

Gig Harbor City Council Meeting



May 10, 1999

AGENDA FOR GIG HARBOR CITY COUNCIL MEETING
May 10, 1999 - 7:00 p.m.

CALL TO ORDER:

CONSENT AGENDA:

These consent agenda items are considered routine and may be adopted with one motion as per Gig Harbor Ordinance No. 799.

1. Approval of the Minutes of the April 26, 1999, City Council meeting.
2. Correspondence / Proclamations:
3. Approval of Payment of Bills for May 10,1999:
 Checks #22468 through #22554 in the amount of \$165,300.55.
4. Approval of Payroll for the month of April,1999:
 Checks #18706 through #18212 in the amount of \$269,428.91.
5. Liquor License Acquisition: Fred Meyer Market Place

OLD BUSINESS:

NEW BUSINESS:

1. First Reading - Concurrency Ordinance.
2. First Reading - Definitions Ordinance.
3. Resolution - Adopt-a-Road Program.
4. Interlocal Agreement for ESB 6094 - Buildable Lands.
5. Consultant Services Agreement - Biological Assessments.

PUBLIC COMMENT/DISCUSSION:

COUNCIL COMMENTS:

STAFF REPORTS:

ANNOUNCEMENT OF OTHER MEETINGS:

Public Hearing - Concurrency and Definitions Ordinances at the regular City Council Meeting of May 24th at 7:00 p.m. at City Hall.

EXECUTIVE SESSION: For the purpose of discussing pending litigation per RCW 42.30.110(i). No action will be taken.

ADJOURN:

REGULAR GIG HARBOR CITY COUNCIL MEETING OF APRIL 26, 1999

PRESENT: Councilmembers Young, Owel, Ekberg, Picinich, Markovich and Mayor Wilbert.
Councilmembers Dick and Platt were absent.

CALL TO ORDER: 7:10 p.m.

CONSENT AGENDA:

These consent agenda items are considered routine and may be adopted with one motion as per Gig Harbor Ordinance No. 799.

1. Approval of the Minutes of the April 12, 1999, City Council meeting.
2. Correspondence / Proclamations:
 - a) Proclamation presented to Jill and Kirsty Johnson from Harbor Heights Elementary School proclaiming April 26-30, 1999 Staff Appreciation Week
3. Approval of Payment of Bills for April 26, 1999:
Checks #22375 through #22467 (excepting #22377) in the amount of \$107,646.23.

MOTION: Move to approve the consent agenda as presented.
Young/Owel - unanimously approved.

OLD BUSINESS:

1. Second Reading of Ordinance – Amendments to Chapter 18.04.230, Establishing Separate Comment and Appeal Period under SEPA. Carol Morris explained that currently the City consolidates the required 14-day SEPA comments period with the 14-day appeal period. An additional 7 days would be allowed beyond the comment period for the filing of an appeal.

MOTION: Move to adopt Ordinance 815 amending Title 18 of the Gig Harbor Municipal Code (18.04.230(B)) to provide for the filing of an appeal of a SEPA threshold determination after the comment due date.
Markovich/Owel – unanimously approved.

NEW BUSINESS:

1. Indemnification Agreement (Talmo, Inc.). Mark Hoppen explained that this agreement is to allow a bored undercrossing within the Washington State Department of Transportation's SR-16 right-of-way for development that requires an extension of the City's water system to provide necessary fire flow.

MOTION: Move to approve an Indemnification Agreement with Talmo, Inc.
Picinich/Owel – unanimously approved.

2. Moratorium – Commercial Stimulant Card Games. – Mark Hoppen gave a brief overview of the concern over the proliferation of mini-casino card rooms and the recent proposed moratorium on such activities at the Washington state level by Governor Locke. Councilmember Owel advised that the Gambling Commission had a web site with all the information on how easy it is to obtain these permits and also voiced her concern about parking. Councilmember Young spoke on the issue of potential revenue for the city. Councilmember Picinich inquired as to whether this would affect anyone currently. Mark Hoppen stated that this was why it was a good time to enact the moratorium because right now there were no businesses that would be directly affected. Carol Morris read the definition of social card games from state statute and noted that a change needed to be made in the title of the ordinance to add social card games.

MOTION: Move to adopt Ordinance No. 816 adopting six-month moratorium and setting a Public Hearing date of June 14, 1999 to address the issue of whether card rooms should be allowed to locate or continue to operate in this jurisdiction with modifications.
Picinich/Owel – unanimously passed.

COUNCIL COMMENTS:

STAFF REPORTS:

Quarterly Finance Report – Dave Rodenbach gave a brief overview of the financial reports for the first quarter of 1999.

ANNOUNCEMENTS OF OTHER MEEETINGS:

Council Workshop to continue discussion of the Concurrency and Definitions Ordinances: Tuesday, May 4th, 1999, 6:00 p.m. in the Council Chambers at City Hall.

EXECUTIVE SESSION: For the purpose of discussing pending litigation as per RCW 42.30.110 (i).

MOTION: Move to adjourn to Executive Session at 7:30 p.m. for approximately 30 minutes.
Young/Owel – unanimously approved.

MOTION: Move to return to regular session at 7:55.
Picinich/Owel - unanimously approved.

ADJOURN:

MOTION: Move to adjourn at 7:56 p.m.
Owel/Picinich – unanimously approved.

Cassette recorder utilized
Tape 527 Side B 000 – 334

Mayor

City Clerk

C091080-2

WASHINGTON STATE LIQUOR CONTROL BOARD

DATE: 5/03/99

LICENSED ESTABLISHMENTS IN INCORPORATED AREAS CITY OF GIG HARBOR
(BY ZIP CODE) FOR EXPIRATION DATE OF 19990731

LICENSEE	BUSINESS NAME AND ADDRESS	LICENSE NUMBER	PRIVILEGES
1 KU ACQUISITION CORPORATION	FRED MEYER MARKET PLACE 5500 OLYMPIC DR BLDG B GIG HARBOR WA 98335 0000	076448	GROCERY STORE - BEER/WINE

RECEIVED

MAY 6 1999

CITY OF GIG HARBOR

Attention:

Enclosed is a listing of liquor licensees presently operating establishments in your jurisdiction whose licenses expire on JULY 31, 1999. Applications for renewal of these licenses for the upcoming year are at this time being forwarded to the current operators.

As provided in law, before the Washington State Liquor Control Board shall issue a license, notice regarding the application must be provided the chief executive officer of the incorporated city or town or the board of county commissioners if the location is outside the boundaries of an incorporated city or town.

Your comments and recommendations regarding the approval or disapproval for the enclosed listed licensees would be appreciated. If no response is received, it will be assumed that you have no objection to the reissuance of the license to the applicants and locations listed. In the event of disapproval of the applicant or the location or both, please identify by location and file number and submit a statement of all facts upon which such objections are based (please see RCW 66.24.010{8}). If you disapprove then the Board shall contemplate issuing said license, let us know if you desire a hearing before final action is taken.

In the event of an administrative hearing, you or your representative will be expected to present evidence in support of your objections to the renewal of the liquor license. The applicant would presumably want to present evidence in opposition to the objections and in support of the application. The final determination whether to grant or deny the license would be made by the Board after reviewing the record of the administrative hearing.

If applications for new licenses are received for persons other than those specified on the enclosed notices, or applications for transfer of licenses are received by the Board between now and JULY 31, 1999, your office will be notified on an individual case basis.

Your continued assistance and cooperation in these licensing matters is greatly appreciated by the Liquor Control Board.

LESTER C. DALRYMPLE, Supervisor
License Division
Enclosures

MAYOR OF GIG HARBOR
3105 JUDSON ST
GIG HARBOR

RECEIVED

MAY - 6 1999

CITY OF GIG HARBOR

WA 983350000



City of Gig Harbor. The "Maritime City"

3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: MARK HOPPEN, CITY ADMINISTRATOR
SUBJECT: CONCURRENCY ORDINANCE
DATE: MAY 5, 1999

INFORMATION/BACKGROUND

The Growth Management Act requires that the City adopt and enforce ordinances "which prohibit development approval if the development causes the level of service on a transportation facility to decline below the standards adopted in the Transportation Element of the City's Comprehensive Plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development." (RCW 36.70A.070(6)). Moreover, "concurrent with development," for the purposes of the statute means that improvements or strategies are in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within six years.

This proposed ordinance implements the state statute by implementing the concurrency provisions of the Transportation Element of the City's Comprehensive Plan. The state requires that at a minimum the city adopt a concurrency regulation for transportation.

POLICY CONSIDERATIONS

The proposed ordinance is returning to the City Council for the fourth time for a "first" reading. Adjustments to the proposed ordinance have been made as per the City Council's specific and general instructions at the May 4th workshop. A Public Hearing for this refined version of the ordinance will accompany the "second" reading.

FISCAL CONSIDERATIONS

Fees relating to reservation of capacity have been deleted from this ordinance.

RECOMMENDATION

Staff recommends that this ordinance be adopted as soon as possible after the second reading.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO DEVELOPMENT AND TRANSPORTATION IMPACTS, IMPLEMENTING THE CONCURRENCY PROVISIONS OF THE TRANSPORTATION ELEMENT OF THE CITY'S COMPREHENSIVE PLAN, AS REQUIRED BY RCW 36.70A.070(6), DESCRIBING THE PROCEDURE FOR THE CITY PUBLIC WORKS DIRECTOR'S EVALUATION OF CONCURRENCY OF THE CITY'S ROAD FACILITIES WITH PROPOSED DEVELOPMENT IN LIGHT OF ADOPTED LEVELS OF SERVICE, DESCRIBING THE PROCEDURE FOR ISSUANCE OF CAPACITY RESERVATION CERTIFICATES, ESTABLISHING THE PROCESS FOR DENIALS, CONCURRENCY RESOLUTIONS AND APPEALS, ESTABLISHING CAPACITY ACCOUNTS, REQUIRING ANNUAL REPORTING AND MONITORING OF ROAD CAPACITY AS PART OF THE ANNUAL UPDATE OF THE CITY'S SIX-YEAR TRANSPORTATION PLAN, AMENDMENTS TO THE TRANSPORTATION ELEMENT OF THE CITY'S COMPREHENSIVE PLAN, AND ADOPTING A NEW CHAPTER 19.10 TO THE GIG HARBOR MUNICIPAL CODE.

WHEREAS, the Growth Management Act requires that the City adopt and enforce ordinances "which prohibit development approval if the development causes the level of service on a transportation facility to decline below the standards adopted in the Transportation Element of the City's Comprehensive Plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development" (RCW 36.70A.070(6)); and

WHEREAS, "concurrent with development," for the purposes of the above statute, means that improvements or strategies are in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within six years (RCW 36.70A.070(6)); Now, Therefore,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON, DO
ORDAIN AS FOLLOWS:

Section 1. A new chapter 19.10 is hereby added to the Gig Harbor Municipal Code, which shall read as follows:

CHAPTER 19.10 CONCURRENCY MANAGEMENT

I. OVERVIEW AND EXEMPTIONS

19.10.001. Purpose. The purpose of this Chapter is to implement the concurrency provisions of the Transportation Element of the City's Comprehensive Plan, in accordance with RCW 36.70A.070(6)(e), consistent with WAC 365-195-510 and 365-195-835. No development permit shall be issued except in accordance with this Chapter, which shall be cited as the Concurrency Management Ordinance.

19.10.002. Authority. The Director of Public Works, or his/her designee, shall be responsible for implementing and enforcing the Concurrency Management Ordinance.

19.10.003. Exempt Development.

A. Development Permit issued prior to Effective Date of this Chapter. All construction or change in use initiated pursuant to a development permit issued prior to the effective date of this Chapter shall be exempt from the requirements of this Chapter, PROVIDED, however, that no development permit shall be extended except in conformance with this Chapter. If the City determines that a previously issued development permit has lapsed or expired, pursuant to the applicable development regulations, then no subsequent development permit shall be issued except in accordance with this Chapter.

B. De Minimis Development. After the effective date of this Chapter, no development activity (as defined in the definition section of this Chapter) shall be exempt from the requirements of this Chapter unless specifically exempted below in subsection C.

C. Exempt Permits.

1. The following types of permits are exempt from the Capacity Reservation Certificate (CRC) process because they do not create additional long-term impacts on road facilities :

Administrative interpretations	Plumbing permit
Sign permit	Electrical permit
Street vacation	Mechanical permit
Demolition permit	Excavation permit
Street Use Permit	Sewer connection permit
Interior alterations	Driveway or street
with no change of use	Access permit
Excavation/clearing permit	
Grading permit	Hydrant use permit

Right of Way Permit
Single family remodeling
with no change of use

Tenant improvement permit
Fire code permit

Notwithstanding the above, if any of the above permit applications will generate more than 15 new p.m. peak hour trips, such application shall not be exempt from the requirements of this chapter.

2. The portion of any project used for any of the following purposes is exempt from the requirements of this Chapter:

Public transportation facilities
Public parks and recreational facilities
Public libraries

Notwithstanding the exemptions hereunder provided, the traffic resulting from an exempt use shall nonetheless be included in computing background traffic for any nonexempt project.

D. **Other Exempt Building Permits.** This Chapter shall apply to all development applications for development or re-development if the proposal or use will generate more than 25 new p.m. peak hour trips.

19.10.004. Capacity Evaluation Required for Change of Use. Except for development exempt under GHMC 19.10.003, any development activity, as defined in the definition section of this Chapter, shall require a capacity evaluation in accordance with this Chapter.

A. **Increased Impact on Road Facilities.** If a change of use will have a greater impact on road facilities than the previous use as determined by the Director based on review of information submitted by the Developer, and such supplemental information as available, a CRC shall be required for the net increase only, provided that the Developer shall provide reasonably sufficient evidence that the previous use has been actively maintained on the site during the five (5) year period prior to the date of application for the capacity evaluation.

B. **Decreased Impact on Road Facilities.** If a change of use will have an equal or lesser impact on road facilities than the previous use as determined by the Director based on review of information submitted by the Developer, a CRC will not be required.

C. **No Capacity Credit.** If no use existed on the site for the five (5) year period prior to the date of application, no capacity credit shall be issued pursuant to this section.

D. **Demolition or Termination of Use.** In the case of a demolition or termination of an existing use or structure, the capacity evaluation for future redevelopment shall be based upon the net increase of the impact for the new or proposed land use as compared to the land use existing prior to demolition, provided that such credit is utilized through a CRC, within five (5) years of the date of the issuance of the demolition permit.

19.10.005 All Capacity Determinations Exempt from Project Permit Processing. The determinations made by the Director pursuant to the authority in this Chapter shall be exempt from project permit processing procedures, as described in GHMC Title 19, except that the appeal procedures of GHMC Title 19 shall apply pursuant to Part VIII of this chapter. The City's processing of capacity determinations and resolving capacity disputes involves a different review procedure due to the necessity to perform continual monitoring of facility and service needs, to ensure continual funding of facility improvements, and to develop annual updates to the transportation of the comprehensive plan.

II. LEVEL OF SERVICE STANDARDS

19.10.006. Introduction. The concept of concurrency is based on the maintenance of specified levels of service with respect to road facilities. Concurrency describes the situation in which road facilities are available when the impacts of development occur, or within six (6) years from the time of development. (See, WAC 365-195-210, definition of "available public facilities.") The City has designated levels of service for road facilities in its transportation comprehensive plan:

- A. to conform to RCW 47.80.030 for transportation facilities subject to regional transportation plans;
- B. to reflect realistic expectations consistent with the achievement of growth aims;
- C. for road facilities according to WAC 365-195-325; and
- D. to prohibit development if concurrency for road facilities is not achieved (RCW 36.70A.070), and if sufficient public and/or private funding cannot be found, land use assumptions in the City's Comprehensive Plan will be reassessed to ensure that level of service standards will be met, or level of service standards will be adjusted.

19.10.007. Level of Service Standards. Level of Service (LOS) is the established minimum capacity of road facilities that must be provided per unit of demand or other appropriate measure of need, as mandated by Chapter 36.70A RCW. LOS standards shall be used to determine if road services are adequate to support a development's impact. The City's established LOS for roads within the city limits shall be as shown in the Transportation Element of the City's Comprehensive Plan.

19.10.008. Effect of LOS Standards. The Director shall use the LOS standards set forth in the Transportation Element of the City's Comprehensive Plan to make concurrency evaluations as part of the review of any application for a CRC issued pursuant to this Chapter.

III. CAPACITY EVALUATIONS

19.10.009. Capacity Evaluations Required Prior to Issuance of CRC.

A. **When the Requirements of this Chapter Apply.** A capacity evaluation shall be required either in conjunction with or prior to the City's consideration of any development permit depending on the time that the applications are filed, unless specifically exempted by this Chapter. The Director shall utilize requirements set forth in Part V to conduct a capacity evaluation, prior to issuance of a CRC. In addition to the requirements set forth in Part V, and specifically in GHMC 19.10.012, the Director may also utilize state law or the Washington Administrative Code, or such other rules regarding concurrency which may be established from time to time by administrative rule. In cases where LOS standards do not apply, the Director shall have the authority to utilize other factors in preparing capacity evaluations to include, but not be limited to, independent LOS analysis.

B. **Capacity Reservation Certificates.** A CRC will not be issued except after a capacity evaluation performed pursuant to Part V, indicating that capacity is available in all applicable road facilities.

19.10.010. Capacity Evaluations Required for Rezone Applications or Comprehensive Plan Amendments Requesting an Increase in Extent or Density of Development. A capacity evaluation shall be required as part of any application for a comprehensive plan amendment or zoning map amendment (rezone) which, if approved, would increase the intensity or density of permitted development. As part of that capacity evaluation, the Director shall determine whether capacity is available to serve both the extent and density of development which would result from the zoning/comprehensive plan amendment. The capacity evaluation shall be submitted as part of the staff report and shall be considered by the City in determining the appropriateness of the comprehensive plan or zoning amendment.

IV. SUBMISSION AND ACCEPTANCE OF APPLICATION

19.10.011. Application for Capacity Evaluation. (1) An application for a CRC and the application for the underlying development permit, shall be accompanied by the requisite fee, as determined by City Council Resolution. An applicant for a CRC shall submit the following information to the Director, on a form provided by the Director together with a development application:

- A. Date of submittal.
- B. Developer's name, address and telephone number.
- C. Legal description of property as required by the underlying development permit application together with an exhibit showing a map of the property.
- D. Proposed use(s) by land use category, square feet and number of units.
- E. Phasing information by proposed uses, square feet and number of units, if applicable.
- F. Existing use of property.
- G. Acreage of property.
- H. Proposed site design information, if applicable.
- I. Traffic report prepared by a licensed professional engineer who is practicing as a traffic engineer;

- J. Written consent of the property owner, if different from the developer;
- K. Proposed allocation of capacity by legal description, if applicable.

(2) Even if the traffic report is based on an estimation of impact, the applicant will still be bound by its estimation of impact, and any upward deviation from the estimated traffic impact shall require at least one of the following: a finding that the additional concurrency sought by the developer through a revised application is available to be reserved by the project; mitigation of the additional impact under SEPA; revocation of the CRC.

19.10.012. Submission and acceptance of an application for a CRC.

A. **Notice of Application.** Issuance of a Notice of Application for the underlying permit application shall follow the process in GHMC § 19.02.004. The Notice of Application required by GHMC § 10.02.004 shall state that an application for a concurrency determination has been received by the City.

B. **Determination of Completeness.** Within 28 days after receiving an application for a CRC, the City shall mail or personally deliver to the applicant a determination which states either: (1) that the application is complete; or (2) that the application is incomplete and what is necessary to make the application complete.

C. **Additional Information.** An application for a CRC is complete for purposes of this section when it meets the submission requirements in GHMC 19.10.010. The Determination of Completeness shall be made when the application is sufficiently complete for review even though additional information may be required or project modifications may be undertaken subsequently. The Director's Determination of Completeness shall not preclude the Director's ability to request additional information or studies whenever new information is required, or substantial changes are made to the proposed project.

D. **Incomplete Applications.**

1. Whenever the applicant receives a determination from the City that an application is not complete, the applicant shall have 90 days to submit the necessary information. Within 14 days after an applicant has submitted the requested additional information, the Director shall make a Determination of Completeness and notify the applicant in the manner provided in subsection A of this section.
2. If the applicant does not submit the additional information requested within the 90-day period, the Director shall make findings and issue a decision that the application has lapsed for lack of information necessary to complete the review, and the applicant may request a refund of the application fee remaining after the City's Determination of Completeness.

E. **Director's Failure to Provide Determination of Completeness.** An application for a CRC shall be deemed complete under this section if the Director does not provide a written determination to the applicant that the application is incomplete as provided in subsection (A) of this section.

F. **Date of Acceptance of Application.** An application for a CRC shall not be officially accepted until complete. When an application is determined complete, the Director shall accept it and note the date of acceptance.

V. PROCEDURE FOR DETERMINING CAPACITY

19.10.013. Method of Capacity Evaluation for Road Facilities.

A. In performing the concurrency evaluation for road facilities, and to prepare the CRC, the Director shall determine whether a proposed development can be accommodated within the existing or planned capacity of road facilities. This may involve the following:

1. a determination of anticipated total capacity at the time the proposed impacts of development occur;
2. calculation of how much of that capacity will be used by existing developments and other planned developments at the time the impacts of the proposed development occur;
3. calculation of the available capacity for the proposed development;
4. calculation of the impact on the capacity of the proposed development, minus the effects of any mitigation provided by the applicant; and
5. comparison of available capacity with proposed development impacts.

B. The Director shall determine if the capacity on the City's road facilities, less the capacity which is reserved can be provided while meeting the level of service performance standards set forth in the City's Comprehensive Plan, and, if so, shall provide the applicant with a CRC.

C. In order to determine concurrency for the purposes of issuance of a CRC, the Director shall make the determination described in Subsections (A)(1) through (5) above. The Director may deem the development concurrent with road facilities, with the condition that the necessary facilities shall be available when the impacts of the development occur or shall be guaranteed to be available through a financial commitment in an enforceable development agreement.

D. If the Director determines that the proposed development will cause the LOS of a road facility to decline below the standards adopted in the Transportation Element of the City's Comprehensive Plan, and improvements or strategies to accommodate the impacts of development are not planned to be made concurrent with development, a CRC and the underlying development

permit, if such an application has been made, shall be denied, pursuant to GHMC Section 19.10.018 and any other provisions of Title 19 that may be applicable to denial of the underlying development permit. Applicants may then appeal pursuant to Part VIII of this chapter.

VI. CAPACITY RESERVATION CERTIFICATES (CRCs)

19.10.014. Purpose of Capacity Reservation Certificate. A CRC is a determination by the Director that: (1) the proposed development activity or development phase will be concurrent with the applicable road facilities at the time the CRC is issued; and (2) the Director has reserved road facility capacity for this application until the expiration of the underlying development permit. In no event shall the Director determine concurrency for a greater amount of capacity than is needed for the development proposed in the underlying permit application.

19.10.015. Procedure for Capacity Reservation Certificates. Within ninety (90) days after receipt of an application for a CRC, the Director shall process the application, in accordance with this Chapter, and issue the CRC or a Denial Letter.

19.10.016. Use of Reserved Capacity. When a valid development permit is issued for a project possessing a CRC, the CRC shall continue to reserve the capacity unless the development permit lapses or expires without the issuance of a Certificate of Occupancy.

19.10.017. Transfer of Reserved Capacity. Reserved capacity shall not be sold or transferred to property not included in the legal description provided by the developer in the application for a CRC. The developer may, as part of a development permit application, designate the amount of capacity to be allocated to portions of the property, such as lots, blocks, parcels, or tracts included in the application. Capacity may be reassigned or allocated within the boundaries of the original reservation certificate by application to the Director. At no time may capacity or any certificate be sold or transferred to another party or entity to real property not described in the original application.

19.10.018. Denial Letter. If the Director determines that one or more road facilities are not concurrent, the Director shall issue a denial letter, which shall advise the developer that capacity is not available. If the developer is not the property owner, the Denial Letter shall also be sent to the property owner. At a minimum, the Denial Letter shall identify the application and include the following information: (1) an estimate of the level of the deficiency on the road facilities; and (2) the options available to the applicant such as the applicant's agreement to construct the necessary facilities at the applicant's cost. In order to appeal from the issuance of a Denial Letter, the developer shall appeal both the Denial Letter and the development permit denial pursuant to Part VIII of this chapter.

19.10.019. Notice of Concurrency Determination. Notice of the concurrency determination shall be given to the public together with, and in the same manner as, that provided for the underlying development permit's SEPA threshold determination, unless the project is exempt from SEPA, in which case notice shall be given in the same manner as a final decision on the underlying development permit without any accompanying threshold determination.

VII. CAPACITY RESERVATION CERTIFICATE (CRC)

19.10.020. Expiration and Extensions of Time.

A. **Expiration.** If a Certificate of Occupancy has not been requested during the time frame set forth in the CRC, the Director shall convert the reserved capacity to available capacity for the use of other developments. Requesting a Certificate of Occupancy before expiration of the CRC shall only convert the reserved capacity to used capacity if the building inspector finds that the project actually conforms with applicable codes.

B. **Extensions.** The city shall assume that the developer requests an extension of transportation capacity reservation when the developer is requesting a renewal of the underlying development permit. No unused capacity may be carried forward beyond the duration of the CRC or any subsequent extension.

VIII. APPEALS OF CONCURRENCY DETERMINATION

19.10.021. Concurrency Determination to be Appealed with Underlying Permit. Any appeal of a concurrency determination shall include appeal of the denial of the underlying development permit application. The appeal shall follow the procedure for the underlying permit as set forth in Title 19 GHMC. If there is no administrative appeal procedure in Title 19 GHMC for the underlying permit, the appeal shall follow the process for an appeal of a Type II permit. The appeal procedure as set forth in Chapter 19.06 GHMC shall be followed.

19.10.022. Time limit to bring appeal. An appeal of a denial letter and the underlying development application shall be brought within the time period set forth in GHMC §19.06.004.

IX. CONCURRENCY ADMINISTRATION

19.10.023. Purpose and Procedure. The purpose of this Part is to describe the process for administering the Concurrency Ordinance. Capacity accounts will be established, to allow capacity to be transferred to various categories in the application process. Capacity refers to the ability or availability of road facilities to accommodate users, expressed in an appropriate unit of measure, such as LOS for road facilities. Available capacity represents a specific amount of capacity that may be reserved by or committed to future users of road facilities.

19.10.024. Capacity Classifications. There are hereby established two capacity accounts, to be utilized by the Director in the implementation of this Chapter. These accounts are:

- A. the **Available Capacity account**; and
- B. the **Reserved Capacity account**;

Capacity is withdrawn from the available capacity account and deposited into a reserved capacity account when a CRC is issued. Once the proposed development is constructed and an

occupancy permit is issued, the capacity is considered "used." Each capacity account of available or reserved capacity will experience withdrawals on a regular basis. Only the Director may transfer capacity between accounts.

19.10.025. Annual Reporting and Monitoring. The Director is responsible for completion of an Annual Capacity Availability Report. This report shall evaluate reserved capacity and permitted development activity for the previous twelve month period, and determine existing conditions with regard to available capacity for road facilities. The evaluation shall report on capacity used for the previous period and capacity available for the Six-Year Capital Facilities Element of the City's Comprehensive Plan and the Six-year Transportation Plan, for road facilities, based upon LOS standards. Forecasts shall be based on the most recently updated schedule of capital improvements, growth projections, public road facility inventories, and revenue projections and shall, at a minimum, include:

- A. A summary of development activity;
- B. The status of each Capacity Account;
- C. The Six-year Transportation Plan;
- D. Actual capacity of selected street segments and intersections, and current LOS; and
- E. Recommendations on amendments to CIP and annual budget, to LOS standards, or other amendments to the transportation element of or to the Comprehensive Plan.

The findings of the Annual Capacity Availability Report shall be considered by the Council in preparing the annual update to the Capital Improvement Element, any proposed amendments to the CIP and Six-year TIP, and shall be used in the review of development permits and capacity evaluations during the next period.

Based upon the analysis included in the Annual Capacity Availability Report, the Director shall recommend to the City Council each year, any necessary amendments to the CIP, TIP and Comprehensive Plan. The Director shall also report on the status of all capacity accounts when public hearings for Comprehensive Plan amendments are heard.

19.10.026. Road LOS Monitoring and Modeling.

A. The City shall monitor Level of Service standards through an annual update of the Six Year Transportation Plan which will add data reflecting development permits issued and trip allocations reserved. The City's Traffic Demand Model will be recalibrated annually based on traffic count information, obtained from at a minimum, the City's Public Works Department.

B. A new trip allocation shall be assigned for each Traffic Analysis Zone, based on the results from the Traffic Demand Model used by the City, to ensure that the City is achieving the adopted LOS standards described in this Chapter and the transportation element of the Comprehensive Plan.

C. Amendments to the Trip Allocation Program that exceed the total aggregate annual trip allocation per zone for any given year shall require an amendment to the Comprehensive Plan.

Monitoring and modeling shall be required and must include anticipated capital improvements, growth projections, and all reserved and available capacity.

Section 2. If any section, sentence, clause or phrase of this ordinance should be held to be invalid or unconstitutional by a court of competent jurisdiction, such invalidity or unconstitutionality shall not affect the validity or constitutionality of any other section, sentence, clause or phrase of this ordinance.

Section 3. This ordinance shall take effect and be in full force five (5) days after publication of an approved summary consisting of the title.

APPROVED:

MAYOR, GRETCHEN A. WILBERT

ATTEST/AUTHENTICATED:

CITY CLERK, MOLLY M. TOWSLEE

APPROVED AS TO FORM:
OFFICE OF THE CITY ATTORNEY:

BY _____

FILED WITH THE CITY CLERK: 3/5/99
PASSED BY THE CITY COUNCIL:
PUBLISHED:
EFFECTIVE DATE:

SUMMARY OF ORDINANCE NO. _____

of the City of Gig Harbor, Washington

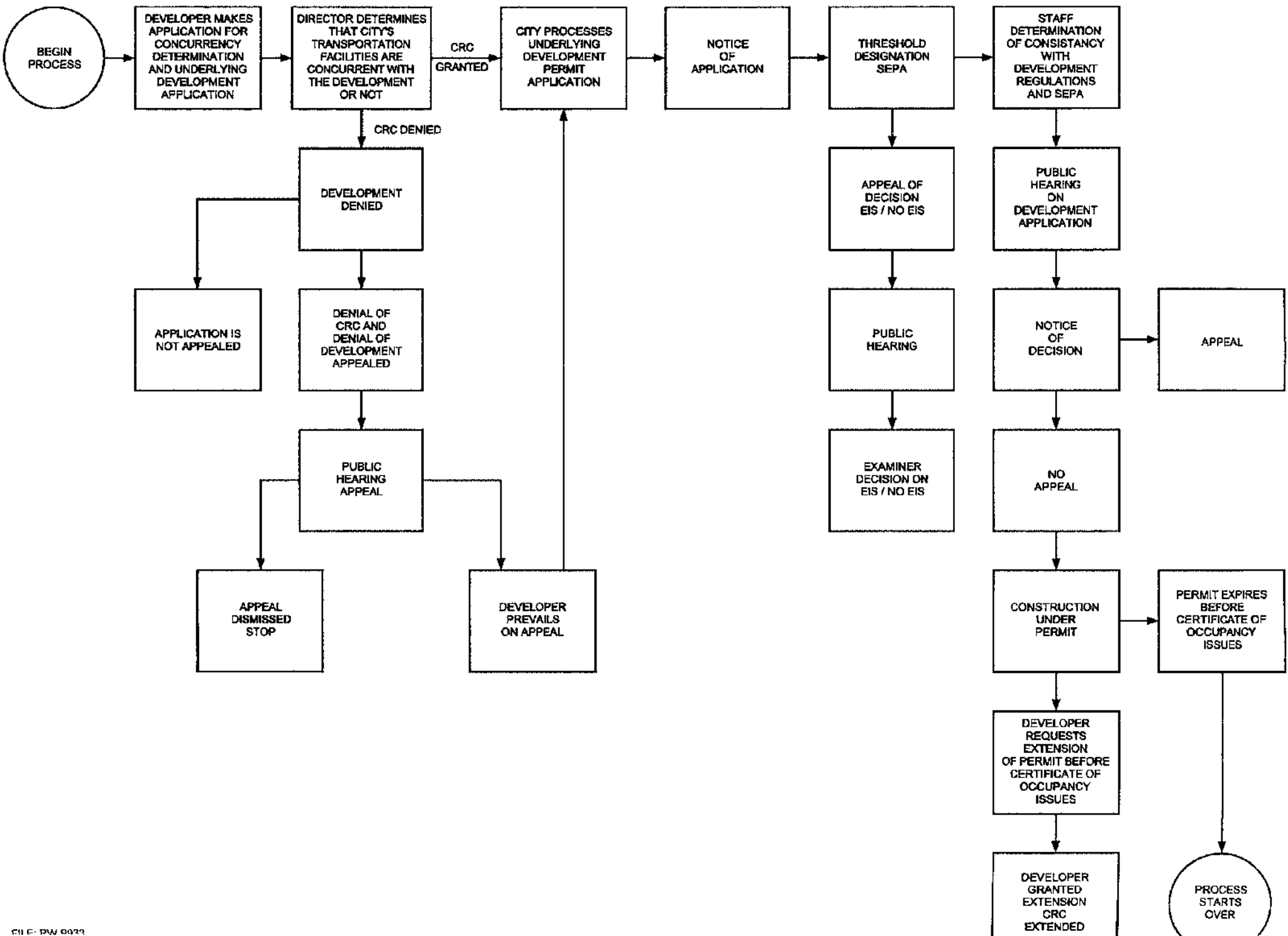
On the ___ day of _____, 1999, the City Council of the City of Gig Harbor, passed Ordinance No. _____. A summary of the content of said ordinance, consisting of the title, provides as follows:

AN ORDINANCE OF THE CITY OF GIG HARBOR, WASHINGTON, RELATING TO DEVELOPMENT AND TRANSPORTATION IMPACTS, IMPLEMENTING THE CONCURRENCY PROVISIONS OF THE TRANSPORTATION ELEMENT OF THE CITY'S COMPREHENSIVE PLAN, AS REQUIRED BY RCW 36.70A.070(6), DESCRIBING THE PROCEDURE FOR THE CITY PUBLIC WORKS DIRECTOR'S EVALUATION OF CONCURRENCY OF THE CITY'S ROAD FACILITIES WITH PROPOSED DEVELOPMENT IN LIGHT OF ADOPTED LEVELS OF SERVICE, DESCRIBING THE PROCEDURE FOR ISSUANCE OF CAPACITY RESERVATION CERTIFICATES, ESTABLISHING THE PROCESS FOR DENIALS, CONCURRENCY RESOLUTIONS AND APPEALS, ESTABLISHING CAPACITY ACCOUNTS, REQUIRING ANNUAL REPORTING AND MONITORING OF ROAD CAPACITY, AS PART OF THE ANNUAL UPDATE OF THE CITY'S SIX-YEAR TRANSPORTATION PLAN, AMENDMENTS TO THE TRANSPORTATION ELEMENT OF THE CITY'S COMPREHENSIVE PLAN, AND ADOPTING A NEW CHAPTER 19.10 TO THE GIG HARBOR MUNICIPAL CODE.

The full text of this Ordinance will be mailed upon request.

DATED this _____ day of _____, 1999.

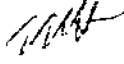
Molly M. Towslee, City Clerk





City of Gig Harbor. The "Maritime City"

3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: MARK HOPPEN, CITY ADMINISTRATOR 
SUBJECT: DEFINITIONS FOR CONCURRENCY AND IMPACT FEE
ORDINANCES
DATE: MAY 5, 1999

INFORMATION/BACKGROUND

The Concurrency Ordinance and Transportation and Parks Impact Fee Ordinance proposed along with this ordinance require supporting definitions. This ordinance has been crafted by Legal Counsel to meet this need. The ordinance is consistent with the current draft of the Concurrency Ordinance.

RECOMMENDATION

Staff recommends that this ordinance be passed at the same reading as the Concurrency Ordinance.

ORDINANCE NO. _____

AN ORDINANCE OF THE CITY OF GIG HARBOR, RELATING TO CONCURRENCY AND IMPACT FEES, SETTING FORTH THE DEFINITIONS TO BE USED FOR BOTH THE CITY'S CONCURRENCY ORDINANCE (CHAPTER 19.10 GHMC) AND THE TRANSPORTATION IMPACT FEE ORDINANCE (CHAPTER 19.12 GHMC) ADDING A NEW CHAPTER 19.14 TO THE GIG HARBOR MUNICIPAL CODE.

WHEREAS, the City is required by law to adopt a Concurrency Ordinance for transportation facilities; and

WHEREAS, the City is authorized by RCW 82.02.050 through 82.02.100 to impose impact fees on development activities by ordinance; and

WHEREAS, the City Council will consider Concurrency Transportation Impact Fee Ordinances for adoption; and

WHEREAS, the definitions in this ordinance relate to the Concurrency and Transportation Impact Fee Ordinances;

NOW, THEREFORE, THE GIG HARBOR CITY COUNCIL DOES ORDAIN AS FOLLOWS:

Section 1. A new chapter 19.14 shall be added to the Gig Harbor Municipal Code, to read as follows:

CONCURRENCY AND IMPACT FEE DEFINITIONS

Definitions. The following words and terms shall have the following meanings for the purpose of chapter 19.10 GHMC, the Concurrency Ordinance, and chapter 19.____ GHMC, the Transportation Impact Fee Ordinance, unless the context clearly appears otherwise. Terms otherwise not defined herein shall be given the meaning set forth in RCW 82-02-090, or given their usual and customary meaning,

1. "Act:" The Growth Management Act, Chapter 36.70A RCW, or as hereinafter amended.

2. "Adequate public facilities:" Facilities which have the capacity to serve development without decreasing levels of service below locally established minimums.
3. "Approving Authority:" The City employee, agency or official having authority to issue the approval or permit for the Development Activity involved.
4. "Annual Capacity Availability Report:" The report prepared each year to include available and reserved capacity for each public facility, and identifying those proposed and planned capital improvements for each public facility that will correct deficiencies or improve levels of service; a summary of development activity a summary of current levels of service and recommendations.
5. "Available public facilities." Facilities are in place, or a financial commitment has been made to provide the facilities, within six years.
6. "Capacity:" The ability of a public facility to accommodate users, expressed in an appropriate unit of measure, such as average daily trip ends within the LOS standards for the facility.
7. "Capacity, Available:" Capacity in excess of current demand ("Used Capacity") for a specific public facility which can be encumbered, reserved, or committed or the difference between capacity and current demand ("Used Capacity")
8. "Capacity, Reserved:" Capacity which has been reserved through use of the capacity reservation certificate process in chapter 19.10 GHMC.
9. "Capacity, Encumbered:" A reduction in the available capacity resulting from issuance of a capacity reservation certificate or that portion of the available capacity.
10. "Capacity Evaluation:" The evaluation by the Director based on adopted LOS standards to ensure that public facilities and services needed to support development are available concurrent with the impacts of such development, as defined in chapter 19.10 or chapter 19.12 GHMC.
11. "Capacity Reservation Certificate:" means a determination made by the Director that (1) a proposed development activity or development phase will be concurrent with the applicable facilities at the time the CRC is issued; and (2) the Director has reserved road capacity for an application for a period that corresponds to the respective developmental permit.
12. "Capital Facilities:" The facilities or improvements included in a capital facilities plan.
13. "Capital Facilities Plan:" The capital facilities plan element of the City's comprehensive plan adopted pursuant to Chapter 36.70A RCW and RCW 36.70A.070, and any amendments to the plan.

14. "Change of Use:" For the purposes of this Title, any change, redevelopment or modification of use of an existing building or site, which meets the definition of "Development Activity" herein.

15. "City:" The City of Gig Harbor, Washington.

16. "Comprehensive land use plan" or "comprehensive plan:" A generalized coordinated land use policy statement of the City Council, adopted pursuant to Chapter 36.70A RCW.

17. "Concurrent with Development:" means that strategies or improvements are in place at the time of development or that a financial commitment is in place to complete the improvements or strategies within six (6) years. See RCW 36.70A.090(6).

18. "Council:" the City Council of the City of Gig Harbor.

19. "County:" Pierce County, Washington.

20. "Dedication:" Conveyance of land to the City for public facility purposes by deed, other instrument of conveyance or by dedication, on a duly filed and recorded plat or short plat.

21. "Demand management strategies:" Strategies aimed at changing travel behavior rather than at expanding or improving the transportation network to meet travel demand. Such strategies can include the promotion of work hour changes, ride-sharing options, parking policies and telecommuting.

22. "Department:" The Public Works Department of the City of Gig Harbor.

23. "Developer:" Any person or entity who makes application or receives a development permit or approval for any development activity as defined herein.

24. "Development Activity" or "Development:" Any construction or expansion of a building, structure, or use, any change in the use of a building or structure, or any changes in the use of the land that creates additional demand for public facilities (such as a change which results in an increase in the number of vehicle trips to and from the property, building or structure) and requires a development permit from the City.

25. "Development Agreement:" The agreements authorized in RCW 36.70B.210 and Concurrency Resolution Agreements, as described in chapter 19.10 of the Gig Harbor Municipal Code Sections.

26. "Development Permit" or "project permit:" Any land use permit required by the City for a project action, including but not limited to: building permits, subdivisions, short plats, binding site plans, planned unit developments, conditional use, shoreline substantial

developments, site plan review, or site specific rezones, and, for purposes of the City's Concurrency Ordinance, shall include applications for amendments to the City's comprehensive plan which request an increase in the extent or density of development on the subject property.

27. "Director:" The Director of the Gig Harbor Public Works Department or his/her authorized designee.

28. "Existing Use:" Development which physically exists or for which the owner holds a valid building permit as of the effective date of this ordinance.

29. "Encumbered:" To reserve, set aside or otherwise earmark the impact fees in order to pay for commitments, contractual obligations or other liabilities incurred for public facilities.

30. "Fair Market Value:" The price in terms of money that a property will bring in a competitive and open market under all conditions of a fair sale, the buyer and seller each being prudently knowledgeable, and assuming the price is not affected by undue stimulus.

31. "Feepayer:" A person, corporation, partnership, an incorporated association, or department or bureau of any governmental entity, or any other similar entity, commencing a land development activity. "Feepayer" includes an applicants for an impact fee credit.

32. "Financial commitment:" Those sources of public or private funds or combinations thereof that have been identified as sufficient to finance public facilities necessary to support development and that there is reasonable assurance that such funds will be timely put to that end.

33. "Growth-Related:" A Development Activity as defined herein that increases the level of service of a public facility.

34. "Impact Fee:" The amount of money determined necessary by the City and imposed upon new development activity as a condition of development approval or permitting to pay for public facilities needed to serve new growth and development, and that is reasonably related to the new development that creates the additional demand and need for public facilities proportionate to the development's share of the cost of the public facilities and that is used for facilities that reasonably benefit the new development. "Impact fee" does not include a reasonable permit or application fee.

35. "Impact Fee Account(s)" or "Account(s):" The account(s) established for each type of public facilities for which impact fees are collected. The Accounts shall be established pursuant to Section 8 of this title, and comply with the requirements of RCW 82.02.070.

36. "Impact Fee Schedule;" The table of impact fees per unit of development, which is to be used by the Director in computing impact fees.

37. "Interest: " The interest rare earned by the City for the impact fee account, if not otherwise defined.

38. "Interlocal Agreement" or "Agreement:" The transportation impact fee interlocal agreement by and between the City and the County, and the transportation impact fee interlocal agreement by and between the City and the State concerning the collection and allocation of road impact fees as authorized in Sections 4 and 5 herein, or any other interlocal agreement entered by and between the City and another municipality, public agency or governmental body to implement the provisions of this title.

39. "Level of Service" or "LOS:" An established minimum functional level of public facilities that must be provided per unit of demand or other appropriate measure of need.

40. "Owner:" The owner of record of real property, although when real property is being purchased under a real estate contract, the purchaser shall be considered the owner of the real property if the contract is recorded.

41. "Previous Use:" (a) The use existing on the site when a capacity evaluation is sought; or (b) The most recent use on the site, within the five (5) year period prior to the date of application.

42. "Project:" A System Improvement, selected by the Gig Harbor City Council for joint private and public funding pursuant to this ordinance and which appears on the Project List.

43. "Project Improvements: " Site improvements and facilities that are planned and designed to provide service for a particular development or users of the project, and are not system improvements. No improvement or facility included in a capital facilities plan approved by the Council shall be considered a project improvement.

44. "Project List:" The list of Projects described in the City's annual and 6-Year Capital Improvement Program and as developed pursuant to the City's impact fee ordinance.

45. "Proportionate Share: That portion of the cost of public facility improvements that are reasonably related to demands and needs of new development

46. "Road:" A right-of-way which affords the principal means of access to abutting property, including an avenue, place, way, drive, lane, boulevard, highway, street, and other thoroughfare, except an alley.

47. "Road facilities:" Includes public facilities related to land transportation.

48. "Service Area:" A geographic area defined by the City or interlocal agreement, in which a defined set of public facilities provide service to development in the area.

49. "State: " The State of Washington.

50. "Subdivision: " All subdivisions as defined in Gig Harbor Municipal Code Title 16, and all short subdivisions as defined in Title 16, which are subject to SEPA Chapter 42.21C RCW and the Gig Harbor SEPA Ordinance, Title 18.

51. "System Improvements: " Public facilities that are included in Gig Harbor's capital facilities plan and are designed to provide service to areas within the City and community at large, in contrast to Project or On-site Improvements.

52. "Traffic Analysis Zone:" The minimum geographic unit used for traffic analysis.

53. "Transportation Primary Impact Area: " A geographically determined area that delineates the impacted area of a deficient roadway link.

54. "Transportation level of service standards:" As measure which describes the operational condition of the travel stream and acceptable adequacy requirement.

55. "Transportation Management Area:" A geographically determined area that contains compact urban development patterns where a dense roadway network and extensive mass transit services are in place. The performance of these areas shall be based on the percentage of lane miles meeting the adopted LOS standards as described in this Ordinance.

56. "Traffic Demand Model:" Describes the simulation through computer modeling of vehicle trip ends assigned on the roadway network.

57. "Trip Allocation Program:" The program established to meter trip ends to new development annually by Service Area and traffic analysis zone to ensure that the City is maintaining adopted LOS standards.

58. "Trip End: " A single or one-directional vehicle movement.

59. "Unit" or "Dwelling Unit:" A dwelling unit as defined in Gig Harbor Municipal Code Section 17.04.320.

Section 2. Severability. If any portion, sentence or clause of this ordinance is found by a court of competent jurisdiction to be invalid or unenforceable for any reason, such finding shall not affect the validity or enforceability of any other portion, sentence or clause

Section 3. Effective Date. This ordinance shall be in full force and effect five (5) days after its passage and publication of a summary, as required by law.

APPROVED:

Mayor Gretchen A. Wilbert

AUTHENTICATED:

Molly M. Towslee, City Clerk

APPROVED AS To FORM:

Carol A. Morris, City Attorney

FILEDE WITH THE CITY CLERK: 5/5/99

PASSED BY THE CITY COUNCIL:

PUBLISHED:

EFFECTIVE DATE:

**SUMMARY OF ORDINANCE NO. _____
of the City of Gig Harbor, Washington**

On _____, 1999, the City Council of the City of Gig Harbor, Washington, approved Ordinance No. _____, the summary of text of which is as follows:

AN ORDINANCE OF THE CITY OF GIG HARBOR, RELATING TO CONCURRENCY AND IMPACT FEES, SETTING FORTH THE DEFINITIONS TO BE USED FOR BOTH THE CITY'S CONCURRENCY ORDINANCE (CHAPTER 19.10 GHMC) AND THE TRANSPORTATION IMPACT FEE ORDINANCE (CHAPTER 19.12 GHMC) ADDING A NEW CHAPTER 19.14 TO THE GIG HARBOR MUNICIPAL CODE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF GIG HARBOR:

The full text of this ordinance will be mailed upon request.

APPROVED by the City Council at their regular meeting of _____, 1999.

BY: _____
Molly M. Towslee, City Clerk



City of Gig Harbor. The "Maritime City"

3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: MARK HOPPEN, CITY ADMINISTRATOR
SUBJECT: ADOPT-A-ROAD PROGRAM
DATE: MAY 5, 1999

Mark Hoppen

INFORMATION/BACKGROUND

Citizens often come and ask for service projects in their community. The Adopt-a-Road Program has been used successfully in many areas of the state, and helps build civic pride. The program allows organized groups of citizens to work in partnership with the city by adopting a section of city street and agreeing to keep it clean for a period of two years. In return, the city will erect a sign identifying the adopting group. This program offers organizations an inexpensive way to contribute to their community and generate publicity for their efforts.

FISCAL IMPACTS

The sign identifying the organization is approximately \$40, and the city will also provide safety equipment, safety training, litterbags and removal of the filled bags.

RECOMMENDATION

Move to adopt the attached resolution.

RESOLUTION NO. _____

**A RESOLUTION OF THE CITY OF GIG HARBOR,
WASHINGTON, ESTABLISHING A NEW “ADOPT-A-ROAD
LITTER CONTROL PROGRAM”.**

WHEREAS, RCW 47.40.100 and RCW 47.40.105 permit local governments to implement adopt-a-road programs for local streets and roads, to enable volunteers to supplement city litter control efforts by adopting portions of city roads and picking up litter along those portions of roads; and

WHEREAS, there are volunteer organizations that are willing to demonstrate their commitment to a clean environment by giving their time and energy to keep section of city roads litter free; and

WHEREAS, the City of Gig Harbor desires to encourage the efforts of these volunteer organizations by the creation and implementation of the “Gig Harbor Adopt-A-Road Litter Control Program” which will allow volunteer organizations to adopt a section of city road or areas along trails and to pick up litter along that section; and

WHEREAS, both the public and the City of Gig Harbor will benefit from such a program in that it will establish a partnership between citizen volunteers and the city to reduce litter and build civic pride in a litter-free Gig Harbor; now, therefore,

THE CITY COUNCIL OF THE CITY OF GIG HARBOR, WASHINGTON,
HEREBY RESOLVES AS FOLLOWS:

Section 1. Agreement. This Adopt-A-Road Program shall be administered according to the administrative rules adopted by the City and attached to this Resolution as Exhibit ‘A’ and entitled: “City of Gig Harbor Adopt-A-Road Litter Control Program and Agreement.”

Section 2. Application. The Adopt-A-Road Litter Control Program Application is hereby attached as Exhibit 'B'.

Section 3. Sign Specifications. The Adopt-A-Road Litter Control Program Sign Specifications are hereby attached as Exhibit 'C'.

Section 4. Statistical Record – Participant Roster. The Adopt-A-Road Litter Control Program Statistical Record – Participant Roster is hereby attached as Exhibit 'D'.

Section 5. Traffic Control Plan. The Adopt-A-Road Litter Control Program Traffic Control is hereby attached as Exhibit 'E'.

Section 6. Severability. In any section, subsection, paragraph, sentence, clause or phrase of this resolution is declared unconstitutional or invalid for any reason, such invalidity shall not affect the validity or effectiveness of the remaining portions of this ordinance.

Section 7. Effective Date. This resolution shall be effective immediately upon passage by the Gig Harbor City Council.

PASSED by the Council of the City of Gig Harbor, this ___ day of March, 1999.

APPROVED:

MAYOR, GRETCHEN WILBERT

ATTEST/AUTHENTICATED:

By: _____
MOLLY TOWSLEE, CITY CLERK

FILED WITH THE CITY CLERK: 2/3/99
PASSED BY THE CITY COUNCIL:

Exhibit 'A'

**CITY OF GIG HARBOR
ADOPT-A-ROAD
LITTER CONTROL PROGRAM**

I. Introduction

A. Purpose

To provide guidance for administration of the Adopt-A-Road Litter Control Program on City Road right-of-way.

B. Definitions

Adopt-A-Road Litter Control Program: A city-wide litter control program whereby volunteer organizations (i.e., organizations which volunteer) may contribute to a cleaner environment and a more attractive state by adopting sections of a city road and removing litter along those sections.

Adopt-A-Road Sign: A sign on city road right-of-way referring to the Department's Adopt-A-Road Litter Control Program and identifying the volunteer organization responsible for litter removal.

Adopt-A-Road Agreement: A contract agreement between the City of Gig Harbor and a volunteer organization participating in the Adopt-A-Road Litter Control Program that delineates the responsibilities of both parties.

Volunteer Organization: Any organization empowered by law to enter into contractual agreements which volunteers to participate in the Adopt-A-Road Litter Control Program.

II. Policy

A. The City of Gig Harbor Department of Administration shall work in partnership with citizen volunteers to reduce roadside litter and to build civic pride in a litter-free city road system.

III. Responsibilities

A. City Administrator or Designee

1. Establish and maintain standard procedures to provide uniform implementation of the city Adopt-A-Road Litter Control Program.

2. Provide, maintain, and update a standardized application form, registration form, and contractual agreement form for implementation of the Adopt-A-Road Litter Control Program.
3. Approve all material, information packets, signs, logos, and any other items or materials used to implement and promote the city-wide Adopt-A-Road Litter Control Program.
4. Maintain a master record of all Adopt-A-Road agreements executed city-wide.
5. Appoint a Program Coordinator to manage, coordinate and facilitate the Adopt-A-Road Litter Control Program.

B. Public Works Supervisor

1. Administer city Adopt-A-Road Litter Control Program.
2. Assign volunteer organizations a section of city road from which to remove litter.
3. Have erected and maintained through coordination with the Public Works Department Adopt-A-Road signs with the name and/or acronym of volunteer organizations at the assigned areas.
4. Furnish trash bags to the volunteer organization.
5. Provide safety information and training aids to the volunteer organizations for use in their in-house training or their participants.
6. Maintain records of any injuries and accidents that may occur during participation in the program.
7. Submit a copy of executed Adopt-A-Road Agreement to the Maintenance Manager.
8. Contact each participating volunteer organization once a year to express appreciation for their participation, remind them of their responsibilities, and inquire if they plan to renew at the end of the current agreement period. Sections of city roads assigned to volunteer organizations should be monitored periodically to ensure that the degree of litter control is in compliance with the Adopt-A-Road Agreement.

C. Volunteer Organization

1. Provide a designated Volunteer Organization Representative.

2. Provide training for all participants using the safety information and training aids provided by the Program Coordinator.
3. Furnish "Volunteer Litter Crew Ahead" advanced warning signs and standards, hard hats, and vests for all participants and any other appropriate materials and equipment deemed necessary.

IV. Rules

Any organization which volunteers may be authorized to participate in the Adopt-A-Road Litter Control Program by removing litter within an assigned section of city road in accordance with the terms prescribed on an Adopt-A-Road Agreement, subject to the following rules:

- A. A volunteer organization shall not be eligible whose name:
 1. Endorses or opposes a particular candidate for public office.
 2. Advocated a position on a specific political issue, initiative, referendum, or piece of legislation.
 3. Includes a reference to a political party.
- B. Volunteer organizations that have not complied to a previous Adopt-A-Road Agreement shall not be eligible for a period of three years following the termination date of the previous Agreement.
- C. Volunteer organizations shall be assigned road sections on a "safety and first-come-first-served" basis. Generally the sections should be a minimum of one mile long. Volunteer organizations should be encouraged to adopt road sections contiguous with other sections of road adopted by other volunteer organizations. Neighborhood areas with several sections of road with a minimum total of one mile long may be assigned.
- D. Volunteer organizations shall be assigned a road section for a minimum of two years. Adopt-A-Road Agreements will terminate of February 28th of every even numbered year unless terminated by either party. Agreement can be terminated by either party with or without cause upon 30 days prior notice. Agreements executed with less than two years to the next even numbered year will extend for more than two years. An example is an agreement executed in November of 1999 will be active until February 28, 2002 (two years, three months). Volunteer organizations assigned sections shall have first right of renewal for that section.
- E. Each volunteer organization participating in the Adopt-A-Road Litter Control Program shall have a designated representative.

- F. All participants shall be at least 15 years of age. All participants shall sign the "Adopt-A-Road" registration form.
- G. Written parental consent shall be submitted to the City of Gig Harbor for all minors (under 18 years of age) prior to participating in the Adopt-A-Road Litter Control Program.
- H. During litter removal, there shall be at least one adult supervisor present from the organization for every eight minors.

V. Appendices:

- 1. "Adopt-A-Road Application"
- 2. "Adopt-A-Road Agreement"
- 3. "Adopt-A-Road Registration Form"
- 4. "Adopt-A-Road Sign Specifications"
- 5. "Adopt-A-Road Traffic Control Plan"
- 6. "Adopt-A-Road Participant Roster"

**CITY OF GIG HARBOR
ADOPT-A-ROAD AGREEMENT**

This Agreement is made and entered into this day and between the City of Gig Harbor, a municipal subdivision of the State of Washington, herein know as the "City" and

_____, a volunteer organization herein known as the "Grantee."

Whereas, the City has the authority to establish a city-wide Adopt-A-Road Litter Control Program pursuant to RCW Chapter 47.40; and

Whereas the Grantee wishes to contribute toward the effort to reduce roadside litter by volunteering to assist in picking up litter on the section of road specified herein;

Now, therefore, the City does hereby authorize the Grantee to participate in the Adopt-A-Road Litter Control Program by picking up litter within the assigned section of city road designated below, in accordance with the following terms and conditions:

A. The Grantee does hereby agree:

1. To conduct clean up activities in a safe manner and under any conditions as may be required by the City for the safety of the participants. Safety of participants is the number one priority of the program, and the volunteer organization agrees to take full responsibility for the safety of each of its participants.
2. To assign a leader to each cleanup crew, and that crew leader shall have a copy of this agreement with him/her during the cleanup activity.
3. To pick up litter no less than four times per year. Additional clean ups should be done as necessary to maintain a neat appearance. Recommended interval for cleanup is once every three months. One cleanup shall take place during the month _____.
4. To furnish and require all participants wear a hard hat and safety vest during clean up activities.
5. To allow no more than ten people to participate in the cleanup activity at one time over a one-mile section.
6. To have no more than two vehicles per one-mile section of assigned road parked on the city road shoulder within the assigned area during a cleanup activity. (A minimum number of vehicles shall be used to transport the participants to the assigned area.) All parking of vehicles shall be in compliance to State law.

7. To require that all participants shall be 15 years of age or older. The Grantee shall furnish supervision by one or more adults for every eight (8) minors (between ages of 15 to 18 years of age) participating in the cleanup activity.
8. To conduct a yearly safety training session for volunteers utilizing materials and training aids provided by the City prior to participating in a roadside cleanup.
9. To obtain supplies and materials from the County during regular business hours at the address shown on page 4 of this agreement.
10. To place filled trash bags at the City road shoulder for pickup and disposal by the City and notify the City at the time of cleanup to coordinate the pickup time and locations.
11. To notify the City immediately in the event of any emergency on City road right-of-way. Participants who find anything that is hazardous or suspected to be hazardous shall not touch, but take appropriate precautions and leave it for disposal by the proper authorities. Participants shall also not pick up syringes, hypodermic needles, exceptionally large, heavy or unyielding objects. These kinds of materials should be flagged and the City notified as soon as possible to arrange for proper disposal.
12. Clean ups shall not be scheduled during a legal holiday, during the afternoon on the day before a legal holiday, or during holiday weekends.
13. To provide the City with a roster (Medical Aid Coverage Record) of individual participants in the cleanup within seven (7) calendar days following the cleanup activity.
14. To report any injuries, incurred by participants during clean up activities, to the City within two (2) working days of the injury. Notification shall include:
 - Name of injured person
 - Nature of injury
 - Date and time of injury
 - How the injury occurred
15. Furnish to the City an "Adopt-A-Road" Registration Form for each participant taking part in litter pickup activities.
16. It is recommended the Grantee have a first aid kit available at the clean up site, and at least one person with a valid First Aid Card be present during clean up activities.

B. The City does hereby agree to:

1. Designate a program administrator to act as contact person for this agreement.
2. Furnish and install a maximum of two Adopt-A-Road signs with the Grantee name or acronym displayed within the assigned area.
3. Furnish the Grantee with trash bags.
4. Remove the filled trash bags from City road shoulder upon notification by Grantee.
5. Assist the Grantee, in cleaning up litter if necessary (i.e., when large, heavy, or hazardous items are found).
6. Provide safety materials and training aids to the Grantee's representative for use by Grantee in training participants.
7. Furnish a portable "Volunteer Litter Crew Ahead" advanced warning sign and stand, safety caps, vests for all participants, and other equipment deemed necessary.

C. General Conditions:

1. Recycling is an accepted and encouraged activity. Recyclable items collected by participant may be removed from the site at the option of the Grantee. Profits from the sale of recyclable items shall belong to the Grantee.
2. The City may suspend this agreement temporarily because of future construction that will take place within the limits of the assigned area. Once these activities have been completed, the Grantee will be notified and the agreement restored.
3. The term of this agreement shall commence on the date the agreement has been executed by the duly authorized representatives of both parties, and shall terminate on February 28th of the following even numbered year. Either party may terminate this Agreement with or without cause by providing the other party with 30 days prior written notice. Upon termination of this agreement the Adopt-A-Road sign shall be removed and remain the property of the Department.

D. Assigned Road Sections:

Road Name: _____

From _____ to _____

Side of roadway: North South East West (Circle assigned side/s)

City of Gig Harbor
Department of Administration
3015 Judson Street
Gig Harbor, WA 98335
Telephone: (253) 851-8136
After Hours: (253) 530-6888

Name of Volunteer Organization

Address

City, State, Zip Code

Mayor

Signature of Organization Representative

Date of Execution

Signature of Organization Representative (print)

Date of Termination

Home Address

City, State, Zip Code

Day Phone

Evening Phone

Exhibit 'B'

Date Application Received

ADOPT-A-ROAD APPLICATION

Name of Volunteer Organization

Name of Volunteer Organization Representative

Day Phone Number

Mailing Address

City, State, Zip Code

List the section(s) of City Road you are interested in cleaning in order of preference:

1	_____ Road Name	_____ From Road	_____ To Road
2	_____ Road Name	_____ From Road	_____ To Road
3	_____ Road Name	_____ From Road	_____ To Road

Sections of City Road are assigned on a safety and first-come, first-served basis. If the sections your group has identified above are not available, the City of Gig Harbor Public Works Department will suggest other alternatives.

As a condition of participation in the Adopt-a-Road Program, the Volunteer Organization Representative executing this application form shall have each adult participant sign this form, which shall indicate that each participant understands and assumes the following risks. The Volunteer Organization Representative agrees to obtain the necessary signatures on the Release Form for Minors and to submit the same to the City prior to initiating any participation in the program.

RELEASE OF THE CITY BY EACH PARTICIPANT

Each participant in the City's Adopt-a-Road program understands that the/she will be assigned to pick up litter along the side of City road sections, but under no circumstances would any participant pick up litter in the traveled portion of the road. By my signature on this form, I hereby acknowledge and understand that my participation in this program is entirely at my own risk, and that the City specifically does not agree to defend, indemnify or hold me harmless for any claims, costs, judgements, awards, attorneys' fees or liabilities of any kind, which arise from injury, death or property damage of which my negligent acts or omissions or the negligent acts or omissions of any third party are the proximate cause. In the event of liability for damages arising out of bodily injury, death or property damage caused by or resulting from the City's negligence or the concurrent negligence of the City and another party, the City's liability shall only be to the extent of the City's negligence.

Signature of Volunteer Organization Representative

Signature of Volunteer

Name of Volunteer (please print)

Please attach a Release Form For Minors if under 18 years of age.

**ADOPT-A-ROAD LITTER CONTROL PROGRAM
RELEASE FORM FOR MINORS**

Name of Volunteer Organization _____

Name of Volunteer _____

Daytime Phone _____

As the parent/guardian of _____, a minor child, I agree and consent to allow my child to participate in the City's Adopt-a-Road program. I understand that my child's participation would involve picking up litter along the side of City road sections, but under no circumstances would any participant pick up litter in the traveled portion of the road. I further acknowledge that as a condition of my child's participation in the program, his/her volunteer organization must provide at least one adult supervisor participant for every eight minor participants.

I understand that my child's participation in the City's Adopt-a-Road program is entirely at my own and my child's risk, and that the City specifically does not agree to defend, indemnify or hold me (or my child) harmless for any and all claims, costs, judgments, awards, attorney's fees or liabilities arising from injury, death or property damage of which my (or my child's) negligent acts or omissions or the negligent acts or omissions of any third party are the proximate cause. In the event of liability for damages arising out of bodily injury, death or property damage caused by or resulting from the City's negligence or the concurrent negligence of the City and another party, the City's liability shall only be to the extent of the City's negligence.

Date: _____

Parent/Guardian's Name: _____

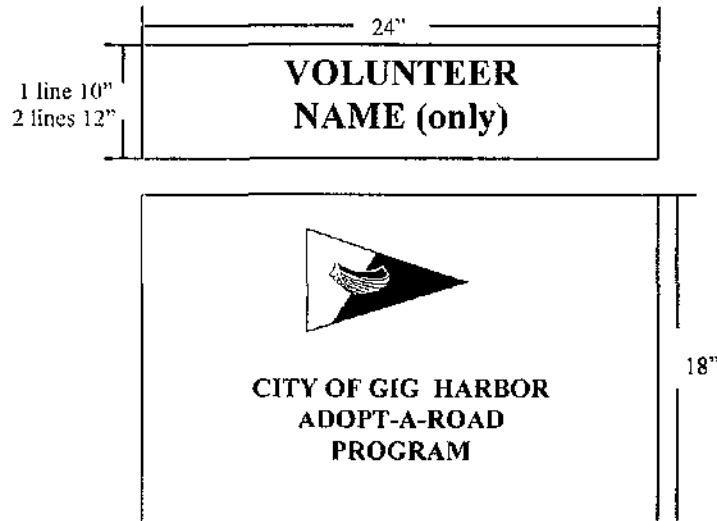
Home Address: _____

Home Telephone: _____

Signature of Parent/Guardian _____

Exhibit 'C'

**CITY OF GIG HARBOR
ADOPT-A-ROAD
SIGN SPECIFICATIONS**



SPECIFICATIONS:

1. Signs shall be reflectorized, and have white letters on blue background with a ½ inch border.
2. Letters shall be 3 inch Series C, logo shall be the City of Gig Harbor Burgee.
3. The volunteer organization name shall not be displayed more predominantly than the remainder of the sign message. No trademarks, organization or business logos may be displayed.
4. Volunteer organization identification sign shall be one line unless two lines are required for a complete group name.
5. Signs shall be placed at the beginning of the assigned Adopt-A-Road section, on the right shoulder.
6. If the volunteer organization is responsible for both sides of the assigned Adopt-A-Road section, one set of signs shall be placed for each direction of traffic.
7. If the volunteer organization is responsible for a neighborhood area with several assigned Adopt-A-Road sections, a maximum of two sets of signs shall be placed in a predominate location entering the assigned neighborhood area.

**CITY OF GIG HARBOR
ADOPT-A-ROAD LITTER CONTROL PROGRAM
STATISTICAL RECORD
PARTICIPANT ROSTER**

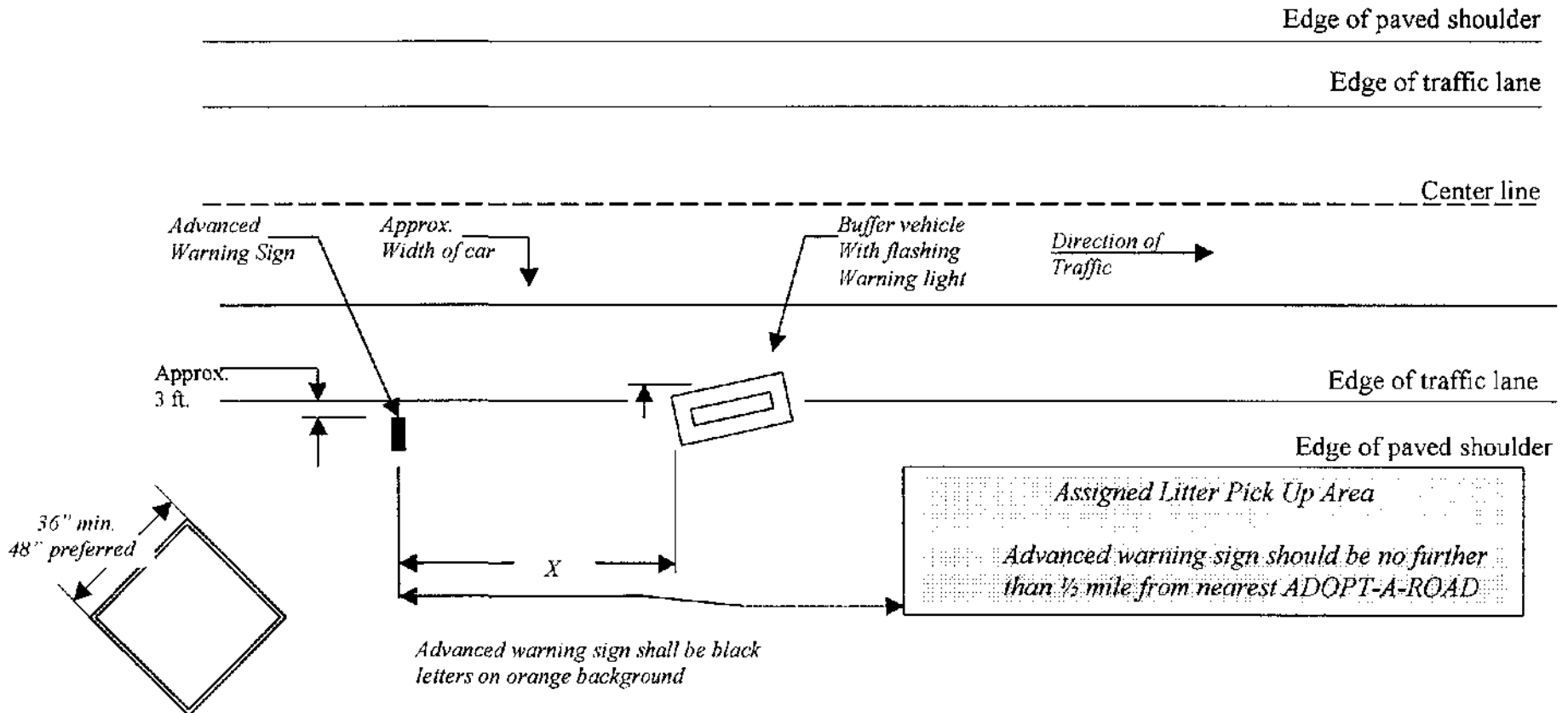
Name of Organization				
Name of Group Leader				
Date	Name	Hours Worked		
		From	To	Total
Number of bags collected				

Return completed list within seven (7) calendar days after each litter pick up to:

Adopt-A-Road Coordinator
 City of Gig Harbor
 3105 Judson Street
 Gig Harbor, WA 98335
 Phone: (253) 851-8136 Fax: (253) 851-8563

Exhibit 'E'
CITY OF GIG HARBOR
ADOPT-A-ROAD LITTER CONTROL PROGRAM
TRAFFIC CONTROL PLAN

SIGN PLACEMENT	
Posted Speed Limit (MPH)	X=Feet
35	280'
30	220'
25-20	170'





City of Gig Harbor. The "Maritime City"

3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL
FROM: MARK HOPPEN, CITY ADMINISTRATOR *M.H.*
SUBJECT: INTERLOCAL AGREEMENT FOR ESB 6094
DATE: MAY 5, 1999

INFORMATION/BACKGROUND

The attached interlocal agreement defines the procedure for allocation of state funds related to ESB 6094, grants for buildable lands evaluations. The agreement will be in effect through December 31, 2002, unless terminated.

FISCAL CONSIDERATIONS

The city share of fiscal year '98 funds allocated as per Pierce County Resolution R99-37 is \$2222. In order to claim these funds, the city must authorize and sign the attached interlocal agreement.

RECOMMENDATIONS

Staff recommends that the City Council authorize the Mayor Wilbert to sign the interlocal as presented.



Pierce County

Department of Planning and Land Services

2401 South 35th Street
Tacoma, Washington 98409-7460
(253) 798-7200 • FAX (253) 798-3131

CHUCK KLEBERG
Director

RECEIVED

MAY - 4 1999

May 3, 1999

CITY OF GIG HARBOR

TO: Pierce County Regional Council (PCRC)

SUBJECT: Interlocal Agreement for ESB 6094, Buildable Lands

The 1997 Legislature passed ESB 6094 amending the Growth Management Act (Section 25 of the Buildable Lands Bill) which requires six counties and their 95 cities and towns to monitor buildable lands with assistance from the Department of Community, Trade and Economic Development (DCTED). Pierce County and its cities and towns have already received funds and completed tasks to initiate this project. DCTED has allocated an additional \$169,006 to continue this project through the end of June 1999.

At the beginning of this county-wide project, both the Growth Management Coordinating Committee (GMCC) and PCRC acknowledged that to complete the necessary tasks, there needs to be coordination and cooperation between the County and the cities and towns. To this end, the PCRC has approved the attached report entitled, "Pierce County Buildable Lands, Procedures for Collecting and Monitoring Data", and has approved amendments to the Pierce County County-Wide Planning Policies.

As a result of the PCRC's recommendation on the distribution of funds to the Pierce County Council, the Council passed Resolution R99-37 on April 20, 1999. The funds are for each city/town to complete the following tasks:

- a) Compilation of raw development data, as detailed in the Buildable Lands Procedures Report, since the adoption of the city's/town's comprehensive plan through December 31, 1998. (Due to Pierce County by June 1, 1999)
- b) The development/enhancement of a permit tracking system to collect the parcel-specific data as detailed in the Buildable Lands Procedures Report. Each city/town shall develop a report that describes the individual data collection and monitoring system being developed. (Report is due by June 1, 1999)
- c) Once the monitoring system is in place, the city/town shall start to collect parcel-specific development data.
- d) To the degree possible, jurisdictions will begin a buildable lands inventory. The inventory will be parcel-specific and consistent with the format and definitions provided in the Buildable Lands Procedures Report.



Pierce County Regional Council
May 3, 1999
Page 2

- e) Representatives from the cities of Fife, Lakewood, Sumner, and Tacoma will continue to serve on the GMCC Buildable Lands Oversight Committee.

Recognizing this project is a multiple project and anticipating the cities and towns will continue to receive funds on a yearly basis, the Pierce County Council has authorized the County Executive to enter into a multi-year interlocal agreement with each city and town. The purpose of the interlocal agreement is to distribute funding from DCTED through December 31, 2002.

To receive the funds for the current state fiscal year (July 1, 1998 – June 31, 1999), each jurisdiction is required to sign the attached interlocal agreement ("Exhibit A" to Resolution R99-37). The quicker each interlocal agreement is returned to the County, the sooner your jurisdiction will receive the first half payment. Please contact me at (253) 798-7039 if you have any questions.

Sincerely,



DAN CARDWELL
Associate Planner
ESB 6094 Project Coordinator

DC:vll
F:\WPFILES\LONG\CARDWELL\SB6094\interloc\98-99COVLTR.DOC
Attachments

cc: GMCC Representatives
City/Town/County Clerks

1 FILE NO. 466

PROPOSAL NO. R99-37

2 Sponsored by: Councilmember Jan Shabro

3 Requested by: County Executive/Planning & Land Services Department

4

5

6

7

RESOLUTION NO. R99-37

8

9

10

11 A RESOLUTION OF THE PIERCE COUNTY COUNCIL AUTHORIZING THE PIERCE
12 COUNTY EXECUTIVE TO EXECUTE AN INTERLOCAL AGREEMENT WITH
13 EACH CITY AND TOWN WITHIN THE COUNTY TO COOPERATIVELY
14 COMPLY WITH REVISED CODE OF WASHINGTON 36.70A.215
15 (BUILDABLE LANDS); AND ALLOCATE FUNDS DISBURSED BY THE
16 WASHINGTON STATE DEPARTMENT OF COMMUNITY, TRADE, AND
17 ECONOMIC DEVELOPMENT.

18

19 WHEREAS, The Washington State Department of Community, Trade,
20 and Economic Development (Department) has the authority to cooperate
21 with and provide assistance to local governments and local agencies
22 serving the community of the State for the purpose of aiding orderly,
23 productive, and coordinated development of the State Revised Code of
24 Washington (RCW) 43.330.050(5)); and

25

26 WHEREAS, The Department has the responsibility of administering
27 programs and projects assigned to the Department by the Governor or
28 the Washington State Legislature; and

DISTRIBUTION:

EXECUTIVE ✓
DEPUTY EXEC., FRAN McNAIR ✓
TOM BJORGEN, ATTORNEY ✓
PALS, CHUCK KLEEBOG ✓
CHIP VINCENT ✓
DAN CARDWELL ✓
VICKI LAMPMAN ✓
TONI FAIRBANKS ✓
MICHELLE SMITH ✓
PCRC REPRESENTATIVES ✓
CODE REVISOR N/A
LIBRARY ✓
MUNICIPAL RESEARCH & SERVICES CENTER/yes ✓ no
LAW LIBRARY ✓
STATE EXAMINER
BOOK

4/28/99
SB

1 WHEREAS, RCW 36.70A.215 requires Pierce County to determine
2 whether there is sufficient suitable land to accommodate the County-
3 wide population projection; determine the actual density of housing
4 and amount of land developed for commercial and industrial uses
5 within urban growth areas; determine the amount of land needed for
6 commercial and industrial uses and for housing by type and density
7 range based on the data collected over the five year period set by
8 the statute; adopt and implement measures to achieve consistency
9 between growth objectives and actual development; annually monitor
10 the effectiveness of measures required under RCW 36.70A.215; and
11

12 WHEREAS, RCW 36.70A.215 requires a cooperative effort by the
13 County and the cities and towns within the County to complete the
14 tasks required by the Department; and
15

16 WHEREAS, RCW 36.70A.215 requires the Department to review and
17 evaluate the effectiveness of RCW 36.70A.215; specifically, whether
18 counties and cities and towns have planned for sufficient "buildable
19 lands" to accommodate the county-wide population projection and the
20 need for commercial and industrial lands (RCW 36.70A.215); and
21

22 WHEREAS, RCW 36.70A.215 authorizes the Department to provide
23 grants to local jurisdictions to assist them in complying with the
24 amendments; and
25

26 WHEREAS, The Department has been working with the Buildable
27 Lands Advisory Committee which is comprised of staff representing the
28

1 counties and cities that are required to establish a review and
2 evaluation program under RCW 36.70A.215; and
3

4 WHEREAS, With input from the Buildable Lands Advisory Committee,
5 the Department decides the amount of grant funds available to each of
6 the counties required to comply with RCW 36.70A.215; and
7

8 WHEREAS, Pierce County receives a yearly grant from the
9 Department for this purpose; and
10

11 WHEREAS, The Washington State Department of Community, Trade and
12 Economic Development (Department) has drafted an Intergovernmental
13 Agreement by which the Department will disburse \$169,006.00 to Pierce
14 County for the purposes of complying with ESB 6094 for fiscal year
15 1998; and
16

17 WHEREAS, The Pierce County Growth Management Coordinating
18 Committee (GMCC) is a technical subcommittee to the Pierce County
19 Regional Council (PCRC), and includes staff representatives from the
20 County and the Cities and Towns within Pierce County; and
21

22 WHEREAS, The GMCC reviewed possible methods by which the County
23 could allocate the funds and developed a scope of work identifying
24 specific tasks to be completed by each jurisdiction; and
25

26 WHEREAS, The GMCC made its recommendation to the Pierce County
27 Regional Council on December 10, 1998; and
28

1 WHEREAS, The PCRC is a multi-jurisdictional group comprised of
 2 elected officials who represent the County and Cities and Towns
 3 within the County; and
 4

5 WHEREAS, the PCRC reviewed and accepted the GMCC's
 6 recommendations on January 21, 1999; and
 7

8 WHEREAS, The allocation approved by the PCRC, as shown below:
 9

ALLOCATION OF SB 6094 GRANT FUNDS FOR FY	
1998	
Jurisdiction	Allocation
Auburn	\$1,000.00
Bonney Lake	\$10,501.00
Buckley	\$6,365.00
Carbonado	\$4,636.00
DuPont	\$2,076.00
Eatonville	\$6,208.00
Edgewood	\$2,573.00
Fife	\$5,450.00
Fircrest	\$1,922.00
Gig Harbor	\$2,222.00
Lakewood	\$4,257.00
Milton	\$4,750.00
Orting	\$5,680.00
Pacific	\$1,000.00
Puyallup	\$10,275.00

Roy	\$1,818.00
Ruston	\$4,236.00
South Prairie	\$4,925.00
Steilacoom	\$2,872.00
Sumner	\$5,395.00
Tacoma	\$26,165.00
University Place	\$7,300.00
Wilkeson	\$4,872.00
Unincorporated Pierce County - Total	\$42,508.00
Total Pierce County Grant	\$169,006.00
FY 1998	

was reviewed by the Pierce County Council on April 20, 1999; and

WHEREAS, The Department of Planning and Land Services (PALS) has drafted an Intergovernmental Agreement whereby PALS will disburse \$169,006.00 for the State's fiscal year starting July 1, 1998, and ending June 31, 1999, as well as undetermined grant amounts through December 31, 2002, to Pierce County for the purposes of complying with RCW 36.70A.215; and

WHEREAS, To cooperatively complete the work necessary under RCW 36.70A.215, an Interlocal Agreement should be executed as provided in Exhibit "A" between the County and each City and Town to allocate the funds from the Department; NOW, THEREFORE,

BE IT RESOLVED by the Council of Pierce County:

1 Section 1. The Pierce County Executive is hereby authorized to
2 execute an Interlocal Agreement with each of the cities and towns in
3 the County as set forth in Exhibit "A" which is attached hereto and
4 incorporated herein by reference.

5
6 Section 2. The Pierce County Executive is hereby authorized to
7 allocate funds disbursed by the Department of Community, Trade, and
8 Economic Development consistent with and for the purpose of complying
9 with the requirements of RCW 36.70A.215.

10
11 Section 3. The Pierce County Executive is hereby directed to
12 provide a copy of each Interlocal Agreement to the Clerk of the
13 Council.

14
15 Adopted this 20th day of April, 1999.

16 ATTEST:

PIERCE COUNTY COUNCIL
Pierce County, Washington

17
18
19 Sandy Bassett, Deputy
Clerk of the Council

Jan Skrebo
Council Chair

20
21 Approved As To Form Only:

22
23 [Signature]
Deputy Prosecuting Attorney
24 Chaf Aul Deputy

25 F:\WPFILES\PROP\R9937.RES

2
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4
5
6 AN INTERLOCAL AGREEMENT BETWEEN PIERCE COUNTY AND THE CITY/TOWN OF
7 GIG HARBOR , RELATING TO THE USE AND ALLOCATION OF GRANTS FOR
8 BUILDABLE LANDS EVALUATIONS UNDER REVISED CODE OF WASHINGTON (RCW)
9 36.70A.215.

10
11
12
13
14
15 WHEREAS, RCW 36.70A.215 requires counties which are subject to
16 the Growth Management Act, in consultation with their cities and
17 towns, to adopt a review and evaluation program which will, among
18 other things,

19
20 (a) determine whether there is sufficient suitable land to
21 accommodate projected population growth;

22
23 (b) determine the actual density of housing that has been
24 constructed and the actual amount of land that has been
25 developed for commercial or industrial purposes within the
26 urban growth areas since the adoption of the Comprehensive
27 Plan or last periodic evaluation;

1 (c) based on (b), determine the amount of land needed for
2 commercial growth, industrial growth and housing for the
3 remaining portion of the 20-year planning period; and
4

5 (d) based on the above considerations, determine whether there
6 is any inconsistency between actual growth and the growth
7 that was envisioned in the County-Wide Planning Policies,
8 city and county comprehensive plans and development
9 regulations, and the Growth Management Act; and
10

11 WHEREAS, the Department of Community, Trade, and Economic
12 Development (CTED) provides grants to counties to carry out this
13 review and evaluation program; and
14

15 WHEREAS, Pierce County receives a yearly grant from CTED for
16 this purpose; and
17

18 WHEREAS, Pierce County and its cities and towns agree that
19 these grant monies would be best used if allocated in part to the
20 County and in part to its cities and towns; and
21

22 WHEREAS, the Pierce County Growth Management Coordinating
23 Committee (GMCC) is a technical subcommittee to the Pierce County
24 Regional Council (PCRC) and includes staff representatives from the
25 County and the cities and towns within it; and
26
27
28

1 WHEREAS, because of the expertise and broad representation of
2 the GMCC and PCRC, the decision as to how the grant funds should be
3 allocated and used should be made by the County on the recommendation
4 of the PCRC;

5
6 NOW, THEREFORE,

7
8 PURSUANT TO CHAPTER 39.34 RCW, THE INTERLOCAL COOPERATION ACT,
9 PIERCE COUNTY (COUNTY) AND THE CITY/TOWN OF GIG HARBOR (CITY/TOWN)
10 AGREE AS FOLLOWS:

11
12 1. The County is the recipient of a yearly grant from CTED to
13 carry out the review and evaluation program set out in RCW 36.70A.215
14 and summarized above.

15
16 2. The County will allocate these funds each year among
17 itself and its cities and towns in the following manner:

18
19 (a) By the date set by the County Executive, each city and
20 town desiring an allocation of these grant funds for the
21 applicable yearly cycle shall submit a proposed scope of
22 work and requested allocation amount to the County
23 Executive and to the PCRC. The scope of work shall be
24 consistent with RCW 36.70A.215 and any applicable rules
25 promulgated by CTED. Further, the scope of work should
26 be designed to accomplish the tasks set out in the
27 document entitled "Pierce County Buildable Lands
28 Procedures for Collecting and Monitoring Data", as

1 amended, by the Pierce County Planning and Land Services
2 Department with consultation from the Pierce County
3 Growth Management Coordinating Committee.
4

5 (b) After receiving from PCRC its recommended allocation and
6 scope of work for each jurisdiction, the County Council
7 shall fix the amount to be allocated to and the scope of
8 work for each city and town. The County Council is not
9 bound by the decision of the PCRC, but shall give
10 considerable weight to its recommendation.
11

12 (c) After the Council has made this decision, the County
13 shall promptly distribute the allocation to each
14 jurisdiction after it has received the grant funds from
15 CTED.
16

17 2. The County is under no obligation to distribute any grant
18 funds until it has actually received the funds from CTED.
19

20 3. The City/Town shall use any funds distributed under this
21 Agreement as specified in the scope of work approved by the County,
22 and consistently with Chapter 36.70A RCW, and any applicable rules.
23

24 4. The City/Town shall submit a status report to the Pierce
25 County Planning and Land Services Department by June 30 of each year
26 documenting the tasks which were completed, pursuant to the scope of
27 work, with allocated funds during the prior twelve months.
28

1 5. The County may withhold any allocated funds from the
2 City/Town if the City/Town has used any previously allocated funds
3 inconsistently with the applicable scope of work, Chapter 36.70A RCW,
4 rules promulgated by CTED, or this Agreement.

5
6 6. This Agreement shall be effective on the date signed by
7 both parties and shall continue in effect through December 31, 2002.
8 However, either party may terminate this Agreement for convenience on
9 30 days notice to the other. If this Agreement is terminated for any
10 reason, the City/Town remains obligated to use any funds distributed
11 to it under this Agreement consistently with all of its terms. In
12 case of termination for any reason, the County is not obligated to
13 distribute any grant funds to the City/Town beyond those actually
14 distributed before the date of termination.

15
16 7. Any notices given to the County under this Agreement shall
17 be given to the Pierce County Planning and Land Services Department
18 at 2401 South 35th Street, Tacoma, WA 98409-7490. Any notices given
19 to the City/Town under this Agreement shall be given to PLANNING DIRECTOR
20 in care of the City/Town.

21
22 8. This Agreement shall be governed by the laws of the State
23 of Washington. The venue for any legal action to enforce this
24 Agreement shall be Superior Court for Pierce County, Washington.

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9. Each person signing below warrants that he or she does so under the authority of the jurisdiction's legislative authority.

IN WITNESS WHEREOF, the signatories hereto have executed this Agreement this _____ day of _____, 1999.

Countersigned: CITY

(Name of City/Town) By: _____
City Manager/Mayor

Attest: Date: _____

City Clerk

Approved as to form:

City Attorney

PIERCE COUNTY

Department Director/Proxy for County Executive

Chief Civil Deputy Prosecuting Attorney

F:\...\FINAL2.WPD



City of Gig Harbor. The "Maritime City"

3105 JUDSON STREET
GIG HARBOR, WASHINGTON 98335
(253) 851-8136

TO: MAYOR WILBERT AND CITY COUNCIL MEMBERS
FROM: WES HILL, P.E., PUBLIC WORKS DIRECTOR *Wes Hill*
SUBJECT: BIOLOGICAL ASSESSMENTS - CONSULTANT SERVICES CONTRACT
DATE: MAY 5, 1999

INTRODUCTION/BACKGROUND

On March 16, 1999, Chinook salmon were listed as an endangered species by the National Marine Fisheries Service (NMFS) under the provisions of the Endangered Species Act (ESA). Based on Section 7 of the ESA, all agencies with projects having federal-aid funding or requiring federal permits have been advised that construction may not proceed until completion of a biological assessment by a qualified biologist, at a minimum. The biological assessments must be reviewed by NMFS, U.S. Fish and Wildlife, and Washington State Departments of Fish and Wildlife, and Natural Resources.

At this time, there are no specific guidelines or requirements for projects not involving federal funds or permits. However, in anticipation that similar provisions will be applied to these projects, other agencies have taken a proactive approach by initiating biological assessments for all of their projects within 1.5-miles of Puget Sound or a fisheries stream, regardless of funding source or other federal involvement.

The East-West (Borgen) Road project has wetland impacts that are subject to Corps of Engineers review, and involves improvements to a portion of State Route 16 which is part of the National Highway (federal) System. In addition, the project requires review by the Washington State Departments of Ecology (wetlands, etc.), and the Washington State Department of Fish and Wildlife for a Hydraulic Project Approval due to the project's proximity to McCormick Creek.

The Point Fosdick Drive Improvement Project is presently being designed for construction later this year. A SEPA checklist is being prepared for this project. Although a specific directive has not been received, it is anticipated that a biological assessment will be needed in conjunction with the SEPA process to confirm the project's impacts and validate the proposed improvements.

After reviewing the Consultant Services Roster and checking with other agencies, the consulting environmental services firm of Applied Environmental Services, Inc., was selected as best qualified to perform the work. Their selection was based on their training and experience in environmental evaluations and biological assessments, familiarity with the area, and ability to complete the work within the project schedule.

Authorization is requested to execute a Consultant Services Contract in the not-to-exceed amount of \$9,989.55 with Applied Environmental Services, Inc., for biological assessments for both the East-West Road and Point Fosdick Drive Improvement projects.

Mayor Wilbert and City Council Members
May 5, 1999
Page 2

FISCAL CONSIDERATIONS

Sufficient funds are available for this work.

RECOMMENDATION

I recommend that the Council move and approve execution of the Consultant Services Contract with Applied Environmental Services, Inc., for biological assessments for both the East-West Road and Point Fosdick Drive Improvement projects in an amount not to exceed nine thousand nine hundred eighty-nine dollars and fifty-five cents (\$9,989.55).

**CONSULTANT SERVICES CONTRACT
BETWEEN THE CITY OF GIG HARBOR AND
APPLIED ENVIRONMENTAL SERVICES, INC.**

THIS AGREEMENT is made by and between the City of Gig Harbor, a Washington municipal corporation (hereinafter the "City"), and **Applied Environmental Services, Inc.** organized under the laws of the State of Washington, located and doing business at **1550 Woodridge Drive SE, Port Orchard, Washington 98366** (hereinafter the "Consultant").

RECITALS

WHEREAS, the City is presently engaged in the design of **Point Fosdick Drive Improvements (CSP-9806) and East/West Roadway Project (CSP-9801)**, and desires that the Consultant perform services necessary to provide the following consultation services.

WHEREAS, the Consultant agrees to perform the services more specifically described in the Scope of Work, dated **April 22, 1999**, including any addenda thereto as of the effective date of this agreement, all of which are attached hereto as **Exhibit A – Scope of Services**, 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:

I. Description of Work

The Consultant shall perform all work as described in **Exhibit A**.

II. Payment

A. The City shall pay the Consultant an amount based on time and materials, not to exceed **nine thousand nine hundred eighty-nine dollars and fifty-five cents (\$9,989.55)** for the services described in Section I 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. **PROVIDED, HOWEVER**, the City reserves the right to direct the Consultant's compensated services under the time frame set forth in Section IV herein before reaching the maximum amount. 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 XVIII 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.

III. 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 sub-consultant of the Consultant shall be or shall be deemed to be the employee, agent, representative or sub-consultant 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 sub-consultants of the Consultant. The Consultant will be solely and entirely responsible for its acts and for the acts of its agents, employees, representatives and sub-consultants 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.

IV. 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 shall be completed by **December 31, 1999**; provided however, that additional time shall be granted by the City for excusable delays or extra work.

V. Termination

A. Termination of Agreement. The City may terminate this Agreement, for public convenience, the Consultant's default, the Consultant's insolvency or bankruptcy, or the Consultant's assignment for the benefit of creditors, at any time prior to completion of the work described in **Exhibit A**. If delivered to one consultant in person, termination shall be effective immediately upon the Consultant's receipt of the City's written notice or such date stated in the City's notice, whichever is later.

B. Rights Upon Termination. In the event of termination, the City shall pay for all services satisfactorily performed by the Consultant to the effective date of termination, as described on a final invoice submitted to the City. Said amount shall not exceed the amount in Section II above. After termination, the City may take possession of all records and data within the

Consultant's possession pertaining to this Agreement, which records and data may be used by the City without restriction. Upon termination, the City may take over the work and prosecute the same to completion, by contract or otherwise. Except in the situation where the Consultant has been terminated for public convenience, the Consultant shall be liable to the City for any additional costs incurred by the City in the completion of the Scope of Work referenced as **Exhibit A** and as modified or amended prior to termination. "Additional Costs" shall mean all reasonable costs incurred by the City beyond the maximum contract price specified in Section II(A), above.

VI. Discrimination

In the hiring of employees for the performance of work under this Agreement or any sub-contract hereunder, the Consultant, its subcontractors, or any person acting on behalf of such Consultant or sub-consultant shall not, by reason of race, religion, color, sex, national origin, or the presence of any sensory, mental, or physical disability, discriminate against any person who is qualified and available to perform the work to which the employment relates.

VII. Indemnification

The Consultant shall defend, indemnify and hold the City, its officers, officials, employees, agents and volunteers harmless from any and all claims, injuries, damages, losses or suits, including all legal costs and attorneys' fees, arising out of or in connection with the performance of this Agreement, except for injuries and damages caused by the sole negligence of the City. The City's inspection or acceptance of any of the Consultant's work when completed shall not be grounds to avoid any of these covenants of indemnification.

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, agents and 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 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.

The provisions of this section shall survive the expiration or termination of this Agreement.

VIII. 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, sub-consultants or sub-contractors.

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 claims made basis.

C. The Consultant is responsible for the payment of any deductible or self-insured retention that is required by any of the Consultant's insurance. If the City is required to contribute to the deductible under any of the Consultant's insurance policies, the Contractor shall reimburse the City the full amount of the deductible.

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.

E. It is the intent of this contract for the Consultant's insurance to 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 in respect to the City. 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 notification will be given to the City of Gig Harbor for any cancellation, suspension or material change in the Consultant's coverage.

IX. Exchange of Information

The City warrants the accuracy of any information supplied by it to the Consultant for the purpose of completion of the work under this Agreement. The parties agree that the Consultant will notify the City of any inaccuracies in the information provided by the City as may be discovered in the process of performing the work, and that the City is entitled to rely upon any information supplied by the Consultant which results as a product of this Agreement.

X. Ownership and Use of Records and Documents

Original documents, drawings, designs and reports developed under this Agreement shall belong to and become the property of the City. All written information submitted by the City to the Consultant in connection with the services performed by the Consultant under this Agreement will be safeguarded by the Consultant to at least the same extent as the Consultant safeguards like information relating to its own business. If such information is publicly available or is already in consultant's possession or known to it, or is rightfully obtained by the Consultant from third parties, the Consultant shall bear no responsibility for its disclosure, inadvertent or otherwise.

XI. 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.

XII. Consultant to Maintain Records to Support Independent Contractor Status

On the effective date of this Agreement (or shortly thereafter), the Consultant shall comply with all federal and state laws applicable to independent contractors including, but not limited to the maintenance of a separate set of books and records that reflect all items of income and expenses of the Consultant's business, pursuant to the Revised Code of Washington (RCW) Section 51.08.195, as required to show that the services performed by the Consultant under this Agreement shall not give rise to an employer-employee relationship between the parties which is subject to RCW Title 51, Industrial Insurance.

XIII. 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 sub-consultants 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.

XIV. 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.

XV. Resolution of Disputes and Governing Law

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 Public Works Director and the City shall determine the term or provision's true intent or meaning. The City Public Works Director 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.

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 Public Works Director's 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 non-prevailing party in any action brought to enforce this Agreement shall pay the other parties' expenses and reasonable attorney's fees.

XVI. Written Notice

All communications regarding this Agreement shall be sent to the parties at the addresses listed on the signature page of the agreement, unless notified to the contrary. Unless otherwise specified, any written notice hereunder shall become effective upon the date of mailing by registered or certified mail, and shall be deemed sufficiently given if sent to the addressee at the address stated below:

CONSULTANT
Lisa Berntsen Stephens
Applied Environmental Services, Inc.
1550 Woodridge Drive SE
Port Orchard, Washington 98366

Wes Hill, P.E.
Director of Public Works
City of Gig Harbor
3105 Judson Street
Gig Harbor, Washington 98335

XVII. Assignment

Any assignment of this Agreement by the Consultant without the written consent of the City shall be void. If the City shall give its consent to any assignment, this paragraph shall continue in full force and effect and no further assignment shall be made without the City's consent.

XVIII. Modification

No waiver, alteration, or modification of any of the provisions of this Agreement shall be binding unless in writing and signed by a duly authorized representative of the City and the Consultant.

XIX. Entire Agreement

The written provisions and terms of this Agreement, together with any Exhibits attached hereto, shall supersede all prior verbal statements of any officer or other representative of the City, and such statements shall not be effective or be construed as entering into or forming a part of or altering in any manner whatsoever, this Agreement or the Agreement documents. The entire agreement between the parties with respect to the subject matter hereunder is contained in this Agreement and any Exhibits attached hereto, which may or may not have been executed prior to the execution of this Agreement. All of the above documents are hereby made a part of this Agreement and form the Agreement document as fully as if the same were set forth herein. Should any language in any of the Exhibits to this Agreement conflict with any language contained in this Agreement, then this Agreement shall prevail.

IN WITNESS WHEREOF, the parties have executed this Agreement on this _____ day of _____, 19__.

By: Lisa Berntsen Stephens
Its Principal

The City of Gig Harbor
By: _____
Mayor

Notices to be sent to:
CONSULTANT
Lisa Berntsen Stephens
Applied Environmental Services, Inc.
1550 Woodridge Drive SE
Port Orchard, Washington 98366

Wes Hill, P.E.
Director of Public Works
City of Gig Harbor
3105 Judson Street
Gig Harbor, Washington 98335

APPROVED AS TO FORM:

ATTEST:

Gig Harbor City Attorney

Gig Harbor City Clerk

APPPLIED
ENVIRONMENTAL
SERVICES, INC.

EXHIBIT A-1
SCOPE OF SERVICES

RECEIVED

APR 22 1999

CITY OF GIG HARBOR
PUBLIC WORKS DEPT.

Thursday, April 22, 1999

City of Gig Harbor
3105 Judson Street
Gig Harbor, WA 98335

Attention: Dave Skinner

Subject: Point Fosdick Improvements (CSP - 9806) Biological Assessment

Dear Dave:

Introduction

Thank you for requesting this scope of work and budget proposal from Applied Environmental Services, Inc. (AES). We are happy to provide this information to perform the Biological Assessment for the widening of Point Fosdick Road in Gig Harbor. Based upon our discussions to date we understand that because the project may be partially federally funded or subject to Endangered Species Act (ESA) overview, Section 7(c) of the ESA must be followed. Our proposal is to provide a brief report addressing the general Biological Assessment criteria with an emphasis toward a "no effect" outcome. Should the results of Task 1 below indicate that the presence of rare, sensitive, threatened or endangered species or critical habitat exists in the project vicinity, our effort will be increased to reflect the appropriate level of effort to complete a Biological Assessment.

Scope Of Work

Task 1. File Review, Paper Inventory

AES will purchase the Washington State Priority Habitats and Species Database (PHS) map product for the site and prepare other pertinent map excerpts for inclusion into our report (Task 3). The PHS map illustrates documented species use and distributions. AES will also prepare information request letters to the various resource agencies (state and federal) soliciting input regarding species presence within a 1.5 mile radius of the proposed project.

1550 Woodridge Dr. SE

Port Orchard, WA 98366

(360) 769-8400 fax (360) 769-8700

EXHIBIT A-1 SCOPE OF SERVICES

Task 2. Onsite Wildlife Investigation

Onsite investigation will include looking for evidence of possible impacts to listed fish or wildlife species that could be associated with the widening of Point Fosdick-Road. AES will photograph the relevant habitat features of the property, if found, for documentation. These photographs will be added to the project file in support of our conclusions and findings. The photos will be retained in the project file for use at a later date if needed.

Task 3. Biological Assessment Report

AES will prepare a brief report describing the methods followed, results and discussion of noted features of the site. The report will focus on the "major concerns that should be addressed in the BA..." for the targeted species. This will be focused toward species identified in Task 1. An 'impacts to the proposal' section will be prepared based upon our field work and review of the plans.

AES will provide a draft report for your review and comment prior to final report completion. We will prepare the final report after you have had an opportunity to view the results and provide input to the "impacts of the proposal" section of the document. AES will prepare a final report addressing your comments which may then be submitted for jurisdictional review and final permitting. Three copies of the final report will be provided. More copies may be requested at an added production expense. Any application fees are the responsibility of the applicant and not part of this scope of work or budget proposal.

Task 4. Additional Tasks as Requested

AES has the capabilities to further assist the client with the planning and permitting surrounding this project. The tasks described above are those which we understand to be minimally required to complete the wildlife priority species survey. Additional effort may be needed such as SEPA preparation, agency meetings mitigation planning and reporting, and site planning assistance in conjunction with the project engineer. AES is prepared to assist the client in any way possible to achieve a reasonable project that meets the City of Gig Harbor requirements. Individual work orders under Task 4 will require a written scope of work change and associated budget increases.

EXHIBIT A-1
SCOPE OF SERVICES

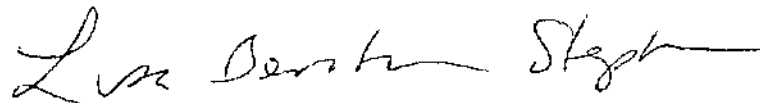
Conclusion

The total estimated fees for Tasks 1 through 3 (described above) is \$1,500.00. This proposal includes the tasks we understand to be necessary to prepare a targeted species assessment and brief report for the subject property. This proposal is based upon our current understanding of the project and may change as more information is transferred to AES. The following scope of work is proposed to be completed by AES. Should additional information become available regarding this project that has direct influence on our work, we would be happy to reassess our fee estimate. All our work will be coordinated with you. Our goals are to provide quality service and products that facilitate project development and jurisdictional acceptance. We have prepared this proposal based upon the information we have available and our experience with these surveys as well as the jurisdiction permit review process.

We are prepared to begin this project with the receipt of a purchase order number. If there are any questions regarding this proposal, our estimated fees or the attached material, please call either Wayne Wright or myself. Thank you again for this opportunity to assist Gig Harbor with your project permitting.

Sincerely,

APPLIED ENVIRONMENTAL SERVICES, INC.

A handwritten signature in black ink that reads "Lisa Berntsen Stephens". The signature is written in a cursive, flowing style.

Lisa Berntsen Stephens
Sr. Environmental Scientist, PWS
President

**EXHIBIT B-1
SCHEDULE OF RATES AND
ESTIMATED HOURS**

RECEIVED

MAY 03 1999

**Applied Environmental Services, Inc.
Project Estimating Sheet**

CITY OF GIG HARBOR
PUBLIC WORKS DEPT.

Project Name: Point Fosdick Improvements (CSP-9806) Biological Assessment
Client: City of Gig Harbor
Date: 4/28/99

Labor Cost Estimate

Task Description	Sr. Env.				
	Sci.	Env. Sci.	Env. Tech.	Drafting	Clerical
Task 1 - File Review, Paper Inventory, Letter Requests	1	1.5			
Task 2 - Onsite Wildlife Investigation	4.75				
Task 3 - Biological Assessment Report	10				1.75
Task 4 - Additional Tasks as Requested	10	10			
Total Hours	25.75	11.5	0	0	1.75
Hourly Rate	\$85.00	\$65.00	\$50.00	\$50.00	\$25.00
Labor Cost	\$2,188.75	\$747.50	\$0.00	\$0.00	\$43.75

Total Labor Cost

\$2,980.00

Non-Labor Cost Estimate

Item Description	Units	Unit Cost	Item Total
Photocopying	30	\$0.10	\$3.00
Mileage	20	\$0.325	\$6.50
Maps & Air Photos		\$100.00	\$0.00
Communication		\$80.00	\$0.00
Supplies			\$0.00
Field Equipment (per day)			\$0.00
Dive Equipment (per day)			\$0.00

Total Non-Labor Cost

\$9.50

TOTAL POINT FOSDICK PROJECT COST

\$2,989.50

EXHIBIT A-2
SCOPE OF SERVICES

A PPLIED
E NVIRONMENTAL
S ERVICES, INC.

RECEIVED

APR 22 1999

CITY OF GIG HARBOR
PUBLIC WORKS DEPT.

Thursday, April 22, 1999

City of Gig Harbor
3105 Judson Street
Gig Harbor, WA 98335

Attention: Dave Skinner

Subject: East/West Road (CSP - 9801) Biological Assessment

Dear Dave:

Introduction

Thank you for requesting this scope of work and budget proposal from Applied Environmental Services, Inc. (AES). We are happy to provide this information to perform the Biological Assessment for the construction of a new road connecting SR 16 to Peacock Hill Avenue NW in Gig Harbor. This new road is currently called East/West Road. Based upon our discussions to date we understand that because the project may be partially federally funded or subject to Endangered Species Act (ESA) overview, Section 7(c) of the ESA must be followed. Our proposal is to provide a report addressing the general Biological Assessment criteria responding to the documented species presence in the project vicinity. Our product will reflect the appropriate level of effort to complete a Biological Assessment under NEPA rules.

Scope Of Work

Task 1. File Review, Paper Inventory

AES will purchase the Washington State Priority Habitats and Species Database (PHS) map product for the site and prepare other pertinent map excerpts for inclusion into our report (Task 3). The PHS map illustrates documented species use and distributions. AES will also prepare information request letters to the various resource agencies (state and federal) soliciting input regarding species presence within a 1.5 mile radius of the proposed project. AES also requests that Gig Harbor provide copies of the wetland delineation report prepared by others, the SEPA Checklist, and other pertinent data regarding the project and site conditions.

1550 Woodridge Dr. SE

Port Orchard, WA 98366

(360) 769-8400 fax (360) 769-8700

EXHIBIT A-2
SCOPE OF SERVICES

Task 2. Onsite Wildlife Investigation

AES will conduct an onsite investigation to document evidence of the wildlife habitat features, species presence and correlation of site conditions to the information obtained through Task 1. Our site investigation will include looking for evidence of possible impacts to listed fish or wildlife species that could be associated with the construction of East/West Road. We understand that the project route extends over one mile in distance and that the route is overgrown, requiring trail clearing and rough terrain. We are planning two field days to complete the onsite investigation. AES will photograph the significant habitat features of the property and surrounding vicinity, if found, for documentation. These photographs will be included in our report to support our conclusions and findings. The photos will also facilitate agency review of the report.

Task 3. Biological Assessment Report

AES will prepare a report describing the methods followed, results and discussion of noted features of the site. The report will focus on the "major concerns that should be addressed in the BA..." for the targeted species identified in Task 1. An 'impacts to the proposal' section will be prepared based upon our field work and review of the engineering plans. This Biological Assessment will be prepared following directions provided by the US Fish & Wildlife Service.

AES will provide a draft report for your review and comment prior to final report completion. We will prepare the final report after you have had an opportunity to view the results and provide input to the "impacts of the proposal" section of the document. AES will prepare a final report addressing your comments which may then be submitted for jurisdictional review and final permitting. Three copies of the final report will be provided. More copies may be requested at an added production expense. Any application fees are the responsibility of the applicant and not part of this scope of work or budget proposal.

Task 4. Additional Tasks as Requested

AES has the capabilities to further assist the client with the planning and permitting surrounding this project. The tasks described above are those which we understand to be minimally required to complete the wildlife priority species survey. Additional effort may be needed such as SEPA preparation, agency meetings mitigation planning and reporting, and site planning assistance in conjunction with the project engineer. AES is prepared to assist the client in

EXHIBIT A-2
SCOPE OF SERVICES

any way possible to achieve a reasonable project that meets the City of Gig Harbor requirements. Individual work orders under Task 4 will require a written scope of work change and associated budget increases.

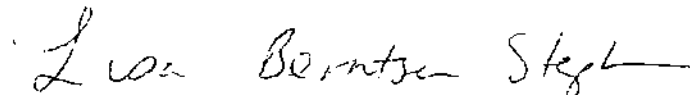
Conclusion

The total estimated fees for Tasks 1 through 3 (described above) is \$5,000.00. This proposal includes the tasks we understand to be necessary to prepare a targeted species assessment and associated report for the subject property. This proposal is based upon our current understanding of the project and may change as more information is transferred to AES. The following scope of work is proposed to be completed by AES. Should additional information become available regarding this project that has direct influence on our work, we would be happy to reassess our fee estimate. All our work will be coordinated with you. Our goals are to provide quality service and products that facilitate project development and jurisdictional acceptance. We have prepared this proposal based upon the information we have available and our experience with these surveys as well as the jurisdiction permit review process.

We are prepared to begin this project with the receipt of a purchase order number. If there are any questions regarding this proposal, our estimated fees or the attached material, please call either Wayne Wright or myself. Thank you again for this opportunity to assist Gig Harbor with your project permitting.

Sincerely,

APPLIED ENVIRONMENTAL SERVICES, INC.



Lisa Berntsen Stephens
Sr. Environmental Scientist, PWS
President

**EXHIBIT B-2
SCHEDULE OF RATES AND
ESTIMATED HOURS**

RECEIVED

MAY 03 1999

CITY OF GIG HARBOR
PUBLIC WORKS DEPT.

**Applied Environmental Services, Inc.
Project Estimating Sheet**

Project Name: East/West Road (CSP-9801) Biological Assessment
Client: City of Gig Harbor
Date: 4/28/99

Labor Cost Estimate

Task Description	Sr. Env.				
	Sci.	Env. Sci.	Env. Tech.	Drafting	Clerical
Task 1 - File Review, Paper Inventory, Letter Requests	4	2.5			
Task 2 - Onsite Wildlife Investigation	16	17			
Task 3 - Biological Assessment Report	8	20			1
Task 4 - Additional Tasks as Requested	15	10			3
Total Hours	43	49.5	0	0	4
Hourly Rate	\$85.00	\$65.00	\$50.00	\$50.00	\$25.00
Labor Cost	\$3,655.00	\$3,217.50	\$0.00	\$0.00	\$100.00

Total Labor Cost

\$6,972.50

Non-Labor Cost Estimate

Item Description	Units	Unit Cost	Item Total
Photocopying	48	\$0.10	\$4.80
Mileage	70	\$0.325	\$22.75
Maps & Air Photos		\$100.00	\$0.00
Communication		\$80.00	\$0.00
Supplies			\$0.00
Field Equipment (per day)			\$0.00
Dive Equipment (per day)			\$0.00

Total Non-Labor Cost

\$27.55

TOTAL EAST/WEST PROJECT COST

\$7,000.05

MARY KAY HIGH
ATTORNEY AT LAW

April 7, 1999

City of Gig Harbor
Planning & Building Services
3125 Judson Street
Gig Harbor, WA 98335

RE: Response to January 19, 1999 Notice of Appeal to Decision Dated 1/4/99
Application for Shoreline Management Substantial Development
Permit (SDP 97-03)
Adam J. Ross, Sr., Applicant
Parcel No. 597000-001-0

To Whom It May Concern:

Adam Ross, Jr. hereby responds to the January 19, 1999 Notice of Appeal to Decision Dated 1/4/99 submitted by Ivan and Aurora Matlock ("Matlocks"). Mr. Ross respectfully requests that the City affirm the Hearing Examiner's decision granting Adam J. Ross, Sr.'s application for a shoreline management substantial development permit for two reasons: 1) the Matlocks' appeal is frivolous and 2) the Hearing Examiner's decision is well-supported by the evidence.

I. The Matlocks' appeal is frivolous and was brought solely for the purpose of delay.

If a party's contentions on appeal are without merit, the appeal is frivolous. *See In the Matter of a Substantial Development Permit Issued by King County to Robert Hicks*, SHB No. 78-25 at 4 (1979 WL 52497). As will be discussed below, the Hearing Examiner's decision was fully supported by a staff report and testimony given at a December 16, 1998 hearing, and the Ross permit application itself has complied at all times with the Gig Harbor Shoreline Master Program and the Shoreline Management Act. The issues raised by the Matlock appeal are thus without merit and cannot be the basis for a modification or denial of the Hearing Examiner's decision.

The Ross permit application has been scrutinized by the Hearing Examiner *three times* now. The Examiner's first decision, issued on February 24, 1998, was supported by staff and approved Mr. Ross' application with conditions. However, because staff allegedly did not provide the Hearing Examiner with letters submitted by the Matlocks and other members of the Harborview Condominium Homeowners Association, the Examiner withdrew his decision. The Examiner evaluated the Ross application a second time on March 30, 1998, and again, with

MARY KAY HIGH
ATTORNEY AT LAW

staff's blessings, granted approval. The Matlocks appealed the second decision, claiming that they had not been given proper notice of the final rescheduled hearing on the matter. The City Council decided to remand the matter to the Hearing Examiner to cure the error, and the Examiner withdrew his March 30 decision. After another public hearing, the Examiner issued a third decision on December 31, 1998, giving the Ross application final approval with staff support.

In contrast to the procedural battles waged against it by the Matlocks, the Ross permit application has never experienced *substantive* difficulty. The Hearing Examiner has consistently ruled in Mr. Ross' favor on the merits of his proposal. In light of the Ross proposal's strong substantive basis, therefore, the only purpose this latest appeal could possibly serve is delay. The Hearing Examiner himself noted the difficulty the Matlocks had in raising legitimate objections to the Ross permit application:

Based upon that testimony and after reviewing the file it is concluded that other slips on the northwest side of the Harborview Marina will not be greatly affected if the application is approved. Therefore, the following allegations by the attorney for the Harborview Marina Condo Owners Association (found in Exhibit O) are seen as spurious comments and should be ignored. *"If this permit is granted, it will preclude access to virtually every one of the western Harborview slips." and, "If the extension is approved, virtually all of the current occupants of slips on the west side of the Harborview Marina will have no access to their slips. As a result, the slips will become worthless."*

December 31, 1998 Findings, Conclusions and Decision ("Decision") at 9 (boldface added; italics in original).

Each of the Matlocks' appeals has cost Mr. Ross resources that should have been invested in his commercial fishing business, but that now have been expended in unrecoverable legal fees. Mr. Ross has been cooperative at all stages of the permitting process and accepts the conditions that have been placed on his permit approval. For the sake of fairness and efficiency, Mr. Ross respectfully asks that the Council affirm the Hearing Examiner's decision.

II. The Hearing Examiner's decision was fully supported by evidence presented during the December 16, 1998 hearing and the staff report.

When the Council makes decisions on permits, it must base those decisions on whether the permits 1) comply with the Master Program for the City of Gig Harbor; 2) promote the policies and procedures of Chapter 90.58 RCW; 3) are supported by written and oral comments from interested persons; and 4) are supported by the findings and conclusions of the Hearing Examiner. City of Gig Harbor Shoreline Master Program ("GHSMP") § 4.03(A)1. The first, second, and fourth directives are not in question here, as the Hearing Examiner's decision found that the Ross permit application was in compliance with the GHSMP and the Shoreline Management Act. Decision at 9.

MARY KAY HIGH
ATTORNEY AT LAW

The only issues raised by the Matlocks are ones that fall under the third directive. Because they are the appellants here, the Matlocks have the burden of proof, even if the Council reviews the record de novo. See *In the Matter of a Shoreline Substantial Development Permit Approved in Part by King County*, SHB No. 83-14 at 2 (1983 WL 197476). However, because the Examiner's decision was supported by ample evidence and testimony, the Matlocks cannot meet their burden and their appeal fails, as explained in detail below.

- A. Finding of Fact/Conclusion of Law No. 3 is supported by Exhibit J and, even if it is irrelevant to the Hearing Examiner's decision, the Ross proposal still complies with the GHSMP.**

The Matlocks complain that there is no evidence to support the Examiner's finding that the Harborview Marina property has been altered with fill. However, the Matlocks themselves reference Exhibit J, an aerial photograph presented at the December 16 hearing and precisely the piece of evidence that the Examiner relied on to make his finding. The Matlocks provide no evidence that the Hearing Examiner did not rely on Exhibit J or that his reliance was erroneous; instead, they flatly state that his finding was "impossible." Notice of Appeal to Decision Dated 1/4/99 ("NOA") at 2. Such a conclusory statement is not enough to overturn a Hearing Examiner's decision, much less act as the basis for an appeal.

Even if the Matlocks are correct, though, the Ross proposal still complies with the GHSMP, which the Matlocks admit is the correct test for approval. NOA at 3. The Hearing Examiner, after evaluating the staff report, evidence, and testimony, specifically found that "the proposed Ross dock extension will comply with the provisions of the Gig Harbor Shoreline Master Program." Decision at 9. The Matlocks present no evidence to the contrary, and their appeal must therefore fail.

- B. Finding of Fact/Conclusion of Law No. 5 was consistent with Conclusions No. 2 and 5 of the March 30, 1998 Decision, and evidence showed that the Ross dock would serve the intent of the GHSMP regulations on setbacks.**

The Matlocks argue that the Hearing Examiner's current decision is inconsistent with a prior decision on the issue of setbacks for commercial fishing moorage facilities. However, a comparative reading shows that the two decisions are, in fact, in harmony. The current decision, issued December 31, 1998, reads:

There is no similar setback requirement in the Shoreline Master Program for commercial fishing moorage facilities, but the minimum clearance between the proposed Ross float extension, with a 17 foot wide fishing boat alongside, and the Harborview Marina exceeds even the requirements for two side by side marinas. Decision at 8. Similarly, the March 30, 1998 decision reads:

After review of the file and the Gig Harbor SMP, the Examiner concurs with the applicant's attorney that the extension of an existing commercial fishing float is not the equivalent of the extension of a marina for the purposes of setback and

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sewerage requirements. . . . [T]he amount of separation between the proposed Ross float and the Harborview Condominium Marina slips (30 feet) exceeds the amount of separation between floats which is required by the City.

March 30, 1998 Findings, Conclusions and Reissued Decision ("Reissued Decision") at 4. Clearly, these sections of the decisions are on par.

The Matlocks take issue with a sentence that appeared in the Reissued Decision: "The applicant will also need to meet setback requirements for any vessel tied to the proposed float." Reissued Decision at 4. The Matlocks claim that because a similar sentence did not appear the current Decision, the current Decision is somehow suspect. However, a reading of Conclusion 2 in the Reissued Decision makes clear that there is no inconsistency between the two decisions.

Conclusion 2 summarized the Examiner's policy analysis of the GHSMP. The Examiner agreed with Mr. Ross that marinas were different than commercial fishing floats, and that because there were no setback regulations for floats similar to the setback regulations for marinas, he could only assess the proposed Ross dock by the "intent" of the SMP regulations: *to provide minimum ingress/egress*. Reissued Decision at 4; GHSMP § 3.11.7 (emphasis added). The Examiner found that the Ross proposal was in compliance with this intent; thus, the sentence in Conclusion 5 of the Reissued Decision meant that Mr. Ross would need to provide minimum ingress/egress, even when there was a fishing boat moored at the proposed float. The Examiner has consistently found that the Ross permit application is in compliance with the intent of the GHSMP. See Decision at 8.

The Matlocks further argue that the Examiner erred by not requiring Mr. Ross to comply with the setback requirements for marinas. The Matlocks reference GHSMP § 3.11.7, which states that "[a]ll moorages, wharves, piers, floats, and vessels moored *at marina facilities* shall be located no closer than twelve feet from the property line, either private property or state leased land" (emphasis added). By its own terms, that section of GHSMP does not apply to commercial fishing floats; it only applies to boats and structures located at marina facilities. The Matlocks' arguments and assignments of error on this point are therefore misplaced, and the Examiner's findings should be upheld.

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C. Finding of Fact/Conclusion of Law No. 6 is based on a reliable survey done by a licensed surveyor.

The Matlocks assign error to Finding of Fact/Conclusion of Law No. 6 in part because it was not based on a survey that had been "dated, signed, or recorded." That argument ignores the evidence that was presented by counsel for Mr. Ross at the December 16 hearing and on December 17, 1998. Page three of Exhibit C, a survey done by Jack Bolton, shows the date (June 12, 1997), the signature of Jack Bolton, and a statement that all of the information shown on the survey had been made public by a survey recorded on February 22, 1982, under recording number ROS '8202220107. Unlike the drawing submitted by Mr. Davies, who is not a surveyor (discussed below in subsection D), Exhibit C is a reliable depiction of the distances between the proposed Ross dock and the Harborview Marina, done by a licensed and experienced surveyor. Exhibit C was properly the basis of the Hearing Examiner's findings.

The Matlocks also argue that the survey was inaccurate and contradicted oral testimony. However, the survey itself notes that there have been errors in past surveys and call readings, which have caused property lines to overlap. Mr. Bolton's survey acknowledges that there is confusion about lease lines and attempts to correct that confusion. It is therefore not surprising that the testimony of several property owners, none of whom were licensed surveyors, conflicted with Mr. Bolton's survey. Still, the Hearing Examiner did hear all the testimony and considered it as part of the record. The fact that he chose to rely on the drawings of a surveyor rather than owners' subjective testimony does not undercut his decision.

D. Finding of Fact/Conclusion of Law No. 7 is directly supported by Mr. Davies' own testimony.

The Matlocks claim that Mr. Davies' drawing (Exhibit M) was based on a survey and that it was therefore more reliable than the actual survey submitted by Mr. Bolton. However, at the hearing, Mr. Davies admitted that he was not a surveyor and that his drawing was a hypothetical depiction of what boat owners at the Harborview Marina would experience if the Ross dock were extended. Transcript of the December 16 Hearing, page 22-23. Mr. Davies admitted that he used an ordinary tape measure to approximate distances, and that the dimensions for boats he drew in the slips were based on brochures from a fish expo in Seattle, not on actual boats that were moored at the Harborview Marina. Transcript of the December 16 Hearing, page 22 - 23.

Faced with the choice of relying on an actual survey and a hypothetical depiction drawn by a lay witness, the Hearing Examiner was fully justified in relying on the survey. Contrary to the Matlocks' assertions, there is evidence to support Finding of Fact/Conclusion of Law No. 7, and the Matlocks thus fail to meet their burden of proof on this issue.

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E. Finding of Fact/Conclusion of Law No. 8 is supported by Exhibit C and Mr. Davies' testimony.

As discussed above, Mr. Davies' drawing was never intended to depict the actual dimensions of boats moored at the Harborview Marina, or the distances between them and the Ross dock. On the other hand, Mr. Bolton's survey was intended to give accurate dimensions of the proposed dock and its relationship to the Harborview Marina. Although the Hearing Examiner commented on the discrepancy between the two exhibits, his Decision obviously demonstrates his belief that Exhibit C, Mr. Bolton's survey, was the more reliable. Without Exhibit C, he could not have reached a definite conclusion about whether the Ross permit application complied with the intent of the GHSMP regarding setbacks (Finding of Fact/Conclusion of Law Nos. 5 and 6). The fact that the Examiner entered a Decision shows that he was persuaded by Exhibit C. The Matlocks have shown no evidence to back their assertion that the Examiner entered his Decision without relying on the evidence, so they again do not meet their burden of proof.

F. Finding of Fact/Conclusion of Law No. 9 is supported by the policies of the GHSMP and the testimony given at the December 16 hearing.

The Matlocks argue that their property rights will be detrimentally affected if the Ross proposal is approved. However, based on testimony given by members of the Harborview Condominium Homeowners Association at the December 16 hearing, the Examiner made specific findings to the contrary, and questioned the credibility of arguments made by their attorney:

[I]t is acknowledged that if the Ross float extension is approved, it will have some impact on slips 41, 43, 45, 47, & 49. However, the owner of the boat in slip 35, [sic] responded under questioning at the hearing that he could get his 40 foot long boat in and out of the marina if the Ross extension is allowed. He also testified that the extension wouldn't affect him that much. Based upon that testimony and after reviewing the file it is concluded that other slips on the northwest side of the Harborview Marina will not be greatly affected if the application is approved. Therefore, the following allegations by the attorney for the Harborview Marina Condo Owners Association (found in Exhibit O) are seen as spurious comments and should be ignored. *"If this permit is granted, it will preclude access to virtually every one of the western Harborview slips." and, "If the extension is approved, virtually all of the current occupants of slips on the west side of the Harborview Marina will have no access to their slips. As a result, the slips will become worthless."*

Decision at 9 (italics in original).

The Hearing Examiner did a balancing of property interests on the record and found that the Ross proposal would allow an expansion of a commercial fishing moorage with minimal impacts. Decision at 9. Such a balancing satisfies Goal Statement 2 from the GHSMP:

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The City of Gig Harbor has achieved its distinctive quality through a beneficial relationship between a variety of uses. It shall be the goal of this Master Program to retain this balance and new development should not emphasize one use at the expense of others.

The Hearing Examiner's findings also support the goals stated under Section 3.06 (Commercial Fishing Industry) of the GHSMP:

Preserve the fishing industry by providing development standards that reflect the needs of the fishing industry.

Encourage the retention and redevelopment of waterfront parcels which provide a substantial and direct contribution to the commercial fishing industry.

Minimize the pressure to convert waterfront property to non-commercial fishing uses.

Encourage the development of moorage and dock facilities consistent with current and future needs.

(Emphasis added.)

By their own testimony, members of the Harborview Condominium Homeowners Association would not be harmed by the Ross proposal. The Hearing Examiner was correct in finding the same, and his Decision should be upheld.

- G. Finding of Fact/Conclusion of Law No. 10 is supported by testimony, evidence, and the staff report, and is substantively consistent with all prior decisions on the Ross proposal.**

The Matlocks finally claim that there are no findings to support the Hearing Examiner's conclusion that the Ross proposal complies with the GHSMP. Such a claim is ludicrous. In Finding of Fact/Conclusion of Law No. 5, the Examiner specifically found that the proposal met or exceeded the minimum requirements for setbacks. Decision at 8. In Finding of Fact/Conclusion of Law No. 6, the Examiner found that the proposal complied with the intent of the GHSMP, to provide minimum ingress/egress. Decision at 8. In Finding of Fact/Conclusion of Law No. 9, the Examiner found that the Ross proposal will not substantially affect the Harborview Marina. Decision at 9. In Finding of Fact/Conclusion of Law Nos. 1 and 10, the Examiner adopted by reference the staff report, which recommended approval of the Ross proposal, and specifically found that the proposal complies with the GHSMP. Decision at 7, 9.

The Matlocks show no examples or evidence that the Ross permit application violates the GHSMP. The Hearing Examiner's December 31, 1998 Decision is fully supported by the evidence and is consistent with prior decisions on the same proposal. The Matlocks cannot meet

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their burden of proof on any of the issues they raise, thus rendering their appeal suspect. In the interests of fairness to the Ross family and maintenance of an efficient decision-making process, the Hearing Examiner's decision should be affirmed and Mr. Ross should be allowed to extend his dock.

Respectfully submitted,



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