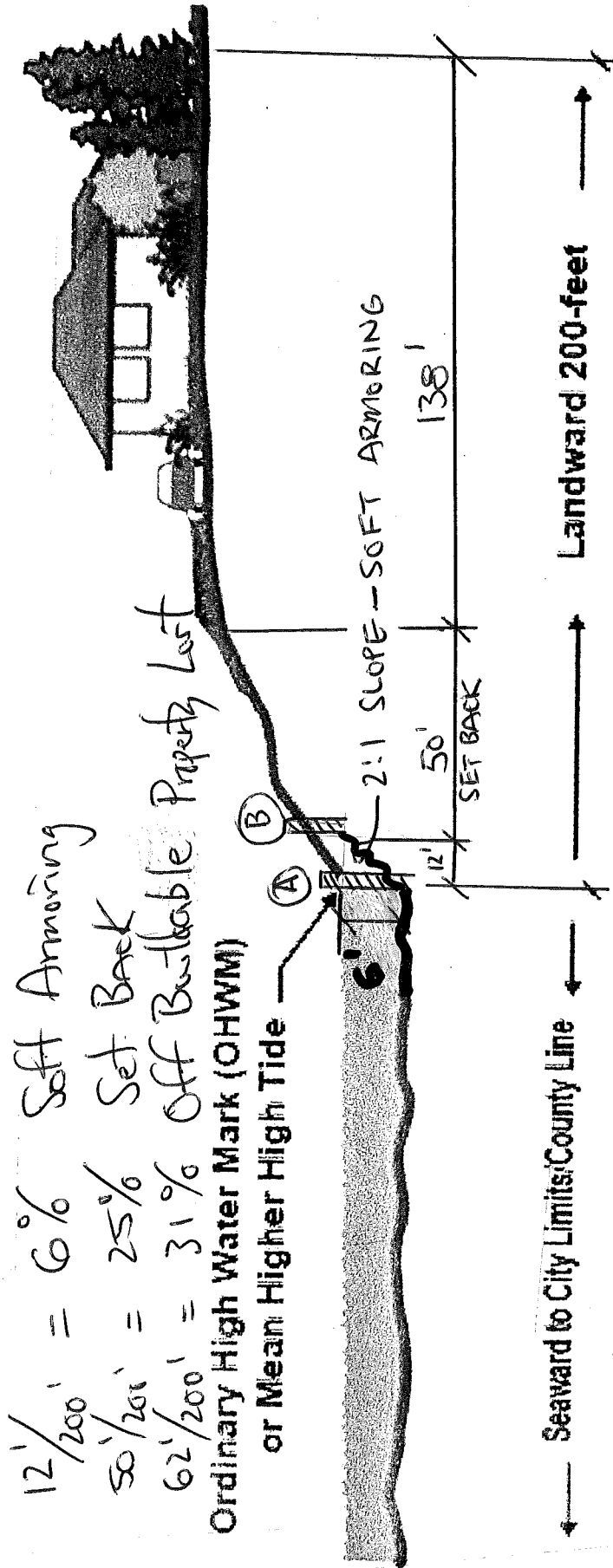


EXHIBIT "A"
5/27/12

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[43.21C.020](#) << [43.21C.030](#) >> [43.21C.0301](#)

RCW 43.21C.030

Guidelines for state agencies, local governments — Statements — Reports — Advice — Information.

The legislature authorizes and directs that, to the fullest extent possible: (1) The policies, regulations, and laws of the state of Washington shall be interpreted and administered in accordance with the policies set forth in this chapter, and (2) all branches of government of this state, including state agencies, municipal and public corporations, and counties shall:

(a) Utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision making which may have an impact on the environment;

(b) Identify and develop methods and procedures, in consultation with the department of ecology and the ecological commission, which will insure that presently unquantified environmental amenities and values will be given appropriate consideration in decision making along with economic and technical considerations;

(c) Include in every recommendation or report on proposals for legislation and other major actions significantly affecting the quality of the environment, a detailed statement by the responsible official on:

(i) the environmental impact of the proposed action;

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented;

(iii) alternatives to the proposed action;

(iv) the relationship between local short-term uses of the environment and the maintenance and enhancement of long-term productivity; and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented;

(d) Prior to making any detailed statement, the responsible official shall consult with and obtain the comments of any public agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate federal, province, state, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the governor, the department of ecology, the ecological commission, and the public, and shall accompany the proposal through the existing agency review processes;

(e) Study, develop, and describe appropriate alternatives to recommended courses of action in any proposal which involves unresolved conflicts concerning alternative uses of available resources;

(f) Recognize the worldwide and long-range character of environmental problems and, where consistent with state policy, lend appropriate support to initiatives, resolutions, and programs designed to maximize international cooperation in anticipating and preventing a decline in the quality of the world environment;

(g) Make available to the federal government, other states, provinces of Canada, municipalities, institutions, and individuals, advice and information useful in restoring, maintaining, and enhancing the quality of the environment;

International
State

EXHIBIT "B" 1/2

(h) Initiate and utilize ecological information in the planning and development of natural resource-oriented projects.

[2010 c 8 § 7002; 1971 ex.s. c 109 § 3.]

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To: "Bill Coughlin" <bcoughlin@kaymedical.com>
Subject: Soft Armoring
CC: "Bob Frisbie" <bobfrisbie@foxinternet.com>
Date: Fri, 07 May 2010 03:47:50 -0800
Status: normal
From: "bobfrisbie" <bobfrisbie@foxinternet.com>
Reply-to: bobfrisbie@foxinternet.com

The email below is information I collected and sent to the WSDOE and City with no response received to date.

I will send you the information on Public Access next.

Bob Frisbie
Cell: 253-224-3524

----- Message Forwarded on Fri, 07 May 2010 03:44:24 -0800

From: "bobfrisbie" <bobfrisbie@foxinternet.com>
To: "Van Zwalenburg, Kim (ECY)" <kvan461@ECY.WA.GOV>
Cc: "Bob Frisbie" <bobfrisbie@foxinternet.com>, "Reema Shakra" <rshakra@esassoc.com>, "Peter Katich" <katichp@cityofgigaharbor.net>, "Tom Dolan" <dolant@cityofgigaharbor.net>
Subject: Email No. 3 - Gig Harbor Draft SMP - Fact Check - Soft Armoring
Date: Tue, 09 Mar 2010 20:37:54 -0800

Two primary reasons are given for soft armoring in the three WSDOE papers referenced.

The first is the raising and protection of salmon.

None of the reports provide a reference to the history of the harvest in Puget Sound. In my mind it is important to provide objective information so that everyone can track which programs are working and which programs are not working. To that end, I contacted the DFW, Valerie Tribble, 360-902-2329 and obtained the following harvest report for Chums/Dogs in Puget Sound since that is the majority of fish returning to Donkey and Cresnet Creeks.

The DFW use a ten year average to determine a runsize for the purpose of publishing data so the data will more clearly reflect the effects of the environment. Statistics began being collected in 1913.

10 yr period 1914 to 1923 (first recorded high) = 12,134,600
or average = 1,213,460/yr
10 yr period 1999 to 2008 = 20,407,157 or average of
2,040,715 or 168% of 1914-23 number
20 yr period 1989 to 2008 = 36,235,911 or average of
1,811,796 or 149% of 1914-23 number

Conclusion: Chum/Dog runsize is clearly greater than the previously recorded high for the period of 1914 to 1923. The numbers say that the removal of hard armoring and shaded areas in Gig Harbor aren't necessary to increase the

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Chum/Dog runs.

Second point:

Technical report 2007-04 recommends the removal of hard armoring to offset the phenomenon of global sea level rise (SLR). However, the paper suggests that the sea level rise between now and the year 2100 will be 3.54 inches to 34.64 inches. The paper also suggests that south Puget Sound is sinking at the rate of 1/8 inches/year (3 mm/yr). This results in a sinking over 90 yers of approximately 11.25 inches.

Point, the paper and the two others do not discuss the loss of usable land area in Gig Harbor bay for fronting lots. At a slope of 4:1, some of the lots in Gig Harbor bay will loose approximately 40% of there usable land area. This needs to be discussed in light of the fact that the fish harvest numbers noted above show a substantial increase in harvest numbers in the last 10 to 20 years. It simply does not make sense to remove hard armoring when the harvest numbers are increasing without their removal.

I have attached the Excel spreadsheet I received from DFW. The yellowed area in the lower right corner is my work and calculations.

Conclusion: The referenced three reports are not scientific/technical documents that support the removal of hard armoring within the limits of the Gig Harbor SMP.

If you have any questions, please do not hesitate to contact me at your convenience.

Thank you,

Bob Frisbie
Phone: 253-224-3524

----- Original Message Follows -----
From: "Van Zwalenburg, Kim (ECY)" <kvan461@ECY.WA.GOV>
To: <bobfrisbie@foxinternet.com>
Cc: "Reema Shakra" <rshakra@esassoc.com>, "Peter Katich" <katichp@cityofgigharbor.net>, "Tom Dolan" <dolant@cityofgigharbor.net>
Subject: RE: Emial No. 2 - Gig Harbor Draft SMP - Fact Check - Soft Armoring
Date: Mon, 8 Mar 2010 17:04:17 -0800

>Mr. Frisbie:
>
>The documents relied on for the Gig Harbor Inventory &
>Characterization are listed in report in appropriate
>sections and should also be listed in the Bibliography
>beginning on page 74 of the report.
>
>Please also review the state rule, WAC 173-26 Part III
>Shoreline Guidelines. This rule is very specific about

EXHIBIT "C"
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>shoreline modifications (including minimum standards for
>shoreline armoring with which the Gig Harbor shoreline
>master program must be consistent). The specific section
>on shoreline modifications is in WAC 173-26-231. Shoreline
>stabilization can be found at WAC 173-26-231(3)(a).

>
>Hope that information is helpful. Kim
>
>Kim Van Zwalenburg
>Shoreline Planner
>Department of Ecology - Southwest Regional Office
>PO Box 47775
>Olympia, WA. 98504-7775
>(360) 407-6520; FAX (360) 407-6305
>e-mail: kvan461@ecy.wa.gov

>
>
>
>
>-----Original Message-----

>From: bobfrisbie@foxinternet.com
>[bobfrisbie@foxinternet.com] Sent: Saturday, March
>06, 2010 1:41 PM To: Van Zwalenburg, Kim (ECY)
>Cc: Reema Shakra; Peter Katich; Tom Dolan; Bob Frisbie
>Subject: Emial No. 2 - Gig Harbor Draft SMP - Fact Check -
>Soft Armoring

>
>Page 26 of the City of Gig Harbor Shoreline Inventory and
>Characterization report identifies three "white papers" used
>to support the WSDOE's recommendations for shoreline
>modifications to the area covered by the City of Gig
>Harbor's SMP.

>
>Please confirm these are the white papers relied on by
>WSDOE to support their position on shoreline armoring:

- >
>1. Overwater structures: Marine issues by Nightingal and
>Simenstad, 2001
>
>2. Marine and Estuarine Shoreline Modifications Issues by
>Williams and Thom, 2001
>
>3. Beaches and Bluffs of Puget sound by Johannessen and
>MacLennan, 2007.

>
>Also, on lines 3 and 4 of Article 4.4 in the inventory the
>following phrase is used, ".....and which may assist in the
>update of shorline management protocols,...."

>
>Question: Does the use of the word may mean that the WSDOE
>does not have the necessary scientific proof to dictate to
>the City of Gig Harbor how to deal with the armoring of the
>shorelines under their plan?

>
>Thank you,
>
>Bob Frisbie
>Email: bobfrisbie@foxinternet.com
>Phone: 253-224-3524

>

EXHIBIT "C"
3/5

18/65

>----- Message Forwarded on Sat, 06 Mar 2010 13:30:41 -0800
>-----
>From: "bobfrisbie" <bobfrisbie@foxinternet.com>
>To: "Kim Van Zwalenburg" <kvan461@ecy.wa.gov>
>Cc: "Reema Shakra" <rshakra@esassoc.com>, "Peter
Katich"
><katichp@cityofgigharbor.net>, "Tom Dolan"
><dolant@cityofgigharbor.net>, "Bob Frisbie"
><bobfrisbie@foxinternet.com>
>Subject: Gig Harbor Draft SMP - Fact Check - Soft Armoring
>Date: Thu, 04 Mar 2010 09:33:32 -0800

>
>Please identify the white paper and/or written agreement
>with the tribes that dictates that the City move from the
>"hard armoring" of seawalls to "soft armoring".

>
>As a Civil Engineer I am concerned that soft armoring is
>not a long term solution to property management on the
>waters of Puget Sound. As you may be aware, the Tacoma
>Narrows Bridge Contractor as a part of their mitigation
>removed the hard armor (rip rap) from the Narrows Park
>seawall and replaced it with soft armor. This soft armor
>failed after +/-3 years and is currently being replaced by
>the Pierce County Parks and Recreation Department at the
>sole cost of Pierce County (source Skip Ferrucci PCP&R
>253-798-4009).

>
>There had been zero problem with the rip rap seawall prior
>to the seawall's removal. It was removed solely because of
>the need for the Tacoma Narrows Contractor to fulfill the
>requirement to perform a certain amount of mitigation in
>order to receive all the necessary permits to construct the
>second Narrows Bridge.

>
>If you move to soft armor walls then at the time of a
>natural disaster (earthquake and/or high tide and winds or
>both) the area will be faced with so many failures at one
>time that our emergency services will not be able to
>respond accordingly and lives will be lost.

>
>Thank you,

>
>Bob Frisbie
>Email: bobfrisbie@foxinternet.com
>Phone: 253-224-3524

[Attachment: Copy of X10000001.xls]

EXHIBIT "C"

4/5

19/65

Information provided by Valerie Tribble, DFW, 360-902-2329 and Valerie.Tribble@dfw.wa.gov on Tuesday 3/9/2010

PUGET SOUND CHUM SALMON TOTAL WILD AND HATCHERY ESCAPEMENT AND RUNSIZE
(Summer - Fall - Winter Timings Combined)

Return Year	Wild Escapement	Wild Runsize	Hatchery Escapement*	Hatchery Runsize*	Total Escapement	Total Runsize	% Increase Over the 1914 to 1923 Average
1968	**	**	**	**	**	**	**
1969	**	**	**	**	**	**	**
1970	**	**	**	**	**	**	**
1971	**	**	**	**	**	**	**
1972	**	**	**	**	**	**	**
1973	**	**	**	**	**	**	**
1974	446,310	646,779	42,163	55,851	488,473	701,430	
1975	114,488	186,926	15,576	18,970	130,064	205,896	
1976	328,997	817,183	60,324	112,229	389,321	929,412	
1977	207,144	546,168	44,166	116,347	251,300	661,505	
1978	489,772	1,137,983	62,249	335,166	552,021	1,473,149	
1979	123,016	176,604	62,278	110,538	185,294	287,142	
1980	255,676	690,637	77,277	314,766	332,953	1,005,403	
1981	204,099	522,004	38,648	201,698	242,747	723,702	
1982	382,703	975,492	56,274	373,037	438,977	1,348,529	
1983	96,799	348,690	43,544	252,417	140,343	601,107	
1984	328,427	691,814	91,866	462,347	420,293	1,144,161	
1985	400,254	1,028,226	98,435	431,795	498,689	1,460,021	
1986	404,278	1,068,291	93,889	482,285	498,167	1,550,576	
1987	383,945	1,026,283	92,764	730,632	476,709	1,756,915	
1988	521,776	1,375,085	94,765	657,820	616,541	2,032,905	
1989	154,219	547,596	85,881	493,663	240,100	1,041,159	
1990	369,179	1,053,003	61,663	303,770	430,842	1,356,773	
1991	249,928	702,333	139,512	553,999	389,440	1,256,332	
1992	488,290	1,326,019	175,555	593,345	663,845	1,919,364	
1993	327,035	857,171	160,732	600,953	487,767	1,458,124	
1994	973,206	1,791,283	301,558	785,306	1,274,764	2,576,589	
1995	533,260	985,932	155,339	402,888	688,599	1,388,820	
1996	996,092	1,557,395	214,918	451,068	1,211,010	2,008,463	
1997	201,125	384,993	105,954	347,696	307,079	732,689	
1998	1,044,849	1,489,084	248,535	601,357	1,293,384	2,090,441	
1999	379,050	561,390	77,180	134,462	466,230	695,852	
2000	235,986	452,793	45,553	115,904	281,539	568,697	
2001	768,789	1,640,831	244,135	945,564	1,012,924	2,586,395	
2002	1,351,241	2,518,151	305,877	873,436	1,657,116	3,391,587	
2003	821,019	1,490,728	269,948	1,062,486	1,090,967	2,553,214	
2004	1,147,506	2,477,532	157,097	804,917	1,304,603	3,282,449	
2005	374,137	823,715	81,886	286,947	456,023	1,110,662	
2006	950,878	1,959,096	169,186	698,912	1,120,064	2,658,008	
2007	613,494	1,471,653	144,250	745,534	757,744	2,217,187	
2008	319,810	904,964	67,245	438,142	387,055	1,343,106	
* Hood Canal and Strait of Juan de Fuca summer chum data are combined wild and hatchery (supplementation) estimates.							
All Hood Canal summer chum are included in the wild totals here.							
** Summer chum escapement and runsize databases for Hood Canal and the Strait of Juan de Fuca begin with the 1974 return. Puget Sound totals cannot be calculated for years prior to 1974.							

1,811,796 149% 168% 1923 Previous 10 Average High

2,040,716 695,852 568,697 2,586,395 3,391,587 2,553,214 3,282,449 1,110,662 2,658,008 2,217,187 1,343,106 1,811,796 2,040,716 695,852 568,697 2,586,395 3,391,587 2,553,214 3,282,449 1,110,662 2,658,008 2,217,187 1,343,106 36,235,911 20,407,157

EXHIBIT "C" 5/5

March 31, 2011

20/65

Robert G. Frisbie
9720 Woodworth Avenue
Gig Harbor, WA 98332
Ph: 253-224-3524
Email: bobfrisbie@foxinternet.com

City of Gig Harbor Planning Commission
City of Gig Harbor
Planning Department

Subject: DRAFT Shoreline Master Program Comments

Dear Commission Members:

My comments regarding the most recent SMP Draft are as follows:

1. The Commission has opted to rely on the technical papers supplied by the WSDOE to support various elements of the Draft SMP. I believe that the technical papers submitted do not supply the necessary data as required under the WAC to support some of the legislation proposed. I respectfully request the Commission write to the Ecology Director, Ted Sturderant and ask him to commit to the City of Gig Harbor that the WSDOE will defend with State money any appeal of SMP elements that would be challenged in the future due to the technical papers lacking sufficient evidence to support SMP regulations.

My point here is that if WSDOE will not defend the technical papers at their sole cost, then the Commission needs to rethink whether or not these same technical papers are adequate to support the SMP as presented.

2. The Draft SMP provides new regulations that allow the adaptive re-use of over water commercial fishing net shed structures and new nonconforming use and structure regulations.

Please refer to the NOAA Technical Memorandum OAR PMEL-132 dated January 2007. I have attached five pages from this technical paper which identify the Tsunami Hazard's in the South Puget Sound Area. The entire paper is accessible on the WEB at www.pmel.noaa.gov/pubs/PDF/vent2981/vent2981.pdf. The table below prepared by me summarizes the objective data for Gig Harbor contained within the technical paper. WSDNR is the coordinating agency in the State and one of the WSDNR's contact persons is Tim Walsh, Ph: 360.902.1432 and Email: tim.walsh@dnr.wa.gov.

EXHIBIT "D" 1/7

21/65

Earthquake Magnitude	Fault Scenario	Wave Height (feet)	Wave Velocity (meters/second)	Time To Reach Gig Harbor (mins)
7.3	Seattle	11.48	1.5	19
7.3	Tacoma	6.56	>1.5	8
7.3	Rosedale-Dominant	4.26	0.4	12

The technical report documents a 6 to 8 foot wave in Gig Harbor in 1949 which resulted in damage within Gig Harbor. Point → The above chart and related technical paper identifies real wave heights that will occur in Gig Harbor.

As you can see from the table above, the Seattle Fault Scenario will generate the highest wave at the mouth of Gig Harbor. It is sufficient to note that the wave will reach Gig Harbor in 19 minutes.

The Planning Commission has a responsibility to look out for the Public Health and Safety of the citizens and visitors to Gig Harbor. Allowing uses in over water net sheds beyond those to support the fishing industry will endanger lives that otherwise would not be put in harms way. Example: The Draft SMP would allow people to live over the water. Assume the Seattle Fault experiences a 7.3 earthquake at 1 am in the morning and a 11.48 foot high wave reaches Gig Harbor by 1:19 am.....most likely, those sleeping over the water will be swept away by the wave within Gig Harbor bay before they were ever alerted to the hazard. The same is true for those working over the water in day light hours. People will have a hard time believing they are in danger and therefore will not leave the hazard area. You have to imagine a wave 11.48 feet high will create a force great enough to break loose boats and floats from their moorings therefore creating an effect far worse than just a pure wave due to the shear volume of "debris" being carried with the wave.

Also, consider the damage that occurred throughout Puget Sound in December 1982 when we experienced a strong NE wind. The damage that was caused by this NE wind was minor compared to what will be caused by a 7.3 magnitude earthquake.

I submit that this portion of the Draft SMP is not sound legislation and by recommending it to WSDOE and the City Council for adoption that the Planning Commission is not performing their duty to protect the Public's Health and Safety.


Sincerely,

 Bob Frisbie

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NOAA Technical Memorandum OAR PMEL-132

**TACOMA, WASHINGTON, TSUNAMI HAZARD MAPPING PROJECT:
MODELING TSUNAMI INUNDATION FROM TACOMA AND
SEATTLE FAULT EARTHQUAKES**

Angie J. Venturato¹
Diego Arcas¹
Vasily V. Titov¹
Harold O. Mofjeld²
Chris C. Chamberlin¹
Frank I. González²

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University of Washington, Seattle, WA

² Pacific Marine Environmental Laboratory
Seattle, WA

Pacific Marine Environmental Laboratory
Seattle, WA
January 2007



**UNITED STATES
DEPARTMENT OF COMMERCE**

**Carlos M. Gutierrez
Secretary**

**NATIONAL OCEANIC AND
ATMOSPHERIC ADMINISTRATION**

**VADM Conrad C. Lautenbacher, Jr.
Under Secretary for Oceans
and Atmosphere/Administrator**

Office of Oceanic and
Atmospheric Research

Richard W. Spinrad
Assistant Administrator

EXHIBIT "0" 3/7

penetration distances (Titov *et al.*, 2003). The following sections provide more details on the offshore wave dynamics and inundation of each tsunami-genic scenario.

Due to constraints of the inundation grid, the model does not cover the full extent of wave propagation in the upper Puyallup River; subsequently, the wave reflects off the edge of the grid boundary leading to potentially nonphysical inundation within the City of Fife and Puyallup Nation territory.

5.1 Seattle Fault Scenario

Offshore Dynamics

The Seattle Fault source creates a sharp dislocation along the fault plane extending across northern Kitsap Peninsula and eastward through south Seattle. Minor subsidence occurs on the north side of the fault. South of the fault, a large uplift occurs with a maximum 8 m in the southern Bainbridge Island region and diminishing in intensity throughout the southern Puget Sound region (Fig. 3). This rupture forms the initial tsunami wave between Alki Point and Restoration Point, which is one of the deepest regions of central Puget Sound. Two wave fronts are formed: one traveling north impacting Elliott Bay and northern Puget Sound, and the other traveling south toward Tacoma and southern Puget Sound. The southern wave front splits into two upon striking the northern tip of Vashon Island 4 min after initial deformation. The eastern and more intense front travels down East Passage striking northern Maury Island and Dumas Bay and then reflecting off the Ruston Way waterfront and southern Vashon Island 12 min after generation (Fig. 7). The weaker west front travels down Colvos Passage striking Point Defiance before joining with the stronger reflected wave in Dalco Pass. Maximum wave crests of approximately 3.5 m amplitudes reach Commencement Bay and Gig Harbor approximately 19 min after generation (Fig. 6). Part of the primary front's reflected wave energy travels north into Quartermaster Harbor and back up East Passage toward Elliott Bay and northern Puget Sound. The remaining wave energy travels into The Narrows and then dissipates in southern Puget Sound. Smaller though still significant waves continue to reflect back and forth within the study region for 3 hr.

11.48 feet

GH

3.5 m

←
19 min

vel
←
> 1.5 m/s

3.35 mph

High (>1.5 m/s) wave velocities occur within Commencement Bay, Gig Harbor, East Passage, Quartermaster Harbor, The Narrows, and Wollochet Bay. Since the model does not dynamically include tidal currents, the current speeds may be more substantial if these events occurred during a flood tide.

Inundation Details

Dumas Bay Park is the first area to be inundated in the study region approximately 10 min after tsunami generation (Fig. 8). Tsunami vertical runup reaches 3.2 m with inundation extending 250 m inland.

Inundation along the Ruston Way waterfront starts approximately 12 min after earthquake generation. This popular recreational area would be struck

EXHIBIT "D" 4/7

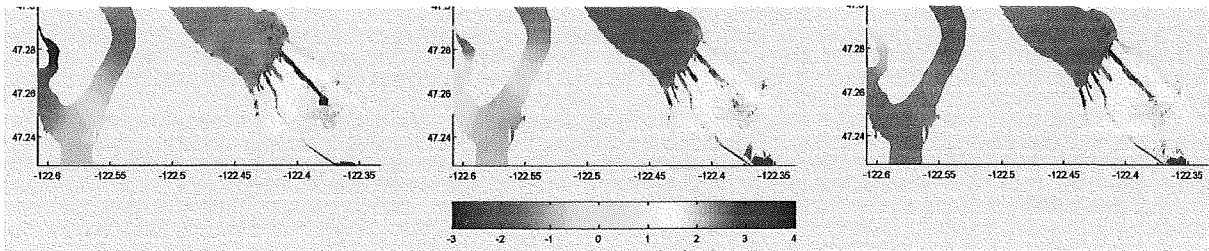


Figure 8: Modeled tsunami inundation in the study region from the Seattle Fault scenario. Snapshots are in 10-min intervals starting near the time of initial inundation at the Port of Tacoma. Wave heights are in meters with respect to Mean High Water.

generation. Tsunami vertical runups above 2 m occur along the northernmost tip of the harbor, inundating a local park. Current speeds are 1-2 m/s within the harbor, and reach above 5 m/s at the harbor entrance.

High current speeds ranging from 2-3 m/s also occur in the Narrows (Fig. 6). The initial wave reaches Titlow Park approximately 20 min after tsunami generation. The southern half of Titlow Park and a rail line are completely inundated with maximum wave runups reaching 3 m.

6.56 feet

3.35 mph

5.2 Tacoma Fault Scenario

Offshore Dynamics

5 m/s = 11.18 mph

TACOMA Fault Scenario

← 3.35 mph

← Velocity

High current speeds (>1.5 m/s) occur at the entrance to Gig Harbor, both ferry terminals, Port of Tacoma waterways, and the recreational area of Dumas Bay.

Inundation Details

Dumas Bay Park is inundated approximately 3 min after tsunami generation with vertical runups reaching 3.5 m (Fig. 5). The waterfront promenade along the north side of Point Defiance Park is struck 5 min after generation with maximum vertical runups reaching 2 m.

Inundation along both ferry terminals occur approximately 7 min after generation with runups reaching 1.5 m and current speeds ranging from 2–3 m/s. Gig Harbor is struck next at 8 min with maximum vertical runups reaching 2 m and inundating the local boat marina. Inundation along the Ruston Way waterfront starts approximately 8 min after generation with the highest runup values of 2.4 m inundating the promenade and roadway.

← 8 min
2 m Ht
6.56 feet

The tsunami hits the Thea Foss Waterway and Port of Tacoma with an initial 0.6-m wave 10 min after generation. The initial wave front does not overtop port facilities; instead, the wave crest builds up in the waterways and begins overflowing port banks at 15 min. Resonance in the waterways and Puyallup River continue to overflow the channels, and the port and public esplanade are slowly inundated over a period of 3 hr (Fig. 10). The majority of the port has runup values around 1 m, though maximum vertical runups reach 3 m at the termini of Blair and Thea Foss waterways and along Puyallup River banks. The total inundation area extends over 3 km inland.

Current speeds are relatively low in The Narrows, ranging from 0.2–0.4 m/s (Fig. 6). The initial wave crest inundates Titlow Park approximately 12 min after generation with maximum runups reaching 2.5 m and washing over the rail line.

5.3 Rosedale-Dominant Tacoma Fault Scenario

Offshore Dynamics

The Rosedale-dominant Tacoma Fault scenario creates moderate uplift (3.6 m) north of the fault plane. Like the Tacoma Fault scenario, the sharpest dislocation occurs primarily on land and shallow waters along the western edge of the fault. A smaller rupture (1.3 m) on the 33-km fault segment along the Rosedale monocline initiates the primary water displacement within Carr Inlet, Wollochet Bay, Hale Passage, and The Narrows (Fig. 3).

Within the primary rupture zone, high currents (>1.5 m/s) occur within Wollochet Bay and along the shores of Titlow Park. Moderate current speeds (0.5–1.2 m/s) occur within Hale Passage and The Narrows. Most of the initial tsunami energy is directed toward Nisqually Reach traveling into Case Inlet and Dana Passage (Fig. 2) where it dissipates in the shallow waters of southwestern Puget Sound. A strong wave also strikes Burley lagoon at the terminus of Carr Inlet within 10 min of generation (Fig. 11).

Remaining wave energy travels north up The Narrows with the initial wave front diminishing from 0.8 to 0.4 m before reaching the entrance to

EXHIBIT "D" 6/7

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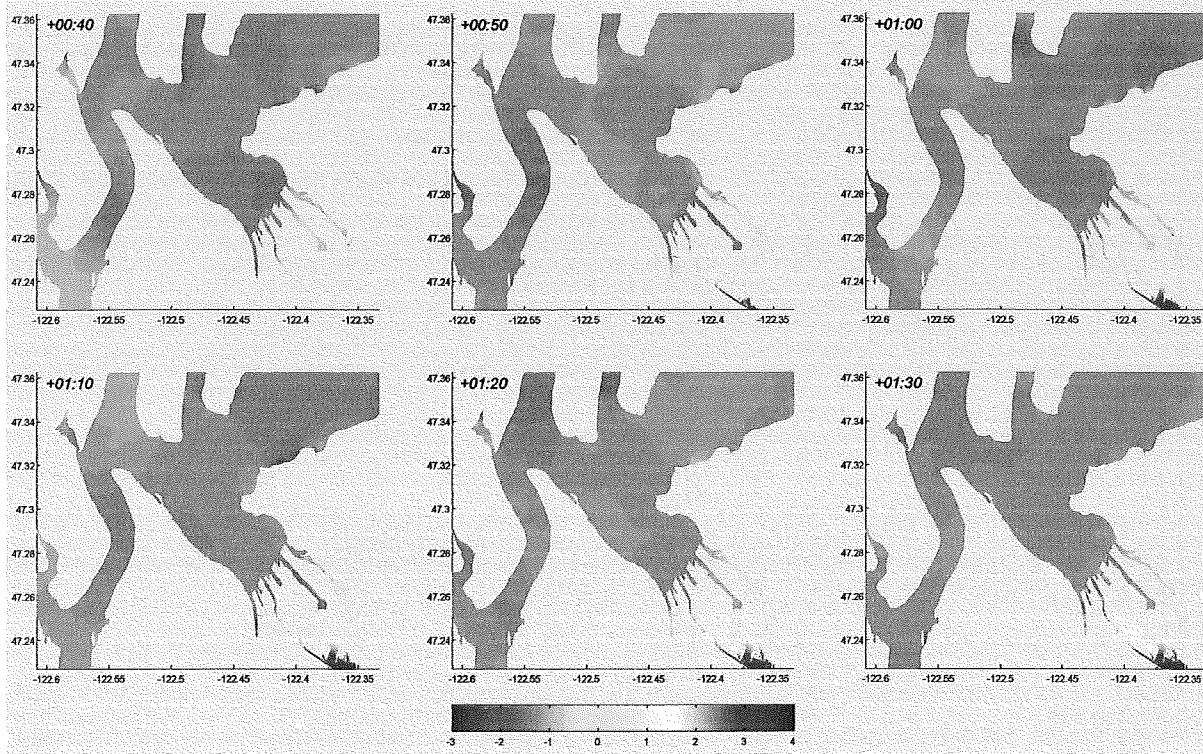


Figure 10: Modeled tsunami inundation in the study region from the Tacoma Fault scenario. Snapshots are in 10-min intervals starting near the time of initial inundation at the Port of Tacoma. Wave heights are in meters.

Gig Harbor 9 min after generation. Part of the wave continues up Colvos Passage and dissipates in central Puget Sound. A 0.2-m wave front reaches Commencement Bay 19 min after generation. This tsunami energy does not dissipate quickly, but sloshes back and forth between the shores of the study region (Fig. 6), starting inundation along the Port of Tacoma 30 min after generation.

A second smaller wave front (0.4 m) travels up The Narrows due to reflected energy from Carr Inlet, Wollochet Bay, and Nisqually Reach approximately 30 min after generation (Fig. 11). This wave combines with the complicated wave activity within Dalco Pass, leading to a second minor wave (0.2 m) striking the Port of Tacoma 40 min after generation. The tsunami continues to dissipate within the region for 4 hr.

Inundation Details

The shores along Wollochet Bay and southern Titlow Park are inundated within 5 min of tsunami generation with maximum runups of 1 m (Fig. 5). Gig Harbor marina is inundated with 1.3 m vertical runups 12 min after generation. The promenade along the north side of Point Defiance Park and Point Defiance ferry terminal are inundated with a 1-m wave at the same

4.26 feet
 12 min
 1.3mHt
 vel = 0.4 m/s
 = 0.9 mph 7/7

EXHIBIT "D"



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[43.21C.010](#) << [43.21C.020](#) >> [43.21C.030](#)

RCW 43.21C.020

Legislative recognitions — Declaration — Responsibility.

(1) The legislature, recognizing that a human being depends on biological and physical surroundings for food, shelter, and other needs, and for cultural enrichment as well; and recognizing further the profound impact of a human being's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource utilization and exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of human beings, declares that it is the continuing policy of the state of Washington, in cooperation with federal and local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to: (a) Foster and promote the general welfare; (b) create and maintain conditions under which human beings and nature can exist in productive harmony; and (c) fulfill the social, economic, and other requirements of present and future generations of Washington citizens.



(2) In order to carry out the policy set forth in this chapter, it is the continuing responsibility of the state of Washington and all agencies of the state to use all practicable means, consistent with other essential considerations of state policy, to improve and coordinate plans, functions, programs, and resources to the end that the state and its citizens may:

- (a) Fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;
- (b) Assure for all people of Washington safe, healthful, productive, and aesthetically and culturally pleasing surroundings;
- (c) Attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;
- (d) Preserve important historic, cultural, and natural aspects of our national heritage;
- (e) Maintain, wherever possible, an environment which supports diversity and variety of individual choice;
- (f) Achieve a balance between population and resource use which will permit high standards of living and a wide sharing of life's amenities; and
- (g) Enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.



(3) The legislature recognizes that each person has a fundamental and inalienable right to a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

[2009 c 549 § 5096; 1971 ex.s. c 109 § 2.]



EXHIBIT "E" 1/2



WASHINGTON STATE LEGISLATURE

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Beginning of Chapter << [43.21C.010](#) >> [43.21C.020](#)

RCW 43.21C.010 Purposes.

The purposes of this chapter are: (1) To declare a state policy which will encourage productive and enjoyable harmony between humankind and the environment; (2) to promote efforts which will prevent or eliminate damage to the environment and biosphere; (3) and [to] stimulate the health and welfare of human beings; and (4) to enrich the understanding of the ecological systems and natural resources important to the state and nation.

[2009 c 549 § 5095; 1971 ex.s. c 109 § 1.]

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WAC 173-27-040

Agency filings affecting this section

Developments exempt from substantial development permit requirement.

(1) Application and interpretation of exemptions.

(a) Exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemption from the substantial development permit process.

(b) An exemption from the substantial development permit process is not an exemption from compliance with the act or the local master program, nor from any other regulatory requirements. To be authorized, all uses and developments must be consistent with the policies and provisions of the applicable master program and the Shoreline Management Act. A development or use that is listed as a conditional use pursuant to the local master program or is an unlisted use, must obtain a conditional use permit even though the development or use does not require a substantial development permit. When a development or use is proposed that does not comply with the bulk, dimensional and performance standards of the master program, such development or use can only be authorized by approval of a variance.

(c) The burden of proof that a development or use is exempt from the permit process is on the applicant.

(d) If any part of a proposed development is not eligible for exemption, then a substantial development permit is required for the entire proposed development project.

(e) Local government may attach conditions to the approval of exempted developments and/or uses as necessary to assure consistency of the project with the act and the local master program.

(2) The following developments shall not require substantial development permits:

(a) Any development of which the total cost or fair market value, whichever is higher, does not exceed five thousand dollars, if such development does not materially interfere with the normal public use of the water or shorelines of the state. The dollar threshold established in this subsection must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the Bureau of Labor and Statistics, United States Department of Labor. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the *Washington State Register* at least one month before the new dollar threshold is to take effect. For purposes of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of development that is occurring on shorelines of the state as defined in RCW 90.58.030 (2)(c). The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials;

(b) Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. "Normal repair" means to restore a development to a state comparable to its original condition, including but not limited to its size, shape, configuration, location and external appearance, within a reasonable period after decay or partial destruction, except where repair causes substantial adverse effects to shoreline resource or environment. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development



EXHIBIT "F"

1/5

is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment;

Bulkhead
←

30/65

2 Classes of Applicants
↓

(c) Construction of the normal protective bulkhead common to single-family residences: A "normal protective" bulkhead includes those structural and nonstructural developments installed at or near, and parallel to, the ordinary high water mark for the sole purpose of protecting an existing single-family residence and appurtenant structures from loss or damage by erosion. A normal protective bulkhead is not exempt if constructed for the purpose of creating dry land. When a vertical or near vertical wall is being constructed or reconstructed, not more than one cubic yard of fill per one foot of wall may be used as backfill. When an existing bulkhead is being repaired by construction of a vertical wall fronting the existing wall, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings. When a bulkhead has deteriorated such that an ordinary high water mark has been established by the presence and action of water landward of the bulkhead then the replacement bulkhead must be located at or near the actual ordinary high water mark. Beach nourishment and bioengineered erosion control projects may be considered a normal protective bulkhead when any structural elements are consistent with the above requirements and when the project has been approved by the department of fish and wildlife.

(d) Emergency construction necessary to protect property from damage by the elements. An "emergency" is an unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with this chapter. Emergency construction does not include development of new permanent protective structures where none previously existed. Where new protective structures are deemed by the administrator to be the appropriate means to address the emergency situation, upon abatement of the emergency situation the new structure shall be removed or any permit which would have been required, absent an emergency, pursuant to chapter 90.58 RCW, these regulations, or the local master program, obtained. All emergency construction shall be consistent with the policies of chapter 90.58 RCW and the local master program. As a general matter, flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not an emergency;

(e) Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on shorelands, construction of a barn or similar agricultural structure, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels: Provided, That a feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations;

(f) Construction or modification of navigational aids such as channel markers and anchor buoys;

Single Family Res
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(g) Construction on shorelands by an owner, lessee or contract purchaser of a single-family residence for their own use or for the use of their family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to chapter 90.58 RCW. "Single-family residence" means a detached dwelling designed for and occupied by one family including those structures and developments within a contiguous ownership which are a normal appurtenance. An "appurtenance" is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the ordinary high water mark and the perimeter of a wetland. On a statewide basis, normal appurtenances include a garage; deck; driveway; utilities; fences; installation of a septic tank and drainfield and grading which does not exceed two hundred fifty cubic yards and which does not involve placement of fill in any wetland or waterward of the ordinary high water mark. Local circumstances may dictate additional interpretations of normal appurtenances which shall be set forth and regulated within the applicable master program. Construction authorized under this exemption shall be located landward of the ordinary high water mark;

(h) Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single-family and multiple-family residences. A dock is a landing and moorage facility for watercraft and does not include recreational decks, storage facilities or other appurtenances. This exception

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applies if either:

(i) In salt waters, the fair market value of the dock does not exceed two thousand five hundred dollars; or

(ii) In fresh waters the fair market value of the dock does not exceed ten thousand dollars, but if subsequent construction having a fair market value exceeding two thousand five hundred dollars occurs within five years of completion of the prior construction, the subsequent construction shall be considered a substantial development for the purpose of this chapter.

For purposes of this section salt water shall include the tidally influenced marine and estuarine water areas of the state including the Pacific Ocean, Strait of Juan de Fuca, Strait of Georgia and Puget Sound and all bays and inlets associated with any of the above;

(i) Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored groundwater from the irrigation of lands;

(j) The marking of property lines or corners on state-owned lands, when such marking does not significantly interfere with normal public use of the surface of the water;

(k) Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed or utilized primarily as a part of an agricultural drainage or diking system;

(l) Any project with a certification from the governor pursuant to chapter 80.50 RCW;

(m) Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this chapter, if:

(i) The activity does not interfere with the normal public use of the surface waters;

(ii) The activity will have no significant adverse impact on the environment including but not limited to fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;

(iii) The activity does not involve the installation of any structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;

(iv) A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the local jurisdiction to ensure that the site is restored to preexisting conditions; and

(v) The activity is not subject to the permit requirements of RCW 90.58.550;

(n) The process of removing or controlling aquatic noxious weeds, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the department of agriculture or the department of ecology jointly with other state agencies under chapter 43.21C RCW;

(o) Watershed restoration projects as defined herein. Local government shall review the projects for consistency with the shoreline master program in an expeditious manner and shall issue its decision along with any conditions within forty-five days of receiving all materials necessary to review the request for exemption from the applicant. No fee may be charged for accepting and processing requests for exemption for watershed restoration projects as used in this section.

(i) "Watershed restoration project" means a public or private project authorized by the sponsor of a watershed restoration plan that implements the plan or a part of the plan and consists of one or more of the following activities:

(A) A project that involves less than ten miles of streamreach, in which less than twenty-five cubic yards of sand, gravel, or soil is removed, imported, disturbed or discharged, and in which no existing vegetation is removed except as minimally necessary to facilitate additional plantings;

(B) A project for the restoration of an eroded or unstable stream bank that employs the

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principles of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; or

(C) A project primarily designed to improve fish and wildlife habitat, remove or reduce impediments to migration of fish, or enhance the fishery resource available for use by all of the citizens of the state, provided that any structure, other than a bridge or culvert or instream habitat enhancement structure associated with the project, is less than two hundred square feet in floor area and is located above the ordinary high water mark of the stream.

(ii) "Watershed restoration plan" means a plan, developed or sponsored by the department of fish and wildlife, the department of ecology, the department of natural resources, the department of transportation, a federally recognized Indian tribe acting within and pursuant to its authority, a city, a county, or a conservation district that provides a general program and implementation measures or actions for the preservation, restoration, re-creation, or enhancement of the natural resources, character, and ecology of a stream, stream segment, drainage area, or watershed for which agency and public review has been conducted pursuant to chapter 43.21C RCW, the State Environmental Policy Act;

(p) A public or private project that is designed to improve fish or wildlife habitat or fish passage, when all of the following apply:

(i) The project has been approved in writing by the department of fish and wildlife;

(ii) The project has received hydraulic project approval by the department of fish and wildlife pursuant to chapter 77.55 RCW; and

(iii) The local government has determined that the project is substantially consistent with the local shoreline master program. The local government shall make such determination in a timely manner and provide it by letter to the project proponent.

Fish habitat enhancement projects that conform to the provisions of RCW 77.55.181 are determined to be consistent with local shoreline master programs, as follows:

(A) In order to receive the permit review and approval process created in this section, a fish habitat enhancement project must meet the criteria under (p)(iii)(A)(i) and (ii) of this subsection:

(i) A fish habitat enhancement project must be a project to accomplish one or more of the following tasks:

- Elimination of human-made fish passage barriers, including culvert repair and replacement;
- Restoration of an eroded or unstable streambank employing the principle of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; or
- Placement of woody debris or other instream structures that benefit naturally reproducing fish stocks.

The department of fish and wildlife shall develop size or scale threshold tests to determine if projects accomplishing any of these tasks should be evaluated under the process created in this section or under other project review and approval processes. A project proposal shall not be reviewed under the process created in this section if the department determines that the scale of the project raises concerns regarding public health and safety; and

(ii) A fish habitat enhancement project must be approved in one of the following ways:

- By the department of fish and wildlife pursuant to chapter 77.95 or 77.100 RCW;
- By the sponsor of a watershed restoration plan as provided in chapter 89.08 RCW;
- By the department as a department of fish and wildlife-sponsored fish habitat enhancement or restoration project;
- Through the review and approval process for the jobs for the environment program;
- Through the review and approval process for conservation district-sponsored projects,

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where the project complies with design standards established by the conservation commission through interagency agreement with the United States Fish and Wildlife Service and the natural resource conservation service;

- Through a formal grant program established by the legislature or the department of fish and wildlife for fish habitat enhancement or restoration; and
- Through other formal review and approval processes established by the legislature.

(B) Fish habitat enhancement projects meeting the criteria of (p)(iii)(A) of this subsection are expected to result in beneficial impacts to the environment. Decisions pertaining to fish habitat enhancement projects meeting the criteria of (p)(iii)(A) of this subsection and being reviewed and approved according to the provisions of this section are not subject to the requirements of RCW 43.21C.030 (2)(c).

(C)(I) A hydraulic project approval permit is required for projects that meet the criteria of (p)(iii)(A) of this subsection and are being reviewed and approved under this section. An applicant shall use a joint aquatic resource permit application form developed by the office of regulatory assistance to apply for approval under this chapter. On the same day, the applicant shall provide copies of the completed application form to the department of fish and wildlife and to each appropriate local government. Local governments shall accept the application as notice of the proposed project. The department of fish and wildlife shall provide a fifteen-day comment period during which it will receive comments regarding environmental impacts. Within forty-five days, the department shall either issue a permit, with or without conditions, deny approval, or make a determination that the review and approval process created by this section is not appropriate for the proposed project. The department shall base this determination on identification during the comment period of adverse impacts that cannot be mitigated by the conditioning of a permit. If the department determines that the review and approval process created by this section is not appropriate for the proposed project, the department shall notify the applicant and the appropriate local governments of its determination. The applicant may reapply for approval of the project under other review and approval processes.

(II) Any person aggrieved by the approval, denial, conditioning, or modification of a permit under this section may formally appeal the decision to the hydraulic appeals board pursuant to the provisions of this chapter.

(D) No local government may require permits or charge fees for fish habitat enhancement projects that meet the criteria of (p)(iii)(A) of this subsection and that are reviewed and approved according to the provisions of this section.

[Statutory Authority: RCW 90.58.030 (3)(e), 90.58.045,90.58.065 , 90.58.140(9), 90.58.143, 90.58.147, 90.58.200,90.58.355 , 90.58.390, 90.58.515, 43.21K.080, 71.09.250,71.09.342 , 77.55.181, 89.08.460, chapters 70.105D, 80.50 RCW. 07-02-086 (Order 05-12), § 173-27-040, filed 1/2/07, effective 2/2/07. Statutory Authority: RCW 90.58.140(3) and[90.58].200 . 96-20-075 (Order 95-17), § 173-27-040, filed 9/30/96, effective 10/31/96.]

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CITY OF GIG HARBOR

Shoreline Inventory and Characterization



This report was funded in part through a cooperative agreement with the National Oceanic and Atmospheric Administration. The views expressed herein are those of the author(s) and do not necessarily reflect the views of NOAA or any of its subagencies.

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Prepared For:
City of Gig Harbor

Last Revised January 2010



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Table 7. 2002/2004 Water Quality Assessment near Gig Harbor, WA

Waterbody	Category Listing	Water Quality Parameter
Tacoma Narrows/Colvos Passage (offshore of Segments A & D)	5	Total PCBs (observed in quillback rockfish tissue)
	2	Dissolved oxygen
	1	Mercury
Gig Harbor	4C (impaired by non-pollutant)	Fish Habitat (Year 2000 biological survey showed continuous cover of ulvoid macroalgae impairing aquatic life from human causes)
Donkey Creek (aka North Creek; lower reaches and mouth in Segment C)	5	Lead
Purdy Creek (lower reaches near mouth and Segment F)	4B (pollution control plan in place)	Fecal coliform
Henderson Bay/Burley Lagoon (off shore near Segment E)	5	Fecal coliform
	2	Dissolved oxygen
	1	pH; Temperature; Ammonia-N

Source: Washington State Department of Ecology, Proposed 2008 Section 303(d) List and Integrated 2004 Section 303(d) List -- WRIA 15.

Water quality sampling in the KGI Watershed has been undertaken by Stream Team volunteers and by URS Corporation technicians on behalf of Pierce County Water Programs (KGI, 2002). Samples were taken on June 1, 2000 and July 31, 2001. Fecal coliform bacteria levels in Crescent Creek were found to be in excess of the state water quality standard of 100 cfu/100ml. Nitrate levels in Goodnough Creek were slightly elevated, with levels ranging between 1.7 and 1.86 mg/L, and likely indicate the presence of nutrients or fertilizers in the system (KGI, 2002). Potential water quality hazards exist at marinas and boat moorage facilities due to fuel spills, increased nutrients from sewage pump-out activities, increased presence of pollutants due to hull scraping and use of anti-fouling paint on boat hulls, and high concentrations of creosote-treated wood pilings and structures.

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Fifth Amendment to the United States Constitution

From Wikipedia, the free encyclopedia

The **Fifth Amendment** to the United States Constitution, which is part of the Bill of Rights, protects against abuse of government authority in a legal procedure. Its guarantees stem from English common law which traces back to the Magna Carta in 1215. For instance, grand juries and the phrase "due process" both trace their origin to the Magna Carta.

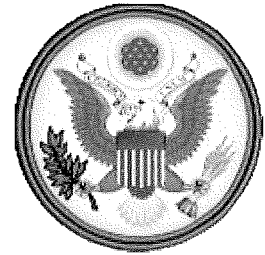
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Text

“ No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against

United States of America



This article is part of the series:
United States Constitution

Original text of the Constitution
Preamble

Articles of the Constitution
I · II · III · IV · V · VI · VII

Amendments to the Constitution
Bill of Rights
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XI · XII · XIII · XIV · XV
XVI · XVII · XVIII · XIX · XX
XXI · XXII · XXIII · XXIV · XXV
XXVI · XXVII

Other countries · **Law Portal**

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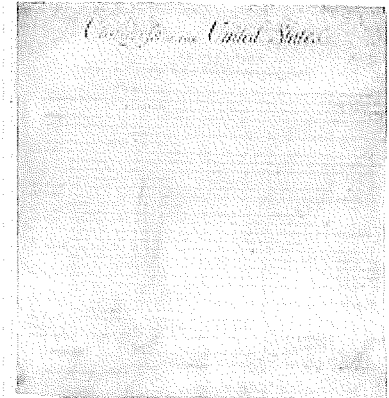
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himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.^[1]

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Grand jury

Grand juries, which return indictments in many criminal cases, are composed of a jury of peers and operate in closed deliberation proceedings; they are given specific instructions regarding the law by the judge. Many constitutional restrictions do not apply during grand jury proceedings. For example, the exclusionary rule does not apply to evidence presented to a grand jury; the exclusionary rule states that evidence obtained in violation of the Fourth, Fifth or Sixth amendments cannot be introduced in court (*United States v. Calandra* 414 U.S. 338 (<http://supreme.justia.com/us/414/338/case.html>) (1974)). Also, defendants do not have the right to have their attorneys present in grand jury rooms during hearings; they would normally have such a right when during questioning by the police while in custody. The grand jury indictment clause of the Fifth Amendment has not been incorporated under the Fourteenth Amendment; in other words, it has not been ruled applicable to the states. States are thus free to abolish grand juries, and many (though not all) have replaced them with preliminary hearings. This was decided in *Hurtado v. California*, 110 U.S. 516 (1884), since "except in cases arising in the land and naval forces, or in the Militia," is held to indicate federal jurisdiction.



The Bill of Rights in the National Archives.

Whether a crime is "infamous" is determined by the nature of the punishment that may be imposed, not the punishment that is actually imposed (*Ex parte Wilson*, 114 U.S. 417 (<http://supreme.justia.com/us/114/417/case.html>) (1885)), though crimes punishable by capital punishment are explicitly required within the text of the Fifth Amendment to be tried upon indictments. In *United States v. Moreland*, 258 U.S. 433 (<http://supreme.justia.com/us/258/433/case.html>) (1922), the Supreme Court held that imprisonment in a prison or penitentiary, as opposed to a correction or reformation house, attaches infamy to a crime. Currently, federal law permits the trial of misdemeanors without indictments (*Duke v. United States*, 301 U.S. 492 (<http://supreme.justia.com/us/301/492/case.html>) (1937)). Also, in the trial of those felonies in which capital punishment may not be applied, the prosecution may proceed without indictments if the defendants waive their Fifth Amendment right.

Indictments found by grand juries may be amended by the prosecution only in limited circumstances. In *Ex Parte Bain* (1887), the Supreme Court held that the indictment could not be changed at all by the prosecution. *United States v. Miller*, 471 U.S. 130 (<http://supreme.justia.com/us/471/130/case.html>) (1985) partly reversed the previous ruling; now, an indictment's scope may be narrowed by the prosecution. Thus, lesser included charges may be dropped, but new charges may not be added.

The grand jury clause of the Fifth Amendment does not protect those serving in the armed forces, whether during wartime or peacetime. Members of the state militia called up to serve with federal forces are not protected under the clause either. In *O'Callahan v. Parker*, 395 U.S. 258 (<http://supreme.justia.com/us/395/258/case.html>) (1969), the Supreme Court held that only charges relating to service may be brought against members of the militia without indictments. That decision

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was overturned in 1987, when the Court held that members of the militia in actual service may be tried for any offense with indictments.^[2]

Double jeopardy

See also: Double jeopardy

The fifth amendment refers to being put in "jeopardy of life or limb." The clause, however, has been interpreted as providing protection regarding "every indictment or information charging a party with a known and defined crime or misdemeanor." The clause, it has been held, does not prevent separate trials by different governments, and the state and federal governments are considered "separate sovereigns". Therefore, one may be prosecuted for a crime in a state court, and prosecuted for the same crime in another state, a foreign country, or (most commonly) in a federal court.

Once acquitted, a defendant may not be retried for the same offense: *Ball v. U.S.* "A verdict of acquittal, although not followed by any judgment, is a bar to a subsequent prosecution for the same offense." 163 U.S. 662 at 672 (1896). Acquittal by a jury is generally final and cannot be appealed by the prosecution, *Fong Foo v. United States*, 369 U.S. 141 (1962). An acquittal in a trial by judge (bench trial) is also generally not appealable by the prosecution, *United States v. Jenkins*, 420 U.S. 358 (1975). A trial judge may normally enter an acquittal if he deems the evidence insufficient for conviction. If the judge makes this ruling before the jury reaches its verdict, the judge's determination is final. If, however, the judge overrules a conviction by the jury, the prosecution may appeal to have the conviction reinstated. Additionally, although a judge may overrule a guilty verdict by a jury, he or she does not have the same power to overrule a not guilty verdict.

Defendants may not be retried following conviction except in limited circumstances when the judge sees fit and proper. Bribing a judge to get an acquittal is not valid because the party acquitted has prevented themselves from being placed into "jeopardy" to begin with. *Harry Aleman v. Judges of the Criminal Division, Circuit Court of Cook County, Illinois, et al.*, 138 F.3d 302 (1998). If a defendant appeals a conviction and is successful in having it overturned, they are subject to retrial. An exception arises if the verdict is overturned on the grounds of evidentiary insufficiency, rather than on the grounds of procedural faults. As noted above, if the trial court made a determination of evidentiary insufficiency, the determination would constitute a final acquittal; in *Burks v. United States* 437 U.S. 1, (1978), it was held that "it should make no difference that the reviewing court, rather than the trial court, determined the evidence to be insufficient." Another exception arises in cases of conviction for lesser offenses. For instance, if a defendant is charged with murder in the first degree, and is convicted by the jury of murder in the second degree, and later the jury's conviction is overturned on procedural grounds, the defendant may be retried for second degree but not first degree murder; the jury, by convicting the defendant of second degree murder, is deemed to have implicitly acquitted them of first degree murder.

The defendant may not be punished twice for the same offense. In certain circumstances, however, a sentence may be increased. It has been held that sentences do not have the same "finality" as acquittals, and may therefore be reviewed by the courts. Sentence increases may not, however, be made once the defendant has already begun serving his term of imprisonment. If a defendant's conviction is overturned on procedural grounds, the retrial may result in a harsher penalty than the original trial. The only exception is that the prosecution may not seek capital punishment in the retrial if the jury did not impose it in the original trial. The reason for this exception is that before imposing the death penalty the jury has to make several factual determinations and if the jury does not make these it is seen as the equivalent of an acquittal of a more serious offense.

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In *Arizona v. Rumsey*, 467 U.S. 203 (1984), it was ruled that in a bench trial, when a judge was holding a separate hearing after the jury trial, to decide if the defendant should be sentenced to death or life imprisonment, the judge decided that the circumstances of the case did not permit death to be imposed. On appeal the judge's ruling was found to be erroneous. However, even though the decision to impose life instead of death was based on an erroneous interpretation of the law by the judge, the conclusion of life imprisonment in the original case constituted an acquittal of the death penalty and thus death could not be imposed upon a subsequent trial. Even though the acquittal of the death penalty was erroneous in that case, the acquittal must stand.

Mistrials are generally not covered by the double jeopardy clause. If a judge dismisses the case or concludes the trial without deciding the facts in the defendant's favor (for example, by dismissing the case on procedural grounds), the case is a mistrial and may normally be retried. Furthermore, if a jury cannot reach a verdict, the judge may declare a mistrial and order a retrial. When the defendant moves for a mistrial, there is no bar to retrial, even if the prosecutor or judge caused the error that forms the basis of the motion. An exception exists, however, where the prosecutor or judge has acted in bad faith. In *Oregon v. Kennedy*, 456 U.S. 667, (1982), the Supreme Court held that "only where the governmental conduct in question is intended to 'goad' the defendant into moving for a mistrial may a defendant raise the bar of double jeopardy to a second trial after having succeeded in aborting the first on his own motion."

Defendants may not more than once be placed in jeopardy for the "same offense". Sometimes, however, the same conduct may violate different statutes. In *Blockburger v. United States*, 284 U.S. 299 (1932), the Supreme Court held that "where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of an additional fact which the other does not". For example, the test was applied in *Brown v. Ohio*, 432 U.S. 161 (1977). The defendant had first been convicted of operating an automobile without the owner's consent, and later of stealing the same automobile. The Supreme Court concluded that the same evidence was necessary to prove both offenses, and that in effect there was only one offense. Therefore, it overturned the second conviction.

In other cases, the same conduct may constitute multiple offenses under the same statute, for instance where one robs many individuals at the same time. There is no explicit bar to separate prosecutions for different offenses arising under the same "criminal transaction", but it is not permissible for the prosecution to re-litigate facts already determined by a jury. In *Ashe v. Swenson*, 397 U.S. 436, (1970), the defendant was accused of robbing seven poker players during a game. John Ashe was first tried for, and acquitted of, robbing only one of the players; the defense did not contest that a robbery actually took place. The state then tried the defendant for robbing the second player; stronger identification evidence led to a conviction. The Supreme Court, however, overturned the conviction. It was held that in the first trial, since the defense had not presented any evidence that there was no robbery, the jury's acquittal had to be based on the conclusion that the defendant's alibi was valid. Since one jury had held that the defendant was not present at the crime scene, the State could not re-litigate the issue.

Self-incrimination

The fifth amendment protects witnesses from being forced to incriminate themselves. To "plead the Fifth" is to refuse to answer a question because the response could provide self-incriminating evidence of an illegal conduct punished by fines, penalties or forfeiture.^[3]

Historically, the legal protection against self-incrimination is directly related to the question of torture for extracting information and confessions.^{[4][5]}

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The legal shift from widespread use of torture and forced confession dates to turmoil of the late 16th and early 17th century in England.^[6] Anyone refusing to take the oath *ex officio mero* (confessions or swearing of innocence, usually before hearing any charges) was taken for guilty^[6]. Suspected Puritans were pressed to take the oath and then reveal names of other Puritans. Coercion and torture were commonly used to compel "cooperation." Puritans, who were at the time fleeing to the New World, began a practice of refusing to cooperate with interrogations. In the most famous case John Lilburne refused to take the oath in 1637. His case and his call for "freeborn rights" were rallying points for reforms against forced oaths, forced self-incrimination, and other kinds of coercion. Oliver Cromwell's revolution overturned the practice and incorporated protections, in response to a popular group of English citizens known as the Levellers. The Levellers presented *The Humble Petition of Many Thousands* to Parliament in 1647 with 13 demands, third of which was the right against self-incrimination in criminal cases. These protections were brought to America by Puritans, and were later incorporated into the United States Constitution through the Bill of Rights.

In terms of Miranda rights, this is often referred to as the "right to remain silent". This amendment is also similar to Section 13 of the Canadian Charter of Rights and Freedoms. In other British Commonwealth countries like Australia and New Zealand, the right to silence of the accused both during questioning and at trial is regarded as an important right inherited from common law, and is protected in the New Zealand Bill of Rights and in Australia through various federal and state acts and codes governing the criminal justice system.

Legal proceeding

The fifth amendment privilege against compulsory self-incrimination applies when an individual is called to testify in a legal proceeding. The U.S. supreme court ruled that the right against self-incrimination applies whether the witness is in a federal or state court (see *Malloy v. Hogan*, 378 U.S. 1 (<http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=US&vol=378&invol=1>) (1964)), and whether the proceeding itself is criminal or civil (see *McCarthy v. Arndstein*, 266 U.S. 34 (1924)).

The right was asserted at grand jury or congressional hearings in the 1950s, when witnesses testifying before the House Committee on Un-American Activities or the Senate Internal Security Subcommittee claimed the right in response to questions concerning their alleged membership in the Communist Party. Under the Red Scare hysteria at the time of McCarthyism, witnesses who refused to answer the questions were accused as "fifth amendment communists". They lost jobs or positions in unions and other political organizations, and suffered other repercussions after "taking the fifth."

Senator Joseph McCarthy (R-Wisc.) asked, "Are you now, or have you ever been a member of the Communist party," while he was chairman of the Senate Government Operations Committee Permanent Subcommittee on Investigations. Admitting to a previous communist party membership was not sufficient. Witnesses were also required to "name names," to implicate others they knew to be communists or who had been communists in the past.

Academy Award winning director Elia Kazan testified before the House Committee on Un-American Activities that he had belonged to the Communist Party briefly in his youth. He also "named names," which incurred enmity of many in Hollywood. Other entertainers such as Zero Mostel found themselves on a Hollywood blacklist after taking the fifth, and were unable to find work for a while in the show business.

The amendment has also been used by defendants and witnesses in criminal cases involving the Mafia. The supreme court has also used the incorporation doctrine to apply the self-incrimination clause against the states under the Fourteenth Amendment.

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The right against self-incrimination does not apply when an individual testifies before a self-regulatory organization (SRO). SROs, such as the National Association of Securities Dealers (NASD), are generally not considered as state actors subject to the restraints of the fifth amendment. Department of Enforcement, *United States v. Solomon*, 509 F. 2d 863 (2d Cir. 1975); *D. L. Cromwell Invs., Inc. v. NASD Regulation, Inc.*, 132 F. Supp. 2d 248, 251-53 (S.D.N.Y. 2001), *aff'd*, 279 F.3d 155, 162 (2d Cir. 2002), *cert. denied*, 537 U.S. 1028 (2002); *Marchiano v. NASD*, 134 F. Supp. 2d 90, 95 (D.D.C. 2001). SROs also lack subpoena powers, so they rely heavily on requiring testimony from individuals while wielding the threat of a bar from the industry (permanent, if decided by the NASD) in the case of noncompliance.

Custodial interrogation

The Fifth Amendment limits the use of evidence obtained illegally by the law enforcement. Originally, at common law, even a confession obtained by torture was admissible. In the eighteenth century, common law in England provided that coerced confessions were inadmissible. The common law rule was incorporated into American law by the courts. However, the use of brutal torture to extract confessions was routine in some rural states as late as the 1930s, and stopped only after the Supreme Court kept overruling convictions based on such confessions, in cases like *Brown v. Mississippi*, 297 U.S. 278 (<http://supreme.justia.com/us/297/278/case.html>) (1936).

Law enforcement responded by switching to more subtle techniques, but the courts held that such techniques, even if they do not involve physical torture, may render a confession involuntary and inadmissible. In *Chambers v. Florida* (1940) the Court held a confession obtained after five days of prolonged questioning, during which time the defendant was held incommunicado, to be coerced. In *Ashcraft v. Tennessee* (1944), the suspect had been interrogated continuously for thirty-six hours under electric lights. In *Haynes v. Washington* (1963) the Court held that an "unfair and inherently coercive context" including a prolonged interrogation rendered a confession inadmissible.

Miranda v. Arizona (1966) was a landmark case involving confessions. Ernesto Miranda had signed a statement confessing the crime, but the Supreme Court held that the confession was inadmissible because the defendant had not been warned of his rights.

The Court held, "the prosecution may not use statements [...] stemming from custodial interrogation of the defendant unless it demonstrates the use of procedural safeguards effective to secure the privilege against self-incrimination. Custodial interrogation is initiated by law enforcement after a person has been taken into custody or otherwise deprived of his freedom of movement.

As for the procedural safeguards to be employed, unless other fully effective means are devised to inform accused persons of their right of silence and to assure a continuous opportunity to exercise it, the following measures are required. Before any questioning, the person must be warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney, either retained or appointed." The warning to which Chief Justice Earl Warren referred is now called the Miranda warning, and it is customarily delivered by the police to an individual upon his or her arrest.

Miranda has been clarified by several further Supreme Court rulings. For the warning to be necessary, the questioning must be conducted under "custodial" circumstances. A person detained in jail or under arrest is, of course, deemed to be in police custody. Alternatively, a person who is under the *reasonable belief* that he may not freely leave from the restraint of law enforcement is also deemed to be in "custody." That determination of "reasonableness" is based on a totality of the objective circumstances. A mere presence at a police station may not be sufficient, but nor is it required. Traffic stops are not

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deemed custodial. Additionally, the Court ruled in *Yarborough v. Alvarado* that a suspect's age and inexperience are not objective factors required to be considered when determining whether it was reasonable for the suspect to believe that he was not free to leave during the questioning.

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The questioning does not have to be explicit to trigger Miranda rights. For example, two police officers engaging in a conversation designed to elicit an incriminating statement from a suspect would constitute questioning. A person may choose to waive his Miranda rights, but the prosecution has the burden of showing that such a waiver was actually made.

A confession not preceded by a Miranda warning where one was necessary cannot be admitted as evidence against the confessing party in a judicial proceeding. The Supreme Court, however, has held that if a defendant voluntarily testifies at the trial that he did not commit the crime, his confession may be introduced to challenge his credibility, to "impeach" the witness, even if it had been obtained without the warning.

In *Hiibel v. Sixth Judicial District Court of Nevada*, the Supreme Court ruled 5-4 on June 21, 2004 that the Fourth, Fifth, and Fourteenth Amendments do not give people the right to refuse to give their name when questioned by police.

Refusal to testify in a criminal case

The Supreme Court ruled that the government cannot punish a criminal defendant for exercising his right to silence, by allowing the prosecutor to ask the jury to draw an inference of guilt from the defendant's refusal to testify in his own defense. *Griffin v. California*, 380 U.S. 609 (<http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=US&vol=380&invol=609>) (1965). In *Griffin*, the Court overturned as unconstitutional under the federal constitution a provision of the California state constitution that explicitly granted such power to prosecutors.

Refusal to testify in a civil case

While defendants are entitled to assert that right, there are consequences to the assertion of the Fifth Amendment in a civil action.

The Supreme Court has held that "the Fifth Amendment does not forbid adverse inferences against parties to civil actions when they refuse to testify in response to probative evidence offered against them." *Baxter v. Palmigiano*, 425 U.S. 308, 318 (1976). "[A]s Mr. Justice Brandeis declared, speaking for a unanimous court in the *Tod* case, 'Silence is often evidence of the most persuasive character.'" *Id.* at 319 (quoting *United States ex rel. Bilokumsky v. Tod*, 263 U.S. 149, 153-154 (1923)). "Failure to contest an assertion...is considered evidence of acquiescence...if it would have been natural under the circumstances to object to the assertion in question." *Id.* (quoting *United States v. Hale*, 422 U.S. 171, 176 (1975)).

In *Baxter*, the state was entitled to an adverse inference against Palmigiano because of the evidence against him and his assertion of the Fifth Amendment privilege.

Federal income tax

In some cases, individuals may be legally required to file reports that call for information that may be used against them in criminal cases. In *United States v. Sullivan*, 274 U.S. 259 (<http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=US&vol=274&invol=259>) (1927), the United States Supreme Court ruled that a taxpayer could not invoke the Fifth Amendment's protections as the

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basis for refusing to file a required federal income tax return. The Court stated: "If the form of return provided called for answers that the defendant was privileged from making[,] he could have raised the objection in the return, but could not on that account refuse to make any return at all. We are not called on to decide what, if anything, he might have withheld."

In *Garner v. United States*, 424 U.S. 648 (<http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=US&vol=424&invol=648>) (1976) the defendant was convicted of crimes involving a conspiracy to "fix" sporting contests and to transmit illegal bets. During the trial the prosecutor introduced, as evidence, the taxpayer's Federal income tax returns for various years. In one return the taxpayer had showed his occupation to be "professional gambler." In various returns the taxpayer had reported income from "gambling" or "wagering." The prosecution used this to help contradict the taxpayer's argument that his involvement was innocent. The taxpayer tried unsuccessfully to keep the prosecutor from introducing the tax returns as evidence, arguing that since the taxpayer was legally required to report the illegal income on the returns, he was being compelled to be a witness against himself. The Supreme Court agreed that he was legally required to report the illegal income on the returns, but ruled that the privilege against self-incrimination still did not apply. The Court stated that "if a witness under compulsion to testify makes disclosures instead of claiming the privilege, the Government has not 'compelled' him to incriminate himself."

Sullivan and *Garner* are viewed by some legal scholars as standing, in tandem, for the proposition that on a required Federal income tax return a taxpayer would probably have to report the amount of the illegal income, but might validly claim the privilege by labeling the item "Fifth Amendment" (instead of "illegal gambling income," "illegal drug sales," etc.)

Grants of immunity

If the government gives an individual immunity, then that individual may be compelled to testify. Immunity may be "transactional immunity" or "use immunity"; in the former, the witness is immune from prosecution for offenses related to the testimony; in the latter, the witness may be prosecuted, but his testimony may not be used against him. In *Kastigar v. United States*, 406 U.S. 441 (<http://supreme.justia.com/us/406/441/case.html>) (1972), the Supreme Court held that the government need only grant use immunity to compel testimony. The use immunity, however, must extend not only to the testimony made by the witness, but also to all evidence derived therefrom. This scenario most commonly arises in cases related to organized crime.

Record keeping

A statutorily required record-keeping system may go too far such that it implicates a record-keeper's right against self-incrimination. A three part test laid out by *Albertson v. Subversive Activities Control Board*, 382 U.S. 70 (1965) is used to determine this: 1. the law targets a highly selective group inherently suspect of criminal activities; 2. the activities sought to be regulated are already permeated with criminal statutes as opposed to essentially being non-criminal and largely regulatory; and 3. the disclosure compelled creates a likelihood of prosecution and is used against the record-keeper.

In *Albertson v. Subversive Activities Control Board*, 382 U.S. 70 (<http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=US&vol=382&invol=70>) (1965), the Supreme Court struck down an order by the Subversive Activities Control Board requiring members of the Communist Party to register with the government and upheld an assertion of the privilege against self-incrimination, on the grounds that statute under which the order had been issued was "directed at a highly selective group inherently suspect of criminal activities."

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In *Leary v. United States*, 395 U.S. 6 (1969) the court struck down the Marijuana Tax Act because its record keeping statute required self-incrimination.

In *Haynes v. United States*, 390 U.S. 85 (1968) the Supreme Court ruled that, since convicted felons are prohibited from owning firearms, requiring felons to register any firearms they owned constituted a form of self-incrimination and was therefore unconstitutional.

Other

Corporations may also be compelled to maintain and turn over records; the supreme court has held that the fifth amendment protections against self-incrimination extend only to "natural persons." There are, however, a few restraints on the government; it may not, for instance, compel a person to keep records for a corporation if those records could be used against the record-keeper himself.

As a condition of employment, workers may be required to answer their employer's narrowly defined questions regarding conduct on the job. If an employee invokes the Garrity rule (sometimes called the Garrity Warning or Garrity Rights) before answering the questions, then the answers cannot be used in criminal prosecution of the employee.^[citation needed] This principle was developed in *Garrity v. New Jersey*, 385 US 493 (1967). The rule is most commonly applied to public employees such as police officers.

In *United States v. Boucher*, 2007 WL 4246473, the United States District Court for the District of Vermont ruled that the fifth amendment protects a defendant from having to reveal an encryption passphrase, or even the existence of one. In February 2009, Boucher was convicted based on separate evidence that did not depend on use of the passphrase.^[7]

In *Boyd v. United States* 116 US 616 (1886) the US Supreme Court stated that "It is equivalent to a compulsory production of papers to make the nonproduction of them a confession of the allegations which it is pretended they will prove".

Due process

Main article: Due process in the United States

The fifth amendment prevents individuals from being deprived of life, liberty, or property without "due process of law." Due process extends to all persons and corporate entities. The Fourteenth Amendment explicitly binds the states with due process protections, through selective incorporation. Fifth Amendment due process protection has not always been granted to corporations, but was first applied to corporations in 1893 by the Supreme Court in *Noble v. Union River Logging* 147 U.S. 165 (<http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=US&vol=147&invol=165>). This was not long after the Supreme Court first granted 14th Amendment protection to corporations in *Santa Clara County v. Southern Pacific Railroad* in 1886.

The fifth amendment applies to the federal government (see *Barron v. Baltimore*), and the Fourteenth Amendment, by its own terms, applies against the States. While the fifth amendment includes a due process clause, it does not include—as the fourteenth amendment *does*—an *equal protection* clause. However, in *Bolling v. Sharpe* 347 U.S. 497 (<http://caselaw.lp.findlaw.com/cgi-bin/getcase.pl?court=US&vol=347&invol=497>) (1954), the Supreme Court averred that it was absurd that the Constitution could deny the states the power to abridge equal protection of the laws, yet permit that power to the Congress. "[T]he concepts of equal protection and due process, both stemming from our

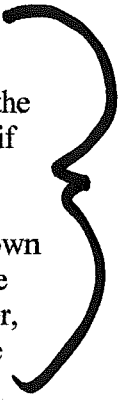
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American ideal of fairness, are not mutually exclusive," reasoned Chief Justice Earl Warren. The Court thus interpreted the fifth amendment's due process clause to include an equal protection element but has continued to hold that there is a difference between due process and equal protection in its fourteenth amendment jurisprudence.

Eminent domain

The Supreme Court has held that the federal government and each state has the power of eminent domain—the power to take private property for "public use". The **Takings Clause**, the last clause of the Fifth Amendment, limits the power of eminent domain by requiring that "just compensation" be paid if private property is taken for public use. The just compensation provision of the Fifth Amendment did not originally apply directly to the states, but the federal courts now hold that the Fourteenth Amendment extended the effects of that provision to the states. The federal courts, however, have shown much deference to the determinations of Congress, and even more so to the determinations of the state legislatures, what constitutes "public use". The property need not actually be used by the public; rather, it must be used or disposed of in such a manner as to benefit the public welfare or public interest. One exception that restrains the federal government is that the property must be used in exercise of a government's enumerated powers.



The owner of the property that is taken by the government must be justly compensated. When determining the amount that must be paid, the government does not need to take into account any speculative schemes that the owner claims the property was intended for use in. Normally, the fair market value of the property determines "just compensation". If the property is taken before the payment is made, interest accrues (though the courts have refrained from using the term "interest").

The federal courts have not restrained state and local governments from seizing privately owned land for private commercial development on behalf of private developers. This was upheld on June 23, 2005, when the Supreme Court issued its opinion in *Kelo v. City of New London*. This 5–4 decision remains controversial. The majority opinion, by Justice Stevens, found that it was appropriate to defer to the city's decision that the development plan had a public purpose, saying that "the city has carefully formulated a development plan that it believes will provide appreciable benefits to the community, including, but not limited to, new jobs and increased tax revenue." Justice Kennedy's concurring opinion observed that in this particular case the development plan was not "of primary benefit to . . . the developer" and that if that was the case the plan might have been impermissible. In the dissent, Justice Sandra Day O'Connor argued that this decision would allow the rich to benefit at the expense of the poor, asserting that "Any property may now be taken for the benefit of another private party, but the fallout from this decision will not be random. The beneficiaries are likely to be those citizens with disproportionate influence and power in the political process, including large corporations and development firms." She argued that the decision eliminates "any distinction between private and public use of property—and thereby effectively delete[s] the words 'for public use' from the Takings Clause of the Fifth Amendment". A number of states, in response to *Kelo*, have passed laws and/or state constitutional amendments which make it more difficult for state governments to seize private land. Takings that are not "for public use" are not directly covered by the doctrine,^[8] however such a taking might violate due process rights under the Fourteenth amendment, or other applicable law.

The exercise of the police power of the state resulting in a taking of private property was long held to be an exception to the requirement of government paying just compensation. However the growing trend under the various state constitution's taking clauses is to compensate innocent third parties whose property was destroyed or "taken" as a result of police action.^[9]

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See also

- Fifth Amendment with Annotations

References

- [^] Cornell University Law School. "Bill of Rights from Cornell University Law School" (<http://www.law.cornell.edu/constitution/constitution.billofrights.html#amendmentv>) . <http://www.law.cornell.edu/constitution/constitution.billofrights.html#amendmentv>. Retrieved 2007-12-16.
- [^] *Solario v. United States*, 483 U.S. 435 (<http://supreme.justia.com/us/483/435/case.html>) (1987)
- [^] *Counselman v. Hitchcock*, 142 U.S. 547 (1892).
- [^] Amar, Akhil Reed (1998). *The Bill of Rights*. New Haven: Yale University Press. pp. 84. ISBN 0300082770.
- [^] Amar, Akhil Reed (2005). *America's Constitution*. New York: Random House. pp. 329. ISBN 1400062624.
- ^{^ a b} Greaves, Richard L. (1981). "Legal Problems" (http://books.google.com/books?id=ULHy6AZPd_wC&pg=PA649) . *Society and religion in Elizabethan England*. Minneapolis, Minnesota: University of Minnesota Press. pp. 649,681. ISBN 0816610304. OCLC 7278140 (<http://www.worldcat.org/oclc/7278140>) . http://books.google.com/books?id=ULHy6AZPd_wC&pg=PA649. Retrieved 19 July 2009. "This situation worsened in the 1580s and 1590s when the machinery of ... the High Commission, was turned against Puritans ... in which a key weapon was the oath *ex officio mero*, with its capacity for self incrimination ... Refusal to take this oath usually was regarded as proof of guilt."
- [^] Sessions, William K. (2009-02-19). "In re Grand Jury Subpoena to Sebastien Boucher: Memorandum of Decision" (<http://volokh.com/files/BoucherDCT.1.pdf>) . <http://volokh.com/files/BoucherDCT.1.pdf>. Retrieved August 28, 2009.
- [^] *See* Berman v. Parker.
- [^] *Wegner v. Milwaukee Mutual, City of Minneapolis* 479 N.W.2d 38 (Minn. 1991) and *Steele v. City of Houston* 603 S.W.2d 786 (1980)

Further reading

- Amar, Akhil Reed; Lettow, Renée B. (1995). "Fifth Amendment First Principles: The Self-Incrimination Clause". *Michigan Law Review* **93** (5): 857–928. doi:10.2307/1289986 (<http://dx.doi.org/10.2307%2F1289986>) .

External links

- CRS Annotated Constitution: Fifth Amendment (http://www.law.cornell.edu/anncon/html/amdt5toc_user.html)
- Privilege Against Self Incrimination (http://rcarterpittman.org/essays/Bill_of_Rights/Privilege_Against_Self-Incrimination.html) by R. Carter Pittman, 1935
- 1954 essay on reasons for pleading the 5th (<http://www.trussel.com/hf/fifth.htm>) by Howard Fast
- 5th Amendment at the Populist Party (http://www.populistamerica.com/5th_amendment) —news and essays related to the Fifth Amendment, at the Populist Party of America
- Don't Talk to the Police (<http://video.google.com/videoplay?docid=-4097602514885833865>) – Professor James Duane of the Regent University School of Law
- Don't Talk to the Police (<http://video.google.com/videoplay?docid=6014022229458915912>) – Officer George Bruch from the Virginia Beach police department

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St Augustine, FL

Concrete Wall
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CAUTION
AREA SUBJECT
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WE RESERVE

EXHIBIT "I"
St. Augustine, FL

Rubble For
Rip Rap



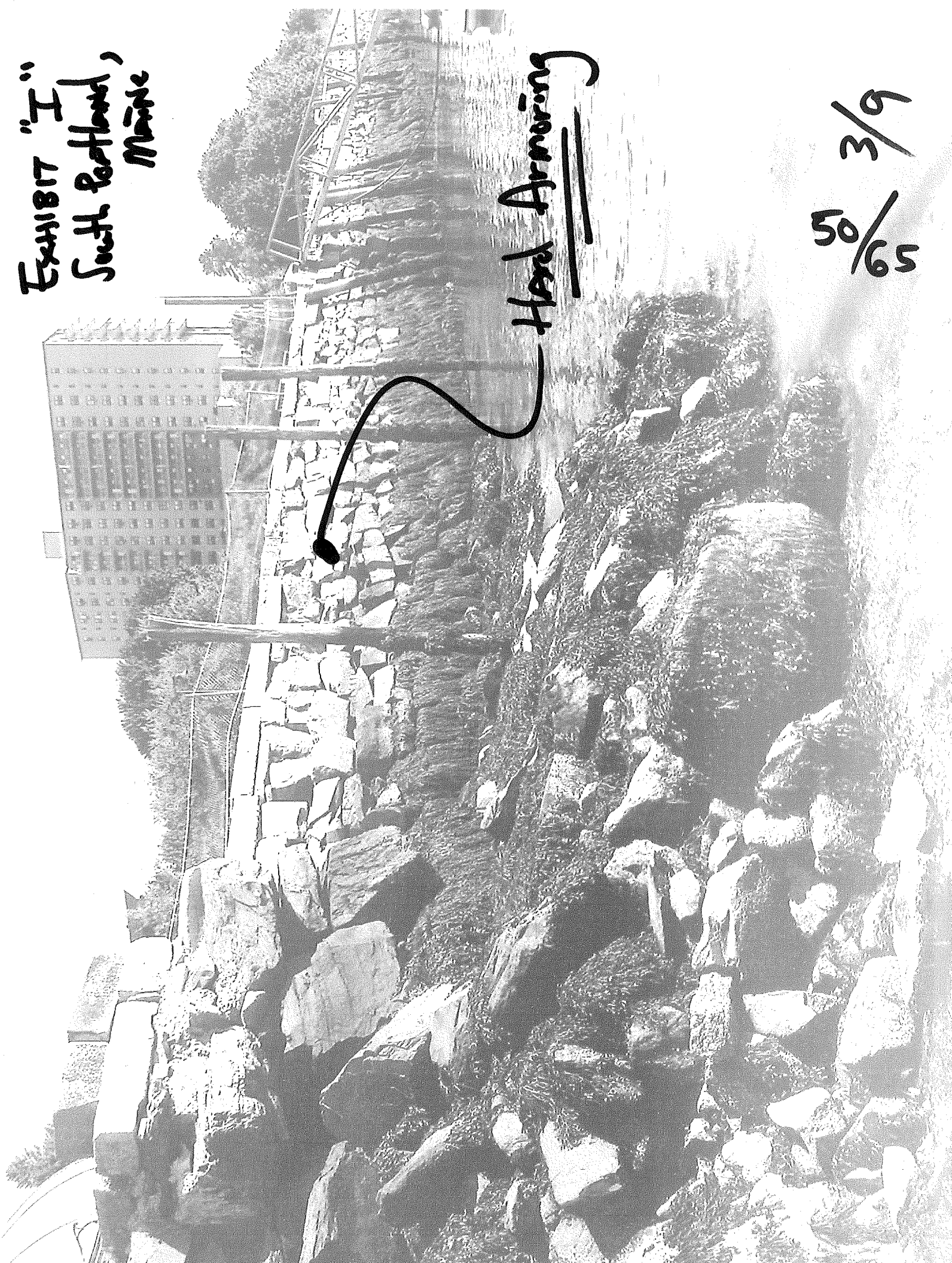
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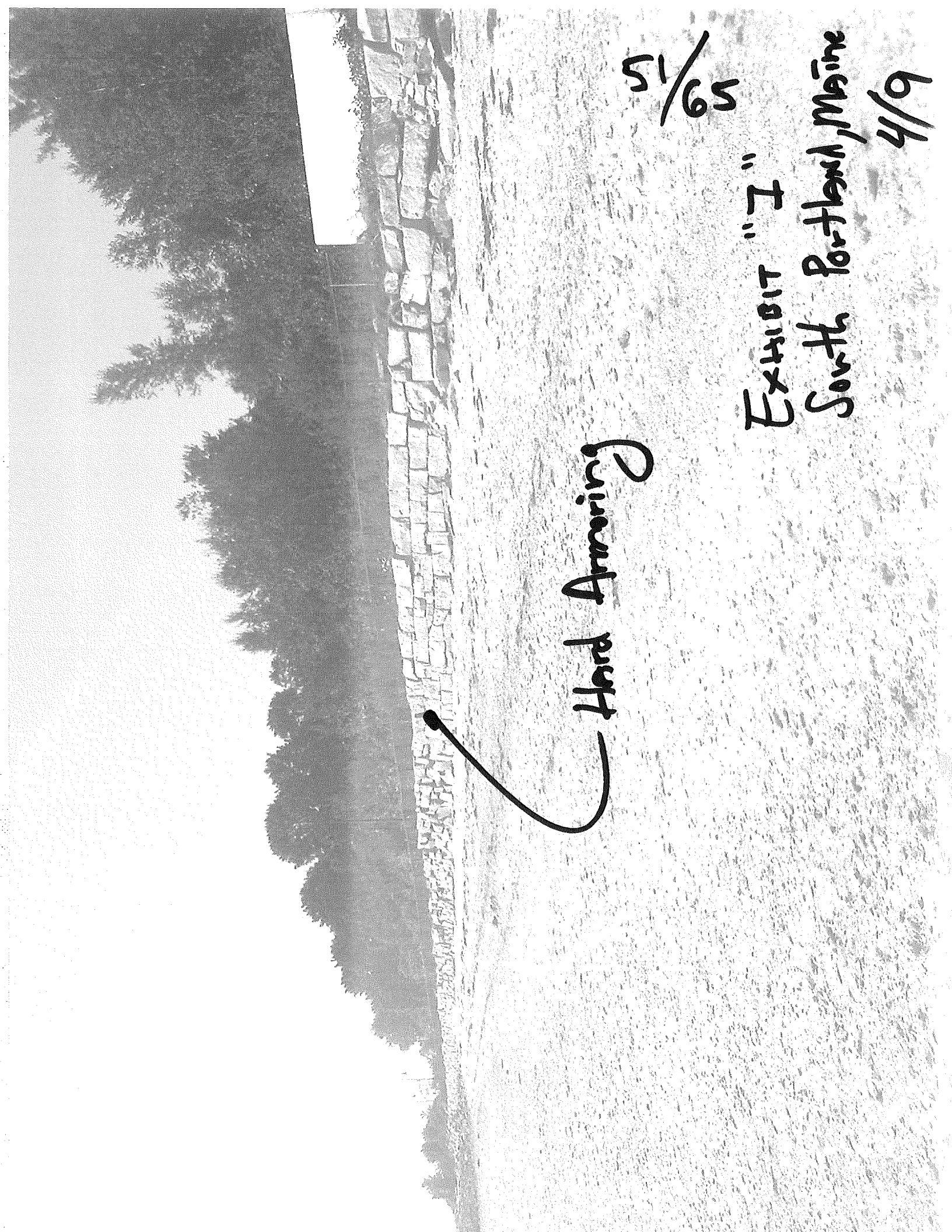
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EXHIBIT "I"
South Portland,
Maine

Hard Armoring

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Hard Armoring

5/65

EXHIBIT "I"

South Portland, Maine

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EXHIBIT "I"
South Portland, MAINE



Rock Rip Rap

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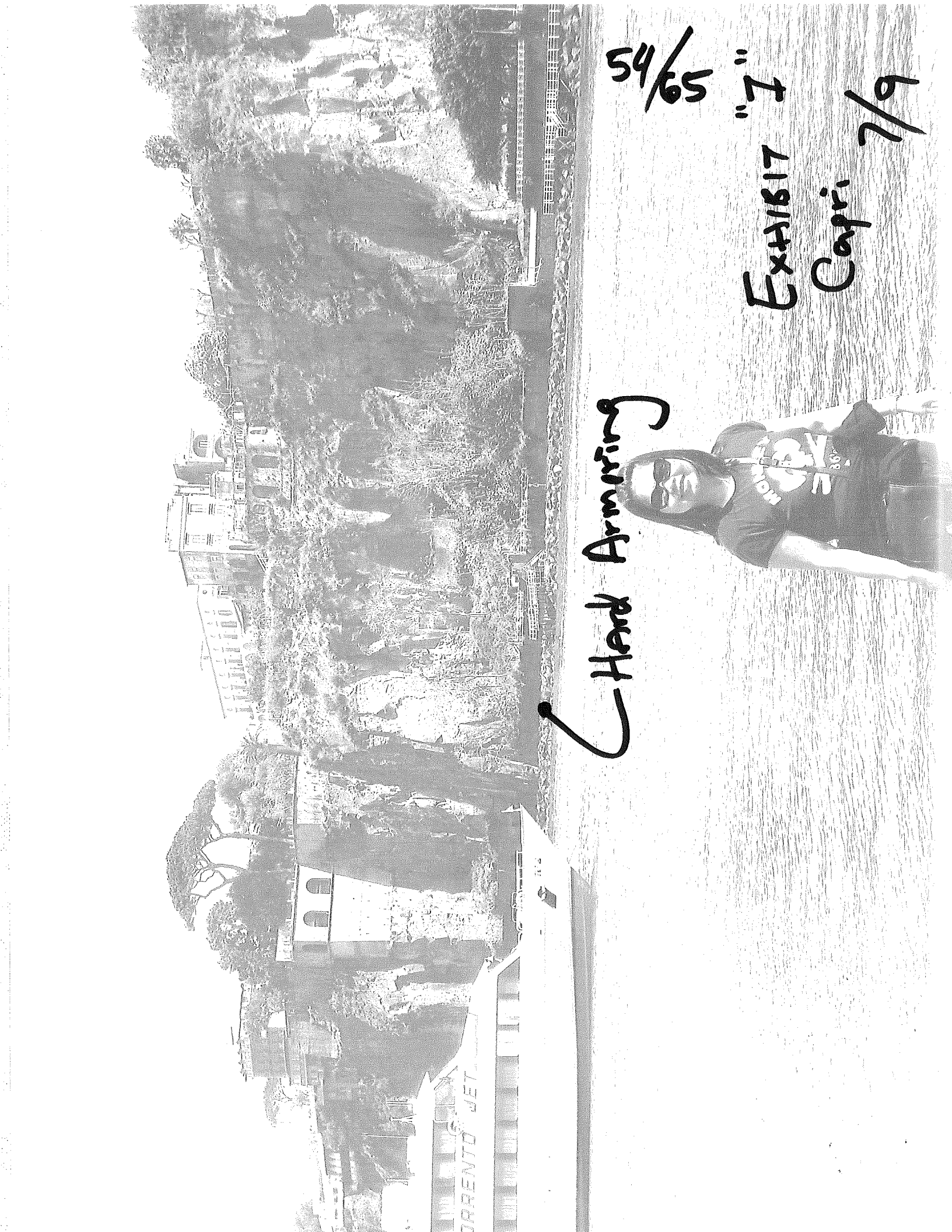


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Southern Italy

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Concrete Ramp Directly
On Beach For
Boat Launching

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Hard Armring

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EXHIBIT "I"

Capri 7/9



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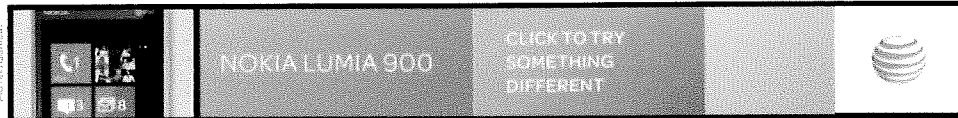
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Wildlife Waste Is Major Water Polluter, Studies Say

"Wildlife consistently came up as being . . . a major player," said Peter Gold, an environmental scientist for the EPA.

To some scientists, this makes perfect sense. They point out that a few wild animals have managed to thrive in the environments that humans create: Deer feast on suburban flowers; raccoons raid backyard pet-food bowls. Nonmigratory Canada geese, descended in part from geese brought to this area as live hunting decoys, have fallen so much in love with golf courses and groomed city parks that their East Coast population now stands at 1.1 million.

It could be the ultimate irony of people's impact on nature that the entire system has changed so radically that wild animals now degrade their own environment. More animals means more bacteria-laden waste. Some of that is swept by storm water into rivers and streams.

Some of the waste is deposited directly into the currents.

"They're pooping in the water," said Chuck Frederickson, an environmentalist who is keeper of the James River, gazing at geese slurping algae off river rocks one recent day. He said the goose population is an obstacle to improving the river: "Do we want less bacteria in the water, or do we want geese around?"

But it is one thing to blame wild animals for pollution and another to figure out how to get them to stop.

Scientists have actually run the numbers for many local streams, using mathematical models to estimate how much the bacteria from wildlife dung needs to be reduced to meet the standards.

But these calculations, required by EPA rules, often have an oddball quality: In the Willis River in central Virginia, for instance, scientists created highly specific estimations of the population density for various animal species (.07 raccoons per acre, for example, and 2.751 muskrats), then factored in the number of grams of waste each animal produces a day (450 grams per raccoon, 100 per muskrat).

Eventually, they determined that there needed to be an 83 percent reduction in the amount of waste that wildlife left directly in streams.

But even the scientists who make these determinations say such a large reduction is unlikely. Although Maryland does kill a few hundred geese annually to reduce water pollution, and the U.S. Fish and Wildlife Service last month relaxed its rules to make it easier to kill geese for public-health reasons, no officials in this area have plans to kill or remove wildlife on a scale large enough to make a difference to the waterways.

"When you run the model, that's what you come up with, but it's unrealistic to expect that anything like that is going to happen," said Charles Hagedorn, a professor at Virginia Tech



Geese, such as these at RFK Stadium in the District, are among the wildlife generating most of the bad bacteria in the region's rivers, scientists say. (By James A. Parcell -- The Washington Post)

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who has worked on pollution surveys for the state over the past 15 years. "That's the conundrum: What do you do?"

Some environmentalists have an answer: Just stop worrying about the wildlife.

"If you were here when Captain John Smith rode up the Anacostia River [in 1608], and you tested the water, it would probably have a good bit of coliform in it" because of wildlife, said Robert Boone, president of an environmental group called the Anacostia Watershed Society.

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Boone said he has heard officials from sewage-treatment authorities bring up the fact that wildlife, more than the human waste they treat, is a major contributor to the bacteria problem.

"That's a total out for not doing anything" to reduce man-made pollution, Boone said. "Just ignore the wildlife and deal with the leaking sewer pipes."

Now, the EPA and state agencies seem to be coming to a similar conclusion. In interviews and in official documents, they say they're considering holding some streams to different standards, expecting that not every stream can be made safe for swimming. In such cases, the states would plan to reduce bacteria from human sources as much as possible and then reassess to see whether some level of bacteria from wildlife is natural.

But, for now, no such reassessments have been made in this area. Maryland officials seem especially unwilling to do so in the near future, fearing how the public would react to such a lowering of the bar.

So, on paper at least, wild animals are still catching blame -- to a reaction of disbelief from some animal advocates.

"Has anybody studied about fish?" quipped David Feld, national program director for a Falls Church-based group called GeesePeace, which seeks nonlethal ways of controlling goose populations. "How much fish contribute?"

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Surprising Source of Bacteria

Scientists recently used high-tech methods to determine the source of harmful bacteria in Rock Creek and the Potomac and Anacostia rivers. They found that significant amounts come from the dung of wildlife such as geese, deer, raccoons and muskrats.

Percentage of bacteria from various sources

	Pets	Livestock	Humans	Wildlife
Anacostia River	19.8%	0.3	24.2%	55.8%
Potomac River	14.7	10.2	16.3	58.8
Rock Creek	18.8	9.5	21.4	50.3

Note: Percentages may not add up to 100 percent because of rounding.

SOURCE: Prof. Charles Hagedorn, Virginia Tech | The Washington Post - September 03, 2006

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Park Grants

There are several grant programs for building and renovating outdoor parks or for buying land for future parks. These grants provide funding for:

- Buying land
- Building or renovating local and state parks
- Developing and renovating public waterfront areas ←
- Creating access to the water ←
- Building ballfields

Examples

- Buying land for a neighborhood park
- Building tennis and basketball courts
- Building a skateboard park
- Rehabilitating splash and spray pools
- Renovating an outdoor swimming pool
- Building a regional athletic complex
- Renovating a dirt soccer field by adding turf and lighting
- Removing bulkheads and restoring the beach to its natural function ←
- Building trails along the shoreline ←
- Building waterfront boardwalks ←
- Developing an off-road vehicle park

Parks for Active Recreation

LWCF - Land and Water Conservation Fund				
Provides funding to buy or develop public outdoor recreation areas and facilities. Grants support both acquisition and development of active and passive recreation areas and conservation lands. Public use is required. A <u>comprehensive plan</u> is required. <u>Learn more.</u>				
Applications Accepted	Who's Eligible	Match	Eligible Project Types	Grant Limit
Even years	Local agencies* State agencies Tribes	50 percent	Land acquisition Development Renovation	\$500,000

EXHIBIT "K" 1/7

60/65

Local Parks Category				
WWRP - Washington Wildlife and Recreation Program				
Provides funding to acquire, develop, or renovate outdoor recreation facilities. Program is for neighborhood, community, and regional parks. At least 50 percent of funding in this grant category is dedicated to acquisition projects. A <u>comprehensive plan</u> is required. Learn more.				
Applications Accepted	Who's Eligible	Match	Eligible Project Types	Grant Limit
Even years	Local agencies* Tribes	50 percent	Land acquisition Development Renovation	\$500,000 to \$1 million

YAF - Youth Athletic Facilities				
Provides funding to buy, build, renovate, and maintain competitive athletic facilities with an emphasis on those that serve both youth and adults. Learn more.				
Applications Accepted	Who's Eligible	Match	Eligible Project Types	Grant Limit
As funding is available. None at this time.	Cities Counties Youth or community athletic nonprofits	50 percent	Land acquisition Development Renovation Maintenance	\$25,000- \$150,000

Community Parks

LWCF - Land and Water Conservation Fund				
Provides funding to buy or develop public outdoor recreation areas and facilities. Grants support both acquisition and development of active and passive recreation areas and conservation lands. Public use is required. A <u>comprehensive plan</u> is required. Learn more.				
Applications Accepted	Who's Eligible	Match	Eligible Project Types	Grant Limit
Even years	Local agencies* State agencies Tribes	50 percent	Land acquisition Development Renovation	\$500,000

Exhibit "K" 2/7

61/65

Local Parks Category WWRP - Washington Wildlife and Recreation Program				
Provides funding to acquire, develop, or renovate outdoor recreation facilities. Program is for neighborhood, community, and regional parks. At least 50 percent of funding in this grant category is dedicated to acquisition projects. A <u>comprehensive plan</u> is required. Learn more.				
Applications Accepted	Who's Eligible	Match	Eligible Project Types	Grant Limit
Even years	Local agencies* Tribes	50 percent	Land acquisition Development Renovation	\$500,000 to \$1 million

Off-Road Vehicle Facilities

LWCF - Land and Water Conservation Fund				
Provides funding to buy or develop public outdoor recreation areas and facilities. Grants support both acquisition and development of active and passive recreation areas and conservation lands. Public use is required. A <u>comprehensive plan</u> is required. Learn more.				
Applications Accepted	Who's Eligible	Match	Eligible Project Types	Grant Limit
Even years	Local agencies* State agencies Tribes	50 percent	Land acquisition Development Renovation	\$500,000

NOVA - Nonhighway and Off-road Vehicle Activities				
Provides funding to buy, develop, or maintain backcountry recreational areas or off-road vehicle parks. Projects are for motorized and non-motorized trail recreation that is accessed by a non-highway road.*** These grants also may be used to fund education and enforcement officers patrolling areas eligible for these grants. Snowmobile projects are not eligible. A <u>comprehensive plan</u> is required. Learn more.				
Applications Accepted	Who's Eligible	Match	Eligible Project Types	Grant Limit

Exhibit "K" 3/3

62/65

Even years	Local agencies* State agencies Federal agencies Tribes	None	Planning Land acquisition Development Maintenance and operation Education and Enforcement	For non-motorized and nonhighway road category projects: <ul style="list-style-type: none"> \$100,000 for all types, except for maintenance and operation projects, which are \$50,000 a year (up to two years) For off-road vehicle projects: <ul style="list-style-type: none"> No limit except for maintenance and operation projects, which are \$100,000 a year (up to two years)
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RTP - Recreational Trails Program				
Program provides funding to rehabilitate and maintain recreational trails and facilities that support a backcountry experience. Emphasis is to perform annual, routine maintenance on backcountry trails Snowmobile trails are eligible in this program. Learn more.				
Applications Accepted	Who's Eligible	Match	Eligible Project Types	Grant Limit
Even years	Local agencies* State agencies Federal agencies Tribes Nonprofits	20 percent	Maintenance Development (limited) Education	General: \$150,000 Education: \$20,000

Waterfront Access

ALEA - Aquatic Lands Enhancement Account

EXHIBIT "K" 4/7

63/65

Provides funding to buy, protect, and restore aquatic lands habitat and to provide public access to the waterfront. Projects must be associated with navigable waters of the state. [Learn more.](#)

Applications Accepted	Who's Eligible	Match	Eligible Project Types	Grant Limit
Even years	Local agencies* State agencies Tribes	50 percent	Acquisition of land or easements Development Renovation	\$500,000 to \$1 million

LWCF - Land and Water Conservation Fund

Provides funding to buy or develop public outdoor recreation areas and facilities. Grants support both acquisition and development of active and passive recreation areas and conservation lands. Public use is required. A comprehensive plan is required. [Learn more.](#)

Applications Accepted	Who's Eligible	Match	Eligible Project Types	Grant Limit
Even years	Local agencies* State agencies Tribes	50 percent	Land acquisition Development Renovation	\$500,000

Local Parks Category
WWRP - Washington Wildlife and Recreation Program

Provides funding to acquire, develop, or renovate outdoor recreation facilities. Program is for neighborhood, community, and regional parks. At least 50 percent of funding in this grant category is dedicated to acquisition projects. A comprehensive plan is required. [Learn more.](#)

Applications Accepted	Who's Eligible	Match	Eligible Project Types	Grant Limit
Even years	Local agencies* Tribes	50 percent	Land acquisition Development Renovation	\$500,000 to \$1 million

Water Access Category
WWRP - Washington Wildlife and Recreation Program

Exhibit "K" 5/7

64/65

Provides funding to create physical access to shorelines for non-motorized, water-related recreation activities such as boating and fishing. At least 75 percent of funding in this grant category is dedicated to acquisition projects. A <u>comprehensive plan</u> is required. Learn more.				
Applications Accepted	Who's Eligible	Match	Eligible Project Types	Grant Limit
Even years	Local agencies* Tribes State agencies**	50 percent. No match required for state agencies.	Land acquisition Development Renovation	None

State Lands

LWCF - Land and Water Conservation Fund				
Provides funding to buy or develop public outdoor recreation areas and facilities. Grants support both acquisition and development of active and passive recreation areas and conservation lands. Public use is required. A <u>comprehensive plan</u> is required. Learn more.				
Applications Accepted	Who's Eligible	Match	Eligible Project Types	Grant Limit
Even years	Local agencies* State agencies Tribes	50 percent	Land acquisition Development Renovation	\$500,000

State Lands Development and Renovation Category WWRP - Washington Wildlife and Recreation Program				
Provides funding to two state agencies to develop and renovate outdoor recreation facilities. A <u>comprehensive plan</u> is required. Learn more.				
Applications Accepted	Who's Eligible	Match	Eligible Project Types	Grant Limit
Even years	Department of Fish and Wildlife Department of Natural Resources	None	Development Renovation	\$325,000

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Exhibit "K" 6/7

65/65

State Parks Category				
WWRP - Washington Wildlife and Recreation Program				
Provides funding to acquire or develop state parks. A <u>comprehensive plan is required</u> . Learn more .				
Applications Accepted	Who's Eligible	Match	Eligible Project Types	Grant Limit
Even years	Washington State Parks and Recreation Commission	None	Land acquisition Development	None

* Local agencies means a city, county, town, federally recognized Native American tribe, special purpose district, port district, or other political subdivision of the state providing services to less than the entire state if legally authorized to acquire and develop public open space, habitat, farmlands, riparian habitat, or recreation facilities.

**State agencies means the Departments of Fish and Wildlife, General Administration and Natural Resources, and the Washington State Parks and Recreation Commission.

Exhibit "K" 7/7

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**BEFORE THE CITY COUNCIL
GIG HARBOR, WASHINGTON**

In re:) No. APP-12-0001
Robert Frisbie SEPA Appeal) DECLARATION OF TOM DOLAN
(PL-SEPA 12-0004)) Hearing Date: May 29, 2012

TOM DOLAN declares as follows:

1. I am over the age of 18, I am competent to testify to the matters set forth below, and I have personal knowledge of those matters.

2. I am the Planning Director of the City of Gig Harbor. I have held my current position since September of 2006.

3. I have a Bachelor's Degree in Urban Planning from Western Washington University (1974). I started working for the City of Tacoma, Washington in June of 1974. In 1976 I started working in the current planning section of the City of Tacoma Planning Department. I continued working at the City of Tacoma in a number of increasingly responsible current planning positions until September of 2006. During my work as a current planner for the City of Tacoma I reviewed and processed hundreds of SEPA checklists and participated in the development of approximately 20 Environmental Impact Statements.

4. As the City's Planning Director, pursuant to section 18.04.040 of the Gig Harbor Municipal Code, I also serve as the City's Responsible Official in connection with State

1 Environmental Policy Act ("SEPA") project and non-project review. During my tenure as
2 Planning Director and responsible official for the City of Gig Harbor I have made threshold
3 determinations on numerous project and non-project actions.

4 5. The process for determining environmental thresholds includes a thorough review
5 of the applicable environmental documents. The purpose of the review is to determine if the
6 proposal under consideration is likely to have probable significant adverse environmental
7 impacts. If the responsible official determines that probable significant adverse environmental
8 impacts are likely, a Determination of Significance is issued and an environmental impact
9 statement is required. If the responsible official determines that probable significant adverse
10 impacts will not occur as a result of the proposal, a Determination of Nonsignificance is issued
11 pursuant to WAC 197-11

12 6. In the case of the SEPA determination for the Shoreline Master Program Update
13 as the responsible official I carefully reviewed the applicable documents. Those documents
14 included the Draft City of Gig Harbor Shoreline Master Program (dated April 21, 2011, revised February
15 29, 2012) as well as the environmental checklist and environmental checklist supplemental sheet
16 for non-project actions. After a careful and thorough review and drawing upon my 36 years of
17 experience with the State Environmental Policy Act (SEPA), I determined that the legislative
18 adoption of the Draft City of Gig Harbor Shoreline Master Program would not result in probable
19 significant adverse impacts to the environment as identified in WAC 197-11.

20 I declare under penalty of perjury under the laws of the State of Washington that the
21 foregoing is true and correct.

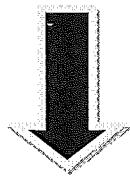
22 DATED: May 29, 2012 at Gig Harbor, Washington.

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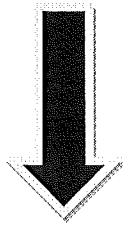
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TOM DOLAN

**State Shoreline Management Act
(RCW 90.58)**



**State Shoreline Master Program Guidelines
(WAC 173-26)**



City of Gig Harbor Shoreline Master Program

WAC 197-11-444
Elements of the environment.

(1) Natural environment

(a) Earth

(i) Geology

(ii) Soils

(iii) Topography

(iv) Unique physical features

(v) Erosion/enlargement of land area (accretion)

(b) Air

(i) Air quality

(ii) Odor

(iii) Climate

(c) Water

(i) Surface water movement/quantity/quality

(ii) Runoff/absorption

(iii) Floods

(iv) Groundwater movement/quantity/quality

(v) Public water supplies

(d) Plants and animals